

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the State of Oklahoma, acting through the Oklahoma Insurance Department (“the Department”), and Navitus Health Solutions, LLC (hereinafter “Navitus”), each one a “Party” and collectively the “Parties”.

### RECITALS

- A. Navitus has engaged in the business of insurance as defined in Okla. Stat. tit. 36, §§ 404 and 6103.2 and transacting insurance as defined in Okla. Stat. tit. 36, §§ 105 (4) in the State of Oklahoma. Navitus is a Pharmacy Benefits Manager or “PBM,” as defined in Okla. Stat. tit. 59, §§ 356.1 and 357(6), and has engaged in the business of pharmacy benefits management, as defined and described in Okla. Stat. tit. 59, § 357(6) and (7), in the State of Oklahoma. Navitus holds a license issued by the Department to engage in the business of pharmacy benefits management in Oklahoma.
- B. Navitus is contracted with many health benefits plans and Oklahoma pharmacies to provide pharmacy benefits management services related to business transactions and the adjudication of claims made within Oklahoma.
- C. With respect to contracts between a PBM and a provider, including a pharmacy services administrative organization (“PSAO”), Title 59 O.S. §360(A)(1) requires a PBM to update its Maximum Allowable Cost (“MAC”) pricing list at least every seven (7) calendar days. Further, Title 59 O.S. §360(A)(4) requires a PBM to provide a reasonable administration appeals procedure to allow a provider, a provider’s representative, and PSAO to contest reimbursement amounts (also known as “MAC appeal”) within fourteen (14) business days of the final adjusted payment date. The PBM must respond to a provider, provider’s representative, or a PSAO which has contested a reimbursement amount through a MAC

appeal within ten (10) business days. If a price update is warranted, the PBM is then required to modify the reimbursement amount, permit the dispensing pharmacy to reverse and rebill the claim in question, and make the reimbursement amount change retroactive and effective for all contracted providers. If a below-cost reimbursement/MAC appeal is denied, Title 59 O.S. § 360(A)(5) requires that the PBM provide the reason for the denial, including the National Drug Code (“NDC”) number from the specific national or regional wholesalers where the drug is available for purchase by the dispensing pharmacy at a price below the PBM's reimbursement price. If the PBM cannot provide a specific national or regional wholesaler where the drug can be purchased by the dispensing pharmacy at a price below the PBM's reimbursement price, the PBM is required to immediately adjust the reimbursement amount, permit the dispensing pharmacy to reverse and rebill the claim in question, and make the reimbursement amount adjustment retroactive and effective for all contracted providers.

D. The Department contends that during the time-period from 8/26/2020 through 10/21/2020, updates were warranted to Navitus's MAC list related to at least EIGHT (8) MAC appeals submitted by Oklahoma pharmacists, pharmacies, providers, their representatives, and/or PSAOs. With respect to these MAC appeals, the Department further contends that:

1. In violation of Title 59 O.S. § 360(A)(5), Navitus failed, at least EIGHT (8) times, to provide NDC numbers from the specific wholesalers where the drugs at issue were available for purchase by the dispensing pharmacies at prices at or below Navitus's reimbursement amounts.

- E. This Settlement Agreement is neither an admission of liability by Navitus nor a concession by the Department that its allegations of violations are not well-founded.
- F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above alleged violations, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The "Covered Conduct" referred to in this Agreement includes any action and inaction, correspondence and lack of correspondence, information provided and lack of information provided, MAC prices, MAC price listings, and reimbursements by and from Navitus related to the EIGHT (8) MAC appeals submitted to Navitus by Oklahoma pharmacists, pharmacies, providers, their representatives, and PSAOs during the time period from 8/26/2020 through 10/21/2020, and referred to in Exhibit A, which is attached hereto and incorporated herein by reference;
2. The "reimbursement amount" or "reimbursement amounts" referred to in this Agreement means the total amount paid to a pharmacist or pharmacies, or pharmacy or pharmacies, inclusive of any reductions in payments, excluding prescription dispense fees, which are related to a service or pharmaceutical provided;
3. The date upon which this Agreement is effective (the "Effective Date") is the date of signature of the last signatory to the Agreement. Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement;
4. No later than 14 days after the Effective Date of this Agreement, Navitus shall provide to the Department any and all information pertaining to the Covered Conduct, which may be



necessary for the Department to independently verify the Oklahoma pharmacists, pharmacies, providers, their representatives, and/or PSAOs that submitted MAC appeals to Navitus and the dates of submission, amounts and dates of reimbursements made by Navitus to the Oklahoma pharmacists, pharmacies, providers, their representatives, and PSAOs, dates of and information provided within responses from Navitus, and that all reimbursements made to Oklahoma pharmacists, pharmacies, providers, their representatives, and/or PSAOs pursuant to paragraph (5)(a) below are done so appropriately, accurately, and in accordance with this Agreement. Such information shall include but not be limited to: Claims data queried from Navitus's contested claims and reimbursement source system, including: 1) pharmacy name, NABP and/or NCPDP number, NPI, PSAO Chain code, prescription number, prescription dispense date, date claim filed, NDC, net amount paid, basis of reimbursement, pharmacy acquisition cost per prescription, pharmacy acquisition cost per unit, date MAC appeal filed with Navitus, Price Discrepancy "PD" Master ID, date of response to MAC appeal by Navitus, number of business days from date MAC appeal filed until date of response by Navitus, PBM response source, response of Navitus, reason for denial (if given), the amount of the additional reimbursement amount (if given), MAC effective date, alternate NDC (if given), and the specific wholesalers where the drugs at issue were available for purchase by the dispensing pharmacies at prices at or below Navitus's initial reimbursement amount, in a manner which allows for the reimbursement amounts to be arranged and organized in Excel software format;

5. Navitus shall pay to the total sum of TEN THOUSAND ONE HUNDRED NINETY-TWO DOLLARS and ELEVEN CENTS (\$10,192.11) (Settlement Amount), which is due no

later than 14 days after the Effective Date of this Agreement. Payment of the Settlement Amount shall be made as follows:

- a. Navitus shall pay additional reimbursements in the total amount of ONE HUNDRED NINETY-TWO DOLLARS and ELEVEN CENTS (\$192.11) to the Oklahoma pharmacists, pharmacies, providers, their representatives, and/or PSAOs that submitted MAC appeals to Navitus related to the Covered Conduct and as are more specifically addressed in Exhibit A, which is attached hereto and incorporated herein by reference. Navitus shall make such reimbursements by making payments through the pharmacies' respective pharmacy service administrative organizations (PSAOs), or if a pharmacy is not contracted with any PSAO, then Navitus shall make such reimbursements directly to the respective Oklahoma pharmacists and pharmacies;
  - b. Navitus shall pay a total penalty amount of TEN THOUSAND DOLLARS and ZERO CENTS (\$10,000.00) to the State of Oklahoma, by and through the Department, based on allegations of EIGHT (8) counts of violations by Navitus at approximately a ONE THOUSAND TWO HUNDRED FIFTY DOLLARS and ZERO CENTS (\$1,250.00) penalty per count;
6. Subject to the exceptions in paragraph seven (7) of this Agreement, and conditioned upon Navitus's full payment of the Settlement Amount, the Department releases Navitus from any civil or administrative monetary claim the Department has pertaining to the Covered Conduct under Title 36 O.S. § 6966 of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title 59 of the Oklahoma Statutes; or the common law theories of payment by mistake, unjust enrichment, and fraud;

7. Notwithstanding the releases given in paragraph six (6) of this Agreement, or any other term of this Agreement, the Commissioner has no authority over the following claims:
  - a. Any liability arising under Okla. Stat. tit. 68, Revenue and Taxation (the Oklahoma Tax Code);
  - b. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal and State health care programs;
  - c. Any liability to the State of Oklahoma (or its agencies) for any conduct other than the Covered Conduct;
  - d. Any liability based upon obligations created by this Agreement; and
  - e. Any liability of individuals except as explicitly stated in this Agreement;
8. Navitus waives and shall not assert any defenses it may have to any administrative action and other judicial action relating to the Covered Conduct that may be based in whole or in part on a contention that the Excessive Fines Clause in the Eight Amendment of the United States Constitution and Article II, § 9 of the Oklahoma Constitution, this Agreement bars a remedy sought in such administrative and other judicial action;
9. Navitus fully and finally releases the Department, its officers, agents, employees, and servants from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Navitus has asserted, could have asserted, or may assert in the future against the Department, its officers, agents, employees, and servants, related to the Covered Conduct and the Department's investigation and prosecution thereof;




10. Navitus agrees not to submit, resubmit, charge, recharge, or cause to be submitted, charged, resubmitted or recharged to any Oklahoma pharmacist or pharmacy any charges or fees related to the Covered Conduct;
11. Navitus agrees that it waives and shall not seek payment or reimbursement for any of the charges, fees, or billings covered by this Agreement (i.e. included in the Covered Conduct) from any pharmacists, pharmacies, providers, health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors that it could have charged under Oklahoma law. The Department agrees that it will not refer any case for administrative enforcement which arises out of the Covered Conduct;
12. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided in this Agreement;
13. Each Party shall bear its own legal expenses and other costs incurred in connection with this matter, including the preparation and performance of this Agreement;
14. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion;
15. This Agreement is governed by the laws of the State of Oklahoma. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the District Court of Oklahoma County. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute;

16. This Agreement constitutes the complete agreement between both Parties. This Agreement may not be amended except by written consent of the Parties;
17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement;
18. This Agreement is binding on Navitus's subsidiaries, successors, transferees, heirs, and assigns; and
19. This Agreement is subject to the Oklahoma Open Records Act, 51 O.S. § 24.A.1, et seq.

**OKLAHOMA INSURANCE DEPARTMENT**

DATED: March 14, 2022

BY:


  
\_\_\_\_\_  
GLEN MULREADY  
Oklahoma Insurance Commissioner



**NAVITUS HEALTH SOLUTIONS, LLC**


DATED: \_\_\_\_\_

BY:

  
\_\_\_\_\_, on behalf of  
Navitus Health Solutions, LLC

DATED: March 10, 2022

BY:

  
\_\_\_\_\_  
Paul Page  
Secretary, Vice President and General  
Counsel for Navitus Health Solutions, LLC  
361 Integrity Drive  
Madison, WI 53717  
[paul.page@navitus.com](mailto:paul.page@navitus.com)



## EXHIBIT A

PBM Name	SBS/OID#	ID Number	PSAO Chain Code	NCPDP #	NPI	Rx Number	Date Claim Filed	NDC	Date Appeal Filed with PBM	Price Discrepancy "PD" MasterID	PBM Response	PBM Response Date	New MAC Rate (if given)	Additional amount of reimbursement over initial reimbursement	Failure to provide valid NDC (alleged viol. of Title 59 § 360(A)(5))
Navitus	88224	NAV1	769	3723156	1255384426	2083326	8/26/2020	93538256	9/3/2020	5974937	Denied	9/10/2020	\$103.90	\$11.80	1
Navitus	88224	NAV2	769	3728714	1952796682	6077853	9/8/2020	59762100101	9/17/2020	6005131	Denied	9/23/2020	189.26	\$22.84	1
Navitus	88224	NAV3	769	3729615	1174061725	6350361	9/14/2020	832059530	9/24/2020	6023345	Denied	9/30/2020	\$78.60	\$17.70	1
Navitus	88224	NAV4	769	3719107	1679614531	78519	10/8/2020	406182001	10/15/2020	6069793	Denied	10/21/2020	\$77.33	\$13.92	1
Navitus	88224	NAV5	769	3722320	1366463432	50851	9/25/2020	527457937	10/1/2020	6035869	Denied	10/7/2020	\$77.33	\$19.37	1
Navitus	88224	NAV6	769	3728714	1952796682	6077853	10/6/2020	59762100101	10/15/2020	6070242	Denied	10/21/2020	\$189.26	\$22.84	1
Navitus	88224	NAV7	769	3729615	1174061725	6350269	10/9/2020	13668020330	10/15/2020	6069628	Denied	10/21/2020	\$279.30	\$41.27	1
Navitus	88224	NAV8	769	3729615	1174061725	6360213	9/24/2020	75834012929	10/1/2020	6038814	Denied	10/7/2020	\$230.53	\$42.37	1
														<b>\$192.11</b>	<b>8</b>