

## PHARMACY BENEFIT MANAGEMENT SERVICES AGREEMENT

This Pharmacy Benefit Management Services Agreement ("Agreement") is effective as of **November 1, 2017** (the "Effective Date") by and between **Navitus Health Solutions, LLC** ("Navitus"), and **City of Broken Arrow** ("Client").

### RECITALS

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

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

**Whereas**, Navitus provides its services using a zero-spread, transparent, full pass-through business model, where all of the discounts and rebates received from pharmacies and pharmaceutical manufacturers are provided to its clients; and

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

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

### Article I DEFINITIONS

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

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

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

**Brand Covered Product** or **Brand** means a Covered Product where the Medi-Span Multi-Source Indicator for the Covered Product reported by Medi-Span contains an "M" (co-branded product), "O" (originator brand) or an "N" (single source brand) for the Covered Product on the date dispensed except where the claim is submitted with a DAW code of "3", "5", or "6", in which case it shall be considered a Generic Drug.

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

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

Agreement as eligible for such benefits. For purposes of clarification, any Eligible Person who is a "Dependent," as defined below, is not a "Cardmember" for purposes of this Agreement.

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

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

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

**Confidential Information** has the meaning given in Section 9.03 of this Agreement.

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

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

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

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

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

**Deductible** means a predetermined amount of money that an Eligible Person must pay before benefits are eligible for payment as indicated in Client's Plan Guidelines. The deductible applies to each Eligible Person each contract year.

**Dependent** means an individual who satisfies all the eligibility criteria through a Cardmember necessary to receive pharmacy benefits under Client's Plan and is identified by Client to Navitus in accordance with the provisions of this Agreement as eligible for such benefits. For purposes of clarification, any Eligible Person who is a "Cardmember," as defined above, is not a "Dependent" for purposes of this Agreement.

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

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

**ERISA** means the Employee Retirement Income Security Act of 1974, and regulations promulgated thereunder, as amended from time to time.

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

**Formulary** means the list of FDA-approved Covered Products developed by Navitus' Pharmacy and Therapeutics Committee, subject to Client's Plan Guidelines and coverage decisions.

**Generic Covered Product or Generic** means a Covered Product for which there is an approved application under § 505(j) of the Federal Food Drug and Cosmetic Act (21 USC 355(j)) and the Medi-Span Multi-Source Indicator for the Covered Product is a "Y" on the date dispensed. Claims submitted with a Multi-Source Code, as defined by Medi-Span, of "O" and also submitted with a DAW code of "3", "5", or "6" shall also be considered a Generic Drug. If a drug product approval is based upon an abbreviated new drug application (ANDA), that drug is a Generic Covered Product. Single-source Generic Covered Products are included in the definition of "Generic Covered Products."

**HIPAA** means the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, as amended from time to time.

**HIPAA Privacy Rule** means the federal regulations related to the use and disclosure of patients' Protected Health Information under 45 CFR Parts 160, 162 and 164, as amended from time to time.

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

**Initial Term** means the initial term of this Agreement as defined in Section 12.01 of this Agreement.

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

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

**Member** means the same as "Eligible Person," and the two terms may be used interchangeably.

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

**Non-Participating Pharmacy** means a pharmacy that does not have an agreement with Navitus to dispense Covered Products to the Eligible Persons receiving benefits under this Agreement.

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

**Pass-Through** means that all Claims are invoiced to Client at the net amount Navitus pays the Participating Pharmacy for such Claims, and Rebates are provided to Client in accordance with Article IV, below, and Navitus does not retain any Rebates or any other direct financial benefits from drug manufacturers or pharmacies, and pays all such amounts to Client..

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

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

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

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

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

**Protected Health Information or PHI** has the meaning set forth in 45 CFR §164.501 and includes individually identifiable health information related to the physical or mental health or condition, the provision of health care, or the payment for the provision of health care to an Eligible Person or otherwise deemed confidential under federal or state law.

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

**Renewal Term** means the time period as defined in Section 12.01 of this Agreement.

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

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

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

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

## Article II NAVITUS' RESPONSIBILITIES

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

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

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

**Section 2.04. Customer Service Call Centers.** Navitus will maintain call centers, which will be accessible through a toll-free telephone line, responsible for responding to inquiries from Participating Pharmacies, other providers, and Eligible Persons regarding the services provided by Navitus under this Agreement. Call center personnel will respond to questions related to eligibility of individuals, Plan Guidelines, Deductible status, Coinsurance and Co-payment levels, maximum benefit status, direct reimbursement, and in the case of Participating Pharmacies, online adjudication instruction. Navitus' toll-free help line shall be available to Client and all Participating Pharmacies and Providers during Navitus' regular hours of business. Navitus customer service will be available twenty-four hours a day, seven days a week, excluding Christmas Day and Thanksgiving Day. Navitus reserves the right to change such hours of operation and Navitus shall notify Client and the Participating Pharmacies prior to any such changes; provided that any such changes will comply with applicable law.

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

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

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

(b) **Mail Service.** Upon Client's request, Navitus will provide Client a mail service program through which the Mail Service Pharmacy will fill prescriptions for Eligible Persons and will mail such prescriptions to Eligible Persons subject to the terms set forth in Exhibit 2.

(c) **Specialty Pharmacy.** Upon Client's request, Navitus will provide Client a Specialty Pharmaceutical program which provides a distribution channel for certain Covered Products that are generally biotechnological in nature, are given by injection, or otherwise require special handling. The Specialty Pharmacy will dispense Specialty Pharmaceuticals to Eligible Persons subject to the terms set forth in Exhibit 2.

(d) **Pharmacy Audits.** Navitus shall maintain a pharmacy audit program, the criteria of which may be amended from time to time. The audit may be conducted by Navitus' internal auditors or its outside auditors at the Participating Pharmacy or at Navitus by a review of electronically submitted Claims. Any overpayments made to a Participating Pharmacy attributable to Client's Claims will be offset against future payments to that Participating Pharmacy or Non-Participating Pharmacy from Client's account. If offset is not available, then any overpayment recovered from the Participating Pharmacy will be promptly remitted to Client. Navitus will promptly use commercially reasonable efforts to recover any overpayment from a Participating Pharmacy or Non-Participating Pharmacy. Navitus will not be required to commence any litigation to recover any such overpayments if, in Navitus' reasonable discretion, it deems such actions not to be economically feasible. In addition, if Navitus commences litigation to recover such amounts, then all expenses incurred by Navitus with regard to such litigation may be offset against any amounts recovered.

**Section 2.07. Claim Processing.**

(a) **General.** Navitus will process Claims with dates of fill on or after the Effective Date, through and including Claims with dates of fill prior to the termination of this Agreement. Navitus will process all Claims according to the Prescription Pricing Schedule in Exhibit 2, Client's Plan Guidelines and HIPAA-required transaction code sets. Notwithstanding the foregoing, if Client requests that Navitus encourage a pharmacy to become a Participating Pharmacy by offering such pharmacy reimbursement rates that exceed the rates set forth in Exhibit 2, then Navitus shall use such revised reimbursement rates for such pharmacy; provided, however, Navitus may refuse to add pharmacies to its network if they do not meet Navitus' minimum credentialing criteria or are owned by, or under common control with, a direct competitor of Navitus. Navitus will review all contractual Claims transmitted by Participating Pharmacies and notify such providers on-line of the reason or reasons for denial of such Claims, including, but not limited to missing or erroneous information. Likewise, Navitus will report to submitting persons the status of all denied Direct Reimbursement

Claims in accordance with ERISA rules and regulations. Client will maintain an appeals process for review of Claims that have been denied by Navitus and appealed by an Eligible Person after such Eligible Person has exhausted available appeals processes maintained by Navitus. Subject to the terms and conditions herein, Client shall make the final determination regarding payment of all submitted Claims. Additionally, if Client notifies Navitus that an Eligible Person has a primary insurer other than the Plan, then Navitus will pay Claims for such Eligible Person as a secondary payor rather than as a primary payor. Navitus does not assume responsibility for establishing coordination of benefits filing order for subsequent coverages, nor responsibility for coordination of benefits investigational efforts, subrogation, or coordination with Worker's Compensation.

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

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

**Section 2.08. Collection of Deductible, Co-payment, or Coinsurance by Pharmacies.** Navitus will contractually require Participating Pharmacies to collect from Eligible Persons or their representatives the amount of any applicable Coinsurance, Co-payment, or Deductible communicated by the online adjudication processing system prior to providing such persons any Covered Products to which such Eligible Person is or may be entitled. Navitus also will contractually require Participating Pharmacies to agree not to recover from Eligible Persons any unpaid balances due from Navitus and/or the Plan.

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

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

(a) **Concurrent Drug Utilization Review.** Navitus will provide concurrent on-line drug utilization review to Participating Pharmacies for all Claims submitted on-line. Participating Pharmacies transmitting Claims will receive advisory messages identifying potential

drug interactions and other circumstances, which may be indicative of inappropriate drug utilization.

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

(c) **Treatment Alternatives.** Client agrees that consistent with the HIPAA Privacy Rule, Navitus may contact Eligible Persons to provide refill reminders or information about treatment alternatives, including, but not limited to, Brand and Generic drugs, or other health-related benefits and services that may be of interest to such Eligible Persons. In connection with these services, Navitus also may provide Participating Pharmacies and Practitioners information, electronic messaging, and communications about such alternatives and services. Client further agrees that Participating Pharmacies and Practitioners may contact Eligible Persons regarding refill reminders or information about treatment alternatives, provided that such action is not inconsistent with applicable medical standards of care or any limitation imposed by applicable law.

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

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

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



(g) **Treatment Decisions.** Subject to Client's Plan Guidelines and the Prior Authorization process set forth in this Agreement, the decisions, in all circumstances, to prescribe and dispense any prescription drug shall be made solely by the prescribing physician or health care provider and the dispensing pharmacist, respectively. A Participating Pharmacy will not be deemed to be a representative, subcontractor, or agent of Navitus or Client based solely on this Agreement.

(h) **Ninety Day at Retail.** Navitus will provide Client, should it so choose in Exhibit 2, a ninety (90) day at retail program through which retail pharmacies will fill prescriptions for Eligible Persons subject to the terms set forth in Exhibit 2.

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

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

**Section 2.12. Core Reports.** Navitus shall prepare and deliver to Client core reports no later than 30 days from the close of the month or quarter, as applicable. Client will receive Navitus' Standard Report Package. "Navitus Standard Report Package" will include reports and data files generally available to Navitus' clients, with information necessary for Client to manage and oversee its Plan. Additional or customized reports shall incur costs to Client as described in Exhibit 1. Upon receipt of Client's request for an ad hoc report, the parties will negotiate in good faith to agree on a due date for such ad hoc report.

### **Article III CLIENT RESPONSIBILITIES**

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

**Section 3.02. Plan Guidelines.** Client represents and warrants that its Plan Guidelines are true, accurate and complete descriptions of the pharmacy benefits available to Eligible Persons and acknowledges its status as the plan administrator for purposes of this Agreement. Client shall retain its discretionary authority to manage, control and interpret its Plan and may, at any time, alter or amend the Plan Guidelines, provided, Client notifies Navitus in writing of all such changes not less than 30 days prior to the effective date of any changes. Navitus will advise Client of the anticipated

implementation dates of the proposed benefit changes, and the benefits that are implemented shall be deemed incorporated into this Agreement as of the date of implementation. Charges, as agreed upon by Navitus and Client in writing, for programming to implement any customized edits shall be borne by Client unless otherwise agreed by the parties. If Client modifies its Plan Guidelines in a manner that materially affects Navitus' duties, obligations or cost of performance under this Agreement, then at the request of Navitus, the parties will work toward a mutually acceptable modification of this Agreement, including, but not limited to, adjustments to the administrative charges in Exhibit 1 or the Prescription Pricing Schedule in Exhibit 2 of this Agreement. If Client and Navitus are unable to agree upon mutually acceptable modifications of this Agreement, then a final and binding decision on the modifications shall be made by a third party acceptable to both parties.

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

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

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

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

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

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

has submitted Covered Product utilization in a duplicitous manner to pharmaceutical manufacturers for purposes of Rebates or calculating Rebates, then Client shall be solely responsible for the reimbursement of any Rebates improperly made based on such utilization and Navitus may terminate Client's participation in the Rebate program.

**Section 4.03. Rebate Calculations.** Navitus will calculate Client's share of Rebates on Covered Products. Client's share of Rebates will be in proportion to its pharmacy utilization of Covered Products as compared to all other Navitus clients with similar Plans, and as specified by the criteria established by the pharmaceutical manufacturer. Client will then be eligible to receive 100% of this amount on a Pass-Through basis. Any claims for which Navitus is unable to submit and collect rebates (e.g. 340B, GPO pricing, hospital or government pharmacies), including any claims that may qualify for rebates under any government program (e.g. Managed Medicaid rebate discounts), are not eligible for Rebates. Claims submitted directly by Eligible Persons may not be eligible for Rebates. Client acknowledges that its eligibility to receive payments for Rebates may change over time due to changes in laws governing prescription drug pricing (including Rebates), or changes in Navitus' contracts with pharmaceutical manufacturers. Client agrees that Navitus shall not have any liability or obligation to Client or its Eligible Persons for any failure by any manufacturer to pay any Rebates, any breach of an agreement related to the transactions contemplated by this Agreement by any manufacturer, or any negligence or willful misconduct of any manufacturer.

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

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

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

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

(a) **Timing of Payment.** Navitus will submit invoices to Client between one and three days after the end of each invoice cycle, and Client agrees to pay Navitus for amounts

owed thereunder within two business days after the date of invoice. Alternatively, upon Client's request and Navitus' consent, Client may advance to, and maintain with, Navitus an amount equal to the sum of one month's estimated Covered Product Claims and one month's estimated administrative charges not later than 15 days prior to the Effective Date of this Agreement. If Client maintains such an amount with Navitus, payment in full will be due 15 days after the date of invoice, instead of two days from the date of the invoice as set forth above. Client agrees that Navitus may retain any earnings on these advances.

**(b) Payment Methodology.** The parties will cooperate in good faith to establish a mutually agreed upon methodology for ACH transfers related to payments as identified by Client during implementation of the services hereunder where either Client or Navitus will initiate ACH transfers from Client's account to Navitus when due. Client shall be solely responsible for depositing funds and verifying that the account has sufficient funds to pay Covered Product Claims and Navitus' administrative charges.

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

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

**Section 5.04. Collections; Interest.** Client shall be responsible for all costs and expenses of collection of amounts due from Client to Navitus, and enforcement of judgments, and agrees to reimburse Navitus for such costs and expenses, including reasonable attorneys' fees. Any amounts not paid by the due date thereof shall bear the interest rate of 12% per annum; however, this interest rate shall not exceed the maximum rate allowed by applicable laws. The rights and remedies set forth in this paragraph are in addition to other rights and remedies available to Navitus under law or in equity.

**Section 5.05. Performance Guarantees.** Final compensation to Navitus may be adjusted based upon assessments incurred for failure to meet performance guarantees as described in Exhibit 3. Unless otherwise set forth in Exhibit 3, Navitus shall provide a report to Client on all applicable performance guarantees on a quarterly basis, no later than one month after the end of each quarter; however, assessments for any failure to meet a performance guarantee shall be determined on an annual basis, based on the average of the results reported quarterly.

## **Article VI TERMINATION**

**Section 6.01. Mutual Agreement.** This Agreement may be terminated at any time by mutual written consent of the parties. If Client terminates this Agreement prior to the end of the then-current term,

then Client shall pay Navitus an amount equal to the Minimum Monthly Administrative Fee as set forth in Exhibit 1.

**Section 6.02. For Cause.**

(a) Either Client or Navitus may terminate this Agreement, at any time, upon not less than 60 days' written notice if: (1) the other party makes an assignment for the benefit of creditors, is the subject of a voluntary or involuntary petition for bankruptcy or is adjudged to be insolvent or bankrupt, or a receiver or trustee is appointed for any portion of its property; or (2) the other party commits a Material Breach of this Agreement, unless the breach is cured prior to the expiration of such notice; or (3) a change in law occurs, as provided in Section 11.08 of this Agreement.

(b) Navitus may terminate this Agreement immediately, in accordance with Section 5.03 of this Agreement.

**Section 6.03. Effect of Termination; Other Remedies.** Termination of this Agreement shall not affect Client's financial responsibility for Covered Product claims and Navitus' administrative charges pertaining to the period prior to termination. A party's right to terminate this Agreement shall not be exclusive of any other remedies available to such party under this Agreement, at law or in equity.

**Section 6.04. No Consent; Notice to Third Parties.** This Agreement may be terminated without the consent of, or notice to, any Eligible Person, any Participating Pharmacy or other third parties. Notwithstanding the foregoing, Navitus may advise Participating Pharmacies and pharmaceutical manufacturers of a pending or actual termination of this Agreement.

**Section 6.05. Run-Out Period.** Client shall continue to assume full responsibility for the funding of Covered Product Claims incurred prior to the effective date of termination of this Agreement and for the payment of Navitus' administrative charges. Client's obligation for payment for these services will continue as long as claims are being processed by Navitus, not to exceed a run-out period of 90 days on the effective date of termination. Administrative service fees for the run-out period will be based on per-transaction charges, calculated on the basis of the actual transactions related to the actual administrative service fees incurred in the last full month prior to the termination of this Agreement. Navitus will return to Client any unapplied deposits, overpayments or advances previously received from Client within 30 days following such run-out period.

**Article VII  
LIABILITY, INDEMNIFICATION, AND WARRANTY**

**Section 7.01. Limited Warranty.** Navitus warrants that it will perform the services described in this Agreement in accordance with the practices and standards generally established in the pharmacy benefits management industry. Navitus guarantees that Claims will be processed with at least 95% accuracy based upon number of Claims processed. Except as expressly set forth herein, Navitus makes no representation or warranty of any kind whatsoever, express or implied, and expressly disclaims any and all such warranties, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose with respect to the products or services provided hereunder. Navitus does not warrant that its services will be uninterrupted or error free.

**Section 7.02. Role of the Parties.** Client acknowledges that Navitus will administer Client's Plan on behalf of Client. Navitus does not underwrite or insure liability of Client in connection with its prescription drug benefits, and Client retains the ultimate responsibility and final authority for its Plan.

For purposes of applicable state and federal legislation, Client is, and shall be deemed, the Plan sponsor of any applicable prescription drug benefit. Nothing in this Agreement is intended by the parties, or shall be construed, to confer upon Navitus the status of a fiduciary of Client or any benefit plan maintained by Client as "Plan fiduciary" is defined under applicable law. The parties agree Navitus is not a fiduciary, except to the extent Navitus exercises discretion with regard to the services provided hereunder.

**Section 7.03. Insurance.** Navitus agrees, at its sole expense, to maintain commercial general liability insurance coverage in amounts not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. Navitus also agrees to maintain errors and omissions insurance with coverage of \$5,000,000 in aggregate and security and data insurance with coverage of \$5,000,000 in aggregate. Finally, Navitus warrants and represents that it has in place and will maintain any Workers' Compensation insurance required by applicable law.

**Section 7.04. Limitation of Liability for Covered Products.**

(a) Client agrees and acknowledges that the services provided by Navitus herein are not intended to substitute for or supplement the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other health care professionals in prescribing or suggesting pharmaceuticals or other products.

(b) Navitus shall under no circumstances be liable (regardless of the basis for the action) to Client, any Eligible Person, or consumers of pharmaceutical products for any damages, injuries, losses, claims, costs, or lawsuits, including any attorney's fees, arising from any actions, failure to act, or violations of any applicable standard of care or applicable law by pharmacies, pharmaceutical manufacturers, pharmaceutical distributors, or any health care providers arising out of the sale, compounding, dispensing, manufacturing, or use of any prescription product or services in connection with this Agreement.

**Section 7.05. Limitations of Liability.**

(a) In no event shall Navitus' total liability for the entire term of this Agreement, regardless of the cause or form of action upon which any such liability is based, exceed the greater of:

(i) the amount of any applicable liability covered by Navitus' insurance coverage; or

(ii) the lesser of:

(1) the actual and direct damages incurred by Client or

(2) the total administrative charges paid or to be paid to Navitus during the first year of this Agreement.

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

(c) Any claim for negligence or other tort liability arising out of, or related to, this Agreement, even if a breach is the result of acts or omissions that may arguably be characterized as negligence or other tortious conduct must be brought as a claim for breach of contract rather than as a claim for tortious conduct.

(d) Any controversy or claim arising out of, or relating to, this Agreement, regardless of the basis of the claim, must be filed within the applicable statute of limitations or one year after the date on which the factual basis for the claim arose, whichever time period is shorter. Failure to file such a claim within that time period shall bar a party from asserting that claim.

**Section 7.06. Indemnification.** Subject to the other limitations in this Article VII and in consideration of Client's covenants, representations and warranties in this Agreement, Navitus agrees to indemnify, defend and hold Client harmless from any and all actions or claims arising from a material breach by Navitus of this Agreement. Navitus shall not be responsible for or have any liability as a result of any actions or claims arising from (a) a material breach by Client of this Agreement; (b) Client's plan design; (c) Client's coverage decisions. Navitus also will not be responsible for the payment of fraudulent claims or filling of fraudulent prescriptions if the fraud is committed by an Eligible Person, or any party other than Navitus. The above indemnifications shall survive termination of this Agreement. A party seeking indemnification hereunder will promptly notify the indemnifying party of any claim subject to indemnification hereunder. Such party will reasonably cooperate with the indemnifying party in such defense.

#### **Article VIII COMPLIANCE WITH LAW**

**Section 8.01. Compliance.** Navitus agrees to comply with all applicable state and federal regulations, rules and laws, including, but not limited to, those related to the licensure and registration of third party administrators, HIPAA, and ERISA, if applicable to Client's Plan. Client acknowledges that if its Plan is an employee welfare Plan for purposes of applicable state or federal law, Client is responsible for its own activities and duties (such as its duties as Plan Administrator) in connection with its Plan. Client acknowledges and agrees that it is responsible for disclosing to Eligible Persons all benefit information legally required to be disclosed, including information related to the calculation of Coinsurance, Co-payments, and Deductibles; coverages and exclusions; eligibility requirements; and Rebates it receives in connection with this Agreement. Client will not identify or represent Navitus as a Plan administrator or a named fiduciary of Client's Plan as those terms are used in state or federal law.

**Section 8.02. Business Associate Agreement.** The parties acknowledge that they have signed, or are signing contemporaneously with this Agreement, a Business Associate Agreement in compliance with HIPAA.

#### **Article IX RECORDS; CONFIDENTIALITY**

**Section 9.01. Maintenance of Records; Audits.** Navitus agrees that it will provide Client with access to all of its records; contracts with drug manufacturers; participating pharmacies, and any subcontractor and such other book and records as may be reasonably required to audit Navitus performance under this Agreement. Navitus agrees to maintain true and correct books and records of Client's Covered Product expenditures in the standard Navitus format and for a period of not less than seven years from the date payment is made. Client may audit such books and records, using an auditor and methodology that is mutually agreed upon by the parties, upon reasonable prior

written notice and during Navitus' normal business hours consistent with privacy and other limitations of applicable federal and state laws, rules and regulations and the provisions of this Agreement; provided, however, that any claims against Navitus related to such audits must be made within six months of the termination of this Agreement. The parties shall require any third-party auditor to execute a confidentiality agreement in a form that is reasonably acceptable to both parties, and which contains provisions intended to protect each party's Confidential Information that are substantially the same as the provisions set forth herein. Any release to the other party of records and data reviewed during such audit, whether electronically or in any other mutually agreeable format, will be in accordance with the terms of this Agreement and applicable law. Notwithstanding the foregoing, Navitus acknowledges that state and federal rules, regulations and laws will govern audits conducted by regulatory agencies with jurisdiction over Client's Plan.

**Section 9.02. Use and Disclosure of Protected Health Information.** Client acknowledges that Protected Health Information will be obtained by Navitus and such Protected Health Information will be obtained from and/or distributed to Client, Participating Pharmacies, the Mail Service Pharmacy, Specialty Pharmacies, and Eligible Persons' Practitioners for drug utilization review and other purposes related to the services provided in connection with this Agreement. Subject to the remaining provisions of this Agreement and to the terms of the Business Associate Agreement, Client hereby permits Navitus to use and disclose such PHI in performance of its duties and obligations in connection with this Agreement. Client grants Navitus permission during and after the term of this Agreement to use de-identified Protected Health Information for quality improvement projects and the development of clinical programs. Such projects and programs may be included in services provided to prospective and existing clients. Navitus shall retain full ownership rights over all resultant data. Notwithstanding anything else in this Agreement, Navitus will not sell any PHI to any third party without Client's permission.

**Section 9.03. Confidential Information.**

(a) **Definition.** "Confidential Information" means non-public information, in any form, medium, or format that a party disclosing the information (a "Disclosing Party") discloses to another party hereunder (a "Receiving Party") unless the Disclosing Party expressly designates such information as not being confidential. "Confidential Information" includes, without limitation: (i) financial, customer, product, technical, and business information, including, but not limited to, financial statements, strategic plans, intellectual property, customer lists and other customer information, marketing plans, business plans, product plans, software, forms, processes, strategies, service methods, personnel information, trade secrets, pricing and know-how; (ii) any confidential information of a third party used by, held by, or otherwise in the possession of a party; and (iii) any protected health information or other information protected by HIPAA or any other state or federal law.

(b) **Protection of Confidential Information.** Client and Navitus agree to take all reasonably necessary steps to protect and not to disclose the other party's Confidential information (as defined below) to any third party, during or after the termination of this Agreement, and shall not use the Confidential Information of another party hereunder, except (a) as specifically contemplated by this Agreement; (b) with the other's prior written consent; (c) as required by local, state or federal law, rule or regulation, including any judicial or administrative interpretation thereof; or (d) to the extent such information becomes generally available to the public, through no action or fault of the Receiving Party.

(c) **Use after Termination.** Client and Navitus shall cease using the other parties' Confidential Information upon termination of this Agreement; provided, however, that Navitus may



retain records and use information as set forth herein, and each Receiving Party may retain Confidential Information for back-up, legal, and archival purposes, provided that such retained Confidential Information shall remain subject to the terms and conditions of this Agreement, and provided that the Confidential Information shall be destroyed or returned as soon as reasonably practicable.

**(d) Disclosures to Third Parties.** Each Receiving Party shall not disclose or communicate, or permit the disclosure or communication of any such Confidential Information to any third party without the prior written consent of the Disclosing Party and a written agreement with such third party. Such written agreement will include terms substantially the same as those set forth in this Agreement. Each Receiving Party shall also take reasonable and prudent steps to avoid the inadvertent or intentional disclosure or misuse of any Confidential Information by any of its current or former directors, officers, employees, agents, or affiliates ("Representatives"); provided, however, that it may disclose Confidential Information to its Representatives for the sole purpose of complying with its obligations under this Agreement, subject to the confidentiality obligations herein.

**(e) Injunctive Relief.** Each party acknowledges that a breach or threatened breach of this Section of this Agreement may cause immediate and irreparable harm to the Disclosing Party. To protect against such harm, the Disclosing Party may seek from a court of competent jurisdiction the issuance of a restraining order or injunction to prohibit any threatened disclosure or misuse of the Disclosing Party's Confidential Information. Such an action for a restraining order or injunction is in addition to and does not limit all other remedies provided by law or in equity or by agreement between the Parties.

**(f) Ownership of Information.** All Confidential Information is and shall remain the property of the Disclosing Party. Disclosure of Confidential Information by the Disclosing Party to the Receiving Party does not grant to the Receiving Party any express or implied right to the Disclosing Party's Confidential Information.

**(g) Legal Process.** In the event a Receiving Party is served with any subpoena or other legal process requiring or purporting to require the disclosure of any Confidential Information of the Disclosing Party, the Receiving Party shall promptly notify the Disclosing Party in writing and shall reasonably cooperate with the Disclosing Party and its legal counsel so that the Disclosing Party may seek a protective order, confidential treatment or other appropriate remedy to the extent deemed appropriate by the Disclosing Party. If the Disclosing Party elects not to seek or is unsuccessful in obtaining any such protective order or other remedy, then the Receiving Party may disclose such Confidential Information to the extent legally required.

**Section 9.04. Conflicts of Interest.** Upon Client's request and consistent with Navitus' transparent business model, Navitus will share with Client: (a) the existence of organizational arrangements, if any, that could potentially create a conflict of interest in making clinical or financial decisions; (b) sources of revenue as they relate to the Client's contract; and (c) the pricing structure for pharmacy benefit management services including rebate structure and administrative fees.

## **Article X DISPUTE RESOLUTION PROCEDURES**

**Section 10.01. Resolution of Disputes.** The parties agree to work in good faith toward resolution of disputes arising during the term of this Agreement. If they are unable to resolve the dispute through informal discussions, either party may submit a written objection to the other party describing and proposing a manner of resolving that dispute. The party receiving such objection shall respond

by accepting, rejecting, or modifying such proposal, in writing, within 30 days of the date that it receives the proposal. If the proposal is accepted, then the acceptance shall be deemed an agreement between the parties. If the proposal is rejected or modified, then the parties shall resume good faith efforts to resolve the dispute for a period of 30 days after notice of the rejection or modification is given. Except for actions requesting equitable relief, no lawsuit or other adverse proceeding may be commenced until expiration of that 30 day period.

**Section 10.02. Jurisdiction.** Any lawsuit arising out of this Agreement must be brought in the state or federal court, as applicable, encompassing Tulsa County, Oklahoma.

## **Article XI MISCELLANEOUS**

**Section 11.01. Notices.** Communications in the ordinary course of performance of this Agreement, including communications regarding payment, may be conducted by any reasonable means, including, but not limited to, telephone, facsimile, or electronic mail. Any formal notice to be given in connection with this Agreement must be in writing and will be deemed to have been given and effective if and when sent by: (a) personal delivery or commercial courier; (b) certified or registered mail, return receipt requested with overnight or two-day guaranteed delivery, postage prepaid; (c) electronic mail message, where delivery is confirmed by recipient; or (d) a nationally recognized overnight delivery service, and addressed to:

Navitus Health Solutions, LLC  
Attn: President  
2601 West Beltline Highway;  
Suite 600  
Madison, WI 53713  
Phone: 608-729-1500  
Fax: 608-729-2527  
E-mail:

Client: see signature page

With a copy to:

Navitus Health Solutions, LLC  
Attn: General Counsel  
2601 West Beltline Highway  
Suite 600  
Madison, WI 53713

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

**Section 11.02. Entire Agreement.** This Agreement, its Exhibits, the Plan Guidelines and any other documents incorporated by reference constitute the entire and complete understanding between the parties regarding the subject matter hereof and supersede all discussions, representations, proposals, offers, counteroffers, and writings between the parties that may have occurred before entering into this Agreement. There are no other agreements or undertakings, written or oral, in effect between the parties relating to the subject matter herein.

**Section 11.03. Force Majeure.** The performance obligations of Navitus or Client respectively hereunder shall be suspended to the extent that all or part of this Agreement cannot be performed due to causes that are outside the control of Navitus and/or Client. Without limiting the generality of

the foregoing, such causes include acts of God, acts of a public enemy, acts of any person engaged in a subversive or terrorist activity or sabotage, wars, fires, floods, earthquakes, explosions, strikes, slow-downs, freight embargoes, market fluctuations, pricing generally available to Navitus, and comparable causes. The foregoing shall not be considered to be a waiver of any continuing obligations under this Agreement, and as soon as said conditions abate sufficiently to allow the resumption of operations, the party affected thereby shall fulfill its obligations as set forth under this Agreement.

**Section 11.04. Exclusivity.** Client agrees that Navitus shall be the exclusive provider to the Client of the type of administrative services described in this Agreement. The Parties will mutually agree upon the Mail Service Pharmacy and Specialty Pharmacy, which will generally not include any entity owned by a direct competitor of Navitus unless otherwise agreed.

**Section 11.05. Intellectual Property.** Except as expressly otherwise provided herein, Navitus retains all rights, title, and interest in and reserves the right to use and control the use of its intellectual property rights in its assets including, but not limited to, its software, reporting packages, user documentation, operations, procedures, and trademarks and service marks. Client agrees not to use any such items except as expressly allowed under this Agreement and also not to refer to Navitus or its trade name or marks in any publication without the prior written approval of Navitus.

**Section 11.06. No Third-Party Beneficiaries.** This Agreement is not intended, and shall not be construed, to create third-party beneficiary rights in any person, including, but not limited to, any pharmacy or other provider or Eligible Person.

**Section 11.07. Governing Law.** This Agreement shall be governed by and construed in accordance with applicable federal laws, rules and regulations, including PPACA, ERISA and HIPAA. To the extent such laws, rules and regulations do not apply or are not controlling, the internal laws of the State of Oklahoma will govern all claims arising out of or relating to this Agreement regardless of the basis of any such claims.

**Section 11.08. Change in Law.** In the event of any change in federal, state or local laws, rules or regulations, including any judicial or administrative interpretation thereof, which materially alters the rights, duties, obligations or cost of performance of either party under this Agreement, the parties will work in good faith toward mutually acceptable modifications of this Agreement, which may include, but are not limited to, changes in benefit design and drug coverage. To the extent that these modifications agreed to by the parties vary the cost of performance, the parties will negotiate in good faith toward the adjustment of the administrative charges to reflect this variation. If Client and Navitus have worked in good faith, but are unable to agree upon mutually acceptable modifications, then either Client or Navitus may terminate this Agreement upon not less than 60 days' prior written notice.

**Section 11.09. Relationship of Parties.** This Agreement is not intended, and shall not be construed, to create any relationship between Client and Navitus other than that of independent contractors. Neither Client nor Navitus shall be construed to be the agent, partner, employee, fiduciary or representative of the other, and neither party shall have the right to make any representations concerning the duties, obligations or services of the other except as consistent with the express terms of this Agreement or as otherwise authorized in writing by the other party.

**Section 11.10. Changes to Pricing Methodology.** At any time during the term of this Agreement, upon an industry-wide event or industry-wide circumstance outside Navitus' control that makes necessary or desirable a conversion of pricing methodology with respect to AWP and/or wholesale acquisition cost pricing and discounts, Navitus may request, upon 30 days' notice to

Client, to convert the pricing methodology used under this Agreement and set forth in Exhibit 2, to another payment methodology that is economically equivalent, as reasonably determined by Navitus. However, if the nature of the industry-wide event or circumstance makes a 30 day notice unfeasible, Navitus shall give notice as soon as reasonably possible. Navitus shall review the need for the conversion, the details of the conversion, and its economic equivalency with Client, and shall not implement the conversion without the prior written approval of Client, which approval shall not be unreasonably withheld; provided, however, that Navitus may implement such change in pricing methodology, immediately, if it reasonably determines that there is no other way to process Claims hereunder.

**Section 11.11. Amendment; Waiver.** This Agreement may be amended or modified solely through a writing signed by authorized persons on behalf of both parties. The failure of either party to insist upon the strict observation or performance of any term or provision of this Agreement or to exercise any right or remedy will not impair or waive any such right or remedy or constitute a waiver of any subsequent breach of the same term or provision or any other term or provision hereof.

**Section 11.12. Effect of Invalidity** In the event a provision of this Agreement is rendered invalid or unenforceable by state or federal statute or regulations or declared null and void by any court or agency of competent jurisdiction, that provision will be deemed stricken, and the remaining provisions of this Agreement will remain in full force and effect.

**Section 11.13. Assignment.** No party may assign or transfer its rights or obligations under this Agreement, in whole or in part, without the other party's prior written consent, which shall not be unreasonably qualified or delayed. Any attempted assignment without that consent shall be void. Notwithstanding the forgoing, Navitus may assign this Agreement to any parent company or affiliate.

**Section 11.14. Construction.** This Agreement will be construed and interpreted neutrally and without regard to the party that drafted it. The headings in this Agreement are used solely for the purpose of convenience and will not be considered in the construction of any provision in this Agreement.

## ARTICLE XII NOTICE REGARDING RENEWAL

**Section 12.01. Term of Agreement.** This Agreement is effective as of the Effective Date above and will continue in full force and effect for a period of one year ("Initial Term"). After the Initial Term has ended, this Agreement may continue from year to year ("Renewal Term") by written mutual agreement of the Parties. Any additional Renewal Terms shall be subject to termination rights as otherwise provided in this Agreement.

**Section 12.02. Increase in Administrative Fees.** As provided in Exhibit 1, "ADMINISTRATIVE SERVICES FEE SCHEDULE," attached hereto, at the beginning of the second full year of the Agreement and at the beginning of each full year thereafter, whether in the Initial Term or a Renewal Term, the amount of the administrative charge may increase by three percent for inflation and other business-related expenses.

**Section 12.03. Notice of Change in Administrative Fees.** After the Initial Term or any Renewal Term for which administrative fees have been expressly set forth in this Agreement, Navitus may change the administrative fees hereunder upon not less than 90 days prior written notice to Client. If any revision in the administrative fees is not acceptable, then Client shall so notify Navitus in writing not less than 60 days prior to the expiration of the 90-day notice period. In the event the parties

cannot agree on the compensation adjustment on or before the expiration of the 90-day notice period, then Client may terminate this Agreement upon 60 days written notice to Navitus, provided such termination shall not be effective until after the end of the 90-day notice period.

**IN WITNESS WHEREOF**, Client has acknowledged its understanding and agreement regarding the automatic renewal notice above, and the parties have entered into this Agreement on the day first written above.

**City of Broken Arrow**

**Navitus Health Solutions, LLC**

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

By: Thomas J. Pabich

Name: \_\_\_\_\_

Name: Thomas J. Pabich

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

Title: SVP, Business Dev. & Client Services

**Variables:**

"Cardmember" will / will not [strike one] include retired employees.

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

Notices to Client (12.01):

Attn: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**APPROVED AS TO FORM:**



**ASSISTANT CITY ATTORNEY**

**Exhibit 1  
ADMINISTRATIVE SERVICES FEE SCHEDULE**

Client agrees to pay Navitus an administrative fee of \$3.12 per Eligible Person per month; provided that the monthly administrative fee will not be less than \$3,128 (the "Minimum Monthly Administrative Fee"). This is based on Client having 1,253 Eligible Persons In Clients Plan. The administrative fee does not include fees for certain additional charges, described below.

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

<b>Services</b>	<b>Additional Fees (per Member per month ("PMPM"), unless noted otherwise)</b>
<b>Implementation &amp; Plan Set-up</b>	
Pre-Implementation Claims Analysis	Included
Pre-Implementation Guided Discovery	Included
Requirements Approval Process	Included
Dedicated Implementation Project Manager	Included
Status and Communication Frequency - Weekly	Included
Pre-Implementation and Go-Live Staffing	Included
Dedicated and Secure Client Web Portal	Included
Post-Implementation Review	Included
Program Consultation and Customization	Included
Standard Coordination of Benefits (COB)	Included
<b>Member Fulfillment</b>	
Production and individual mailing (includes postage) of a standard member booklet and standard prescription-only benefit identification cards for initial issue and new enrollees. Standard communication materials can be branded with Client's logo at no additional charge, upon Client's request.	Included
Individual Mailing of Welcome Letter	Included
Pharmacy ID Card Replacement.	No charge for replacement cards; however, if volume is excessive, a cost may apply.
<b>Claims Management</b>	
Point-of-Service Claims Processing	Included
Direct Member Reimbursement (paper claims)	Included
Manual Pharmacy-Submitted Claims Processing	Included
Eligibility Management	Included
<b>Pharmacy Network Services</b>	
Navitus Network Management	Included
Pharmacy Network Credentialing & Compliance	Included

Mail Service Program Management	Included
Specialty Program (Navitus SpecialtyRx) Clinical Management	Included
Maximum Allowable Cost (MAC) Program Administration	Included
Pharmacy Reimbursement	Included
Pharmacy Provider Compliance Audits:	
• Routine compliance audits facilitated through correspondence/telephonic interviews	Included
• Expanded Pharmacy Auditing Services	Optional - Client-specific audits will result in additional fees to be determined based on the extent of the audit
e-Prescribing	Set-up cost of \$5,000 per client, up to \$0.145 fee per eligibility transaction (transaction fees subject to change). Navitus will waive the \$5,000 set-up fee if the client implements e-Prescribing upon start up of full PBM services. Notwithstanding the foregoing, if Navitus' provider of e-prescribing services, increases the amount that it charges Navitus for e-prescribing provided to Eligible Persons under this Agreement, then Navitus may increase the amount that it charges Client for e-Prescribing hereunder by the amount of such increase, provided Navitus gives Client written notice of any such price increase.
Pharmacy Provider Communications – including quarterly newsletter, pharmacy panel meetings, client implementation communications	Included
<b>Data Services</b>	
Navitus Standard Claims Data File Export	Included
Standard Client Reports, including Web-based access via Navi-Gate® for Plan Sponsors	Included
Online Access to Navitus claims system for eligibility purposes and claims review, if required.	Included: Up to two seat licenses*; each additional seat license costs \$440 annually  (*Unused licenses will be inactivated.)
Navi-Gate 3D Online Reporting	Include: Up to three seat licenses*, each additional seat license costs \$800 annually (*Unused licenses will be inactivated.)

Custom Ad Hoc Report Creation	\$150 per programming hour
Flexible Eligibility Format	Flat File & EDI
Eligibility Feeds	Included
Accumulator (Deductible & MOOP)	Included
<b>Client Services</b>	
Client Services Executive Support	Included
Clinical Account Executive Support	Included
Consultative Review	Includes annual consultative review at Client's office or via conference call
Operational Meetings	Includes up to monthly operational meetings as mutually agreed upon by Client and Navitus (via conference call unless otherwise agreed).
Health Fair & Employee Meeting Support	Optional, additional costs may apply based on number of events, number of employees attending, format, etc.
<b>Customer Care</b>	
Integrated Call Center with LIVE Representative Service; Member & Pharmacy Help Desk	Included
Pre-Implementation and Go-Live Staffing	Included
Secure Member Web Portal (Navi-Gate® for Members)	Included
<b>Formulary and Rebate Services</b>	
Navitus Formulary Management	Included
P&T Committee Review & Support	Included
Pharmaceutical Manufacturer Contracting and Management	Included
<b>Safety, Drug Price and Volume Management</b>	
Online Concurrent DUR	Included
Administrative/Non-Clinical Prior Authorization	Included
Clinical Prior Authorization	Included
Electronic Prior Authorization	Optional – pass through of vendor transaction costs plus administrative fees
ERISA Appeal Support for Claim Re-determinations	\$75 per Claim
First-level appeal for Claim re-determinations.	\$75 per Claim. Additional reviews by Independent Review Organizations (IROs) will be passed through at the cost of the review plus Navitus' then-current fee for handling such appeals.



External Reviews	Navitus will coordinate the external review process using an Independent Review Organization (IRO). All costs incurred by Navitus with regards to IRO reviews will be passed through to Client at the amount incurred (without mark-up), plus an administrative fee of \$175 per appeal and, upon Client's request, Navitus will provide documentation supporting such costs. Navitus will arrange for reviews by IRO, when necessary using criteria established by Navitus and Client. Client understands that IRO review pricing is subject to change, and upon request Navitus will provide Client with updated pricing for IROs after Navitus receives it from the IROs.
Step Therapy Care and Quantity Limits	Included
<b>Retrospective DUR - Safety (RDUR)</b>	
<ul style="list-style-type: none"> <li>• Controlled Substance Monitoring</li> <li>• Multi-Prescriber</li> <li>• Multi-Prescription</li> <li>• Expanded Fraud, Waste &amp; Abuse</li> <li>• Duplicate Therapy</li> </ul>	Included
<b>Enhanced RDUR (Cost Programs)</b>	
<ul style="list-style-type: none"> <li>• Generic Alternatives Management</li> <li>• Lower Cost Rx Alternatives Management</li> <li>• RxCents Tablet Splitting</li> <li>• Dose Consolidation</li> </ul>	Optional Enhanced RDUR programs are conducted on an effort-by-effort basis and measured through a Pay-for-Performance (P4P) model, which is executed with no up-front risk to Client. Navitus executes the programs at its expense, and the Client pays Navitus 25% of plan savings, based on actual achieved savings.
<b>Prescriber Insights (Prospective DUR)</b>	
<p>Examples may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Formulary Compliance</li> <li>• Generic Dispensing Rate</li> <li>• Cost Per Prescription</li> </ul>	Optional - \$5,000 per year + pass through of mailing costs
<b>Health Management Programs</b>	
Asthma Management Program – program includes two clinical intervention mailings per year	Optional - \$0.05 additional PMPM

<p>Pharmacoadherence – program includes four mailings per year. Clients may choose from a subset of chronic disease states. For example:</p> <ul style="list-style-type: none"> <li>• Hypertension</li> <li>• Cholesterol</li> <li>• Oral Diabetics</li> </ul>	<p>Optional - \$0.09 - \$0.12 additional PMPM, depending upon scope and number of disease states targeted</p>
<p>Diabetes Management Health Services</p>	<p>Optional - pass through of vendor transaction costs</p>
<p>Respiratory Health Adherence Program</p>	<p>Optional - Cost of program passed through to Client</p>
<p>Medication Therapy Management (MTM)</p> <p>Program offers:</p> <ul style="list-style-type: none"> <li>• Guaranteed client customizable CMR Completion Rates</li> <li>• Unique targeting with focus on CMRs, Stars and Intervention outcomes</li> <li>• Telephonic delivery model providing patient privacy and multi-lingual support</li> <li>• Full support of the Data Validation process</li> <li>• Clinical and Quality focus, with customizable and scalable programs</li> <li>• Regulatory expertise – Compliant with CMS Guidelines</li> <li>• Supports the Part C Star Measures</li> <li>• All member and prescriber outreach fulfilled, documented, and retained</li> <li>• Weekly member qualification</li> <li>• Prioritized Interventions and Patient Outreach</li> <li>• Extensive Monthly, Quarterly, and Annual reporting packages</li> </ul> <p>In the Standard MTM Program Model, Navitus will work with the client to determine which targeting criteria and alerts the client desires. Further, we will work with the client to establish a CMR Rate that the client would like to achieve and then work within the program to ensure the client will meet the guaranteed CMR completion rate.</p>	<p>Optional - Pricing as agreed upon by the parties prior to implementation.</p>
<p>Disease Management via Navitus SpecialtyRx - For example:</p> <ul style="list-style-type: none"> <li>• Growth Hormones</li> <li>• Hepatitis C</li> <li>• Multiple Sclerosis</li> <li>• Rheumatoid Arthritis</li> </ul>	<p>Included</p>
<p>“Included” items above represent all-inclusive services for a highly functional pharmacy benefit program. Additional fees may apply if higher intensity management is desired. Navitus will fully disclose any impact on pricing for more aggressive management, while consulting with Client to determine the value of product inclusion, customization, intensity level change, and potential member impact. With close client collaboration, Navitus will consider risk/reward financial arrangements aligned with trend management and program performance.</p>	

**Exhibit 2  
PRESCRIPTION PRICING SCHEDULE**

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

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

**A. Network Rates.** Reimbursement for each Branded Covered Product, not requiring compounding, dispensed by a Participating Pharmacy will be based upon the lower of (1) AWP, less an average of the applicable percentage in the below table, plus an average dispensing fee of the applicable dispensing fee in the below table; (2) such pharmacy's Usual and Customary Price; or (3) the amount submitted by the pharmacy. Reimbursement for each Generic Covered Product dispensed by a Participating Pharmacy will be the lower of (1) the Navitus MAC plus a dispensing fee, if applicable; (2) each Participating Pharmacy's respective contracted price for such Covered Product, including a discount plus a dispensing fee; (3) such pharmacy's Usual and Customary Price; or (4) the amount submitted;. The average effective discount performance for generic Covered Product is AWP minus the applicable percentage in the below table plus an average dispense fee of the applicable dispensing fee in the below table.

Pharmacy Type	Brand/ Generic	Discount off of AWP	Dispensing Fees
		Estimates	Estimates
Retail 30 Day	Brands	14.5%	\$1.45
Retail 30 Day	Generics	75.5%	\$1.45
Retail 90 Day	Brands	18.65%	\$0.60
Retail 90 Day	Generics	78.5%	\$0.65
Mail Order	Brands	20%	\$0.00
Mail Order	Generics	82%	\$0.00
Specialty  On average, for specialty products dispensed through the Navitus SpecialtyRx program (Lumicera and preferred wrap pharmacy)	Combined	15.75%	\$0.00

**THE FOLLOWING PROGRAM IS OPTIONAL AND WILL APPLY IF CHECKED BELOW OR IF REQUESTED BY CLIENT DURING THE TERM OF THE AGREEMENT BY NOTICE TO NAVITUS:**

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

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

**Compounding Fee Time Reimbursement Rates:**

1 - 5 minutes	\$10.00
6-15 minutes	\$15.00
16-30 minutes	\$20.00
31+ minutes	\$25.00

**Exhibit 3  
PERFORMANCE GUARANTEES**

Navitus will provide the following performance guarantees, placing up to twenty-five percent (25%) of the administrative services fees at risk for the applicable time frame, with assessments as described for non-compliance. The proposed assessments set forth below are expressed as a percentage of the administrative fees at risk.

Category	Performance Standard	Measurement	Assessment
Mail Order Dispensing Accuracy Rate	99.9% of all claims will be dispensed to members accurately with respect to the correct prescription drug dosage, directions for use, quantity and authorized refills.	Quarterly report.	[ %]
Mail Order Claims Turnaround - Clean Claims (no intervention)	95% of all clean prescriptions for covered products will be dispensed and shipped within an average of two (2) business days of receipt of the order at the mail service pharmacy.	Quarterly report.	[ %]
Mail Order Claims Turnaround - Claims Requiring Administrative or Clinical Intervention	100% of all prescriptions for covered products will be dispensed and shipped within an average of five (5) business days of receipt of the order at the mail service pharmacy for orders that require administrative or clinical intervention.	Quarterly report.	[ %]
Customer Care - Abandonment Rate	Not more than three percent (3%) of calls, excluding short abandons (callers who abandon in 30 seconds or fewer), will be abandoned.	Quarterly report.	[ %]
Customer Care - Telephone Service Factor (TSF)  TSF is a literal count of all calls answered within the specified threshold. TSF is reported as a percentage.	Commercial/Exchange—90% of calls received from members will be answered in 15 seconds or less.	Quarterly report.	[ %]
Customer Care - Average Speed to Answer (ASTA)	Calls will be answered with an average of less than 30 seconds.	Quarterly report.	[ %]

Category	Performance Standard	Measurement	Assessment
ASTA is the average amount of time all calls are held before being answered. ASTA is reported in seconds.			
Customer Care - Written Inquiries	95% of written inquiries will be responded to within five (5) business days.  100% will be responded to within ten (10) business days.	Quarterly report.	[ %]
Information Management - Standard Reports	100% of standard reports are distributed to the client within 15 business days after the end of cycle close.	Quarterly report.	[ %]
Claims Processing System Availability	On a quarterly basis, Navitus will guarantee 99.5% system availability (other than scheduled system maintenance time or telecom outage) of the real-time claims adjudication system.	Quarterly report.	[ %]
Overall On-Time Program Implementation	Navitus will meet all significant deadlines related to program implementation as agreed to at the project planning meeting.		[ %]

If Navitus performance falls below the financial or performance guarantee level for two consecutive quarters, payment for the standard will be enforced unless the parties have mutually agreed to waive the penalty due to extenuating or other "special cause" circumstances. Any payments owed by Navitus for failing to meet the performance guarantees set forth above will be paid within ninety (90) days after the end of the applicable calendar year. The maximum amount of all penalties payable by Navitus under the Agreement shall not exceed 25% in total of the administration fees in that reporting period.