

Pharmacy Benefit Management Contract
ETJ0007 Amendment 1 December 8, 2010



Issued by the State of Wisconsin
Department of Employee Trust Funds

On behalf of the Group Insurance Board
With
Navitus Health Solutions, LLC

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**PART 1
GENERAL TERMS & CONDITIONS**

1.01 Execution of Contract. This Contract between Navitus Health Solutions, LLC (hereinafter “Contractor”) and the State of Wisconsin Group Insurance Board (hereinafter “Board”) shall become effective when this document is signed by authorized representatives for each party hereto. By their signature, each signatory represents that he or she has proper and legal authority to sign and bind their principal and that each party has all required legal right and power to perform all acts called for by this Contract in the State of Wisconsin and elsewhere.

1.02 Documents Constituting Contract.

(a) The parties acknowledge that the following documents describe the plan to be administered by Contractor under this Contract, and for that purpose the following documents are incorporated by reference:

(1) The document titled “TERMS AND CONDITIONS FOR COMPREHENSIVE MEDICAL PLAN PARTICIPATION IN THE STATE OF WISCONSIN GROUP HEALTH BENEFIT PROGRAM AND UNIFORM BENEFITS FOR THE 2011 BENEFIT YEAR” (ET-1136-xx), as amended by the Board from time to time for 2011 or for subsequent years, specifically Part 4. Uniform Benefits.

(2) The document titled “Standard Plan Health Care Benefit Plan” (ET-2112), as amended by the Board from time to time for 2011 or for subsequent years.

(3) The document titled “State Medicare Plus Health Care Benefit Plan” (ET-4113), as amended by the Board from time to time for 2011 or for subsequent years

(4) The document titled “Request for Proposal # ETJ0007- Administrative Services as the State of Wisconsin Pharmacy Benefit Manager - APPENDIX D: Standard Terms and Conditions (DOA-3054) and Supplemental Standard Terms and Conditions (DOA-3681) and Special Terms and Conditions Dated January 28, 2010 (hereinafter referred to as the RFP).

(5) The document titled “Health Insurance Pharmacy Benefit Manager (PBM) ANSI 834 PROJECT DOCUMENTS” prepared by the Department of Employee Trust Funds Applications Development Bureau.

(b) Subject to the provisions of Subsection (c) below, the following documents (collectively called the “Contractor Proposal”) are hereby incorporated by reference:

(1) The document titled "Proposal for Administrative Services as the State of Wisconsin Pharmacy Benefit Manager; RFP # ETJ0007: Technical Proposal; Binder 1 of 3" dated March 3, 2010.

(2) The document titled "Proposal for Administrative Services as the State of Wisconsin Pharmacy Benefit Manager; RFP # ETJ0007: Technical Proposal Exhibits; Binder 2 of 3 dated March 3, 2010.

(3) The document titled "Proposal for Administrative Services as the State of Wisconsin Pharmacy Benefit Manager; RFP # ETJ0007: Section D, Cost Proposal; Binder 3 of 3 dated March 3, 2010.

(c) The parties acknowledge that, in entering into this Contract, the Board is entitled to rely on specific representations in the Contractor Proposal that induced the Board to select Contractor; however, the parties further acknowledge that the Contractor Proposal contains statements of intent, expectations, and other statements that are not intended to be contractually binding.

1.03 Order of Precedence. In the event of any conflict, ambiguity or inconsistency among the terms of this Contract and the documents incorporated by reference in Section 1.02, the conflict shall be resolved by an order of precedence applying the terms from a higher order document to supersede a lower order document to the extent necessary to resolve any inconsistencies between them. Silence on any matter in a higher order document shall not negate or modify the provisions of a lower order document. The order of precedence is outlined in the contract document titled "Contract By Authorized Board" that this amendment applies to.

1.04 Term of Contract.

(a) The operational obligations agreed to herein shall commence January 1, 2011, and shall extend through December 31, 2013 unless extended or terminated in accordance with applicable Contract provisions. The Contractor will be responsible for Plan Year 2011 PBM program enrollment activities in the fall of 2010. The implementation start date will be approximately July 1, 2010.

(b) Following the initial term, this Contract may be extended for up to two (2) successive two-year periods, upon the agreement of both parties. Any agreement to extend the Contract must be set forth in writing by the parties at least six (6) months prior to the end of the initial contract period or a renewal term, as applicable, and shall be contingent upon approval by the Board in order to be effective. Upon the agreement of the parties, this Contract may be extended for both of the two-year extensions, constituting one four-year extension beginning January 1, 2014 and ending on December 31, 2017.

(c) Cost increases for any contract extensions may be capped at the rate of inflation or 3% per annum (whichever is lower) from the contract effective

date to the renewal date as measured by the National (U. S. City Average) consumer price index for all urban consumers (CPI-U) unless justified by Navitus and otherwise agreed to by the Board.

1.05 Amendments to the Contract. The Contract may be amended at any time by written mutual agreement, but any such amendment shall be without prejudice to any claim arising prior to the date of the change. No one, except duly authorized officers or agents of the Contractor and the Board, shall alter or amend this Contract. No change in this Contract shall be valid unless evidenced by an amendment that is signed by such officers of the Contractor and the Board.

1.06 Subcontracting. None of the services to be provided by the Contractor shall be subcontracted or delegated to any other organization, subdivision, association, individual, corporation, partnership or group of individuals, or other such entity without prior written notification to, and approval of, the Board.

1.07 Agent for the Board.

(a) Except as expressly provided to the contrary in par. (b), whenever any right, power or duty is imposed or conferred on the Board by the terms of this Contract, that right, power or duty so imposed or conferred shall be possessed and exercised by the Department or the specific Department employee named in this Contract, acting as authorized agent for the Board.

(b) Notwithstanding par. (a), the following actions require action by a majority of a quorum of the Board:

(1) Termination of this contract for cause, although the Department may recommend that action to the Board.

(2) The Department may review the initial benefit policy decisions interpreting this Contract and the provisions of the group health insurance benefit plan with respect to individual subscribers and their claims, following the initial decision by the Contractor and the Contractor's subsequent internal grievance process, but such decisions are subject to appeal by the subscriber to the Board under Wis. Stat. § 40.03 (6) (i) and Wis. Admin. Code Ch. ETF 11. The Board retains the authority to reverse a claim determination made by the Contractor or Department. Board decisions on benefit claims are also subject to judicial review as provided under Wis. Stats. § 40.08(12).

(c) The Department, in which the Board is created and to which the Board is attached, is authorized to receive on behalf of the Board any notice described in this Contract, as provided in § 1.10(a).

(d) The parties acknowledge that the Contractor is providing administrative services under the control and direction of the Board or its agent, the Department, with regards to payment or denial of pharmacy claims for which

the Public Employee Trust Fund is the ultimate insurer, and therefore the parties agree that the Contractor shall be regarded as an agent of the Board under §§ 893.82 and 895.46 of the Wisconsin Statutes with respect to causes of action arising from actions taken within the Contractor's scope of its employment as a provider of administrative services for the Board.

(e) With respect services performed other than within the Contractor's scope of its engagement as a provider of administrative services for the Board, the Contractor shall be treated as an independent contractor under law. The imposition of performance standards alone shall not be regarded as the Board exercising control and direction over the Contractor's actions sufficient to overcome the Contractor's status as an independent contractor.

1.08 Ownership of Information and Data.

(a) This contract shall no way affect or limit the Board's rights to use, disclose or duplicate, for any purpose whatsoever, all information and data pertaining to the Department or Covered Individuals and generated by the claims administration and other services provided by Contractor under this Contract.

(b) All files (paper or electronic) containing any Wisconsin claimant or employee information and all records created and maintained in the course of the work specified by this Contract are the sole and exclusive property of the Board. Contractor may maintain copies of such files during the term of this Contract as may be necessary or appropriate for its performance of this Contract. Moreover, Contractor may maintain copies of such files after the term of this Contract (i) for 120 days after termination, after which all such files shall be transferred to the Board or destroyed by Contractor, except for any files as to which a claim has been made, and (ii) for an unlimited period of time after termination for Contractor's use for statistical purposes, if Contractor first deletes all information in the records from which the identity of a claimant or employee could be determined and certifies to the Board that all personal identifiers have been removed from the retained files.

1.09 Right to Publish or Disclose.

(a) Throughout the term of this Contract, the Contractor must secure the Board's written approval prior to the release of any information which pertains to work or activities covered by this Contract (except as may be appropriate for the administration of claims in the usual course of business under this Contract), specifically including, without limitation, personal information concerning persons claiming or entitled to benefits, participants in the Group Insurance Board health plans under Wis. Stat. § 40.51 and their dependents, and medical records within the definition of Wis. Admin. Code § ETF 10.01 (3m).

(b) The parties agree that it is a breach of contract to disclose any information to any person that the Board or Department may not disclose under

Wis. Stat. § 40.07. Contractor acknowledges that it will be liable for damage or injury to persons whose confidential personal information is disclosed by any officer, employee, agent, or subcontractor of the Contractor without proper authorization.

1.10 Notices.

(a) Any notices to be provided to the Board under the terms of this contract shall be made by certified mail, with return receipt requested, or by registered mail to:

The Group Insurance Board
c/o Administrator, Division of Insurance Services
Department of Employee Trust Funds
P.O. Box 7931
Madison WI 53707

(b) Any notices to be provided to the Contractor under the terms of this contract shall be made by certified mail, with return receipt requested, or by registered mail to:

Navitus Health Solutions
c/o President
999 Fourier Drive Suite 301
Madison WI 53717

(c) Delivery of notice by other means, including by personal delivery to the person identified above, facsimile, electronic mail, or other electronic means, is also satisfactory, provided the recipient expressly acknowledges receipt of the notice, in writing.

(d) Either party of this Contract may change its address for notice purposes by first giving notice in accordance with this section.

1.11 Termination of the Contract.

(a) **GROUND FOR TERMINATION.** This Contract between the parties may be terminated, other than at the expiration of the term of the contract, only as follows:

(1) **By Board for Cause.** The Board may terminate this Contract for cause upon written notice to Contractor. "Cause" shall be defined as the occurrence of any of the following:

(i) A gross material or repeated material failure of the Contractor to perform its contractual duties or responsibilities under this agreement, and such nonperformance continues for a period of thirty (30) days after written notice given to Contractor specifying the breach and the proposed action or actions to cure the breach. For this purpose, the breach shall be deemed cured if (1) the breach is corrected and remedied to the reasonable satisfaction of the Board within the thirty (30) day period, or (2) if the breach cannot be reasonably corrected within thirty (30) days, the Contractor has commenced in good faith to correct the breach and has agreed that non-termination is conditioned on the Contractor's diligence in proceeding to correct the breach to the reasonable satisfaction of the Board; or

(ii) Any material fraud or material willful misconduct by the Contractor or its officers, directors, employees, agents or subcontractors. A termination under this Subdivision 1.11(a)(1)(ii) is effective immediately upon giving notice to the Contractor.

(iii) Upon the financial inability of the Contractor to continue to perform the Contract, as evidenced by factors including but not limited to the following: making of a general assignment for the benefit of Contractor's creditors; the appointment of a receiver for all of its business or assets; or, the filing of a voluntary or involuntary petition in bankruptcy, provided that in the event of an involuntary petition, the Contractor shall not have been able to obtain a dismissal of the petition within thirty (30) days after the date of filing.

(2) By Board without Cause. The Board may also terminate the Contract upon the occurrence of any of the following events, upon at least one hundred eighty (180) days advance written notice of termination to the Contractor, specifying the date upon which such termination becomes effective:

(i) If Federal or State law or regulation (other than a regulation promulgated by the Department) should render continued performance of the Contract by the Board impossible or inappropriate.

(ii) If required by a change in Federal or State law or by court order, to the extent required by such changes or court order.

(3) By Board Because of Change in Control of Contractor. The Board shall have the right to terminate the Contract upon change in control of Contractor, upon 120 days' written notice to Contractor. The Board's right to terminate under this Section shall be exercisable only by written notice given to the Contractor no later than 120 days after the later of the following:

(i) The effective date of the change in control, whether by consummation of the transaction giving rise to the change in control or by a

functional change in control of the Contractor's operations pending consummation of such a transaction, or

(ii) Written notice of the effective change in control from Contractor to the Board.

(iii) For these purposes, a "change in control" shall mean any of the following events:

a. Any sale, transfer, or other disposition of all of the outstanding ownership interests of the Contractor (including by merger, consolidation, conversion, or other event), which results in ownership, or controlling share of ownership, of the Contractor being acquired by any person or entity other than an Affiliate;

b. Any sale, transfer, or other disposition of all or substantially all of the assets of the Contractor to any person or entity other than an Affiliate;

c. The filing of a registration statement by the Contractor under the Securities Act of 1933, as amended, with the United States Securities and Exchange Commission (the "SEC) for the registration of the equity securities of the Contractor that would constitute, upon issuance, more than fifty percent (50%) of the outstanding equity interests or voting stock of the Contractor.

d. An "Affiliate" means any owner of the Contractor as of the date of this Contract, or any person or entity that controls, is controlled by, or is under common control with any such owner, specifically Dean Health Plan, Inc.; Dean Health Insurance, Inc.; Dean Health Systems, Inc.; SSM Health care of Wisconsin, Inc.

(4) By Contractor for Cause. The Contractor may terminate this Contract for cause upon written notice to the Board. "Cause" shall be defined as the occurrence of either of the following:

(i) If the Board fails to make any payment or deposit within five (5) days after the date such payment or deposit is due, and such failure continues for five (5) business days after the Contractor gives the Board written notice of the failure to make the payment or deposit, Contractor may terminate this Contract immediately upon written notice thereof to the Department; or

(ii) A gross material or repeated material failure of the Board to perform its contractual duties or responsibilities under this agreement (other than failure of payment described in (i) above), and such nonperformance continues for a period of thirty (30) days after written notice given to the Board specifying the breach and the proposed action or actions to cure the breach. For

this purpose, the breach shall be deemed cured if (1) the breach is corrected and remedied to the reasonable satisfaction of the Contractor within the thirty (30) day period, or (2) if the breach cannot be reasonably corrected within thirty (30) days, the Board has commenced in good faith to correct the breach and has agreed that non-termination is conditioned on the Board's diligence in proceeding to correct the breach to the reasonable satisfaction of the Contractor.

(5) By Contactor without Cause. The Contractor may also terminate the Contract upon the occurrence of any of the following events, upon at least one hundred eighty (180) days advance written notice of termination to the Board, specifying the date upon which such termination becomes effective:

(i) If Federal or State law or regulation (other than a regulation promulgated by the Department) should render continued performance of the Contract by the Contractor impossible or inappropriate.

(ii) If required by a change in Federal or State law or by court order, to the extent required by such changes or court order.

(6) Loss of Funding. The Contract may be terminated by either party, upon written notice to the other:

(i) In the event funding of claims payments or contractual services rendered by Contractor become permanently unavailable to the Department. Prior to termination under this Subdivision, the Board and Department shall use their best efforts to obtain or use alternative funding.

(ii) In the event it becomes evident State funding of claims payments or contractual services rendered by Contractor will be temporarily suspended or unavailable, the Board shall immediately notify Contractor in writing identifying the basis for the anticipated unavailability or suspension of funding. Upon such notice, the Board or Contractor may suspend performance of any or all of Contractor's obligations under this Contract if the suspension or unavailability of funding will preclude reimbursement for performance of those obligations. Prior to suspension under this Subdivision, the Board and Department shall use their best efforts to obtain or use alternative funding. In the event funding temporarily suspended or unavailable is reinstated, Contractor may remove suspension hereunder by written notice to the Board. In the event Contractor elects not to reinstate services, Contractor shall give the Board written notice of its reasons for such decision. Contractor shall make such decision in good faith.

(b) RIGHTS AND OBLIGATIONS UPON TERMINATION.

(1) In General. Except as otherwise provided in this subsection 1.11(b), upon any termination of this Contract, the Contractor shall perform the services specified in the turnover plan described in Section 1.12 if so requested by the Board; provided, however, that except as expressly set forth otherwise

herein, the Contractor shall not be obligated to perform such services unless all amounts due to the Contractor under this Contract, including payment for the turnover services, have been paid. Failure of the Contractor to comply with the turnover plan upon request and upon payment shall constitute a separate breach for which the Contractor shall be liable.

(2) Termination by Board for Cause. Upon any termination of this Contract by the Board for cause under Paragraph 1.11(a)(1) above:

(i) Payments of the administrative fees to the Contractor under Section 6.01 shall cease as of the termination date.

(ii) The Contractor shall perform the services specified in the turnover plan without additional consideration.

(iii) The Contractor shall be liable to the Board, Department, State of Wisconsin and Public Employee Trust Fund for costs directly caused by Contractor's breach, including any additional costs of obtaining substitute performance of the services contracted for in this Contract.

(iv) Termination for non-performance shall not operate or be construed as a waiver of any right the Board might have in the absence of such termination, to allege and prove any default which occurred prior to the date of such termination, and to recover damages attributable to such default.

(v) The Board shall exercise commercially reasonable efforts to accomplish the transition and to mitigate its damages.

(3) Other Termination. In the event this Contract is terminated other than at the end of the initial term of the Contract and other than under Paragraph 1.11(a)(1) above:

(i) If the termination is pursuant to Paragraph 1.11(a)(2) or Subdivision 1.11(a)(3)(i) above, Contractor shall be entitled to and the Board shall pay, in addition to amounts owing for services rendered prior to the date of termination and in addition to fees payable for turnover services, a termination fee equal to \$300,000 per month for each full or partial month remaining in the initial term at the time of termination; provided, however, that the termination fee shall not apply if the failure of payment under subdiv. 1.11(a)(3)(i) is due to breach of this Contract by Contractor. Such fee shall be paid in full at the time of termination.

(ii) If the termination is pursuant to Paragraph 1.11(a)(5) above, then (1) the Board shall pay to Contractor its actual costs of termination, as determined by agreement of the parties or, if they are unable to agree, by audit, which shall determine the portion of the Contractor's start-up costs allocable to this Contract and the residual value, if any, of those costs retained by Contractor, and (2) such termination shall constitute a breach of this Contract

such that contractor may pursue whatever remedies it may have under law against the appropriate party or third-party, including the State of Wisconsin.

(iii) Upon receipt of such notice, the Contractor shall exercise commercially reasonable efforts to accomplish the cancellation and to mitigate its damages.

(c) **SPECIFIC PERFORMANCE.** The Contractor acknowledges that any failure or delay on its part in the delivery to the Board of items specified above will not be adequately compensated in damages. The Contractor accordingly agrees that the Board may obtain specific performance of these obligations.

(d) **OTHER RIGHTS OR CAUSES OF ACTION PRESERVED.** The expression of specific Board or Contractor rights within this Contract, with respect to Contract termination, does not in any way limit, or constitute a release or waiver by the Board or Contractor, as the case may be, of other rights or causes of action that it may have against the other or its agents.

1.12 Turnover Plan.

(a) The Contractor shall develop a turnover plan, as indicated in Section B. - Administrative Capabilities, Part 4.0 Transition, Implementation and Turnover Plans in the document titled "Request for Proposal # ETJ0007- Administrative Services as the State of Wisconsin Pharmacy Benefit Manager dated January 28, 2010", acceptable to the Board to provide for complete turnover of pharmacy benefit operations to the Board or a successor Contractor to allow the uninterrupted continuation of management of the pharmacy benefit and pharmacy claims processing.

(b) The turnover plan must address, but is not limited to, the following areas:

(1) Data transfer and file conversion. The Contractor shall transfer physical possession to the Board, or its designee, copies in a format acceptable to the Board and to the Contractor of the most current and complete version of all supporting documentation and all subscriber, insured and claimant files in the possession or control of the Contractor and its subcontractors and agents.

(2) Parallel processing.

(3) Testing of the system.

(4) Phase-in period.

(5) Time period for trouble shooting and consulting after the new operations begin.

(6) Fees to Contractor for turnover services, which shall reflect reasonable charges for actual costs incurred by Contractor.

(7) Contractor shall promptly supply to the Board all information in its possession or which can be reasonably obtained, that is necessary for the processing of any outstanding claims.

(8) Failure by Contractor to comply with the turnover plan as set forth in this Section 1.12 shall constitute a separate breach for which the Contractor may be liable, including for the costs of the Board obtaining substitute performance.

(c) In the event the Contractor terminates the Contract, an updated Turnover Plan (including schedule for turning over any pharmacy claims, pharmacy management procedures, all related documentation, and files) must accompany the notice of termination. In the event the Board terminates the Contract, an updated Turnover Plan shall be sent to the Board within thirty (30) days of the written notice to the Contractor.

(d) The parties shall review and update the turnover plan at least annually during the term of this Contract.

(e) The Contractor's responsibilities at the time of turnover will include management and control of its turnover assistance and reasonable cooperation with the other party or parties to the turnover.

1.13 Successor Contractor. Nothing in this Contract shall be construed to prevent or in any way restrict the Board, at a time and in a manner of its choosing, from soliciting the services of a future pharmacy benefits manager.

1.14 Program Policy and Eligibility Determinations.

(a) The Board shall determine all program policy.

(b) The Board shall establish the eligibility provisions for employees entitled to benefits under the group health insurance benefit plans, including the pharmacy benefits included thereunder.

(c) The Board shall make any necessary determinations of a person's eligibility for coverage.

1.15 Contract Administration.

(a) The Contractor will designate a Contract Administrator who shall have executive and administrative oversight for performance of the Contractor's obligations under this Contract. The Contractor shall not change this designation without prior written notice to the Department.

(b) The Board will designate a Contract Administrator, who shall have oversight for performance of the Board's obligations under this Contract. The Board shall not change the person designated without prior written notification to the Contractor.

1.16 Right to Suspend Operations.

(a) If, at any time during the period of this Contract, the Board determines that the best interest of the Board or the group insurance accounts of the Public Employee Trust Fund, or the insured employees having a beneficial interest in the Trust Fund, would be best served by the Contractor's temporarily holding all pharmacy benefit payments, the Board will notify the Contractor.

(b) Upon receipt of such notice, the Contractor shall suspend all transactions for the affected claims, for the period of time specified in the notice. The Contractor will issue an explanation to affected claimants and subscribers as to why no check was issued. The Board shall pay the reasonable and necessary costs of issuing the explanation.

1.17 Federal and State Law.

(a) All Contractor's services under this Contract shall be performed in material compliance with the applicable Federal and State laws and regulations in effect at the time of performance, except when imposition of a newly enacted or revised law or regulation would result in an unconstitutional impairment of this Contract.

(b) The Contractor will make commercially reasonable efforts to ensure that Contractor's professional and managerial staff maintain a working knowledge and understanding of all Federal and State laws, regulations, and administrative code appropriate for the performance of their respective duties, as well as contemplated changes in such law which affect or may affect any of the following:

(1) The administration of employer-provided health insurance pharmacy benefits by governmental plans generally.

(2) Pharmacy benefits and claims under the group health insurance plans of Wis. Stat. §§ 40.51 and 40.52.

(3) The performance of Contractor's responsibilities under this Contract.

(c) In the event Contractor, in its capacity as the contracted agent for the administration of pharmacy benefits and claims, requires clarification or interpretation of Federal or State law, regulation, or administrative code, or of any change in the Uniform Benefits, Guidelines, or Standard Plan, the Contractor shall advise the Board, requesting clarification or interpretation in writing. With the approval of the Department, the Contractor may suspend performance with respect to affected matters, to the extent that such performance is unreasonable or impossible, until the clarification or interpretation is received.

1.18 Fraud and Abuse.

(a) Commencing January 1, 2011, the Contractor will refer to the Department any suspected or discovered fraudulent or abusive practices by employers covered by this Contract or their employees that the Contractor encounters in the performance of its contractual activities.

(b) The Contractor will produce, on a timely basis, reports, printouts and other documentation reflecting information or data processed by Contractor which is needed to investigate or document suspected instances of fraud or abuse relating to the pharmacy benefits or claims.

1.19 Inquiries and Requests.

(a) The Contractor will refer to the Board all inquiries or requests by State or Federal legislators, their staff members, or others (excluding routine inquiries from Covered Individuals as to claims administration) concerning Contractor's performance under this Contract or the processing, payment or denial of claims within two working days of receipt of the request and prior to making any response. Unless the Board requests otherwise, the Board will make any necessary response, and the Contractor will make no response.

(b) The Contractor will refer any requests made by individuals under the public records laws to the Board within two working days after receipt of the request and will assist the Board in locating and copying the records that may be disclosed in response to the request, as determined by the Board.

1.20 Choice of Law.

(a) This Contract is executed under and bound by the laws of the State of Wisconsin.

(b) Contractor agrees to bring any legal proceedings arising under the Contract in a court of the State of Wisconsin in the County of Dane.

1.21 Severability. If any provision of the Contract is found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law.

1.22 Dispute resolution.

(a) The parties shall make a good faith effort to resolve any disputes arising during the term of this Contract. If the Contract Administrators for the Board and the Contractor are unable to resolve the dispute through informal discussions, then the President of Contractor and the Secretary of the Department shall attempt to resolve the dispute, which attempt shall include at least one face-to-face meeting.

(b) If any controversy arising out of or relating to this Contract is not resolved informally as described above, either party may commence a legal action to resolve the matter. The parties agree that the Dane County Circuit Court, Madison, Wisconsin, shall have exclusive jurisdiction over any such action, and that the matter shall be reviewed *de novo* by that court.

(c) Subsection (b) shall not apply to the judicial review of a Board decision concerning a benefit claim by an employee or claimant. Such appeals shall be governed exclusively by Wis. Stats. § 40.08(12) and the Board's decision may be entitled to great weight, at the discretion of the court.

1.23 Document formatting. The standards, formats and forms for all documentation required of Contractor under this Contract shall be mutually agreed upon by the Board and Contractor.

1.24 Approvals, Consents, Etc. When agreement, approval, acceptance or consent by either party is required by any provision of this Contract, such action shall not be unreasonably delayed or withheld.

1.25 Award of Related Contracts. The Board, as it deems necessary, may undertake or award supplemental contracts for other services related to pharmacy benefits under its group health insurance plans, or any portion thereof, which are not expressly awarded to the Contractor. The Contractor shall cooperate reasonably with such other subcontractors and the Board in all such cases.

1.26 Entire Agreement. This Contract, its Exhibits, subsequent amendments and the documents incorporated by reference in Section 1.02 above contain the entire understanding between the parties on the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect. This Contract supersedes any other oral or written agreement entered into between the parties on the subject matter hereof.

1.27 No Third Party Beneficiaries. The intended third-party beneficiaries of the Pharmacy Benefit Plan are the subscribers and their insured dependents entitled to pharmacy benefits under the Uniform Benefits, guidelines or Standard Plan. However, such benefits are ultimately paid from the Public Employee Trust Fund, not by the Contractor or the individual HMOs covered by the Uniform Benefits and Guidelines. This Contract is not intended to subject the Contractor to any claim by, or liability to, such third-party beneficiaries. No party other than the Board (except governmental authorities to the extent required by law) is or shall be entitled to bring any action to enforce any provision of this Contract against the Contractor, and the covenants, undertakings, and agreements set forth in this Contract shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.

1.28 Miscellaneous. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing its obligations for reasons beyond its control, including, without limitation, acts of God or of the public enemy, flood or storm, strikes, or statute, rule or action of Federal, State or local government agency. Waiver of a breach of any provision of this Contract will not be deemed a waiver of any subsequent breach of the Contract. In the event that a provision of this Contract is rendered invalid or unenforceable by State or Federal statute or regulations or declared null and void by any court of competent jurisdiction, the remaining provisions of this Contract will remain in full force and effect. This Contract shall be binding upon and inure to the benefit of the parties hereto and their heirs, legal representatives, successors, and permitted assigns. The headings in this Contract are used solely for the purpose of convenience and shall not be considered in the construction thereof.

PART 2
DEFINITIONS OF WORDS & PHRASES USED IN CONTRACT

2.01 Definitions. Within this contract, the following words and phrases shall have the meaning specified below. Terms not defined below shall have the meanings provided by Wis. Stat. § 40.02 and Wis. Admin. Code § ETF 10.01 unless otherwise clearly and unambiguously defined by the context of their usage in this contract.

“Pharmacy Benefit Plan” means the portion of the Board’s group health plan that provides for the coverage of certain pharmacological and related Covered Products subject to certain Copayments, Deductibles, or Coinsurance requirements, limitations and exclusions as described in the Uniform Benefits, the Guidelines, and the Standard Plan.

“Board” means the State of Wisconsin Group Insurance Board.

“Coinsurance” means that portion of the charge for Covered Products, calculated as a percentage of the charge for such services, that is to be paid by Covered Individuals pursuant to the Pharmacy Benefit Plan.

“Contract” means this agreement, including the exhibits and documents included by express reference in § 1.02, and including any duly adopted amendments to this Contract.

“Contractor” means Navitus Health Solutions, LLC.

“Copayment” means a fixed dollar portion of the charge for Covered Products, which is to be paid by Covered Individuals pursuant to the Pharmacy Benefit Plan.

“Covered Individual” means each person who is eligible for prescription drug benefits under the Pharmacy Benefit Plan, including Subscribers and their dependents.

“Covered Products” means those Products that are covered under the Pharmacy Benefit Plan. Covered Products may include, but are not limited to, brand or generic prescription medications, medications not requiring a prescription, and/or medical supplies and equipment.

“Deductible” means a predetermined amount of money that a Covered Individual must pay before benefits are eligible for payment.

“Department” means the State of Wisconsin, Department of Employee Trust Funds.

“Drug Spend” means the discounted Ingredient Cost of all drugs adjudicated under the Pharmacy Benefit Plan for a given year, plus dispensing fees, net of

manufacturers' rebates, determined on an accrual basis. "Drug Spend" does not include Contractor's administrative fees or other administrative expenses of the Pharmacy Benefit Plan, and shall not take into account deductibles, copayments, and co-insurance payments made by the insured members under the Pharmacy Benefit Plan.

"Drug Trend" means the rate of change in the Drug Spend from one year to another, expressed as a percentage, as agreed by the parties. No later than December 1 of each year, the Board shall retain an actuary to propose a Drug Trend for the following year. That proposed Drug Trend shall be binding on both parties unless either party objects in writing to the proposal within fifteen (15) days after its receipt of the proposal. Upon the objection of either party, or as provided under 6.01(d), the parties shall negotiate in good faith to agree on a Drug Trend for that year.

"Eligible Product" means the brand name or generic Product that is included in the Contractor-recommended and Board-approved formulary and for which a Product manufacturer and Contractor have entered into a contractual rebate agreement.

"Guidelines" means the "Terms and Conditions for Comprehensive Medical Plan Participation in the State of Wisconsin Group Health Benefit Program and Uniform Benefits," form ET-1136, specifically Part 4. Uniform Benefits, as in effect for the year in question.

"Identification Cards" means cards indicating eligibility of Covered Individuals, printed in the most current NCPDP (National Council for Prescription Drug Processing) version. These cards will be distributed upon initial enrollment, upon a change in the Pharmacy Benefit Plan, or upon request of the Covered Individual.

"Ingredient Cost" means the amount Contractor pays to the pharmacy on behalf of the Board, less any and all income streams, to reflect complete financial transparency as defined in the RFP.

"Online Transaction Processing" means the process of settling claims, from submission through final disposition, between two or more parties.

"Participating Pharmacy" means a pharmacy or a company that is authorized to represent one or more subsidiary, affiliated, or franchised pharmacies, that has been accepted as a Participating Pharmacy and has entered into a Participating Pharmacy Agreement with Contractor to provide Covered Products to Covered Individuals.

"Participating Prescribers" means those prescribers who are authorized to prescribe medication to Covered Individuals under the Pharmacy Benefit Plan.

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

”Products” means brand or generic prescription medications, medications not requiring a prescription, and/or medical supplies and equipment.

“Projected Drug Spend” means the Drug Spend for the prior year increased by the Drug Trend for the current year, adjusted for membership changes between years.

“Rebate” means the total dollar amount paid by a Product manufacturer to Contractor for Eligible Product utilization. This includes any revenue offered by a Product manufacturer for administrative services.

“Standard Plan” means the self-insured Standard Plan offered by the Group Insurance Board.

“Subscriber” means the same as “subscriber” as defined in the Uniform Benefits.

“Uniform Benefits” means the portion of the Guidelines titled “Uniform Benefits.”

2.02 Internal references.

This contract is divided into parts, sections, subsections, paragraphs, subdivisions and subdivision paragraphs which may be identified from their numbering and referred to internally as follows:

1	§ 1.01	(a)	(1)	(i)	a.
Part	Section	Subsection or sub. (a)	Paragraph or para. (1)	Subdivision or subdiv. (i)	Subdivision paragraph or subd. para. a.

PART 3
CLAIMS ADMINISTRATION

3.01 Claims Administration.

(a) With respect to claims for pharmacy benefits, the Contractor shall serve as third-party administrator, providing all necessary administrative services to administer, process, and pay all pharmacy benefit claims arising under the Standard Plans offered by the Board and under all contracts between the Board and approved health care coverage plans, including health maintenance organizations and preferred provider plans, to which the Pharmacy Benefit Plan applies, including the health care coverage available to both state employees and employees of another employer, as that term is defined by Wis. Stat. § 40.02 (28); provided, however, that the Contractor shall not administer claims for pharmacy benefits reserved to the health care coverage plans under the Pharmacy Benefit Plan or the contracts between the Board and those health care coverage plans.

(b) The Contractor shall administer claims in accord with the Contract. The Board acknowledges that it has the sole authority to control and administer the Pharmacy Benefit Plan and has contracted with the Contractor for assistance in administering claims. The Board further acknowledges that although Contractor has the authority to make initial determinations to approve or reject claims, the Board has the ultimate authority over such decisions, in the event the Contractor's initial decision is challenged. Nothing in this Contract shall be construed or deemed to confer on Contractor any responsibility for or control over the terms or validity of the Pharmacy Benefit Plan. Further, because Contractor is not an insurer, plan sponsor, or a provider of health services to Covered Individuals, Contractor shall have no responsibility for (a) any funding of plan benefits; (b) any insurance coverage relating to Board, the plan, or the Covered Individuals; or (c) the nature or quality of professional health services rendered to Covered Individuals, except as otherwise expressly provided in Sections 4.07(c) and 4.17(e).

3.02 Review of Claims Decisions.

(a) The Contractor shall make claims decisions according to its understanding of the Pharmacy Benefit Plan. The Contractor's decision to deny a pharmacy benefit claim, in whole or part, is subject to review only as follows:

(1) The subscriber must first seek review through the internal grievance process established by the Contractor to determine whether the Contractor has made a clear error in denying the claim. The process includes a formal grievance procedure, which at a minimum provides the individual the opportunity to present a complaint and evidence to the Contractor, and the Contractor will consider the complaint and advise the enrollee of its final decision. Enrollees must be advised in writing of the Department's review and

determination process, including the applicable time limit, when a claim is denied. The notice, to be furnished by the Contractor, shall substantially conform to Exhibit 5.

(2) Except as provided in sub. (b), the subscriber must request review of the Contractor's action by the Department within 60 days after written notice is given of the final result from the Contractor's grievance process and of the 60-day time limit to seek DEPARTMENT review of that result; otherwise, the Contractor's action is final. The subscriber must complete a DEPARTMENT complaint form and submit copies of all pertinent documentation including the written determinations issued by the Contractor. The DEPARTMENT will issue a written determination which is subject to review by the Group Insurance Board.

(3) A determination made by the DEPARTMENT may be appealed to the Group Insurance Board as provided in Wis. Stat. § 40.03 (6) (i) and Wis. Admin. Code § ETF 11.01 (3), *et seq.* A request to appeal a determination made by the DEPARTMENT must be received within 90 days after the determination is mailed to be timely. Otherwise the DEPARTMENT determination is final and not reviewable.

(4) Decisions of the Group Insurance Board are reviewable only by an action for certiorari commenced in the Dane County Circuit Court as provided in Wis. Stat. § 40.08 (12). An action for certiorari must be commenced within 30 days after notice of the Board decision is mailed to be timely. Otherwise the Board decision is final and not reviewable.

(b) The subscriber may, as an alternative to the administrative appeal process described in sub. (a) (2) through (4), instead seek independent review under Wis. Stat. § 632.835 and Wis. Admin. Code ch. Ins 18. This option is available only if the Contractor has denied a claim (for which the cost of treatment is expected to exceed \$250) and the denial is based on either of the following:

(1) The treatment does not meet requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness.

(2) The treatment is experimental under the terms of the plan.

(c) The independent review process is an optional alternative to asking the Department of Employee Trust Funds to review the matter. However, nothing shall prohibit the subscriber from seeking a determination by the DEPARTMENT during the period prior to the deadline for requesting independent review.

3.03 Benefit Plan Specifications. The Contractor acknowledges that the Board has provided, in the Uniform Benefits, Guidelines and Standard Plan, specifications for the Pharmacy Benefit Plan in sufficient detail to permit Contractor to reasonably perform its duties under this Contract beginning January 1, 2011. However, in the event of any changes to the details of the Pharmacy Benefit Plan or if any future unanticipated circumstances arise for

which the Uniform Benefits, Guidelines or Standard Plan, provide inadequate guidance, the Contractor may request a clarification as provided by § 1.17(c).

(a) Because Board changes to the Pharmacy Benefit Plan may require programming changes, such changes will be coordinated with Contractor to assure timely implementation and minimal disruption of the ongoing Pharmacy Benefit Plan. The time required for new Pharmacy Benefit Plan changes will generally be as follows:

(1) Two weeks for changes within the existing Pharmacy Benefit Plan structure,

(2) Four to six weeks for changes for which functionality is currently available but not utilized, and

(3) Twelve to twenty-four weeks for changes for which functionality needs to be developed by Contractor's pharmacy processing system vendor.

(b) Contractor will notify Board, as promptly as reasonably possible following receipt of the request, as to the feasibility and timing of the requested change. Contractor shall not be responsible for implementing any changes to any previously established Pharmacy Benefit Plan information until Contractor shall have confirmed its agreement to and acceptance of implementation of such changes to Board in writing including a timetable for change implementation.

3.04 Covered Individual File. The Board will provide, or cause to be provided or accessed, a complete file and/or listing of all Covered Individuals of the Pharmacy Benefit Plan covered by this Contract ("Covered Individual File"). The Board will promptly furnish Contractor files and/or listings containing the identification of individuals whose enrollment has been terminated and a complete record for each new Covered Individual.

3.05 Participating Prescriber File. If the Board places restrictions on Participating Prescribers, the Board will provide, or cause to be provided or accessed, a complete file and/or listing of all Participating Prescribers of the Pharmacy Benefit Plan covered by this Contract ("Participating Prescriber File"). The Board will promptly furnish Contractor files and/or listings containing the identification of prescribers whose participation has been terminated and a complete record for each new Participating Prescriber File.

3.06 Plan Design Information; Member Eligibility. The Board, at its own expense, will provide Contractor all information concerning its plan design and Covered Individuals necessary for Contractor to perform its obligations under this Contract, including any updates to this information as necessary. This information must be complete and accurate, provided timely, and in a format and media approved by Contractor. Contractor, Covered Individuals, Participating

Prescribers and Participating Pharmacies are entitled to rely on the accuracy and completeness of this information, and updates thereto.

3.07 Limited Warranty. Contractor warrants that Contractor will perform the services described in this Contract (i) in accordance with the performance standards and other specific performance criteria set forth herein, and (ii) to the extent that this Contract does not provide specific performance criteria, in a good and workmanlike manner in accordance with the practices and standards generally established in the pharmacy benefits management industry. Except as otherwise expressly set forth in this Contract, CONTRACTOR MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WHATSOEVER, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. CONTRACTOR DOES NOT WARRANT THAT ITS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. This Contract is not a contract for the sale of goods.

3.08 Hold Harmless; Consequential and Tort Damages.

(a) The Contractor will indemnify and save harmless the 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 the Contractor 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.

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

(c) Except as provided in sub. (a) above, neither party will have any negligence or other tort liability to the other arising from the performance or any breach of this Contract, even if a breach is caused by negligence or other tortious conduct.

3.09 Insurance; Limitation of Liability.

(a) Contractor shall maintain Comprehensive General Liability insurance, including but not limited to coverage for bodily injury and property damage, with limits of not less than \$1,000,000 per occurrence and in the aggregate. In addition, Contractor shall provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this Contract with minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

(b) In no event shall the liability of Contractor (or any of its affiliates, officers, directors, employees, or agents) in the aggregate under or in connection with this Contract exceed the insurance proceeds available to Contractor for that claim, plus the deductible amount applicable to that claim. Contractor (and its affiliates, officers, directors, employees, or agents) shall not be liable for any claim that is asserted by the Board more than one hundred twenty (120) days after the Board is or reasonably should have been aware of such claim, except that claims made by the Board against Contractor that arise out of claims by third parties, to which Subsection 3.08(a) above might apply may be brought at any time within the applicable statute of limitations. .

3.10 No Liability for Products.

(a) THE SERVICES PROVIDED BY CONTRACTOR HEREIN ARE NOT INTENDED TO SUBSTITUTE FOR OR SUPPLEMENT THE KNOWLEDGE, EXPERTISE, SKILL, AND JUDGMENT OF PHYSICIANS, PHARMACISTS, OR OTHER HEALTH CARE PROFESSIONALS IN PRESCRIBING OR SUGGESTING PRODUCTS. THE ABSENCE OF A WARNING FOR A GIVEN DRUG, DRUG DOSAGE, OR DRUG COMBINATION SHALL NOT BE CONSTRUED TO INDICATE THAT THE DRUG, DRUG DOSAGE, OR DRUG COMBINATION IS SAFE, APPROPRIATE, OR EFFECTIVE FOR ANY COVERED INDIVIDUAL.

(b) Except as provided in sub. (c), Contractor shall not, under any circumstances, be liable or responsible for injury, including death, suffered by any Covered Individual or other consumer of any pharmaceutical or any other Product dispensed or distributed by any Participating Pharmacy, non-Participating Pharmacy, or person or entity accessing the Online Transaction Processing or related services provided by Contractor for any purpose, or for any side effects or other consequential or incidental damages of any kind or description whatsoever from the use of any such product, it being expressly understood that such liability and responsibility rests entirely upon the pharmacist, the prescriber, or other professional involved in the transaction. Without limiting the foregoing, the Board agrees that Contractor shall not be liable to the Board or any Covered Individual for losses, costs, claims, lawsuits, settlements, judgments, or expenses, including attorneys' fees, arising as a result of the sale, compounding, dispensing, manufacturing, or use of any prescription drug or Product dispensed by a Participating Pharmacy or a non-Participating Pharmacy whose claims are processed hereunder, or for any violation by such pharmacy of any applicable standard of care or applicable law, including without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or the regulations promulgated thereunder.

(c) Sub. (b) does not apply with respect to any Participating Pharmacy which the Contractor fails to exclude as a Participating Pharmacy or to subject to other appropriate disciplinary action after the Contractor becomes aware that

there is cause to exclude the Participating Pharmacy under Section 4.07(c) below.

3.11 Fraudulent Claims. Contractor shall not be liable or responsible for any claim, injury, demand, or judgment based on contract, tort, or other grounds (including warranty of merchantability) arising directly or indirectly out of the payment of fraudulent claims or filling of fraudulent prescriptions if the fraud is committed by any party other than Contractor. "Fraudulent claims" shall include the unauthorized, illegal, or wrongful use of any identification card issued to any Covered Individual, and the wrongful use of any identification card that is lost or stolen.

3.12 Consent. The Board represents that there is a legally adequate written consent from each Covered Individual permitting the Board to release to Contractor information required by Contractor to perform the services described in this Contract.

PART 4 PHARMACY MANAGEMENT

4.01 Pharmacy Management. Contractor shall be responsible for Online Transaction Processing of claims for Covered Products submitted by Participating Pharmacies, according to the benefit plan coverage parameters provided under Uniform Benefits. Covered Individual File and Participating Prescriber File information supplied by the Board. Such Online Transaction Processing shall include eligibility and coverage determination, calculation of allowable costs and applicable Deductibles, Coinsurance or Copayments, and communication of payment disposition to Participating Pharmacies, and shall be subject to the terms and conditions of this Contract, including but not limited to the procedures set forth in Section 4.17. In addition to administering pharmacy claims, the Contractor, with the consent of the Board, shall establish the collateral procedures and services necessary to provide pharmacy benefits under the Board's group health insurance plans in accord with the Proposal and this Contract, including enrollment and eligibility system according to Health Insurance PBM ANSI 834 Project Documents.

4.02 Access to Mail Order Services. Contractor shall establish a fair and competitive process to identify, evaluate and contract with a single vendor of mail order pharmacy services while this Contract is in effect. The process and choice of vendor are subject to written approval by the Board. For the duration of this Contract, the Board shall provide mail order pharmacy services for its Covered Individuals only through this Contract.

(a) **Distribution of Information.** The contract with the mail order pharmacy vendor shall provide that a member may begin the mail order process with the chosen vendor by phone, on-line, or by filling out a mail order brochure. In addition, refills can be ordered on-line. The vendor will provide to Covered Individuals, on request, informational material explaining its services and the forms necessary for Covered Individuals to utilize the mail service

(b) **Delivery and Dispensing.** Subject to, and in accordance with plan design, the vendor's pharmacies will dispense new or refill prescription orders upon receipt from a Covered Individual of (i) a valid prescription order or a completed refill order form; and (ii) the applicable co-payment, Coinsurance or Deductible amount. The vendor's pharmacies will fill and mail to each Covered Individual via common carrier at the address set forth in the Eligibility File, or as appearing on the face of the prescription, so long as such addresses are within the United States.

(c) **Professional Judgment.** Each vendor pharmacy shall exercise its professional judgment in the dispensing of Covered Products and may refuse to dispense any Drug Product based upon the professional judgment of its pharmacists.

4.03 Claims submitted by Covered Individual. Contractor will accept claims submitted directly by Covered Individuals when such Covered Individuals complete a standard claim form along with proof of payment. Contractor will process such properly submitted claims and produce and mail, within thirty (30) calendar days of receipt of a request for reimbursement: (a) an explanation of benefits to Covered Individuals for allowable claims, together with checks for the agreed upon reimbursement amounts; or (b) requests for information for claims that are ineligible or incomplete.

4.04 Customer Service.

(a) **Pharmacy Help Desk.** Contractor will provide Participating Pharmacies with help desk assistance and access to Contractor's Retail Pharmacy Help Desk 24 hours a day, seven days a week, excluding some Holidays.

(b) **Call Center.** Contractor will also have Customer Service Representatives available to members, pharmacists and prescribers 24 hours a day, seven days a week, excluding some Holidays, via a toll-free, customer service call center. Staff will be available to answer Covered Individuals' questions on plan design, eligibility, deductible status, required copay / coinsurance levels, and maximum benefit status. Contractor's web site will provide the Board and Covered Individuals with answers to many common questions, including information on the Participating Pharmacy network, formulary, member materials and other pertinent materials.

4.05 Identification Cards. Contractor will design one Identification Card layout and provide the Board with a proof of final design layout. Contractor will make available a selection of standardized Identification Cards using the ETF logo at no additional charge, but if the Board desires any further customization of the Identification Cards, including the addition of updated ETF or other logos, the Board will pay an additional fee, as agreed by the parties, for that customization. The Board will provide Contractor with the logo or logos in a mutually agreed upon medium. Contractor will generate a card in such final design for each Subscriber, which will list each dependent of the Subscriber who is a Covered Individual at the time of issuance, and the Subscriber's and each dependent's member identification number. The Board, Department, or Covered Individuals may request additional Identification Cards, and Contractor will produce and mail requested Identification Cards every Monday, Wednesday, and Friday.

4.06 On-Line Coordination of Benefits. Contractor will conduct Online Transaction Processing of Covered Products for Covered Individuals that have one secondary insurance.

4.07 Pharmacy Network Administration.

(a) Contractor has created a network of Participating Pharmacies, which will perform pharmacy services for Covered Individuals. Contractor will adjudicate claims submitted by Participating Pharmacies in accordance with the Participating Pharmacy's agreement with Contractor. Each Participating Pharmacy shall exercise its professional judgment in the dispensing of Covered Products and may refuse to dispense any Drug Product based upon the professional judgment of its pharmacists. The Board and its actuaries will have access to these agreements and the Contractor will notify the Board if the agreements change in a manner that materially affects this Contract.

(b) Contractor's creation and maintenance of a network of Participating Pharmacies is undertaken in the capacity of an independent contractor. The Board is not a party to the agreements between the Contractor and the Participating Pharmacies.

(c) The Contractor shall conduct audits of the Participating Pharmacies in accordance with Subsection 4.10(f) below. If the Contractor becomes aware that any Participating Pharmacy, pharmacy or company that is authorized to represent one or more subsidiary, affiliated, or franchised pharmacies has engaged in any fraudulent practice or has violated any applicable standard of care or applicable law, including without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or the regulations promulgated thereunder, the Contractor shall immediately disclose such information to the Board. The Contractor and Department shall consult and shall take such action as appears to them jointly to be reasonable under the circumstances, including but not limited to exclusion of that Participating Pharmacy from Contractor's Participating Pharmacies network

4.08 Standard Covered Individual Materials. Contractor will mail to Subscribers an initial enrollment package within four business days of receipt of the daily update load. The initial enrollment package shall consist of: (i) an "Overview of Benefits" brochure that will include a description of how the formulary is developed, information about the web site, and a description of features; (ii) Identification Card(s); and (iii) a mail order brochure. All other materials, including information on a pill splitting program and disease management offerings, will be mailed only upon request of a Subscriber and as appropriate. The Contractor reserves the right to direct Covered Individuals to the web site, or call center, as appropriate, to obtain information and materials. Printing, distribution and postage expenses will be covered by the Contractor.

4.09 Specialty Injectable Program. Contractor shall make available to Board a specialty injectable program through the vendor chosen by Contractor and approved by the Board, to provide that service. After initial implementation, the Board agrees that it will provide specialty injectable services for its Covered Individuals only through this program.

4.10 Cost Management Services. Contractor will provide the following Cost Management Services and any additional programs mutually agreed upon between the Board and Navitus.

(a) Contractor Standard Formulary Management. Board agrees to cooperate and work with Contractor to effect the adoption, distribution, and implementation of an evidence based drug formulary designed to achieve the lowest overall net program cost consistent with the highest level of quality outcomes.

(b) Generic Sampling Program. Contractor will implement a generic sampling program designed to encourage the use of generic medications by waiving or reducing the Copayment or Coinsurance on the initial prescription of selected Covered Products during Online Transaction Processing.

(c) Lower Rx Alternatives. Contractor will implement a Lower Rx Alternative Program designed to offer lower cost alternatives to reduce costs for the Board and the Member.

(d) Generic Alternatives. Contractor will implement a Generic Alternatives Program designed to offer generic alternatives to brand products to reduce costs for both the Board and the Member.

(e) Dose Consolidation. Contractor will implement a Dose Consolidation Program designed to identify opportunities for Members who are on multiple dose medications that can be safely administered in a single dose to reduce costs for both the Board and the Member.

(f) Half-Tablet Program. Contractor will develop and implement a voluntary half-tablet program designed to encourage the use of half-tablet medications by reducing the Copayment or Coinsurance for certain brand name Drug Products in accord with the provisions of the Benefit Plans. The program will only be available to Drug Products that: (i) are on Board's formulary; (ii) are recognized as an appropriate product to split by the Contractor P&T Committee; (iii) the various strengths of the medication are comparably priced; and (iv) the medication has once-daily dosing. If the Half-Tablet Program is adopted by Board, Contractor will provide pill splitting devices to Covered Individuals. These pill splitting devices may contain the Contractor logo or may be customized to carry Board's logo.

(g) Maintenance of On-Line Formulary. Contractor will maintain the formulary described in above on-line so that claims processed from Participating Pharmacies will be in compliance with the formulary instructions.

(h) Pharmaceutical Care Program. Contractor will conduct a program by which Participating Pharmacies are reimbursed according to the options selected from Exhibit 2, Pharmaceutical Care Program, for providing clinical and educational services to Covered Individuals. Contractor shall report on the cost

and effectiveness of the program and the Board shall have the opportunity to periodically review, suspend or cancel all or part of the program at its discretion.

(i) Pharmacy Auditing Program. Each Participating Pharmacy in the Contractor's network shall be subject to audit. The Board may require use of an independent auditor rather than the Contractor. Auditing will be conducted in four phases starting at a high-level system audit and progressing through further drill-down and analysis to on-site audits if necessary. Desk-top audits will be conducted on a daily/weekly/monthly basis, depending on the type of audit report. On-site audits will be conducted as needed. Settlements result by reversing or adjusting claims found to be processed in error. Contractor agrees to provide Board with eighty percent (80%) of settlements resulting from reversing or adjusting claims found to be processed in error.

(j) Pharmacy & Therapeutics Committee. Contractor has created an independent Pharmacy and Therapeutics (P&T) Committee to evaluate the safety, efficacy, and uniqueness of a Drug Product to determine whether that Drug Product should be included on the formulary. Representation on the P&T Committee will be determined by appropriate geographic representation from across the State of Wisconsin, and will include physicians and pharmacists who agree to serve. The Department will appoint at least one member who will serve on the P&T Committee. The Board will consider the recommendations of the P&T Committee to assist Board in making formulary or other coverage determinations. The Board agrees that the formulary recommended by Contractor and approved by the Board will be the only formulary in place during the term of this Contract, and that changes to the formulary will be recommended by the P&T Committee and approved by the Board.

(k) Prior Authorization. For a select group of Drug Products, as identified by the Board, Contractor personnel will implement Prior Authorization procedures to assist prescribers and Covered Individuals in obtaining coverage for otherwise non-covered Drug Products. In making prior authorizations, Contractor will follow the procedures and criteria as established by the Board. Contractor will not make any unilateral discretionary determinations, but may at any time ask the Board to approve an expansion or modification to previously established prior authorization procedures.

Contractor will accept Prior Authorization requests from prescribers or Covered Individuals and will approve or deny such requests in accordance with the approved program. Contractor will notify the prescriber who submitted the Prior Authorization request of the coverage determination for such request. Approvals will be entered into the Contractor claim adjudication system. Denial reports may be furnished to Board upon request.

The Board covenants that under no circumstances shall Contractor be responsible or otherwise liable to the Board or a Covered Individual with respect to any and all awards, losses, claims, suits, damages, liability, judgments, fines,

penalties, settlement amounts and expenses, including reasonable attorneys' fees (collectively "Damages") arising from or as a result of Contractor's decision to authorize or deny Prior Authorization or coverage of any drug in accordance with the criteria approved by the Board, except to the extent that any Damages arise from Contractor's failure to apply the plan design.

(l) Rebate Management. Refer to Section 6.05.

(m) Step Therapy Protocols. Contractor may provide a step therapy program, pursuant to which limitations on drug coverage may be established for categories of drugs that are not otherwise covered by or included in the plan. Such coverage limitations are defined and established based upon Board's written approval. Claims for these drugs will be rejected if the coverage requirements established by Board's applicable step therapy protocols are not satisfied.

Step therapy will involve an automated Prior Authorization process developed by the Contractor and implemented upon Board's written approval regarding certain drugs and drug classes. For Board-selected Drug Products, the claims system will search the claims history to determine if Board's criteria for coverage have been met.

The Board acknowledges that the step therapy program is an automated, non-discretionary processing technique intended to provide better management of the Board's drug benefits based upon objective criteria approved by Board. Contractor shall not undertake, and is not required, to determine medical necessity or appropriateness of therapy determinations, to make diagnoses, or to substitute Contractor's judgment for the professional judgment and responsibility of the physician.

(n) Web Site. Contractor will maintain a publicly accessible web site at www.Navitus.com. The site will include but will not be limited to, the formulary, benefit design, individual look-up capabilities, claims history, "contact us" option, information on pill splitting, mail order services and other programs offered. There will be direct access to the Board's program functions.

4.11 Benefit Plan Files. Contractor will establish and maintain the following files from Benefit Plan-specific information, selected and furnished by Board: Employer Group File, Covered Individual File and Participating Prescriber File, group number, drug class. Maintenance to those files (additions, terminations, and updates to files) will be performed (i) within five (5) business days of Contractor's receipt of Board's written submission of such additions, terminations, and updates, and (ii) within two (2) business days of Contractor's receipt of Board's electronic submission of such additions, terminations, and updates. Until completion of maintenance, Board will remain responsible for all claims submitted on behalf of such affected individuals. Files will be designed in

a way to allow Board to create and down load ad hoc reports, as permitted by law.

4.12 Report Clarification and Audits. In order to clarify information supplied in the standard reports, Board may request reasonable additional information or response from Contractor.

4.13 Direct Pharmacy Reimbursement. Contractor will perform data entry in order to process on-line direct pharmacy reimbursement pursuant to universal claim forms received for Covered Products.

4.14 Direct Covered Individual Reimbursement. Contractor will perform data entry in order to process on-line direct Covered Individual reimbursement pursuant to receiving a copy of the receipt for a Covered Product and a completed standardized claim form available through Contractor. Contractor will not process claims more than thirteen (13) months old except in extraordinary circumstances. Contractor will draft and distribute reimbursement checks weekly.

4.15 Performance Standards. The performance of the services to be provided by Contractor in this Contract shall be subject to the standards set forth in Part 10.

4.16 Effective Date. The effective date of the services described in this Contract shall be January 1, 2011.

4.17 Contractor/Participating Pharmacy Interface.

(a) **Claims Submission.** Participating Pharmacies will be required to submit bills for Covered Products to Contractor in accordance with the procedures detailed in the most current National Council of Prescription Drug Programs (“NCPDP”) Online Claims Submission Telecommunication Standard.

(b) **Claims Quality.** Contractor will edit claims information online based upon individual Benefit Plan guidelines. Missing, illegible or erroneous information will cause claims to be rejected and the Participating Pharmacy will be notified online according to the NCPDP standards for communicating such rejections. All such rejected claims must be resubmitted in their entirety.

(c) **Participating Pharmacy Reimbursement Calculation.** Participating Pharmacy reimbursement calculation for each claim submitted will be accomplished by applying Board’s Benefit Plan-specific algorithms which will cover various combinations of formulary inclusion/exclusion, Copayment amounts, refills, etc, if applicable. Payments to Participating Pharmacies will be based on the rates set within the network contracts held by Contractor. Additional parameters may be incorporated upon the mutual agreement of Board and Contractor so as to ensure that Contractor’s Pharmacy Claims Online Transaction Processing System will accommodate the additional parameters.

Reimbursement will be based upon the National Drug Code (“NDC”) file in effect on the date the prescription is filled.

(d) Grievance Process. Grievances between a Participating Pharmacy and the Contractor shall be resolved by the terms of the contract between them, and the Board and the Department shall have no role or responsibility.

(e) Prescriptions. Contractor assumes no liability or responsibility for the accuracy, efficacy, or timely receipt of prescriptions, orders, or other directions by Participating Prescribers to supply prescription Covered Products to any Covered Individual. However, this subsection shall not be construed to immunize or absolve the Contractor of liability if the Contractor does not comply with the requirements of Subsection 4.07(c) above or maintains a pharmacy in its network of Participating Pharmacies either (1) contrary to a joint decision under Section 4.07(c), or (2) after the Contractor is aware that the pharmacy has materially or repeatedly violated its duty to supply drugs to covered individuals in accordance with industry standards.

**PART 5
ADDITIONAL SERVICES & TASKS
TO BE PROVIDED BY CONTRACTOR**

5.01 Reporting.

(a) Contractor will provide Board with copies of standard management reports as selected by Board from Contractor's current Standard Reports (see Exhibit 1). Reports are available in a standard electronic format. Non-standard reports may be requested and the Board agrees to pay for such reports as may be agreed from time to time by Board and Contractor. To Contractor's knowledge, the reports shall be accurate and complete in all material respects. The Board will review all reports and statements provided by Contractor and will notify Contractor in writing of any errors or objections known to the Board.

(b) The Contractor shall produce periodic reports, as mutually agreed with the Board, at intervals and in a format approved by the Board.

5.02 Respond to Board Inquiries. The Contractor shall promptly respond to all inquiries from the Board concerning any aspect of the Pharmacy benefit management program.

5.03 Update Files. The Contractor shall promptly purge and update files according to Board guidelines.

5.04 Budget and Policy Cooperation. The Contractor shall work cooperatively with Board designees on budget and policy implementation.

5.05 On-site personnel. At the Department's request, Contractor shall provide on-site support and administrative services by providing personnel to work at the Department of Employee Trust Funds offices to perform tasks associated with the administration of this Contract.

5.06 Expert services. At the request of the Board, the Contractor shall make available to the Department qualified medical consultants to assist the Department in its reviews of questionable claims, claims recommended for denial for medical reasons, reconsiderations and appealed claim determinations.

5.07 Mailing & Postage. The Contractor will pay for all mailing, postage and handling costs for the distribution of materials as required by Section 4.08 or by other express provisions of this Contract.

5.08 Pass Through Costs. The payments to the Contractor under the terms of this Contract do not include compensation for providing the services described in §§ 5.05 and 5.06. The costs, if any, of (i) providing personnel under Section 5.05, (ii) providing medical consultants under Section 5.06, and (iii) of mailing, postage, and handling other than as paid by Contractor under Section

5.07 shall be invoiced separately by contractor and paid by the Board in addition to the administrative fee to Contractor as part of this Contract.

5.09 Appeal Process Support.

(a) The Contractor shall participate in all administrative hearings under Wis. Admin. Code ch. ETF 11 to the extent determined to be necessary by the attorney(s) representing the Department.

(b) Participation means providing evidence and testimony necessary to explain the claim decisions made by the Contractor. The Contractor shall be responsible for any cost required for participation in the administrative hearings by Contractor staff and any approved subcontractors, including, but not limited to, time spent at the hearing and travel time to and from the hearing.

**PART 6
FINANCIAL & AUDIT PROVISIONS**

6.01 Payment for contractor's services.

(a) As payment in full for the services described in this Contract (except as expressly set forth otherwise herein), the Board agrees to pay an administrative fee according to the following formula:

The per member per month administrative fee is multiplied by the number of active members in the claims processing system on the 15th of each month.

(b) Payments shall be made semi-monthly, based on the number of active members in the claims processing system on the 15th of the month. No true-up is needed as the Contractor is billed for actual eligible members on the eligibility file sent.

(c) The per member per month administrative fee is \$2.80 effective January 1, 2011 and will be adjusted annually, during the initial term of the contract, as of January 1 of each year, to reflect an increase over the prior year's fee equal to the greater of (a) four percent (4%) or (b) the percentage change in the Milwaukee All Goods Consumer Price Index as published by the United States Department of Labor ("Index"). The change in the Index shall be determined as of December 1 of each year, by comparing the Index for the most recent month then available to the Index for the year prior to that month (for example, by comparing the Index for October, 2011 to the Index for October, 2010).

(d) Incentive Payment. Each year during the initial term or any renewal term of the Contract, based upon the incentive calculation, the Board will assess whether an incentive payment is owed to the Contractor. Any incentive payment that results will be based on the *Incentive Percentage* being applied to the *Amount of Savings* achieved during that year. The purpose of this Incentive Payment is to reward the Contractor for savings produced by the Contractor's administration for the entire year. The parties agree, however, that it is not the purpose of the incentive payments to reward the contractor for savings windfalls that are not derived from the cost containment services provided within the Contractor's provision of pharmacy benefits management.

(1) Amount of Savings. The Savings in any year shall equal the difference, if any, between (i) the total Projected Drug Spend for that year, less (ii) the actual Drug Spend for the current year. The amount of the Savings shall be adjusted to reflect changes in membership during each measurement period, with the effect that the final Savings calculation shall be based on the actual membership for the year for which the Savings is determined.

(2) Incentive Percentage. Unless otherwise agreed in writing by the parties from time to time, and as limited by (5) below, the Incentive

Percentage for any calendar year shall be determined by agreement of the parties, made simultaneously with the agreement upon the Drug Trend for that year. The parties currently agree that the Incentive Percentage shall be twenty percent (20%).

(3) Payment Terms. The incentive payment for any calendar year shall be paid on a quarterly basis.

(4) Quarterly Payment. Following each quarter, there will be an incentive payment. Because of the lag period in collecting rebates from manufacturers, estimated rebates for the quarter will be included in the calculation of the payment. Quarterly payments shall be made within sixty (60) days after the end of each calendar quarter, and shall be determined as follows:

(i) The parties agree that certain factors that may influence the calculation require special treatment, as provided below:

a. Rebate Payments. As a result of the natural lag period collecting rebate dollars from manufacturers, estimated rebates will be included in the quarterly calculations. However, final incentive payment true-up related to rebates will be calculated and paid upon final payment of all rebate amounts for a particular quarter to ETF. Navitus will provide ETF with an estimated impact of rebates on a periodic basis. Any negative impact of rebates to the incentive payment for a given quarter or year would result in a refund of those dollars which have already been paid. No interest shall be due on these incentive payments or refunds, unless not timely made.

b. Plan Paid Claims Amount. The Incentive Calculation is based upon the Plan Paid eligible claims dollars.

c. Taxes. Taxes which are included in the individual transaction charges submitted to the ETF for reimbursement under the prescription benefit program will be included as a portion of the transaction costs for continuity and for consistency in calculating the trend from year to year. However, if the applicable taxation is altered from one year to another so as to have an effect upon the calculation of incentive payment, then, upon the request of either party, it is agreed that an adjustment to the calculation will be made so as to neutralize the effect of the tax change so that it does not advantage or disadvantage either party.

(ii) The amount of the Savings for the quarter shall be determined as provided in (2) and application of the treatments specified in the foregoing paragraph (5). The Incentive Percentage will be applied to the quarterly Amount of Savings to arrive at the incentive payment for the quarter. Any negative quarterly incentive payments would be offset against positive amounts for that given year. However, if the sum of the quarterly payments results in a negative amount in any given year, then no payment shall be made.

for that year and any quarterly payments made previously during that year must be returned to the Board by the Contractor.

(iii) Contractor will provide an annual reconciliation for all components of the incentive payment to include a description of how cost containment services provided by the Contractor are attributable to the overall savings.

(5) Windfall Adjustment. The purpose of the incentive payment is to reward the Contractor for pharmacy benefits management services that result in savings to the group health insurance program. The parties recognize that some future events might have a disproportionate effect, which was not and could not have reasonably been anticipated in advance, on the Drug Trend, and therefore the Savings. The parties agree that the Contractor should not receive incentive payments based on savings not derived from the cost containment services provided by the provisions of the Contractor's administrative services. For example, legislative mandates or discretionary actions taken by the Group Insurance Board could affect the Drug Trend for a year. The introduction of a new, low cost drug that largely replaces all present prescription treatment for a disease could result in a Savings. These examples are not intended to be exclusive or in any way limiting. The parties agree to alert each other to any such events as soon as possible after a potential disproportionate and unanticipated effect on Savings is perceived and thereafter to negotiate in good faith to mutually agree upon an adjustment of the measurement of Savings or the Percentage, so as to better achieve the goal of having the incentive reward based on savings achieved by the Contractor's management

(e) Retiree Drug Subsidy Program. The Board agrees to pay Navitus \$3,246.75 per month for the administration of the Retiree Drug Subsidy (RDS) Program. This fee will be adjusted upon mutual agreement by the Board and the Contractor as needed. Contractor will provide the following services:

(1) Retiree Drug Subsidy Program Application Process Support Includes assisting the Department with the annual Retiree Drug Subsidy Program application process. When possible, Navitus will assist with the various general support services related to the overall application process.

(2) Eligibility Administration Services May include establishing the respective retiree list, sending updates of each respective retiree list to CMS (monthly, quarterly, semi-annually, or annually), receiving response files from CMS and securely transmitting these response files to the Department, and maintenance and storage of eligibility information for six years, as required by CMS. Determination of Medicare eligibility for clients is not in the scope of services. Currently the Department is responsible for performing this function.

(3) Formulary Review

Complete formulary review to identify differences in the Department's formulary and CMS formulary requirements and appropriate implementation. This review includes maintenance of client-specific rebate tables to update and monitor exclusions, filters, etc.

(4) Claims Payment File Support

Submission of aggregate drug cost data (including estimated rebate amounts attributable to the gross costs for subsidy reimbursement) by Navitus to CMS. This cost (claims) data is pre-processed by Navitus to ensure only allowable claims are sent to CMS for subsidy reimbursement, per the CMS-defined benefit, for the RDS program. Data will be archived for six years in the Navitus data warehouse, as required by CMS. Claims data may also be provided to the Department, upon request.

(5) Claims Reconciliation

Year-end claims reconciliation conducted by Navitus with CMS for RDS claims. Aggregate cost and rebate reconciliation information (including actual rebate amount attributable to the gross drug costs for subsidy reimbursement) will be provided to CMS. These services include complete reconciliation of this data with CMS.

(6) Reporting

RDS program reporting is provided quarterly with aggregate costs by Plan Option. The Department has access to limited ad hoc reporting.

(7) Appeals Support

The Navitus RDS Team can assist the Department, as directed, with data support needed for appeals related to the RDS program.

(f) In the event the Board determines that additional services, not originally contemplated in this Contract, are necessary to realize its purposes or in the best interests of the individuals covered by the pharmacy benefit, the Board will first approach the Contractor about providing those services. The Board and Contractor shall negotiate in good faith in an attempt to establish fair and reasonable additional compensation for the Contractor to perform the additional services. If unable to reach agreement, the Board may seek the services elsewhere.

6.02 Claims Account.

(a) The Board assumes all financial responsibility for claims submitted for Covered Individuals to Contractor, whether by Participating Pharmacies or Covered Individuals. Board shall initiate Automated Clearinghouse ("ACH") transfers to Contractor within two business days of receipt of Contractor invoices as authorized below.

(b) Prior to the effective date of this Contract, under the provisions of the previous contract, the Board provided to Contractor sufficient funds to hold within Contractor's account(s) an amount at least equal to three-fourths (3/4) of one month's prescription claims and administrative fees.

(1) Effective July 1, 2011, Navitus will begin reimbursing the Board, annually, one-fifth the amount of the claims and administrative fees previously provided to the Contractor.

(2) Reimbursement to the Board over the next five years will be made as distinct payments to the Department and will not be made as adjustments to administrative or other fees paid to Contractor.

(3) In the event the contract is terminated prior to the full five years any outstanding balance Contractor owes the Board will revert to the Board in one lump sum, within 14 calendar days of the termination of the contract.

(c) Billing and payment cycles for pharmacy claims and administrative fees will occur twice monthly. Billing and payment cycles for claims submitted directly by Covered Individuals will occur monthly. Billing and payment cycles may be modified if mutually agreed upon by Contractor and Department. Contractor will electronically send invoices, in forms satisfactory to both parties, to Board as follows:

(1) Pharmacy Claims Reimbursement. Cycle I: Encompasses prescription claims processed day 1 through day 15. Contractor will electronically send an invoice to Board two business days after the end of the cycle. Cycle II: Encompasses prescription claims processed day 16 through the last day of the month. Contractor will electronically send an invoice to Board two business days after the end of the cycle.

(2) Member Claims Reimbursements (manual claims received directly from Covered Individuals). Each cycle consists of one month, always ending on the last day of the month. Contractor will electronically send an invoice to Board two business days after the end of the cycle

(3) Administrative Fees. Cycle I: Encompasses administrative fees for services provided from day 1 through day 15. Contractor will electronically send an invoice to Board two business days after the end of the cycle. Cycle II: Encompasses administrative fees for services provided from 16 through the last day of the month. Contractor will electronically send an invoice to Board two business days after the end of the cycle.

(4) Other Fees. For any fees other than the administrative fees, each cycle consists of one month, always ending on the last day of the month. Contractor will electronically send an invoice to Board two business days after the end of the cycle.

(d) No such amounts that are or will be rightfully transferred to Contractor shall be considered Plan Assets. Amounts incorrectly transferred to the Contractor remain assets of the Public Employee Trust Fund for which the Board members are trustees. Board acknowledges and agrees that the account(s) into which money from Board's Account is transferred may contain money from one or more other clients of self-insured pharmacy Benefit Plans under contract with Contractor for administrative services. Board also acknowledges and agrees that any and all interest earned from such account(s) shall accrue to and be the property of Contractor.

6.03 Failure to Make Funds Available.

(a) In the event that for any reason the Board failed to make funds available to pay claims for Covered Products or has failed to pay fees to Contractor and Board fails to provide the required funds within one (1) business day after notice of the need to provide such funds, Contractor may terminate this Contract immediately without notice, and may, at Board's expense, provide notice of such termination to Participating Pharmacies and Covered Individuals.

(b) In the event that Board has at any time failed to make funds available to pay claims for Covered Products or has failed to pay fees to Contractor, in addition to any other remedies, Contractor shall have the right to offset any unpaid amounts against any amounts owed to the Board by Contractor.

(c) Board further acknowledges the right of any Participating Pharmacy to proceed directly against the Board to collect any legitimate claim for Covered Products that Board has failed to pay to the Participating Pharmacy through Contractor pursuant to this Contract. This is a waiver of any claim of lack of privity of contract between Board and the Participating Pharmacy for collection of legitimate claims for Covered Products pursuant to this Contract only.

6.04 Taxes. In addition to the administrative fees set forth in Section 6.01, the Board shall pay to contractor any applicable state and federal taxes on such fees (other than Contractor's taxes based on net income).

6.05 Rebate Calculation. The Board will receive 100% of all earned Rebates. The Board shall have the right, at its expense, at reasonable times and upon reasonable notice, to review and audit the books and records of Contractor pertaining to such Rebates; provided, however, that Contractor shall not be obligated to disclose any documents or information that would cause Contractor to violate any laws, any contractual obligations of confidentiality, or other legally binding obligations.

6.06 Payment of Rebates. The Board will receive Rebate payments on a quarterly basis. Within ninety (90) days of Contractor's procurement of said

quarter's audited Rebate results, Contractor will reduce an invoice for Covered Products by the amount of Rebate payments.

6.07 Audits.

(a) RECORDS. The Contractor shall maintain books, records, documents, and other evidence pertaining to the administrative services under this Contract to the extent and in such detail as shall properly reflect all performance of Contractor's duties herein.

(b) COOPERATION WITH AUDITORS. The Contractor will, in conjunction with Board designated personnel, participate in and cooperate fully with audits of Contractor's services under this Contract as required under Federal or State law, and with other audits or reviews of Contractor's services under this Contract determined by the Board to be necessary and appropriate. This may include an audit on behalf of the Wisconsin State Legislature.

(c) ANNUAL AUDITS.

(1) The Contractor is required to submit to annual audits of its services, operations, and compliance under this Contract according to audit guidelines established by the Board. The audits will be completed by the firm contracted by the Employee Trust Funds Board to complete third party contract audits of the Pharmacy Benefit program, and will be paid for by the Board. The audits by the third party contractor will be based upon Board specifications. The audit firm will deliver to both the Contractor and to the Board a report of findings and recommendations within the guidelines established by the Board.

(2) The report will be prepared in accordance with generally accepted auditing standards, and will include the following matters and other matters as agreed by the Board and Contractor: comprehensive compliance audit of the program; evaluation of internal control; risk assessment of the administration of the program; analyses of data, billing, etc. to ascertain compliance with Contract provisions and accepted accounting principles, good business practice, etc.; and substantive tests to evaluate the accuracy of recording and processing transactions and the effectiveness, efficiency, and economy of transaction processing.

(d) INTERNAL CONTROLS REVIEW . Contractor will cooperate with an independent third-party auditor's study and evaluation of and testing of the effectiveness of the internal controls over its contract tasks at least once per year, which study and evaluation shall be at the Board's expense.

(e) Limitations on Audits. The following understandings shall govern audits under this Section 6.07:

(1) The Board may audit the flow and proper use of its funds through the Contractor's claims processing system.

(2) The Board may review the content of, and audit cash flows pertaining to, all contracts between Contractor and pharmaceutical manufacturers, including payments of rebates from those manufacturers to Contractor.

(3) Except as provided in par. (2), the Board shall not have access to information pertaining solely to other customers of Contractor, or to the insureds of those other customers.

(4) The Board shall be entitled to receive summary balance sheet information sufficient to show the financial strength of Contractor, in a format acceptable to Contractor and the Board.

(5) All of the information obtained pursuant to an audit shall be confidential, shall not be deemed a public record, and shall not be disclosed to any third party. All employees and agents of the Board or Department, including but not limited to independent parties who perform the audits, shall execute a confidentiality agreement in form satisfactory to Contractor and to the Board, as a condition of being granted access to that information.

6.08 Contractor Maximum Allowable Cost List. Contractor maintains a Maximum Allowable Cost ("MAC") list for generic drug PRODUCTS that is based upon Wisconsin Medicaid MAC prices multiplied by a factor of 1.20. As of the Effective Date of this Contract, the Contractor MAC list contains 1,044 Drug PRODUCTS. The Contractor MAC list may be modified quarterly by Contractor to reflect any modification or changes to the Wisconsin Medicaid MAC list. In addition, MAC prices may be increased or decreased as needed to account for sudden fluctuations in pharmacy acquisition costs and MAC prices for new generic entities may be established prior to the quarterly updates. The MAC list will be the basis for generic reimbursement at contracted pharmacies.

PART 7
RECORDS AND CONFIDENTIALITY

7.01 Record-keeping and Access. The Contractor agrees to the following terms for access to records relating to the Contract and services provided thereunder:

(a) RETENTION.

(1) All claims adjudicated under the Contract shall be retained for a minimum of two (2) years from date of payment or denial unless otherwise notified by the Board.

(2) Paper and micromedia, if applicable, copies of claims shall be retained for at least three (3) years from the date of expiration or termination of the Contract.

(3) Storage by Contractor shall be in the State of Wisconsin throughout the specified periods.

(4) After the minimum retention time, the Contractor will forward all claims information to the State of Wisconsin Records Center according to procedures established by the Board.

(5) Unless the Board specifies in writing a shorter period of time, the Contractor agrees to preserve and make available all of its other pertinent books, documents, papers, and records involving transactions related to the Contract for a period of three (3) years from the date of expiration or termination of the Contract.

(6) Records involving matters in litigation shall be kept for one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within the three (3) years.

(b) ACCESS. The Contractor shall agree that authorized State representatives, including, but not limited to, personnel of the Department, other State entities with statutory authority and, independent auditors acting on behalf of the Board or Department shall have access to and the right to examine the items listed above during the Contract period and during the three (3) year post Contract period or until resolution, unless otherwise prohibited by law. During the Contract period, the access to these items will be in Wisconsin. During the three (3) year post-contract period, delivery of and access to the listed items will be at no cost to the Board or Department.

7.02 Confidentiality.

(a) Contractor will make commercially reasonable efforts to ensure that each individual employed by Contractor or a subcontractor who may receive

information confidential under Wis. Stat. § 40.07, including but not limited to medical records as defined by Wis. Admin. Code § ETF 10.01 (3m), and personally identifiable health information confidential under federal law signs a confidentiality agreement in form acceptable to Contractor and the Board, and is familiar with and will comply with all federal and state laws regarding the confidentiality of that information.

(b) Contractor shall make commercially reasonable efforts to ensure that confidential personal information is disclosed only to those employees who need the information to discharge their duties.

7.03 Miscellaneous. Changes to Pricing Methodology. At any time during the term of this Agreement, Navitus shall have the option, upon thirty (30) days' notice to the Board, to convert the pricing methodology used under this Agreement, to another payment methodology that is economically equivalent.

PART 8
MEDICARE PRESCRIPTION DRUG PROGRAM (PDP) SUPPORT

8.01 Navitus would provide full service Medicare Part D administrative support to the Board, in its pursuit of becoming a Direct Contract PDP, implement a Self-Funded PDP Product, or other Medicare D product with Navitus. At the Contractor's election, Navitus could provide the following administrative support to the Board for this product:

- (a) Medicare Part D Program Management
- (b) Formulary Development and Management
- (c) Enrollment and Enrollment Reconciliation with CMS
- (d) Rebate Management
- (e) Call Center (member, pharmacy, help desk)
- (f) Grievance and Appeals
- (g) Formulary Transition
- (h) Coverage Determinations
- (i) Medicare B vs. D Support
- (j) Pharmacy Network Management
- (k) E-Prescribing
- (l) FIR Transaction Processing Support (Plan to Plan Reconciliation)
- (m) Marketing Materials model development, ID cards, materials production, material fulfillment (including EOB fulfillment), including print and mail costs
- (n) Part D Web site
- (o) Explanation of Benefits
- (p) Benefit Administration
- (q) Claims Processing
- (r) Coordination of Benefits
- (s) Manual Claims

- (t) Vaccine Administration
- (u) PDE Management
- (v) Financial Reconciliation with CMS
- (w) Recoveries and Reconciliation
- (x) Clinical Programs
- (y) Medication Therapy Management (MTM) Program
- (z) Compliance Support
- (aa) Auditing
- (bb) Reporting (Standard Reports and CMS Reports)
- (cc) Claims Extracts
- (dd) Training

At the time the Board initiates a request for Navitus to implement a Direct Contract PDP, Self-Funded PDP Product, or other Medicare D product with Navitus, Navitus will prepare a detailed analysis of the requirements needed at the time to meet CMS guidelines.

The Board and Navitus will discuss pricing at that time and determine a mutually agreed upon pricing strategy dependent on what items listed above would be the responsibility of the Board and/or Navitus.

PART 9
HIPAA COMPLIANCE

9.01 Business Associate Agreement. For purposes of the federal Health Insurance Portability and Accountability Act, Contractor is a business associate of the Board and Department in their capacity as administrators of a covered entity, namely a health plan. Contractor has executed the business associate agreement attached and incorporated within this Contract as Exhibit 3 and will keep this agreement in force throughout the period covered by this Contract and any surviving provisions.

PART 10
PERFORMANCE STANDARDS FOR CONTRACTOR

10.01 Performance standards, and penalties for failure to meet those standards, shall be developed and agreed upon by the parties. Those standards and penalties shall be incorporated in and become a part of this Contract as Exhibit 6.

PART 11
ADDITIONAL DUTIES OF THE BOARD

11.01 Overall Management and Oversight. The Board will provide overall management and oversight of the pharmacy benefit management and pharmacy claims processing program, including any necessary verification of Contractor adherence to contractual obligations and operating performance. Reports of performance evaluations will be furnished to Contractor for comment and statement of corrective action, if applicable.

11.02 Issue Policies and Guidelines. The Board will issue any necessary written program policies, guidelines and standards that the Contractor requires to properly perform and fulfill its contractual obligations. Contractor may rely upon and shall conduct its contractual activities in accordance with said written policies, standards and guidelines. Contractor shall advise the Board of the manner by which the written program policies, standards, and guidelines will be implemented and applied.

11.03 Liaison. The Board shall establish and maintain liaison and cooperation with Contractor, including convening periodic meetings with Contractor to discuss matters including but not limited to:

- (a) Changes to the pharmacy benefit program that may affect contractual obligations.
- (b) Program policies, standards and guidelines.
- (c) Results of administrative appeal proceedings.
- (d) Any questions or material concerns either party may have with regard to its own or the other's performance under the Contract.

EXHIBIT 1

STANDARD BOARD COMMUNICATIONS

Standard Board Communications based on the information included in the report selection below, but customized to this program as agreed upon by the parties.

Report Time Frame:

Monthly

Quarterly

Semiannually

Annually

Report Selection

Top 50 Drugs By Cost

Top 50 Drugs By Quantity

Monthly Trend Report

Pharmacy Activity Report

Drug Utilization Reports By Therapeutic Class

Tablet Splitting Summary

Rebate Allocation Reports

Pharmacy Discount Calculation

Grievance Report (annual, due March 1)

Telephone Activity

EXHIBIT 2
PHARMACEUTICAL CARE PROGRAM

Formulary Interchange

Reimbursement: \$4

This code should be used when a prescription for a medication not on the applicable formulary is switched to a formulary medication.

Therapeutic Interchange

Reimbursement: \$12

This code should be used when making a change in a patient's prescription order to a more cost-effective option. This requires notification of the prescriber and a change in prescription order. Examples of this would include: Changing to a B-rated generic product or switching to a half-tablet prescription. Changing from a brand name product to an A-rated generic are not reimbursable.

Change of Dose

Reimbursement: \$5

This code should be used where the prescribed dose is either higher or lower than the recommended dose, or the duration is either insufficient or excessive. This requires the prescription to be changed by the prescriber.

Patient Compliance Monitoring

Reimbursement: \$10

This code should be used when the pharmacist notifies the prescriber of either over or under utilization of medication by the patient.

Patient Training on Glucose Monitors

Reimbursement: \$1 per minute, up to 30 minutes

Patient Training on Asthma Inhaler and Peak Flow Meters

Reimbursement: \$1 per minute, up to 10 minutes

Patient Training on Blood Pressure Monitors

Reimbursement: \$1 per minute, up to 15 minutes

Patient Training on Nasal Inhalers

Reimbursement: \$1 per minute, up to 5 minutes

EXHIBIT 3
BUSINESS ASSOCIATE AGREEMENT

[See Attached]

EXHIBIT 4

STATE OF WISCONSIN STANDARD TERMS AND CONDITIONS

See Appendix D

RFP #ETJ0007

Standard Terms and Conditions and Supplemental Standard Terms and
Conditions for Procurements for Services

EXHIBIT 5

DEPARTMENT NOTIFICATION LANGUAGE

1. The letter from the Contractor conveying the final grievance decision shall include information on the availability of independent review to the extent a notice would be required from an insurer under Wis. Stat. § 632.835 (2) (b) and Wis. Admin. Code § INS 18.11.
2. In addition, the Contractor's letter shall include language notifying the individual of the opportunity to seek review of the Contractor's final grievance decision through the Department of Employee Trust Funds.
3. The language in the Contractor's letter shall include the specific language provided by the Department and is revised as needed.

EXHIBIT 6
EMPLOYEE TRUST FUNDS – PERFORMANCE STANDARDS
JANUARY 1, 2011

Standard	Definition of Standard	Goal	Penalty
System Availability	The percentage of time the claims processing system is available for the adjudication of on-line claims submitted by Network Pharmacies.	99% of the time the system is available (7 days x 24 hours/day), excluding scheduled downtime for maintenance or system upgrades.	98%-98.9%-non-compliant* <98%-\$7500 penalty
Eligibility – Update Frequency	The time it takes for clean eligibility files, received in the mutually agreed upon format, to be accurately uploaded and available within the system.	90% of the time clean eligibility files are uploaded and available within the system within two business days of receipt.	88-89.9%-non-compliant* <88%-\$7500 penalty
Mail Order Program	The percentage of time clean prescriptions* are shipped to the member within 2 business days. Clean prescriptions means claims where the vendor does not need to obtain additional information to be able to fill the prescription.	90% of all clean prescriptions are shipped within two business days of receipt.	89-89.9%-non-compliant* <89%-\$7500 penalty
Mail Order Program	The percentage of time the remainder of clean prescriptions* are shipped to the member within 5 business days of receipt. Clean prescriptions means claims where the vendor does not need to obtain additional information to be able to fill the prescription.	99.5% of all clean prescriptions are shipped within five business days of receipt.	98-99.4%-non-compliant* <98%-\$7500 penalty
Mail Order Program	Percentage of prescriptions dispensed accurately with no errors.	99.98% of prescriptions are dispensed accurately with no errors.	98-99% - non-compliant* <98%-\$7500 penalty
Standard Reports	Reports, which have been mutually agreed upon by the client and Navitus, to be provided to the client.	Standard reports are generated and provided to the client within 15 business days of the end of the reporting period.	\$500/day

*If performance remains at this level for two consecutive quarters, then penalty shown for the standard will be enforced unless parties mutually agreed to waive the penalty due to extenuating or other “special cause” circumstances.

EXHIBIT 6
EMPLOYEE TRUST FUNDS – PERFORMANCE STANDARDS
JANUARY 1, 2011

Standard	Definition of Standard	Goal	Penalty
Initial Enrollment Package	The percentage of time enrollment packages are mailed to members no later than 4 business days following receipt of complete eligibility (eligibility does not need to be developed for missing or incomplete information).	97% of the time enrollment packets are mailed out no later than 4 business days following receipt of complete eligibility.	95-96.9%-non-compliant* <95%-\$2500 penalty
ID Cards	The percentage of time ID cards are mailed to members within 4 business days following date of request.	97% of the time cards are mailed out within 4 business days following date requested.	95-96.9%-non-compliant* <95%-\$2500 penalty
Call Center Metrics - Telephone Service Factor	The percentage of calls answered within 30 seconds.	90% of the calls are answered within 15 seconds.	89-89.9%-non-compliant* <89%-\$7500 penalty
Call Center Metrics - Service % (inverse of call abandon)	The percentage of calls answered (not abandoned). This measure excludes “short” abandons (callers who abandon within 30 seconds.)	95% of all calls received are answered.	93-94.9%-non-compliant* <93%-\$7500 penalty
Member Satisfaction Survey	Navitus will conduct an annual member satisfaction survey.	90% of responses are satisfied or very satisfied.	88-89.9% - non-compliant* <88% - \$7500 penalty
Written Inquiries From ETF Ombuds	Time frame in which written inquires from ETF are responded to in writing.	Respond to ETF within 10 business days from the date of the ETF inquiry 100% of the time.	None
Direct Member Reimbursement (DMR) Claims Processing	The percentage of time “clean” claims* are adjudicated. This is a manual process where the member sends in a claim form and the member is directly reimbursed. Clean claims means all information is present to adjudicate the claim.	99% of the time all clean claims are adjudicated within 30 calendar days of receipt.	97-98.9%-non-compliant* <97%-\$7500 penalty

*If performance remains at this level for two consecutive quarters, then penalty shown for the standard will be enforced unless parties mutually agreed to waive the penalty due to extenuating or other “special cause” circumstances.

EXHIBIT 6
EMPLOYEE TRUST FUNDS – PERFORMANCE STANDARDS
JANUARY 1, 2011

Standard	Definition of Standard	Goal	Penalty
Pharmacy Network Reimbursement Financial Accuracy	The percentage of time claims paid (including reversals and adjustments) to a Network Pharmacy are paid in accordance with the pharmacy contract reimbursement provisions effective at the time the claim is adjudicated.	99.5% of the time claims are paid in accordance with the pharmacy contract reimbursement provisions effective at the time the claim is adjudicated.	99-99.4%-non-compliant* <99%-\$7500 penalty
Member Written Inquiry	Time frame in which written inquiries from members (excluding grievance requests) are resolved.	A written response of resolution is sent to the member within five business days of Navitus receiving the written inquiry 100% of the time unless an extension is requested to obtain additional and/or missing information necessary to resolve the inquiry.	None

NOTES

1. Performance standards will be reported starting at the beginning of the 3Q2010 and penalties will apply as of 3Q2010 actual results.
2. The maximum annual amount of penalties payable by Navitus shall be \$100,000.
3. Penalties under these standards shall be suspended as mutually determined by ETF and Navitus where “special cause” circumstances materially alter the intended purpose of these standards and the application of them would unfairly impact Navitus. Examples of “special cause” would include such things as a substantial increase in enrollment; eligibility issue causing unanticipated phone call volume in the Call Center, etc.
4. If for any quarter ETF membership fails to average 228,000 members, the parties agree to modify penalty amounts based on actual membership levels.
5. Where Navitus’ ability to meet any performance standard relies on the performance of a subcontractor, implementation of the standard will be delayed to a date mutually agreeable to both parties so Navitus has the opportunity to amend its contract with the subcontractor to include a similar standard.

*If performance remains at this level for two consecutive quarters, then penalty shown for the standard will be enforced unless parties mutually agreed to waive the penalty due to extenuating or other “special cause” circumstances.