



STATE OF ARKANSAS AMENDMENT TO SERVICES CONTRACT

Contract #: 4600052301

Amendment #: 2

1. Contracting Parties:

Department No. & Name	0914 - Statewide Shared Services ▼		
Division			
Contractor Name	Navitus Health Solutions		
Service Type	Technical and General Services (TGS)		
Tracking # 1		Tracking #2	

Except as expressly amended by this Amendment, all of the terms, conditions, covenants, representations, and warranties in the above referenced Contract are hereby ratified and confirmed in every respect and shall remain unmodified and unchanged and shall continue in full force and effect as provided therein as amended hereby.

2. New Contract Expiration Date, if Applicable: _____

Please leave blank if not extending contract to new date.

3. Purpose of Amendment:

Provide amendment details below.

Clarifying terms and operational conditions.

4. Amended Dollar Amount:

For each amendment involving a change in the contract dollar amount, enter the previous contract amounts. Enter this amendment's amounts, showing (+) for increase and (-) for decrease. Enter the new total for each row. Note: Services apply to both professional and technical services. Reimbursable expenses are specific to professional services and commodities are specific to technical services.

	Previous	This Amendment	New Total
Services	\$ 11,512,800.00	\$ 0.00	\$ 11,512,800.00
Reimbursable Expenses			\$ 0.00
Commodities			\$ 0.00
TOTAL	\$ 11,512,800.00	\$ 0.00	\$ 11,512,800.00

Total dollar amount paid on contract as of this date: \$ 1,834,295.14 as of 10/26/2023

Updated total projected cost \$ 26,863,200.00

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5. Attachment List:

Pharmacy Benefit Management Services Agreement Amendment

Except as specifically amended herein (or as attached), all other terms and conditions of the above referenced contract remain unchanged.

6. Source of Funds the Department intends to draw on. This is provided for informational purposes only. It is required under Arkansas Procurement Law and is not a performance obligation of the Department or an unconditional promise to pay from the sources identified.

Fund Source	Identify Source of Funds *	Fund	Fund Center	Amount of Funding	% of Total Contract Cost
Cash Funds <input type="checkbox"/>	Cash Bank Account	7009144		\$ 5,756,400.00	50.00 %
Cash Funds <input type="checkbox"/>	Cash Bank Account	700914c		\$ 5,756,400.00	50.00 %
<input type="checkbox"/>					%
					%
TOTALS				\$ 11,512,800.00	100.00 %

Identify whether State general revenue funds (GRF), special revenue funds (SRF) federal funds (FED), or other public funds (Other) are the source. Identify each specific source of SRF, such as special taxes or fees, in the "Identify Source of Funds" column. Similarly, if Other public funds, such as tobacco funds, general improvement funds, etc., are being used to pay the Contractor, these should be specified in the "Identify Source of Funds" column.

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7. Department Contacts for Question(s) Regarding This Contract:

Contact #1 – Department Representative submitting/tracking this contract

Skochu Fields

Name
(501) 683-0196

Telephone #

Controller

Title
skochu.fields@arkansas.gov

Email

Contact #2 – Department Representative with knowledge of this project (for general questions and responses)

Amanda Land

Name
(501) 682-5142

Telephone #

Deputy Director

Title
amanda.land@arkansas.gov

Email

Contact #3 – Department Representative Director or Critical Contact (for time sensitive questions and

Grant Wallace

Name
(501) 682-5502

Telephone #

Director

Title
grant.wallace@arkansas.gov

Email

8. Signatures:

Cony J. Super

Contractor Authorized Signature 10/27/2023

Date

Veginitron

Department Authorized Signature 10/27/23

Date

VP, Sales

Title

361 Integrity Dr. Madison WI 53717

Address

Secretary

Title

501 Woodlane L.R., AR

Address

72201

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR: **Yes** **No** SUBCONTRACTOR NAME: Navitus Health Solutions, LLC

TAXPAYER ID NAME: Navitus Health Solutions, LLC IS THIS FOR: **Goods?** **Services?** **Both?**

YOUR LAST NAME: Page FIRST NAME: Paul M.I.: M

ADDRESS: 361 Integrity Drive

CITY: Madison STATE: WI ZIP CODE: 53717 COUNTRY: USA

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

FOR INDIVIDUALS *

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse *is* a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/ commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and how are they related to you? <small>[i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]</small>	
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Relation
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

None of the above applies

FOR AN ENTITY (BUSINESS) *

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?		
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Ownership Interest (%)	Position of Control
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

None of the above applies

Contract and Grant Disclosure and Certification Form

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:


1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature  Title VP & General Counsel Date 11/16/2022
Vendor Contact Person Gary Hattendorf Title Senior Market VP, Sales Phone No. 480-498-6265

Agency use only

Agency Number _____ Agency Name _____ Agency Contact Person _____ Contact Phone No. _____ Contract or Grant No. _____

PROPOSAL SIGNATURE PAGE

Type or Print the following information.

PROSPECTIVE CONTRACTOR'S INFORMATION					
Company:	Navitus Health Solutions, LLC				
Address:	361 Integrity Drive				
City:	Madison	State:	WI	Zip Code:	53717
Business Designation:	<input type="checkbox"/> Individual <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Public Service Corp <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Nonprofit				
Minority and Women-Owned Designation*:	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> American Indian <input type="checkbox"/> Service Disabled Veteran <input type="checkbox"/> African American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Women-Owned <input type="checkbox"/> Asian American <input type="checkbox"/> Pacific Islander American				
	AR Certification #: _____ * See <i>Minority and Women-Owned Business Policy</i>				

PROSPECTIVE CONTRACTOR CONTACT INFORMATION			
<i>Provide contact information to be used for RFP solicitation related matters and Project Lead for Interview.</i>			
Contact Person:	Gary Hattendorf	Title:	Sr. Market VP, Sales
Phone:	480-498-6265	Alternate Phone:	
Email:	gary.hattendorf@navitus.com		

CONFIRMATION OF REDACTED COPY
<input checked="" type="checkbox"/> YES, a redacted copy of submission documents is enclosed. <input type="checkbox"/> NO, a redacted copy of submission documents is <u>not</u> enclosed. I understand a full copy of non-redacted submission documents will be released if requested. <i>Note: If a redacted copy of the submission documents is not provided with Prospective Contractor's response packet, and neither box is checked, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA). See RFP Solicitation for additional information.</i>

ILLEGAL IMMIGRANT CONFIRMATION
By signing and submitting a response to this <i>RFP Solicitation</i> , Prospective Contractor agrees and certifies that they do not employ or contract with illegal immigrants and shall not employ or contract with illegal immigrants during the term of a contract awarded as a result of this RFP.

ISRAEL BOYCOTT RESTRICTION CONFIRMATION
By checking the box below, Prospective Contractor agrees and certifies that they do not boycott Israel and shall not boycott Israel during the term of a contract awarded as a result of this RFP. <input checked="" type="checkbox"/> Prospective Contractor does not and shall not boycott Israel.

An official authorized to bind the Prospective Contractor to a resultant contract shall sign below.

The signature below signifies agreement that any exception that conflicts with a Requirement of this *RFP Solicitation* may cause the **Prospective Contractor's proposal to be rejected.**

Authorized Signature: _____
 Printed/Typed Name: Diana Gibson-Pace

Title: SVP & Chief Growth Officer
 Date: 11/30/22

PHARMACY BENEFIT MANAGEMENT SERVICES AGREEMENT AMENDMENT

This Amendment to the Pharmacy Benefit Management Services Agreement (“Amendment”) is effective as of **July 1, 2023**, (the “Effective Date”) by and between **Navitus Health Solutions, LLC**, with a principal business address of 361 Integrity Drive, Madison, Wisconsin 53717 (“Navitus”), and **State of Arkansas, Department of Transformation & Shared Services – Employee Benefits Division**, with a principal business address of 501 Woodlane Street, Suite 500, Little Rock, Arkansas 72201 (“EBD”) for services that began on **July 1, 2023** (“Go Live Date”).

WHEREAS, the parties entered into an agreement to implement and administer self-funded pharmacy benefits provided by the State of Arkansas for the Arkansas State and Public School Employee Health Insurance Plan;

WHEREAS, the parties desire to establish this Amendment in order to provide clarification on terms and conditions set forth in the State of Arkansas’ RFP for Pharmacy Benefit Manager (RFP No. S000000161) and the best and final offers conducted in response to the RFP (collectively, the RFP and best and final offers are included in Contract 4600052301);

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the sufficiency of which is hereby acknowledged, Navitus and EBD agree as follows:

1. DEFINITIONS

AWP means the average wholesale price of a prescription drug, identified by its 11-digit National Drug Code, 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 contains an “M” (co-branded product), “O” (originator brand) or an “N” (single source brand) on the date dispensed, except Covered Products with a Multi-Source Indicator of “O” where the Claim is submitted with a DAW code of “5” in which case it shall be considered a House Generic Drug.

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 pharmacy, another provider, a Member or such Member’s representative in connection with one or more prescription drugs dispensed to such Member.

Covered Products means those prescription drugs and ancillary devices and supplies that are covered under EBD’s Plan Guidelines.

Data means Client’s Confidential Information used to provide the services, including Protected Health Information (PHI) and Personally Identifiable Information (PII).

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.

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

Mail Service Pharmacy means a pharmacy which has entered into an agreement with Navitus to fill and deliver Covered Products to Members via the United States Postal Service, United Parcel Service or other mail delivery service.

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

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

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.

Pass-Through means both: (a) the amount Navitus bills EBD will be equal to the amount paid to the Participating Pharmacies, and (b) Navitus will pass through to EBD of all Rebates received by Navitus. Additionally, Navitus will support any verification or audits reasonably requested by EBD confirm the foregoing.

Plan means EBD’s insured or self-funded benefit plan, which provides pharmacy benefits to Members.

Plan Guidelines means a description of EBD’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 EBD and submitted to Navitus.

Prescriber means a physician or other health care provider authorized to prescribe medication to Members.

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 §160.103.

Specialty Products as determined by Navitus and approved by Client, means a Covered Product that requires a prescription, mixture, or compound containing a minimum of one prescription ingredient that: (i) is available only through one or more Specialty Pharmacy; or (ii) meets at least four of the following ten (10) criteria: (a) drug meets the CMS minimum-cost threshold for the specialty tier; (b) drug is a complex, large molecule, or a biological/biopharmaceutical/biotech product; (c) drug is used to treat a small population with a rare and/or chronic disease; (d) drug requires special storage and handling (refrigeration, freezing, HAZMAT, etc.) or requires special shipping and handling; (e) drug requires unique or complex administration, such as an injectable

product or administration under Prescriber supervision; (f) disease state needs to be closely supervised or monitored, including frequent follow-up; (g) drug therapy requires strict adherence and an adherence program for efficacy; (h) drug therapy requires safety monitoring for potential adverse effects; (i) initiated by or in consultation with a specialist; (j) drug is part of a risk evaluation and mitigation strategy (REMS) program; or (iii) as mutually agreed by the parties.

Specialty Pharmacy means a pharmacy that has entered into an agreement with Navitus and primarily dispenses Specialty Products to Members.

Usual and Customary Price or **U&C** means the retail price reported to Navitus by the dispensing Participating Pharmacy for a particular Covered Product in a cash or uninsured transaction, on the date such Covered Product is dispensed by such Participating Pharmacy, which excludes (i) sales tax; (ii) discounts provided for prescription drug savings cards; and (iii) other discounts claimed.

2. EBD RESPONSIBILITIES

Required Information. EBD agrees to provide Navitus all information reasonably required by Navitus, including the Plan, to fulfill its duties and obligations under this Agreement. EBD agrees to promptly review and analyze information provided by Navitus and notify Navitus of any errors or omissions. EBD agrees that all information provided shall be true, accurate and complete to the best of EBD's knowledge as well as consistent with the Plan benefits available to Members. Navitus may rely on all information provided by EBD in providing services hereunder.

Plan Guidelines. EBD agrees that its Plan Guidelines, as provided to Navitus, are true, accurate and complete. EBD acknowledges that it is the plan administrator for purposes of this Agreement, and it will make descriptions of the pharmacy benefits available to Members. EBD shall retain its discretionary authority to manage, control and interpret its Plan and may, at any time, alter or amend the Plan Guidelines, provided that EBD notifies Navitus in writing of any changes not less than thirty (30) days prior to the effective date of any such changes. Promptly upon receipt of any proposed changes, Navitus will advise EBD of the anticipated implementation dates, and the benefits that are implemented shall be deemed incorporated into this Agreement as of the date of implementation. The cost of programming to implement any customized changes, as agreed upon by the parties in writing, shall be borne by EBD unless otherwise agreed by the parties. If EBD 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 or other pricing in this Agreement.

Eligibility. EBD represents that each individual's eligibility for benefits is determined by the criteria in its Plan. EBD will provide Navitus eligibility information identifying each individual eligible for pharmacy benefits under EBD's Plan ("Eligibility File"). The Eligibility File will be made available for Navitus to access through EBD's AR Benefits System. The Eligibility File shall include all information requested by Navitus to enable Navitus to process Claims in accordance with HIPAA and shall be provided in a mutually acceptable format. EBD will provide Navitus regular updates to the Eligibility File, including, but not limited to, changes in eligibility status, additions and deletions of Members, and termination of benefits, together with the effective date of any such changes. If EBD retroactively terminates a Member under the Plan, EBD shall be responsible for payment of all Claims related to such Member that are processed before Navitus processes the retroactive termination. The AR Benefits Systems will be unavailable for Navitus to access during scheduled maintenance each Sunday from 6:00 am to

noon CST and each Friday from 8:00 pm to 8:15 pm CST. Navitus shall not be liable for failure or delay in performing its obligations due to unavailability of AR Benefits System during scheduled and unscheduled system downtimes.

Member Authorizations and Consents. EBD represents and agrees that it has or shall obtain all required consents and authorizations from its Members for the services provided in connection with this Agreement and for Protected Health Information to be released to EBD.

EBD is a State Entity. Navitus acknowledges that EBD is a government entity subject to statutes governed by Arkansas law and regulation, and any applicable federal statutes. Navitus further acknowledges that EBD is subject to oversight and advisory bodies. Navitus agrees it will cooperate with any directives EBD receives through these oversight and advisory bodies, as dictated by Arkansas law.

3. FORMULARY PROGRAM AND REBATES

Cooperation. EBD agrees to approve the Formulary and to allow Navitus to communicate and make available Formulary-related information to Participating Pharmacies, Prescribers and Members. EBD agrees to cooperate with Navitus in the maintenance of the Formulary and to facilitate Members' utilization of the Formulary. Navitus may modify the Formulary from time to time, subject to EBD's approval. Final decisions on the Formulary for EBD's Plan shall be made by EBD.

Rebate Submissions. EBD agrees that, consistent with HIPAA, Navitus will submit Members' Protected Health Information to pharmaceutical manufacturers in exchange for Rebates. EBD acknowledges that Rebates are intended to be paid only once by manufacturers on Covered Product utilization and, therefore, agrees not to participate in any other formulary, rebate or discount program related to Covered Product utilization by Members in connection with this Agreement. EBD agrees that it shall be solely responsible for the reimbursement of any Rebates improperly made based on EBD's non-compliance with this Section and that such non-compliance may result in Navitus's termination of EBD's participation in the Rebate program.

Rebate Calculations. Navitus will ensure that EBD receives Rebates on Covered Products, based on its Member's utilization of Covered Products as specified by the criteria established by the pharmaceutical manufacturer. EBD will then be eligible to receive one hundred percent (100%) of this amount on a Pass-Through basis. Any Claims for which Navitus is unable to collect rebates (e.g., 340B, GPO pricing obtained through sources other than Navitus, hospital or government pharmacies, etc.), including any Claims that may qualify for rebates under any government program (e.g., Managed Medicaid rebate discounts), are not eligible for Rebates. Additionally, Claims submitted to Navitus directly by Members may not be eligible for Rebates.

Payment of Rebates. Within ninety (90) days after the end of each quarter, Navitus shall pay EBD the minimum Rebate guarantees and provide detailed reports listing the number of brand drugs per delivery channel, Rebate amount per brand drug at each delivery channel, and the resulting minimum guaranteed Rebate payment per delivery channel owed to EBD as well as the Rebates received by Navitus for EBD's utilization without a request being made by EBD. Navitus shall pay additional Rebates received to EBD throughout the term of the contract until 100% of all earned Rebates are paid even after all the minimum Rebate guarantees have been paid. Navitus shall pay all Rebate revenue earned by EBD to EBD regardless of its termination status as Navitus' client. EBD 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

attributable to other Navitus client's Covered Product utilization. EBD acknowledges that its eligibility to receive payments for Rebates may be impacted by any changes in laws governing prescription drug pricing (including Rebates) or changes in Navitus' contracts with pharmaceutical manufacturers. EBD agrees that Navitus shall not have any liability or obligation to EBD or its Members for any failure by any manufacturer to pay any Rebates, any breach of an agreement by any manufacturer, or any negligence or willful misconduct of any manufacturer.

Group Purchasing Organization and Rebate Audits. Navitus will hold a limited number of direct contracts with pharmaceutical manufacturers. The majority of Rebates from pharmaceutical manufacturers will be negotiated through the group purchasing organization ("GPO") that Navitus contracts with for Rebates. Navitus will perform an annual audit to confirm that: (a) Rebates, manufacturer administration fees, and price protection were fully passed through to EBD, (b) Rebates were invoiced and paid correctly, and (c) Rebate metric guarantees, if any, were met and calculated per the terms of this Agreement. If necessary, Navitus will make reasonable effort obtain information from the GPO to the extent practicable under Navitus's contract with the GPO.

4. **Payments to NAVITUS.** EBD agrees to pay Navitus the administrative charges as set forth in the RFP. EBD also agrees to fund the payment of Covered Product Claims, whether submitted by pharmacies or Members, in accordance with the Prescription Pricing Schedule and all applicable gross receipts, provider, sales, use and similar taxes related thereto. If a business and occupation tax apply to the purchases of Covered Products, then the business and occupation tax will be treated as a sales and use tax hereunder and paid by the Plan. Navitus will invoice EBD for Claims at the amount Navitus pays for those Claims. EBD further acknowledges and agrees that Navitus, and third parties contracted with Navitus, may retain interest earnings not in excess of market rates in connection with the payment of Covered Product Claims under this Agreement.
 - a. **Timing of Payment.** Navitus will submit invoices to EBD within three (3) days after the end of each invoice cycle, and EBD agrees to pay Navitus for amounts owed thereunder within five (5) business days after the date of invoice; provided, however, that after January 1, 2024 Navitus will submit claims invoices weekly to EBD, and EBD shall pay Navitus within seven (7) calendar days of receiving such invoices. If EBD fails to make payment within the applicable time period two or more times in a year, the parties will work in good faith to reach a mutually agreeable resolution to such delays in payment. Alternatively, upon agreement of the parties, EBD 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 (or such other amount agreed upon by the parties). If EBD maintains such an amount with Navitus, any shortage between the amount advanced and the amount owed will be due fifteen (15) days after the date of invoice. EBD agrees that Navitus may retain any interest on these advances.
 - b. **Payment Methodology.** Payments to Navitus under this Agreement will be made via ACH transfers, which will be initiated, as agreed upon by the parties, by either EBD or Navitus from EBD's account when due. EBD shall be solely responsible for ensuring that the account has sufficient funds to pay Covered Product Claims and Navitus' administrative charges. EBD acknowledges and agrees that Navitus' account(s) into which money from EBD's bank account is transferred may contain money from one or more other clients of Navitus and further agrees that once such money is withdrawn from EBD's account, it is no longer a Plan asset. EBD agrees that Navitus may retain any interest on such money.

5. **Failure to Make Funds Available.** In the event that, for any reason, funds are not available on the date due, and EBD fails to provide the required funds within one (1) Business Day after being notified of the inadequate funds, Navitus may immediately cease providing services hereunder and provide notice of such cessation of services to Participating Pharmacies and Members. Additionally, Navitus will have the right to offset any unpaid amounts by EBD against any amounts owed to EBD by Navitus, or any entity affiliated with Navitus. The rights and remedies set forth in this Section are in addition to other rights and remedies available to Navitus under law or in equity.
6. **Run-Out Period.** EBD's obligation for payment of Covered Product Claims and Navitus' administrative charges will continue as long as Claims are being processed by Navitus, not to exceed a run-out period of ninety (90) days following the termination date. Administrative service fees for the run-out period will be based on per-transaction charges, calculated based on the number of transactions in the last full month prior to the termination of this Agreement divided by the administrative fees incurred in that same month. Navitus will return to EBD any overpayments or unapplied advances previously received from EBD within thirty (30) days following such run-out period.
7. **Limitation of Liability for Covered Products.**
 - a. EBD agrees and acknowledges that the services provided by Navitus pursuant to this Agreement are not intended to substitute for or supplement the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other health care professionals in prescribing, dispensing, or suggesting pharmaceuticals or other products. Subject to EBD'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 Prescriber and the dispensing pharmacist, respectively. A Participating Pharmacy will not be deemed to be a representative, subcontractor, or agent of Navitus or EBD based solely on this Agreement.
 - b. Navitus shall under no circumstances be liable (regardless of the basis for the action) 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, medical supplies, or services in connection with this Agreement.
8. **Data Security.** Navitus, its employees, subcontractors, and agents, shall maintain appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of Data and to protect against any anticipated threats or hazards to the security or integrity of Data which could result in substantial harm, embarrassment, inconvenience, unfairness, or other loss to the Client and any individual on whom information is maintained. Navitus's administrative, technical, and physical safeguards shall conform to the standards set in the current version of the NIST Cybersecurity Framework (or its equivalent). Such measures shall include measures for protection against unauthorized or unlawful access to Data and against accidental or unlawful destruction, loss, alteration, damage, disclosure of, or access, to Data.

Navitus shall maintain and operate a formal security program materially in accordance with industry standards that is designed to: (i) ensure the security and integrity of Data, (ii) protect against threats or hazards to the security or integrity of Data, (iii) prevent unauthorized access to Data, and (iv) prevent unauthorized access to its information technology infrastructure including,

without limitation, data processing devices, data storage devices, servers, networks, information services and computing devices and communication devices (“IT Infrastructure”).

In the event Navitus discovers unauthorized access to IT Infrastructure or unauthorized use or disclosure of Data (a “Security Incident”) or reasonably believes that a Security Incident has occurred, Navitus shall promptly (and within any timeframe established by applicable law concerning Navitus’ notification requirement) notify Client of such Security Incident, shall provide to Client any information regarding the incident reasonably requested by Client (including a list of the Data and IT infrastructure affected and all affected individuals and their contact information) and shall promptly take all measures reasonably required to recover Data, to remedy any flaws, defects or vulnerabilities in Navitus’ systems, software or personnel related to the Security Incident.

Navitus shall engage, at its own cost, an independent accounting firm to produce annual audit reports. Client reserves the right to require that such audits employ the SOC 2 standards of the American Institute of Certified Public Accountants. Navitus will transmit a copy of each audit report to Client promptly following Navitus’ receipt of such report. Navitus shall limit access to Data and IT infrastructure (“Data Access”) to individuals whose duties require Data Access in order for Navitus to perform its contractual obligations. Before permitting Data Access to any individual, Navitus shall obtain, to the extent permitted by law, current criminal and financial background checks for such individual. Navitus shall not permit Data Access by any individual that Navitus reasonably determines may expose Client to a risk of loss or damage, unauthorized use or modification of Data, damage to IT infrastructure.

9. Confidential Information.

- a. **Definition.** “Confidential Information” means non-public information, in any form, medium, or format that the party disclosing the information (the “Disclosing Party”) discloses to the other party hereunder (the “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 PHI or other information protected by HIPAA or any other state or federal law.
- b. **Protection of Confidential Information.** EBD and Navitus agree to take all reasonably necessary steps to protect and not to disclose the other party’s Confidential Information to any third party, during or after the termination of this Agreement, and shall not use the Confidential Information of the other party hereunder, except (i) as specifically contemplated by this Agreement; (ii) with the other's prior written consent; (iii) as required by local, state or federal law, rule or regulation, including any judicial or administrative interpretation thereof; or (iv) to the extent such information becomes generally available to the public, through no action or fault of the Receiving Party.
- c. **Use after Termination.** EBD and Navitus shall cease using the other parties' Confidential Information upon termination of this Agreement; provided, however, that (i) Navitus may retain records and use information as set forth herein; (ii) each party may retain Confidential Information for back-up, legal, and archival purposes; and (iii) the Confidential Information

shall be destroyed or returned as soon as reasonably practicable. Any retained Confidential Information shall remain subject to the terms and conditions of this Agreement.

- d. **Disclosures to Third Parties.** The 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 similar to those set forth in this Agreement. The 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. **Freedom of Information.** EBD is a public entity that is subject to the Arkansas Freedom of Information Act, Ark. Code Ann. § 25-19-101 et seq. (“FOIA”). The FOIA may require disclosure of certain material that could fall under the definition of “Confidential Information” pursuant to this Agreement. In the event Confidential Information is received by EBD from Navitus and is requested by a third party under FOIA, EBD agrees to provide Navitus with prompt notice of such third-party request, and Navitus shall be free to challenge the disclosure in accordance with the laws of the State of Arkansas. Should Navitus, in its judgment, believe that the requested information is not subject to disclosure and should Navitus intend that such information remain confidential, then Navitus shall so notify EBD, in writing, within two (2) business days following Navitus’ receipt of EBD’s notification or as otherwise permitted by Arkansas law. Navitus’ written response shall indicate the specific information which Navitus shall request EBD to withhold with respect to the third-party request. EBD shall use reasonable efforts to cooperate with Navitus in response to any applicable requests filed pursuant to FOIA. In all instances however, the requirements of FOIA shall be followed by EBD and such action shall not constitute a breach of this Agreement. In the event Navitus requests EBD to withhold information that is later ordered to be disclosed, and as a result the third party makes a successful claim for reasonable attorneys’ fees and litigation expenses arising out of the FOIA action, Navitus agrees to indemnify EBD for such attorneys’ fees and litigation expenses.
- f. **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. The rights and remedies set forth in this Section are in addition to and are not intended to limit any other rights and remedies available to the Disclosing Party under law or in equity.
- g. **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 the Receiving Party any express or implied right to the Disclosing Party’s Confidential Information.
- h. **Legal Process.** In the event the 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 in order 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.

- 10. Force Majeure.** The performance obligations of Navitus or EBD 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 such party. 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.
- 11. Exclusivity.** EBD agrees that Navitus shall be the exclusive provider to EBD of the type of administrative services described in this Agreement. The Parties will mutually agree upon the Mail Service and Specialty Pharmacies and will generally not include any entity owned by a direct competitor of Navitus unless otherwise agreed.
- 12. Intellectual Property.** Except as expressly provided herein, Navitus retains all right, title, and interest in and reserves the right to use and control the use of its intellectual property rights including, but not limited to, such rights in its software, reporting packages, user documentation, operations, procedures, and trademarks and service marks. EBD 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.
- 13. 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their authorized representatives as of the Effective Date.

**EBD: State of Arkansas, Department of
Transformation & Shared Services –
Employee Benefits Division**

By:  _____

Name: Grant Wallace

Title: Director, Employee Benefits Division

Date: 10/26/2023

Navitus Health Solutions, LLC

Cory J. Super

By: 955CFDC2B5C2F06EE1D48C07750E06C4 contractworks.

Name: Cory Super

Title: VP, Sales

Date: 10/23/2023