

Healthcare Membership Agreement

MEMBERSHIP INFORMATION

Member Name (please print or type full legal name of member)	Number of locations <i>If > 1, attach facility list</i>	Number of beds
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Address (street address) _____

City	State	Zip
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Phone number	Fax number
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Member Type:

Skilled Nursing
 Assisted Living
 CCRC
 Independent Living
 Other _____

Ownership Classification:

For Profit
 Not for Profit
 Other _____

CONTACT INFORMATION

Primary Contact Name	Title	
Phone #	Fax #	E-mail Address

AGREEMENT

This Membership Agreement (the "Agreement") is made and entered into effective as of _____, 20__ (the "Effective Date"), between Navigator Group Purchasing, Inc. ("Navigator" or "NGP") and the member set forth under "Membership Information" above (the "Member") for the purpose 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 one (1) year 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. (Please see the back side for further terms of the Agreement and definitions of certain 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 and Title (please print)	Name and Title (please print)
Date	Date

1) Definitions.

Except as otherwise set forth herein (including in Exhibit A hereto), defined terms used in this Agreement are set forth below:

a) "Facility" or "Facilities" means the Member facilities identified on Page 1 which are either owned or managed by Member and that will purchase products and services under the Vendor Contracts.

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, lease or licensing of products and services.

d) "Vendor" or "Vendors" means a supplier, manufacturer, distributor or third party purchasing group.

e) "Vendor Rebates" means any and all off-invoice discounts or other discounts or rebates paid or applied directly by a Vendor to a Member, other than Distributor Brand Incentives and Pinnacle Program Allowances.

2) Engagement.

a) 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 may purchase, lease or license products and services available under the Vendor Contracts 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. Member acknowledges that Vendors shall have final right of approval over Member and Facilities participation under Vendor Contracts.

b) The Facilities identified in Page 1 hereto shall have access to the Program. Each Facility shall execute and deliver to Navigator a Membership Agreement prior to being granted access to the Program. Member may add additional Facilities to this Agreement upon notice to, and approval by Navigator, subject to such Facility's agreement to comply with the terms of this Agreement.

3) Changes to Members and Facilities

Member agrees to and shall keep Navigator advised, in writing, of any material change pertaining to the following:

- a) total number of beds serviced by Member and by each Facility on a current basis;
- b) any change in ownership of Member or any Facility;
- c) any change in wholesaler/distributor used by Member or any Facility;
- d) any change in contact name for each department of Member and any Facility using the Vendor Contracts;
- e) any change in address of Member or any Facility;
- f) any change in the type of facility serviced by Member or any Facility; and
- g) any change in facility license of Member or any Facility.

4) Compliance with Laws.

The parties shall comply with all applicable federal, state and local laws and regulations ("Applicable Laws") applicable to the operation of a party's business. It is the intent of the parties that this arrangement comply with all Applicable Laws, including, without limitation, the federal Anti-Kickback Statute, set forth in 42 U.S.C. §1320a-7b(b) and the statutory exceptions applicable to group purchasing organization and discount arrangements and, further, that this arrangement satisfy each of the group purchasing organizations safe harbor regulation set forth in 42 C.F.R. §1001.952(j) and discounts safe harbor regulation set forth in 42 C.F.R. §1001.952(h).

5) Administrative Fees and Rebates

a) GPO Fees. Member acknowledges that (i) Navigator will receive payment of administrative fees from the Vendors, including administrative fees, rebates, allowances and incentives (collectively, "GPO Fees"), for administrative and other services provided by Navigator, based on products and services purchased, leased or licensed by Member and its Facilities; and (ii) the dollar amount of GPO Fees received by Navigator from its Vendors will, subject to 5(b) below, be up to three percent (3%) of the aggregate dollar amount of purchases made by Member and its Facilities under the Vendor Contracts.

b) Additional GPO Fees. Navigator may receive GPO Fees from Vendors in excess of three percent (3%) or additional administrative fees from its Vendors based on the products and services purchased, leased or licensed by Navigator members collectively, which, when added to the GPO Fees earned based on Member's and its Facilities' individual purchases, may exceed three percent (3%). Navigator acknowledges that it does not know whether it will receive GPO Fees in excess of three percent (3%), but in the event that it does, it shall on a schedule attached hereto (which schedule shall become part of this Agreement), specify the amount or if not known the maximum amount Navigator will be paid by such Vendor for such purchases. Such amount may be a fixed sum or a fixed percentage of the value of purchases made from the Vendor. A list of the Vendor Contracts for which Navigator's administrative fees exceed three percent (3%) as of the Effective Date is attached hereto as Exhibit B.

c) Administrative Fee Reports. On an annual basis, Navigator shall disclose in writing to Member: (i) each Vendor's name; and (ii) the total GPO Fees received from each Vendor attributable to products and services purchased, leased or licensed by Member and each of its Facilities. Member shall provide to its Facilities all required information regarding GPO Fees earned by Navigator. 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 and any additional fees received based on purchases made by Navigator members on a collective basis. Member shall be responsible for disclosing information regarding such GPO Fees to each of its Facilities.

d) Vendor Rebates and NGP Offeror Rebates. In the event Navigator receives any verified Vendor Rebates on behalf of Member, Navigator will remit such rebates to Member as promptly as possible. Member shall be responsible for remitting to Facilities any Vendor Rebates belonging to Facilities. NGP will use all reasonable efforts to verify all Vendor Rebates pertaining to Member and Facilities and to keep Member informed of product, service and price changes. (Member shall notify Facilities of any such changes.) In the event NGP receives any verified Vendor Rebates, NGP will remit to Member such Vendor Rebates in a timely manner. Member shall be responsible for remitting to Facilities any Vendor Rebates belonging to Facilities. Such Vendor Rebates shall comply with all Applicable Laws, including the Discounts Safe Harbor, and Member and Facilities acknowledge and agree that NGP shall incur no liability resulting from any rebate arrangement between Member and a Vendor or Facility and a Vendor, as the case may be. In addition, Member shall be eligible for certain NGP Offeror Rebates. The terms of the NGP Offeror Rebates are set forth on Exhibit A attached hereto and incorporated by reference herein.

6) Termination.

a) Navigator may terminate this Agreement on sixty (60) 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 and Member fails to cure such breach within thirty (30) days after notice of such breach. Member may terminate this Agreement if Navigator breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after notice of such breach.

b) Navigator shall also have the right to terminate this Agreement upon sixty (60) days' prior notice upon the transfer, directly or indirectly, by sale, merger or otherwise, of all or 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.

7) Member Confidentiality.

Member and Facilities shall treat as confidential (and not use or disclose except in connection with its obligations under this Agreement) all information that it receives, in any form, from Navigator regarding contract prices, programs, price lists, financial data, customer and supplier information, product development, business and marketing plans, and information contained in catalogs and other non-public, proprietary and confidential information of Navigator, including the terms of this Agreement. Upon termination, Member shall return to Navigator all such confidential information.

8) Navigator Disclaimer; Member Release; Limitation of Liability.

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. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER LIABILITY IS

ASSERTED IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), EVEN IF A PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF SAME OR IF THE SAME ARE FORESEEABLE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL NAVIGATOR'S LIABILITY ARISING OUT OF OR BASED UPON THIS AGREEMENT EXCEED THE GPO FEES EARNED AND RETAINED BY NAVIGATOR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, INCLUDING WITHOUT LIMITATION, ANY ACTION IN TORT OR CONTRACT.

9) Representations, Warranties and Covenants of Member.

Member, for itself and for each of its Facilities that purchase products and services under the Vendor Contracts, whether or not set forth on Exhibit A hereto, hereby represents, warrants, and covenants to Navigator as follows:

a) Member and its Facilities shall indemnify, defend and hold harmless Navigator, its respective affiliates, agents, officers, directors and employees from and against any and all losses, liabilities, damages, costs and expenses whatsoever (including, without limitation, reasonable attorney's fees), suffered or incurred by Navigator, Member, or Facilities, resulting from or in any way connected with Member's and/or Facilities' purchase or use of products and services; any acts or omissions, negligence or willful misconduct; breach of this Agreement; the use by Member and/or Facilities of any information contained in any reports or analyses provided by Navigator to Member; or 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 represents and warrants that all products and services purchased by it or its Facilities under the Vendor Contracts will be for its own use in the provision of health care services by the Member or Facilities, and not for resale or distribution to third parties other than in the course of furnishing health care services.

d) Member has full power and authority to enter into this Agreement for itself and the Facilities, to act as representative and agent for the Facilities to bind the Facilities to the terms of this Agreement and to carry out the transactions contemplated hereby. All Facilities are owned or managed by Member and furnish services to third parties for whom payment may be made in whole or in part under Medicare or a state health care program.

e) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will constitute a violation or breach of (i) the certificate of incorporation or bylaws or other organizational

documents of Member or any Facility; (ii) any provision of any contract or other instrument to which Member or any Facility is a party or by which Member or any Facility, its businesses, assets or properties may be affected or secured; (iii) any order, writ, injunction or decree applicable to Member or any Facility; or (iv) to the knowledge of Member, any statute, rule or regulation. No consent, approval, order or authorization of, or registration, declaration or filing with any governmental or other third party, domestic or foreign, is required by or with respect to Member (or any Facility) in connection with Member's execution and delivery of this Agreement, or the consummation of the transactions contemplated hereby.

f) Member and Facilities have not (i) been served with a notice of proposed exclusion, or committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed upon it or they under, any federal or state health care program, including, but not limited to, Medicare or Medicaid, or (ii) been convicted, under federal or state law (including, without limitation, a plea of *nolo contendere* or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care item or service or with respect to any act or omission in any health care program operated by or financed in whole or in part by any federal, state or local government agency. Member and/or a Facility shall notify NGP immediately after Member and/or such Facility become aware that any of the foregoing representations and warranties may be inaccurate or may become incorrect.

10) Governing Law and Venue

a) This Agreement shall be governed and interpreted under the laws of the State of New Jersey without regard to conflict of law principles. Both parties agree that any dispute under this Agreement shall be litigated in the United States District Court of New Jersey, venued in Newark, New Jersey or any other Court in New Jersey having jurisdiction. Member specifically submits to the jurisdiction of the Courts in New Jersey.

11) Amendment and Assignment.

a) This Agreement may not be assigned by Member without Navigator's prior written consent. Navigator may assign this Agreement without Member's prior written consent. Additionally, the relationship between Navigator and Members is one of an independent contractor only and nothing in this Agreement shall be construed to create a principal/agent, employer/employee or master/servant or fiduciary relationship between Navigator and Member unless otherwise expressly specified herein.

b) This Agreement may be amended or modified only by a written agreement executed by all of the parties hereto. Any handwritten changes must be initialed by all parties hereto.

EXHIBIT A
NGP OFFEROR REBATES

Member may, as applicable, be eligible to receive the NGP Offeror Rebates in connection with Member's and Facilities' purchases of Products and Services under Vendor Contracts, as follows:

Members Participating in the Pinnacle Plus Program:

- Purchases Through Foodbuy – All Pinnacle Program Allowances, net of the following: (i) an amount equal to 1% of Member's Pinnacle Volume to be retained by Foodbuy; and (ii) an amount equal to 1% of Member's Pinnacle Volume to be retained by Navigator.
- Purchases Through Broadline Food Distributors:
 - US Foods –50% of Distributor Brand Incentives
 - All Other Broadline Distributors –100% of Distributor Brand Incentives

Members Participating in the Pinnacle Program

- Purchases Through Foodbuy –
 - if Manufacturer Allowance Effectiveness is greater than 2% - all Pinnacle Program Allowances, net of the following: (i) an amount equal to 1% of Member's Pinnacle Volume to be retained by Foodbuy; and (ii) an amount equal to 1% of Member's Pinnacle Volume to be retained by Navigator.
 - if Manufacturer Allowance Effectiveness is less than 2% - 25% of Pinnacle Program Allowances.
- Purchases Through Broadline Food Distributors
 - US Foods – 50% of Distributor Brand Incentives
 - All Other Broadline Distributors – 100% of Distributor Brand Incentives

Definitions:

- "Distributor Brand Incentives" means all incentives and allowances received under Navigator's distribution agreements with broadline food distributors in connection with the purchase of Products and Services by Member and Facilities under such agreements.
- "Pinnacle Program Allowances" means the aggregate dollar amount of all: (i) volume rebates, (ii) volume allowances, and (iii) brand incentives received under Foodbuy's distribution agreements, in connection with the purchase of Products and Services by Member and Facilities through Navigator's Pinnacle or Pinnacle Plus Program, as applicable.
- "Pinnacle Volume" means the aggregate dollar amount of purchases of Products and Services by Member and Facilities through Navigator's Pinnacle or Pinnacle Plus Program, as applicable.
- "Manufacturer Allowance Effectiveness" means Pinnacle Program Allowances divided by Pinnacle Volume.

Payment of NGP Offeror Rebate. NGP Offeror Rebates earned by Member and Facilities shall be paid as follows:

- Distributor Brand Incentives shall be paid on a quarterly basis within sixty (60) days from the end of each quarter; and
- Pinnacle Program Allowances shall be paid on a quarterly basis within ninety (90) days from the end of each quarter.

Member shall distribute the NGP Offeror Rebates due to a Facility in accordance with the NGP Offeror Rebate report provided by NGP to Member. Records maintained by NGP concerning Member's and Facilities' purchases and the GPO Fees received by NGP for such purchases shall control in the event of any dispute between the parties regarding the amount of any NGP Offeror Rebates due to Member and Facilities.

Compliance with Law. The parties shall comply with all applicable laws, including the federal Anti-Kickback Statute set forth at 42 U.S.C. § 1320a-7b(b) and the Discounts Safe Harbor. Each of NGP, Member and Facilities shall comply with all applicable reporting and disclosure obligations under the Discounts Safe Harbor. The parties acknowledge and agree that the terms of this Agreement are commercially reasonable and have been negotiated in an arms-length transaction and that NGP Offeror Rebates on the purchase of Products and Services provided by NGP to Member and Facilities have not been determined in a manner that takes into account the volume or value of referrals or business otherwise generated between the parties except as permitted under the Discounts Safe Harbor.

**EXHIBIT B
NGP VENDOR CONTRACTS
(ADMINISTRATIVE FEE > 3%)**

<u>Vendor</u>	<u>Administrative Fee</u>
Staples Contract & Commercial, Inc.	3.5%
Staples Contract & Commercial, Inc.	5.0% additional Administrative Fee effective August 1, 2017 through July 31, 2018, for products and services purchased by MHA Members that have not purchased products through MHA's Staples group purchasing agreement prior to August 1, 2017