

**GLOBAL HEALTHCARE EXCHANGE  
SUPPLIER USER AGREEMENT  
TERMS AND CONDITIONS**

- 1. Background:** GHX operates an on-line, independent electronic trading system and other services described in each SOW (the “**Exchange**”) intended to facilitate the real-time transfer of money, information, goods and services in the medical and healthcare equipment, products, services and supplies markets between suppliers (“**Suppliers**”) of such information, goods and services (“**Products**”) and their customers (“**Purchasers**”). GHX and User now desire to permit User: (i) if a Supplier, to supply Product information for display on the Exchange and enter into contracts with Purchasers to sell Products using the Exchange or (ii) if a Purchaser, to enter into contracts with Suppliers to purchase Products using the Exchange. Suppliers and Purchasers who have signed agreements to use the Exchange are hereinafter referred to collectively as “**Exchange Users.**” If a “Distributor” (as defined below) or agent is acting in the role of a supplier of Product on the Exchange, then it is a Supplier for purposes of this Agreement even if it does not take legal title to the Product. If a Distributor or agent is acting in the role of a purchaser of Product on the Exchange, then it is a Purchaser for purposes of this Agreement.
- 2. The Exchange**

  - a. The Exchange:** The Exchange provides Exchange Users with an automated system and services for: (i) developing, maintaining and accessing information with respect to the features, characteristics and availability of Products from Suppliers for reference purposes and to create an accurate item master file; (ii) conveying information between Suppliers and Purchasers, directly and through third parties, relative to the purchase and sale of Products and otherwise facilitating the formation and performance of contracts between Exchange Users for the purchase of Products; and (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 Exchange Users. GHX grants to User, for the term of this Agreement, a non-exclusive right and license to access and use the Exchange solely for User’s internal use in the Territory, for the purposes set forth in clauses (i) through (iii) above.
  - b. Authority and Amendments:** User represents and warrants that it is duly authorized to enter into this Agreement for itself and any Affiliates listed on the attached “**Affiliate List.**” Amendments will only be effective when agreed upon in writing.
  - c. Upgrades:** Updates and upgrades of the Exchange services or software may be implemented by GHX from time to time. Such updates and upgrades are included in the services, will not result in additional charges to User, 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 Exchange.
  - e. Services:** GHX, in its sole discretion, may enhance, delete or modify the features, format, “look and feel,” functions or services of the Exchange, the procedures for use of the Exchange, or the information offered on the Exchange, except to the extent that such changes prevent Suppliers from complying with applicable laws and regulations (collectively, “**Requirements of Law**”), including Product labeling and other marking requirements and other marketing and distribution regulations.
- 3. Contract Information:** The terms and conditions of contracts between Exchange Users 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 between Exchange Users. GHX is not a party to contracts between Exchange Users and will not acquire title to Products or otherwise bear the risk of product performance. GHX will not intentionally influence the terms of any contracts between Exchange Users and will use commercially reasonable efforts to present competing products in a neutral manner, except as otherwise requested by a Purchaser. GHX will not intentionally influence the distribution channel of any Product.
- 4. Security**

  - a. Identification:** GHX will provide User with log-on identifications and passwords (each, an “**Identification**”) for its representatives approved to use the Exchange. Each of User’s authorized representatives must have a unique Identification to access the Exchange. User shall 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 Exchange; (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 Exchange only in connection with User's business purposes. User will provide GHX prompt notice of the loss or unauthorized disclosure of any Identification.

- b. Exchange Security:** GHX will use commercially reasonable efforts to maintain the security of the Exchange, including, without limitation, constructing and maintaining firewalls and other security devices to limit any unauthorized access to information accessible from the Exchange. 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 in furtherance of the purposes set forth in the section titled The Exchange, 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 Exchange.
- c. Privacy:** User will not breach or attempt to breach Exchange computer or software security, attempt to access the information of another User or otherwise invade the privacy of others in connection with its use of the Exchange.

## 5. Ownership, Confidentiality and Licenses

- a. Definitions.** The following terms will have the indicated meanings:
  - "**Aggregated Data**" means a compilation of multiple Exchange Users' Transaction Data concerning which GHX has taken commercially reasonable precautions to ensure that no individual, particular transaction or entity can be identified.
  - "**Catalog**" means the Product Data of multiple GHX Suppliers organized according to GHX's classification scheme.
  - "**Distributor**" means any distributor of goods manufactured by others, whether acting as a Supplier or Purchaser.
  - "**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. law, foreign law, or international treaty regime.
  - "**Marks**" means all trademarks, trade names, service marks, service names and logos, worldwide.
  - "**Product Data**" means Product information that a Supplier provides to GHX for display on the Exchange, to communicate to Purchasers including, without limitation, Product descriptions, Product specifications, Marks, catalog prices, catalogs, directions for use, text, pictures, sound, video and other data.
  - "**Transaction Data**" means any information communicated by GHX to an Exchange User, by an Exchange User to GHX, or between a Supplier and Purchaser through the Exchange that relates to product purchase, sale, availability, price, terms of payment or order status, including summaries of such information.
- 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 Exchange (including, without limitation, all web pages of the Exchange and GHX's proprietary XML schema and document type definitions); (iii) GHX's Marks; (iv) the Catalog; and (v) Aggregated Data, but excluding in each of (i) through (v) 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 the "**GHX Intellectual Property**."
- c. Ownership By Third Parties:** The Exchange contains third-party Marks and other Intellectual Property belonging to third parties. All such Intellectual Property is and will remain the property of its respective owners. Except as set forth in the section titled The Exchange, access to the Exchange does not grant a right to User to copy or use any such Intellectual Property.
- d. Ownership By User**

- i. **Transaction Data:** As between User and GHX, User will own all Transaction Data jointly with the Purchaser that is a party to the transaction generating the Transaction Data, each with the right to use such 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 such transaction. GHX may provide reports relating to Transaction Data in accordance with the instructions of either the Supplier or the Purchaser that is a party to a transaction giving rise to such Transaction Data. User will not issue any instructions regarding Transaction Data which would violate any agreement with a third party. GHX will be under no duty of inquiry regarding the ownership of such data or User's right to dispose of such data.
  - ii. **Product Data:** As between User and GHX, User will own all rights to data with respect to any information it supplies to GHX for display, including, without limitation, Product Data, and URLs or other identifiers used on User's web page accessed through or linked to the Exchange.
- e. Reserved Rights:** Except as provided in the section titled Web Page Link License, 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 Exchange, access to the Exchange does not constitute a right to copy or use any of GHX Intellectual Property or the Intellectual Property of any other User of the Exchange.
- f. Confidentiality**
- i. **Confidential Information:** Certain information furnished or disclosed by each party to this Agreement, including, without limitation, Product Data, Transaction Data and non-public information about each party's business strategies and future product or Exchange offerings may contain or reflect the confidential information of such party. Confidential information of GHX is referred to hereinafter as "**GHX Confidential Information.**" Except as provided below in this section titled Confidential Information, GHX Confidential Information includes, without limitation, all GHX Intellectual Property, Information about or of other Exchange Users and information accessed through use of or concerning the Exchange. Confidential information of User is referred to hereinafter as "**User Confidential Information.**" User Confidential Information includes, without limitation, all Transaction Data. GHX Confidential Information and User Confidential Information are collectively referred to hereinafter 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:
    - (a) was published or otherwise became available to the general public without breach of this Agreement;
    - (b) was furnished by a third party without a breach of such third party's obligations to the disclosing party;
    - (c) was in a party's possession prior to the disclosure by the other party; and
    - (d) was developed independently by an employee or agent who was not aware of Confidential Information furnished to it pursuant to this Agreement.Notwithstanding anything to the contrary set forth herein, any party to this Agreement (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the relationship contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. This authorization of tax disclosure is retroactively effective to the commencement of the first discussions between the parties regarding the relationship contemplated herein. The preceding two sentences will be interpreted to comply with the requirements of Treasury Regulation 1.6011-4(b)(3)(iii).
  - 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 License to Data and Web Page Link License and for the purpose of conducting authorized transactions on the Exchange. Neither party will disclose to any other person the other party's Confidential Information without the prior written consent of the other party. Each party will give prompt notice to the other 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 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 such receipt and the substance of such 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 such required disclosure, at such other party's sole expense. The receiving party will thereafter be entitled to comply with such 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 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 and Transaction Data for archive purposes and for purposes of its joint owner. 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 such disclosure.
- v. **Limits on Exchange of or Access to Information:** User will not use the Exchange or activities related to the Exchange for the purposes of exchanging among Suppliers or their affiliated entities competitively sensitive information such as prices or terms of sale. GHX will not engage in activities that facilitate the exchange of competitively sensitive information among Suppliers and their affiliated entities except as necessary for a Distributor to use the Exchange as contemplated by the section titled The Exchange.

## 6. Term and Termination

- a. **Term:** Unless sooner terminated as provided below, this Agreement will commence on the Effective Date and continue in effect until the Initial Termination Date. Thereafter, this Agreement will automatically renew for additional one-year terms, unless either party notifies the other in writing of its intent to terminate this Agreement, at least sixty (60) days prior to the end of the then current term.
- b. **Termination for Breach:** Either party may terminate this Agreement or any statement of work executed by the parties under this Agreement in the event of a breach by the other party, if such breach is not cured within thirty (30) days after written notice by the non-breaching party.
- c. **Consequences of Termination:**
  - i. **For GHX:** Upon termination of this Agreement, GHX will (i) comply with the section titled Return of Confidential Information; (ii) terminate any hyperlinks to User's Product Data and website; (iii) de-activate User's Identifications; (iv) post a notice on the Exchange stating that User's Products are no longer directly available through the Exchange; and (v) refund an allocable portion of Fees paid for any period after the termination.
  - ii. **For the User:** Upon termination of this Agreement, User will: (i) cease all use of the Exchange (ii) pay all outstanding Fees; (iii) comply with the section titled Return of Confidential Information; and (iv) honor all outstanding contracts with other Exchange Users.
  - 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: OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, GHX MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS TO ANY PERSON OR ENTITY WITH

RESPECT TO THE SERVICES, THE EXCHANGE OR ANY PRODUCTS SOLD THROUGH THE EXCHANGE. OTHER THAN AS EXPRESSLY SET FORTH ABOVE, GHX PROVIDES ALL SERVICES PERFORMED HEREUNDER "AS IS." GHX HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF DATA, NONINFRINGEMENT AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE WITH REGARD TO THE EXCHANGE, THE EXCHANGE SOFTWARE AND ITS USER INTERFACE. GHX DOES NOT WARRANT THAT IT WILL BE ABLE TO CORRECT ALL REPORTED DEFECTS IN THE EXCHANGE OR THAT USE OF THE EXCHANGE, ACCESS TO PRODUCT DATA OR LINKS TO OTHER SUPPLIER MATERIALS WILL BE UNINTERRUPTED OR ERROR-FREE. GHX PROVIDES NO WARRANTIES WITH RESPECT TO THE FUNCTIONALITY OF THE SOFTWARE AND ITS USER INTERFACE. GHX MAKES NO WARRANTY REGARDING FEATURES, SOFTWARE OR SERVICES PROVIDED BY THIRD PARTIES.

- 8. Limitation of Liability:** EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THE SECTIONS TITLED INDEMNITY BY EXCHANGE AND INDEMNITY BY USER, EACH PARTY'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY KIND (INCLUDING DEATH OR BODILY INJURY), WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY SERVICES COVERED BY OR FURNISHED UNDER THIS AGREEMENT, WILL IN NO CASE EXCEED THE GREATER OF (1) THE AMOUNT OF FEES ACTUALLY PAID BY USER TO GHX HEREUNDER OR (2) \$200,000. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THE SECTIONS TITLED INDEMNITY BY EXCHANGE AND INDEMNITY BY USER, NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF BUSINESS, USE OR DATA, INTERRUPTION OF BUSINESS, LOST PROFITS OR GOODWILL, OR OTHER INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OR OF ANY LIMITED REMEDY. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST USER OR GHX. NEITHER PARTY WILL APPLY FOR, SEEK OR OTHERWISE REQUEST FROM ANY COURT, RELIEF OR REMEDY IN THE FORM OF EXEMPLARY OR PUNITIVE DAMAGES.

**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 the User Indemnitees directly or indirectly attributable to any third party claims (i) that any GHX Intellectual Property infringes, misappropriates or violates such third party's rights under any trademark, copyright, trade secret or any patent issued as of the Effective Date unless such claim is caused by misuse or modification by User (except as authorized by GHX or by User's use of such GHX Intellectual Property in combination with any product 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 of the User Indemnitees.
- b. Indemnity by User:** User will defend, indemnify and hold harmless GHX, its officers, directors, agents, assigns and successors-in-interest (collectively the "**GHX Indemnitees**") from and against all 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 purchase, sale or performance of any Product purchased by or from User through the Exchange; (ii) intellectual property issues

regarding Product Data supplied by User, or posted by User on its web-site linked to the Exchange or Products offered or sold by User through the Exchange; (iii) information posted, supplied or used in connection with GHX or the Exchange 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) 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, such indemnified party must (a) notify the indemnifying party in writing of any such claim; (b) provide the indemnifying party with reasonable assistance to settle or defend such claim at the indemnifying party's own expense; and (c) grant to the indemnifying party the right to control the defense and/or settlement of such claim, at the indemnifying party's own expense; provided, however, that (i) 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; (ii) the indemnifying party will not, without the indemnified party's consent (such 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 (iii) 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, such consent not to be unreasonably withheld or delayed, and (iv) in the event the indemnifying party elects not to assume the control granted pursuant to clause (c) above, the indemnified party will have the right, notwithstanding anything in the preceding clause (iii) to the contrary, to control the defense and/or settlement of such 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 herein will prevent User from purchasing or selling any Product through any other electronic or other medium or channel.
- b. Integration and Waiver:** This Agreement and any exhibits attached hereto constitute the entire agreement between the parties relating to this subject matter. All previous and collateral agreements, representations, warranties, promises, and conditions relating to the subject matter of this Agreement are superseded by this Agreement. Any understanding, promise, representation, warranty, or condition not incorporated into this Agreement will not be binding on either party. Waiver by a party of any default by the other will not be deemed a waiver of any other default irrespective of whether such default is similar.
- c. Severability:** The invalidity or unenforceability of any term or provision herein 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 such 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 fifteen (15) business days after the other party receives such notice. The designated executives of each party will meet and attempt to settle the dispute in good faith within such fifteen (15) day time period. If the dispute is not settled to the mutual satisfaction of both parties with such fifteen (15) day time period, then they will have recourse to settle the dispute as set forth below in this section.

- ii. Upon the expiration of the fifteen-day period contemplated above in this section, all disputes will be subject to arbitration pursuant to the rules of, and before three (3) arbitrators selected by, the Center for Public Resources Institute for Dispute Resolution. Arbitrations will take place in Denver, Colorado. The cost of any arbitration is to be shared equally by the disputing parties. Arbitration will be the only method, apart from good faith negotiations and requests for injunctive or other preliminary relief in a court of law, by which the parties resolve disputes.
- e. **Governing Law; Jurisdiction:** This Agreement will be governed by and construed in accordance with the laws of the State of Colorado as though all acts or omissions related hereto occurred in such state. All court actions arising out of or relating to this Agreement will be brought exclusively in a state or federal court located in Denver County, Colorado. User hereby consents to the jurisdiction of such courts.
- 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 for more than five days as a result of Force Majeure, no Fees will be owed by User to the extent that User is affected by the inability to perform during such period. "**Force Majeure**" means any acts or omissions of any civil or military authority, acts of God, acts or omissions of the other party hereto, 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 hereunder without GHX's prior written consent, provided however, that 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 notice to GHX. GHX may assign, delegate, sublicense, transfer, or subcontract any of its rights or obligations hereunder to any of its wholly-owned subsidiaries. Subject to the foregoing, this Agreement will be binding upon, and will inure to the benefit of, the parties hereto and their respective permitted successors and assigns.
- h. **Notices:** All notices, requests and other communications required or permitted to be given under this Agreement, except those specifically permitted to be given by e-mail, must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by express mail, private courier or facsimile to the party to whom such notice is required or permitted to be given. Any such notice will be considered to have been given when received, or if mailed, five business days after it was mailed, as evidenced by the postmark. The mailing address or electronic mail address for notice to either party will be the address shown on the signature page of this Agreement. Either party may change its mailing address or electronic mail address by notice as provided by this section titled Notices.
- i. **Third-Party Rights:** 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 hereto and their permitted successors and assigns.

## 11. Special Provisions for Suppliers

"Supplier" as used in this section titled Special Provisions for Suppliers will mean User solely to the extent acting as a Supplier.

### a. Fees and Payments

- i. **Fees:** As consideration for Supplier's access to the Exchange and use of the services provided by GHX, Supplier will pay to GHX a one-time Integration Fee and an annual User Fee (the "**Fee**") in accordance with the schedule set forth in the Supplier Integration Statement of Work or any other SOW. In addition, Supplier will pay all taxes levied in connection with this Agreement other than taxes based on GHX's net income.

- ii. **Invoicing and Payment:** GHX will invoice the Supplier for Fees and Supplier will make payment on the terms set forth in any related statement of work. On all sums past due, Supplier agrees to pay interest at the lesser of one and one half percent (1.5%) per month or the then-highest interest rate allowable under applicable law, plus collection costs (including, without limitation, reasonable attorneys' fees), until paid in full. GHX reserves the right to suspend further display of Supplier's Product Data, suspend Supplier's access to the Exchange or cancel this Agreement on thirty (30) days written notice to Supplier if Supplier fails to pay any amount when due.



**b. Product Data and Transaction Data**

- i. **Product Data:** Supplier will provide Product Data and Transaction Data in the format specified by GHX. Alternatively, Supplier may purchase formatting services from GHX. Supplier will provide Product Data and Transaction Data reasonably requested by GHX, including, without limitation, information customarily included in a product catalog for Products to be sold through the Exchange, pricing, Product availability, and delivery status. Selection of the Products to be sold by Supplier through GHX is solely at Supplier's discretion. Supplier acknowledges that GHX is providing Supplier with the ability to display and publish the Product Data and Transaction Data and that GHX is acting as a passive conduit for such display and publishing. GHX has no obligation, and undertakes no responsibility, to review any Product Data or Transaction Data for any reason. Supplier will be solely responsible for the content of all of its Product Data. To the fullest extent permitted by law, the Product Data will be deemed to be exclusively "under the control" of Supplier and not "under the control" of GHX.
- ii. **Other Product Data Requirements:** Supplier will be solely responsible for: (i) creating, maintaining and updating all Product Data; (ii) the content, ongoing completeness and accuracy of such Product Data or of information contained on Supplier's Exchange-accessed web-site; (iii) complying with all Requirements of Law; and (iv) maintaining, updating and ensuring the security of Supplier's Exchange-accessed website. If Supplier fails to provide Product Data which meets these requirements or fails to keep Product Data current, GHX may terminate this Agreement pursuant to the section titled Termination for Breach, and Supplier will lose all access to the Exchange.
- iii. **Exchange Standards:** Supplier will use its commercially reasonable efforts to: (i) update Product Data whenever it becomes inaccurate, including, without limitation, providing updated pricing and catalog information where applicable; (ii) respond promptly to Purchaser inquiries; (iii) not offer or sell any fraudulent, unauthorized, contraband, or stolen merchandise; (iv) not infringe any valid and enforceable third party rights, including, without limitation, copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (v) not include any obscene, indecent or pornographic content; (vi) not include any inaccurate, defamatory, libelous, illegal, threatening, harassing content or content against public policy or content which is otherwise objectionable; (vii) not include any content that is prohibited by this Agreement; (viii) meet all standards set forth by GHX pursuant to this Agreement; and (ix) not sell or offer for sale any adulterated or misbranded Products or other Products that do not meet the Requirements of Law. GHX may refuse to publish or display Product Data on the Exchange if Supplier fails to comply with the requirements of this section titled Exchange Standards or may terminate this Agreement pursuant to the section titled Termination for Breach.
- iv. **License To Data:** Supplier hereby grants to GHX, for the term of this Agreement, a non-exclusive, royalty-free, license to its intellectual property rights in all Product Data, Transaction Data, and other Intellectual Property that it supplies to GHX, including, without limitation, User's Marks, logos, insignias, URLs and any other distinct branding items for use on the Exchange, to use, reproduce, publicly display, publicly perform and digitally perform on the Exchange solely in the Territory for the purposes described in the section titled The Exchange and for identifying Supplier as having Products available on the Exchange, provided, that: (i) GHX will at all times use the appropriate trademark or service mark notice as Supplier may from time to time specify; (ii) GHX will not modify Supplier's Product Data except as permitted in writing by Supplier; and (iii) Product Data may only be displayed to Purchasers (including Distributors acting in their capacity as Purchasers) and not other Suppliers.
- v. **Web Page Link License:** GHX grants to Supplier for the Term of this Agreement a non-exclusive, worldwide, royalty-free license to use GHX's Marks, URLs or other Exchange identifiers (i) on Supplier's web page and to link such web page to GHX's home page; (ii) in Supplier's Product and marketing materials to identify the Exchange as a purchasing mechanism for Supplier's Products; and (iii) to identify Supplier as a User of the Exchange.

## 12. Consents for Suppliers

- a. **Aggregated Data:** User grants GHX a worldwide, perpetual, royalty-free license to use Transaction Data for the preparation of Aggregated Data for User and other Exchange Users. GHX may also grant a non-exclusive sublicense of its rights under this section.
- b. **Non-User Trading Partners and Unsigned Purchasers**
  - i. **Non-User Trading Partners:** The following provision is applicable only if User indicates on the signature page that it consents to it. This provision enables a Supplier to transact business through GHX with persons who have not signed User Agreements with GHX ("**Non-User Trading Partners**"). By consenting to trading with Non-User Trading Partners, User does not grant any new data rights to the Non-User Trading Partners or waive any rights that User may have under any separate agreement with the Non-User Trading Partner. Non-User Trading Partners do not receive access to reporting tools or other services offered by GHX.
  - ii. **Unsigned Purchasers:** From time to time, Suppliers desire that GHX connect them to Purchasers of their products who have not signed User Agreements with GHX. GHX will connect User to Purchasers who have not signed a User Agreement with GHX ("**Unsigned Purchasers**") upon User's request. In such cases it is up to User to determine if any agreement between User and each Unsigned Purchaser is necessary or desirable. In such cases, GHX is only facilitating communications, usually via EDI, between User and the Unsigned Purchasers. User may notify GHX in writing that User wishes to be connected to an Unsigned Purchaser by any written means, including e-mail. If User consents to transacting business with Unsigned Purchasers through GHX, User does so with these understandings, and any Unsigned Purchaser with whom you consent to transact business will be treated as a GHX User and Purchaser for purposes of this Agreement.