

Provider Agreement

Provider Name:	Phone:	
Business Name:	Fax:	
Street:		
City:	State:	Zip:
Email:		

Office Contacts: List those Sales & Marketing personnel and other individuals (ie Provider's Assistant, Commissions Coordinator, etc) you want to be authorized to speak with, and receive information from NavigateHCR

Contact Name:	Contact Title:
Contact Email:	Contact Phone:

Payee Information

Payee Name:		
Street:		
Business Name:	State:	Zip:

For office use only

RSD:

Agreement

THIS PROVIDER AGREEMENT ("Agreement") is made and entered into and effective as of ____ / ____ / ____ ("Effective Date") by and between First Pacific Exchange, Inc., a California corporation d/b/a NavigateHCR, located at 10875 Rancho Bernardo Rd., Suite 108, San Diego CA 92127 ("NHCR"), and _____ located at _____ ("Provider").

In consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

- 1. Duties.** Provider agrees to communicate NHCR's products and services to potential clients and enroll interested qualifying clients into NHCR's products and services in accordance with NHCR's pricing, policies and procedures. Provider shall not circulate or distribute any material bearing the trade names or trademarks of NHCR, other than materials provided by NHCR or approved in writing in advance by NHCR. Provider shall not incur any indebtedness or liability; or make, alter, or discharge contracts; waive forfeitures, extend time of payments due, waive payment, make refunds or rebates, or name additional rates on behalf of NHCR.
 - A. Pricing.** NHCR shall establish a price for every product and service to be sold by Provider on behalf of NHCR. Provider shall sell all of NHCR's products and services only at the price established by NHCR, unless otherwise approved by NHCR in writing. Provider shall not give or offer to give any discounts on the price of any goods or services without the prior written consent of NHCR. Provider shall not otherwise sell any goods or services at a price lower or higher than the price set by NHCR without NHCR's prior written consent.
 - B. Restriction on Subcontracting.** Provider shall not subcontract or otherwise permit third persons to perform any services hereunder without the prior written consent of NHCR.
- 2. Territory.** This Agreement does not assign a sales territory to Provider. However, NHCR reserves the right to impose territorial restrictions with sixty (60) days written notice to Provider.
- 3. Disclosure of Third Party Information.** Provider represents that his/her/its performance of all the terms of this Agreement does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data of a third party and Provider will not disclose to NHCR, or induce NHCR to use, any confidential or proprietary information belonging to third parties, unless such use or disclosure is authorized in writing by such owners.
- 4. Confidentiality.** Provider understands and agrees that Provider may acquire Confidential Information regarding the business of NHCR, and that NHCR would suffer great injury and loss if Provider disclosed or used such information in a manner not authorized by NHCR. Provider agrees that all information provided to Provider by NHCR shall be received in strict confidence, shall be used only for the purpose of this Agreement and no such information, other than publicly available marketing materials, shall be disclosed by Provider without the prior written consent of NHCR, except as may be necessary by reason of legal, accounting or regulatory requirements beyond the Provider's reasonable control. Provider agrees to take all reasonable steps to protect the Confidential Information. "Confidential Information" includes by way of example only and not as a limitation, customer information, customer plan information, provider information, strategies, methods of operation, pricing, marketing plans, financial information and documents, information available through NHCR's Provider-only website, specifications, drawings, product information, non-publicly accessible sales and marketing materials, manufacturing and quality procedures, software and other trade secret or proprietary information and/or items.
 - A. Non-Disclosure.** During this Agreement and for a period of eighteen (18) months after the termination of this Agreement, Provider shall not use or disclose (other than in performing this Agreement), any Confidential Information. Provider shall at all times safeguard Confidential Information against disclosure to, or unauthorized use by, third persons or entities. Upon termination of this Agreement or at any time upon NHCR's request, Provider shall return to NHCR all of the Confidential Information and all documents, materials and other property of NHCR. The restrictions herein shall not apply to information in the public domain through no fault of Provider, or to generally available information regarding principles of business operation.
 - B. Third Party Discovery.** If any governmental agency or third party seeks in any way to discover or otherwise gain access to, or production ("Discovery") of any Confidential Information or any other data or records of NHCR which is in the possession of Provider, Provider shall immediately notify NHCR in writing and shall at NHCR's request and expense oppose such Discovery and cooperate with NHCR in its efforts to preclude, quash, limit or impose protective orders or similar restriction on such Discovery.
 - C. Return of Property.** All information relating to the business activities of NHCR, including without limitation, Confidential Information, hardware/software tools and templates, documents, drawings, artwork, specifications, manuals, letters, reports, sketches, memoranda, records, files, computer programs, data, or the like furnished to Provider by NHCR or created by Provider under this Agreement, are and shall remain the exclusive property of NHCR. Provider agrees to delivery promptly all of NHCR's property and all copies thereof in Provider's possession or custody to NHCR at any time upon NHCR's request, but in any event, no later than the termination of this Agreement.
 - D. Ownership.** NHCR shall own any reports, evaluations, artwork, proposals, mockups, prototypes, documents, magnetically or optically encoded media, and

other tangible materials created by Provider as part of his/her/its services under this Agreement. In addition, NHCR shall own any and all works, discoveries, improvements and inventions conceived and/or reduced to practice by or for Provider in the performance of the services under this Agreement. Provider shall execute and deliver such instruments and take such other actions as may be required to carry out the assignments contemplated by this paragraph. The provisions of this subsection shall not apply to assign to NHCR any of Provider's rights in any invention for which no equipments, supplies, facilities, Confidential Information or trade secret information of NHCR was used, which was developed entirely on Provider's own time and which does not relate, at the time of conception or reduction to practice of the invention, to NHCR's business or its actual or demonstrably anticipated research or development.

- E. Non-Disclosure by NHCR.** NHCR recognizes that Provider has built up value in its client lists. As such, NHCR agrees that it, including all of its officers, directors, employees and agents, will not use or disclose any client information provided by Provider except in connection with providing the products or services as provided hereunder during the term of this Agreement and for a period of eighteen (18) months thereafter.
- 5. Ownership of Intellectual Property.** Nothing in this Agreement shall be construed to grant Provider any ownership interest or license or other right to any of NHCR's trademarks, service marks, trade names, copyrights, trade secrets, or other intellectual property rights (collectively "NHCR Rights"), which shall remain the sole and exclusive property of NHCR. Upon termination of this Agreement, or upon NHCR's request, Provider shall immediately return to NHCR all documents or materials subject to NHCR's Rights in Provider's possession or under Provider's control. In the event NHCR provides written authorization to Provider to destroy rather than return said documents or materials, Provider shall provide NHCR with an affidavit of destruction certifying that it has destroyed all such documents or materials, including any electronic copies thereof.
- 6. Interference with Relationships.** During the term of this Agreement and for a period of eighteen (18) months following the termination of this Agreement for any reason or no reason, Provider will not, directly or indirectly, induce or attempt to induce (other than by means of general advertising or general solicitations of applications for employment) any management-level employee, officer, director, sales director, sales representative or sales manager of NHCR to terminate a relationship or breach any agreement with NHCR.
- 7. Reasonableness of Restrictions.** Provider acknowledges and agrees that NHCR makes a significant investment in order to assist Provider in marketing NHCR's products and services and that it will take a substantial period of time and substantial sales in order for NHCR to recoup such investment. Provider further acknowledges and agrees that, by virtue of Provider's relationship with clients, Provider would be able to compete unfairly with NHCR for business from such clients. Provider, therefore, agrees that the restrictions and other obligations set forth herein are reasonable and necessary for the protection of the business and Confidential Information of NHCR and to prevent great damage or loss to NHCR. Provider acknowledges and agrees that the consideration received by Provider is sufficient to fully and adequately compensate Provider for agreeing to such restrictions. Provider agrees to the restrictions set forth herein to induce NHCR to assist Provider in developing business involving the products and services of NHCR. In addition, Provider agrees to ensure that all employees/agents of Provider who are actively involved in a marketing or sales capacity on Provider's behalf in marketing or selling NHCR's products or services hereunder are bound by the restrictions and obligations set forth in Sections 5 through 11 of this Agreement.
- 8. Remedies.** It is agreed that any breach of the provisions of Sections 5, 7 and/or 9 of this Agreement by Provider will subject NHCR to irreparable damage and that NHCR shall be entitled, in addition to any other legal remedies available to it, to an injunction restraining Provider from any violation of this Agreement. NHCR shall be entitled to pursue all available remedies and shall not be limited to any single remedy. If Provider is in breach of this Agreement, Provider shall not be entitled to receive any commission after default, even if the sales for such commissions have been completed.
- A. MEASURE OF DAMAGES.** THE MEASURE OF DAMAGES RECOVERABLE FROM NHCR BY PROVIDER SHALL NOT INCLUDE ANY AMOUNTS FOR INDIRECT, SPECIAL CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH DAMAGES ARE FORESEEABLE.
- B. LIMITATION OF DAMAGES.** IN THE EVENT NHCR IS LIABLE TO PROVIDER FOR DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT, THEN PROVIDER MAY RECOVER HIS/HER/ITS DIRECT DAMAGES UP TO AN AMOUNT NOT TO EXCEED IN THE AGGREGATE FOR ALL EVENTS THE COMPENSATION PAID TO PROVIDER FOR THE SALES IN DISPUTE.
- 9. Termination.** This Agreement may be terminated: (1) immediately by the non breaching party upon written notice to the other party if based on material breach of the terms of this Agreement; or (2) upon thirty (30) days written notice by either party. Provider's entitlement to commissions on renewals pursuant to Section 3, this Agreement shall be deemed to have been terminated by Provider as of the first date of Provider's breach of any of the restrictions set forth in Section 5 above.
- 10. Independent Contractor.** Provider is an independent contractor, and nothing herein shall be construed as creating an employer-employee, agency, partnership, joint venture, or franchise relationship between NHCR and Provider. Provider shall have no authority to act as agent for NHCR, or bind or obligate NHCR in any manner other than as specifically authorized by NHCR.
- A. No Employee Benefits.** Provider hereby acknowledges that (i) NHCR has no obligation to provide Provider (or any of Provider's employees, if applicable) with disability insurance, worker's compensation or other such insurance; (ii) Provider should provide, at Provider's expense, such insurance as Provider may deem desirable and prudent; and, (iii) Provider shall have no right to participate in NHCR's medical insurance or other employee benefit plans.
- B. Performance of Work.** Provider shall have sole discretion and control over Provider's services and the manner in which it is performed, provided that the serviced are performed in a professional, workmanlike manner. Provider will control his/her/its own schedule.
- C. Payment of Taxes.** Unless a corporation, Provider shall complete and deliver to NHCR an I.R.S. Form W-9 and warrants the accuracy of the information provided therein. Provider understands that as an independent contractor, Provider is responsible to make payments, if any, against estimated income taxes due to the Internal Revenue Service and all relevant State agencies and Provider agrees to defend, indemnify and hold harmless NHCR from any and all claims made by any entity on account of an alleged failure by Provider to satisfy any such tax withholding obligations.

- 11. Indemnification.** Provider and NHCR shall each indemnify, defend and hold harmless the other and their respective successors, assigns, officers, directors and employees from any and all actions, causes of action, claims, demands, costs, losses, liabilities, expenses and damages (including reasonable attorneys' fees and reasonable expert witnesses' fees) arising out of or relating to a breach by the other of their obligations under this Agreement. Prompt notice shall be given to the party in breach of their obligations under this Agreement of any claim to which this Section relates.
- 12. Survival.** The restrictions and obligations set forth in Sections 5 through 11, and any provisions relating to the enforcement of such sections, shall survive the termination of this Agreement.
- 13. Notices.** Any notice required to be given shall be in writing and shall be sent by overnight delivery service such as Federal Express (with receipt) or mailed by registered or certified mail (return receipt requested). If being sent to NHCR, the notice shall be addressed to NHCR at the address set forth in this Agreement or such other address as NHCR may specify by written notice to Provider. If being sent to Provider, the notice shall be addressed to Provider's address maintained in NHCR's records.
- 14. Assignment.** This Agreement and the rights and obligations of NHCR hereunder may be assigned by NHCR. Provider shall not assign any rights or obligations hereunder without NHCR's written consent. Severability. The provisions of the Agreement are severable. The invalidity or unenforceability of any provision shall not affect the validity of enforceability of the remaining provisions. Further, the parties agree that the court making such determination shall modify the invalid or unenforceable provision in such manner as deemed necessary by the court to make it valid and enforceable. 19. Representation. Each party represents and warrants that the person signing on its behalf below is duly authorized to execute this Agreement and to bind the party hereto.
- 15. Governing Law Venue.** This Agreement shall be governed by and construed according to the laws of the State of California, excluding that body of law pertaining to conflict of laws. Jurisdiction and venue for any action arising under or relating to this Agreement shall lie exclusively in a competent court located in San Diego County, State of California.
- 16. Attorneys' Fees.** If any action is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reimbursement for reasonable attorneys' fees, costs and expenses, including without limitation, expert witnesses' fees, in addition to any other relief to which such prevailing party may be entitled.
- 17. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same Agreement. Executed copies hereof exchanged via facsimile or other electronic means shall be as valid and enforceable as any original.
- 18. Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral with respect to the subject matter hereof. Unless otherwise stated herein, the terms of this Agreement shall not be altered, amended, or modified except in writing and signed by the parties. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereby be taken or held to be a waiver of the provision itself.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date.

"Provider"

Date

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date.

By

Its

Date