

**GLOBAL HEALTHCARE EXCHANGE
PROVIDER USER AGREEMENT
TERMS AND CONDITIONS - EUROPE**

1. **Background:** GHX operates an on-line, independent electronic trading system and other services as described in each SOW (the “**Services**”) intended to facilitate the transfer of information, goods and services in the medical and healthcare equipment, products, services and supplies markets (“**Products**”) between suppliers (“**Suppliers**”) and their customers (“**Providers**”). Suppliers and Providers who have signed agreements with GHX to use GHX services are referred to collectively as “**GHX Community Members**”. If a “**Distributor**” (as defined in the Definitions section) or agent is acting in the role of a supplier of Products, then it is a Supplier for purposes of this Agreement even if it does not take legal title to the Products. If a Distributor or agent is acting in the role of a purchaser of Products, then it is a Provider for purposes of this Agreement. A Supplier who is a GHX Community Member is referred to as a “**GHX Supplier**.” The Provider who is signatory to this Agreement is individually referred to as “**User**.”

2. **The Services**
 - a. **The Services:** GHX provides Providers and Suppliers with an automated system and services for: (i) developing, maintaining and accessing information with respect to the Products; (ii) conveying information with Suppliers and Providers, directly and through third parties, relative to the purchase and sale of Products and otherwise facilitating the formation and performance of contracts with Providers and Suppliers for the purchase of Products; (iii) providing information with respect to the fulfillment of orders for Products, summary information regarding the purchase and sale of Products, and other information that may be of interest to Providers and Suppliers and (iv) GHX to provide the Services described in any SOW, change order or purchase order between GHX and User. GHX grants to User, for the term of this Agreement, a non-exclusive right and license to (a) access and use the Services solely for User’s internal use in the Territory, for the purposes set forth in clauses (i) through (iv) above and (b) obtain (directly or indirectly through a third party licensed by GHX), display and use the Catalog Repository (as defined in the Definitions section) for the purposes set forth in clause (i) above and make internal copies as necessary to display and back up the Catalog Repository for User’s internal use in the ordinary course of User’s business.
 - b. **Authority, Affiliates and Amendments:** User represents and warrants that it is duly authorized to enter into this Agreement and the SOWs for itself and any Affiliates listed on the attached **Affiliate List**. User is responsible for compliance with this Agreement and the SOWs by its Affiliates. References to User mean User and each Affiliate subscribing to the applicable Service. GHX represents and warrants that it is duly authorized to enter into this Agreement and the SOWs. When on the other party’s premises, each party will comply with the policies regarding conduct of visitors communicated to it by the other party. Amendments will only be effective when agreed in writing and signed by both parties.
 - c. **Upgrades:** Updates and upgrades to the Services may be implemented by GHX in its reasonable discretion from time to time. Updates and upgrades are included in the Services, unless otherwise mutually agreed in an SOW, and will not be subject to acceptance or rejection by User.
 - d. **Hardware and Software:** User will be responsible for obtaining and maintaining all hardware and software necessary to access the Internet and the Services.
 - e. **Modifications:** GHX, in its sole discretion, may enhance, delete or modify the features, format, “look and feel”, functions or services of the Services, the procedures for use of the Services, or the information offered on the Services, except to the extent that these changes prevent Providers from complying with applicable laws and regulations (collectively, “**Requirements of Law**”).

3. **Contracts with Providers and Suppliers:** The terms and conditions of contracts with Providers and Suppliers with respect to the purchase and sale of Products, including, without limitation, price, transportation, terms of payment, risk of loss, delivery, acceptance, and warranties are established by the applicable Providers and Suppliers. GHX is not a party to contracts with Providers and Suppliers for the purchase and sale of Products, will not acquire title to Products or bear the risk of the Products' performance. GHX will not intentionally influence the terms of any contracts with Providers and Suppliers and will use commercially reasonable efforts to present competing Products in a neutral manner, except as otherwise requested by User. GHX will not intentionally influence the distribution channel of any Products.

4. **Security**

- a. **Identification:** GHX will provide User or enable User's designated administrator to provide log-on identifications and passwords (each, an "**Identification**") to use the Services. Each of User's designated individuals must have a unique Identification to access the Services. User will use commercially reasonable efforts: (i) to protect the security of each Identification; (ii) not to permit individuals other than employees or contractors approved by it to use each Identification to gain access to the Services; (iii) not to disclose any Identification to any person except on a need-to-know basis; and (iv) to ensure that approved employees or contractors access the Services only in connection with User's internal business purposes and only in accordance with this Agreement and the applicable SOW. User will provide GHX prompt notice of the loss or unauthorized disclosure of any Identification.
- b. **Services Security:** GHX and User will each use commercially reasonable efforts to maintain the security of the Services, including, without limitation, constructing and maintaining firewalls and other security devices to limit any unauthorized access to or use of the Services or information accessible from the Services. GHX and User each will take commercially reasonable precautions to avoid introducing into the other's computers any computer virus, trojan horse, worm or other malicious computer code. Except as permitted in the section titled The Services, User may not upload, download, modify, disassemble, decompile, or copy GHX Intellectual Property or otherwise take any action that may affect the use or functionality of the Services.
- c. **Privacy:** User will not breach or attempt to breach computer or software security of the Services, attempt to access the information of another GHX Community Member or otherwise invade the privacy of others in connection with its use of the Services.
- d. **Contract Data Processing Schedule:** To the extent any personal data is sent through the Services, User agrees that GHX merely acts as a data processor, upon instruction of User, which should be considered as the data controller for the purposes of complying with applicable data protection laws. The **Contract Data Processing Schedule** applies to the collection, processing and use of all personal data.

5. **Ownership, Confidentiality and Licenses**

- a. **Definitions:** The following terms will have the indicated meanings:
 - i. "**Aggregated Data**" means a compilation of multiple GHX Community Members' Transaction Data concerning which GHX has taken commercially reasonable precautions to ensure that no individual, particular transaction or entity can be identified.
 - ii. "**Catalog Repository**" means the repository of catalogs of Product Data of multiple Suppliers, and all modifications thereto, that GHX provides to User.
 - iii. "**Developments**" means any information, inventions, discoveries, ideas, innovations, communications, writings, reports and other works (whether or not copyrightable or patentable), including any computer programs, which are made, conceived, developed or prepared by GHX during the Term and which are based upon or arise from the Services performed by GHX for User.
 - iv. "**Distributor**" means any distributor of goods manufactured by others, whether acting as a Supplier or Provider.

- v. **“Intellectual Property”** means any and all copyrights, patents, patent registration rights, business processes, data rights, mask works, Marks and associated goodwill, trade secrets, know-how, moral rights, design and so-called “look and feel” and graphical user interface, data flows, product and connectivity specifications, schematics, documentation, source code and object code, data maps and definitions, and other proprietary rights arising or enforceable under any U.S. or Territory law, or international treaty regime applicable to the U.S. or Territory.
 - vi. **“Marks”** means all trademarks, trade names, service marks, service names, domain names and logos, worldwide.
 - vii. **“Product Data”** means information about Products that Suppliers provide to GHX including, without limitation, identifiers, descriptions, specifications, Marks, catalog prices, directions for use, text, pictures, URLs, and other information and all modifications thereto that Suppliers provide to GHX.
 - viii. **“Transaction Data”** means any information communicated with a Supplier and Provider through the Services that relates to purchase and sale availability, price, payment terms or status of Products, including summaries of this information. For the avoidance of doubt, Transaction Data includes purchase order data, purchase acknowledgement data, invoice data and other transaction sets data communicated through the Services.
- b. **Ownership by GHX:** As between GHX and User, GHX owns, and will own, all right, title and interest in and to all Intellectual Property, whether now existing or hereafter arising, embodied in or associated with: (i) GHX; (ii) the Services (including, without limitation, all URLs and web pages of the Services and GHX’s proprietary XML schema and document type definitions); (iii) GHX’s Marks; (iv) the Catalog Repository; (v) Aggregated Data, and (vi) Developments, but excluding in each of (i) through (vi) above, Transaction Data, Product Data, and User’s Marks. In addition, GHX retains the right to use its knowledge, experience, and know-how, including processes, ideas, concepts, and techniques developed in the course of performing any Services. The Intellectual Property described in this section titled Ownership by GHX constitutes **“GHX Intellectual Property”**.
- c. **Ownership by Third Parties:** The Services contains Product Data Marks and other Intellectual Property belonging to third parties. All third party Intellectual Property is and will remain the property of its respective owners. Except as set forth in the section titled The Services, access to the Services does not grant a right to User to copy or use any third party Intellectual Property. User may be granted a license or sublicense to software owned or licensed to GHX or User by third parties in connection with the Services (**“Third Party Software”**). User agrees to abide by applicable end user license agreements for Third Party Software provided in connection with the Services as a condition to its use of Third Party Software and the Services. User is not responsible for license fees for use of any Third Party Software owned or licensed to GHX in connection with the Services unless otherwise agreed in an SOW. If User requests GHX to perform Services regarding Third-Party Software owned or licensed to User, User represents and warrants that User and GHX have the right to do so, the Services performed by GHX will not infringe third party’s rights, and GHX has the right to use the Third-Party Software to perform the Services without payment of any fees.
- d. **Ownership by User**
- i. **Transaction Data:** As between User and GHX, User will own all Transaction Data jointly with the Supplier that is a party to the transaction generating the Transaction Data, each with the right to use Transaction Data as if it were the sole owner and without any duty to account to the other, except as may be provided in a separate agreement among the parties to the transaction. GHX may provide reports relating to Transaction Data in accordance with the instructions of either the Supplier or the Provider that is a party to a transaction giving rise to the Transaction Data. User and its Affiliates consent to GHX providing Transaction Data to its Group Purchasing Organization (**“GPO”**), shared service organization or other group purchasing consortium (the **“Group”**) for Products purchased through the Services as requested

by the User or the Group if User is a member of any Group. User will not issue any instructions regarding Transaction Data which would violate any agreement with its Affiliates, Group or any third party. GHX will be under no duty of inquiry regarding the ownership of Transaction Data or User's right to dispose of this data.

- ii. **Product Data:** As between User and GHX, the applicable Suppliers own all rights to Product Data.
 - iii. **Personal Data:** Transaction Data must not contain any personal data within the meaning of the **Contract Data Processor Schedule**. GHX EU recommends User anonymize or pseudonymize any health related personal data relating to patients, so that no data subject will be personally identifiable with regard to health related personal data.
- e. **Aggregated Data:** User grants GHX a worldwide, perpetual, royalty-free license to use Transaction Data for the preparation of Aggregated Data. GHX may grant non-exclusive sublicenses of its rights under this section.
- f. **Reserved Rights:** Except as provided in the section titled Use of Name, nothing in this Agreement grants User any right to use GHX's Marks in any Product Data, sales promotion, or press release without GHX's prior written approval. Except in furtherance of the purposes set forth in the section titled The Services, access to the Services does not constitute a right to copy or use any of GHX Intellectual Property or the Intellectual Property of any other Providers and Suppliers. GHX reserves all rights to GHX Intellectual Property.
- g. **Confidentiality**
- i. **Confidential Information:** Certain information furnished or disclosed by each party, including, without limitation, Product Data, Transaction Data and information about each party's business strategies and Products may contain confidential information of that party. Confidential information of GHX is referred to as "**GHX Confidential Information**". Except as provided in this section titled Confidential Information, GHX Confidential Information includes, without limitation, all GHX Intellectual Property, information about or of other GHX Community Members and information accessed through use of or concerning the Services. Confidential information of User is referred to as "**User Confidential Information**". User Confidential Information includes, without limitation, all Transaction Data. GHX Confidential Information and User Confidential Information are collectively referred to as "**Confidential Information**". Confidential Information of the disclosing party also includes information that a reasonable person would generally understand and expect to be confidential or proprietary, as well as information that the disclosing party identifies at the time of disclosure as confidential. Confidential Information does not include information that the receiving party demonstrates:
 - (1) was published or otherwise became available to the general public without breach of this Agreement;
 - (2) was furnished by a third party without a breach of that third party's obligations to the disclosing party;
 - (3) was in a party's possession prior to the disclosure by the other party; and
 - (4) was developed independently by an employee or agent who was not aware of Confidential Information furnished to it pursuant to this Agreement.
 - ii. **Obligations:** Each party agrees to protect the confidentiality of the other's Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event with less than due care and attention. Neither party will reproduce or use any Confidential Information of the other party, except pursuant to the limited license set forth in the sections titled Limitations and License and Use of Name and for the purpose of conducting authorized transactions using the Services. Neither party will disclose to any other person the other party's Confidential Information except as permitted under this Agreement without the prior written consent of the other party. Each party will give prompt notice of any unauthorized disclosure of the other party's Confidential Information of which it becomes aware.

- iii. **Legal Process:** If either party receives a subpoena, summons or other validly issued administrative or judicial process requesting the Confidential Information of the other party, the party receiving the subpoena or other process will provide prompt notice to the other party of receipt and the substance of the subpoena or process if reasonably practical and permitted by law. In addition, to the extent permitted by applicable law, the receiving party will cooperate with the other party in any attempt to contest or limit the required disclosure, at the other party's sole expense. The receiving party will thereafter be entitled to comply with the subpoena or process to the extent reasonably required by law. Notice will not be required prior to disclosure of Confidential Information to tax authorities to the extent reasonably required in connection with tax audits of GHX or User.
- iv. **Return of Confidential Information:** Upon termination or expiration of this Agreement, each party will use commercially reasonable efforts to promptly return to the other party and/or destroy all copies of the other party's Confidential Information in its possession, custody or control, except that GHX may retain Product Data solely for archive purposes, Transaction Data for archive purposes and for purposes of its joint owner. and personal data for the purposes permitted under the **Contract Data Processing Schedule**. If a party becomes aware of the unauthorized disclosure of the other party's Confidential Information, it will give prompt notice to the other party of the disclosure.
- v. **Limits on Use of Competitively Sensitive Information:** User will not use the Services or activities related to the Services for the purposes of exchanging among Suppliers or their affiliates competitively sensitive information such as prices or terms of sale.
- h. **Product Data, Transaction Data and Catalog Repository.**
 - i. **Product Data and Transaction Data:** User will provide Product Data and Transaction Data reasonably requested by GHX from time to time. Product Data and Transaction Data will be provided in the format specified by GHX unless otherwise agreed in an SOW. Selection of the Products for the Services is solely at User's discretion. User agrees that GHX is acting as a passive conduit for the display and publication of Product Data unless otherwise agreed in an SOW, and GHX reserves to Suppliers complete control over the form and substance of all Product Data, subject to GHX Suppliers' obligations under their Supplier User Agreements with GHX. GHX has no obligation, and undertakes no responsibility to review any Product Data or Transaction Data for any reason. Product Data will be deemed "under the control" of the applicable Supplier.
 - ii. **License and Limitations:** User may display and use the Catalog Repository and all Product Data contained in the Catalog Repository verbatim as received, and may not edit, modify or create derivative works of the Catalog Repository, in whole or in part, or any Product Data in any way. Notwithstanding any other provision of this Section titled Limitations on Display and Use of Catalog Repository, User may: (i) translate the Product Data into another format; (ii) display Product Data without displaying related elements of the Catalog Repository; and (iii) create, display and use subsets of the Product Data, including both subsets of Products and of the unmodified fields describing Products. User may display data regarding other products together with the Catalog Repository or permitted subsets of the Catalog Repository. Other than information regarding other products added by User, all modifications and subsets created by User pursuant to this Section will constitute part of the Catalog Repository, and User will have no greater rights in any modification or subset than its rights to use and display the Catalog Repository as provided in this Section. If requested by GHX, User will, at no cost to GHX, provide GHX or applicable Suppliers with reasonable access to User's systems to permit GHX and Suppliers to verify User's compliance with the Agreement. Under no circumstances will User display the Product Data of any Supplier to any other Supplier. Any derivative works made or created by User pursuant to this Agreement or otherwise will remain the property of the applicable Supplier or

GHX, as the case may be, and User will obtain no right, title, or interest in, or to, any derivative works. User may not use the Catalog Repository to populate, electronically or otherwise, directly or indirectly, any other electronic catalog management system or trading system except for the Services. Except as set forth in this Section, no other use, including copying, display, transmittal or distribution of the Catalog Repository, in any form, in whole or in part, by User is permitted without GHX's prior written consent.

- iii. **Withdrawal:** GHX may withdraw or cancel all or any part of the Catalog Repository if: (i) the Catalog Repository becomes the subject of a claim that it infringes the rights of any third person or that GHX otherwise does not have the right to permit others to use it; (ii) the Catalog Repository becomes illegal or contrary to any applicable law or regulation; or (iii) a GHX Supplier terminates GHX's right to supply its Product Data to User. Upon notice that GHX has withdrawn or cancelled all or any part of the Catalog Repository pursuant to this Section, User will (a) cease all use of the Catalog Repository and Product Data and (b) return or destroy all Product Data provided by GHX. Within 30 days of termination, Purchaser will certify to GHX in writing that it has ceased use of the Catalog Repository and all Product Data and has deleted all Product Data from User's systems, unless the Supplier consents in writing to the retention of Product Data.

6. Termination

- a. **Termination for Breach:** Either party may terminate this Agreement in the event of a breach by the other party, if the breach is not cured within 30 days after written notice by the non-breaching party.
- b. **Cross Default:** If either party breaches any SOW, Schedule or GHX service executed by the parties under this Agreement, the other party may terminate the breached SOW, Schedule or GHX service if the breach is not cured within 30 days after written notice by the non-breaching party. Breach of an SOW, Schedule or GHX service does not constitute breach of any other SOW, Schedule or GHX service. If User fails to pay fees due to GHX after 30 days' notice and right to cure, GHX may suspend performance of all GHX services until payment. User remains liable for fees for any GHX services suspended or terminated for breach by User. Termination or suspension is without prejudice to the non-breaching party's other rights or remedies.
- c. **Consequences of Termination**
 - i. **For GHX:** Upon termination of this Agreement, GHX will (1) comply with the section titled Return of Confidential Information; (2) de-activate Product Data in the Services; (3) de-activate User's Identifications and (4) upon termination for breach by GHX, refund an allocable portion of Fees paid for any period after termination.
 - ii. **For User:** Upon termination of this Agreement, User will: (1) cease all use of the Services; (2) pay all outstanding Fees; (3) comply with the section titled Return of Confidential Information; and (4) honor all outstanding contracts with other GHX Community Members.
 - iii. **Survival:** All rights and obligations with regard to information disclosed or matters occurring or arising before the effective date of termination will survive the termination or expiration of this Agreement, including without limitation, the rights and obligations set forth in the sections titled Ownership, Confidentiality and Licenses, Consequences of Termination, Disclaimer, Limitation of Liability, Indemnity, and General.

- 7. **Disclaimer:** GHX UNDERTAKES TO RENDER THE SERVICES WITH THE DILIGENCE OF A PRUDENT MERCHANT. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, GHX MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS WITH RESPECT TO THE PRODUCTS OR SERVICES, AND PROVIDES ALL SERVICES "AS IS". GHX DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, NONINFRINGEMENT, COURSE OF DEALING OR PERFORMANCE AND ALL OTHER IMPLIED WARRANTIES. GHX DOES NOT WARRANT IT WILL BE ABLE TO CORRECT ALL REPORTED DEFECTS IN THE SERVICES OR THAT USE

OF OR ACCESS TO THE SERVICES, PRODUCT DATA OR OTHER DATA WILL BE UNINTERRUPTED OR ERROR-FREE. GHX PROVIDES NO WARRANTIES WITH RESPECT TO THE FUNCTIONALITY OR FEATURES OF ANY GHX OR THIRD PARTY SERVICES, SOFTWARE AND USER INTERFACE.

8. **Limitation of Liability:** See attached **Local Law Addendum**.

9. **Indemnity**

- a. **Indemnity by GHX:** GHX will defend, indemnify and hold harmless User, its officers, directors, agents, assigns and successors-in-interest (collectively the “**User Indemnitees**”) from and against any claims, demands, suits, causes of action, legal or administrative proceedings and pay all damages, costs and expenses, including, without limitation, reasonable attorneys’ fees and expenses, paid, incurred or suffered by any of User Indemnitees directly or indirectly attributable to any third party claims (i) that any GHX Intellectual Property infringes, misappropriates or violates that third party’s rights under any trademark, copyright, trade secret or any patent issued in the Territory as of the Effective Date unless the claim is caused by misuse or modification by User (except as authorized by GHX) or by User’s use of the GHX Intellectual Property in combination with any Services or information not owned by or developed by GHX (ii) failure by GHX to comply with Requirements of Law or (iii) resulting from GHX’s gross negligence or willful misconduct. To the fullest extent permitted by law, the foregoing indemnification will apply regardless of the fault, active or passive negligence (other than gross negligence or willful misconduct) or breach of warranty or contract by any User Indemnitees.
- b. **Indemnity by User:** User will defend, indemnify and hold harmless GHX (and in the case of clause (v) the GHX Supplier of the relevant Product Data), their officers, directors, agents, assigns and successors-in-interest (collectively the “**GHX Indemnitees**”) from and against any claims, demands, suits, causes of action, legal or administrative proceedings and pay all damages, costs and expenses, including, without limitation, reasonable attorneys’ fees and expenses, paid, incurred or suffered by any of the GHX Indemnitees, directly or indirectly attributable to any third party claims related to: (i) the use of any Products purchased through the Services; (ii) intellectual property issues regarding any product data supplied or posted by User in connection with the Services; (iii) information posted, supplied or used in connection with GHX or the Services by User; (iv) GHX’s acts or omissions in accordance with User’s instructions with respect to the delivery of Transaction Data; (v) the failure by User to comply with Requirements of Law; (vi) any errors in any data supplied to GHX by User; or (vii) any modification of the Catalog Repository or Product Data by User; or (viii) User’s gross negligence or willful misconduct. To the fullest extent permitted by law, the foregoing indemnification will apply regardless of the fault, active or passive negligence (other than gross negligence or willful misconduct), or breach of warranty or contract by any of the GHX Indemnitees.
- c. **Indemnification Procedures:** Promptly after receipt by an indemnified party of a notice of any third party claim or the commencement of any action, the indemnified party must (i) notify the indemnifying party in writing of any claim; (ii) provide the indemnifying party with reasonable assistance to settle or defend the claim at the indemnifying party’s own expense; and (iii) grant to the indemnifying party the right to control the defense and/or settlement of the claim, at the indemnifying party’s own expense; provided, however, that (1) the failure to so notify, provide assistance or grant authority and control will only relieve the indemnifying party of its obligation to the indemnified party to the extent that the indemnifying party is prejudiced thereby; (2) the indemnifying party will not, without the indemnified party’s consent (not to be unreasonably withheld or delayed), agree to any settlement which: (x) makes any admission on behalf of the indemnified party; or (y) consents to an injunction against the indemnified party (except an injunction relating solely to the indemnified party’s continued use of any infringing intellectual property); and (3) the indemnified party will have the right, at its expense, to participate in any legal proceeding to contest and defend a claim and to be represented by legal counsel of its choosing, but

will have no right to settle a claim without the indemnifying party's written consent, not to be unreasonably withheld or delayed, and (4) in the event the indemnifying party elects not to assume the control granted pursuant to this Indemnification Procedures section, the indemnified party will have the right, notwithstanding anything in this Indemnification Procedures section to the contrary, to control the defense and/or settlement of the claim, at the indemnifying party's expense.

10. General

- a. **Independent Contractors; Non-Exclusive:** Each party to this Agreement is an independent contractor with respect to the other, and neither will have any authority to bind or commit the other. Nothing in this Agreement will create a joint venture, partnership, or agency relationship between the parties. This Agreement is not intended to be an exclusive arrangement and nothing contained in this Agreement will prevent User from purchasing or selling any Products through any other electronic or other medium or channel.
- b. **Entire Agreement; Waiver:** This Agreement constitutes the entire agreement between the parties and supersedes all previous and collateral agreements, arrangements, understandings, representations, warranties, promises, terms and conditions relating to the subject matter of this Agreement. Waiver by a party of any default by the other will not be deemed a waiver of any other default irrespective of whether the default is similar.
- c. **Severability:** The invalidity or unenforceability of any term or provision in this Agreement will in no way affect the validity or enforceability of any other term or provision.
- d. **Disputes**
 - i. If any dispute arises between the parties, either party may provide the other party with written notice of the dispute that reasonably, accurately and completely explains the dispute, and which requests that one senior executive from each party meet to discuss and attempt to settle the dispute within 15 business days after the other party gives notice of the dispute. The designated executives of each party will meet and attempt to settle the dispute in good faith within this time period.
 - ii. Upon the expiration of the time period provided in the section titled Disputes, all disputes will be settled by a court of law.
- e. **Governing Law; Jurisdiction:** See attached **Local Law Addendum**.
- f. **Force Majeure:** Except for obligations to make payment, neither party will be liable to the other for any delay in performance or inability to perform due to Force Majeure. In the event of GHX's inability to perform any of the Services for more than five days as a result of Force Majeure, no Fees will be owed by User for the impacted Services to the extent that User is affected by the inability to perform during this period. "**Force Majeure**" means any acts or omissions of any civil or military authority, acts of God, acts or omissions of the other party, terrorism, fires, strikes or other labor disturbances, major equipment failures, fluctuations or non-availability of electrical power, heat, light, air conditioning or telecommunications equipment that cannot reasonably be foreseen or prevented, or any other act, omission or occurrence beyond either party's reasonable control, irrespective of whether similar to the foregoing enumerated acts, omissions or occurrences. If either party's performance is delayed by Force Majeure, the time for performance will be reasonably extended.
- g. **Assignment and Sublicense:** User will not assign, delegate, sublicense, transfer or subcontract the whole or any part of this Agreement or its rights under this Agreement without GHX's prior written consent. The merger, consolidation, reorganization or change in control or the acquisition of substantially all of the business and assets of User will not be deemed an assignment and will not require the consent of GHX provided that User's successor-in-interest undertakes in writing to be bound by the terms of this Agreement. User may extend this Agreement to additional Affiliates by mutually agreed amendment. Additional fees may apply to add Affiliates. GHX may assign, sublicense, transfer, any of its rights or obligations under this Agreement. GHX may delegate or subcontract all or a portion of the Services, subject to the limitations in the Contract Data Processing Schedule and provided that GHX will be responsible for the performance of the work of such

subcontractor. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of, the parties and their respective permitted successors and assigns.

- h. Notices:** All notices under this Agreement must be in writing. Except for notices specifically permitted to be given by e-mail, notices must be given by registered or certified mail, postage prepaid and return receipt requested, express mail or private courier to the address for notice of the other party shown on the signature page of this Agreement. Any notice will be deemed given when received. Either party may change its notice address by notice under this section.
 - i. Third Party Rights:** Each Supplier that owns Product Data that is sublicensed to User by GHX under this Agreement will be a third-party beneficiary of all of GHX's rights with respect to the Product Data, provided, however, that Suppliers will not be entitled to enforce their respective rights under this Section unless: (i) User has materially breached this Agreement with respect to Product Data; (ii) the breach has continued for at least 60 days after the expiration of any applicable grace or cure period; and (iii) GHX has failed to enforce its rights with respect to the Product Data. Except as expressly provided in this Agreement, this Agreement will not be construed to confer any right or benefit on any party other than the parties and their permitted successors and assigns.
 - j. Interpretation:** Section headings are included for only convenient reference and may not describe the sections to which they relate. "Include," "includes" and "including" are deemed to be followed by "without limitation." "Or" is not exclusive. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting it or causing it to be drafted.
 - k. Order of Precedence within the Agreement:** The Agreement consists of these components: (i) the signature page, (ii) any attached Variation Schedule, (iii) the Local Law Addendum, (iv) the attached Affiliate List, (v) the Contract Data Processing Schedule, (vi) these Provider User Agreement Terms and Conditions - Europe, (vii) any other attached exhibits, addendums or schedules to this Agreement, and (viii) the SOWs. All of these components are incorporated in this Agreement. The order of precedence for any conflict within these components of the Agreement are: (i) the signature page, (ii) any attached Variation Schedule, (iii) the Local Law Addendum, (iv) the attached Affiliate List, (v) the Contract Data Processing Schedule, (vi) these Provider User Agreement Terms and Conditions - Europe (vii) any other attached exhibits, addendums or schedules to this Agreement, and (viii) the SOWs.
- 11. Fees and Payments**
- a. Fees:** As consideration for User's access and use of the Services, User will pay GHX the fees (the "**Fees**") listed in the SOWs.
 - b. Invoicing and Payment:** GHX will invoice User and User will pay the Fees on the terms set forth in the SOWs. GHX reserves the right to suspend User's access to or use of the Product Data or Services or cancel this Agreement on 30 days' notice if User fails to pay any amount when due.
 - c. Interest and Late Fees:** See attached **Local Law Addendum**.
 - d. Taxes:** Fees are net prices. Any applicable VAT will be payable by User at the statutory rate as amended. Reverse charge procedure may apply.
- 12. Use of Name:** User grants to GHX the right to list its name or Marks for the purpose of identifying it as a user of the Services. GHX grants to User the right to use its name or Marks for the purpose of identifying it as a User of the Services.
- 13. User's Trading Partners:** User's trading partners may be GHX Community Members or trading partners who are not GHX Community Members ("**Non-GHX Trading Partners**"). All Services may be used with GHX Community Members. Services may be used with Non-GHX Trading Partners only if the SOW for the applicable Services specifically refers to Non-User Trading Partners or GHX consents, upon User's request, for User to use the Services with Non-GHX Trading Partners. User may request to use the Services with Non-GHX Trading Partners by any written means, including e-mail or any other approved method for User to provide

instructions to GHX for the Services. GHX is only responsible for providing Services to User as described in this Agreement and the applicable SOW. GHX is acting at User's instructions regarding User's trading partners; GHX has no obligation or liability to any of User's trading partners. It is up to User to determine if any agreements between User and its trading partners are necessary or desirable. As between User and GHX, GHX is entitled to treat Non-GHX Trading Partners as GHX Community Members or Providers for purposes of any references to GHX Community Members or Providers in this Agreement.