



# MEMBERSHIP AGREEMENT FORM

## MEMBER INFORMATION

**Member Name** (please print or type all information)

**Address** (please include street address)

<b>City</b>		<b>State</b>	<b>Zip</b>
<b>Phone</b>	<b>Fax</b>	<b># of Licensed Beds</b>	

**Type of Facility:**

Skilled Nursing       Assisted Living       Other \_\_\_\_\_

**Ownership Classification:**

For-Profit       Not-for-Profit       Other \_\_\_\_\_

## CONTACT INFORMATION

<b>Primary Contact Name</b>		<b>Title</b>
<b>Phone</b>	<b>Fax</b>	<b>Email</b>
<b>Food Service/Secondary Contact Name</b>		<b>Title</b>

## AGREEMENT

This Membership Agreement (the "Agreement") effective \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), is between Navigator Group Purchasing, Inc. ("NAVIGATOR") and \_\_\_\_\_ (the "Member") for the purposes of permitting Member and its facilities to obtain certain products and services under Vendor Contracts between Navigator and Vendors. Subject to termination under Section 6 hereof, the term of this Agreement shall be for a period of \_\_\_\_\_ (\_\_\_\_) years commencing on the Effective Date, with automatic renewals thereafter for terms of one (1) year each unless either party gives written notice of non-renewal of this Agreement at least ninety (90) days prior to the end of the initial term or any subsequent renewal term. Member has the right to cancel membership at any time with a 30 day notice.

**(Please see back side for further terms of the Agreement and definitions of terms used above.)**

**IN WITNESS WHEREOF**, each party hereto has duly executed, or has caused this Agreement to be duly executed, as of the date first above written.

\_\_\_\_\_  
Signature of Navigator Representative

\_\_\_\_\_  
Signature of Member Representative

\_\_\_\_\_  
Name & Title (please print)

\_\_\_\_\_  
Name & Title (please print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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# NAVIGATOR GROUP PURCHASING MEMBERSHIP AGREEMENT

## 1) **Definitions.**

As used herein, the following terms have the following meanings:

- a) "Facility" or "Facilities" means the Member facilities identified on Page 1 which will be purchasing products and services under vendor contracts negotiated by Navigator.
- b) "Program" means the group purchasing program conducted by NAVIGATOR, pursuant to which Member and its Facilities are provided access to the Vendor contracts.
- c) "Vendor Contracts" means the purchasing agreements between Vendors and NAVIGATOR for the purchase of products and services, and any agreements between Vendors and third parties that have agreed that Members may purchase under such agreements.
- d) "Vendor" or "Vendors" means the supplier of products and services under the Vendor contracts.

## 2) **GPO Fees.**

Member acknowledges (i) that NAVIGATOR will receive payment of fees for administrative and other services provided by NAVIGATOR from one or more Vendors based on products and services purchased, licensed or leased by Member and its Facilities ("GPO Fees"), and (ii) that the percentage of the GPO Fees will be three percent (3%) or less. NAVIGATOR may receive additional GPO Fees from Vendors, the payment of which is based on the products and services purchased by NAVIGATOR Members collectively which, when added to the GPO Fees earned based on a Member's and its Facilities' individual purchases, may exceed three percent (3%). The Vendors who may pay fees exceeding 3% is Staples. (The total percentage is determined by calculating year end performance growth incentives, and is reported on NAVIGATOR's annual safe harbor report.) NAVIGATOR does not know whether it will receive such additional GPO Fees, but shall disclose in writing to the Member on an annual basis the names of the Vendors, and the specific amount of total GPO Fees received from each of the Vendors with respect to products and services purchased, licensed or leased by each of the Member's Facilities, including the amount received from each Vendor based on purchases of NAVIGATOR Members collectively. NAVIGATOR shall also disclose to the Secretary of the United States Department of Health and Human Services, upon request, the amount of GPO Fees received by NAVIGATOR from each Vendor with respect to products and services that are purchased, licensed or leased by Member and its Facilities. Member is responsible for disclosing information regarding such GPO Fees to each of its Facilities.

## 3) **Termination.**

- a) NAVIGATOR may terminate this Agreement on ninety (90) days' notice to Member if (i) Member or any of its Facilities fails to comply with the terms and conditions of any of the Vendor Contracts, or (ii) Member or any of its Facilities otherwise breaches any provision of this Agreement; provided, however, that NAVIGATOR may terminate this Agreement in the event of a breach described above only if NAVIGATOR shall have given Member written notice of the specifics of the breach and Member shall not have cured such breach or caused such breach to be cured within fifteen (15) days thereafter.
- b) NAVIGATOR shall also have the right to terminate this Agreement upon ninety (90) days' prior notice upon the transfer, directly or indirectly, by sale, merger or otherwise, of substantially all of the assets of Member or its ultimate parent or any permitted assignee (upon assignment to such assignee) or in the event that more than 49% of Member capital stock or the capital stock of its ultimate parent or any such permitted assignee is transferred to an independent third party entity.

## 4) **NAVIGATOR Disclaimer and Member Release.**

NAVIGATOR DOES NOT MAKE AND EXPRESSLY DISCLAIMS, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, AS TO ANY PRODUCTS AND SERVICES SOLD BY ANY VENDOR; AND MEMBER AND ITS FACILITIES HEREBY EXPRESSLY RELEASE NAVIGATOR FROM ANY AND ALL LIABILITY AND CLAIMS RELATING TO THE PRODUCTS AND SERVICES, AND ANY BREACH OR ALLEGED BREACH OF WARRANTY IN CONNECTION WITH THE PRODUCTS AND SERVICES.

## 5) **Purchase of Products and Services.**

- a) It is the intent of the parties to establish a business relationship that complies with the Medicare and Medicaid anti-kickback statute, set forth in 42 U.S.C. §1320a-7b(b). The parties agree that, for the purposes of this Agreement, NAVIGATOR is acting as a group purchasing organization and the parties believe that this Agreement satisfies the requirements for a written agreement under the group purchasing organizations safe harbor at 42 C.F.R. §1001.952(j).
- b) Subject to the terms and conditions set forth in this Agreement, Member hereby engages NAVIGATOR to act as its independent group purchasing organization, and is hereby granted access to the Vendor Contracts, pursuant to which Member and its Facilities will purchase products and services available there under for use by Member and its Facilities. Member hereby authorizes NAVIGATOR, as its agent for such purposes, to (i) negotiate the terms of and enter into Vendor Contracts, and to cancel or modify any Vendor Contracts as it deems necessary, advisable or appropriate; and (ii) receive from Vendors, distributors, and e-commerce companies, data relating to purchases of products and services under Vendor Contracts by Member and its Facilities.
- c) The Facilities identified in Page 1 hereto shall have access to the Program. Each Facility shall execute and deliver to NAVIGATOR the Membership Agreement prior to being granted access to the Program.

## 6) **Representations, Warranties and Covenants of Member.**

Member, for itself and for each of its Facilities that purchase under the Vendor Contracts, whether or not set forth on Exhibit A hereto, hereby covenants with NAVIGATOR as follows:

- a) Member and its Facilities shall indemnify and hold NAVIGATOR, its respective affiliates, agents, officers, directors and employees (the "Indemnitees") harmless from and against any and all losses, liabilities, damages, costs and expenses (whatsoever, including, without limitation, reasonable attorney's fees) that are awarded against or incurred after the date hereof by any of them, relating to acts or omissions of Member and/or Facilities which relate in any way to this Agreement, including, without limitation, any claims resulting from a failure to pay for any products and services purchased by Member or any of its Facilities.
- b) Member agrees to cause each of its Facilities (i) to comply with all terms of this Agreement as if a party hereto, (ii) to comply with all terms of the Vendor Contracts, including without limitation, payment terms and own use requirements and (iii) to execute separate agreements or acknowledgements as requested by NAVIGATOR or any particular Vendor evidencing such Facility's agreement to comply with the terms of the relevant Vendor Contract.
- c) Member warrants that all products and services purchased by it or its Facilities under the Vendor Contracts will be for use in the provision of healthcare services by the Member or Facilities, and not for resale or distribution to third parties other than in the course of furnishing healthcare services.
- d) Member warrants that all Facilities listed on Page 1 hereto are owned by Member and furnish services to third parties for whom payment may be made in whole or in part under Medicare or a state healthcare program.