



## Contract By Authorized Board

**Commodity or Service:** Administrative Services as the State of Wisconsin  
Pharmacy Benefit Manager

**Request for Proposal (RFP) No:** ETJ0007  
As modified or clarified in Amendment 4  
and Medicare Part D Addendum 2

**Authorized Board:** Group Insurance  
Board

**Contract Period:** 01/01/2011 thru 12/31/2015 with an option for one (1) additional two-year period.

1. This contract is entered into by and between the State of Wisconsin, Department of Employee Trust Funds (Department), the State of Wisconsin Group Insurance Board (Board) and the contractor whose name, address, and principal officer appears on page 2. The Department is the sole point of contact for Board contracting;
2. Whereby the Department of Employee Trust Funds agrees to direct the purchase and the contractor agrees to supply the contract requirements cited above in accordance with the terms and conditions of the request for bid cited above, and in accordance with the contractor's bid submitted on this request for bid which request for bid is hereby made a part of this contract;
3. In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employees or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Wis. Stats., sexual orientation as defined in s.111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
4. Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan. Contractors with an annual work force of less than fifty (50) employees are exempted from this requirement.

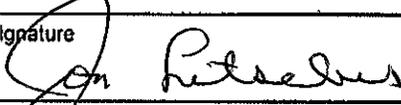
Within fifteen (15) working days after the award of the contract, the plan shall be submitted for approval to the Department. Technical assistance regarding this clause is provided by the Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931, 608.261.7952.

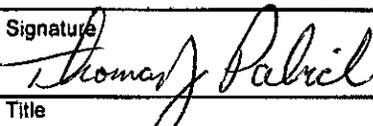
5. For purposes of administering this contract, or in the event of any conflict, ambiguity, or inconsistency among the terms of this Contract and the documents incorporated within, the Order of Precedence to resolve any inconsistencies is:
  - 1) This contract;
  - 2) Amendment 4, dated December 26, 2014 and Medicare Part D-Employer Group Waiver Plan Addendum 2 dated December 26, 2014 and the Business Associate Agreement dated December 26, 2014;
  - 3) Amendment 3, dated February 20, 2014;
  - 4) Amendment 2, dated November 6, 2012;
  - 5) Medicare Part D Addendum, dated January 1, 2012;
  - 6) Amendment 1, dated December 8, 2010;
  - 7) Business Associate Agreement;
  - 8) The Uniform Benefits provisions found in the "TERMS AND CONDITIONS FOR COMPREHENSIVE MEDICAL PLAN PARTICIPATION IN THE STATE OF WISCONSIN GROUP HEALTH BENEFIT PROGRAM AND UNIFORM BENEFITS FOR THE CONTRACTED YEAR ( ET-1136-xx)" as related to pharmacy benefits to be provided through the pharmacy benefit manager under the express provisions of the Uniform Benefits Guidelines and Standard Plan and terms and conditions of the specific contracts between the Board and individual HMOs as amended by the Board from time to time for 2011 or for subsequent years;
  - 9) RFP ETJ0007 dated January 28, 2010, including all appendices, attachments and amendments;
  - 10) The technical and cost proposals for the RFP ETJ0007 submitted by Navitus Health Solutions, LLC dated March 3, 2010, including all appendices, attachments and amendments.

6. Navitus Pharmacy Benefit Management Services Agreement - Medicare Part D Addendum, dated January 1, 2012, provides for services applicable to the inclusion of a Medicare Part D Employer Group Waiver Plan in place of the Retiree Drug Subsidy program for the State and Wisconsin Public Employers group health insurance programs.
7. Amendment 2 dated November 6, 2012, revises payment for Contractor's services effective April 1, 2012. All other provisions of this Contract unrelated to this amendment remain in effect.
8. Amendment 3 dated February 20, 2014, memorializes the Board's May 21, 2013 decision to extend this Contract for one (1) 2-year period effective January 1, 2014, and expiring on December 31, 2015, in accordance with Section 1.04 of Amendment 1 of this Contract. This amendment also reflects an agreement between the Department, on behalf of the Board, and the Contractor to allow the Department to initiate ACH transfers to the Contractor within three (3) business days instead of two (2) for payment of claims account invoices from the Contractor as identified in Section 6.02 of Amendment 1 of this Contract. All other provisions of this Contract remain in full force and effect.
9. Amendment 4 dated December 26, 2014, documents the changes to the Medicare Part D-Employer Group Waiver Plan Addendum 2 dated December 26, 2014, and the updated Business Associate Agreement dated December 26, 2014 that replaces the agreement dated December 8, 2010 as referenced in Exhibit 3 Amendment 1.

**Contract Number & Service:** ETJ0007: Administrative Services as the State of Wisconsin Pharmacy Benefit Manager

**Amendment 4 – December 26, 2014**

<b>State of Wisconsin Department of Employee Trust Funds</b>
By Authorized Board (Name) Group Insurance Board
By (Name) Jon Litscher
Signature 
Title Chair, Group Insurance Board
Contact and Phone c/o John Voelker, Deputy Secretary 608.266.9854
Date (MM/DD/CCYY) 02/02/2015

<b>To be Completed by Contractor</b>
Legal Company Name Navitus Health Solutions, LLC
Trade Name Navitus Health Solutions
Taxpayer Identification Number 43-608530
Company Address (City, State, Zip)  2601 West Beltline Highway, Suite 600 Madison, WI 53713
By (Name) Thomas J. Pabich
Signature 
Title SVP- Bus. Dev. & Client Services
Phone 608-729-1557
Date (MM/DD/CCYY) 01/13/2015

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## BUSINESS ASSOCIATE AGREEMENT

Dated December 26, 2014

This Business Associate Agreement ("Agreement") is by and between Navitus Health Solutions, LLC (Navitus) and the Wisconsin Department of Employee Trust Funds ("ETF"), and acting on behalf of the State of Wisconsin and the Group Insurance Board.

### RECITALS:

**WHEREAS**, ETF and Navitus have executed a contract, pursuant to which Navitus provides pharmacy benefit administration services ("Underlying Contract"), and in connection with those services ETF discloses or allows the disclosure to Navitus of certain information that is subject to protection by the Health Insurance Portability and Accountability Act of 1996, ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 as passed as part of ARRA ("HITECH") and their implementing regulations, Title 45, Parts 160 through 164 of the Code of Federal Regulations, as well as by laws and administrative rules of the State of Wisconsin; and

**WHEREAS**, with respect to its activities pursuant to the Underlying Contract, Navitus is ETF's Business Associate as that term is defined by HIPAA; and

**WHEREAS**, it is the intent of this Agreement to comply with state law and with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards in 45 C.F.R. Parts 160 to 164, inclusive; and

**WHEREAS**, ETF and Navitus agree to incorporate the terms of this Agreement into the Underlying Contract and agree to incorporate this Agreement into any associated addenda and contract extensions, in order to comply with HIPAA, HITECH and state law.

**NOW, THEREFORE**, in consideration of these premises and the mutual promises and agreements hereinafter set forth, ETF and Navitus hereby agree as follows:

### DEFINITIONS:

It is the intent of this Agreement to comply with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards, including the definitions in 45 C.F.R. Parts 160 to 164, inclusive, as applicable. This Agreement also addresses compliance with Wisconsin laws on confidentiality of personal information. In particular, the following words and phrases in this Agreement have the meanings set forth below, unless the context clearly requires otherwise:

"ARRA" means the American Recovery and Reinvestment Act of 2009.

"Individual Personal Information" has the meaning set forth in Wis. Admin. Code § ETF 10.70 (1).

"Medical Record" has the meaning set forth in Wis. Admin. Code § ETF 10.01 (3m).

"Personal Information" is information that can be used to identify a person and includes, without limitation, **Individually Identifiable Health Information, Individual Personal Information, Medical Records and Protected Health Information.**

"Third Party" means a party other than a subcontractor or agent that ETF has approved.

### PART I – OBLIGATIONS OF Navitus

A. **Uses and Disclosures.** Navitus may use or disclose Personal Information it creates for or receives from ETF or any other Navitus of ETF for only the following, limited purposes:

1. **Permitted Uses and Disclosures of Personal Information.** Navitus is permitted to use and disclose Personal Information:

- (a) To conduct pharmacy benefit administration services in accordance with the Underlying Contract.
  - (b) Subject to the limitations on Uses and Disclosures outlined in this Navitus Agreement, specifically including the State Law Restrictions in Part I, Section A, Navitus is authorized to use and disclose Personal Information as necessary for Navitus' proper management and administration, to carry out Navitus' legal responsibilities, and as otherwise Required by Law.
2. Prohibition on Unauthorized Use or Disclosure. Navitus will not use or disclose Personal Information it creates for or receives from ETF or from another Business Associate of ETF, except as authorized or required by this Agreement or as Required by Law or as otherwise authorized in writing by ETF, including, without limitation, marketing and solicitation of business outside the Underlying Contract and disclosure of such information to third-parties.
3. Compliance with Regulations. Navitus will comply with:
- (a) 45 C.F.R. Parts 160 to 164, inclusive, as applicable to a "Business Associate" of a "Covered Entity" and any other regulations adopted pursuant to HIPAA and HITECH; and
  - (b) Applicable State Law not preempted by 45 C.F.R §§ 160.201 to 160.203, inclusive, or any other federal law.
4. State Law Restrictions. Navitus shall comply with Wis. Stat. §§ 40.07 and 134.98 with respect to information Navitus creates for or receives from ETF or from any other Business Associate of ETF. In particular:
- (a) Any Third Party request, including a subpoena, for disclosure of Personal Information, including, without limitation, Medical Records or Individually Identifiable Health Information, shall be referred to ETF in a timely manner; and
  - (b) Navitus shall not disclose to any Third Party Individual Personal Information which ETF itself may not disclose pursuant to Wis. Stat. § 40.07(1), or of Medical Records that ETF itself may not disclose pursuant to Wis. Stat § 40.07(2).

**B. Compliance with Standard Transactions.**

1. Standard Transactions Conducted By Navitus. If Navitus conducts, in whole or in part, transactions, for or on behalf of ETF that are covered by 45 C.F.R Part 162, Navitus will comply with the applicable HIPAA transactions standards, and will require any subcontractor or agent involved with the conduct of such transactions to provide reasonable assurances, evidenced by written contract, that it will comply with each applicable requirement of 45 CFR Part 162. Further, Navitus will require that each of its subcontractors or agents provide assurances, by written contract, that it will not enter into a Trading Partner Agreement, in connection with its conduct of Standard Transactions for and on behalf of ETF that:
- (a) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
  - (b) Adds any data element or segment to the maximum data set;
  - (c) Uses any code or data element that either is not in the Standard Transaction's implementation specification or is marked "not used" by the Standard Transaction's implementation specifications;
  - (d) Changes the meaning or intent of the Standard Transaction's implementation specifications; or
  - (e) Otherwise violates 45 CFR §162.915.
2. Communications Between the Parties. Communications between ETF and Navitus that are required to meet HIPAA transactions standards will meet the standards set by 45 CFR Part 162. For all other communications, the forms, tape formats or electronic formats used shall be those mutually agreed upon by ETF and Navitus.

- C. **Information Safeguards.** Navitus will develop, implement, maintain and use reasonable and appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of Personal Information under the control of Navitus, and to prevent intentional or unintentional non-permitted or violating use or disclosure of Protected Health Information. Navitus will document and keep these safeguards current and furnish documentation of the safeguards to ETF upon request. These safeguards will comply with HIPAA, HITECH and their implementing regulations.
- D. **Reporting of Breach, Improper Use or Disclosure and Security Incidents.** Navitus will report to ETF the discovery of any breach, use, disclosure or Security Incident regarding Personal Information, not allowed by this Agreement or in violation of 45 C.F.R. Part 164 or HITECH. An occurrence of a breach, improper use or disclosure or security incident is considered to be discovered as of the first day on which such occurrence is known to Navitus, or, by exercising reasonable diligence, would have been known to Navitus.
1. Navitus shall provide notice to ETF of the occurrence. The notice shall include the identification of each individual whose unsecured Personal Information has been, or is reasonably believed by Navitus to have been accessed, acquired, or disclosed during such occurrence.
  2. Within one business day of the discovery, Navitus shall notify ETF's Privacy Officer. Navitus shall immediately conduct an investigation and report in writing within four business days the following information:
    - (a) The name and contact information of each individual whose Personal Information has been or is reasonably believed to have been accessed, acquired or disclosed during the occurrence.
    - (b) A brief description of what happened, including the date of the occurrence and the date of the discovery of the occurrence, if known.
    - (c) A description of the types of Personal Information that were involved in the occurrence (e.g., full name, date of birth, Social Security number, account number).
    - (d) A brief description of what Navitus is doing to investigate the occurrence, to mitigate losses and to protect against further occurrences.
    - (e) The actions Navitus has undertaken or will undertake to mitigate any harmful effect of the occurrence.
    - (f) A corrective action plan that includes the steps Navitus has taken or will take to prevent similar occurrences.
  3. At ETF's option, Navitus will be responsible for notifying individuals of the occurrence when ETF requires notification and to pay any cost of such notifications, as well as any costs associated with the breach, improper use or disclosure, including, without limitation, credit monitoring services. Navitus must obtain ETF's approval of the time, manner and content of any such notifications, provide ETF with copies of the notifications, and provide the notifications within sixty (60) days after discovery of the breach, improper use or disclosure. Navitus shall have the burden of demonstrating to ETF that all notifications were made as required, including any evidence demonstrating the necessity of any delay beyond the 60 day calendar notification to affected individuals after the discovery of the breach by ETF or Navitus. To the extent possible ETF will cooperate with Navitus to utilize a Breach Notification Procedure that satisfies both Parties' notice obligations under HIPAA and does not invalidate Business Associate's insurance coverage related to such breach notifications.

**E. Duty to Mitigate Effect of Misuse or Unauthorized Disclosure and Notify Members of Unauthorized Acquisition:**

1. Navitus will mitigate, as required by HIPAA, HITECH, state law and this agreement, to the extent practicable, any harmful effect that is known to Navitus of a breach, improper use, unauthorized disclosure or security incident reported pursuant to subsection D of this section.
2. Navitus will comply with the provisions of Wis. Stat. §134.98 and any subsequently adopted state law regarding mitigation of privacy breaches, and shall ensure by written contract that any subcontractor or agent with whom it contracts to carry out the provisions of the Underlying Contract also complies with the provisions of Wis. Stat. §134.98 and any subsequently adopted law regarding mitigation of privacy breaches.

**F. Minimum Necessary.** Navitus will make reasonable efforts to use, disclose, or request only the minimum amount of Personal Information necessary to accomplish the intended purpose and shall comply with regulations issued pursuant to HIPAA and HITECH. Internal disclosure of such information to employees of Navitus shall be limited only to those employees who need the information and only to the extent necessary to perform their responsibilities according to the Underlying Contract and this Agreement.

**G. Disclosure to Navitus' Subcontractors and Agents.** Navitus shall require any of its agents or subcontractors to provide reasonable assurance, evidenced by written contract, that the agent or subcontractor will comply with the same privacy and security obligations as Navitus with respect to such Personal Information. Before entering into such a contract with an agent or subcontractor, Navitus shall obtain from ETF approval of the contract.

**H. Access, Amendment and Disclosure Accounting.**

1. Access. At the direction of ETF, Navitus agrees to provide access to any Protected Health Information held by Navitus which ETF has determined to be part of ETF's Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its access obligations under HIPAA and HITECH. All fees related to this access, as determined by Navitus, are the responsibility of the individual requesting the access.
2. Amendment. At the direction of ETF, Navitus agrees to amend or correct Protected Health Information held by Navitus and which ETF has determined to be part of ETF's Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its amendment obligations pursuant to HIPAA and HITECH. All fees related to this amendment, as determined by Navitus, are the responsibility of the individual requesting the amendment.
3. Documentation of Disclosures. Navitus agrees to document such disclosures of Protected Health Information and information related to such disclosures so that ETF may meet its obligations under HIPAA and HITECH.
4. Accounting of Disclosures.
  - (a) Navitus shall maintain a process to provide ETF an accounting of disclosures of Protected Health Information for as long as Navitus maintains Protected Health Information received from or on behalf of ETF. Navitus agrees to provide to ETF or to an individual, in a time and manner designated by ETF, information collected in accordance with Subsection 3 above, to permit ETF to properly respond to a request by an individual for an accounting of disclosures pursuant to HIPAA and HITECH.
  - (b) Each accounting will provide:
    - (i) The date of each disclosure;
    - (ii) The name and address of the organization or person who received the Protected Health Information;
    - (iii) A brief description of the Protected Health Information disclosed; and

- (iv) For disclosures other than those made at the request of the subject, the purpose for which the Protected Health Information was disclosed and a copy of the request or authorization for disclosure.
  - (c) For repetitive disclosures which Navitus makes to the same person or entity, including ETF, for a single purpose, Navitus may provide:
    - (i) The disclosure information for the first of these repetitive disclosures;
    - (ii) The frequency or number of these repetitive disclosures; and
    - (iii) The date of the last of these repetitive disclosures, Navitus will make a log of this disclosure information available to ETF within five (5) business days of ETF's request.
  - (d) Navitus need not record disclosure information or otherwise account for disclosures of Protected Health Information if:
    - (i) The disclosures are allowed under this Agreement or are expressly authorized by ETF in another written document; and
    - (ii) The disclosures are for one of the following purposes:
      - i. Treatment, Payment or Health Care Operations that are not made through an Electronic Health Record;
      - ii. In response to a request from the Individual who is the subject of the disclosed Protected Health Information, or to that Individual's Personal Representative;
      - iii. Made to persons involved in the health care or payment for the health care of the Individual who is the subject of the disclosed Protected Health Information;
      - iv. For notification for disaster relief purposes;
      - v. For national security or intelligence purposes;
      - vi. As part of a Limited Data Set; or
      - vii. To law enforcement officials or correctional institutions regarding inmates.
  - 5. Disclosure Tracking Time Periods. Except as otherwise provided in this paragraph, Navitus must have available to ETF the disclosure information required by this section, but in no case will Navitus be required to have available information from:
    - (a) More than six (6) years before ETF's request for the disclosure information; or
    - (b) Any period during which Navitus did not provide services to ETF.
  - 6. Disclosure Tracking for Disclosures made through Electronic Health Records: Navitus only needs to provide disclosures for Treatment, Payment or Health Care Operations made through an Electronic Health Record for three years prior to the date on which the accounting is requested. Navitus shall provide all information necessary for ETF to provide an accounting that includes all information required by regulations issued pursuant to HIPAA and HITECH.
  - 7. Effective Date: The effective date for accounting required under subsection 6 depends on the date ETF acquires an Electronic Health Record. If ETF had an electronic Health Record as of January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF on or after January 1, 2014. If ETF does not have an Electronic Health Record as of January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF after the later of January 1, 2011 or the date ETF acquires an Electronic Health Record.
- I. Accounting to ETF and Government Agencies. Navitus will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information available to ETF to provide to the U.S. Department of Health and Human Services (HHS) in a time and manner designated by HHS for the purpose of determining ETF's compliance with HIPAA and HITECH.

Navitus shall promptly notify ETF of any inquiries made to it by HHS concerning ETF's compliance with HIPAA.

- J. **Red Flag Rules.** If applicable to Navitus, Navitus shall be responsible for implementation of an Identity Theft Monitoring Policy and procedure to protect Personal Information under the Federal Trade Commission regulations known as the "Red Flag Rules."

#### PART II -ETF OBLIGATIONS

- A. **Changes in Permissions to Use and Disclose Protected Health Information.** ETF shall promptly notify Navitus of any change in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such change may affect Navitus' use or disclosure of such Protected Health Information.
- B. **Changes in ETF's Notice of Privacy Practices.** ETF shall provide Navitus with a copy of ETF's Notice of Privacy Practices and shall notify Navitus of any change made to the Notice of Privacy Practices, to the extent that such change may affect Navitus' efforts to comply with this Agreement.
- C. **Changes in State Law.** ETF shall notify Navitus of any relevant change in Wisconsin law, to the extent that such change may affect Navitus' efforts to comply with this Agreement.

#### PART III - TERM, TERMINATION AND AMENDMENT

- A. **Term.** This Agreement becomes effective on the effective date of the Underlying Contract. The Agreement is co-extensive with the term of the Underlying Contract, including any extensions made to the original Underlying Contract.
- B. **Termination for Breach.** ETF shall have the right to terminate the Underlying Contract and this Agreement if Navitus, by pattern or practice, materially breaches any provision of this Agreement.
- C. **Reasonable Steps to Cure Breach.** In addition to the right to terminate this Agreement and Underlying Contract pursuant to section B, above, ETF may provide Navitus with an opportunity to cure the material breach. If these efforts to cure the material breach are unsuccessful, as determined by ETF in its sole discretion, ETF may terminate the Underlying Contract and this Agreement, as soon as administratively feasible.
- D. **Effect of Termination: Return or Destruction of Protected Health Information.** Upon termination, cancellation, expiration, or other conclusion of the Agreement, Navitus shall:
1. Return to ETF or, if return is not feasible, destroy all Personal Information in whatever form or medium that Navitus received from or created on behalf of ETF. This provision shall also apply to all Personal Information that is in the possession of subcontractors or agents of Navitus. In such case, Navitus shall retain no copies of such information, including any compilations derived from and allowing identification of Personal Information. Navitus shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, Navitus shall certify on oath in writing to ETF that such return or destruction has been completed.
  2. If Navitus destroys Personal Information, it shall be done with the use of technology or methodology that renders the Personal Information unusable, unreadable, or undecipherable to unauthorized individuals as specified by HHS in HHS guidance for the destruction of Protected Health Information. Acceptable methods for destroying Personal Information include: (i) paper, film, or other hard copy media shredded or destroyed in order that Personal Information cannot be read or reconstructed; and (ii) electronic media cleared, purged or destroyed consistent with the standards of the National Institute of Standards and Technology (NIST). HHS specifically excluded redaction as a method of destruction of Protected Health Information, unless the information is properly redacted so as to be fully de-identified.
  3. If Navitus believes that the return or destruction of Personal Information is not feasible, Navitus shall provide written notification of the conditions that make return or destruction

infeasible. Upon mutual agreement of the Parties that return or destruction is not feasible, Navitus shall extend the protections of this Agreement to Personal Information received from or created on behalf of ETF, and limit further uses and disclosures of such Personal Information, for so long as Navitus maintains the Personal Information.

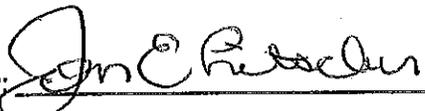
- E. **Agreement to Amend Agreement.** The parties to this contract acknowledge that federal laws relating to transactions, security and privacy are rapidly evolving and that amendment to this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, HITECH and their implementing regulations. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, HITECH and applicable federal regulations. If this Agreement is not amended by the effective date of any final regulation or amendment to final regulations with respect to HIPAA and HITECH, this Agreement will automatically be amended on such effective date such that the obligations they impose on Navitus remain in compliance with the regulations then in effect.

#### PART IV – GENERAL PROVISIONS

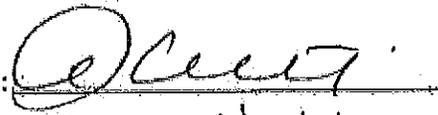
- A. **Conflict.** The provisions of this Agreement override and control any conflicting provision of the Underlying Contract. All non-conflicting provisions of the Underlying Contract remain in full force and effect.
- B. **Election to Not Treat As Representative.** Nothing in this Agreement shall be construed to limit the discretion of ETF, under 45 C.F.R. § 164.502 (g) (5), to elect not to treat a person as the representative of an individual.
- C. **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any entity other than ETF and Navitus, any rights, remedies, obligations or liabilities whatsoever.
- D. **Documentation.** All documentation that is required by this Agreement or by 45 C.F.R. Part 164 will be retained by Navitus for six (6) years from the date of creation or when it was last in effect, whichever is longer.
- E. **Survival.** The parties' obligations and rights, with respect to Navitus' engagement to provide services, will be unaffected by the termination of the Underlying Contract and this Agreement. In particular, the provisions of Part III, Sections D and E, and this section, shall survive termination of the Underlying Contract and this Agreement.

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

Department of Employee Trust Funds  
on behalf of the  
State of Wisconsin Group Insurance Board

By:   
Name: Jon E. Litscher  
Title: Chair GIB

Navitus Health Solutions, LLC

By:   
Name: Alyse Hutchinson  
Title: Privacy Officer

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**MEDICARE PART D EMPLOYER GROUP WAIVER PLAN ADDENDUM 2**

**Dated December 26, 2014**

This Employer Group Waiver Plan Addendum (this "Addendum") is entered into this 1st day of January, 2015 ("Effective Date") by and between Navitus Health Solutions, LLC, a Wisconsin limited liability company ("Navitus"), and The State of Wisconsin Department of Employee Trust Funds, on behalf of The State of Wisconsin Group Insurance Board ("Client"). Client and Navitus may be referred to, individually, as a "Party" and, collectively, as the "Parties."

**RECITALS**

Whereas, Navitus and Client have entered into a Pharmacy Benefit Management Contract Services Agreement with an effective date of January 1, 2011 (the "Client Agreement"), under which Navitus provides services related to the management of pharmacy benefits sponsored by Client;

Whereas, Navitus and Client had previously entered into an agreement with Sterling Life Insurance Company related to the provision of EGWP-related services, and that agreement has since been terminated; and the Parties intend that this Addendum will replace that previous agreement;

Whereas, Navitus and Dean Health Insurance, Inc. ("Sponsor"), have entered into a Medicare Part D – Employer Group Waiver Plan Pharmacy Benefit Management Services Agreement (the "Sponsor Agreement") dated October 1, 2014, pursuant to which Navitus administers Employer Group Waiver Plans (as defined below) sponsored by Sponsor pursuant to Sponsor's agreement with CMS;

Whereas, Client provides Eligible Persons (as defined below) enrolled in its Medicare Part D Prescription Drug Program with benefits for prescription drugs and certain devices and supplies dispensed by pharmacists, and Client desires to offer its retirees Medicare Part D benefits via a CMS-approved Employer Group Waiver Plan;

Whereas, Client and Navitus desire to enter into this Addendum for the provision and management of the pharmacy benefits sponsored by Client for Eligible Persons under the Medicare Part D Laws and Regulations (as defined below), which is offered by Sponsor and administered by Navitus;

Now therefore, in consideration of the mutual promises set forth herein, Client and Navitus agree as follows:

**ARTICLE I.  
DEFINITIONS**

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

**CAHPS** – Consumer Assessment of Healthcare Providers and Systems (CAHPS) is a standardized member survey mandated by the Centers for Medicare and Medicaid Services (CMS) to measure quality and performance within specific healthcare segments.

**Client Agreement** has the meaning assigned to it in the Recitals.

**CMS** means the Centers for Medicare and Medicaid Services.

**Covered Products** means those prescription drugs and ancillary devices and supplies that are covered under Client's Plan Guidelines, and as required or limited by CMS.

**Eligible Person** means one of Client's Medicare Part D applicants who satisfies all the eligibility criteria necessary to receive pharmacy benefits under the Plan and is identified by the Client as an enrollee in the Employer Group Waiver Plan.

**Employer Group Waiver Plan, EGWP, or 800 Series Plan** means a customized Medicare Part D prescription drug plan developed by Sponsor and Navitus and offered exclusively to Employer group health plans by Sponsor on an administrative services only basis.

**EGWP Plan Guidelines** means a description of pharmacy benefits provided under the EGWP and limitations thereto, including the framework of policies, interpretations, rules, practices and procedures applicable to such benefits and signed by Sponsor and submitted to Navitus. The parties agree that the EGWP Plan Guidelines will be consistent with Sponsor Agreement between Sponsor and Navitus, the contracts between Sponsor and CMS related to operating an EGWP, and CMS guidance regulatory requirements. The EGWP Plan Guidelines shall not include any amendments except as provided in Section 4.03 of this Addendum.

**Formulary** means the entire list of Covered Products under the Plan as agreed upon by the parties and which complies with CMS requirements and limitations.

**Generic Product** means any drug designated as generic by the entity that Navitus has entered into an agreement with to provide Branded Product and Generic Product designation as well as the Average Wholesale Price (AWP).

**Independent Review Entity or IRE** means an entity that conducts independent external reviews of adverse health care treatment decisions. As of the Effective Date, CMS had designated MAXIMUS Federal Services, Inc., to be the IRE that handles exceptions and appeal/review processes associated with Medicare Part D.

**Medicare Part D** means the Medicare Prescription Drug Benefit Program set forth in the Medicare Prescription Drug, Improvement and Modernization Act of 2003 and the regulations and subregulatory guidance promulgated thereunder, as may be amended from time to time.

**Sponsor Agreement** has the meaning assigned to it in the Recitals.

**Medication Therapy Management, or MTM**, means a drug therapy management program that is designed to ensure, with respect to targeted Eligible Persons, that Covered Products are appropriately used to optimize therapeutic outcomes through improved medication use, and to reduce the risk of adverse events, including adverse drug interactions.

**Member** means an Eligible Person.

**MIPAA** means the Medicare Improvements for Patients and Providers Act of 2008 and any amendments thereto.

**Navitus PMPM** has the meaning assigned to it in Exhibit 1.

**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"

will not be considered a representative, subcontractor, or agent of Navitus and may include the Mail Service Pharmacy, Specialty Pharmacy, Indian tribal unit pharmacies, home infusion pharmacies, mental health facilities and other pharmacies and facilities required by CMS.

**Pass-Through** means that all Rebates and discounts are provided to Client in accordance with Article IV, below, and Navitus does not retain any Rebates or any other direct financial benefits from drug manufacturers or pharmacies.

**Plan** means the combination of benefits provided to Eligible Persons through (a) Sponsor's Employer Group Waiver Plan, which includes the Medicare Part D Defined Standard Benefit, and (b) the Wrap Plan, which includes commercial non-Medicare Part D benefits.

**Plan Guidelines** means the combined description of pharmacy benefits in the EGWP Plan Guidelines and the Wrap Plan Guidelines.

**PPACA or "Affordable Care Act"** means the Patient Protection and Affordable Care Act and the Health Care Education and Reconciliation Act of 2010 and their accompanying regulations, as amended from time to time.

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

**Provider** means any organization, institution, or individual that provides health care services to Medicare beneficiaries. Physicians, ambulatory surgical centers, and outpatient clinics are some of the providers of services covered under Medicare Part B.

**Rebates** mean rebates, discounts, or incentives received by Navitus pursuant to a contract with a pharmaceutical manufacturer, and directly attributable to the Formulary and Covered Product utilization by Eligible Persons, as well as those rebates, discounts or incentives from market share contracts related to Client's population of Eligible Persons.

**Service Area** means Sponsor's geographic service area, as approved by CMS. This service area includes all 50 States, the District of Columbia, and Puerto Rico.

**Specialty Pharmaceuticals** means those biotech and other Covered Products identified by Navitus as specialty pharmaceuticals from time to time based on the Covered Product's attributes and costs. 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.

**True Out-of-Pocket Cost or TrOOP** means expenses (such as a Coinsurance, Copayment or Deductible amount) incurred by an Eligible Person or by another person on behalf of an Eligible Person.

**Trust Account** means a trust account established by Navitus on behalf of Client for the purpose of holding capitation payments from CMS until such amounts are distributed as provided herein. The Trust Account will not be a grantor trust of Client, and Client will not be the settlor of the trust and will not have any reporting tax or other obligations with respect to the trust.

**Wrap Plan** means the commercial non-Medicare Part D benefits provided to Eligible Persons by Client through Navitus, which is separately administered from the EGWP, and which benefits are those agreed upon by Client and Navitus from time to time.

**Wrap Plan Guidelines** means a description of pharmacy benefits provided under the Wrap Plan and limitations thereto, including the framework of policies, interpretations, rules, practices and procedures applicable to such benefits signed by Client and submitted to Navitus. The Wrap Plan Guidelines will not include any amendments except as provided in Section 4.03 of this Addendum.

All other capitalized terms that are not otherwise defined in this Addendum shall have the meaning set forth in the Client Agreement.

## **ARTICLE II. SCOPE OF ADDENDUM; NAVITUS' RESPONSIBILITIES**

**Section 2.01. Scope of Addendum; General Description of Duties and Obligations.** This Addendum includes terms and conditions under which Navitus will provide services related to the Plan. Except as otherwise modified or supplemented by this Addendum, the terms of the Client Agreement shall apply to the services provided under this Addendum. All such services provided by Navitus shall be consistent and comply with Sponsor's contractual obligations to CMS. This addendum supersedes the previous Medicare Part D Addendum upon its expiration.

**Section 2.02. Delegated Functions.** Navitus agrees to perform the services provided under this Addendum in compliance with all applicable federal laws and regulations and CMS instructions, including, without limitation, all of the requirements set forth under 42 CFR Part 423. The Parties acknowledge that (a) Sponsor will monitor Navitus' performance of those delegated functions on an ongoing basis, and (b) Sponsor may revoke the delegation of those functions and services to Navitus if Sponsor or CMS determines that Navitus has not performed those functions or services satisfactorily after written notice to Navitus of the deficiency and a reasonable opportunity to cure such breach. In the event delegated functions are revoked, Navitus will inform the Client of any actions immediately.

**Section 2.03. Implementation Services.** Navitus will assign dedicated personnel to Client in order to implement the services provided under this Agreement. 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 except as otherwise required under Section 2.16 herein for CMS reporting requirements, from Navitus' standard report library; (e) implementing standard Navitus system edits; (f) enabling Client's connectivity through a virtual private network or file transfer protocol to Navitus' system; (g) implementing standard Prior Authorization guidelines required by Client (when prior authorization services are purchased without customization); and (h) producing standard prior authorization letters, from Navitus' standard library (when prior authorization services are purchased without customization); (i) all other applicable and necessary services required for timely and appropriate implementation.

**Section 2.04. 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.

Navitus will conduct regularly scheduled consultative review meetings to report and review a summary of the delegated activities performed. The meetings will be scheduled and organized by the Navitus account management team and be conducted at times and places mutually agreed upon by the parties.

**Section 2.05. Grievances and Redeterminations.** Navitus shall administer CMS-compliant Grievance and Appeal processes in accordance with the provisions of 42 CFR Part 423, Subpart M. Navitus is also responsible for resolution of complaints received through the CMS Complaint Tracking System (CTM) that pertain to Navitus operational support of the EGWP product.

**Section 2.06. Complaint Tracking Module (CTM).** Navitus will have responsibility for CTM actions and activities as required by CMS. Navitus will adhere to requirements published in the CMS CTM Standard Operating Procedures document, as modified by CMS from time to time, to ensure beneficiary complaints are addressed in accordance with CMS requirements.

**Section 2.07. Member Call Center.** Navitus will maintain a CMS compliant member call center, which will be accessible through a toll-free telephone line, responsible for responding to inquiries from Eligible Persons regarding eligibility, benefits and TrOOP verification, location of Participating Pharmacies and other related Member concerns. Member services hours will be during normal business hours of Monday through Friday 8am to 5pm CST/CDT, unless otherwise required.

**Section 2.08. Pharmacy Help Desk Call Center.** Navitus will maintain a CMS compliant pharmacy help desk call center, which will be accessible through a toll-free telephone line, responsible for responding to inquiries from Participating Pharmacies and other providers regarding the services provided by Navitus under this Agreement; provided, additionally, that Navitus shall also assist Eligible Persons who call Navitus' call center from a Participating Pharmacy seeking assistance. Call center personnel will respond to questions related to online adjudication. Navitus' toll-free help line shall be available to all Participating Pharmacies twenty-four hours per day, three hundred sixty-five days per year. Navitus reserves the right to change such hours of operation and Navitus shall notify Client and the Participating Pharmacies at least ten (10) business days prior to any such changes.

**Section 2.09. Pharmacy Network.** Navitus has created and will maintain a network of Participating Pharmacies that complies with all applicable state and federal regulations and shall meet the needs of the Client to adequately and sufficiently serve Client's Eligible Persons. Navitus shall cause Participating Pharmacies to perform pharmacy services for Eligible Persons according to their Participating Pharmacy agreement. The composition of the Participating Pharmacy network may change due to the addition or withdrawal of specific Participating Pharmacies, subject to the terms of this Section

(a) **Access Standards.** Navitus will make available to Client a network of pharmacy providers that meets the CMS access requirements in the Service Area. Navitus will comply with the CMS rules related to pharmacy network access for EGWPs as outlined in the Medicare Prescription Drug Benefit Manual, as modified from time to time. The Parties understand that CMS has waived the specific Part D retail pharmacy access standards contained in 42 CFR 423.120(a)(1) for "800 series" EGWPs as long as the plan sponsor attests that its networks are and will continue to be sufficient to meet the needs of those individuals eligible to participate in the plan, including situations involving emergency access. However, CMS may review the adequacy of the pharmacy networks and potentially require expanded access in the event of beneficiary complaints or for other reasons in order to ensure that the plan's network is sufficient to meet the needs of its enrollee population. Should CMS require expanded access to meet the needs of the enrollee population, Navitus shall meet or exceed such minimum access requirements put forward by CMS within three months of any review or such shortened period as required by CMS.

**(b) Out-of-Network Access.** Client's rules limiting Eligible Persons' out-of-network access shall satisfy the requirements of 42 CFR §423.124(c) and agrees to provide Navitus those rules for implementation. Consistent with those out-of-network access rules provided in writing by Client, Navitus shall work with Client to ensure compliance with the requirements of 42 CFR §423.124 in providing adequate access to Eligible Persons for Covered Products dispensed at Non-Participating Pharmacies when Eligible Persons cannot reasonably be expected to obtain Covered Products at Participating Pharmacies.

**(c) Public Disclosure of Drug Prices for Equivalent Drugs.** Navitus shall implement the requirements in 42 CFR §423.132 by contractually requiring pharmacies dispensing Covered Products to inform Eligible Persons of any differential between the price of a Covered Product and the price of its lowest generic version that is therapeutically equivalent and bioequivalent and available at that pharmacy unless the particular Covered Product being purchased is the lowest-priced therapeutically equivalent and bioequivalent version of that drug available at that pharmacy. Client and Navitus acknowledge that this information must be provided after the drug is dispensed at the point of sale; in the case of mail service, at the time of delivery; in the case of a long term care pharmacy, through a written explanation of benefits; or under other circumstances where CMS deems compliance to be impossible or impracticable.

**(d) Listing of Participating Pharmacies.** Navitus will make available to Client and Eligible Persons a printed list of Participating Pharmacies in its network as required by CMS. This information will also be available in an electronic form on the Navitus MedicareRx member website.

**(e) 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.

**(f) 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.

**(g) 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 or Non-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 will promptly use commercially reasonable efforts to recover any overpayment from a Participating Pharmacy or Non-Participating Pharmacy. Navitus will not be required to commence any litigation to recover any such overpayments if, in Navitus' reasonable discretion, it deems such actions not to be economically feasible. In addition, if Navitus commences litigation to recover such amounts, then all expenses incurred by Navitus with regard to such litigation may be offset against any amounts recovered. Navitus will promptly use commercially reasonable efforts to recover any overpayment from a Participating Pharmacy or Non-Participating Pharmacy. Navitus will not be required to commence any litigation to recover any such overpayments if, in Navitus' reasonable discretion, it deems such actions not to be economically feasible. In addition, if Navitus commences litigation to recover such amounts, then all expenses incurred by Navitus with regard to such litigation may be offset against any amounts recovered. Navitus will provide reporting related to such overpayments as agreed upon by the parties from time to time.

## Section 2.10. 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 according to the Prescription Pricing Schedule in Exhibit 2, the Plan Guidelines and HIPAA-required transaction code sets. Client recognizes that the Prescription Pricing Schedule indicates a target pricing discount for the distribution channels listed, and that the agreed upon discounts from some pharmacies may vary within each channel, and more specifically, agreed upon discount rates may vary substantially for some long-term care pharmacies servicing Eligible Persons residing in long term care facilities, for Indian Tribal Unit pharmacies, home infusion pharmacies, and other non-traditional retail pharmacies required by CMS. Notwithstanding the foregoing, if Client requests that Navitus encourage a pharmacy to become a Participating Pharmacy by offering such 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 notify such providers on-line of the reason or reasons for denial of such Claims, including, but not limited to, missing or erroneous information. Navitus will also make factual determinations and interpret the provisions of the Plan to make coverage determinations on claims for Plan Benefits. Eligible Persons will have the right to file a grievance or an appeal if they are unhappy or dissatisfied with any of the benefits or services they receive pursuant to the Plan.

Navitus shall operate its claims processing system in accordance with the CMS requirements including but not limited to the following:

(i) On-Line Claims Processing. Navitus will provide real time on-line claims processing in accordance with the CMS requirements: 98% response within 4 seconds; 99% of all claims paid with no errors; and 99% system availability.

(ii) Paper Claims Processing. Navitus shall receive and process claims from Eligible Persons in accordance with the CMS requirements: 100% of Claims not requiring intervention will be processed within 14 days; 100% of claims requiring intervention will be processed within 30 days of Navitus' receipt of the Claim; and 99% of all paper claims paid with no errors.

(iii) System Specifications. Navitus shall make available to CMS, or CMS's delegated entity, upon CMS's request, documentation regarding Navitus information systems, including: hardware and software; operating systems; the commercial organization from which Navitus receives pricing, including file revision history; the number of sites processing claims (including disaster recovery back-up system); and system volume in covered lives, including the number of transactions the system can support per day and per hour.

(iv) Claims from Participating Pharmacies. The following Services will be provided upon receipt of a Claim:

A. Verification that the individual for whom the prescription has been provided is an Eligible Person;

B. Verification that the medication dispensed is eligible for coverage based on the applicable formulary and other utilization criteria;

C. Verification that the pharmacy and prescriber maintains a valid National Provider Identification number or other licensing number as required by CMS; and

D. Monthly verification that neither prescriber nor pharmacy is excluded from participation in Medicare by the Office of the Inspector General.

(v) Accurate application of Medicare Part D processing parameters including but not limited to, Low Income Subsidy copayments, calculation and maintenance of Gross Drug Spend and TrOOP accumulators, N transactions, Financial Information Reporting (FIR)/TrOOP balance transfers, Part B vs. D edits, transitional fill benefits, and Coordination of Benefits per CMS regulations.

**(b) Coordination of Benefits.** Subject to Client's compliance with Section 3, below, which requires Client to provide to Navitus eligibility information, including that required to conduct proper Coordination of Benefits, Navitus shall work with Client to ensure that the process for adjudicating claims will include the Coordination of Benefits in accordance with federal regulation 42 CFR 423.464, to the extent that Navitus has been notified by Client of additional benefit coverage for Eligible Persons, and real-time tracking of Eligible Person's drug benefits, including TrOOP, for those Claims transmitted by Participating Pharmacies using the NCPDP facilitation process. If CMS notifies Navitus that an Eligible Person has a primary insurer other than the Plan, then Navitus will pay Claims for such Eligible Person as a secondary payor rather than as a primary payor. Navitus does not assume responsibility for establishing coordination of benefits filing order for subsequent coverages.

**(c) E-Prescribing.** Client and Navitus will comply with the e-prescribing standards, as amended from time to time, as promulgated by CMS for the Medicare Part D program.

**(d) Direct Member Reimbursement.** Navitus will provide an Eligible Person with a claim form that must be used when submitting a Claim for reimbursement for Covered Products provided by a Participating Pharmacy or non-participating pharmacy. Eligible Persons will submit Claims using such forms. Navitus will process the Claims according to the Plan Guidelines and in the amount approved by Client for payment and ensure payment occurs within 14 days of Navitus' receipt of the forms.

**(e) Claim Reprocessing.** Navitus shall be responsible for reprocessing Eligible Persons' claims when necessary to ensure that claims payments accurately reflect the benefit plan design, Plan Guidelines (e.g., copays, coinsurance) and eligibility status of an Eligible Person, and the accurate amount due a Participating Pharmacy under its contract with Navitus. Reprocessed claims will be extracted and remitted to CMS on the next Prescription Drug Event file.

**(f) Covered Pharmacy Services for Long Term Care.** Navitus will require any Participating Pharmacy that is a long term care Participating Pharmacy to agree to dispense Part D Covered Products in accordance with 42 CFR §423.154 in regards to quantity dispensed to Eligible Persons who reside in long term care facilities, as defined in 42 CFR §423.100 and as further defined and qualified by PPACA and regulations promulgated thereunder including provisions related to the short cycle dispensing of certain prescription orders. Navitus will adjudicate a benefit design and a long-term-care Participating Pharmacy must dispense solid oral doses of brand name drugs, as defined in 42 CFR §423.4, to Eligible Persons in such facilities in no greater than 14-day increments. The Plan Guidelines for long term care benefits shall allow up to 31 days of medication as a one-month's supply except as otherwise pertaining to provisions of PPACA and regulations promulgated thereunder including 42 CFR §423.154 related to the short cycle dispensing of certain prescription orders which address claims and reimbursement relevant to the short cycle dispensing provisions for which a dispensing fee will apply for each dispensing of such brand drugs subject to short cycle dispensing rules and regulations established by CMS.

**Section 2.11. 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. Participating Pharmacies will collect the lesser of the amount of the Claim determined under Exhibit 2 or the Co-payment. Notwithstanding the foregoing and if allowed by CMS and federal and state law, Client agrees that Participating Pharmacies may waive or reduce an Eligible Person's Coinsurance, Copayment or Deductible if done in an unadvertised, unsolicited non-routine manner after determining in good faith that the Eligible Person is financially needy or after failure to collect such amount despite reasonable efforts. In the event Navitus must complete claims reprocessing for Eligible Persons, Navitus may or may not be notified by the Participating Pharmacy if payments are made on behalf of Eligible Persons. Under no circumstances will Client be responsible to Navitus or any pharmacy for any monies owed by Eligible Persons to pharmacies or Navitus. If Navitus is notified that an Eligible Person makes a payment related to a Claim that Navitus later offsets against payments otherwise owed to a Participating Pharmacy, because such payment is in excess of the amount the Eligible Person is required to pay under the Plan, then Navitus will refund such payment to the Eligible Person.

**Section 2.12. Client Claims File.** Navitus will provide Client with an electronic file in Navitus' standard format of all paid, denied, rejected, and duplicate Claims for Client prescription drug program on a daily 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 2.13. 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 all CMS required 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 Providers and Participating Pharmacies as needed to discuss therapeutic issues and to offer suggestions for alternative therapy. In connection with these services, Navitus also may provide Participating Pharmacies and Providers information, electronic messaging, and communications about such alternatives and services. Client further agrees that Participating Pharmacies and Providers may contact Eligible Persons regarding refill reminders or information about treatment alternatives; provided that such action is not inconsistent with applicable medical standards of care or any limitation imposed by applicable law.

(c) **Treatment Alternatives.** Client agrees that consistent with the HIPAA Privacy Rule, CMS rules and regulations, the Business Associate Agreement between the Party, and pending Client, and CMS approval on all communications to Eligible Persons, 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 Providers information, electronic messaging, and communications about such alternatives and services. Client further agrees that Participating Pharmacies and Providers may contact Eligible Persons regarding refill reminders or information about treatment alternatives; provided that such action is not inconsistent with applicable medical standards of care or any limitation imposed by applicable law.

(d) **Formulary Management.** Navitus will develop Medicare and Wrap Plan formularies. All

changes to the formularies will be approved by the Navitus Pharmacy and Therapeutics Committee in accordance with 42 CFR §423.120(b)(21). Navitus will produce a Formulary Listing document and provide it to Eligible Persons as required by CMS. Final decisions regarding the Formulary will be made by Navitus. Navitus may modify the Formulary from time to time. Navitus will upload the Medicare Part D Formulary via HPMS and conduct all justification communications with CMS as applicable. Navitus shall ensure that all negative formulary changes are communicated to Eligible Persons at least ninety (90) days prior to the effective date of such changes to insure proper implementation. Navitus will be responsible for obtaining the approval of CMS for such negative formulary changes. Navitus shall make the changes to the adjudication system accordingly to reflect the changes to the formulary listing. Navitus may offer Client additional Formulary support services intended to assist in the transition of Client's Eligible Persons from their current drug utilization mix to a more appropriate mix of utilized products that are better aligned with the Formulary, if such services are reasonably required in order for such transition to be success. To the extent that any such additional Formulary support services offered by Navitus will require additional fees, the Parties' will agree in writing regarding such fees prior to the implementation of such services.

**(e) Formulary Transition.** Navitus will administer a CMS compliant Formulary Transition program for Eligible Persons and provide any related communications required by CMS.

**(f) Coverage Determinations.** Navitus will administer the Prior Authorization and initial coverage determination processes in compliance with the CMS requirements, including turnaround times, subject to Client's obligations to notify Navitus of the eligibility of Eligible Persons to receive benefits, the Plan Guidelines, and the appeal rights of Eligible Persons related to coverage determinations including, without limitation, the grievance and appeals process described under Section 3.04, below. Navitus personnel will utilize Navitus' claims processing system to enter overrides for Claims that were rejected due to the need for Prior Authorization. The Prior Authorization list and its protocols are established and maintained by Navitus' Pharmacy and Therapeutics Committee. This list may change from time to time based upon the clinical determination of the Pharmacy and Therapeutics Committee as approved by CMS. Client acknowledges that Navitus may suspend processing of any Claims for Covered Products subject to Prior Authorization in the event a Provider fails to provide missing information necessary for the processing of such Claims in compliance with such protocols.

**(g) Treatment Decisions.** Subject to Client's Plan Guidelines and the Coverage Determinations 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) 90 Day at Retail.** Navitus will provide Client a 90 day at retail program through which retail pharmacies will fill prescriptions for Eligible Persons subject to the terms set forth in Exhibit 2. Client's benefit design must meet CMS's "Level Playing Field" requirements as defined in 50.10 – Level Playing Field Between Mail-Order and Retail Pharmacies in Chapter 5 of the Medicare Prescription Drug Benefit Manual in order for the 90 day at retail program to be administered by Navitus. Should Navitus believe that Client's benefit design does not satisfy CMS requirements, Navitus shall immediately notify Client and work with Client to bring such program in compliance prior to Navitus canceling its provision of the 90 day at retail program.

**(i) Medication Therapy Management.** Navitus will ensure a CMS compliant MTM program is implemented and executed in accordance with CMS guidance. Navitus in conjunction with any subcontracted MTM program vendor(s), will produce all CMS MTM reports required as part of the MTM program. Navitus will submit the MTM program reports to CMS through HPMS or the other plan reporting mechanisms (i.e. Gentran).

(j) **Prompt Payments to Pharmacies.** In accordance with 42 CFR 423.505(b)(21) and to the extent applicable in a subcontract, Navitus uses a standard for reimbursement of pharmacies based on the cost of a drug. Navitus will update such standard not less frequently than once every seven days, beginning with an initial update on January 1 of each year, to accurately reflect the market price of the drug. In accordance with 42 CFR 423.520 and 42 CFR 423.505(b)(20), Navitus will issue, mail, or otherwise transmit payment with respect to all claims submitted by pharmacies (other than pharmacies that dispense drugs by mail order only, or are located in, or contract with, a long-term care facility) within 14 days of receipt of an electronically submitted claim or within 30 days of receipt of a claim submitted otherwise and allows long term care pharmacies to have not less than 30 days, but not more than 90 days, to submit Part D claims for reimbursement.

(k) **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 2.14. 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 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 2.15. Enrollment.** Navitus shall determine eligibility and enrollment for coverage under the Plan according to the information provided by the Client and shall ensure that the enrollment information is reconciled with CMS in a timely manner and in accordance with CMS designated timeframes. Client will provide Navitus enrollment information identifying each individual eligible for pharmacy benefits under the Plan in a mutually-agreed upon format. Navitus will provide such enrollment data to CMS for enrollment into the Plan. Upon receipt of enrollment information from CMS, Navitus will load this information in its enrollment system and claims processing system. Such information shall include all information identified by Navitus so as to enable Navitus to process Claims in accordance with regulations related to HIPAA Standard Transactions, and as required to conduct proper Coordination of Benefits consistent with 42 CFR 423.464. Client will provide Navitus regular updates of subsequent changes in enrollment, including, but not limited to, changes in eligibility status, additions and deletions of Eligible Persons, and termination of benefits, together with the effective date of any such changes if such changes occur after the effective date of this Agreement. Without limiting the foregoing, Navitus shall:

- (a) Collect COB information from Eligible Persons through COB letters and report that information to the Electronic Correspondence Referral System (ECRS) in a timely fashion;
- (b) Investigate discrepancies when COB information provided to Navitus conflicts with the COB information received from an Eligible Person, another payor or COB information provided in connection with a Claim;
- (c) Receive the electronic COB file from CMS or its COB subcontractor and load it into Navitus' enrollment and claims processing system;
- (d) Resolve CMS Prescription Drug Event rejections related to the eligibility and/or enrollment of individuals whose Claims have been paid by Navitus;
- (e) Recoup from individuals or the Client any overpayment issued by Navitus when such overpayment is due to retroactive eligibility and/or enrollment changes;

- (f) Recoup from individuals or the Client, and pay to CMS, any repayments owed to CMS as a result of premium subsidy overpayments; and
- (g) Maintains responsibility for adhering to CMS's "Best Available Evidence" processing requirements.

Navitus is responsible for the following: (i) determining eligibility and enrollment for coverage under the Plan according to the information provided by Client, and shall be responsible for all enrollment reconciliation with CMS; (ii) making factual determinations and interpreting the provisions of the Plan to make coverage determinations on Claims for Plan benefits; (iii) notifying the Client to adjust member premiums due the Low Income Subsidy and to enforce Late Enrollment Penalty payments; and (iv) member premium billing. Navitus shall maintain an enrollment system for Client's Plan as the enrollment system of record.

**Section 2.16. Dissemination Materials.** Navitus will complete fulfillment of all Member materials required by CMS.

These materials include, but are not limited to, the following:

- (a) Pre-Enrollment "Opt" letter
- (b) Summary of Benefits
- (c) A welcome packet to include:
  - (i) Enrollment acknowledgement letter
  - (ii) ANOC/EOC
  - (iii) Comprehensive Formulary
  - (iv) Pharmacy Directory
  - (v) Member I.D. Cards;
- (d) Post enrollment materials;
- (e) Formulary errata sheets; and
- (f) All disenrollment notifications and communications;
- (g) Monthly Explanation of Benefits (EOB)
- (h) Clinical letters
- (i) Coverage Determinations, Grievance, and Appeals letters

Navitus will review ad hoc member communications developed by Navitus and Client to ensure no CMS compliance risks exist with each communication.

**Section 2.17. Web Site.** Navitus shall develop, maintain, and administer a web site in accordance to the requirements outlined in Chapter 12, "Employer/Union Sponsored Group Health Plans" and Chapter 3, "Medicare Marketing Guidelines" of the Medicare Managed Care Manual.

**Section 2.18. CAHPS Surveys.** As required by CMS, Navitus is responsible for contracting with an approved vendor to conduct annual CAHPS surveys with Client members. Such surveys are sent to Client members without Navitus or Client review.

**Section 2.19. Financial Information Reporting (FIR) Transaction Processing.** Navitus will administer FIR transaction processing on behalf of Sponsor. Navitus will send and receive transactions from the Troop Facilitator, Relay Health. Navitus will also reconcile FIR reports received from Relay Health with Navitus enrollment information to ensure that the transaction activity is consistent with enrollment reports.

**Section 2.20. Reporting.** Navitus shall prepare and deliver to Client core reports, including reports needed for CMS compliance, no later than thirty (30) days from the close of the month or quarter, as applicable. Client will receive Navitus' Standard Report Package. Navitus is responsible for providing CMS-required reporting

to CMS and for participation in CMS Data Validation Audits related to these reports.

**Section 2.21. Compliance Program.** Navitus shall maintain a compliance program as necessary for CMS compliance. Sponsor maintains overall responsibility of compliance programs in its role as Part D Plan sponsor.

**Section 2.22. Service Area.** Navitus represents and warrants that the Plan's Service Area is approved by CMS. Navitus will notify Client within ten (10) days of any change in the service area approved by CMS.

**Section 2.23. Prescription Drug Event ("PDE") Reconciliation.** Navitus is responsible for all financial reconciliation with CMS. This includes, but is not limited to, the following reconciliations:

- (a) Low Income Subsidy (LICS);
- (b) Direct Subsidy;
- (c) Reinsurance;
- (d) Coverage Gap Discounts;
- (e) Monthly Membership Report (MMR) and Transaction Reply Report (TRR) to the EGWP Enrollment File; and
- (f) Overall CMS reimbursement and annual financial reconciliation with CMS.

Navitus is also responsible for submission of Prescription Drug Event (PDE) data to CMS and receipt of PDE response files from CMS. Navitus provides DIR (direct and indirect remuneration) data to CMS in support of annual financial reconciliation. Navitus shall initiate the PDE reconciliation processes with CMS. Navitus will be responsible for examining and classifying claims that have been rejected through the PDE process. Navitus will be responsible for correction of claims information in accordance with its scope of service under this Agreement. Navitus will accumulate and resubmit corrected claim information to complete the PDE reconciliation process and manage the final financial reconciliation with CMS.

**Section 2.24. CMS Contract.** Navitus, in cooperation with Sponsor states that Sponsor: (a) will maintain a valid contract with CMS to offer an 800 Series EGWP in service areas set forth herein; (b) will be licensed as a risk bearing entity by states which require such licensure and will meet the financial solvency requirements set forth in 42 C.F.R. § 423.401; and (c) Sponsor, either directly or through subcontractors, will comply with the requirements of its contract with CMS to offer 800 Series EGWPs.

**Section 2.25. Dissemination Materials.** Navitus will work with Sponsor to ensure that Sponsor reviews and approves all Member materials that are sent to Members prior to use to ensure no CMS compliance risks exist with each communication.

**Section 2.26. Plan Guidelines.** Navitus, in cooperation with Sponsor states that EGWP Plan Guidelines are based on the Defined Standard Benefit as defined by CMS each plan year and are true, accurate and complete descriptions of the pharmacy benefits available to Eligible Persons. Navitus will promptly notify Client and Navitus of any changes to the EGWP Plan Guidelines.

Client affirms that Navitus may rely on the Wrap Plan Guidelines as true, accurate and complete descriptions of the pharmacy benefits available to Eligible Persons. Client shall promptly notify Navitus of any changes to the Wrap Plan Guidelines. Client will only have the authority to modify the Wrap Plan Guidelines and may not modify any of the EGWP Plan Guidelines or the CMS Defined Standard Benefit.

After receiving notice of a change in the Plan Guidelines from Sponsor or Client, Navitus will advise Client of the anticipated implementation dates of the proposed benefit changes, and the benefits that are implemented shall be deemed to be incorporated into this Addendum 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 to by the Parties. If CMS, Sponsor, or Client modifies the Plan Guidelines in a manner that materially affects any Party's duties, obligations or cost of performance under this Addendum, then at the request of such affected Party, all of the Parties will work toward a mutually acceptable modification of this Addendum, including, but not limited to, adjustments to the administrative charges in Exhibit 1 or the Prescription Pricing Schedule in Exhibit 2 of this Addendum. If Client and Navitus are unable to agree upon mutually acceptable modifications after negotiating in good faith, then any Party may terminate this Addendum upon not less than 60 days' prior written notice.

**Section 2.27. Compliance Program; Oversight.** Navitus, in cooperation with Sponsor states that Sponsor maintains a compliance program in accordance with the terms and conditions of the Sponsor Agreement. Sponsor maintains overall responsibility of compliance programs in its role as Part D Plan sponsor.

### **ARTICLE III. CLIENT RESPONSIBILITIES**

**Section 3.01. Eligibility.** In accordance with a mutually agreed upon schedule and in compliance with all applicable CMS requirements, Client shall provide to Navitus, on at least a weekly basis, eligibility files, which shall include any information reasonably required by Navitus to provide enrollment/disenrollment files to CMS and reconcile enrollment with CMS. Client agrees to provide Navitus all information reasonably required by Navitus to fulfill its duties and obligations under this Agreement. This information must be in writing, complete and accurate and provided timely. Navitus may rely on the completeness and accuracy of this information. Client agrees to review and analyze information provided by Navitus in a timely fashion and notify Navitus of any errors or omissions. Client shall be solely responsible for the accuracy and timeliness of such information, including financial responsibility to make each Participating Pharmacy and Eligible Person whole as a result of any errors caused by Client related to eligibility and retroactivity of benefits. Client is responsible for determining eligibility and enrollment for coverage under the Plan according to information provided by Client's employees and retirees. All Eligible Person eligibility information furnished to Navitus shall be provided via electronic media (e.g., electronic data interface) in a file layout mutually agreed to by the Parties. Hard-copy submission of Eligible Person information shall be submitted to Navitus only in emergency situations. Client represents that each individual's eligibility for benefits is determined by reference to criteria in its Plan. Such information shall include all information identified by Navitus so as to enable Navitus to process Claims in accordance with HIPAA, and as required to conduct proper Coordination of Benefits consistent with 42 CFR 423.464, and shall be provided in a mutually acceptable format. Client will provide to Navitus regular updates of subsequent changes in enrollment, including, but not limited to, changes in eligibility status, additions and deletions of Eligible Persons, and termination of benefits, together with the effective date of any such changes if such changes occur after the effective date of this Addendum. 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 3.02. Premium Billing.** If Client bills Eligible Persons for premiums related to the services provided pursuant to the Plan, Client shall bill those Eligible persons in accordance with the Plan Guidelines and all CMS rules and regulations related to such premiums. Without limiting the foregoing, Client shall adjust premiums due to the Low Income Subsidy and to enforce Late Enrollment Penalty payments in accordance with CMS rules and regulations. Client agrees to comply with all CMS rules and regulations, including, without limitation, those related to the billing of premiums for Eligible Persons.

**Section 3.03. Communications with Eligible Persons.** Client shall submit any communications to Eligible Persons that mention the Plan or the benefits offered thereunder to Navitus for review and approval

prior to delivering such communications to any Eligible Persons.

**Section 3.04. Contract Compliance.** Client acknowledges and agrees that Navitus and Sponsor are required to perform certain functions and duties under the terms of Sponsor's contracts with CMS to operate an EGWP. Client further acknowledges that Navitus and Sponsor must meet all terms and conditions and all required statutory and regulatory standards defined in such agreements and Sponsor is directly accountable for compliance with those standards. Nothing in this Addendum should be construed to limit in any way Sponsor's authority or responsibility regarding any of those functions that may be delegated.

**Section 3.05. EGWP Service Area.** Client shall provide Navitus with a complete list of Client's locations that fall within the Service Area upon execution of this Addendum, and Client shall promptly communicate any change in Client's locations within the Service Area to Navitus, so that Navitus can ensure that services are available to Eligible Persons residing near such locations.

**Section 3.06. Eligible Person Authorizations and Consents.** Client 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.

#### **ARTICLE IV. BILLING AND PAYMENTS**

**Section 4.01. Administrative Fees.** Client shall pay Navitus the Navitus PMPM and additional fees for administrative services identified on Exhibit I, attached hereto, using the existing Navitus administrative fee billing and payment processes whereby the Client is billed on the 15<sup>th</sup> day of the month. Navitus may change the Navitus PMPM and the other administrative charges, effective on or after the close of the Initial Term or any Renewal Term of this Addendum upon not less than 90 days prior written notice to Client. If any revision in the Navitus PMPM or other administrative charges is not acceptable, then Client shall so notify Navitus and Sponsor in writing not less than 60 days prior to the expiration of the 90-day period. In the event the Parties cannot agree on the compensation adjustment on or before the expiration of the 90-day period, then this Addendum shall terminate at the end of such time period. Navitus shall pay Sponsor as set forth in the Sponsor Agreement.

**Section 4.02. CMS Subsidies Processing.** Unless prohibited by law, Navitus shall arrange for all CMS and Drug Manufacturer Coverage Gap Discount payments related to the Plan to be directly deposited by CMS and Drug Manufacturers into the Claims Account. Navitus shall set up, maintain, and manage (at Navitus' sole expense) the Claims Account for the processing and reconciliation of CMS and Drug Manufacturer Coverage Gap Discount payments. Navitus shall provide each Client reporting derived from CMS payment files that support these payments.

(a) **Capitation Payment.** Navitus shall deposit the monthly prospective capitation payment that it receives from CMS into the Trust Account and pays Client, through electronic funds transfer, the amounts payable to Client under this Addendum from such amounts within two months of their receipt from CMS. Low Income Premium Subsidies received as part of the monthly capitation payment will be paid to the client within 5 business days of receipt.

(b) **Coverage Gap Manufacturer Discount Payments.** Coverage Gap Manufacturer Discount Payments received by Navitus on a quarterly basis will be paid to Client through electronic funds transfer within five business days of receipt.

(c) **End of Plan Year Payments.** End of plan year payments including but not limited to Low Income Subsidy and Reinsurance will be paid to Client through electronic funds transfer within five business days upon receipt by CMS.

**Section 4.03. Rebate Payment.** One hundred percent (100%) of all Rebates received by Navitus that are attributable to Client will be sent to the Client per Navitus' rebate payment process. Rebate payments will not be deposited into Trust Account.

**Section 4.04. Claims Payment Method.** Navitus shall adjudicate claims in accordance with the provisions of the Client Agreement as modified by this Addendum. On a weekly basis, Navitus shall bill Client for claims adjudicated, including pharmacy claims and direct member reimbursement (DMR) claims. Client shall fund the payment of Claims in accordance with the Prescription Pricing Schedule in Exhibit 2 to this Addendum and shall also pay all applicable gross receipts, provider, sales, use and similar taxes related thereto. Client assumes all financial responsibility for funding the payment of Claims submitted to Navitus with regard to Client's Eligible Persons, whether by Participating Pharmacies or Eligible Persons. Client shall pay Navitus for Claims adjudicated in accordance with the terms set forth in Part 6 - Financial and Audit Provisions, of the Client Agreement. In the event the Client fails to make a payment to Navitus required under this Addendum, and CMS makes such a payment to Navitus on Client's behalf, then Navitus may offset such payment against any amounts that Navitus is otherwise required to pay Client, including, without limitation, amounts previously deposited into the Trust Account.

## **ARTICLE V. TERM AND TERMINATION**

**Section 5.01. Initial Term; Renewal Terms.** This Addendum is effective as of the Effective Date and may continue for up to three years thereafter, dependent on the renewal of Client Agreement so as to run concurrently with the duration of the Client Agreement. Unless terminated sooner as provided herein, this Addendum will automatically renew for subsequent renewals terms of one year (each a "Renewal Term").

**Section 5.02. Termination.** The provisions of Section 5.02(a), "For Cause," of the Client Agreement apply to the termination of this Addendum. Further, this Addendum may be terminated as follows:

(a) In the event Sponsor, Navitus or CMS determines (in its sole discretion) that Client has not performed satisfactorily under this Addendum, Navitus shall provide such notice to Client. Client shall have 30 calendar days to cure its deficient performance. In the event such deficiency is not cured within the 30 calendar days period, this Addendum may be terminated by Navitus immediately upon written notice to Client, or as of such other date as may be specified in such notice.

(b) If any Party is excluded, debarred, suspended or declared ineligible to participate in any federal health care program or any federal procurement or non-procurement program, the other Party may terminate this Addendum immediately upon written notice to such Party.

(c) In the event the Client Agreement terminates for any reason, this Addendum shall automatically terminate as of the date the Client Agreement terminates.

(d) In the event that the Sponsor Agreement terminates for any reason, this Addendum shall automatically terminate as of the date the Sponsor Agreement terminates.

(e) In the event Sponsor's agreement with CMS to offer an 800 Series EGWP is terminated in one or more service areas, this Addendum shall automatically terminate in the affected service areas as of the date Sponsor's agreement with CMS terminates as to the affected service areas.

(f) In the event Sponsor's license to bear risk is terminated in one or more states that require such licensure, this Addendum shall automatically terminate as of the date Sponsor's license to bear risk is terminated in any state in which Client has Eligible Persons.

(g) If Navitus decides to use a different vendor for EGWP services at any time during the term of this Addendum, then Client shall execute such documents as may be reasonably requested by Navitus to substitute a different provider of EGWP services in place of Sponsor, provided that the terms and conditions for such substituted EGWP provider are substantially the same as those set forth herein.

(h) This Addendum may also be terminated in accordance with Sections 5.01 and 5.04 above.

In the event that this Addendum terminates for any of the foregoing reasons, each Party with knowledge of such termination shall immediately notify the other Parties of such termination unless such Party reasonably believes that the other Parties are aware of the termination.

**Section 5.03. Right of Partial Termination.** Navitus reserves the right to immediate partial termination with respect to one or more Benefit Programs if the state or federal government terminates the Benefit Program or Sponsor's participation in that program. In the case of partial termination, this Addendum shall remain in full force and effect for all other Eligible Persons, and Benefit Programs. In the event that partial termination reduces the number of covered Eligible Persons to a level that the current pricing as set forth in Exhibit 1 and Exhibit 2 is inequitable to any Party, the Parties agree to negotiate in good faith to establish a new pricing. If the Parties are unable to agree to a new pricing, Navitus may terminate this Addendum upon 120 days written notice to Client. During this termination period, the rates in effect at the time of notice of termination shall remain in effect.

**Section 5.04. Effect of Termination; Other Remedies.** Termination of this Addendum shall not affect Client's financial responsibility for Claims, the Navitus PMPM, and any additional fees incurred prior to the date of termination. A Party's right to terminate this Addendum shall not be exclusive of any other remedies available to such Party under this Addendum, at law or in equity.

## ARTICLE VI. RECORDS; CONFIDENTIALITY

**Section 6.01. Maintenance of Records; Audits.** Each Party shall maintain records relating to its performance under this Addendum for a minimum of ten years or longer as required by law, including the Medicare Part D rules and CMS guidance. Each Party may audit such books and records of the other Party, using an auditor and methodology that is mutually agreed upon by the Parties, upon reasonable prior written notice and during such Party's normal business hours consistent with privacy and other limitations of applicable federal and state laws, rules and regulations and the provisions of this Addendum provided, however, that any claims against either Navitus or Sponsor related to an audit must be made within six months of the final reconciliation of the applicable plan year by CMS, unless otherwise required by law. A third party may be allowed or designated to conduct an audit with the prior written consent of the Party being audited, which consent shall not be unreasonably withheld. The Parties shall require any third-party auditor to execute a confidentiality agreement in a form that is reasonably acceptable to both of Parties involved, and which contains provisions intended to protect each Party's Confidential Information that are substantially the same as the provisions set forth herein.

**Section 6.02. Government Audits, Inquiries and Record Requests.** Each Party shall permit CMS and its designees direct access to and the right to audit, evaluate, or inspect any books, contracts, or other records of a Party that pertain to any aspect of Sponsor's EGWP, Sponsor's contract with CMS or the provision of Client

and its Eligible Persons, including reconciliation of benefit liabilities, and determination of amounts payable under CMS's contract with Sponsor, or as CMS or its designee may deem necessary to enforce CMS's contract with Sponsor. Each Party agrees that CMS and its designees' right to inspect, evaluate, and audit the records of the Party that pertain to any aspect of Sponsor's EGWP, Sponsor's contract with CMS or the provision services to Client and its Eligible Persons extends through ten years from the end date of Sponsor's contract period as set forth in Sponsor's contract with CMS or ten years from the completion of the audit by CMS or its designees. In the event CMS contacts Navitus or Client directly with respect to an audit, evaluation or inspection of Sponsor's EGWP, Navitus or Client shall promptly notify Sponsor of such audit, evaluation or inspection. The Parties acknowledge and agree that record requests from CMS or its designees relating to Sponsor's EGWP shall be answered by Sponsor. If such a request involves books, contracts, records, including medical records, or other documentation relating to Sponsor's EGWP that is maintained by Navitus or Client, Navitus or Client, as appropriate, shall provide such requested documentation to Sponsor for production to CMS or its designees.

**Section 6.03. Proprietary and Confidential Information.** Each Party agrees not to use or disclose the other Party's proprietary and confidential information ("Confidential Information") to any third party, during or after the termination of this Addendum, except (a) as specifically contemplated by this Addendum; (b) with the other's Party'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. "Proprietary and Confidential Information" shall include, but not be limited to: (i) with respect to Navitus: the rates at which Navitus pays pharmacies for prescription drug services and the rebate amounts received by Navitus from manufacturers or intermediaries, the terms and conditions of this Addendum, 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 any other information or knowledge that Sponsor or Client acquires from Navitus pursuant to this Addendum; and (ii) with respect to Sponsor: its operations and strategies information related to members, providers, subcontractors; and any other information or knowledge that Navitus or Client acquires from Sponsor pursuant to this Addendum. The Parties agree to treat the Proprietary and Confidential Information as confidential, will disclose such Proprietary and Confidential Information to their employees who have need to know in order to accomplish the purposes permitted hereunder, and who themselves agree not to disclose it to anyone. Each Party shall cease using the other Parties' Proprietary and Confidential Information upon termination of this Addendum or a subsequent agreement between the Parties and shall return or destroy such information at the disclosing Party's written direction. The Parties acknowledge that any unauthorized disclosure or use of Proprietary and Confidential Information would cause each other immediate and irreparable injury or loss. Accordingly, should any Party fail to comply with this section, the other Parties shall be entitled to specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Addendum, and to the judgment for damages (including reasonable attorneys' fees) caused by the breach and to any other remedies provided under applicable law.

## **ARTICLE VII. INDEMNIFICATION**

Navitus will indemnify and save harmless the Client, the Group Insurance Board, its members, the Public Employee Trust Fund, Department of Employee Trust Funds and its employees ("Indemnified Parties") from all damages, costs and attorney fees awarded to a third party against one or more Indemnified Parties, to the extent that such award is a result of any wrongful act or omission by Navitus or its employees, agents or subcontractors ("subcontractors" shall not include the Participating Pharmacies) in the performance of this Contract. "Wrongful" in this context includes (without limitation) unlawful, negligent, and tortious acts or omissions and acts or omissions in breach of this Contract. 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 Contract or a breach of this Contract, even if advised of the possibility of such damages or lost profits.

**ARTICLE VIII.  
MISCELLANEOUS**

**Section 8.01. Notices.**

The notice address for Navitus is: **Navitus Health Solutions, LLC**  
Attn: President  
2601 West Beltline Highway  
Madison, WI 53713

With a copy to: **Navitus Health Solutions, LLC**  
Attn: Legal Department  
2601 West Beltline Highway  
Madison, WI 53713

The notice address for Client is: **The State of Wisconsin Group Insurance Board**  
c/o Administrator, Division of Insurance Services  
Department of Employee Trust Funds  
P.O. Box 7931  
Madison, WI 53707-7931  
Fax: 608-267-0633

**Section 8.02. Entire Agreement.** This Addendum, 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 Addendum. There are no other agreements or undertakings, written or oral, in effect between the Parties relating to the subject matter herein. In the event of any conflicts between this Addendum, the Client Agreement, and the Sponsor Agreement, this Addendum shall control with regard to the terms and conditions related to the relationship of the Parties related to Medicare Part D services and the Client Agreement and the Sponsor Agreement will control with regard to the subject matter thereof. In the event the Sponsor Agreement is amended or changed in any way, Navitus will notify client promptly of the amendment or any change and its impact on this agreement.

**Section 8.03. Exclusivity.** Client agrees that Navitus shall be the exclusive provider to the Client of the type of administrative services described in this Addendum. Except as otherwise agreed to by the Parties and as applicable, the Mail Service Pharmacy shall be the preferred provider of the internet and mail order pharmacy services described in this Addendum for the Client's Eligible Persons, and except as otherwise agreed to by the Parties, the Specialty Pharmacy shall be the preferred provider of the Specialty Pharmaceuticals described in this Addendum for the Client's Eligible Persons. Client shall not contract with another entity to provide pharmacy benefit management services to Client.

**Section 8.04. Intellectual Property.** Except as expressly otherwise provided herein, each Party 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 trademarks and service marks. Each Party agrees not to use any such items except as expressly allowed under this Addendum and also not to refer to such other Party or its trade name or marks in any publication without the prior written approval of such other Party.

**Section 8.05. 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 any Party under this Addendum, the Parties will work in good faith toward mutually acceptable modifications of this Addendum. Such modifications may include but are not limited to changes related to appeals; complaints and grievances; benefit design; clinical services; coordination of benefits; e-prescribing; drug coverage; explanation of benefits; the Formulary; fraud, waste and abuse programs; MTM programs; pharmacy access and contracting; reports, 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 Party may terminate this Addendum upon not less than sixty (60) days' prior written notice.

**Section 8.06. Relationship of Parties.** This Addendum is not intended, and shall not be construed, to create any relationship between Client, and Navitus other than that of independent contractors. No Party shall be construed to be the agent, partner, employee, fiduciary or representative of the other and no Party shall have the right to make any representations concerning the duties, obligations or services of the others except as consistent with the express terms of this Addendum or as otherwise authorized in writing by the other Party.

**Section 8.07. Amendment; Waiver.** This Addendum may be amended or modified solely through a writing signed by authorized persons on behalf of the Parties. The waiver of any breach of any term or provision of this Addendum shall not constitute a waiver of any subsequent breach of the same term or provision or any other term or provision hereof.

**Section 8.08. Compliance.** Each Party agrees to comply with all applicable federal and state laws, rules and regulations, including, but not limited to, HIPAA, Medicare laws, CMS guidance, the Americans with Disabilities Act, the Medicare Modernization Act of 2003, the Medicare Improvements for Patients and Providers Act of 2008, PPACA, all aspects of the Medicare Prescription Drug Benefit Program, and any regulations issue pursuant thereto, and state laws, rules and regulations related to the licensure and registration of third party administrators. Each Party shall be responsible for ensuring its own compliance with any laws, regulations and CMS guidance applicable to its business and its performance under this Addendum. If at any time any Party becomes aware of any non-compliance, the Party agrees to notify the other Parties in writing immediately.

**Section 8.09. Assignment.** The Parties shall ensure that any contracts or agreements with subcontractors or agents performing functions on the Plan Sponsor's behalf related to the operation of the Part D benefit are in compliance with 42 CFR §423.505(i).

**Section 8.10. Debarment.** Navitus shall not knowingly employ, or subcontract with, a person that employs or contracts with an individual, who is excluded from participation in Medicare or a federal health care program for the provision of health care, utilization review, medical social work, or administrative services.

**Section 8.11 Non-Discrimination.** In accordance with, but not limited to, 42 C.F.R. §§ 423.505(b)(3) and 423.34(a), no Party shall not deny, limit, or condition the furnishing of services to Eligible Persons on the basis of any factor that is related to health status, including but not limited to medical condition (including HIV status); race; religion; color; creed; national origin; ancestry; religion; physical handicap; claims experience; receipt of health care; medical history; genetic information; evidence of insurability, including conditions arising out of acts of domestic violence; or disability.

IN WITNESS WHEREOF, the Parties have entered into this Addendum on the day first written above.

Department of Employee Trust Funds on behalf of  
The State of Wisconsin Group Insurance Board

Navitus Health Solutions, LLC

By: Jon E Litscher

Name: Jon E Litscher

Title: Chair @ IB

By: Thomas J. Patrick

Name: Thomas J. Patrick

Title: SVP - Bus. Dev. & Client Services

**Exhibit 1**  
**ADMINISTRATIVE PRICING SCHEDULE**

**1. Administrative Fees.** Client shall pay Navitus an administrative fee of **\$10.88** per Member per month (the "Navitus PMPM") for each year this Addendum is in force during the three-year Initial Term, and the Navitus PMPM as modified thereafter in accordance with Section 4.01 of the Addendum, which includes a fee paid to Sponsor. In exchange for the Navitus PMPM, Navitus shall provide, and work with Sponsor to provide, the following services:

- Account Management
  - Implementation Services
  - Annual re-implementation to meet new regulatory requirements
  - Eligibility Updates
  - Plan Changes and Support
  - Program Consultation
  
- Program Management and Oversight
  - Medicare D Implementation support
  - Ongoing management and oversight
  - Annual CMS audits
  - CMS Reports
  - Annual CMS Data Validation audits
  - OIG Exclusion List Processing
  - HPMS Maintenance
  - Annual CAHPS surveys
  
- Plan Administration & Claims Processing
  - PDP product administration
    - TrOOP administration
    - Low Income Subsidy administration
  - Wrap product administration
  - Claims processing
  
- Rebate Administration
  - Rebate administration per Medicare Part D contracts with Pharma
  - DIR (Direct and Indirect Remuneration) reporting to CMS
  
- Member Materials
  - Medicare Part D website
  - Fulfillment of all member materials
  - Monthly Explanation of Benefit (EOB) mailings
  - Additional mailings including but not limited to:
    - Formulary Transition letters
    - Prescription Transfer letters
    - Appeals & Grievances letters
    - Coverage Determination letters
    - Ad hoc member communications
  
- Reporting and Claims Data
  - CMS reporting

- Client standard reporting
- Financial reporting (in support of CMS subsidies)
- Claims data
- PDE Management
  - Manage PDE inventory
  - Submissions/Re-submissions of PDE data to CMS
  - PDE reconciliation with CMS
- Appeals & Grievances
  - Per CMS regulations
- Call Center
  - Per CMS regulations
  - Medicare Part D Member Call Center
  - Medicare Part D Pharmacy Help Desk
- Coverage Determinations & Redeterminations
  - Per CMS regulations
- Clinical Programs
  - C-DUR (Concurrent Drug Utilization Review)
  - R-DUR (Retrospective Drug Utilization Review)
  - MEIR (Medication Error Identification and Reduction)
- Medicare B vs. D Management
- Formulary Transition
  - Per CMS regulations
- Formulary Management
  - Per CMS regulations
  - P&T Committee
  - FDA Non-Matched NDC list processing
  - HPMS formulary maintenance
- Medication Therapy Management (MTM)
  - Per CMS regulations
  - Performed by business partner SinfoniaRx
- Pharmacy Network
  - Development and maintenance of Medicare Part D pharmacy network (separate from Commercial network)
- E-Prescribing
  - Per CMS requirements
- Manual Claims
  - Per CMS requirements

- Vaccine Administration
  - Per CMS requirements
- RetroLICS Processing
  - Claims reprocessing due to retroactive Low Income Subsidy eligibility
- Finance
  - Pharmacy payment processing
  - Direct Member Reimbursement processing
  - Funds flow oversight and reporting
  - Financial reconciliation with CMS
  - Low Income Subsidy (LIS) and Late Enrollment Penalty (LEP) administration support for Client
  - PDE submissions
  - State insurance regulatory reporting
  - Administration fee processing
- CMS Subsidies Administration & Reconciliation with CMS
  - Direct Subsidy
  - Low Income Subsidy
  - Coverage Gap Discount
  - Reinsurance
- Enrollment
  - Enrollment processing with CMS
  - Exception processing & audits
  - Reconciliation with CMS
  - Fulfillment of all CMS-required enrollment materials
  - Coordination of Benefits
  - Financial Information Reporting (FIR), also referred to as “Plan to Plan Reconciliation”

### **Sponsor Specific**

- Program Management & Oversight
- CMS Contract Management & Compliance
  - CMS Audits
  - HPMS Maintenance
  - Member Materials Compliance Review

**2. Additional Fees.** In addition to the Navitus PMPM, Client shall pay Navitus the fees set forth below for the additional services listed below:

- Ad Hoc Reporting - \$150 per hour

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

**General.** Client and Navitus acknowledge 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 one hundred percent (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 all parties that individual contracts may vary from the targeted rate based upon negotiation.

Navitus reserves the right to modify pricing for certain exclusive generic drugs 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 2.60%, plus an average dispensing fee of \$1.50; 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 \$1.50; (2) AWP, less an average of 25.0% plus an average dispensing fee of \$1.50; (3) such pharmacy's Usual and Customary Price; or (4) the amount submitted. Rates do not include long term care or home infusion pharmacies.

Retail drug program discount rates excludes pharmacy services obtained from long-term care pharmacies, home infusion pharmacies, mail order pharmacies, specialty pharmacies, military pharmacies, and those pharmacies deemed by client as necessary to include in the network but which do not meet Navitus discount or credential standards or to meet minimum CMS retail access requirements. Retail drug program discounts rates include pharmacy services from Indian/ Tribal Indian/ Urban Tribal Indian (I/T/U) pharmacies.

Compound medications will be reimbursed as follows: Each respective Participating Pharmacies contracted brand or generic discount as it pertains to the individual ingredients contained with the compounded prescription 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

**B. Long Term Care Program.** Long term care pharmacy and facility reimbursement for each Covered Brand Product dispensed by a Long Term Care Pharmacy will be based upon the lower of: (1) WAC plus 7.25% plus a dispensing fee equal to \$4.25; 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 Long Term Care Pharmacy will be lower of: (1) AWP, less an aggregate 18.0%, plus a

dispensing fee equal to \$4.50; or (2) the applicable Navitus Maximum Allowable Cost, plus dispensing fee equal to \$4.50; or (3) the amount submitted.

**C. Home Infusion Program.** Home Infusion pharmacy and facility reimbursement for each Covered Brand Product dispensed by a Home Infusion Pharmacy will be based upon the lower of: (1) WAC plus 2.60% plus a variable dispensing fee ranging from \$10.00 to \$25.00; 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 Home Infusion Pharmacy will be lower of: (1) AWP, less an aggregate 25.0%, plus a variable dispensing fee ranging from \$10.00 to \$25.00; or (2) the applicable Navitus Maximum Allowable Cost, plus a variable dispensing fee ranging from \$10.00 to \$25.00; or (3) the amount submitted.

Pharmacy Time for Compound Part D Drug Preparation: Participating Pharmacy shall indicate the time spent preparing the compound Part D Drug within the NCPDP Level of Effort field. The amount of compounding time reimbursed by Navitus is shown in the NCPDP table below

Submitted Level of Service	Compounding Time (in minutes)	Reimbursement
11	1-5	\$10.00
12	6-15	15.00
13	16-30	20.00
14	31+	25.00

Compounds with ingredient costs exceeding \$100.00 will require the pharmacy to contact Sterling for additional processing assistance.

**D. Mail Service Program.** Reimbursement for each brand Covered Product dispensed by the Mail Service Pharmacy will be based upon the lower of (1) WAC, less 3.75%, plus a dispensing fee of \$0.00; (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 \$0.00; (2) AWP, less 55%, plus a dispensing fee of \$0.00; or (3) the amount submitted.

**E. Specialty Pharmaceutical Program.** Reimbursement for each Specialty Pharmaceutical, not requiring compounding, dispensed by a Participating Pharmacy, which is not the Specialty Pharmacy, will be at the corresponding retail brand or generic discounted amount. Reimbursement for each Specialty Pharmaceutical, not requiring compounding, dispensed by the Specialty Pharmacy will be based upon the lower of (1) WAC, plus an average of 1.50% (discounts vary by drug); or (2) such pharmacy's Usual and Customary Price; or (3) the amount submitted by the pharmacy.

**F. Direct Reimbursement Claims Paid by Navitus.** Reimbursement to Navitus for each Direct Reimbursement Claims will be paid to Navitus at a rate equal to the actual pharmacies' billed charges, less the Eligible Person's cost-share or co-payment amount, if applicable.

**THE FOLLOWING PROGRAM IS OPTIONAL, AND MAY BE REQUESTED BY CLIENT AT ANY TIME DURING THE TERM OF THE AGREEMENT AT THE PRICING SET FORTH BELOW:**

**G. [ X ] Extended Day Supplies.** This program provides Eligible members to obtain extended days supply of up to ninety (90) day supply of maintenance medications through participating retail pharmacies whenever Client includes a mail order pharmacy benefit option in its Plan Specifications. Reimbursement for

each brand maintenance product dispensed by a Participating Retail Pharmacy will be based upon the lower of (1) WAC, less an aggregate of 2.25% (WAC - 2.25%), plus a dispensing fee of \$1.00; 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 Retail Pharmacy will be lower of (1) the applicable Navitus Maximum Allowable Cost, plus a dispensing fee of \$1.00; (2) AWP, less an aggregate of 35%, plus a dispensing fee of \$1.50; (3) such pharmacy's Usual and Customary Price; or (4) the amount submitted.