

# SECURITIES AND EXCHANGE COMMISSION

## FORM SC 13D/A

Schedule filed to report acquisition of beneficial ownership of 5% or more of a class of equity securities [amend]

Filing Date: **2005-10-13**  
SEC Accession No. **0000914760-05-000226**

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### SUBJECT COMPANY

#### NEOFORMA INC

CIK: **1096219** | IRS No.: **770424252** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **SC 13D/A** | Act: **34** | File No.: **005-58839** | Film No.: **051135798**  
SIC: **7389** Business services, nec

Mailing Address  
3061 ZANKER ROAD  
SAN JOSE CA 95134

Business Address  
3061 ZANKER ROAD  
SAN JOSE CA 95134  
4086545700

### FILED BY

#### UNIVERSITY HEALTHSYSTEM CONSORTIUM

CIK: **1120797** | IRS No.: **363740243** | State of Incorporation: **IL** | Fiscal Year End: **1231**  
Type: **SC 13D/A**

Business Address  
2001 SPRING ROAD  
SUITE 700  
OAK BROOK IL 60523  
6309541700

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

SCHEDULE 13D

(AMENDMENT NO. 7)

UNDER THE SECURITIES EXCHANGE ACT OF 1934

NEOFORMA, INC.  
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(Name of Issuer)

COMMON STOCK  
-----

(Title of Class of Securities)

640475 10 7  
-----

(CUSIP Number)

KARIN LINDGREN, GENERAL COUNSEL  
UNIVERSITY HEALTHSYSTEM CONSORTIUM  
2001 SPRING ROAD, SUITE 700  
OAK BROOK, IL 60523  
(630) 954-1700

(Name, Address and Telephone Number of Person Authorized  
to Receive Notices and Communications)

October 10, 2005

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Sections 240.13d-1(e), 240.13d-1(f), or 240.13d-1(g), check the following box.

The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the act (however, see the Notes).

1 NAME OF REPORTING PERSONS,

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (entities only)  
UNIVERSITY HEALTHSYSTEM CONSORTIUM; 36-3740243

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(See Instructions)

(a)   
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

N/A

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2(d) or 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION  
ILLINOIS

		7	SOLE VOTING POWER
NUMBER OF SHARES			2,130,302
BENEFICIALLY			
OWNED BY		8	SHARED VOTING POWER
EACH			0
REPORTING			
PERSON		9	SOLE DISPOSITIVE POWER
WITH			2,130,302
		10	SHARED DISPOSITIVE POWER
			0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
2,130,302

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11)  
EXCLUDES CERTAIN SHARES (See Instructions)

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13 10.29% (Based on 20,713,395 shares of Neoforma, Inc. common stock estimated to be outstanding)

TYPE OF REPORTING PERSON (See Instructions)

14 CO

This Amendment No. 7 (this "Amendment") to the Statement on Schedule 13D (the "Schedule 13D") filed by University HealthSystem Consortium, an Illinois not for profit corporation ("UHC"), as initially filed on Schedule 13D on February 5, 2001, and as amended by

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Amendment No. 1 on September 11, 2003, as further amended by Amendment No. 2 on January 18, 2005, as further amended by Amendment No. 3 on April 11, 2005, as further amended by Amendment No. 4 on April 13, 2005, as further amended by Amendment No. 5 on July 7, 2005, and as further amended by Amendment No. 6 on October 7, 2005, relates to shares of common stock, par value \$.001 per share (“Common Stock”), of Neoforma, Inc., a Delaware corporation (the “Issuer”), whose principal executive offices are located at 3061 Zanker Road, San Jose, California 95134. All capitalized terms used but not defined herein have the meanings ascribed to them in the Schedule 13D.

As a result of the Exchange Agreement (as defined in Item 4) and the Voting Agreement (as defined in Item 4), UHC may be deemed to be a member of a group with GHX (as defined in Item 4) within the meaning of Rule 13d-5 promulgated under the Exchange Act. However, UHC disclaims membership in, and does not affirm the existence of, a group with GHX as a result of such agreements.

#### ITEM 4. PURPOSE OF TRANSACTION

Item 4 of the Schedule 13D is hereby amended and supplemented to add the following:

On October 10, 2005, Global Healthcare Exchange, LLC, a Delaware limited liability company (“GHX”), Leapfrog Merger Corporation, a Delaware corporation that is a wholly-owned subsidiary of GHX (“Merger Sub”), and Neoforma entered into an Agreement and Plan of Merger (the “Merger Agreement”). Pursuant to the Merger Agreement, Merger Sub will be merged with and into Neoforma (the “Merger”) with Neoforma continuing as the surviving corporation (the “Surviving Corporation”) and a wholly-owned subsidiary of GHX. The Merger Agreement is further described below in this Item 4.

##### Exchange Agreement

As a condition of, and an inducement to GHX and Merger Sub entering into the Merger Agreement, UHC has entered into an exchange agreement, dated as of October 10, 2005, with GHX (the “Exchange Agreement”). Pursuant to the Exchange Agreement, effective immediately prior to the Merger, UHC shall transfer 1,634,492 shares of Common Stock beneficially owned by UHC to GHX and, in exchange therefor, GHX shall issue to UHC 10,535,116 membership units of GHX (the “GHX Membership Units”). Such number of GHX Membership Units is equal to approximately 2.88% of the sum of (i) the outstanding membership units of GHX as of the date hereof, plus (ii) the number of GHX Membership Units, plus (iii) the number of membership units of GHX to be issued to VHA Inc. (“VHA”), immediately prior to the Merger pursuant to an exchange agreement, dated as of October 10, 2005, between GHX and VHA (the “VHA Exchange Agreement”). The consummation of the transactions contemplated by the Exchange Agreement is subject to the satisfaction or waiver of conditions set forth in the Exchange Agreement.

##### Merger Agreement

Pursuant to the Merger Agreement, upon the Merger becoming effective (the “Effective Time”), each share of Common Stock outstanding immediately prior to the Effective Time (other than such shares held in Neoforma’s treasury, by any wholly-owned subsidiary of Neoforma, by

GHX, by Merger Sub, or by any other wholly-owned subsidiary of GHX and any other such shares held by stockholders, if any, who properly exercise their dissenters' rights) shall be converted into the right to receive \$10.00 in cash, without interest (subject to adjustments to the extent appropriate) (the "Cash Consideration") and (iii) each outstanding and unexercised option to purchase Common Stock shall be converted into the right to receive an amount in cash equal to the difference, if any, between (A) the Cash Consideration multiplied by the number of shares of Common Stock underlying such option and (B) the aggregate exercise price with respect to such option. The consummation of the Merger is subject to the satisfaction or waiver of conditions set forth in the Merger Agreement, including obtaining certain stockholder and regulatory approval.

Pursuant to the Merger Agreement, the 495,810 shares of Common Stock owned by UHC after the consummation of the transactions contemplated by the Exchange Agreement shall be converted into the right to receive an aggregate amount of \$4,958,100 in cash.

The Merger Agreement provides that at the Effective Time (i) the certificate of incorporation of Merger Sub shall be the certificate of incorporation of the Surviving Corporation and (ii) except as otherwise provided in the Merger Agreement, the bylaws of the Surviving Corporation shall be amended and restated to conform to the bylaws of Merger Sub.

#### Voting Agreement

As a condition of, and a further inducement to GHX and Merger Sub entering into the Merger Agreement, UHC has entered into with GHX a voting agreement, dated as of October 10, 2005 (the "Voting Agreement"). Pursuant to the Voting Agreement, UHC shall vote the Common Stock beneficially owned by UHC (the "Subject Shares") at the Stockholders' Meeting in favor of the approval of the Merger and the approval and adoption of the Merger Agreement.

The Voting Agreement also provides that at any meeting of stockholders of Neoforma or any adjournment thereof or in any other circumstances upon which VHA's approval is sought, UHC shall vote the Subject Shares against (i) any merger agreement or merger (other than the Merger Agreement and the Merger), consolidation, combination, sale of substantial assets, reorganization, recapitalization, dissolution, liquidation or winding up of or by Neoforma or any of its subsidiaries or any other proposals by third parties to acquire assets or securities of Neoforma as described in the Merger Agreement (an "Acquisition Proposal"), (ii) any amendment of Neoforma's certificate of incorporation or bylaws or other proposal or transaction involving Neoforma or any of its subsidiaries which would in any manner impede or prevent the Merger Agreement or any of the transactions contemplated thereby or change in any manner the voting rights of any class of capital stock of Neoforma.

Pursuant to the Voting Agreement, UHC appointed two GHX designees as UHC's proxy and attorney-in-fact, with full power of substitution and resubstitution, solely to vote or act by written consent prior to the termination of the Voting Agreement with respect to the Subject Shares in accordance with UHC's obligations under the Voting Agreement. UHC also agreed to not, and not enter into any arrangement to, transfer or otherwise dispose of, any of the Subject Shares or grant any proxy that is inconsistent with its obligations under the Voting Agreement.

UHC agreed to not solicit any Acquisition Proposals or furnish any information, engage in discussions or negotiations or enter into any contracts in connection with an Acquisition Proposal. However, UHC may, in accordance with the applicable provisions of the Merger Agreement, furnish information and enter into discussions or negotiations with any person at such time as Neoforma is engaging in such activities under circumstances permitted under the Merger Agreement.

Under the Voting Agreement, UHC also waived, to the extent permitted by applicable law, any rights of appraisal or rights to dissent from the Merger that it may have under applicable law.

The Voting Agreement, and UHC's obligations thereunder, shall terminate upon the earlier to occur of (i) the consummation of the Merger, (ii) the termination of the Merger Agreement and (iii) any amendment to any pricing term of the Merger Agreement that is adverse to UHC or any amendment to or waiver of any other term of the Merger Agreement in a manner materially adverse to UHC.

#### Waiver

On October 10, 2005, Neoforma, UHC and VHA entered into an agreement (the "Waiver") providing for the waiver by Neoforma of (i) certain specified provisions containing voting and/or transfer restrictions applicable to the Common Stock of each of the Amended and Restated Common Stock and Warrant Agreement, dated as of May 24, 2000, between UHC and Neoforma (as amended pursuant to the Amendment to Amended and Restated Common Stock and Warrant Agreement, dated as of January 25, 2001, between UHC and Neoforma), the Common Stock Purchase Agreement, dated as of January 25, 2001, between UHC and Neoforma (as amended pursuant to the First Amendment to Common Stock Purchase Agreement, dated as of April 14, 2003, between UHC and Neoforma), the Amended and Restated Common Stock and Warrant Agreement, dated as of May 24, 2000, between VHA and Neoforma (as amended pursuant to the Amendment to Amended and Restated Common Stock and Warrant Agreement, dated as of October 18, 2000, between VHA and Neoforma), the Common Stock Purchase Agreement, dated as of January 25, 2001, between VHA and Neoforma (as amended pursuant to the First Amendment to Common Stock Purchase Agreement, dated as of April 11, 2003, between VHA and Neoforma), and (ii) any other obligations that UHC, VHA and their respective affiliates have with respect to Neoforma or its affiliates, solely to the extent that such other obligations would otherwise be violated or breached by entering into, or performing obligations under, the Exchange Agreement, the Voting Agreement, the VHA Exchange Agreement and the Voting Agreement between VHA and GHX dated as of October 10, 2005. Such waivers by Neoforma are effective for the period commencing on the date of the Waiver and ending on the earlier of (i) the date the Merger is consummated and (ii) the date the Merger Agreement is terminated by Neoforma or GHX pursuant to its terms.

#### Other Agreements

The current Fourth Amended and Restated Outsourcing and Operating Agreement with Neoforma, dated as of August 13, 2003, will be terminated upon the consummation of the Merger. On October 10, 2005, GHX, VHA, UHC, Novation and HPPI entered into an Outsourcing Agreement (the "New Outsourcing Agreement") in a separate transaction that will become effective as of the consummation of the Merger. Pursuant to the New Outsourcing

Agreement, effective as of the consummation of the Merger, GHX shall provide to such other parties certain internet e-commerce services facilitating the sale, rental, lease and license of new and used equipment, products, supplies, services, information and other content related to the healthcare industry, by allowing electronic orders to be placed and received for the foregoing and by providing online information and analytic capabilities regarding the foregoing. The initial term of the New Outsourcing Agreement will expire December 31, 2011. Pursuant to the New Outsourcing Agreement, effective as of the consummation of the Merger, Novation shall make the following monthly payments to GHX for the services described above: \$4,000,000 per month for the first twelve months; \$3,500,000 per month for the next twelve months; and \$2,833,333 per month thereafter. Novation shall also make a yearly payment to GHX of \$975,0000 for the provision of certain additional related services.

References to and the descriptions of the Merger Agreement, the Exchange Agreement, the Voting Agreement, the Waiver and the New Outsourcing Agreement as set forth herein are not intended to be complete and are qualified in their entirety by reference to the Merger Agreement, the Exchange Agreement, the Voting Agreement, the Waiver and the New Outsourcing Agreement, respectively, copies of which have been filed as Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4 and Exhibit 5 to this Amendment and which are incorporated by reference in this Item 4 in their entirety where such references and descriptions appear.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

Item 5 of the Schedule 13D is hereby amended and supplemented to add the following:

(a) and (b) For the purposes of Rule 13d-3 promulgated under the Exchange Act, GHX, by reason of the execution and delivery of the Voting Agreement, may be deemed to have shared voting power with UHC with respect to (and therefore beneficially own within the meaning of Rule 13d-3 under the Exchange Act) 2,130,302 shares of Common Stock, representing 10.29% of the outstanding shares of Common Stock. However, nothing set forth in this Schedule 13D shall be deemed to constitute an admission that GHX is the beneficial owner of the shares of Common Stock referred to in this Item 5 for purposes of Section 13(d) of the Exchange Act or for any other purpose.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER

Item 6 of the Schedule 13D is hereby amended and supplemented to add the following:

The information set forth, or incorporated by reference in Item 5 and Item 6 of this Amendment is hereby incorporated by this reference in this Item 4.

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS

References to and descriptions of the following exhibits as set forth herein are qualified in their entirety by reference to the copies of such documents attached as exhibits as set forth below and incorporated herein in their entirety where such references and descriptions appear.



- Exhibit 1 Agreement and Plan of Merger, dated as of October 10, 2005, by and among Neoforma, Inc., Global Healthcare Exchange, LLC and Leapfrog Merger Corporation (incorporated by reference to Exhibit 2.1 of the Form 8-K of Neoforma, Inc. (File No. 000-28715), as filed with the SEC on October 12, 2005).
- Exhibit 2 Exchange Agreement, dated as of October 10, 2005, between Global Healthcare Exchange, LLC and University HealthSystem Consortium.
- Exhibit 3 Voting Agreement, dated as of October 10, 2005, between Global Healthcare Exchange, LLC and University HealthSystem Consortium.
- Exhibit 4 Waiver, dated as of October 10, 2005, among Neoforma, Inc., VHA Inc. and University HealthSystem Consortium.
- Exhibit 5\* Outsourcing Agreement among Novation, LLC, VHA Inc., University HealthSystem Consortium, Healthcare Purchasing Partners International, LLC and Global Health Exchange, LLC.

\*A complete copy of Exhibit 5 has been filed separately with the Securities and Exchange Commission pursuant to an Application for Confidential Treatment. The confidential portions of Exhibit 5 have been omitted from this filing and are marked by an asterisk.

[Signature on next page]

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SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, correct and complete.

Dated: October 12, 2005

UNIVERSITY HEALTHSYSTEM CONSORTIUM

By:

/s/ Mark E. Mitchell

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Mark E. Mitchell,

its Vice President, Finance

## EXCHANGE AGREEMENT

This Exchange Agreement (this "Agreement") is made and entered into as of October 10, 2005, between Global Healthcare Exchange, LLC, a Delaware limited liability company ("GHX"), and University HealthSystem Consortium, an Illinois corporation (the "Stockholder").

WHEREAS, concurrently with the execution and delivery of this Agreement, Neoforma, Inc., a Delaware corporation (the "Company"), GHX and Leapfrog Merger Corporation, a Delaware corporation and a wholly owned subsidiary of GHX ("Merger Sub"), are entering into an Agreement and Plan of Merger, of even date herewith (the "Merger Agreement"), which provides, among other things, for the merger of Merger Sub with and into the Company, with the Company continuing as the surviving corporation (the "Merger"), and GHX and the members of GHX holding that number of membership interests of GHX as is necessary to approve the Formation Agreement Amendment and the LLC Agreement Amendment, as applicable, are entering into the Formation Agreement Amendment and the LLC Agreement Amendment (as such terms are defined in Section 2(b));

WHEREAS, as of the date hereof, the Stockholder is the beneficial owner of, and has the sole right to vote with respect to the Merger 2,130,302 shares of common stock, par value \$0.001 per share, of the Company ("Company Common Stock"); and

WHEREAS, subject to the conditions set forth herein, immediately prior to the Effective Time, (i) the Stockholder desires to exchange 1,634,492 shares of Company Common Stock ("Shares"), and (ii) GHX desires to issue to the Stockholder, in exchange (the "Exchange") for the Shares, 10,535,116 Class P Membership Units of GHX (the "Exchange Units").

Capitalized terms used herein and not otherwise defined shall have the respective meanings attributed to them in the Merger Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and warranties contained herein, GHX and the Stockholder hereby agree as follows:

1. Exchange.

(a) Immediately prior to the Closing under the Merger Agreement, the Stockholder shall assign, transfer, convey and deliver the Shares to GHX and, in exchange for each such Share, GHX shall issue to the Stockholder 10,535,116 Exchange Units. If, during the period from the date of this Agreement through the time that is immediately prior to the Closing under the Merger Agreement, the outstanding Membership

Units (as defined in Annex I to the Formation Agreement) of GHX are changed into a different number or class by reason of any split, division or subdivision of Membership Units, dividend, distribution or capital contribution, reverse split of Membership Units, consolidation of Membership Units, reclassification, recapitalization or other similar transaction, or if a dividend, distribution or additional capital contribution is declared by GHX during such period, or a record date with respect to any such event shall occur during such period, then the foregoing number of Exchange Units shall be adjusted to the extent appropriate to reflect such change or other modification of the Membership Units. If any Shares are held in "street name" by the Stockholder, such Stockholder agrees to arrange for an appropriate transfer thereof to GHX hereunder.

(b) In the event that the Exchange is consummated but the Merger Agreement is terminated in accordance with its terms, then promptly following such termination, the Stockholder shall assign, transfer, convey and deliver to GHX the number of Exchange Units received by the Stockholder pursuant to clause (a) above and, in exchange therefor, GHX shall assign, transfer, convey and deliver to the Stockholder the Shares exchanged by the Stockholder for such Exchange Units pursuant to clause (a) above.

## 2. Exchange Closing.

(a) The closing of the transactions contemplated by this Agreement (the "Exchange Closing") shall take place at the offices of Fenwick & West LLP, 275 Battery Street, San Francisco, California, (or at such other location as the parties hereto shall agree to) immediately prior to the Closing under the Merger Agreement.

(b) At the Exchange Closing, the Stockholder will deliver to GHX (i) stock certificates duly endorsed for transfer to GHX, accompanied by stock powers duly endorsed in blank, representing the number of Shares subject to the Exchange and (ii) an Accession Agreement (the "Accession Agreement") in the form attached as Schedule A hereto to the Third Amended and Restated Formation Agreement of GHX (the "Formation Agreement"), as amended by Amendment No. 1 thereto in the form attached as Schedule B hereto (the "Formation Agreement Amendment" and the Formation Agreement as amended by the Formation Agreement Amendment, the "Revised Formation Agreement"), and the Fifth Amended and Restated Limited Liability Company Agreement of GHX (the "LLC Agreement"), as amended by Amendment No. 1 thereto in the form attached as Schedule C hereto (the

“LLC Agreement Amendment” and the LLC Agreement as amended by the LLC Agreement Amendment, the “Revised LLC Agreement”), duly executed by the Stockholder. At the Exchange Closing, GHX will (i) issue the Exchange Units to the Stockholder and (ii) deliver to the Stockholder the Accession Agreement duly executed by GHX and the Formation Agreement Amendment and the LLC Agreement Amendment duly executed by GHX and members of GHX holding that number of membership interests of GHX as is necessary to approve the Formation Agreement Amendment and the LLC Agreement Amendment, as applicable.

3. Representations and Warranties of the Stockholder. The Stockholder represents and warrants as follows:

(a) Corporate Form. The Stockholder is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois.

(b) Corporate Authority, etc. The Stockholder has (and, immediately prior to the Exchange Closing, will have) all requisite corporate power and authority to enter into this Agreement, the Revised Formation Agreement, the Revised LLC Agreement and the Accession Agreement and to perform all of its obligations hereunder and thereunder and to carry out the transactions contemplated hereby and thereby.

(c) Actions Authorized. The Stockholder has taken all corporate actions necessary to authorize it to enter into and to perform this Agreement, the Revised Formation Agreement, the Revised LLC Agreement and the Accession Agreement and to consummate the transactions contemplated hereby and thereby. This Agreement has been, and upon the execution thereof, the Accession Agreement will have been duly executed and delivered by the Stockholder and, assuming due authorization, execution and delivery hereof and thereof by GHX, each such agreement constitutes a legal, valid and binding obligation of the Stockholder enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is considered in a proceeding in equity or at law).

(d) Ownership of Shares. The Stockholder is the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended, which meaning will apply for all purposes of this

Agreement) of, and has the sole power to vote and dispose of, the number of Shares set forth in the recitals hereto, free and clear of any security interests, liens, charges, encumbrances, equities, claims, options or limitations of whatever nature and free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of the Shares), except as may exist by reason of this Agreement, the Significant Stockholder Voting Agreement, the First Purchase Agreement or the Second Purchase Agreement (as such terms are defined in the Significant Stockholder Voting Agreement) (except as otherwise permitted by the Waiver, dated as of the date hereof, among the Stockholder, VHA Inc. and the Company (the "Company Waiver")), or pursuant to applicable law. Except as provided for in this Agreement, the Significant Stockholder Voting Agreement and the Merger Agreement, there are no outstanding options or other rights to acquire from the Stockholder, or obligations of the Stockholder to sell or to dispose of, any Shares.

(e) No Agreements. Except for this Agreement, the Significant Stockholder Voting Agreement and the First Purchase Agreement and the Second Purchase Agreement (subject to the Company Waiver), the Stockholder has not entered into or agreed to be bound by any other arrangements or agreements of any kind with any other party with respect to the Shares, including, but not limited to, arrangements or agreements with respect to the acquisition or disposition thereof or any interest therein or the voting of any such shares.

(f) No Conflict. Neither the execution and delivery of this Agreement, the Formation Agreement Amendment, the LLC Agreement Amendment or the Accession Agreement, the consummation of the transactions contemplated hereby or thereby, nor the performance of the Stockholder' s obligations hereunder or thereunder will (i) result in a violation or breach of in any material respect, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any material contract, agreement, instrument, commitment, arrangement or understanding to which the Stockholder is a party, or result in the creation of a security interest, lien, charge, encumbrance or claim with respect to the Stockholder' s Shares, (ii) require any material consent, authorization or approval of any Person or (iii) violate or conflict with any writ, injunction or decree applicable to the Stockholder, the Stockholder' s Shares or the Exchange Units.

(g) Securities Laws Matters; Investor Awareness. The Stockholder acknowledges that it has read the Formation Agreement, the Formation Agreement Amendment, the LLC Agreement and the LLC Agreement Amendment and understands that such documents contain (a) substantial restrictions that prohibit transfers of Exchange Units except in limited circumstances and (b) prohibitions on GHX' s ability to distribute profits or make other distributions or payments to its members except in limited circumstances. In addition, the Stockholder acknowledges receipt of advice from GHX that (i) the Exchange Units have not been registered under the Securities Act of 1933 (the "Act") or qualified under any state securities or "blue sky" or non U.S. securities laws, (ii) there is no public market for the Exchange Units and it is not anticipated that there will be, (iii) the Exchange Units must be held indefinitely and the Stockholder must continue to bear the economic risk of the investment in the Exchange Units unless such Exchange Units are subsequently registered under the Act and such state or non U.S. securities laws or an exemption from such registration is available, (iv) Rule 144 promulgated under the Act ("Rule 144") is not presently available with respect to sales of any Exchange Units and GHX has made no covenant to make Rule 144 available and Rule 144 is not anticipated to be available in the foreseeable future, (v) when and if the Exchange Units may be disposed of without registration in reliance upon Rule 144, such disposition can be made only in limited amounts and in accordance with the terms and conditions of such Rule, and (vi) if the exemption afforded by Rule 144 is not available, public sale of the Exchange Units without registration will require the availability of an exemption under the Act.

(h) Accredited Investor. The Stockholder is an "accredited investor" as such term is defined in Rule 501(a) promulgated under the Securities Act.

(i) Stockholder' s Experience. (i) The Stockholder' s financial situation is such that the Stockholder can afford to bear the economic risk of holding the Exchange Units for an indefinite period of time, (ii) the Stockholder can afford to suffer complete loss of its investment in the Exchange Units, and (iii) the Stockholder' s knowledge and experience in financial and business matters are such that the Stockholder is capable of evaluating the merits and risks of the Stockholder' s investment in the Exchange Units.

(j) Investigation. In entering into this Agreement, Stockholder has relied solely upon its own investigation and analysis, and Stockholder acknowledges that, except for the specific representations and warranties

of GHX contained in this Agreement, neither GHX nor any of its Affiliates, Associates, agents or representatives makes or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or otherwise made available to Stockholder or any of its Affiliates, Associates, agents or representatives.

(k) Investment Intent. The Stockholder is acquiring the Exchange Units solely for the Stockholder's own account for investment and not with a view to or for sale in connection with any distribution thereof. The Stockholder agrees that the Stockholder will not, directly or indirectly, offer, transfer, sell, pledge, hypothecate or otherwise dispose of any of the Exchange Units (or solicit any offers to buy, purchase or otherwise acquire or take a pledge of any Exchange Units), except in compliance with (i) the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, (ii) applicable state and non-U.S. securities or "blue sky" laws and (iii) the provisions of this Agreement, the Revised LLC Agreement and the Revised Formation Agreement.

4. Representations and Warranties of GHX. GHX represents and warrants to the Stockholder as follows, except as set forth in and subject to: (a) the exceptions and disclosures set forth in the part or subpart of the GHX Disclosure Schedule corresponding to the particular Section or subsection in this Section 4 in which such representation and warranty appears; (b) any exceptions or disclosures cross-referenced to another part or subpart of the GHX Disclosure Schedule; and (c) any exception or disclosure set forth in any other part or subpart of the GHX Disclosure Schedule to the extent it is reasonably apparent that such exception or disclosure qualifies such other representation or warranty:

(a) Subsidiaries; Due Organization. (i) GHX has no Subsidiaries other than as set forth in Part 4(a) of the GHX Disclosure Schedule. All of the capital stock and other equity interests in such Subsidiaries are owned by GHX, free and clear of all Encumbrances. GHX has not agreed and is not obligated to make, nor or is it bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Entity.

(ii) GHX is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite limited liability company power and authority: (A) to conduct its business in the manner in which its business is currently being conducted; (B) to own or lease and use its assets in the manner in which its assets are currently owned or leased and used; and (C) to perform its



obligations under all Contracts by which it or any of its Subsidiaries is bound and which is material to GHX and its Subsidiaries, taken as a whole. GHX has provided Stockholder with true, correct and complete copies of the LLC Agreement and the Formation Agreement.

(iii) GHX (in jurisdictions that recognize the following concepts) is qualified to do business as a foreign limited liability company, and is in good standing, under the laws of such jurisdictions where the nature of its business requires such qualification, except as would not reasonably be expected to have a Material Adverse Effect.

(b) Limited Liability Company Authority, etc. GHX has (and, immediately prior to the Exchange Closing, will have) all requisite limited liability company right, power and authority to enter into this Agreement, the Formation Agreement Amendment, the LLC Agreement Amendment and the Accession Agreement and to perform all of its obligations hereunder and thereunder and to carry out the transactions contemplated hereby and thereby and GHX has all requisite limited liability company right, power and authority to issue the Exchange Units to the Stockholder as contemplated hereby.

(c) Actions Authorized. GHX has taken all limited liability company actions necessary to authorize it to enter into and to perform this Agreement, the Formation Agreement Amendment, the LLC Agreement Amendment and the Accession Agreement and to consummate the transactions contemplated hereby and thereby. All requisite approvals of the owners of the outstanding Membership Units of GHX necessary under the Formation Agreement and the LLC Agreement (i) to approve the Exchange, the Formation Agreement Amendment, the LLC Agreement Amendment and the Accession Agreement and (ii) to admit the Stockholder as a member of GHX have been obtained. Each of this Agreement, the Formation Agreement Amendment and the LLC Agreement Amendment have been, and upon the execution thereof, the Accession Agreement will have been duly executed and delivered by GHX and, assuming due authorization, execution and delivery hereof and thereof by the Stockholder and the other parties thereto, as applicable, constitutes a legal, valid and binding obligation of GHX enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is considered in a proceeding in equity or at law).

(d) Consents. Except: (A) for the filings, registrations or qualifications (i) that may be required under Regulation D under the Securities Act or (ii) that may be required under the state securities laws or “blue sky” laws of any state of the United States of America that may be required to be made or obtained, all of which GHX will comply with within the time limits specified therein; (B) as required under the LLC Agreement and the Formation Agreement; and (C) as would not reasonably be expected to have a Material Adverse Effect, GHX is not and will not be required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with: (1) the execution, delivery or performance of this Agreement, the Formation Agreement Amendment, the LLC Agreement Amendment or the Accession Agreement by GHX; or (2) the consummation of the Exchange.

(e) Non-Contravention. Assuming compliance with the applicable provisions of the Securities Act, the Exchange Act, the DGCL and state securities or “blue sky” laws, except as set forth in Part 4(e) of the GHX Disclosure Schedule, neither (1) the execution and delivery of this Agreement, the Formation Agreement Amendment, the LLC Agreement Amendment or the Accession Agreement by GHX, nor (2) the consummation of the Exchange, will or would reasonably be expected to, directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with or result in a violation of any of the provisions of the Certificate of Formation of GHX, the Formation Agreement or the LLC Agreement;

(ii) contravene, conflict with or result in a violation of, any Legal Requirement or any Order to which GHX or any of its material assets is subject;

(iii) contravene, conflict with or result in a violation, a material breach or a default of, or forfeiture of any rights under, any of the terms or requirements of any Governmental Authorization that is held by GHX or that otherwise relates to the business of GHX as currently conducted;

(iv) contravene, conflict with or result in a violation or breach of in any material respect, or result in a default under, any provision of any GHX Significant Contract (as defined in Section 4(k)), or give any Person the right to:

(i) declare a default or exercise any remedy under any such GHX Significant Contract; (ii) a rebate, chargeback, penalty or change in delivery schedule under any such GHX Significant Contract; (iii) accelerate the maturity or performance of any such GHX Significant

Contract; or (iv) cancel, terminate or modify any right, benefit, obligation or other term of such GHX Significant Contract; or

(v) result in the imposition or creation of any Encumbrance upon or with respect to any asset owned or used by GHX,

except, in the case of clauses “(ii),” “(iii)” and “(v)” of this sentence, as would not reasonably be expected to have a Material Adverse Effect.

(f) Capitalization. Assuming the consummation of the transactions contemplated hereby, by the Merger Agreement and by the exchange agreement entered or to be entered into between GHX and VHA Inc. (the “Other Exchange Agreement”), immediately following the consummation of the transactions contemplated hereby, by the Merger Agreement and by the Other Exchange Agreement, the outstanding membership interests of GHX will be as set forth on Schedule D hereto. Schedule E hereto reflects the membership interests of GHX on Schedule D, as adjusted to reflect the exercise of any warrants, options, or other securities that will be outstanding as of the Effective Time and the proposed issuance of any Membership Interests during the period from the date hereof until the Effective Time set forth in Part 4(h) of the GHX Disclosure Schedule. As of the date hereof (i) there are 313,229,103 Membership Interests (as defined in the LLC Agreement) outstanding, (ii) pursuant to Section 3.5(b) of the LLC Agreement, there are and will be issuable, immediately upon the closing of an IPO (as defined in the LLC Agreement) of (x) GHX or (y) upon conversion of GHX to corporate form, a successor to GHX (and under no other circumstance), warrants entitling the holders to acquire in the aggregate up to 21,720,685 Membership Interests (subject to adjustment) and (iii) pursuant to that certain Warrant, dated September 26, 2000, issued by GHX to CMI Warrant Holding Company, LLC (the “CMI Warrant”), there are and will be issuable, on the first Business Day (as defined in the CMI Warrant) after the closing of an IPO (as defined in the CMI Warrant) of (x) GHX or (y) upon a conversion of GHX to a corporate form, a successor to GHX (and under no other circumstance), warrants entitling the holders to acquire in the aggregate up to 28,580,276 Membership Interests (subject to adjustment). Except as set forth in this Section 4(f) or in Part 4(f) of the GHX Disclosure Schedule, or as otherwise contemplated by this Agreement, GHX has not reserved any Membership Interests for issuance under any option plans and there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments obligating GHX to issue, sell, deliver or transfer any Membership Interests. Other

than the LLC Agreement, the CMI Warrant, the Other Exchange Agreement and this Agreement, there are no agreements, options, warrants, calls, rights or commitments of any character relating to the issuance, sale, purchase or redemption, restricting the transfer of, or the declaration of payments of distributions on, any Membership Interests. All of the outstanding Membership Interests have been duly authorized and validly issued, are fully paid. Except as set forth in this Section 4(f), in the LLC Agreement or in the Formation Agreement, (i) none of the outstanding Membership Interests is entitled or subject to any preemptive right, right of participation, right of maintenance or any similar right, (ii) none of the outstanding Membership Interests is subject to any right of first refusal in favor of GHX and (iii) GHX is under no obligation, nor is it bound by any Contract to repurchase, redeem or otherwise acquire any outstanding Membership Interests or other securities of GHX.

(g) Financial Statements. (i) GHX has provided to the Stockholder (A) the unaudited consolidated balance sheet of GHX as of June 30, 2005 (the "GHX Balance Sheet"), and the related unaudited consolidated statements of income and cash flow for the six months then ended, and (B) the audited consolidated balance sheets of GHX as of December 31, 2004 and December 31, 2003 and the related audited consolidated statements of income, stockholder' s equity and cash flows for the years then ended, and the notes to such financial statements (collectively, the "GHX Financial Statements").

(ii) Except as set forth in Part 4(g) of the GHX Disclosure Schedule, the GHX Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, as otherwise indicated therein, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments) and fairly present in all material respects the consolidated financial position of GHX and its Subsidiaries as of the respective dates thereof and the consolidated results of operations and cash flows of GHX and its Subsidiaries for the periods covered thereby.

(iii) Except as set forth in Part 4(g) of the GHX Disclosure Schedule and for those liabilities that are reflected or reserved against on the GHX Balance Sheet (including any notes thereto) and for liabilities incurred in the ordinary course of business consistent with past practice since June 30, 2005, since such date, neither GHX nor any of its Subsidiaries has incurred any liability of any nature whatsoever (whether

absolute, accrued, contingent or otherwise and whether due or to become due) that has had or is reasonably likely to have, either individually or in the aggregate, a Material Adverse Effect.

(h) Absence of Changes. Except as set forth in Part 4(h) of the GHX Disclosure Schedule, since June 30, 2005, GHX and its Subsidiaries have conducted their respective businesses in all material respects in the ordinary course of business consistent with past practice, and, without limiting the generality of the foregoing:

(i) there has not been any Material Adverse Effect;

(ii) GHX has not declared, accrued, set aside or paid any dividend or made any other distribution in respect of any Membership Interests or repurchased, redeemed or otherwise reacquired any Membership Interests or other securities of GHX;

(iii) except as set forth herein, in the LLC Agreement, in the Formation Agreement and in the Other Exchange Agreement, GHX has not sold, issued, granted, pledged or otherwise encumbered or authorized the sale, issuance, grant, pledge or encumbrance of any Membership Interest or other security of GHX, any option, call, warrant or right to acquire any Membership Interests or other security of GHX, or any instrument convertible into or exercisable or exchangeable for any Membership Interests or other security of GHX.

(iv) neither GHX nor any of its Subsidiaries has written off as uncollectible, or established any extraordinary reserve with respect to, any material account receivable or other material indebtedness;

(v) neither GHX nor any of its Subsidiaries has made any pledge of any of its material assets or permitted any of its material assets to become subject to any Encumbrances;

(vi) neither GHX nor any of its Subsidiaries has changed any of its methods of accounting or accounting practices in any material respect, except as required by concurrent changes in GAAP;

(vii) neither GHX nor any of its Subsidiaries has (1) made or changed any material Tax election, (2) entered into any settlement or compromise of any material Tax liability or (3) surrendered any right to claim a material Tax refund;

(viii) neither GHX nor any of its Subsidiaries has prepared or filed any material Tax Return materially inconsistent with past practice or, on any such Tax Return, taken any position, made any election, or adopted any method that is materially inconsistent with positions taken, elections made or methods used in preparing or filing similar material Tax Returns in prior periods;

(ix) neither GHX nor any of its Subsidiaries has settled or compromised any pending or threatened material suit, action, claim, arbitration, mediation, inquiry, Legal Proceeding or investigation of or against GHX or any Subsidiary of GHX, unless in connection with such settlements or compromises (A) there was no finding or admission of any violation of any Legal Requirement or the rights of any Person and (B) the sole relief provided was monetary damages not in excess of \$100,000 in the aggregate;

(x) other than the Financing, neither GHX nor any of its Subsidiaries has incurred, guaranteed, assumed or otherwise become responsible for any indebtedness in excess of \$100,000 in the aggregate; and

(xi) neither GHX nor any of its Subsidiaries has agreed or committed to take any of the actions referred to in clauses “(ii)” through “(x)” above.

(i) Title to Assets. GHX owns, and has good and valid title to, all material assets purported to be owned by it, including all material assets reflected on the GHX Balance Sheet (except for assets sold or otherwise disposed of since the date of the GHX Balance Sheet). Except as set forth in Part 4(i) of the GHX Disclosure Schedule, all of said assets are owned by GHX free and clear of any Encumbrances. GHX or its Subsidiaries are the lessees of, and hold valid leasehold interests in, all material assets purported to have been leased by them, including all material assets reflected as leased on the GHX Balance Sheet (it being understood that the representations and warranties contained in this Section 4(i) do not apply to ownership of, or Encumbrances with respect to, Intellectual Property Rights, which matters are addressed solely in the representations and warranties set forth in Section 4(j)). Except as would not be material to GHX and its Subsidiaries as a whole, the assets owned, licensed or leased by GHX or its Subsidiaries constitute all the assets used in the business of GHX and its Subsidiaries (including all books, records, computers and computer programs and data processing systems), are in good condition (subject to normal wear and tear and immaterial

impairments of value and damage) and are generally suitable for the uses for which they are used in the operation of the business of GHX and its Subsidiaries.

(j) Intellectual Property. (i) (I) GHX owns and has sole and exclusive right to use each material item of GHX Owned IP free and clear of any Encumbrances, except (y) non-exclusive licenses granted by GHX in connection with the sale or license of GHX Products in the ordinary course of business and (z) as would not reasonably be expected to materially interfere with the use of such GHX Owned IP as used in the ordinary course of business; (II) with respect to GHX IP that is not GHX Owned IP, GHX and its Subsidiaries have all necessary rights to use such GHX IP in their business. Without limiting the generality of the foregoing, to the knowledge of GHX, GHX owns or otherwise has, and immediately after the Exchange Closing will continue to have, all Intellectual Property Rights needed to conduct the business of GHX and its Subsidiaries as presently conducted in all material respects.

(ii) All GHX Registered IP (except where GHX has elected not to maintain or continue the prosecution or registration of any GHX Registered IP) is subsisting and, to the knowledge of GHX, is valid and enforceable.

(iii) Neither the execution, delivery or performance of this Agreement nor the consummation of the Exchange would reasonably be expected to, with or without notice or the lapse of time, and as a result of any Contract to which any of GHX or any of its Subsidiaries is a party or otherwise bound, result in or give any other Person the right or option to cause, create, impose or declare: (i) a loss of, or Encumbrance on, any GHX IP; or (ii) the grant, assignment or transfer to any other Person of any license or other right or interest under, to or in any of the GHX IP, except, in each case, as would not reasonably be expected to have a Material Adverse Effect.

(iv) To the knowledge of GHX, no Person has infringed, misappropriated or otherwise violated, and no Person is infringing, misappropriating or otherwise violating, any GHX Owned IP except as would not be material to GHX.

(v) To the knowledge of GHX, neither GHX nor any of its Subsidiaries has infringed, misappropriated or otherwise violated in any material respect any Intellectual Property Right of any other Person, except as would not be material to GHX and its Subsidiaries as a whole.

(k) Contracts. Part 4(k) of the GHX Disclosure Schedule sets forth a list of each Contract that constitutes a GHX Significant Contract as of the date of this Agreement. For purposes hereof, each of the following shall constitute a “GHX Significant Contract”: (i) each Contract containing any non-compete provision that restricts GHX or any of its Subsidiaries, (ii) the Formation Agreement and all amendments thereto, (iii) the LLC Agreement and all amendments thereto, (iv) each Contract relating to the issuance of any equity securities of the Company, (v) each Affiliated Party Contract (as defined below), (vi) each Contract involving payments of \$250,000 or more per annum to or by GHX or any of its Subsidiaries (other than ordinary course purchase and supply Contracts) and (vii) each other Contract that is material to GHX and its Subsidiaries, taken as a whole. The Formation Agreement and the LLC Agreement are valid and binding obligations of GHX and each GHX Significant Contract is, to the knowledge of GHX, valid and binding upon the other parties thereto and is in full force and effect in all material respects. Except as set forth in Part 4(k) of the GHX Disclosure Schedule, as of the date of this Agreement: (i) GHX has not materially violated or materially breached, or committed any default under, any GHX Significant Contract; (ii) to the knowledge of GHX, no other Person has materially violated or materially breached, or committed any default under, any GHX Significant Contract; (iii) to the knowledge of GHX, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) would reasonably be expected to: (A) result in a material violation or material breach of any of the provisions of any GHX Significant Contract; (B) give any Person the right to declare a default under any GHX Significant Contract; (C) give any Person the right to receive or require a rebate, chargeback, penalty or any additional material rights under any GHX Significant Contract; (D) give any Person the right to accelerate the maturity or performance of any GHX Significant Contract; or (E) give any Person the right to cancel, terminate or modify in any material respect any GHX Significant Contract; and (iv) since January 1, 2004, GHX has not received any written notice regarding any actual or possible material violation or material breach of, or default under, any GHX Significant Contract. For purposes of this Agreement, each Contract, arrangement or understanding that is currently in effect to which GHX (or any of GHX’ s Subsidiaries) and any member of GHX (or any of such member’ s Affiliates) is a party or is otherwise bound is referred to as an “Affiliated Party Contract”.

(l) Taxes. (i) Each of the material Tax Returns required to be filed by or on behalf of GHX or any Subsidiary of GHX with any Governmental Body: (w) has been filed on or before the applicable due



date (including any extensions of such due date); (x) has been prepared in all material respects in compliance with all applicable Legal Requirements and (y) when filed, was complete and accurate in all material respects and disclosed all Taxes required to be paid by GHX or any Subsidiary of GHX for the periods covered thereby; and (z) to the extent related to income Taxes, has been examined by the appropriate Governmental Body or the period for assessment of the Taxes in respect of which each such Tax Return was required to be filed (taking into account all applicable extensions and waivers) has expired. All material Taxes (whether or not shown on any Tax Return) owed by GHX or any Subsidiary of GHX have been timely paid.

(ii) The GHX Financial Statements accrue all liabilities for all material Taxes of GHX or any Subsidiary of GHX with respect to all periods through the date thereof in accordance with GAAP, and no liabilities for material Taxes have been incurred since the date of the GHX Financial Statements other than in the operation of the business of GHX or such Subsidiary in the ordinary course of business. GHX has established, in the ordinary course of business and consistent with its past practices, reserves adequate for the payment of all material Taxes of GHX or any Subsidiary of GHX since the date of the GHX Financial Statements.

(iii) Except as set forth in Part 4(l) of the GHX Disclosure Schedule, (A) to the knowledge of GHX, no Tax Return of GHX or any Subsidiary of GHX is currently subject to an audit by any Governmental Body, (B) no extension or waiver of the limitation period applicable to any Tax Return of GHX or any Subsidiary of GHX has been granted by GHX or any Subsidiary of GHX, and (C) no such extension or waiver has been requested from GHX or any Subsidiary of GHX, except, in the case of clauses (A) through (C) of this sentence, as would not reasonably be expected to have a Material Adverse Effect.

(iv) There are no material Contracts relating to allocating or sharing of Taxes to which GHX or any Subsidiary of GHX is a party. Neither GHX nor any Subsidiary of GHX (y) is currently under any contractual obligation to indemnify any Person with respect to Taxes (except for customary agreements to indemnify lenders or security holders in respect of Taxes) or (z) is a party to any material Contract providing for payments by GHX or any Subsidiary of GHX with respect to any amount of Taxes of any other Person.

(v) All material Taxes which GHX or any Subsidiary of GHX are required by law to withhold or to collect for payment have been duly

withheld and collected and have either been paid or accrued, reserved against and entered on the books of GHX.

(vi) Neither GHX nor any Subsidiary of GHX has participated in any transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has identified (by notice, regulation, other form of published guidance or otherwise) as a “listed transaction” pursuant to Treasury Regulation § 1.6011-4(b)(2).

(m) No Violation, Litigation or Regulatory Action. Except as set forth in Part 4(m) of the GHX Disclosure Schedule or with respect to matters which would not, in the aggregate, reasonably be expected to have a Material Adverse Effect, GHX is in compliance with all applicable Legal Requirements. Since January 1, 2004, GHX has not received any written notice from any Governmental Body or other Person regarding any actual or possible violation in any material respect of, or failure to comply in any material respect with, any material Legal Requirement.

(n) Legal Proceedings; Orders. Except as set forth in Part 4(n) of the GHX Disclosure Schedule, (i) there is no pending Legal Proceeding to which GHX or its Subsidiaries is a party or, to the knowledge of GHX, to which any other Person is a party, and (ii) to the knowledge of GHX, no Governmental Body or other Person has threatened in writing to commence any Legal Proceeding to which GHX or its Subsidiaries is a party or was so threatened to become a party or, to the knowledge of GHX, to which any other Person is a party or was so threatened to become a party, in each case, that would reasonably be expected to have a Material Adverse Effect. There is no Order to which GHX, or any of the material assets owned or used by GHX, is subject, except as would not reasonably be expected to have a Material Adverse Effect.

(o) Valid Shares. The issuance of the Class P Membership Units in connection herewith has been duly authorized on behalf of GHX and such units, when issued pursuant to this Agreement, will be duly and validly issued and outstanding, fully paid, and issued in accordance with the registration or qualification provisions of any relevant state securities laws, or pursuant to valid exemptions therefrom. Such issuance is not subject to preemptive rights or rights of first refusal or similar rights except as have been waived.

(p) Certain Business Practices. Neither GHX nor, to the knowledge of GHX, any Representative of GHX with respect to any

matter relating to GHX or its Subsidiaries, has: (i) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; or (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or any rules or regulations promulgated thereunder.

(q) Governmental Authorizations. GHX holds all Governmental Authorizations necessary to enable GHX to conduct its business substantially in the manner in which its business is currently being conducted, except for such Governmental Authorizations as to which the failure to so hold would not, in the aggregate, have a Material Adverse Effect. All such Governmental Authorizations are valid and in full force and effect, except as would not, in the aggregate, have a Material Adverse Effect. Since January 1, 2004, GHX has not received any written notice from any Governmental Body regarding: (i) any actual or possible violation of or failure to comply with any term or requirement of any material Governmental Authorization; or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any material Governmental Authorization. To the knowledge of GHX, no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a breach or default under any such Governmental Authorization that would affect in any material respect the ability of GHX to conduct business as currently conducted. GHX is in compliance in all material respects with all of the terms and requirements of each grant, incentive or subsidy provided or made available to or for the benefit of GHX by any U.S. federal, state or local Governmental Body or any foreign Governmental Body or otherwise. Neither the execution or delivery of this Agreement, nor the consummation of the Exchange, with or without notice or lapse of time, gives any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify any such grant, incentive or subsidy, the effect of which would reasonably be expected to, either individually or in the aggregate, have a Material Adverse Effect.

## 5. Covenants.

(a) Pre-Closing Period. (i) Between the date hereof and the date on which the Exchange Closing occurs (the “Pre-Closing Period”), neither GHX nor any of its Subsidiaries shall (without the prior written consent of the Stockholder, which consent shall not be unreasonably withheld or delayed) enter into any Business Acquisition if such Business

Acquisition would be reasonably likely to (A) result in a material delay of the termination or expiration of any waiting period applicable to the Merger under the HSR Act or (B) materially increase the likelihood of the institution of an injunction of the Merger under any Antitrust Law.

(ii) During the Pre-Closing Period, (A) each of GHX and the Stockholder shall promptly notify the other in writing after learning of any event, condition, fact or circumstance that would make the timely satisfaction of any of the conditions set forth in Section 6(a) or 6(b), respectively, impossible or unlikely and (B) GHX shall promptly notify Stockholder in writing after learning of any event, condition, fact or circumstance that would reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, each of GHX and the Stockholder shall promptly advise the other in writing of any material Legal Proceeding or material claim threatened in writing, commenced or asserted against or with respect to GHX, the Merger or the Exchange. No notification given to the Stockholder or GHX pursuant to this Section 5(a)(ii) shall limit or otherwise affect any of the representations, warranties, covenants or obligations of GHX or the Stockholder, respectively, contained in this Agreement.

(b) Access and Investigation. During the Pre-Closing Period, GHX shall (and shall cause its Subsidiaries to): (a) provide the Stockholder and the Stockholder's Representatives with reasonable access during normal business hours, upon reasonable notice to GHX, to GHX's and its Subsidiaries' personnel and assets and to all existing books, records, Tax Returns, work papers and other documents and information relating to GHX or its Subsidiaries; and (b) provide or make available to the Stockholder and the Stockholder's Representatives such copies of the existing books, records, Tax Returns, work papers and other documents and information relating to GHX or its Subsidiaries as the Stockholder may reasonably request. Without limiting the generality of any of the foregoing, during the Pre-Closing Period and subject to applicable Antitrust Laws, GHX and the Stockholder shall promptly provide the other party with copies of any notice, report or other document filed with or sent to any Governmental Body on behalf of GHX or the Stockholder, as applicable, in connection with the Merger or any of the other Contemplated Transactions. The foregoing shall not require GHX to permit any inspection, or to disclose any information, that in the reasonable judgment of GHX could reasonably be expected to result in (i) the disclosure of any trade secrets of third parties or the violation of any obligations of GHX with respect to confidentiality if GHX shall have used reasonable efforts to obtain the consent of such third party to such

inspection or disclosure, (ii) the waiver of any applicable attorney-client privilege so long as GHX has taken reasonable steps to permit inspection of or to disclose information described in this clause (ii) on a basis that does not compromise GHX' s privilege with respect thereto or (iii) the violation of any applicable Legal Requirement. The parties shall seek in good faith appropriate substitute disclosure arrangements under circumstances in which the immediately preceding sentence applies. No investigation by the Stockholder shall limit or otherwise affect any of the representations, warranties, covenants or obligations of GHX contained in this Agreement.

(c) Operations Prior to the Exchange Closing. Except as set forth in Part 5(c) of the GHX Disclosure Schedule or as expressly contemplated or permitted by this Agreement or the Merger Agreement, during the Pre-Closing Period, GHX shall, in all material respects, conduct its business and operations in the ordinary course and in accordance with past practices and GHX shall use its commercially reasonable efforts to preserve substantially intact the business organization of GHX and its Subsidiaries and maintain its existing relationships and goodwill with material customers, suppliers, distributors, creditors, lessors, lessees, employees and business associates. Without limiting the generality of the foregoing sentence, except as set forth in Part 5(c) of the GHX Disclosure Schedule or as expressly contemplated or permitted by this Agreement or the Merger Agreement, during the Pre-Closing Period, GHX shall not, and shall not permit any of its Subsidiaries to (without the prior written consent of the Stockholder, which consent shall not be unreasonably withheld or delayed):

(i) (A) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any Membership Units or shares of capital stock, except for dividends by a wholly-owned Subsidiary of GHX, or (B) repurchase, redeem or otherwise reacquire any Membership Units or shares of capital stock or other securities;

(ii) sell, issue, grant, pledge or otherwise encumber or authorize the sale, issuance, grant, pledge or encumbrance of: (A) any Membership Units, capital stock or other security; (B) any option, call, warrant or right to acquire any Membership Units, capital stock or other security; or (C) any instrument convertible into or exercisable or exchangeable for any Membership Units, capital stock or other security;

- (iii) amend or permit the adoption of any amendment to the Certificate of Formation of GHX, the Formation Agreement or the LLC Agreement;
- (iv) other than in the ordinary course of business and consistent with past practices or as required by concurrent changes in GAAP, change any of its methods of accounting or accounting practices in any material respect;
- (v) (A) make or change any material Tax election, (B) enter into any settlement or compromise of any material Tax liability or (C) surrender any right to claim a material Tax refund;
- (vi) prepare or file any Tax Return materially inconsistent with past practice or, on any such Tax Return, take any position, make any election or adopt any method that is materially inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns in prior periods;
- (vii) agree or commit to take any of the actions described in clauses "(i)" through "(vi)" of this Section 5(c).
- (d) Confidentiality; Disclosure. The parties hereto acknowledge that they and the other parties thereto have previously entered into that certain confidentiality agreement, dated as of June 6, 2005, among GHX, the Stockholder, VHA Inc., Novation, LLC and Healthcare Purchasing Partners International, LLC (the "Confidentiality Agreement"), which shall continue in full force and effect in accordance with its terms. The initial press release issued by the Stockholder and GHX concerning this Agreement shall be a joint press release and thereafter the Stockholder and GHX shall consult with each other before issuing any press release or otherwise making any public statement regarding this Agreement, except as may be required by applicable Legal Requirements.
- (e) Expenses. Except as set forth in Section 7(j), all fees and expenses incurred in connection with this Agreement and the Contemplated Transactions shall be paid (or caused to be paid) by the party incurring such expenses, whether or not the Merger and the Exchange are consummated.
- (f) Regulatory Approvals and Related Matters. Except where prohibited by applicable Legal Requirements, and subject to the

Confidentiality Agreement, the Stockholder and GHX shall consult with the other party prior to taking a position with respect to any filing required under Section 5.6(a) of the Merger Agreement, shall permit the other to review and discuss in advance, and consider in good faith the views of the other in connection with, any analyses, appearances, presentations, memoranda, briefs, white papers, arguments, opinions and proposals before making or submitting any of the foregoing to any Governmental Body by or on behalf of GHX in connection with any investigations or proceedings in connection with this Agreement, the Merger Agreement or the Contemplated Transactions, coordinate with the other in preparing and exchanging such information and promptly provide the other (and its counsel) with copies of all filings, presentations or submissions (and a summary of any oral presentations) made by GHX with any Governmental Body in connection with this Agreement, the Merger Agreement or the Contemplated Transactions; provided that with respect to any such filing, presentation or submission, each of the Stockholder and GHX need not supply the other (or its counsel) with copies (or, in case of oral presentations, a summary) to the extent that any Legal Requirement applicable to such party requires such party or its Subsidiaries to restrict or prohibit access to any such properties or information or to the extent required by any existing confidentiality or non-disclosure agreement. GHX will notify the Stockholder promptly upon the receipt of: (i) any comments from any officials of any Governmental Body in connection with any filings made pursuant hereto or pursuant to the Merger Agreement, and (ii) any request by any officials of any Governmental Body for amendments or supplements to any filings made pursuant to, or information provided to comply in all material respects with, any applicable Legal Requirements. Whenever any event occurs that is required to be set forth in an amendment or supplement to any filing made pursuant to Section 5.6(a) of the Merger Agreement, GHX will promptly inform the Stockholder of such occurrence and the Stockholder and GHX will cooperate with respect to the filing by GHX with the applicable Governmental Body of such amendment or supplement.

(g) Voting of Shares. GHX agrees that it shall not exercise the power to vote with respect to any Shares during any period of time between the Exchange Closing and the Effective Time (as defined in the Merger Agreement).

6. Conditions Precedent.

(a) The obligations of the Stockholder to consummate the transactions contemplated hereby are subject to the following conditions:

(i) The representations and warranties of GHX contained in Section 4(f) shall be true and correct with respect to those matters that are qualified by Material Adverse Effect or other materiality standard and shall be true and correct in all material respects with respect to those matters that are not so qualified, in each case on the date hereof and as of the Exchange Closing as though made on and as of the Exchange Closing (except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct or true and correct in all material respects, as applicable, as of such earlier date). The representations and warranties of GHX set forth in Section 4 of this Agreement other than those listed in the immediately preceding sentence shall be true and correct, without giving effect to any Material Adverse Effect or other materiality qualifier within such representations and warranties, on the date hereof and as of the Exchange Closing as though made on and as of the Exchange Closing (except to the extent any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date), except where the failure of such representations and warranties to be so true and correct, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Material Adverse Effect;

(ii) All of the covenants and obligations in this Agreement that GHX is required to comply with or to perform at or prior to the Exchange Closing shall have been complied with and performed in all material respects;

(iii) The Stockholder shall have received a certificate executed by the Chief Executive Officer and Chief Financial Officer of GHX, in their capacities as such, confirming that the conditions set forth in Sections 6(a)(i) and 6(a)(ii) have been satisfied;

(iv) The Company, Parent or Merger Sub shall have received the proceeds of the Financing on the terms set forth in the Commitment Letter, or shall have otherwise obtained the financing required in order for GHX and Merger Sub to fulfill its obligations under the Merger Agreement;

(v) Each Affiliated Party Contract listed on Part 6(a)(v) of the GHX Disclosure Schedule shall have been extended for the period set forth on such part of the GHX Disclosure Schedule and, except as set forth on such part of the GHX Disclosure Schedule, GHX shall have provided



to the Stockholder accurate and complete copies of the amendment or other agreement that shall have made such extension effective; and

(vi) All of the conditions set forth in Sections 6 and 7 of the Merger Agreement (except for Section 6.8) shall have been satisfied or waived by the party entitled to waive such condition.

(b) The obligations of GHX to consummate the transactions contemplated hereby are subject to the following conditions:

(i) The representations and warranties of the Stockholder contained in Section 3 shall be true and correct in all material respects, in each case on the date hereof and as of the Exchange Closing as though made on and as of the Exchange Closing (except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date);

(ii) All of the covenants and obligations in this Agreement that the Stockholder is required to comply with or to perform at or prior to the Exchange Closing shall have been complied with and performed in all material respects;

(iii) GHX shall have received a certificate executed by the Chief Executive Officer and Chief Financial Officer of the Stockholder, in their capacities as such, confirming that the conditions set forth in Sections 6(b)(i) and 6(b)(ii) have been satisfied; and

(iv) All of the conditions set forth in Section 6 of the Merger Agreement (except for Section 6.8) shall have been satisfied or waived by GHX.

## 7. Miscellaneous.

(a) Binding Effect; Benefits. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the parties hereto and their respective successors and permitted assigns. Except as specifically provided in Section 7(l), nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties hereto and their respective successors and permitted assigns) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Except as set forth in Section 7(j), no party shall have liability for any breach of any representation or warranty contained herein, except for any willful or intentional breach thereof.

(b) Amendments. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the Stockholder and GHX.

(c) Definitions. For purposes of this Agreement:

“Encumbrance” shall mean any lien, pledge, charge, mortgage, easement, encroachment, imperfection of title, title exception, title defect, right of possession, lease, security interest, encumbrance, adverse claim, interference or restriction on transfer (except for restrictions arising under applicable securities laws) except for: (i) liens or other imperfections of title that would not be reasonably likely to, individually or in the aggregate, materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of GHX; (ii) liens and encumbrances for Taxes, assessments or other government charges not yet due or which are being contested in good faith; (iii) zoning, building or other similar government restrictions; (iv) easements, covenants, rights of way or other similar restrictions with respect to real property; (v) vendor’ s liens not exceeding the unpaid purchase price of the encumbered asset; (vi) pledges or deposits to secure obligations under workers’ compensation laws or similar legislation or to secure public or statutory obligations; (vii) non-exclusive licenses entered into in the ordinary course of business; (viii) liens securing indebtedness that are reflected on the GHX Balance Sheet; and (ix) liens, pledges, charges, mortgages, security interests or encumbrances arising under the Financing.

“GHX Disclosure Schedule” shall mean the GHX Disclosure Schedule and exhibits thereto that has been delivered by GHX to the Stockholder upon the execution of this Agreement.

“GHX Associate” shall mean any current officer, director, or other employee of GHX.

“GHX IP” shall mean: (a) all Intellectual Property Rights with respect to which GHX or any of its Subsidiaries has (or purports to have) an ownership interest, and (b) all Intellectual Property Rights licensed or sublicensed to GHX or any of its Subsidiaries by any Person.

“GHX Owned IP” shall mean all GHX IP with respect to which GHX or any of its Subsidiaries has (or purports to have) an ownership interest.

“GHX Product” shall mean any product or service developed, manufactured, marketed, distributed, provided, leased, licensed or sold, directly or indirectly, by or on behalf of GHX that is material to the business of GHX as currently conducted, and accounted for at least 5% of GHX’ s revenues for the fiscal year ending December 31, 2004.

“GHX Registered IP” shall mean any GHX Owned IP that is Registered IP.

“GHX Source Code” shall mean any source code, or any portion, aspect or segment of any source code, which is material to any GHX Product.

“Intellectual Property Rights” shall mean all rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights and mask works; (b) trademark, trade name and domain name rights or other rights with respect to designations of origin and similar rights and the goodwill of GHX or any of its Subsidiaries symbolized thereby; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in Intellectual Property; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions and reissues of, and applications for, any of the rights referred to in clauses “(a)” through “(e)” above; and (g) all rights and remedies against infringement, misappropriation or other violation thereof.

“Material Adverse Effect” shall mean any adverse event, condition, effect, change, event, development or circumstance (each, an “Effect”) that, individually or when considered together with all other Effects, would reasonably be expected to have a material adverse effect on: (a) the business, condition (financial or otherwise) or results of operations of GHX and its Subsidiaries taken as a whole; provided, *however*, that, in no event shall any of the following, alone or in combination, be deemed to constitute, nor shall any of the following be taken into account in determining whether there has occurred, a Material Adverse Effect: (i) Effects resulting from conditions generally affecting the industries in which GHX or its customers participate or the U.S. or global economy or capital markets as a whole, to the extent that such conditions do not have a disproportionate impact on GHX and its Subsidiaries, taken as a whole; (ii) Effects resulting from the announcement (or pre-announcement disclosure), or pendency of the Merger and the Contemplated Transactions (including any cancellation of

or delays in customer orders, any reduction in sales, any disruption in distributor, reseller, supplier, partner or similar relationships or any loss of employees); (iii) any failure by GHX to meet internal projections or forecasts or third party revenue or earnings predictions for any period ending (or for which revenues or earnings are released) on or after the date of this Agreement, in and of themselves (it being understood that the Effects giving rise or contributing to the failure to meet such projections, forecasts or predictions may be taken into account in determining whether there has been, or would reasonably be expected to be, a Material Adverse Effect), (iv) any action or litigation against GHX, the Company, the Stockholder or VHA Inc. relating to or arising from allegations of breach of fiduciary duty relating to the Company or GHX entering into this Agreement or the Merger Agreement or disclosure violations in the securities filings made in connection with the Merger; (v) Effects resulting from compliance with the terms of, or the taking of any action required by, this Agreement or the Merger Agreement, including actions taken pursuant to Section 5.6 of the Merger Agreement; (vi) changes in applicable Legal Requirements or GAAP; or (vii) any Company Material Adverse Effect or (b) other than an Effect resulting from a Company Material Adverse Effect, the ability of GHX to consummate the Merger or the Exchange on or prior to the End Date or the Extended End Date, as applicable.

(d) Assignability. Neither this Agreement nor any party's rights or obligations hereunder may be assigned or delegated by such party without the prior written consent of the other party, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by any party without the prior written consent of the other party shall be void and of no effect.

(e) Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they may be entitled at law or in equity.

(f) Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (regardless of the laws that might otherwise

govern under applicable principles of conflicts of laws thereof). In any action between the parties arising out of or relating to this Agreement or any of the Contemplated Transactions, each of the parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Chancery Court of the State of Delaware. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO IT THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7(f).

(g) Entire Agreement; Counterparts; Exchanges by Facsimile or Electronic Delivery. This Agreement and the other agreements, exhibits, schedules and disclosure schedules referred to herein (including the Revised Formation Agreement, and the Revised LLC Agreement) constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof and thereof; *provided, however,* that the Confidentiality Agreement shall not be superseded and shall remain in full force and effect in accordance with its terms. This Agreement may be executed by facsimile and in two counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or by electronic delivery in .pdf format shall be sufficient to bind the parties to the terms and conditions of this Agreement.

(h) Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

(i) Waiver. Subject to Sections 7(i)(A) and 7(i)(B), at any time prior to the Exchange Closing, either party may: (i) extend the time for the performance of any of the obligations or other acts of the other party; (ii) waive any inaccuracy in or breach of any representation, warranty, covenant or obligation of the other party in this Agreement or in any document delivered pursuant to this Agreement; and (iii) waive compliance with any covenant, obligation or condition for the benefit of such party contained in this Agreement.

(A) No failure on the part of either party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(B) Neither party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party;

and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

(j) Survival of Representations and Warranties and Agreements; Indemnification. Except with respect to the representations and warranties contained in Section 4(f), which shall survive for a period of eighteen (18) months following the Exchange Closing, none of the representations and warranties contained in this Agreement or in any certificate delivered pursuant to this Agreement shall survive the Exchange Closing. This Section 7(j) shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Exchange Closing. GHX shall indemnify, defend and hold harmless the Stockholder and each of its Affiliates, officers, directors, employees, consultants and other Representatives from and against any and all damages, liabilities, claims, actions, suits, proceedings, costs, charges and expenses, including reasonable attorneys' fees, incurred or sustained by any of such persons as a result of or from any breach of any of the representations and warranties contained in Section 4(f).

(k) Termination. This Agreement shall terminate upon the earlier to occur of (i) the date of the termination of the Merger Agreement in accordance with its terms and (ii) an agreement of GHX and the Stockholder to terminate this Agreement. All representations, warranties, covenants and agreements set forth herein shall terminate and have no further force or effect as of the termination of this Agreement pursuant to this Section 7(k). Notwithstanding the foregoing, Sections 5(d), 5(e) and 7 of this Agreement and the Confidentiality Agreement, and the covenants and agreements set forth herein and therein, shall survive the termination of this Agreement and no party shall be relieved from any liability (y) by reason of such termination, for a breach by such party of this Agreement prior to such termination or (z) for any willful or intentional breach of any covenant, obligation, representation or warranty contained in this Agreement.

(l) Third Party Beneficiary. The Company is a third party beneficiary of this Agreement with the right to enforce the provisions hereof.

(m) GHX Disclosure Schedule. The GHX Disclosure Schedule shall be arranged in separate parts corresponding to the numbered and lettered sections contained in Section 4.

(n) Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent designated for overnight delivery by nationally recognized overnight air courier (such as DHL or Federal Express), two business days after mailing; (b) if sent by facsimile transmission before 5:00 p.m., when transmitted and receipt is confirmed; (c) if sent by facsimile transmission after 5:00 p.m. and receipt is confirmed, on the following business day; and (d) if otherwise actually personally delivered, when delivered, provided that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as either party shall provide by like notice to the other party to this Agreement:

if to GHX:

Global Healthcare Exchange, LLC  
Suite 400  
11000 Westmoor Circle  
Westminster, CO 80021  
Attn: Chief Executive Officer and Chief Financial Officer  
Facsimile: (720) 887-7233

with a copy (which shall not constitute notice) to:

Sidley Austin Brown & Wood LLP  
Bank One Plaza  
10 South Dearborn Street  
Chicago, IL 60603  
Attention: Frederick C. Lowinger  
  
Facsimile: (312) 853-7036

Carol M. Lind

if to the Stockholder:

University HealthSystem Consortium  
2001 Spring Road, Suite 700  
Oak Brook, Illinois 60523  
Attn: General Counsel  
Facsimile: (630) 954-4730



with copies (which shall not constitute notice) to:

McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, Illinois 60606  
Attn: Dean A. Kant, Esq.  
Facsimile: (312) 984-7700

(o) Construction

(A) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include masculine and feminine genders.

(B) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(C) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(D) Except as otherwise indicated, all references in this Agreement to “Sections,” “Exhibits” and “Schedules” are intended to refer to Sections of this Agreement and Exhibits or Schedules to this Agreement.

(E) The headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

\* \* \* \* \*

IN WITNESS WHEREOF, GHX and the Stockholder have executed this Agreement as of the date first above written.

GLOBAL HEALTHCARE EXCHANGE, LLC

By: /s/ Michael Mahoney \_\_\_\_\_

Name: Michael Mahoney

Title: CEO

UNIVERSITY HEALTHSYSTEM CONSORTIUM

By: /s/ Robert J. Baker \_\_\_\_\_

Name: Robert J. Baker

Title: President and CEO

VOTING AGREEMENT

VOTING AGREEMENT, dated as of October 10, 2005 (this "Agreement"), between Global Healthcare Exchange, LLC, a Delaware limited liability company ("Parent"), and University HealthSystem Consortium, an Illinois corporation (the "Stockholder").

## RECITALS

WHEREAS, Neoforma, Inc. is a corporation organized under the laws of the State of Delaware (the "Company"). The Stockholder "beneficially owns" (as such term is defined in Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended) the number of shares of common stock, par value \$0.001 per share, of the Company (the "Common Stock") set forth opposite the Stockholder's name on Exhibit A hereto (such shares of Common Stock, together with all other shares of capital stock of the Company acquired by the Stockholder after the date hereof and during the term of this Agreement, being collectively referred to herein as the "Subject Shares"); and

WHEREAS, pursuant to Section 6.1 of the Amended and Restated Common Stock and Warrant Agreement, dated as of May 24, 2000, between the Company and the Stockholder (as amended pursuant to the Amendment to Amended and Restated Common Stock and Warrant Agreement, dated as of January 25, 2001, the "First Purchase Agreement"), the Stockholder is permitted to vote the Subject Shares with respect to the Merger and the Merger Agreement in its sole discretion; and

WHEREAS, concurrently with the execution and delivery of this Agreement, Parent, Leapfrog Merger Corporation, a corporation organized under the laws of the State of Delaware ("Merger Sub"), and the Company are entering into an Agreement and Plan of Merger (as the same may from time to time be modified, supplemented or restated, the "Merger Agreement") providing for the merger of Merger Sub with and into the Company, with the Company surviving the Merger (the "Merger") upon the terms and subject to the conditions set forth therein; and

WHEREAS, as a condition to entering into the Merger Agreement, Parent has required that the Stockholder enter into this Agreement, and the Stockholder desires to enter into this Agreement to induce Parent to enter into the Merger Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual premises, representations, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Representations and Warranties of the Stockholder. The Stockholder represents and warrants to Parent as follows:

(a) Authority. The Stockholder is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, has all requisite corporate

power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and has duly taken all corporate action necessary for the due authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by the Stockholder and, assuming this Agreement constitutes a valid and binding obligation of Parent, constitutes a valid and binding obligation of the Stockholder enforceable in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights generally from time to time in effect and to general equitable principles.

(b) No Conflicts. (i) No filing with any governmental body or authority, and no authorization, consent or approval of any other person is necessary for the execution of this Agreement by the Stockholder and the consummation by the Stockholder of the transactions contemplated hereby (except for applicable requirements, if any, of the Securities Exchange Act of 1934, as amended) and (ii) none of the execution and delivery of this Agreement by the Stockholder, the consummation by the Stockholder of the transactions contemplated hereby or compliance by the Stockholder with any of the provisions hereof shall (A) conflict with or result in any breach of the organizational documents of the Stockholder, (B) result in, or give rise to, a violation or breach of or a default under (with or without notice or lapse of time, or both) any of the terms of any material contract, understanding, agreement or other instrument or obligation to which the Stockholder is a party or by which the Stockholder or any of its Subject Shares may be bound, or (C) violate any order, writ, injunction, decree, judgment, statute, rule or regulation applicable to the Stockholder or any of its Subject Shares, except for any of the foregoing as could not reasonably be expected to materially impair the Stockholder's ability to perform its obligations under this Agreement.

(c) The Subject Shares. Exhibit A sets forth the Stockholder's name and the number of Subject Shares over which the Stockholder has record and beneficial ownership as of the date hereof. As of the date hereof, the Stockholder is the record or beneficial owner of the Subject Shares denoted as being owned by the Stockholder on Exhibit A and has the sole power to vote (or cause to be voted) such Subject Shares with respect to the Merger and the Merger Agreement. Except as set forth on such Exhibit A, neither the Stockholder nor any affiliate of the Stockholder owns or holds any right to acquire any additional shares of any class of capital stock of the Company or other securities of the Company or any interest therein or any voting rights with respect thereto.

(d) Title. The Stockholder has good and valid title to the Subject Shares denoted as being owned by the Stockholder on Exhibit A, free and clear of any and all pledges, mortgages, liens, charges, proxies, voting agreements, encumbrances, adverse claims, options, security interests and demands of any nature or kind whatsoever, other than those created by the First Purchase Agreement, the Common Stock Purchase Agreement, dated as of January 25, 2001, between the Company and the Stockholder, as amended April 14, 2003 (the "Second Purchase Agreement"), this Agreement or as could not reasonably be expected to impair the Stockholder's ability to perform its obligations under this Agreement.

(e) Reliance by Parent. The Stockholder understands and acknowledges that Parent is entering into, and causing Merger Sub to enter into, the Merger Agreement in reliance upon the Stockholder's execution and delivery of this Agreement.

(f) Litigation. To the knowledge of the Stockholder, there is no action, proceeding or investigation pending or threatened against the Stockholder that questions the validity of this Agreement or any action taken or to be taken by the Stockholder in connection with this Agreement.

Section 2. Representations and Warranties of Parent. Parent hereby represents and warrants to the Stockholder as follows:

(a) Authority. Parent is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and has duly taken all corporate action necessary for the due authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by Parent and, assuming this Agreement constitutes a valid and binding obligation of the Stockholder, constitutes a valid and binding obligation of Parent enforceable in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights generally from time to time in effect and to general equitable principles.

(b) No Conflicts. (i) No filing with any governmental body or authority, and no authorization, consent or approval of any other person is necessary for the execution of this Agreement by Parent and the consummation by Parent of the transactions contemplated hereby and (ii) none of the execution and delivery of this Agreement by Parent, the consummation by Parent of the transactions contemplated hereby or compliance by Parent with any of the provisions hereof shall (A) conflict with or result in any breach of the organizational documents of Parent, (B) result in, or give rise to, a violation or breach of or a default under (with or without notice or lapse of time, or both) any of the terms of any material contract, understanding, agreement or other instrument or obligation to which Parent is a party or by which Parent or any of its assets may be bound, or (C) violate any order, writ, injunction, decree, judgment, statute, rule or regulation applicable to Parent, except for any of the foregoing as could not reasonably be expected to materially impair Parent' s ability to perform its obligations under this Agreement.

(c) Reliance by the Stockholder. Parent understands and acknowledges that the Stockholder is entering into this Agreement in reliance upon the execution and delivery of the Merger Agreement by Parent.

(d) Litigation. To the knowledge of Parent, there is no action, proceeding or investigation pending or threatened against Parent that questions the validity of this Agreement or any action taken or to be taken by Parent in connection with this Agreement.

Section 3. Covenants of the Stockholder. Until the termination of this Agreement in accordance with Section 4, the Stockholder, in its capacity as such, agrees as follows:

(a) At any meeting of stockholders of the Company called to vote upon the Merger and the Merger Agreement or at any adjournment thereof or in any other

circumstances upon which a vote, consent or other approval (including by written consent) with respect to the Merger and the Merger Agreement is sought from the stockholders of the Company, the Stockholder shall vote (or cause to be voted) the Subject Shares in favor of the approval of the Merger and the approval and adoption of the Merger Agreement. Any such vote shall be cast or consent shall be given in accordance with such procedures relating thereto so as to ensure that it is duly counted for purposes of determining that a quorum is present and for purposes of recording the results of such vote or consent. The Stockholder agrees not to enter into any agreement or commitment with any person the effect of which would be inconsistent with or violative of the provisions and agreements contained in this Section 3(a).

(b) Except as the Stockholder is otherwise obligated under the First Purchase Agreement and the Second Purchase Agreement (subject to the Waiver, dated as of the date hereof, among the Stockholder, VHA Inc. and the Company), at any meeting of stockholders of the Company or at any adjournment thereof or in any other circumstances upon which the Stockholder's vote, consent or other approval is sought, the Stockholder shall vote (or cause to be voted) the Subject Shares against (i) any merger agreement or merger (other than the Merger Agreement and the Merger), consolidation, combination, sale of substantial assets, reorganization, recapitalization, dissolution, liquidation or winding up of or by the Company or any of its Subsidiaries or any other Acquisition Proposal or (ii) any amendment of the Company's certificate of incorporation or bylaws or other proposal or transaction involving the Company or any of its Subsidiaries, which amendment or other proposal or transaction would in any manner impede, frustrate, prevent or nullify the Merger, the Merger Agreement or any of the other transactions contemplated by the Merger Agreement or change in any manner the voting rights of any class of capital stock of the Company. The Stockholder further agrees not to commit or agree to take any action inconsistent with the foregoing.

(c) The Stockholder hereby appoints Mike Mahoney and Greg Nash, and each of them individually, as the Stockholder's proxy and attorney-in-fact, with full power of substitution and resubstitution, solely to vote or act by written consent prior to the termination of this Agreement with respect the Subject Shares in accordance with Section 3(a). This proxy is given to secure the performance of the duties of the Stockholder under this Agreement. The Stockholder shall promptly cause a copy of this Agreement to be deposited with the Company at its principal place of business. The Stockholder shall take such further action or execute such other instruments as may be reasonably necessary to effectuate the intent of this proxy. The proxy and power of attorney granted pursuant to this Section 3(c) by the Stockholder shall be irrevocable during the term of this Agreement, shall be deemed to be coupled with an interest sufficient in law to support an irrevocable proxy and shall revoke any and all prior proxies granted by the Stockholder inconsistent with the proxy hereby granted. The power of attorney granted by the Stockholder herein is a durable power of attorney and shall survive the dissolution or bankruptcy of the Stockholder. The proxy and power of attorney granted hereunder shall terminate upon the termination of this Agreement. The Stockholder represents that any proxies heretofore given in respect of the Stockholder's Subject Shares are not irrevocable and that any such proxies are hereby revoked.

(d) Except as provided in Sections 3(a) and 3(c), the Stockholder agrees not to, directly or indirectly, (i) sell, transfer, tender, pledge, encumber, assign or otherwise dispose of (collectively, a "Transfer") or enter into any agreement, option or other arrangement with respect to, or consent to, a Transfer of, any or all of the Subject Shares to any

person, that is inconsistent with its obligations under this Agreement, or (ii) grant any proxies, deposit any Subject Shares into any voting trust or enter into any voting arrangement, whether by proxy, voting agreement or otherwise, with respect to any of the Subject Shares, in each case that is inconsistent with this Agreement.

(e) The Stockholder hereby represents that it is not now engaged in discussions or negotiations with any party other than Parent with respect to any Acquisition Proposal. The Stockholder shall not, nor shall the Stockholder authorize any investment banker, consultant, attorney or other advisor or representative of the Stockholder to, directly or indirectly (i) solicit, initiate or knowingly encourage, induce or facilitate the making, submission or announcement of any Acquisition Proposal, (ii) furnish any information (including non-public information) regarding the Company to any Person in connection with or in response to an Acquisition Proposal, (iii) engage in discussions or negotiations with any Person with respect to any Acquisition Proposal or (iv) enter into any Contract contemplating or providing for any Acquisition Transaction; provided, however, that this Section 3(e) shall not prohibit Stockholder from furnishing any information (including non-public information) regarding the Company to, or entering into discussions or negotiations with, any Person at any such time as the Company is engaging in such activities with such Person in compliance with the terms and conditions of the Merger Agreement. Any such furnishing of information, discussions or negotiations shall be conducted in accordance with Section 4.3 of the Merger Agreement.

(f) At the request of Parent, the Stockholder shall use all commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with Parent in doing, all things reasonably necessary, proper or advisable to carry out the intent and purposes of this Agreement.

Section 4. Termination. This Agreement shall terminate (i) upon the earlier of (A) the Effective Time, (B) the date of the termination of the Merger Agreement and (C) the effective date of any amendment to any pricing term of the Merger Agreement in a manner adverse to the Stockholder or any amendment to or waiver of any other term or condition of the Merger Agreement in a manner materially adverse to the Stockholder, in each case without the prior written consent of the Stockholder or (ii) at any time upon notice by Parent to the Stockholder. All representations, warranties, covenants and agreements set forth herein shall terminate and have no further effect as of the termination of this Agreement pursuant to this Section 4. Notwithstanding the foregoing, Sections 7 through 19, inclusive, of this Agreement shall survive the termination of this Agreement and no party shall be relieved from any liability, by reason of any such termination, for a breach by such party of this Agreement prior to such termination.

Section 5. Appraisal Rights. To the extent permitted by applicable law, the Stockholder hereby waives any rights of appraisal or rights to dissent from the Merger that it may have under applicable law.

Section 6. Publication. The Stockholder hereby authorizes Parent and the Company to publish and disclose in the press release announcing the Merger and in the Proxy Statement (including any and all documents and schedules filed with the Securities and Exchange Commission relating thereto) its identity and ownership of shares of Common Stock as each are set forth on Exhibit A attached hereto and the nature of the Stockholder's

commitments, arrangements and understandings pursuant to this Agreement. Parent and/or the Company will allow the Stockholder a reasonable opportunity to review and comment on any language in the press release announcing the Merger and in the Proxy Statement (including any and all documents and schedules filed with the Securities and Exchange Commission relating thereto) that refers to the Stockholder.

Section 7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to any principles or rules of conflicts of laws thereof.

Section 8. Jurisdiction; Waiver of Jury Trial.

(a) Each of the parties hereto irrevocably and unconditionally (i) agrees that any legal suit, action or proceeding brought by any party hereto arising out of or based upon this Agreement or the transactions contemplated hereby may be brought in the courts of the State of Delaware or the United States District Court for the District of Delaware (each, a “Delaware Court”), (ii) waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in any Delaware Court, and any claim that any such action or proceeding brought in any Delaware Court has been brought in an inconvenient forum, and (iii) submits to the non-exclusive jurisdiction of Delaware Courts in any suit, action or proceeding. Each of the parties agrees that a judgment in any suit, action or proceeding brought in a Delaware Court shall be conclusive and binding upon it and may be enforced in any other courts to whose jurisdiction it is or may be subject, by suit upon such judgment.

(b) EACH OF THE PARTIES AGREES AND ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION OR VALIDITY OF THIS AGREEMENT.

Section 9. Specific Performance. The Stockholder acknowledges and agrees that (i) the covenants, obligations and agreements of the Stockholder contained in this Agreement relate to special, unique and extraordinary matters, (ii) Parent is and will be relying on such covenants in connection with entering into the Merger Agreement and the performance of its obligations under the Merger Agreement, and (iii) a violation of any of the terms of such covenants, obligations or agreements may cause Parent irreparable injury for which adequate remedies are not available at law. Therefore, the Stockholder agrees that Parent, in addition to any other remedies at law or in equity it may have, shall be entitled to an injunction, restraining order or such other equitable relief (without the requirement to post bond) as a court of competent jurisdiction may deem necessary or appropriate to restrain the Stockholder from committing any violation of such covenants, obligations or agreements.

Section 10. Amendment, Waivers, etc. Neither this Agreement nor any term hereof may be amended or otherwise modified other than by an instrument in writing signed by



Parent and the Stockholder. No provision of this Agreement may be waived, discharged or terminated other than by an instrument in writing signed by the party against whom the enforcement of such waiver, discharge or termination is sought.

Section 11. Assignment; No Third Party Beneficiaries. This Agreement shall not be assignable or otherwise transferable by a party without the prior consent of the other party, and any attempt to so assign or otherwise transfer this Agreement without such consent shall be void and of no effect. This Agreement shall be binding upon the respective successors and permitted assigns or transferees of the parties hereto. Nothing in this Agreement shall be construed as giving any person, other than the parties hereto and their successors and permitted assigns or transferees, any right, remedy or claim under or in respect of this Agreement or any provision hereof. No failure or delay by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 12. Notices. All notices, consents, requests, instructions, approvals and other communications provided for in this Agreement shall be in writing and shall be deemed validly given upon personal delivery or one day after being sent by overnight courier service or by telecopy (so long as for notices or other communications sent by telecopy, the transmitting telecopy machine records electronic conformation of the due transmission of the notice), at the following address or telecopy number, or at such other address or telecopy number as a party may designate to the other parties:

If to Parent, to:

Global Healthcare Exchange, LLC  
Suite 400  
11000 Westmoor Circle  
Westminster, CO 80021  
Attn: Chief Executive Officer and Chief Financial Officer  
Facsimile: (720) 887-7233

with copies to:

Sidley Austin Brown & Wood LLP  
Bank One Plaza  
10 South Dearborn Street  
Chicago, IL 60603  
Attention: Frederick C. Lowinger

Carol M. Lind

Facsimile: (312) 853-7036

If to the Stockholder, to:

University HealthSystem Consortium  
2001 Spring Road, Suite 700  
Oak Brook, Illinois 60523  
Attn: General Counsel  
Facsimile: (630) 954-4730

with copies to:

McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, Illinois 60606  
Attn: Dean A. Kant, Esq.  
Facsimile: (312) 984-7700

Section 13. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties hereto to the maximum extent possible. In any event, the invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of this Agreement, including that provision, in any other jurisdiction.

Section 14. Integration. This Agreement (together with the Merger Agreement solely to the extent referenced herein), including Exhibit A hereto, constitutes the full and entire understanding and agreement of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings or agreements relating to the subject matter of this Agreement.

Section 15. Mutual Drafting. Each party hereto has participated in the drafting of this Agreement, which each party acknowledges is the result of extensive negotiations between the parties.

Section 16. Section Headings. The section headings of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 17. Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile), each of which shall be an original and all of which shall constitute one and the same instrument.

Section 18. Capitalized Terms. For purposes of this Agreement, capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Merger Agreement.

Section 19. Definitions. References in this Agreement to “affiliate” shall mean, as to any person, any other person which, directly or indirectly, controls, or is controlled by, or is under common control with, such person. As used in this definition, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of

management or policies of a person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise. References in the Agreement to “person” shall mean an individual, a corporation, a partnership, an association, a trust or any other entity, group (as such term is used in Section 13 of the Exchange Act) or organization, including, without limitation, a governmental body or authority.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

GLOBAL HEALTHCARE EXCHANGE,  
LLC

By: /s/ Michael Mahoney  
Name: Michael Mahoney  
Title: CEO

UNIVERSITY HEALTHSYSTEM CONSORTIUM

By: /s/ Robert J. Baker  
Name: Robert J. Baker  
Title: President and CEO

**STOCKHOLDER**

<b><u>Name</u></b>	<b><u>Number of Subject Shares</u></b>
University HealthSystem Consortium	2,130,302

## WAIVER

WAIVER, dated October 10, 2005 (the "*Waiver*"), by and among Neoforma, Inc. (formerly known as Neoforma.com, Inc.), a Delaware corporation (the "*Company*"), VHA Inc., a Delaware corporation ("*VHA*"), and University HealthSystem Consortium, an Illinois corporation ("*UHC*").

## WITNESSETH:

WHEREAS, the Company and VHA are parties to (i) that certain Amended and Restated Common Stock and Warrant Agreement dated as of May 24, 2000 (as amended pursuant to that certain Amendment to Amended and Restated Common Stock and Warrant Agreement dated as of October 18, 2000, the "*First VHA Agreement*") and (ii) that certain Common Stock Purchase Agreement dated as of January 25, 2001 (as amended pursuant to that certain First Amendment to Common Stock Purchase Agreement dated as of April 11, 2003, the "*Second VHA Agreement*" and together with the First VHA Agreement, the "*VHA Agreements*");

WHEREAS, the Company and UHC are parties to (i) that certain Amended and Restated Common Stock and Warrant Agreement dated as of May 24, 2000 (as amended pursuant to that certain Amendment to Amended and Restated Common Stock and Warrant Agreement dated as of January 25, 2001, the "*First UHC Agreement*") and (ii) that certain Common Stock Purchase Agreement dated as of January 25, 2001 (as amended pursuant to that certain First Amendment to Common Stock Purchase Agreement dated as of April 14, 2003, the "*Second UHC Agreement*" and together with the First UHC Agreement, the "*UHC Agreements*");

WHEREAS, the Company is entering into an agreement with Global Healthcare Exchange, LLC ("*GHX*") as of the date hereof (the "*Merger Agreement*") whereby a wholly owned subsidiary of GHX will merge with and into Neoforma such that Neoforma will become a wholly owned subsidiary of GHX (the "*Merger*");

WHEREAS, as of the date hereof and in connection with the Merger, each of VHA and UHC are entering into with GHX (i) voting agreements (the "*Voting Agreements*") pursuant to which, among other things, each of VHA and UHC will agree to vote their shares of Company common stock in favor of the approval of the Merger and the approval and adoption of the Merger Agreement and (ii) exchange agreements (the "*Exchange Agreements*") pursuant to which each of VHA and UHC will exchange certain of their shares of Company common stock for membership interests of GHX;

WHEREAS, although the VHA Agreements and the UHC Agreements permit VHA and UHC to freely vote their shares of the Company's common stock in a transaction, such as the Merger, that would constitute a Change of Control (as such term is defined in the VHA Agreements and the UHC Agreements), the Voting Agreements obligate VHA and UHC to take or refrain from certain actions in furtherance of the Merger which would be prohibited by the voting restrictions contained in the VHA Agreements and the UHC Agreements; and

WHEREAS, the VHA Agreements contain certain restrictions on the transfer of the Company' s common stock which would prevent VHA from entering into and performing certain of its obligations under its Voting Agreement and Exchange Agreement.

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained and intending to be legally bound hereby, the parties agree as follows:

**Section 1. Waiver.** For the sole purpose of permitting VHA, UHC and their respective affiliates to enter into, and perform their respective obligations under, the Voting Agreements and the Exchange Agreements, the Company hereby waives (y) the provisions of Sections 6.1 and 6.3 of the First VHA Agreement, Section 5.1 of the Second VHA Agreement, Section 6.1 of the First UHC Agreement and Section 5.1 of the Second UHC Agreement and (z) any other obligations that VHA, UHC and their respective affiliates have with respect to the Company or its affiliates, solely to the extent that such other obligations would otherwise be violated or breached by entering into, or performing obligations under, the Voting Agreements and the Exchange Agreements, in each case for the period commencing on the date hereof and ending on the earlier of (i) the date the Merger is consummated and (ii) the date the Merger Agreement is terminated by the Company or GHX pursuant to its terms.

**Section 2. Status of Agreements.** Except as expressly set forth herein, no provision or term of any of the VHA Agreements, the UHC Agreements or any other agreement is hereby waived, modified, amended or supplemented, and all such provisions and terms, as in effect on the date hereof, are hereby ratified and shall remain in full force and effect.

**Section 3. Amendments; Waivers.** This Waiver may not be modified or amended except by a written instrument signed by authorized representatives of each party and referring specifically to this Waiver. Any term, provision or condition of this Waiver may be waived in writing at any time by the party which is entitled to the benefit thereof.

**Section 4. Counterparts.** This Waiver may be executed in counterparts, which together shall be considered one and the same agreement and each of which shall be deemed an original.

**Section 5. Governing Law.** This Waiver shall be governed and construed under the internal laws of the State of Delaware as applied to agreements among Delaware residents entered into and performed entirely within Delaware, without reference to principles of conflicts of laws or choice of law.

IN WITNESS WHEREOF, each of the parties has executed this Waiver on the date first written above.

NEOFORMA, INC. (formerly known as  
NEOFORMA.COM, INC.)

By: /s/ Robert Zollars  
Name: Robert Zollars  
Title: Chairman & CEO

VHA INC.

By: /s/ Stuart B. Baker, M.D.  
Name: Stuart B. Baker, M.D.  
Title: Executive Vice President

UNIVERSITY HEALTHSYSTEM CONSORTIUM

By: /s/ Robert J. Baker  
Name: Robert J. Baker  
Title: President and CEO



CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. ASTERISKS DENOTE SUCH OMISSION.

OUTSOURCING AGREEMENT

dated as of October 10, 2005

among

NOVATION, LLC,

VHA INC.,

UNIVERSITY HEALTHSYSTEM CONSORTIUM,

HEALTHCARE PURCHASING PARTNERS INTERNATIONAL, LLC,

and

GLOBAL HEALTHCARE EXCHANGE, LLC

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OUTSOURCING AGREEMENT

This Outsourcing Agreement ("AGREEMENT") executed as of October 10, 2005 and effective as of the "EFFECTIVE TIME" as defined below, by and among Global Healthcare Exchange, LLC, a limited liability company organized under the laws of Delaware with offices at 11000 Westmoor Circle, Suite 400, Westminster, CO 80021 ("SERVICE PROVIDER"), Novation, LLC, a Delaware limited liability company with offices at 125 East John Carpenter Freeway, Irving, Texas 75062 ("NOVATION"), Healthcare Purchasing Partners International, LLC, a Delaware limited liability company with offices at 125 East John Carpenter Freeway, Irving, Texas 75062 ("HPPI"), VHA Inc., a Delaware corporation with offices at 220 East Las Colinas Boulevard, Irving, Texas 75039-5500 ("VHA"), and University HealthSystem Consortium, an Illinois corporation with offices at 2001 Spring Road, Suite 700, Oak Brook, Illinois 60523 ("UHC"). Capitalized terms not otherwise defined herein shall have the respective meanings set forth in Section 1 below.

RECITALS

WHEREAS, Service Provider is a provider of Internet e-commerce services to the healthcare industry facilitating the sale, rental, lease and license of new and used equipment, products, supplies, services, information and other content, by allowing electronic orders to be placed and received for the foregoing and by providing online information and analytic capabilities regarding the foregoing;

WHEREAS, VHA and UHC are organizations whose Members are hospitals and healthcare providers, and which view e-commerce services as an essential part of their cooperative purchasing programs on behalf of their Members and desire to cause such services to be available to their Members through this Agreement;

WHEREAS, VHA and UHC together own all the ownership interests in Novation and HPPI;

WHEREAS, Novation is a contracting agent that also develops and delivers supply chain management agreements, programs and services on behalf of VHA and UHC and their Members;

WHEREAS, HPPI is a GPO that serves healthcare organizations that are not members of VHA and UHC and other GPOs and which develops and delivers supply-chain management programs and services to such healthcare organizations;

WHEREAS, the Parties desire to establish a relationship to enable the Parties to achieve increased efficiency and cost savings through Internet-based technology and pursuant to which Service Provider will provide the GHX Exchange, the Novation Proprietary Services and other Services for the benefit of the Members of VHA and UHC and the associated healthcare organizations of HPPI;

WHEREAS, Novation, VHA, UHC and HPPI are parties to the Neoforma Outsourcing Agreement and desire to transition the services provided thereunder to Service Provider in accordance with this Agreement; and

WHEREAS, certain of the Parties have entered into the Merger Agreement pursuant to which Neoforma will become a wholly-owned subsidiary of Service Provider.

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the respective meanings set forth below. Other capitalized terms shall have the meanings set forth elsewhere in this Agreement.

"ACTIVATION EVENT" has the meaning set forth in Section 6.4.3(d).

"AFFILIATE(S)" means, with respect to a specified Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified Person. Service Provider, on the one hand, and Novation, VHA, HPPI and/or UHC, on the other hand, shall not be Affiliates of each other.

"AGGREGATED ALLIANCE MEMBER DATA" means a compilation prepared by or on behalf of any Alliance consisting of Member Data with respect to any two or more Members of the Alliance in question.

"AGGREGATED GHX DATA" means a compilation prepared by Service Provider of Transaction Data of Members and of non-Members (i.e., other customers of Service Provider) concerning which Service Provider has taken commercially reasonable precautions to ensure that no individual, particular transaction or entity (including, without limitation, a Member or a GPO) can be identified.

"AGREEMENT" has the meaning set forth in the Preamble.

"ALLIANCE" means UHC, VHA or HPPI, as applicable.

"ALLSOURCE(R) CATALOG" means the Product Data of multiple Suppliers, organized according to the Classification Scheme.

"ANALYTIC DATA" means all or any portion of the information and data



created or generated from the analysis of Member Data and/or [\*\*\*\*\*] in accordance with the terms hereof.

"ANALYTICS" means the software or other functionality that enables a User to review, analyze and/or report on Member Data and [\*\*\*\*\*].

"CHANGE" has the meaning set forth in Section 4.2.1.

"CHANGE REQUEST" has the meaning set forth in Section 4.2.1.

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CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. ASTERISKS DENOTE SUCH OMISSION.

"CHARGES" has the meaning set forth in Section 7.4.1.

"CLASSIFICATION SCHEME" means Service Provider's proprietary classification scheme for Product Data made available through the GHX Exchange.

"CLIENT SOFTWARE" means the software licensed by Service Provider to the Participating Members, including any manuals and other available documentation therefor, and including any Updates thereto, but not including any Third Party Technology.

"COMPETITOR" means any Person that, at the time of determination, would reasonably be considered to be a competitor of Novation, VHA, UHC or HPPI.

"CONFIDENTIAL INFORMATION" has the meaning set forth in Section 10.1.1.

"CONTENT" means any text, graphics, logos, button icons, images, audio clips, HTML code, java programs and other material used or displayed as part of or in connection with the GHX Exchange, the Novation Marketplace or NPS, other than Product Data.

"[\*\*\*\*\*]" or "[\*\*\*\*\*]" means [\*\*\*\*\*] on [\*\*\*\*\*] use of the [\*\*\*\*\*] and [\*\*\*\*\*], as more particularly described in [\*\*\*\*\*].

"CONTROL" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of the entity in respect of which the determination is being made, through the ownership of voting securities, contract, voting trust or otherwise.

"CURRENT VERSION" has the meaning set forth in Section 6.4.5(a).

"DELIVERABLES" has the meaning set forth in Section 4.1.

"EFFECTIVE DATE" means the date on which the Effective Time occurs.

"EFFECTIVE TIME" has the meaning set forth in the Merger Agreement.

"ESCROW AGENT" has the meaning set forth in Section 6.4.5(a).

"GHX EXCHANGE" means Service Provider's e-commerce system and marketplace for enabling e-commerce transactions and transmitting procurement communications between buyers and Suppliers in the health care industry, all as further described in EXHIBIT B ("SCOPE OF SERVICES"). GHX Exchange includes both GHX Exchange Standard and GHX Exchange Plus.

"GHX EXCHANGE SOFTWARE" means the software necessary to provide the GHX Exchange, including any manuals and other available documentation therefor, and including any Updates thereto, but not including any Third Party Technology.

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"GHX EXCHANGE PLUS" or "GHXE PLUS" means the services designated as such in the Scope of Services, which shall be provided only if and to the extent that any Participating Member elects to receive such services for an additional

fee.

"GHX EXCHANGE STANDARD" or "GHXE STANDARD" means all of the GHX Exchange other than GHX Exchange Plus.

"GHX FORMATION AGREEMENT" means that certain Third Amended and Restated Formation Agreement among Service Provider and its members, dated as of December 30, 2002, as the same may be amended, modified or supplemented from time to time.

"GHX LLC AGREEMENT" means that certain Fifth Amended and Restated Limited Liability Company Agreement among Service Provider and its members, dated as of December 30, 2002, as the same may be amended, modified or supplemented from time to time.

"GPO(S)" means any entity in the United States that meets the definition of a "Group Purchasing Organization" as set forth in 42 CFR Section 1001.952(j), and any entity outside the United States performing a similar function.

"HPPI" has the meaning set forth in the Preamble.

"HPPI MEMBER(S)" means, at any date, those organizations acting as purchasers, renters or lessees in their respective markets that are associates of HPPI and to which HPPI provides procurement-related services, cost management programs and other services.

"INFRINGEMENT CLAIM" has the meaning set forth in Section 14.3.1.

"INITIAL TERM" has the meaning set forth in Section 8.1.

"INSOLVENCY EVENT" has the meaning set forth in Section 8.4.

"[\*\*\*\*\*]" has the meaning set forth in Section 8.4.

"INTELLECTUAL PROPERTY" has the meaning set forth in Section 9.5.2.

"INTELLECTUAL PROPERTY RIGHTS" collectively means any and all rights in Intellectual Property, including without limitation, copyrights, patents, patent registration rights, business processes, data rights, mask works, Marks, trade secrets, and know-how rights arising or enforceable under any U.S. law, foreign law, or international treaty regime.

"INTERNET" means the public, global network of computer networks and individual computers constantly connected using standardized communications protocols, specifically TCP/IP or any successor protocol thereof.

"ITEMS" has the meaning set forth in Section 14.3.1.

"LOSSES" has the meaning set forth in Section 14.1.

"MARKS" means all trademarks, trade names, service marks, service names and logos, worldwide.

"MEMBER(S)" means, at any date, those organizations that are (i) Patrons of VHA as VHA designates from time to time, (ii) members of UHC as UHC designates from time to time and/or (iii) HPPI Members, and in each case, that are listed in an electronic file supplied to Service Provider and updated periodically by Novation.

"MEMBER-BASED PRICING" has the meaning set forth in Section 7.5.1.

"[\*\*\*\*\*]" means those [\*\*\*\*\*] [\*\*\*\*\*] between any one or more [\*\*\*\*\*] and any [\*\*\*\*\*], for the [\*\*\*\*\*] of such [\*\*\*\*\*].

"[\*\*\*\*\*] PORTFOLIO" means a catalog of all [\*\*\*\*\*] for which one or more [\*\*\*\*\*] has contracted for the benefit of such [\*\*\*\*\*].

"[\*\*\*\*\*] PRODUCT" means any [\*\*\*\*\*] that is part of the [\*\*\*\*\*] Portfolio.

"MEMBER DATA" has the meaning set forth in Section 9.1.1.

"MEMBER-FACING PLAN" has the meaning set forth in Section 2.5.1.

"MERGER AGREEMENT" means that certain Agreement and Plan of Merger by and among Service Provider, Neoforma, and Leapfrog Merger Corporation, a Delaware corporation, dated as of the date hereof.

"MIGRATED" means, with respect to a particular Participating Member, that [\*\*\*\*\*] of the activities set forth on the [\*\*\*\*\*] have been successfully completed with respect to that Member.

"MIGRATION DEADLINE" has the meaning set forth in Section 2.1.3.

"MIGRATION PLAN" has the meaning set forth in Section 2.1.1.

"[\*\*\*\*\*]" means the [\*\*\*\*\*] [\*\*\*\*\*] (and the [\*\*\*\*\*] related thereto) that includes [\*\*\*\*\*] [\*\*\*\*\*] of [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to a [\*\*\*\*\*] [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*] that [\*\*\*\*\*] the [\*\*\*\*\*], the [\*\*\*\*\*] and the [\*\*\*\*\*]. The [\*\*\*\*\*] included in [\*\*\*\*\*] shall include [\*\*\*\*\*] [\*\*\*\*\*] thereto that are included in the [\*\*\*\*\*] to be [\*\*\*\*\*] in the [\*\*\*\*\*] (referred to as [\*\*\*\*\*]).

"[\*\*\*\*\*] DATA" means any [\*\*\*\*\*] [\*\*\*\*\*] by [\*\*\*\*\*], any [\*\*\*\*\*] or any [\*\*\*\*\*] to [\*\*\*\*\*] for [\*\*\*\*\*] in [\*\*\*\*\*], including without limitation [\*\*\*\*\*] that is [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] (including [\*\*\*\*\*]), [\*\*\*\*\*], [\*\*\*\*\*], [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*] that [\*\*\*\*\*], any [\*\*\*\*\*] or any [\*\*\*\*\*] provides to [\*\*\*\*\*] for [\*\*\*\*\*] on [\*\*\*\*\*], including, without limitation, [\*\*\*\*\*], [\*\*\*\*\*], [\*\*\*\*\*], [\*\*\*\*\*], [\*\*\*\*\*], [\*\*\*\*\*], [\*\*\*\*\*], [\*\*\*\*\*] and other [\*\*\*\*\*].

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"[\*\*\*\*\*] PERIOD" means the period of time during which [\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*].

"[\*\*\*\*\*] SERVICES" means the services necessary to [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*] during the [\*\*\*\*\*], including [\*\*\*\*\*] to [\*\*\*\*\*] by [\*\*\*\*\*], [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*].

"NEOFORMA" means Neoforma, Inc., a Delaware corporation.

"NEOFORMA OUTSOURCING AGREEMENT" means that certain Fourth Amended and Restated Outsourcing and Operating Agreement by and among Neoforma, Novation, VHA, UHC and HPPI dated as of August 13, 2003.

"NEW PARTICIPATING MEMBERS" has the meaning set forth in Section 2.5.4(a).

"NON-NOVATION CONTRACT PRODUCT" means any [\*\*\*\*\*] that is not part of the [\*\*\*\*\*], including, without limitation, a [\*\*\*\*\*] or a [\*\*\*\*\*].

"NON-RENEWAL NOTICE" has the meaning set forth in Section 8.2.

"NOVATION" has the meaning set forth in the Preamble.

"NOVATION CONTRACT" means [\*\*\*\*\*] [\*\*\*\*\*] or [\*\*\*\*\*] contracts that [\*\*\*\*\*] has entered into for the [\*\*\*\*\*] of the [\*\*\*\*\*].

"NOVATION CONTRACT PRODUCT(S)" means any [\*\*\*\*\*] that is [\*\*\*\*\*] by a [\*\*\*\*\*].

"[\*\*\*\*\*] [\*\*\*\*\*]" has the meaning set forth in Section [\*\*\*\*\*].

"NOVATION MARKETPLACE" means the services being provided by Neoforma pursuant to the Neoforma Outsourcing Agreement as of the Effective Date, including the e-commerce marketplace accessible only to Members of VHA, UHC or HPPI, as updated by the release to be issued in the fourth quarter of 2005 (referred to as Avalon), but excluding the Novation Proprietary Services.

"NOVATION MATERIALS" means Content and [\*\*\*\*\*] Data provided by Novation or by Suppliers to Service Provider solely for use in connection with NPS.

"NOVATION OPERATING AGREEMENT" has the meaning set forth in Section 8.3.2.

"NOVATION PROPRIETARY SERVICES" or "NPS" means the [\*\*\*\*\*], [\*\*\*\*\*] and any other services [\*\*\*\*\*] developed pursuant to a SOW for the exclusive use of Novation and hosted or otherwise provided by Service Provider.

"NOVATION SUPPLIERS" means each Supplier with which Novation has an agreement with respect to [\*\*\*\*\*] to be offered to Members.

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"PARTICIPATING MEMBERS" means any Member that has signed an agreement with Service Provider (or with Neoforma if signed prior to the Effective Date and still in effect) for use of any of the Services.

"PARTY" means each of Service Provider, Novation, HPPI, VHA and UHC and any other Person that becomes a signatory to this Agreement, unless the context requires otherwise.

"PATRON(S)" means a Person that is entitled to receive a patronage refund from VHA.

"PERFORMANCE CREDITS" means the liquidated damages amounts payable by Service Provider to Novation for a failure to meet the Service Levels.

"PERSON" means a natural person, corporation, partnership (limited or general), limited liability company, business trust or other entity.

"POST-MIGRATION" has the meaning set forth in Section 2.2.2.

"PRE-EXISTING GHX AGREEMENTS" has the meaning set forth in Section 2.2.2(c).

"PRE-EXISTING MEMBER AGREEMENTS" has the meaning set forth in Section 2.5.3.

"PRE-MIGRATION" has the meaning set forth in Section 2.2.1.

"PRODUCT(S)" means equipment, products, supplies, services, information and other content provided by Suppliers and available for purchase, rental or lease by Members whether or not through the GHX Exchange or the Novation Marketplace.

"PRODUCT COUNCIL" has the meaning set forth in the GHX LLC Agreement.

"PRODUCT DATA" means product information that a Supplier provides to Service Provider for display on the GHX 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. For avoidance of confusion, price data for a specific transaction is Transaction Data, not Product Data.

"RENEWAL PROPOSAL" has the meaning set forth in Section 8.2.

"RENEWAL TERM" has the meaning set forth in Section 8.2.

"REPORTS" has the meaning set forth in Section 2.8.2(b).

"RESPONSE" has the meaning set forth in Section 4.2.1.

"[\*\*\*\*\*]" means those [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] of [\*\*\*\*\*] or [\*\*\*\*\*] that have not been [\*\*\*\*\*] to [\*\*\*\*\*] and which the [\*\*\*\*\*] may have [\*\*\*\*\*] because they are [\*\*\*\*\*] in [\*\*\*\*\*] or [\*\*\*\*\*].

"[\*\*\*\*\*]" means a [\*\*\*\*\*] of all [\*\*\*\*\*] for which [\*\*\*\*\*] or [\*\*\*\*\*] have contracted for the benefit of their [\*\*\*\*\*] that have not been [\*\*\*\*\*] to [\*\*\*\*\*] and which the [\*\*\*\*\*] may have [\*\*\*\*\*] because they are Members[\*\*\*\*\*]

in [\*\*\*\*\*] or [\*\*\*\*\*].

"[\*\*\*\*\*]" means any [\*\*\*\*\*] that is part of the [\*\*\*\*\*].

"SERVICE(S)" means the services to be provided hereunder by Service Provider, and includes, without limitation, collectively: (i) the Novation Marketplace (with respect to Pre-Migration Members), (ii) GHX Exchange Standard (with respect to Post-Migration Members), (iii) all other services to be provided pursuant to this Agreement, (iv) the [\*\*\*\*\*] and the [\*\*\*\*\*], (v) the other Novation Proprietary Services to the extent that such services are the subject of one or more signed Statements of Work and (vi) GHX Exchange Plus (to the extent that a Member has elected to receive such services).

"SERVICE FEES" has the meaning set forth in Section 7.1.

"SERVICE LEVEL(S)" means the objective criteria establishing the level of Service Provider's required provision of the Services under this Agreement, as further described in EXHIBIT C.

"SERVICE PROVIDER" has the meaning set forth in the Preamble.

"SERVICE PROVIDER CHANGE OF CONTROL" means a merger or consolidation (other than with a subsidiary of Service Provider) in which Service Provider is not the surviving entity, or the sale of substantially all the assets of Service Provider, or a sale or other transaction or series of related transactions in which more than [\*\*\*\*\*] of the outstanding common stock or general voting securities (other than the sale of securities in any public offering) of Service Provider (or the common stock or general voting securities of the new parent entity of Service Provider) immediately after such sale or other transaction or series of related transactions is not owned by the persons or entities who, immediately prior to such sale or other transaction or series of related transactions, owned one-hundred percent (100%) of the common stock or general voting securities of Service Provider.

"SERVICE PROVIDER MATERIALS" means Content provided by Service Provider and displayed on and available to Users of NPS, the Novation Marketplace, GHX Exchange or NPS but shall not include the Novation Materials.

"[\*\*\*\*\*]" has the meaning set forth in Section [\*\*\*\*\*].

"SOURCE CODE" has the meaning set forth in Section 6.4.5(a).

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"SOWS" has the meaning set forth in Section 4.1.

"SUPPLIER(S)" means manufacturers, distributors and other suppliers of medical, surgical, pharmaceutical and other products, equipment and services used by healthcare providers and/or related professionals.

"[\*\*\*\*\*]" or "[\*\*\*\*\*]" means all or any portion of [\*\*\*\*\*] or [\*\*\*\*\*] regarding the [\*\*\*\*\*], [\*\*\*\*\*] or [\*\*\*\*\*] of [\*\*\*\*\*] by [\*\*\*\*\*] that is [\*\*\*\*\*] to [\*\*\*\*\*] by [\*\*\*\*\*], other than [\*\*\*\*\*]

"TERM" has the meaning set forth in Section 8.2.

"TERMINATION ASSISTANCE PERIOD" means the [\*\*\*\*\*] period immediately following the expiration or termination of this Agreement.

"TERMINATION ASSISTANCE SERVICES" means termination assistance to allow the Services to continue in accordance with the terms and conditions of this Agreement and without interruption or adverse effect and to facilitate the orderly transition and migration of all Services then being performed by Service Provider, including any transition and migration from Service Provider to Novation or, if applicable, VHA and UHC (or a third-party provider undertaking, on behalf of Novation, VHA or UHC, to provide the Services).

"THIRD PARTY TECHNOLOGY" shall mean software code and other technology licensed by Service Provider for use in the GHX Exchange Software and/or the Client Software, including Updates to such technology.

"TRANSACTION DATA" means any information communicated by Service Provider to a Participating Member, by a Participating Member to Service Provider or between a Supplier and a Participating Member through GHX Exchange Standard (for Post-Migration Members) or through the Novation Marketplace (for Pre-Migration Members) that relates to product purchase, sale, availability, price, terms of payment or order status, including summaries of such information.

"UHC" has the meaning set forth in the Preamble.

"UPDATE" means an update to the GHX Exchange Software or the Client Software, as applicable, licensed by Novation, UHC, VHA and HPPI hereunder, but not including any updates to the Third Party Technology.

"USER(S)" means the individual authorized representatives of Participating Members who use the GHX Exchange, the Novation Marketplace or the Novation Proprietary Services, the individual employees of UHC, VHA, Novation or HPPI who access the GHX Exchange, the Novation Marketplace or the Novation Proprietary Services and the individual employees of Suppliers that access the GHX Exchange, the Novation Marketplace or the Novation Proprietary Services.

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"VHA" has the meaning set forth in the Preamble.

"V/U/N" means VHA, UHC and Novation.

## 2. SERVICE PROVIDER OBLIGATIONS

### 2.1 Migration.

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2.1.1 Migration Plan. Service Provider shall transition Participating Members from the [\*\*\*\*\*] to the [\*\*\*\*\*] in accordance with the Migration Plan attached hereto as EXHIBIT A ("MIGRATION PLAN"). Service Provider shall use [\*\*\*\*\*] efforts to provide a [\*\*\*\*\*] and [\*\*\*\*\*] transition, with [\*\*\*\*\*] [\*\*\*\*\*] of [\*\*\*\*\*] during the transition from the [\*\*\*\*\*], except as otherwise permitted under the Migration Plan. The Migration Plan shall not be amended without the consent of [\*\*\*\*\*], such consent not to be unreasonably withheld.

2.1.2 Assumptions and Further Development. The Migration Plan is based upon Service Provider's use of [\*\*\*\*\*]'s [\*\*\*\*\*] as part of the [\*\*\*\*\*] in lieu of its [\*\*\*\*\*]. In the event Service Provider elects to retain its [\*\*\*\*\*], the Migration Plan may need to be [\*\*\*\*\*]. Service Provider shall notify [\*\*\*\*\*] by [\*\*\*\*\*] as to which [\*\*\*\*\*] shall be used as part of the [\*\*\*\*\*]. In developing the final Migration Plan, Service Provider shall provide each of [\*\*\*\*\*] and the [\*\*\*\*\*] with the opportunity to confirm that [\*\*\*\*\*] ("[\*\*\*\*\*]") is complete and correct and will work with [\*\*\*\*\*] and the [\*\*\*\*\*] to add any items that may have been unintentionally overlooked. The Parties will negotiate in good faith the [\*\*\*\*\*] of adding any such unintentionally-omitted items to EXHIBIT B.

2.1.3 Migration Services. Service Provider shall ensure that it has [\*\*\*\*\*] resources and that it obtains [\*\*\*\*\*] cooperation from third parties to develop and successfully implement the Migration Plan in accordance with its terms. The Parties shall cooperate to encourage Participating Members to migrate to the [\*\*\*\*\*]. Service Provider may terminate the services provided under the [\*\*\*\*\*] for any Participating Member that has not Migrated to the [\*\*\*\*\*] on or before [\*\*\*\*\*] after the Effective

Date, provided that Service Provider has performed [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] relating to the Migration Plan hereunder during such [\*\*\*\*\*] period (the "MIGRATION DEADLINE").

2.2 Services. Subject to the terms of this Agreement, Service Provider shall perform all Services itself or through its wholly-owned subsidiaries (or through Neoforma as a subcontractor of Service Provider), unless and until otherwise agreed in writing by Novation and each of the Alliances, which agreement shall not be unreasonably

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withheld or delayed. Service Provider may liquidate or dissolve Neoforma so that all of its assets are distributed to Service Provider or merge or consolidate Neoforma into or with Service Provider, or transfer all or substantially all of its assets to Service Provider or a wholly-owned subsidiary of Service Provider, if despite such transaction, Service Provider is able to maintain in full force and effect the Pre-Existing Member Agreements pursuant to Section 2.5.3 unless and to the extent that they have been replaced by an agreement with Service Provider pursuant to Section 2.5.4. Throughout the Migration Period, all Participating Members will continue to receive Services including at least all the functionality of the Novation Marketplace.

2.2.1 Pre-Migration Services. With respect to those Participating Members that have not been Migrated pursuant to the Migration Plan ("PRE-MIGRATION"), Service Provider shall provide to such Participating Members: (a) [\*\*\*\*\*] of the Novation Marketplace, (b) all other functions of the Novation Marketplace, using [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*] in accordance with the Migration Plan, and (c) the Novation Proprietary Services.

2.2.2 Post-Migration Services. With respect to those Participating Members that have been Migrated pursuant to the Migration Plan ("POST-MIGRATION"), Service Provider shall provide the GHX Exchange, [\*\*\*\*\*] and the [\*\*\*\*\*] in accordance with this Agreement. Service Provider shall also provide any additional Services (including NPS Services) pursuant to the Statements(s) of Work then in effect, if any, and any GHX Exchange Plus services that the Participating Member has then elected to receive, it being understood that GHX Exchange Plus services may be subject to a competitive bid process before being offered to Members with respect to one or more of the Alliances. Service Provider and Novation acknowledge and agree that the GHX Exchange will evolve and be modified or be enhanced over time to keep pace with technological advancements and improvements in e-commerce, in accordance with the recommendations of the Product Council. Each of Novation, VHA, UHC and HPPI may also independently elect in its sole discretion, to receive any or all of the GHX Exchange Plus services itself or on behalf of its Participating Members.

2.2.3 [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*].

(a) To the extent the [\*\*\*\*\*] have then [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*]'s [\*\*\*\*\*] to [\*\*\*\*\*] during [\*\*\*\*\*] [\*\*\*\*\*] shall [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*]:

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(i) [\*\*\*\*\*] for the [\*\*\*\*\*] [\*\*\*\*\*] of any [\*\*\*\*\*] or [\*\*\*\*\*] of the [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] this Agreement shall be [\*\*\*\*\*] [\*\*\*\*\*] as the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*][\*\*\*\*\*] [\*\*\*\*\*] by [\*\*\*\*\*] to any [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], except [\*\*\*\*\*] to [\*\*\*\*\*][\*\*\*\*\*] [\*\*\*\*\*] by [\*\*\*\*\*] [\*\*\*\*\*] to the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*][\*\*\*\*\*] [\*\*\*\*\*] on [\*\*\*\*\*] [\*\*\*\*\*]; and

(ii) [\*\*\*\*\*]'s [\*\*\*\*\*] [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] this Agreement shall be [\*\*\*\*\*] [\*\*\*\*\*] as the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] (including [\*\*\*\*\*] [\*\*\*\*\*] therefor) [\*\*\*\*\*] by [\*\*\*\*\*] (other than [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] that are [\*\*\*\*\*] to [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] of [\*\*\*\*\*]) to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] for the [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*].

(b) [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] that the [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*] by [\*\*\*\*\*] to [\*\*\*\*\*] the [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*] this Agreement for the [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] shall be [\*\*\*\*\*] or [\*\*\*\*\*] than the [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*] by [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] in [\*\*\*\*\*], [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] on [\*\*\*\*\*].

(c) Notwithstanding the foregoing provisions of this Section 2.2.3, [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] and [\*\*\*\*\*] for the [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] that are [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] than [\*\*\*\*\*] it [\*\*\*\*\*] to [\*\*\*\*\*], the [\*\*\*\*\*] and the [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] that [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] into [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] and the [\*\*\*\*\*] [\*\*\*\*\*] and [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] (and [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] with [\*\*\*\*\*]) to [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] and [\*\*\*\*\*] to [\*\*\*\*\*], the [\*\*\*\*\*] and the [\*\*\*\*\*] [\*\*\*\*\*] are [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] by [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] in [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*].

2.3 Service Levels; Root-Cause Analysis.

2.3.1 Service Levels. The Services shall be provided in a manner that satisfies the performance standards and service levels set forth on EXHIBIT C. Service Provider shall maintain such professional and

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technical personnel and other resources (including, without limitation, hardware, software, facilities, equipment and other assets) as shall be required to provide the Services in accordance with the Service Levels and to satisfy its obligations hereunder throughout the Term. Novation's and the Alliances'



sole and exclusive remedies for Service Provider's failure to meet the Services Levels are set forth in EXHIBIT C. Except as provided in EXHIBIT C, Service Provider's failure to meet the Service Levels shall not be deemed a breach of this Agreement. The Parties agree that the damages provided in EXHIBIT C are a reasonable estimate of the damages that would be suffered by Novation and the Alliances as a consequence of the failures described in EXHIBIT C and do not constitute a penalty (the Parties hereby acknowledging the inconvenience and difficulty of otherwise obtaining an adequate remedy).

2.3.2 Root-Cause Analysis. Upon receipt of a notice from Novation or any of the Alliances of Service Provider's failure to provide the Services in accordance with this Agreement or upon Service Provider's knowledge of a failure to provide the Services in accordance with this Agreement, Service Provider shall, as soon as reasonably practicable, (i) perform a root-cause analysis to identify the cause of such failure and (ii) provide Novation and each of the Alliances with a report detailing the cause of, and procedure for correcting, such failure. If the root cause of such failure is due to the fault of Service Provider (whether determined pursuant to the foregoing or pursuant to Section 17), Service Provider will implement such procedure and provide Novation and the Alliances with reasonable assurance that such failure will not recur; provided that Novation and each of the Alliances shall retain any and all applicable rights and remedies hereunder with respect to such failure. If Service Provider concludes that the root cause of such failure is due to the fault of any Person other than Service Provider, Service Provider shall promptly give Novation and each of the Alliances notice of, and information supporting, such conclusion, subject to Novation's and the Alliances' right to disagree with Service Provider's conclusion and to have the root cause determined in accordance with Section 17. The Parties shall submit to the process set forth in Section 17 any Disputed Matter regarding the root cause of any such failure to provide the Services in accordance with the applicable Service Levels.

2.4 [\*\*\*\*\*] . Service Provider shall, on a [\*\*\*\*\*] basis as agreed to by Service Provider and [\*\*\*\*\*] in connection with the Service Levels, [\*\*\*\*\*] onto [\*\*\*\*\*] as provided by [\*\*\*\*\*], including, without limitation, [\*\*\*\*\*] relating to new [\*\*\*\*\*].

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2.5 Service Provider's Interaction with Members; Pre-Existing Data and Service Arrangements.

2.5.1 Member-Facing Plan. Service Provider will provide representatives to call upon Members that are not already receiving Services on a periodic basis and using appropriate methods of communications as mutually agreed to in a plan approved in writing by Service Provider, Novation and each of the Alliances (the "MEMBER-FACING Plan"). The initial Member-Facing Plan is attached hereto as EXHIBIT D. Except (a) as authorized by the Member-Facing Plan, (b) to respond to specific Member inquiries (including Requests for Proposals) or (c) as otherwise required to provide the Services hereunder, Service Provider shall not, directly or through any of its Affiliates or another Person, contact or communicate with any Member

without the prior written consent of the Alliance(s) to which such Member belongs.

2.5.2 Members Using Service Provider prior to the Effective Date. Service Provider shall assure that any Participating Member that is currently receiving services from Service Provider, is listed in the Migration Plan, and desires to avail itself of the benefits of this Agreement may, at its option and without liability, supersede the pricing terms and any other terms that conflict with the terms of this Agreement under its existing contract(s) or other arrangement(s) with Service Provider for the purpose of participating in the GHX Exchange and the Novation Proprietary Services under this Agreement. Such Member shall be solely responsible for any and all charges due with respect to any GHX Exchange Plus services that it may elect to receive.

2.5.3 Maintenance of [\*\*\*\*\*]. Service Provider shall use [\*\*\*\*\*] efforts to cause [\*\*\*\*\*] to maintain in full force and effect [\*\*\*\*\*] [\*\*\*\*\*] and [\*\*\*\*\*] existing as of the [\*\*\*\*\*] ("[\*\*\*\*\*]") (except in response to a [\*\*\*\*\*] of a [\*\*\*\*\*] by a [\*\*\*\*\*] after [\*\*\*\*\*] to the applicable [\*\*\*\*\*] and an [\*\*\*\*\*] to assist in addressing the [\*\*\*\*\*]). Prior to [\*\*\*\*\*] of any [\*\*\*\*\*], Service Provider shall use (or shall cause [\*\*\*\*\*] to use) [\*\*\*\*\*] efforts to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] in accordance with Section [\*\*\*\*\*] or to [\*\*\*\*\*] the [\*\*\*\*\*].

2.5.4 Participation of Additional and Renewal Members.

- (a) Service Provider, Novation, UHC, VHA and HPPI shall be jointly responsible for encouraging additional Members to execute agreements to participate in the GHX Exchange and Novation Proprietary Services. Within ninety (90) days after the Effective Date and, thereafter once each year within ninety (90) days after the anniversary of

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the Effective Date, the Parties shall meet and use good faith and reasonable efforts to determine and agree upon their respective responsibilities in connection with obtaining agreements between additional Members and Service Provider for use of the GHX Exchange and Novation Proprietary Services ("NEW PARTICIPATING MEMBERS").

- (b) Service Provider shall present to each Member that is considering participation in the GHX Exchange and Novation Proprietary Services a user agreement substantially in the form of EXHIBIT E ("FORM OF MEMBER AGREEMENT"). Service Provider shall be free to negotiate such user agreements with prospective Members in its sole discretion; [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], that [\*\*\*\*\*] shall [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], the [\*\*\*\*\*] to [\*\*\*\*\*] or [\*\*\*\*\*] the [\*\*\*\*\*] of the [\*\*\*\*\*] relating to [\*\*\*\*\*] [\*\*\*\*\*]'s [\*\*\*\*\*] to the [\*\*\*\*\*] to [\*\*\*\*\*] and the [\*\*\*\*\*] [\*\*\*\*\*] by [\*\*\*\*\*] of [\*\*\*\*\*] or [\*\*\*\*\*] without [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] and the [\*\*\*\*\*]

[\*\*\*\*\*] of [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] for such [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] a [\*\*\*\*\*] with the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]. Service Provider shall promptly provide to each of Novation and the appropriate Alliance(s) copies of all agreements with Participating Members.

(c) The Parties shall in good faith review and consider proposed changes to the Form of Member Agreement based on experiences related to negotiation of agreements with Members. Novation and the Alliances will not unreasonably withhold or delay their consent to changes in the Form of Member Agreement.

(d) [\*\*\*\*\*] and [\*\*\*\*\*] the [\*\*\*\*\*] have [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] [\*\*\*\*\*] with [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] shall [\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*] of [\*\*\*\*\*] the [\*\*\*\*\*] to [\*\*\*\*\*] the [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] for [\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*] and the [\*\*\*\*\*] to the [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] (or a [\*\*\*\*\*]) in the event that [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] ("[\*\*\*\*\*]") herein: (a) in [\*\*\*\*\*] [\*\*\*\*\*] by [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] in [\*\*\*\*\*] [\*\*\*\*\*], and (b) in [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] by [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*]'s [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*] of [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] or of [\*\*\*\*\*] [\*\*\*\*\*]. [\*\*\*\*\*] the [\*\*\*\*\*] of [\*\*\*\*\*] [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*] or [\*\*\*\*\*] as [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] a [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] to the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] or

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[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] and the [\*\*\*\*\*] [\*\*\*\*\*] of [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] for [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] a [\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*] that [\*\*\*\*\*] such [\*\*\*\*\*]. [\*\*\*\*\*] and [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] and to the [\*\*\*\*\*] [\*\*\*\*\*] by the [\*\*\*\*\*] [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] of the [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] such [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] to the [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] (or [\*\*\*\*\*] [\*\*\*\*\*]) [\*\*\*\*\*] [\*\*\*\*\*] or [\*\*\*\*\*] of [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*].

## 2.6 Data From Suppliers.

2.6.1 [\*\*\*\*\*]. Novation shall, in its discretion, enter into agreements with Suppliers for the receipt of [\*\*\*\*\*]. Service Provider shall work in good faith to obtain the [\*\*\*\*\*] from such Suppliers and utilize it to perform the Services in accordance with EXHIBIT B.

2.6.2 Product Data. In its negotiations with Suppliers, [\*\*\*\*\*] shall use [\*\*\*\*\*] efforts (without any obligation to bear any expense or pay any amount) to cause the Suppliers to provide [\*\*\*\*\*] regarding [\*\*\*\*\*] of their [\*\*\*\*\*] to [\*\*\*\*\*] for [\*\*\*\*\*] in

the [\*\*\*\*\*]. [\*\*\*\*\*] shall, in its discretion, obtain [\*\*\*\*\*] with Suppliers for [\*\*\*\*\*] to be included in [\*\*\*\*\*]. Absent a separate agreement with [\*\*\*\*\*], [\*\*\*\*\*] shall not be entitled to [\*\*\*\*\*] [\*\*\*\*\*] in [\*\*\*\*\*].

2.6.3 [\*\*\*\*\*]. Absent a separate agreement with [\*\*\*\*\*], Service Provider shall not use [\*\*\*\*\*] except as necessary to provide [\*\*\*\*\*].

2.7 Knowledge Sharing. On a mutually agreed schedule, Service Provider, Novation, VHA and UHC will provide information to each other to understand how Service Provider provides the Services and how Novation, VHA and UHC (or any of their designees) use the Services so that each may better fulfill its obligations under this Agreement.

2.8 Communications with Novation and Alliances.

2.8.1 Notice of Materially Adverse Facts. Subject to its obligations under Section 10, Service Provider will provide written notice to each of Novation, VHA, UHC and HPPI reasonably promptly after becoming aware of any fact relating to this Agreement or the Services that would reasonably be likely to materially adversely affect any of the Services, Service Provider, the Members, VHA, UHC or HPPI including, without limitation, the institution of litigation against Service Provider.

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2.8.2 Reports.

- (a) In addition to any other reports required by this Agreement, Service Provider will simultaneously provide each of Novation, VHA, UHC and HPPI with its standard real-time, on-line reports of its Participating Members' usage statistics and reports on other reasonable matters. In addition, with respect to Pre-Migration Members, Service Provider shall provide the reports and metrics that Novation previously received from Neoforma with respect to the Novation Marketplace, samples of which are attached in EXHIBIT F.
- (b) With respect to GHX Exchange Standard services provided to Post-Migration Members, Service Provider shall provide the same reports and metrics to Novation and the Alliances as it provides to its other customers, a sample of which is attached in EXHIBIT F. (Collectively, all reports and metrics provided pursuant to this Agreement are "REPORTS").
- (c) Service Provider shall provide the Reports at least as frequently as Service Provider generally provides its Reports to its other customers, provided, however, that until all activities described on the Migration Plan have been completed, such reports shall be provided no less frequently than monthly. Such reports shall be made available, at no additional charge, in the form of Excel(TM) files transferred via electronic transmission to Novation, VHA, UHC or HPPI, such other files via the Internet, or in

such other format as the Parties agree. The Parties will mutually agree on any changes to the scope, format and substance of the reporting system that Service Provider will use from time to time to communicate with Novation, VHA, UHC and HPPI.

2.8.3 Regular Meetings. Service Provider, Novation, VHA, UHC and HPPI will conduct regular business reviews on a quarterly basis, or as otherwise agreed by the Parties, to discuss the strategic direction of the Novation Marketplace, the GHX Exchange, the Novation Proprietary Services and, as applicable, the following items: the Member-Facing Plan, compliance with Service Levels, annual volume and connection targets, goals surrounding New Participating Members, matters regarding Suppliers, and any other matter requested by Novation or one of the Alliances. As part of the regular business reviews, Service Provider and each of Novation and the Alliances will review the Service Levels and discuss in good faith any necessary revisions of the Service Levels, the GHX Exchange, the Novation Proprietary Services, the Novation Marketplace, Service Provider's current products and services, implementation and enhanced connections and planned new products and services or Service Provider's provision of the Services hereunder. No changes will be made to the Service

Levels unless the parties mutually agree to the changes and execute a written amendment to this Agreement.

2.9 Goals and Incentives. The Parties shall meet annually to establish goals with respect to the Services to help assure success, including use of the Services by Members. Each of the Parties shall consider achievement of such goals in determining incentive-based compensation for its management employees.

### 3. THE GHX EXCHANGE

3.1 Maintenance as Leading Provider. Service Provider shall use commercially reasonable efforts to maintain the GHX Exchange as a leading provider of e-commerce services to the healthcare industry.

3.2 User Registration.

3.2.1 NPS

(a) Members. Each User of a Participating Member will be required to register as a representative of such Member with UHC, VHA or HPPI, as applicable, prior to using NPS. UHC, VHA or HPPI, as applicable, will request such information as each deems necessary to verify that such User is an authorized representative of such Member. Each of UHC, VHA or HPPI, as applicable, shall have the right to determine whether a User has authority to access NPS.

(b) Employees of Alliances and Suppliers. Each employee-User of any of UHC, VHA, Novation or Suppliers will be required to register as a representative of UHC, VHA, Novation or a Supplier, as applicable, prior to using NPS. UHC, VHA, HPPI, or a Supplier, as applicable, shall have the right to determine whether a User has authority to access NPS.

(c) General Registration Procedures. When each User logs on to NPS, Service Provider, with Novation's assistance, shall register Participating Members and their Users on NPS. Service Provider will require Users to create and use passwords as a necessary condition to accessing NPS. Service Provider will verify such information against the on-line database information then most-recently made available by Novation and ensure that such registration is authorized in accordance with registration and password issuance and protection procedures acceptable to Service Provider and in accordance with EXHIBIT G ("REGISTRATION AND PASSWORD ISSUANCE AND PROTECTION PROCEDURES"). Service Provider shall be responsible for keeping the NPS registry current with the most-recent data made available by Novation and for not allowing access to NPS by unauthorized Users. Participating Members shall only be allowed to view data related to their respective

Member organizations. Service Provider will allow an employee-User of Novation or any of the Alliances to have access to information regarding Members of one or more of VHA, UHC, HPPI only to the extent permitted by an information feed provided from time to time by Novation.

### 3.2.2

#### GHX Exchange.

- (a) Identification. For GHX Exchange Standard, Service Provider shall issue to Novation, each Alliance and each Participating Member a confidential user name(s) and password(s) (each, an "IDENTIFICATION") for Novation, each Alliance and each Participating Member to access and use GHX Exchange Standard. Novation, each Alliance and each Participating Member shall each (a) protect the security of each Identification, (b) have the right to access GHX Exchange Standard exclusively for their respective business purposes, (c) not disclose its Identification(s) to anyone other than those of its authorized employees or agents with a need to know in order to initiate transactions on GHX Exchange Standard, and (d) not have the right to authorize third parties to access or use GHX Exchange Standard for the benefit of any such third party. Any and all persons accessing GHX Exchange Standard using an Identification issued to the Participating Members shall be deemed to have actual authority to transmit transactions through GHX Exchange Standard on behalf of the applicable Member. Any information that any Participating Member inputs into GHX Exchange Standard will be solely the responsibility of the Member whose Identification was utilized to gain access. Novation will provide Service Provider prompt notice of the loss or unauthorized disclosure of its Identification, or upon notice of an unauthorized use of GHX Exchange Standard with its Identification.
- (b) GHX Exchange Security. Each Party shall take all commercially reasonable steps necessary

to protect the security of accessing and conducting transactions through use of the GHX Exchange, including without limitation the implementation of virus protection software on its network, and of procedures to prevent abusive or malicious acts or omissions against the GHX Exchange. Except to access and make use of the GHX Exchange pursuant to this Agreement, Novation and the Alliances may not upload, download, modify, disassemble, decompile, or copy Service Provider's Intellectual Property or otherwise take any action that may affect the use or functionality of the GHX Exchange.

- (c) Privacy. Novation and the Alliances will not breach or attempt to breach GHX Exchange computer or software security, attempt to

access the information of any entity other than Novation or the Alliance, as applicable, and the Participating Members or otherwise invade the privacy of others in connection with its use of the GHX Exchange.

3.2.3 Novation Marketplace. As to all Pre-Migration Members, Service Provider shall maintain the same registration and authentication procedures as are in effect for the Novation Marketplace as of the date hereof.

3.3 Notice of Novation Contracts. Novation shall provide Service Provider periodic notification (in a form mutually agreed upon by the parties) of all effective group purchasing agreements between Novation and Suppliers to enable Service Provider to make a distinction between Novation Contract Products and Non-Novation Contract Products.

3.4 Provision of Product Information.

3.4.1 Provision of Non-Novation Contract Product Information. Service Provider will use commercially reasonable efforts to obtain from Suppliers the Product Data to be located on GHX Exchange Standard in respect of all [\*\*\*\*\*] (except for [\*\*\*\*\*] addressed in Section [\*\*\*\*\*]). Service Provider shall display such Product Data on GHX Exchange Standard and use commercially reasonable efforts to keep such Product Data up to date.

3.4.2 Provision of Novation Contract Product and [\*\*\*\*\*]. Novation, VHA or UHC, as applicable, shall use commercially reasonable efforts to obtain from Suppliers and provide to Service Provider [\*\*\*\*\*] information for [\*\*\*\*\*], [\*\*\*\*\*] and any unique [\*\*\*\*\*] and [\*\*\*\*\*] relating to such [\*\*\*\*\*] and [\*\*\*\*\*] that are prepared by Novation, VHA or UHC, as the case may be. Service Provider shall display such information on [\*\*\*\*\*] during the [\*\*\*\*\*] and keep such information up-to-date in accordance with the Service Levels.

3.5 Removal of Materials and Products from NPS.

3.5.1 Removal of Materials. [\*\*\*\*\*] may request that any materials or data that [\*\*\*\*\*] or any of the [\*\*\*\*\*], in each of its sole discretion, believe are likely to result in [\*\*\*\*\*] to Service Provider, Novation, HPPI, VHA, UHC, any Members and/or any User be [\*\*\*\*\*] removed from any part of NPS, and Service Provider shall [\*\*\*\*\*] comply with such requests.

3.5.2 Removal of Products. Upon written instructions from [\*\*\*\*\*] with regard to [\*\*\*\*\*], or from [\*\*\*\*\*] or [\*\*\*\*\*] with regard to [\*\*\*\*\*], Service Provider will [\*\*\*\*\*] remove any [\*\*\*\*\*] from [\*\*\*\*\*]. Service

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Provider will notify [\*\*\*\*\*] with regard to [\*\*\*\*\*], or [\*\*\*\*\*] or [\*\*\*\*\*] with regard to [\*\*\*\*\*], [\*\*\*\*\*] after becoming aware of any problem with Products listed on [\*\*\*\*\*] that is [\*\*\*\*\*] to result in [\*\*\*\*\*] to Service Provider, Novation, HPPI, VHA, UHC, Members, or any Users, but Service Provider will have [\*\*\*\*\*] obligation to monitor or conduct any investigation regarding liability or performance issues relating to Products.

3.6 Other GPOs. Service Provider shall not make the [\*\*\*\*\*], [\*\*\*\*\*], [\*\*\*\*\*] or any other information or data provided by Novation or any Alliance to Service Provider, available to any other entity, including any GPO other than VHA, UHC or HPPI. Service Provider shall act in accordance with its Guiding Principles, a copy of which is attached hereto as EXHIBIT O.

3.7 Reasonable Assistance. Each Party will provide the other Parties with on-going reasonable assistance with regard to technical, administrative and service-oriented issues relating to the Services.

4. NOVATION PROPRIETARY SERVICES AND CHANGES IN SERVICES

4.1 Novation Proprietary Services. [\*\*\*\*\*], [\*\*\*\*\*], [\*\*\*\*\*] or [\*\*\*\*\*] may each elect, in its sole discretion, to enter into one or more Statements of Work ("SOWs") for Novation Proprietary Services or for changes to [\*\*\*\*\*] or for [\*\*\*\*\*] or [\*\*\*\*\*] not included in the [\*\*\*\*\*]. Any SOW entered into by [\*\*\*\*\*] shall be subject to the Change Control Procedures set forth in Section 4.2 and other applicable provisions of this Agreement. Any SOW entered into by [\*\*\*\*\*], [\*\*\*\*\*] or [\*\*\*\*\*] shall, unless otherwise provided therein, (1) incorporate the terms of this Agreement except that the recipient of services thereunder (i.e., [\*\*\*\*\*], [\*\*\*\*\*] or [\*\*\*\*\*]) shall be the party thereto instead of [\*\*\*\*\*], (2) provide that charges pursuant to the SOW shall be on a [\*\*\*\*\*] and [\*\*\*\*\*] and (3) will allow [\*\*\*\*\*] by [\*\*\*\*\*], [\*\*\*\*\*] pr [\*\*\*\*\*], as applicable, after [\*\*\*\*\*] without further [\*\*\*\*\*]. Each of [\*\*\*\*\*], [\*\*\*\*\*] or [\*\*\*\*\*] shall inform the others of any SOWs that it intends to enter into with [\*\*\*\*\*]. Any deliverables created pursuant to a SOW (the "DELIVERABLES") shall be subject to the [\*\*\*\*\*] provisions set forth in Section [\*\*\*\*\*].

4.2 Change Control for Novation Proprietary Services.

4.2.1 Change Control Procedure. In the event that (i) either [\*\*\*\*\*] or [\*\*\*\*\*] wishes a change to the Novation Proprietary Services, including changes in the [\*\*\*\*\*], [\*\*\*\*\*] or [\*\*\*\*\*] of the foregoing, or (ii) [\*\*\*\*\*] requests [\*\*\*\*\*] [\*\*\*\*\*] (each of the foregoing, a "CHANGE"), the requesting Party shall submit a written proposal to the other Party describing such desired change ("CHANGE REQUEST"). The receiving Party shall review the Change Request

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and reject or accept the Change Request in writing within a [\*\*\*\*\*] period of time, but in no event more than [\*\*\*\*\*] after receipt of the Change Request (the "RESPONSE"). In the event that the Change Request is rejected, the Response shall include the [\*\*\*\*\*] and, in the event that the Change Request is rejected by [\*\*\*\*\*], [\*\*\*\*\*] shall wherever possible, [\*\*\*\*\*] a [\*\*\*\*\*] to the [\*\*\*\*\*]. [\*\*\*\*\*] and [\*\*\*\*\*] shall negotiate in good faith to agree on a Change, and its accompanying terms, within [\*\*\*\*\*] after receipt of the Response; provided, however, that either Party may, in its sole discretion, elect to not agree to any Change. In the event that the Change Request is accepted, the Parties shall mutually agree on the changes to be made to this Agreement to reflect such Change. The changes or additional terms and conditions (if any) shall be made only in a written Change Order signed by an authorized representative of the Parties. Notwithstanding the foregoing, nothing set forth in this Agreement shall be construed to require renegotiation of existing Services.

4.2.2 Adjustment in [\*\*\*\*\*]. The [\*\*\*\*\*] [\*\*\*\*\*] hereunder may [\*\*\*\*\*] or [\*\*\*\*\*] as a result of a [\*\*\*\*\*] agreed upon by the Parties pursuant to the procedure set forth in Section 4.2.1 and such [\*\*\*\*\*] or [\*\*\*\*\*] shall be negotiated by the Parties in good faith.

4.2.3 Emergency Changes. No Change shall be implemented without [\*\*\*\*\*]'s approval, except reasonable, temporary Changes made on an emergency basis that are necessary to maintain the continuity of [\*\*\*\*\*]. If the need for an emergency change arises, either Party's Contract Administrator or his or her designee shall as [\*\*\*\*\*] submit to the other Party a Change Request for such Change and each Party shall, subject to the other terms and conditions of this Agreement, use [\*\*\*\*\*] efforts to implement such Change [\*\*\*\*\*]. The Parties shall thereafter agree, [\*\*\*\*\*], upon a Change Order regarding such emergency Change.

## 5. SERVICE PROVIDER EXCLUSIVITY

5.1 Exclusivity. Service Provider agrees that during the Term of this Agreement it will not operate as a group purchasing organization organized for the purpose of negotiating specific prices on products and services to be purchased by its members.

5.2 Marketing Other Services To Members. Service Provider shall not target market any or all of the GHX Exchange to Members through arrangements with other group purchasing organizations. Nevertheless, nothing shall restrict Service Provider from offering the GHX Exchange to any other group purchasing organizations and its members and, except for the obligation not to target market such Services as set forth

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above in this Section 5.2, nothing shall restrict Service Provider from selling such Services to members of such other group purchasing organizations under Service Provider's agreement with such other group purchasing organization even if such member happens to be a Member. Notwithstanding the foregoing, under no circumstances shall the Service Provider offer or provide Novation Proprietary Services or any other service involving the Novation Contracts to any Person other

than to a Member in accordance with the terms of this Agreement.

6. LICENSES

- 6.1 Marks. Each Party hereby grants to each of the other Parties a royalty-free, non-exclusive, non-transferable, non-sublicenseable, worldwide license to use and display during the Term the Party's Marks only as necessary to perform in accordance with the Agreement and subject to the Mark owner's prior approval of the form of use. The Mark owner may terminate the foregoing Mark license if, in its reasonable discretion, the licensee's use of the Marks tarnishes, blurs or dilutes the quality associated with the Mark or the associated goodwill and such problem is not cured within ten (10) days of written notice of breach; alternatively, instead of terminating the license in total, the owner may specify that certain licensee uses may not contain such Marks. Title to, ownership of, and all proprietary rights (including, without limitation, Intellectual Property Rights) and interest in the owner's Marks will remain with the Mark owner. The licensee will use the owner's Marks exactly in the form provided and in conformance with the owner's Mark usage policies. A copy of Novation's current trademark usage guidelines is attached as EXHIBIT I ("NOVATION'S TRADEMARK USAGE GUIDELINES"). A copy of Service Provider's current trademark usage guidelines is attached as EXHIBIT J ("SERVICE PROVIDER'S TRADEMARK USAGE GUIDELINES"). A copy of each of VHA's, UHC's and HPPI's current trademark usage guidelines are attached as EXHIBIT K ("VHA'S, UHC'S, AND HPPI'S TRADEMARK USAGE GUIDELINES"). The licensee will not take any action inconsistent with the owner's ownership of its Marks, and any benefits accruing from use of such Marks will automatically vest in the Mark owner. The licensee will not form any combination Marks with any other Party's Marks. Subject to the provisions of Section 8.8, upon termination or expiration of this Agreement, each Party will cease all use of all Parties' Marks.
- 6.2 Service Provider Materials. Service Provider grants to Novation a worldwide, nontransferable, non-exclusive, royalty-free license to use the Service Provider Materials only in promotional materials used to encourage participation on the GHX Exchange and the Novation Marketplace, or to use the NPS.
- 6.3 Novation Materials. Novation grants to Service Provider a worldwide, nontransferable, non-exclusive, royalty-free license to use the Novation Materials during the Term solely to enable Service Provider to provide the Services contemplated under this Agreement.
- 6.4 Licenses; Source Code Escrow; Proprietary Rights.
- 6.4.1 Access License. Service Provider has developed Confidential Information and trade secrets relating to the sale of its products and services to a large number of customers in the healthcare industry using proprietary business processes. Each of Novation, VHA, UHC and HPPI acknowledges that Service Provider and its Affiliates have invested substantial money in the development and maintenance of such processes and in the sourcing and sales of products and services. Each of Novation, VHA, UHC and HPPI will have a position of special trust and confidence for the use of such Confidential Information (including without limitation the roster of Service Provider's customers and business partners). Accordingly, during the Term, Service Provider hereby grants to each of Novation, VHA, UHC and HPPI a non-exclusive license to use Confidential Information and such trade secrets for the limited purpose of providing the assistance to

Service Provider as contemplated in this Agreement. Additionally, during the Term, Seller hereby grants to each of Novation, VHA, UHC and HPPI a non-exclusive royalty-free license to use the Services (including without limitation the Client Software) for the limited purpose of providing assistance to Service Provider as contemplated in this Agreement and to Participating Members and to the extent necessary to receive Member Data, [\*\*\*\*] and Analytic Data as contemplated hereby; provided, however, that nothing in this Agreement grants Novation or the Alliances any license to use or copy Product Data.

6.4.2 License to Service Provider. Neoforma, Novation, VHA, UHC and/or HPPI have developed Confidential Information and trade secrets relating to the development of [\*\*\*\*]. Service Provider acknowledges that Neoforma, Novation, VHA, UHC and/or HPPI have invested substantial money in the development and maintenance of [\*\*\*\*]. Service Provider will have a position of special trust and confidence for the use of [\*\*\*\*] to support the purposes of this Agreement. Accordingly, during the Term, to the extent of their rights therein, Novation, VHA, UHC and HPPI hereby grant to Service Provider a limited, non-transferable, royalty-free, non-exclusive license to use and, on the terms provided herein, to modify [\*\*\*\*] and any Confidential Information of Novation, VHA, UHC and HPPI related thereto for the limited purpose of performing Service Provider's obligations under this Agreement.

6.4.3 Grant of Source Code License.

(a) Subject to the terms of this Agreement, Service Provider hereby grants, and Novation, VHA, UHC and HPPI each hereby accepts, a nontransferable, non-assignable (except to Affiliates of Novation, VHA, UHC or HPPI), non-exclusive, limited and

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royalty-free license to modify and use the GHX Exchange Software solely in accordance with this Section 6.4.3; provided, however, that Novation, VHA, UHC and HPPI each ----- agrees not to exercise its rights under such license to the GHX Exchange Software unless and until the occurrence of an Activation Event. Upon such occurrence, Novation, VHA, UHC and HPPI each may use the GHX Exchange Software to operate the GHX Exchange solely for the benefit of Participating Members and limited to the extent necessary to cause Suppliers' products to remain available for purchase by Participating Members. Subject to the conditions set forth herein, Novation, VHA, UHC and HPPI each shall have the right to run such software on an unlimited number of servers which it controls and shall ensure that no distribution of such software is permitted to any third party.

(b) Novation's, VHA's, UHC's and HPPI's license to use the GHX Exchange Software set forth in Section 6.4.3(a) is limited solely to the extent necessary to enable Participating

Members to use the GHX Exchange in the state it exists as of the date of an Activation Event, and only for such limited purpose. Novation, VHA, UHC and HPPI will each be entitled: (i) to modify and make derivative works of the Client Software; (ii) to use, reproduce, transmit and copy the Client Software, and (iii) to sublicense the Client Software to Participating Members; provided, however, Novation, VHA, UHC and HPPI each ----- agrees not to use, reproduce, transmit, copy, distribute or sublicense the Client Software until the occurrence of an Activation Event.

- (c) In connection with the license granted under Section 6.4.3(a), Novation, VHA, UHC and HPPI each shall have the right to use Updates to the Client Software that may become available to Participating Members. Upon such availability of Updates to the Client Software or GHX Exchange Software, as the case may be, Service Provider shall provide each of Novation, VHA, UHC and HPPI with one copy of each such Update (in object code form only) without additional charge. Additionally, every six months during the Term of this Agreement, upon the request of Novation, VHA, UHC or HPPI Service Provider shall deliver to each of Novation, VHA, UHC and HPPI, at no charge, the current version of the GHX Exchange Software (in object code form only) being used by Service Provider in operating the GHX Exchange at such time.
- (d) The licenses set forth in Sections 6.4.3(a) and (b) shall be activated upon the occurrence of any of the following events (each an "ACTIVATION EVENT"): (i) Service Provider or its successor in interest makes a determination that it will no longer

operate the GHX Exchange (such determination will be evidenced by: (A) Service Provider or its successor in interest giving written notice thereof; or (B) Service Provider or its successor in interest ceasing to operate the GHX Exchange, and failing to respond to a written request from Novation, VHA, UHC or HPPI for confirmation of such cessation within [\*\*\*\*] of Service Provider's receipt of such written request); (ii) Service Provider has ceased its ongoing business operations, or has ceased the sale, licensing, maintenance or other support of the Client Software and no successor of Service Provider has undertaken the sale, licensing, maintenance and/or support of the Client Software; or (iii) the GHX Exchange is not available to at least [\*\*\*\*\*] of Participating Members or is not available to at least [\*\*\*\*\*] of the Suppliers integrated with the GHX Exchange, where the period of unavailability in either case is [\*\*\*\*\*] or greater, and the foregoing is not due to a Force Majeure event. For purposes of this paragraph, unavailability of the GHX Exchange means that the designated participants are unable to transmit and receive transaction communications due to failure of Service Provider systems and operations and not due to any outside factors that are outside of Service

Provider's control.

- (e) Novation, VHA, UHC and HPPI's rights related to the GHX Exchange Software and Client Software that are licensed to Novation, VHA, UHC and HPPI by Service Provider under this Section 6.4.3 shall cease upon the first to occur of following events:
  - (i) The end of the Initial Term, or if this Agreement has been renewed prior to the Activation Event, the Renewal Term.
  - (ii) Immediately upon termination of this Agreement if this Agreement has been terminated by Service Provider as a result of an uncured material breach by Novation, VHA, UHC or HPPI.
  - (iii) If Novation, VHA, UHC and HPPI's rights are activated as a result of the event described in clause (iii) of Section 6.4.3(d), then such rights shall cease at such time when Service Provider has cured the factors that have caused such event to occur and Service Provider becomes able to fulfill its obligations under the Member Agreements to provide the GHX Exchange, and Service Provider is able to demonstrate such capability to Novation's reasonable satisfaction.

6.4.4 Third Party Technology. Service Provider agrees to reasonably assist and cooperate with Novation, VHA, UHC and HPPI in their efforts to obtain, within ninety (90) days after the Effective Date of this Agreement, a non-exclusive sublicense for each of Novation, VHA, UHC and HPPI to use, and sublicense the Third Party Technology to Participating Members solely for the purposes of operating the GHX Exchange and distributing the Client Software as necessary for such operation in accordance with these terms. Service Provider shall not be required to assume any additional fees or costs in connection with its obligations under this section, and Novation, VHA, UHC and HPPI shall be responsible for all license fees and costs, including attorney fees, associated with obtaining such rights from such Third Party Technology providers.

6.4.5 Source Code Escrow.

- (a) Prior to the Effective Date, Service Provider shall have deposited a current version of the source code (to the extent such source code is owned by Service Provider) for the GHX Exchange Software and the Client Software and any other software required to provide the Services and any associated documentation that exists, other than software relating to the Novation Marketplace as it exists immediately before the Effective Time (the "CURRENT VERSION") with Iron Mountain, Inc. or another escrow agent reasonably agreed by the Parties (the "ESCROW AGENT") pursuant to an escrow agreement executed by each of the Parties and the Escrow Agent, in form and substance satisfactory to each of the Parties ("ESCROW

AGREEMENT"). The Escrow Agreement shall be based on the Escrow Agent's standard three-party master escrow agreement form, with release conditions conforming to the Activation Events and such other changes as are approved by the Parties. None of the Parties shall unreasonably withhold or delay its approval of the Escrow Agreement. Service Provider further agrees to deposit copies of the source code of any Updates or other modifications to the GHX Exchange Software or the Client Software (together with the Current Version, the "SOURCE CODE"), to the extent there are Updates or other modifications delivered to Novation, VHA, UHC and HPPI, each [\*\*\*\*\*] during the Term of this Agreement. Promptly after the Effective Date and from time to time hereafter, Service Provider shall deposit, or cause to be deposited all source code relating to NPS in the escrow arrangements contemplated by the Escrow Agreement.

(b) Upon the occurrence of an Activation Event (as verified in accordance with the terms of the escrow agreement), Novation, VHA, UHC and HPPI each may exercise its rights under the licenses set forth in Section 6.4.3 above with respect to the Source Code, and the Escrow Agent shall deliver the Source

Code to each of Novation, VHA, UHC and HPPI. Upon the delivery of the Source Code by the Escrow Agent, Novation, VHA, UHC and HPPI each shall maintain the Source Code in confidence in accordance with Section 10.1. Novation, VHA, UHC and HPPI each shall use the Source Code to exercise Novation, VHA, UHC and HPPI's rights under Section 6.4.3 and for no other purpose. Novation, VHA, UHC and HPPI each shall promptly return the Source Code to escrow upon the first to occur of: (a) the expiration of the Initial Term or if this Agreement has been renewed prior to the Activation Event, the Renewal Term; (b) immediately upon termination of this Agreement if this Agreement has been terminated by Service Provider as a result of an uncured material breach by Novation, VHA, UHC and HPPI; (c) if Novation, VHA, UHC and HPPI's rights with respect to the Source Code are activated as a result of the event described in clause (iii) of Section 6.4.3(d), then such rights shall cease at such time when Service Provider has cured the factors that have caused such event to occur and Service Provider becomes able to fulfill its obligations to make the GHX Exchange available, and Service Provider is able to demonstrate such capability to Novation's reasonable satisfaction; or (d) when Novation, VHA, UHC and HPPI have no further need to utilize the licenses granted in this Section 6.4. Novation, VHA, UHC and HPPI shall each be liable to Service Provider for all damages incurred by Service Provider arising from or relating to any unauthorized disclosure of the Source Code by it, or any third party operating under the direction of it. All expenses associated with providing the Source Code escrow for the benefit of Novation, VHA, UHC and HPPI shall be paid by Novation.

(c) Service Provider shall cause Neoforma (or its successor, if any) to maintain in full force and effect any source code escrow in effect on the Effective Date until the Migration Deadline. Service Provider shall also cause Neoforma (or its successor) to promptly deposit in such escrow any and all material revisions or modifications after the Effective Date to the software that is the subject of such escrow. In lieu of the foregoing, Service Provider may subject all such software to the Escrow Agreement, in which case "Source Code" shall be deemed to include, in addition to the GHX Exchange Software and Client Software, all the corresponding software relating to the Novation Marketplace.

6.4.6 Proprietary Rights; Restrictions. Notwithstanding anything to the contrary expressed or implied in this Agreement, Service Provider (or, as applicable, its licensors) retains all right, title, interest, and Intellectual Property Rights in and to the GHX Exchange and any derivative works thereof. Except only as expressly set forth in this Section 6.4, none of Novation, VHA, UHC or HPPI may itself, or allow any third party to: (a) modify or otherwise generate

any derivative works from the GHX Exchange; or (b) disassemble, decompile or otherwise reverse engineer the GHX Exchange or attempt to reveal the trade secrets, know-how, source code (except as expressly permitted under Section 6.4.5), or structure underlying the GHX Exchange. None of Novation, VHA, UHC or HPPI shall provide access to the GHX Exchange to any third party except as is expressly authorized in this Agreement. Service Provider reserves to itself all rights with respect to the GHX Exchange not expressly granted to Novation, VHA, UHC or HPPI under this Agreement.

## 7. FEES AND TAXES

7.1 Fees. [\*\*\*\*\*] shall pay the fees set forth as part of EXHIBIT B ("SCOPE OF SERVICES") for [\*\*\*\*\*], the [\*\*\*\*\*], [\*\*\*\*\*] and the [\*\*\*\*\*] (the "SERVICE FEES"). Fees for [\*\*\*\*\*] (other than [\*\*\*\*\*] and [\*\*\*\*\*]) shall be as set forth in the applicable [\*\*\*\*\*]. [\*\*\*\*\*] who wish to receive the [\*\*\*\*\*] shall be responsible for the [\*\*\*\*\*].

7.2 Taxes. Service Provider, Novation, VHA, UHC and HPPI shall take reasonable steps to cooperate to minimize any local, state, national and foreign taxes (including, without limitation, sales, use and VAT taxes which may apply), licenses, export/import fees and any other fees or similar obligations relating to any sale, rental or lease of a Product through the Novation Marketplace or the GHX Exchange or relating to [\*\*\*\*\*].

7.3 Other Expenses. No Party shall be required to pay to any other Party any amounts for the performance of their respective obligations hereunder other than those expressly set forth in this Agreement.

7.4 Payment Terms.

7.4.1 Invoices. Service Provider shall issue to Novation at least thirty (30) days prior to the beginning of a calendar month an invoice for the Service Fees and other charges due Service Provider for such calendar month hereunder and not otherwise invoiced (collectively, "CHARGES").

- 7.4.2 Payments. All invoices submitted by Service Provider to Novation are due and payable on or before the first day of a calendar month.
- 7.4.3 Credits. With respect to any amounts to be paid or reimbursed by Service Provider to Novation pursuant to this Agreement or pursuant to liquidated damages provisions, as set forth in Section 2.3.1, Service Provider may, at its option, pay such amounts to Novation by giving Novation a credit to be applied against Charges otherwise payable to Service Provider.

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7.5 Member-Based Pricing.

7.5.1 Conversion to Member-Based Pricing. Except for [\*\*\*\*] Member-Based Pricing (as addressed in 7.5.2), the Parties shall begin to convert to pricing based on payment for the [\*\*\*\*] by the Members ("MEMBER-BASED PRICING") by [\*\*\*\*]. Notwithstanding the foregoing, upon the prior written approval of VHA, UHC and Novation, they may elect to [\*\*\*\*] the date for conversion to Member-Based Pricing at any time. Upon the earlier of written notice from Novation that Novation, VHA and UHC have elected to proceed with Member-Based Pricing on [\*\*\*\*] basis, or [\*\*\*\*], the Parties shall work together in good faith to develop a detailed plan for such conversion beginning at least [\*\*\*\*] prior to the anticipated date of conversion to Member-Based Pricing. Upon written approval of such a Plan by each of Novation, VHA and UHC, each Party shall be obligated hereunder to take the respective actions set forth under such plan by the applicable deadlines set forth therein. In developing the detailed plan, the parties shall negotiate appropriate amendments to this Agreement to (i) credit in full against the [\*\*\*\*] [\*\*\*\*] amounts collected from [\*\*\*\*] of [\*\*\*\*] and/or [\*\*\*\*] paying under Member-Based Pricing, and (ii) specify payment mechanics to effect the foregoing credit.

7.5.2 [\*\*\*\*] Member-Based Pricing. Notwithstanding Section 7.5.1, [\*\*\*\*] Members shall pay for access to the [\*\*\*\*] (including any [\*\*\*\*] services if they so elect) through Member-Based Pricing as of the Effective Date, which Member-Based Pricing shall be subject to Section 2.2.3.

8. TERM AND TERMINATION

8.1 Initial Term. This Agreement shall become effective at the Effective Time and will remain in effect until 11:59 P.M. Central Time Zone on December 31, 2011 (the "INITIAL TERM"), unless terminated earlier in accordance with the terms of this Agreement.

8.2 Renewal and Extension of Term. None of the Parties shall be obligated to renew or extend this Agreement beyond the Initial Term. However, if Service Provider wishes to extend or renew this Agreement, then at least [\*\*\*\*] prior to the expiration of the Initial Term, Service Provider shall deliver to each of the other Parties a proposal describing the terms on which this Agreement would be extended for an additional [\*\*\*\*] ("RENEWAL PROPOSAL"). The pricing in the Renewal Proposal shall be the most favorable pricing that Service Provider



provides, directly or indirectly, to any Person that receives services that are the same as or substantially similar to any of the Services to be provided during the Renewal Term, unless

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otherwise specifically disclosed in the Renewal Proposal (such disclosure to include how the proposed pricing differs from any more favorable pricing). At least [\*\*\*\*\*] prior to the expiration of the Initial Term, each of Novation, VHA or UHC shall provide notice to Service Provider and to the other Parties of its intent to (i) accept the Renewal Proposal describing the terms on which this Agreement will be extended, and the appropriate Parties shall promptly begin drafting a renewal agreement including such terms; (ii) not renew this Agreement ("NON-RENEWAL NOTICE"); or (iii) negotiate with Service Provider the terms on which to renew the Agreement. Any statement or notice of such intent by a Party is not binding on any other Party. In the event that all of the Parties agree in writing on terms for a Renewal Term, the Agreement shall, except as otherwise expressly agreed in writing, renew for one (1) [\*\*\*\*\*] term after the completion of the Initial Term ("RENEWAL Term"). The Initial Term and any and all renewals or extensions thereof and any Termination Assistance Period are referred to herein as the "TERM".

### 8.3 Termination for Cause or Dissolution.

8.3.1 For Cause. Each of Service Provider and Novation will have the right to terminate this Agreement if such other Party breaches any of its obligations under this Agreement in any material respect unless the breaching Party (x) cures such breach within [\*\*\*\*\*] after receiving written notice of such breach or (y) if such breach is not curable within such [\*\*\*\*\*] period, makes substantial progress in curing such breach within such [\*\*\*\*\*] period and cures such breach within [\*\*\*\*\*] after receiving written notice of such breach. Novation may terminate this Agreement (i) for Service Provider's failure to meet its Service Level obligations hereunder only as set forth in Exhibit C or (ii) if Service Provider is unable to perform for more than [\*\*\*\*\*] all or a substantial portion of the Services due to any third party claim of infringement or misappropriation of Intellectual Property Rights whether or not it is the subject of indemnification hereunder. Any dispute regarding whether a breach has occurred or has been cured or the nature of such breach shall be addressed in accordance with Section 17.

8.3.2 [\*\*\*\*\*] [\*\*\*\*\*]. [\*\*\*\*\*] that the [\*\*\*\*\*], [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] from [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*], [\*\*\*\*\*] [\*\*\*\*\*] and [\*\*\*\*\*] ("[\*\*\*\*\*]") is [\*\*\*\*\*] (and [\*\*\*\*\*] [\*\*\*\*\*] by [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]) (the "[\*\*\*\*\*]"), as [\*\*\*\*\*] the [\*\*\*\*\*] by [\*\*\*\*\*] [\*\*\*\*\*] or [\*\*\*\*\*] in a [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*], [\*\*\*\*\*] of [\*\*\*\*\*], [\*\*\*\*\*] and [\*\*\*\*\*] shall, [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] for the [\*\*\*\*\*] of the [\*\*\*\*\*] [\*\*\*\*\*] with [\*\*\*\*\*] upon the [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*], with the [\*\*\*\*\*] [\*\*\*\*\*] for the [\*\*\*\*\*] to be [\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to be [\*\*\*\*\*] as

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[\*\*\*\*\*] in [\*\*\*\*\*] by [\*\*\*\*\*] and shall [\*\*\*\*\*]  
[\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*].  
[\*\*\*\*\*] shall [\*\*\*\*\*] in [\*\*\*\*\*] with [\*\*\*\*\*] or  
[\*\*\*\*\*] if [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] the  
[\*\*\*\*\*] to be [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] a [\*\*\*\*\*]  
[\*\*\*\*\*] in [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*]'s [\*\*\*\*\*] and  
the [\*\*\*\*\*] [\*\*\*\*\*] for [\*\*\*\*\*] [\*\*\*\*\*]; provided  
that, if [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]  
and [\*\*\*\*\*], [\*\*\*\*\*] shall [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to  
[\*\*\*\*\*] [\*\*\*\*\*] by an [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]  
its [\*\*\*\*\*] are [\*\*\*\*\*]. If [\*\*\*\*\*] by [\*\*\*\*\*]  
[\*\*\*\*\*] or [\*\*\*\*\*] of [\*\*\*\*\*] or [\*\*\*\*\*], [\*\*\*\*\*]  
shall [\*\*\*\*\*] a [\*\*\*\*\*] "[\*\*\*\*\*]" for the [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] and [\*\*\*\*\*] a [\*\*\*\*\*] [\*\*\*\*\*] for  
[\*\*\*\*\*] [\*\*\*\*\*] .

8.3.3 Termination of Merger Agreement. This Agreement shall terminate, automatically and without notice, if, prior to the Effective Time, the Merger Agreement is terminated in accordance with its terms.

8.4 Termination for Insolvency Events.

8.4.1 Service Provider Insolvency Event. If Service Provider becomes or is declared insolvent, becomes subject to a voluntary or involuntary bankruptcy or similar proceeding, or makes an assignment for the benefit of all or substantially of all of its creditors ("INSOLVENCY EVENT"), then in such event, Novation may terminate this Agreement immediately upon providing written notice of termination to Service Provider or, if such termination is subject to any statutory provision or judicial order staying such action, seek leave to modify such stay so as to terminate this Agreement.

8.4.2 Novation Insolvency Event. If Novation becomes the subject of an Insolvency Event, each of Service Provider, VHA and UHC shall, pursuant to good faith negotiations, enter into separate agreements for the remainder of the current Term with Service Provider upon the terms and conditions hereof, with the aggregate price for the Services to be rendered under the new separate agreements to be allocated as directed in writing by VHA and UHC and shall not exceed the total amounts otherwise due hereunder. Service Provider shall negotiate in good faith with VHA or UHC if such Party wishes to reduce the Services to be received under such a separate agreement in order to reduce Service Provider's costs and the amounts due for such Services; provided that, if Service Provider agrees to reduce such Services and Fees, Service Provider shall have no obligation to reduce fees by an amount greater than its costs are reduced. If requested by any one or more of VHA or UHC, Service Provider shall establish a separate "look and feel" for the Party so requesting and charge a reasonable fee for such service.

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8.4.3 [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]. [\*\*\*\*\*] [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] (the "[\*\*\*\*\*]") [\*\*\*\*\*] the [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] of [\*\*\*\*\*]  
and the [\*\*\*\*\*] [\*\*\*\*\*] ([\*\*\*\*\*] [\*\*\*\*\*] and the  
[\*\*\*\*\*]) (the "[\*\*\*\*\*]") shall, [\*\*\*\*\*] to [\*\*\*\*\*]  
[\*\*\*\*\*], [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] for the  
[\*\*\*\*\*] of the [\*\*\*\*\*] [\*\*\*\*\*] with [\*\*\*\*\*] [\*\*\*\*\*]  
the [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*], with the [\*\*\*\*\*]  
[\*\*\*\*\*] for the [\*\*\*\*\*] to be [\*\*\*\*\*] [\*\*\*\*\*] the

[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to be [\*\*\*\*\*] as [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] by the [\*\*\*\*\*]. [\*\*\*\*\*] shall  
[\*\*\*\*\*] in [\*\*\*\*\*] with [\*\*\*\*\*] [\*\*\*\*\*] if [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] the [\*\*\*\*\*] to be [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] a [\*\*\*\*\*] [\*\*\*\*\*] in [\*\*\*\*\*] to  
[\*\*\*\*\*] [\*\*\*\*\*]'s [\*\*\*\*\*] and the [\*\*\*\*\*] [\*\*\*\*\*] for  
[\*\*\*\*\*] [\*\*\*\*\*] as [\*\*\*\*\*] a [\*\*\*\*\*] of [\*\*\*\*\*]'s  
[\*\*\*\*\*] and the [\*\*\*\*\*] [\*\*\*\*\*] for [\*\*\*\*\*] [\*\*\*\*\*]  
as [\*\*\*\*\*] a [\*\*\*\*\*] of [\*\*\*\*\*]'s [\*\*\*\*\*] and the  
[\*\*\*\*\*] [\*\*\*\*\*] for [\*\*\*\*\*] by [\*\*\*\*\*] of the [\*\*\*\*\*]  
of [\*\*\*\*\*] to the [\*\*\*\*\*]. [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]  
shall [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*]:  
(a) the [\*\*\*\*\*] [\*\*\*\*\*] for the [\*\*\*\*\*] to be [\*\*\*\*\*]  
[\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] shall [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]; (b)  
[\*\*\*\*\*] shall [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] an [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] its  
[\*\*\*\*\*] are [\*\*\*\*\*]; (c) [\*\*\*\*\*] shall [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] than [\*\*\*\*\*]  
[\*\*\*\*\*] (as defined below) [\*\*\*\*\*] to the [\*\*\*\*\*];  
(d) [\*\*\*\*\*] [\*\*\*\*\*] shall [\*\*\*\*\*] the [\*\*\*\*\*] to  
[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] as [\*\*\*\*\*] [\*\*\*\*\*] if,  
[\*\*\*\*\*] a [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] ([\*\*\*\*\*]  
the [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*]) [\*\*\*\*\*], it [\*\*\*\*\*]  
[\*\*\*\*\*] the [\*\*\*\*\*] to [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*] it  
[\*\*\*\*\*] [\*\*\*\*\*] to the [\*\*\*\*\*] for [\*\*\*\*\*] [\*\*\*\*\*]  
[\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*][\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to the [\*\*\*\*\*]; and (e)  
[\*\*\*\*\*] shall [\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*] to [\*\*\*\*\*]  
[\*\*\*\*\*] as [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] if, [\*\*\*\*\*] a  
[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] ([\*\*\*\*\*] the [\*\*\*\*\*] and  
[\*\*\*\*\*] [\*\*\*\*\*]) [\*\*\*\*\*], [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] the  
[\*\*\*\*\*] [\*\*\*\*\*] it [\*\*\*\*\*] to the [\*\*\*\*\*] [\*\*\*\*\*] to  
the [\*\*\*\*\*] and [\*\*\*\*\*] the [\*\*\*\*\*] to [\*\*\*\*\*] an  
[\*\*\*\*\*] [\*\*\*\*\*] for [\*\*\*\*\*] [\*\*\*\*\*] at [\*\*\*\*\*] to  
(and [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]) the [\*\*\*\*\*]' [\*\*\*\*\*]  
[\*\*\*\*\*] to the [\*\*\*\*\*]. In the event that [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] and the [\*\*\*\*\*] [\*\*\*\*\*] to  
[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] for the [\*\*\*\*\*] of the  
[\*\*\*\*\*] [\*\*\*\*\*], [\*\*\*\*\*] any of [\*\*\*\*\*] or the  
[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]. [\*\*\*\*\*]  
[\*\*\*\*\*] by [\*\*\*\*\*] [\*\*\*\*\*] or [\*\*\*\*\*] of [\*\*\*\*\*],  
[\*\*\*\*\*] shall [\*\*\*\*\*] a [\*\*\*\*\*] "[\*\*\*\*\*]" for the  
[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] and [\*\*\*\*\*] a [\*\*\*\*\*] [\*\*\*\*\*]  
for [\*\*\*\*\*] [\*\*\*\*\*]. [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]  
is [\*\*\*\*\*] to [\*\*\*\*\*] a [\*\*\*\*\*] or [\*\*\*\*\*] of [\*\*\*\*\*]  
[\*\*\*\*\*] that [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]  
[\*\*\*\*\*][\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] that [\*\*\*\*\*] the  
[\*\*\*\*\*] of an [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*]. [\*\*\*\*\*],  
and [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*][\*\*\*\*\*] [\*\*\*\*\*]  
[\*\*\*\*\*],[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]

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[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] the [\*\*\*\*\*] of an  
[\*\*\*\*\*] to [\*\*\*\*\*]. "[\*\*\*\*\*]" [\*\*\*\*\*] [\*\*\*\*\*], with  
respect to [\*\*\*\*\*] and the [\*\*\*\*\*] [\*\*\*\*\*]  
[\*\*\*\*\*],[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]'s [\*\*\*\*\*] of the  
[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*]  
[\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to the [\*\*\*\*\*].

8.5 Termination Upon Service Provider Change of Control. Service  
Provider shall promptly notify Novation of the effectiveness  
of any Service Provider Change of Control. In the event  
Novation has not previously consented to a Service Provider  
Change of Control, Novation shall have the right to terminate  
this Agreement effective on the date specified in Novation's  
notice of termination, in the event of receipt of any such  
notice from Service Provider of a Service Provider Change of  
Control, or upon the effectiveness of any Service Provider

Change of Control or thereafter in the event no notice is given in accordance herewith.

- 8.6 Return of Materials. Upon termination or expiration of this Agreement and any applicable Termination Assistance Period for any reason, Service Provider, Novation and each of the Alliances shall promptly return to the other Parties, and shall not take, use or disclose, all records (in any form, format or medium) containing or relating to Service Provider Materials or Novation Materials or the Confidential Information of the other Parties, except that Service Provider and Novation may each maintain a copy of such records for archival purposes, to meet obligations to joint owners of Transaction Data, to comply with laws, for internal audit purposes, for purposes of defense of litigation, for continuity of business purposes and to establish or protect a Party's rights under this Agreement, and Novation shall provide a copy to each of VHA, UHC and HPPI for such purposes.
- 8.7 Survival. All rights and obligations with regard to information disclosed or matters occurring or arising before the effective date of termination, and all rights and obligations which by their terms are intended to survive termination or expiration of this Agreement, will survive such termination or expiration, including, without limitation, the rights and obligations set forth in Sections 6.4.3, 6.4.5, 6.4.6, 8.6, 8.7, 8.8, 8.9, 9, 10, 11.3.2, 11.4, 14, 15, 16, 17, 18 and 19, and the final sentence of Section 2.5.4(d). The foregoing rights and remedies shall be cumulative and in addition to all other rights and remedies available in law and in equity.
- 8.8 Termination Assistance Services. Upon the later of termination or expiration of this Agreement or the end of the Termination Assistance Period, Service Provider will (i) de-activate all Identifications of Novation, the Alliances and all Participating Members who are not subject to Member-Based Pricing at such time, and (ii) if this Agreement has expired or if any party other than Service Provider has terminated this Agreement in accordance with Section 8.3.1, refund an allocable portion of Fees paid for any period after

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termination and provide Novation and each Alliance with an electronic copy of the Member Data and [\*\*\*\*\*] . Service Provider hereby grants to Novation and each Alliance the perpetual right to use the foregoing materials for their use internally and with their Members and, if applicable, for re-hosting and use on an e-commerce system that is competitive with the GHX Exchange, solely for the use of Novation, the Alliances and their Members. Service Provider will provide the Termination Assistance Services during the Termination Assistance Period. Except as otherwise provided in this Section 8.8, this Agreement shall remain in full force and effect during the Termination Assistance Period. For the first [\*\*\*\*\*] of the Termination Assistance Period, the Charges required to be paid hereunder shall be reduced by [\*\*\*\*\*]. Thereafter, Termination Assistance Services shall be provided at Service Provider's then-current Charges.

- 8.9 Equitable Remedies. Each Party reserves its rights to seek equitable relief in connection with the enforcement of any of its rights hereunder. If a court of competent jurisdiction should find that any Party has breached (or attempted or threatened to breach) any of its obligations hereunder, such Party agrees that even without any additional findings of irreparable injury or other conditions to injunctive relief, it shall not oppose the entry of an appropriate order compelling performance by it or restraining it from further

breaches (or attempted or threatened breaches).

9. DATA RIGHTS; INTELLECTUAL PROPERTY

9.1 Data Rights.

9.1.1 Member Data. Novation shall have the right to access and use all Member Data as provided herein. For purposes of this Agreement, "MEMBER DATA" shall be defined as Transaction Data with respect to which either (i) the applicable Participating Member or (ii) the applicable Supplier has consented to Novation's and the applicable Alliance's access to and use of such Transaction Data either pursuant to an agreement with Service Provider or Neoforma or as separately agreed between the Member or Supplier, as applicable, and Novation. During the Term, (i) access of Novation or the applicable Alliance to Member Data arising solely from the consent of a particular Participating Member shall continue as long as the Member remains a Participating Member and is subject to an agreement with Service Provider or Neoforma and as long as such Participating Member's consent to such access remains in effect, and (ii) Novation's access to Member Data arising solely from a Supplier's consent shall continue as long as the Supplier's consent to such access remains uncontested and in effect.

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9.1.2 Transaction Data. As between the Parties to this Agreement, the parties to each transaction that is executed in whole or in part via the GHX Exchange or Novation Marketplace after the Effective Time (e.g., the applicable Supplier and Participating Member) will each own the Transaction Data relating to such transaction. Neither Service Provider nor Novation may disclose any Transaction Data to any third party without the consent of one of the owners of such Transaction Data. All Transaction Data will be deemed to be Confidential Information and therefore subject to the provisions of Article 10 hereof (and subject to rights and restrictions related to such Transaction Data as apply between the Member and Service Provider, Neoforma or Novation, as the case may be).

9.1.3 Aggregated GHX Data. Service Provider will not include Transaction Data in Aggregated GHX Data without the consent of both the Supplier and the Participating Member that are parties to the transaction to which the Transaction Data relates. Notwithstanding any provision of this Agreement to the contrary, (i) no Aggregated GHX Data shall be compiled by Service Provider or any of its Affiliates in which Members are parties to more than [\*\*\*\*\*] of the transactions that generate the Transaction Data included in the compilation of Aggregated GHX Data, (ii) neither Service Provider nor any of its Affiliates, (including, without limitation, any other GPO) shall have the right to use any Transaction Data of Members of any Alliance to create Aggregated GHX Data that permits a recipient to compare GPOs or to compare academic medical centers and non-academic medical centers, and (iii) each of VHA, UHC and HPPI shall have the right (subject to the terms of any license or other permission of its Members) to aggregate Member Data, to prepare Aggregated Alliance Member Data and to perform analysis using Member Data

with respect to each of their Members in each of its sole discretion. If Service Provider begins offering Aggregated GHX Data to third parties during the Term, then Service Provider shall provide Aggregated GHX Data that is based in part on the Member Data to Novation [\*\*\*\*\*] during the [\*\*\*\*\*] period following the Effective Date and, following such period but prior to the expiration or termination of the Term, at pricing [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] the [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] by [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] with [\*\*\*\*\*].

- 9.1.4 Aggregated Alliance Member Data. Each of VHA, UHC and HPPI hereby grant the following licenses with respect to its Aggregated Alliance Member Data:

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- (a) A nonexclusive, non-transferable royalty-free license to Novation to access and use such Aggregated Alliance Member Data only as directed by each of VHA, UHC or HPPI ; and
- (b) A nonexclusive, non-transferable royalty-free license to Service Provider to use such Aggregated Alliance Member Data only to the extent that such use is: (i) required for the performance of Service Provider's obligations pursuant to this Agreement and (ii) in accordance with the confidentiality provisions of Section 10.

Assuming that it has the requisite rights from its Members, each Alliance may prepare (or cause a third party, including Service Provider, to prepare on its behalf) any and all (i) Aggregated Alliance Member Data that the Alliance deems appropriate with respect to its Members and (ii) combinations of such data that two or more of the Alliances may deem appropriate with respect to each of their Aggregated Alliance Member Data, in each case without the consent of or license from any Supplier.

- 9.1.5 Product Data. All Product Data provided by a Supplier shall be owned by the Supplier of the Product which the Product Data describes.
- 9.2 Analytic Data. Subject to the rights of Members and Service Provider with respect to the underlying Transaction Data, all Analytic Data shall be owned by Novation. Novation hereby grants to each of UHC, VHA and HPPI a non-exclusive, royalty-free license to use for any purposes whatsoever the Analytic Data that Novation owns.
- 9.3 No Other Licenses or Use. Except as expressly set forth in this Section 9, none of the Alliances, Novation or Service Provider grants any license, express or implied, in any of the Transaction Data, Product Data, Analytic Data, [\*\*\*\*\*] Data or [\*\*\*\*\*]. The failure to abide by the terms and conditions of this Section 9 shall constitute a material default of this Agreement.
- 9.4 Ownership by Third Parties. The GHX Exchange, the Novation Marketplace [\*\*\*\*\*] and the AllSource(R) Catalog contain third party Marks and other Intellectual Property belonging to third parties, including Product Data and Transaction Data. All such Intellectual Property is and will remain the property of its respective owners. The Parties acknowledge that, from time to

time, the Parties may use third parties to provide certain data for use on or in connection with the GHX Exchange and the Novation Marketplace pursuant to a separate agreement with a third party (e.g., supply line data that is provided by [\*\*\*\*]). The Parties acknowledge that all data that a Party gathers or develops independent of this Agreement shall not be covered by this Agreement, provided that Service Provider shall not solicit any such information from a Member without

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fully disclosing to the Member all intended uses for which such information is being collected and will be used.

#### 9.5 Intellectual Property.

9.5.1 Deliverables. As between Service Provider and VHA, UHC, HPPI or Novation, as the case may be, the ownership of all Deliverables created pursuant to Section 4 of this Agreement and all Intellectual Property Rights related thereto shall be mutually agreed by the parties to each SOW and set forth therein.

9.5.2 Proprietary Rights; Restrictions. Notwithstanding anything to the contrary expressed or implied in this Agreement, but subject to Article 4 hereof, each Party (or, as applicable, its licensors) retains all right, title, interest in and to its Intellectual Property, and any derivative works thereof and improvements thereto, and each Party reserves to itself all rights with respect thereto. For purposes of this Agreement, "INTELLECTUAL PROPERTY" collectively 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 of each Party, whether such is now existing or may hereafter come into existence. With respect to Service Provider, Intellectual Property includes, without limitation: (i) the GHX Exchange (including, without limitation, all web pages of such Exchange and Service Provider's proprietary XML schema and document type definitions, to the extent that the same exist); (ii) the AllSource(R) Catalog; and (iii) Aggregated GHX Data, but excluding in each of (i) through (iii) Transaction Data and Product Data. With respect to Novation, Intellectual Property includes, without limitation: (i) Novation Materials; (ii) Intellectual Property comprising or included in Novation Proprietary Services; but excluding in each of (i) and (ii) Transaction Data and Product Data. As between Service Provider and Novation on the one hand, and each of VHA, UHC and HPPI on the other hand, each of VHA, UHC and HPPI shall own the Aggregated Alliance Member Data with respect to its Members. Notwithstanding the foregoing and except as expressly provided in Section 9.1.2, nothing in this Agreement shall affect any Party's ownership or other rights in Intellectual Property created or arising prior to the Effective Date.

### 10. SAFEGUARDING OF DATA; CONFIDENTIALITY

#### 10.1 Confidentiality.

- 10.1.1 Confidential Information. "CONFIDENTIAL INFORMATION" means (i) business or technical information of any Party, including, without limitation, information relating to a Party's product plans, designs, costs, product prices, finances, marketing plans, business opportunities, personnel, research, development, know-how or the pricing information available to Members, (ii) any information designated "confidential" or "proprietary" or which, under the circumstances, should reasonably have been understood to be confidential, (iii) the terms and conditions of this Agreement, (iv) all Transaction Data, except as provided in Section 9, (v) as to Novation and the Alliances, all [\*\*\*\*\*] , except as provided in Section 9, (vi) with respect to an Alliance, information regarding the affairs and business of their respective Affiliates, Members or customers, (vii) with respect to Novation, all Novation Materials, the Novation Contracts and all information contained therein or related thereto, (viii) with respect to Novation and each Alliance, all Aggregated Alliance Member Data relating to the Members of such Alliance, (ix) with respect to GHX, all Aggregated GHX Data and (x) with respect to Novation and each Alliance, all Analytic Data relating to the Members of such Alliance.
- 10.1.2 Confidentiality Obligations. Each Party agrees that (i) it will not use or disclose to any other Party or third Person including its Affiliates (other than its wholly-owned subsidiaries) any Confidential Information disclosed to it by any other Party except as contemplated by this Agreement and (ii) it will take all reasonable measures to maintain the confidentiality of all Confidential Information of each other Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance.
- 10.1.3 Exclusions. Section 10.1.2 will not prevent a Party from disclosing Information that such Party demonstrates: (i) is owned by such Party or its Affiliates or is already known (except via a breach of this Agreement) by the recipient Party or its Affiliates without an obligation of confidentiality other than under this Agreement, (ii) is publicly known or becomes publicly known through no breach of this Agreement or other unauthorized act of the recipient Party, (iii) is rightfully received from a third party, provided that (A) the source is not known to be bound by a confidentiality agreement, and (B) this clause (iii) shall in no event apply to Transaction Data transmitted by or to Members, or (iv) is independently developed by employees of a Party or an Affiliate of a Party without use of the other Party's Confidential Information. If Confidential Information is required to be disclosed pursuant to a requirement of a governmental authority, such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, to the extent possible, (i) provides the Party that owns the Confidential Information with timely prior notice of such requirement and

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coordinates with such other Party in an effort to limit the nature and scope of such required disclosure and (ii) uses commercially reasonable efforts to ensure that, within applicable law, such Confidential Information will not be further disclosed. If Confidential Information is required to be disclosed in connection with the conduct of any arbitration proceeding conducted pursuant to Section 17, such Confidential Information may be disclosed pursuant to and in accordance with the approval and at the direction of the arbitrator conducting such proceeding.

10.1.4 No License. Nothing contained in this Section 10.1 will be construed as obligating a Party to disclose its Confidential Information to another Party, or as granting to or conferring on a Party, expressly or implied, any patent, copyright, Mark, trade secret or other Intellectual Property Rights or any license to the Confidential Information of the other Party.

10.1.5 Loss of Confidential Information. In the event of any breach by the recipient Party of this Section 10.1 that results in a disclosure or loss of, or inability to account for, any Confidential Information of the furnishing Party, the receiving Party shall promptly, at its own expense, (i) notify the furnishing Party in writing, (ii) take such commercially reasonable actions as may be necessary or reasonably requested by the furnishing Party to minimize the breach, and (iii) cooperate in all reasonable respects with the furnishing Party to minimize the breach and any damage resulting therefrom.

10.2 Safeguarding of Data. Service Provider shall maintain appropriate safeguards, consistent with prevailing industry standards, against the destruction, inappropriate disclosure, wrongful access or use, loss or alteration of Novation's or either Alliance's Confidential Information in the possession of Service Provider. In any event, Service Provider shall maintain safeguards that are no less rigorous than those maintained by Service Provider for its own information of a similar nature and, in no event, less than a reasonable level of safeguards. Novation and each Alliance shall maintain appropriate safeguards, consistent with prevailing industry standards, against the destruction, inappropriate disclosure, wrongful access or use, loss or alteration of Service Provider's Confidential Information in the possession of Novation or such Alliance, as the case may be. In any event, Novation and the Alliances shall maintain safeguards that are no less rigorous than those maintained by Novation and the Alliance for their own information of a similar nature and, in no event, less than a reasonable level of safeguards.

10.3 Business Associate Provisions. To the extent reasonably requested by any Party, each Party will enter into one or more addenda to this Agreement to enable the other Parties to satisfy their obligations as business associates of the Members, including the obligation to extend certain confidentiality obligations to subcontractors of such a Party as a business associate.

## 11. REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Representations by Service Provider. Service Provider represents and warrants to Novation, VHA, UHC and HPPI that each of the following statements in this Section 11.1 are true and correct as of the date hereof and as of the Effective Time (except as otherwise provided below).

11.1.1 Due Organization. Service Provider is a limited liability company duly organized, validly existing

and in good standing under the laws of the State of Delaware.

11.1.2 Authority; Non-Contravention.

(a) Service Provider has all requisite limited liability company power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary limited liability company action on the part of Service Provider. This Agreement has been duly executed and delivered by Service Provider, and it constitutes the valid and binding obligation of Service Provider, enforceable against Service Provider in accordance with its terms, except as enforceability may be limited by bankruptcy and other similar laws affecting the rights of creditors generally and general principles of equity.

(b) The execution and delivery of this Agreement by Service Provider does not, and the performance of this Agreement by Service Provider will not, (i) conflict with or violate the GHX Formation Agreement, the GHX LLC Agreement or other organizational documents of Service Provider, (ii) conflict with or violate any law, rule, regulation, order, judgment or decree applicable to Service Provider or by which Service Provider or any of its properties is bound or affected or (iii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or impair Service Provider's rights or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of an encumbrance on any of the properties or assets of Service Provider pursuant to, any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise or other instrument or obligation to which Service Provider is a party or by which Service Provider or its assets is bound or affected, except, in the case of clauses (ii) and (iii), for such conflicts, violations, breaches, defaults, impairments, or rights which, individually or in the aggregate, would not have a material adverse effect on Service Provider.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with any governmental entity is required to be obtained or made by Service Provider in connection with the execution, delivery and performance of this Agreement, except those already obtained as of the Effective Date.

11.1.3 Performance. All Services will be performed throughout the Term in a professional and workmanlike manner.

11.1.4 Extension of Other Agreements. Except as otherwise

provided on Exhibit N hereto, all agreements with members of Service Provider (including, without limitation, HCA Inc., Premier, Inc. and each of their Affiliates) have been extended until [\*\*\*\*\*] on the same terms as were in effect on [\*\*\*\*\*], other than amendments to its agreements with Premier, Inc., HCA Inc. and their respective Affiliates solely to conform certain provisions of such agreements to the provisions of this Agreement (the "Conforming Amendments"). Service Provider has provided accurate and complete copies of such agreements with each of such entities as they were in effect on [\*\*\*\*\*] (or prior to the date of the Merger Agreement in the case of the Conforming Amendments), except for the redaction of certain confidential information.

11.1.5 Source Code Escrow. As of the Effective Time, with respect to all Source Code owned or controlled by Service Provider immediately before the Effective Date, Service Provider has taken all actions required to be taken on or before the Effective Date pursuant to Section 6.4.5.

11.1.6 Agreements.

- (a) All agreements between Service Provider and Suppliers that are currently in effect are in the form provided to Novation and the Alliance or have only immaterial modifications thereto.
- (b) All agreements between Service Provider and any GPO that are currently in effect are set forth on Exhibit M and complete copies (subject to redaction of certain confidential information) have been provided to Novation and the Alliances. Exhibit M also sets forth any pricing policy, understanding or arrangement that is currently in effect with respect to any GPO that is not a party to an agreement with Service Provider or members of such a GPO.
- (c) Service Provider charges a fee for all services that it provides to customers, except for its WebConnect product.

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11.2 Representations by Novation, VHA, UHC and HPPI. Each of Novation, VHA, UHC and HPPI, severally and not jointly, represents and warrants to Service Provider that the following statements made by it in this Section 11.2 are true and correct as of the date hereof and as of the Effective Time.

11.2.1 Due Organization. Novation is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware; UHC is a corporation duly organized, validly existing and in good standing under the laws of the state of Illinois; VHA is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware; HPPI is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware.

11.2.2 Authority; Non-Contravention.

- (a) Each of Novation and HPPI has all requisite limited liability company power and authority, and each of VHA and UHC has all

requisite corporate power and authority, to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary limited liability company action on the parts of Novation and HPPI and all necessary corporate action on the parts of VHA and UHC. This Agreement has been duly executed and delivered by Novation, VHA, UHC and HPPI, and it constitutes the valid and binding obligation of each of Novation, VHA, UHC and HPPI, enforceable against each of Novation, VHA, UHC and HPPI in accordance with its terms, except as enforceability may be limited by bankruptcy and other similar laws affecting the rights of creditors generally and general principles of equity.

- (b) The execution and delivery of this Agreement by Novation, VHA, UHC and HPPI does not, and the performance of this Agreement by each of Novation, VHA, UHC and HPPI will not, (i) conflict with or violate the limited liability company and corporate organizational documents, respectively, (ii) conflict with or violate any law, rule, regulation, order, judgment or decree applicable to Novation, VHA, UHC or HPPI or by which Novation, VHA, UHC or HPPI, or any of their respective properties are bound or affected, or (iii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or impair Novation's, VHA's, UHC's or HPPI's rights or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of an encumbrance on any of the properties or assets of Novation, VHA, UHC or HPPI

pursuant to, any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise or other instrument or obligation to which Novation, VHA, UHC or HPPI is a party or by which Novation, VHA, UHC or HPPI, or any of their assets, is bound or affected, except, in the case of clauses (ii) and (iii), for such conflicts, violations, breaches, defaults, impairments, or rights which, individually or in the aggregate, would not have a material adverse effect on Novation, VHA, UHC or HPPI, respectively.

- (c) No consent, approval, order or authorization of, or registration, declaration or filing with any governmental entity is required to be obtained or made by Novation, VHA, UHC or HPPI in connection with the execution, delivery and performance of this Agreement.

### 11.3 Compliance with Laws and Regulations; Other Covenants.

- 11.3.1 Compliance with Laws. Service Provider represents and warrants that throughout the Term, Service Provider and the Services shall be and shall remain in compliance with all applicable federal, state and local laws and regulations. Each of Novation, VHA,

UHC and HPPI represents and warrants that throughout the Term, Novation, VHA, UHC and HPPI shall be and shall remain in compliance with all applicable federal, state and local laws and regulations.

11.3.2 HHS and Comptroller General. Service Provider agrees that, until the expiration of four (4) years after the furnishing of any goods and services pursuant to this Agreement, it will make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of this Agreement and any books, documents, records and other data of Service Provider that are necessary to certify the nature and extent of the costs incurred by Members in purchasing such goods and services. If Service Provider carries out any of its duties under this Agreement through a subcontract with a related organization involving a value or cost of ten thousand dollars (\$10,000) or more over a twelve-month period, Service Provider will cause such subcontract to contain a clause to the effect that, until the expiration of four (4) years after the furnishing of any good or service pursuant to said contract, the related organization will make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of this Agreement and any books, documents, records and other data of said related organization that are necessary to certify the nature and extent of costs incurred by Service Provider for such goods or services. Service Provider shall give Novation, VHA, UHC and HPPI notice immediately upon receipt of any request from the Secretary of Health and Human Services or the

Comptroller General of the United States or any of their duly authorized representatives for disclosure of such information.

11.3.3 No Exclusion or Debarment. Service Provider represents and warrants, as of the Effective Date, that Service Provider has not: (a) been listed by any federal or state agency as excluded, debarred, suspended or otherwise ineligible to participate in federal and/or state programs; or (b) been convicted of any crime relating to any federal and/or state program. Service Provider further agrees to immediately notify Novation, VHA, UHC and HPPI in writing in the event Service Provider is listed by a federal or state agency as excluded, debarred, suspended or otherwise ineligible to participate in any federal and/or state programs or if Service Provider is convicted of any crime relating to any such program.

11.3.4 No Exchange of Competitively Sensitive Information. None of Novation, VHA, UHC or HPPI will use the Exchange or activities related to the Exchange for the purposes of exchanging among Suppliers or their Affiliates competitively sensitive information such as prices or terms of sale.

11.4 Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH OF NOVATION, VHA, UHC AND HPPI DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. SERVICE PROVIDER MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS TO ANY OTHER PARTY HEREUNDER WITH RESPECT TO ANY PRODUCTS SOLD THROUGH THE GHX EXCHANGE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SERVICE PROVIDER PROVIDES ALL SERVICES HEREUNDER "AS IS."

SERVICE PROVIDER HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE WITH REGARD TO THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SERVICE PROVIDER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ACCURACY OF DATA. SERVICE PROVIDER DOES NOT WARRANT THAT IT WILL BE ABLE TO CORRECT ALL REPORTED DEFECTS IN THE SERVICES OR THAT USE OF THE SERVICES, ACCESS TO PRODUCT DATA OR LINKS TO OTHER SUPPLIER MATERIALS WILL BE UNINTERRUPTED OR ERROR-FREE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SERVICE PROVIDER PROVIDES NO WARRANTIES WITH RESPECT TO THE FUNCTIONALITY OF THE GHX EXCHANGE SOFTWARE AND THE CLIENT SOFTWARE. EXCEPT AS EXPRESSLY

PROVIDED HEREIN, SERVICE PROVIDER MAKES NO WARRANTY REGARDING FEATURES, SOFTWARE OR SERVICES PROVIDED BY THIRD PARTIES.

12. USE OF SUBCONTRACTORS; RIGHTS TO REQUEST REPLACEMENT

- 12.1 Generally. Service Provider may subcontract its obligations under this Agreement subject to the limitations imposed by this Section 12.1. Service Provider shall not subcontract any Services included in the Member-Facing Plan to a Competitor.
- 12.2 Right to Request Replacement. Novation and each of the Alliances shall have the right during the Term to request that Service Provider withdraw and replace (or cause to be withdrawn and replaced, as the case may be), as soon as reasonably possible, an employee of Service Provider, any of its Affiliates or subcontractors who is providing Services included in the Member-Facing Plan. Service Provider will approve any such request if Service Provider determines that the individual's performance is materially deficient, good faith doubts exist concerning the individual's ability to render future performance, or there have been material misrepresentations by or concerning the individual.
- 12.3 Continuing Responsibility. Service Provider shall remain responsible for obligations performed by subcontractors to the same extent as if such obligations were performed by Service Provider. Service Provider shall be Novation's sole point of contact regarding the Services, including with respect to payment.
- 12.4 Confidential Information. Service Provider shall not disclose Confidential Information of any of Novation, VHA, UHC, HPPI or any of their Members to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in all material respects as required of Service Provider under this Agreement.

13. INSURANCE

- 13.1 Insurance. Service Provider, Novation and each Alliance will pay all costs and receive all benefits under policies arranged by it, and each waives rights of subrogation it may otherwise have regarding the other's insurance policies. Service Provider will maintain and keep in force during the Term general liability insurance, workers compensation insurance and property damage insurance with a minimum combined single limit of liability in the amount of not less than [\*\*\*\*\*] per occurrence and [\*\*\*\*\*] in the aggregate and will name Novation, VHA, UHC and HPPI, as their interests may appear, as additional insureds. The foregoing liability limits can be satisfied through a combination of primary and excess policies.

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13.2 Proof of Insurance. On the Effective Date and when otherwise requested by Novation, Service Provider will provide a certificate of insurance reflecting the coverage described in Section 13.1 issued by an insurance company and signed by an authorized agent. Service Provider will not amend, in any material respect that affects the interests of Novation, VHA, UHC, HPPI or the Members or terminate said insurance except after thirty (30) days' prior written notice to Novation. In addition, Service Provider shall provide Novation with at least thirty (30) days prior written notice of any material cancellation or material modification of such insurance by the insurance company.

14. INDEMNITY

14.1 Service Provider Indemnity. Subject to Section 14.4, Service Provider shall indemnify, defend and hold harmless each of Novation, VHA, UHC and HPPI and each of their Affiliates, officers, directors, employees, consultants and agents from and against any and all damages, liabilities, claims, actions, suits, proceedings, costs, charges and expenses, including reasonable attorneys' fees (collectively, "LOSSES"), incurred or sustained by any of such persons arising from the claim of any Person who is not a Party arising as a result of or from (i) the failure of Service Provider to perform any of its obligations under any agreement between Service Provider and a third party (including, without limitation, any agreements between Service Provider and a Supplier); (ii) any claims arising out of Service Provider's breach of this Agreement; (iii) any claim arising out of the death of or bodily injury to any employee of any of Novation, VHA, UHC and HPPI and each of their Affiliates (or their respective subcontractors) to the extent caused by the gross negligence or willful misconduct of Service Provider or its Affiliates; (iv) the loss of or damage to the real or tangible personal property (whether owned or leased) of any of Novation, VHA, UHC and HPPI and any of their Affiliates, officers, directors, employees, consultants and agents to the extent caused by the gross negligence or willful misconduct of Service Provider or its Affiliates; (v) Service Provider's failure to pay and discharge any taxes (including interest and penalties) for which Service Provider is responsible pursuant to the terms of this Agreement; and (vi) any claim asserted against any of Novation, VHA, UHC and HPPI and any of their Affiliates by an employee of Service Provider to the extent such claim arises from decisions, acts, omissions or violations of statute by Service Provider with respect to such employee's employee/employer relationship with Service Provider.

14.2 Novation Indemnity. Subject to Section 14.4, Novation shall indemnify, defend and hold harmless each of Service Provider and its Affiliates, officers, directors, employees, consultants and agents from and against any and all Losses awarded against or paid in settlement by Service Provider incurred or sustained by any of such persons arising from the claim of any Person who is not a Party arising as a result of or from (i) the failure of Novation to perform any of its obligations under any agreement between Novation and a third party; (ii) any claims arising out of Novation's breach of this Agreement; (iii) any claim arising out of the death of or bodily injury to any employee of Service Provider or its

Affiliates (or their respective subcontractors) to the extent caused by the gross negligence or willful misconduct of Novation or its Affiliates; (iv) the loss of or damage to the real or tangible personal property (whether owned or leased) of Service Provider and its Affiliates, officers, directors, employees, consultants and agents to the extent caused by the gross negligence or willful misconduct of Novation or its Affiliates; (v) Novation's failure to pay and discharge any

taxes (including interest and penalties) for which Novation is responsible pursuant to the terms of this Agreement; and (vi) any claim asserted against Service Provider by an employee of Novation to the extent such claim arises from decisions, acts, omissions or violations of statute by Novation with respect to such employee's employee/employer relationship with Novation.

#### 14.3 Infringement Claims.

14.3.1 Indemnity. Each of Service Provider and Novation, VHA, UHC and HPPI, at their respective expense, shall indemnify, defend and hold harmless the other Party and its Affiliates, and their respective officers, directors, employees, consultants, agents, successors and assigns, from and against any and all Losses arising from the claim of any Person who is not a Party relating to any Services, software, hardware or the indemnitor's Materials ("ITEM(S)") provided or delivered by the indemnitor to the indemnitee under this Agreement that, when used in conformity with all applicable written instructions and documentation, (i) infringes any United States patent or United States copyright, or infringes or otherwise violates any trademark rights under the laws of the United States or any state thereof, or (iii) constitutes misappropriation of any trade secret that is enforceable in the United States (each such third-party claim, action, suit or proceeding, an "INFRINGEMENT CLAIM").

14.3.2 Indemnity Exclusions. Notwithstanding anything to the contrary herein, the indemnitor shall have no obligation to defend or indemnify the indemnitee for any Infringement Claim to the extent arising out of or relating to (i) modifications to any Item made by or on behalf of the indemnitee where but for such modifications there would have been no Infringement Claim, (ii) any Intellectual Property that is embodied or otherwise included in [\*\*\*\*\*] as of the Effective Date, (iii) any use of any Service Provider Intellectual Property not in accordance with this Agreement, (iv) any use of the GHX Exchange in combination with other products, equipment, software, or data not supplied by Service Provider if the GHX Exchange can still be used and infringement can be avoided by not using such other product, equipment, software or data, or (v) any use of any release of the GHX Exchange Software or Client Software other than the most current release made available to the Parties and their Members. With respect to Third

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Party Technology, only the indemnity, if any, given by the developer or manufacturer thereof will apply, and Service Provider shall not be obligated to provide any indemnity hereunder for any third party claim to the extent based on such Third Party Technology.

14.3.3 Injunction or Prohibition. If the indemnitee's use of any Item is enjoined or otherwise prohibited, or if the indemnitor reasonably believes that there exists a threat of the same, the indemnitor shall have the right, in its sole discretion and at its expense, in addition to its indemnification obligations above, to (i) obtain for the indemnitee the right to continue to use the affected Item, or (ii) replace or modify the affected Item so that it becomes non-infringing and remains functionally equivalent.



14.4 Indemnity 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. The indemnifying party shall not be required to indemnify the indemnified party for the cost of the arbitrators' fees, the allocation of which is set forth in Section 17.

14.5 Exclusive Remedy. NOTWITHSTANDING ANYTHING ELSE CONTAINED IN THIS AGREEMENT TO THE CONTRARY, SECTIONS 14.1, 14.2 AND 14.3 SET FORTH THE SOLE AND EXCLUSIVE REMEDY OF THE INDEMNITEES, AND THE ENTIRE OBLIGATION AND LIABILITY OF THE INDEMNITORS, FOR ANY CLAIMS BY ANY PERSON WHO IS NOT A PARTY TO THIS AGREEMENT.

## 15. LIMITATION OF LIABILITY

EXCEPT FOR EACH PARTY'S OBLIGATIONS UNDER SECTIONS 10 (CONFIDENTIALITY) AND 14 (INDEMNIFICATION) OF THIS AGREEMENT AND EXCEPT FOR PAYMENT OF FEES, NO 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 OF THIS AGREEMENT, OR FROM ANY SERVICES COVERED BY OR FURNISHED UNDER THIS AGREEMENT, WILL IN ANY CASE EXCEED THE EQUIVALENT OF THE SUM OF THE AMOUNTS PAID TO SERVICE PROVIDER BY NOVATION PURSUANT HERETO DURING THE [\*\*\*\*\*] ENDING IMMEDIATELY PRIOR TO THE CLAIM. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 14 OF THIS AGREEMENT OR AMOUNTS PAYABLE PURSUANT TO EXHIBIT C, NO 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. NO PARTY WILL APPLY FOR, SEEK OR OTHERWISE REQUEST FROM ANY COURT, RELIEF OR REMEDY IN THE FORM OF EXEMPLARY OR PUNITIVE DAMAGES.

## 16. AUDIT RIGHTS

16.1 General. Subject to the following provisions of this Section 16, upon reasonable prior written notice from Novation, Service Provider shall provide to such third-party auditors as Novation may designate in writing, access during normal business hours to Service Provider's applicable facilities and

to appropriate Service Provider management personnel and subcontractors, and to applicable data and records maintained by Service Provider with respect to the Services for the purpose of confirming Service Provider's compliance with this Agreement. To the extent applicable to the Services performed by Service Provider, the scope of such audits may include, without limitation, (i) Service Provider's practices and procedures, (ii) Service Provider's computer systems, (iii) the adequacy of general controls and security practices and procedures, (iv) the adequacy of disaster recovery and back-up procedures, (v) any matter necessary to enable Novation to meet applicable legal or regulatory requirements, (vi) Service Provider's compliance with Service Levels and (vii) billing data and records relating to the Services. Any such audit shall be conducted in a manner so as to minimize any

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disruption to Service Provider's business. Subject to Section 16.6, such audits shall be conducted at the expense of Novation.

- 16.2 Frequency of Audits. Novation shall not have the right to conduct more than one audit in any 12-month period.
- 16.3 Auditors. The auditor conducting such audit shall be subject to the approval of all the Parties, such approval not to be unreasonably withheld or delayed, and shall be bound by written confidentiality provisions at least as restrictive as those contained in this Agreement.
- 16.4 Record Retention. In order to document the Services and the fees and expenses paid or payable by Novation under this Agreement, Service Provider shall retain its standard records and supporting documentation for the greater of (i) five (5) years or (ii) the period required by applicable law or (iii) the period under which a claim could be asserted under applicable law with respect to the transaction to which the records relate.
- 16.5 Cooperation. Service Provider shall use commercially reasonable efforts to assist such auditors in connection with such audits.
- 16.6 Overcharges and Undercharges. If, as a result of any such audit, the auditor determines that Service Provider has overcharged or undercharged Novation, Novation, VHA, UHC or HPPI shall notify Service Provider of the amount of such overcharge or undercharge and Service Provider or Novation, as applicable, shall promptly pay to the other the amount of the overcharge or undercharge, plus interest at a rate of 1% per month or the maximum rate permitted by law, whichever is less, calculated from the date of receipt by Service Provider of the overcharged or undercharged amount until the date of payment. If any such audit reveals an overcharge to Novation during any 12-month period exceeding seven percent (7%) of Novation's aggregate fees hereunder for such period, Service Provider shall reimburse Novation for the reasonable out-of-pocket costs and expenses incurred for such audit.
- 16.7 Audit Reports. Service Provider and Novation shall meet to review each audit report promptly after the issuance thereof and to mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested by the audit report.

## 17. DISPUTE RESOLUTION

Except as provided in Section 8.9, all disputes arising out of or in connection with the execution, interpretation, performance or nonperformance of this Agreement will be resolved in accordance with

18. GENERAL PROVISIONS

- 18.1 No Waiver. The delay or omission by any Party to exercise or enforce any right or power of any provision of this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance. A waiver by any Party of any of the covenants to be performed by any other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained.
- 18.2 Entire Agreement. This Agreement and the Exhibits attached hereto, and the GHX Formation Agreement, the GHX LLC Agreement, and the Merger Agreement to the extent specifically referred to in this Agreement, together constitute the complete and exclusive agreement between the Parties, and supersede any and all prior agreements of the Parties with respect to the subject matter hereof. This Agreement and the Exhibits attached hereto may be amended or modified, or any rights under it waived, only by a written document executed by all of the Parties.
- 18.3 Publicity. Except as required by law or provided in this Agreement, no Party will make any public statement, press release or other announcement relating to the terms of or existence of this Agreement without the prior written approval of all other Parties. In addition, the Service Provider shall not make any public statement, press release or other announcement (i) relating to the Services that uses the name of a Member without such Member's prior written approval and, except in the case of Participating Members subject to Member-Based Pricing, the approval of the Alliance to which such Member belongs; or (ii) regarding the Deliverables without the approval of Novation, UHC, VHA or HPPI, as the case may be. The Parties will cooperate prior to the filing of any public document which may require the filing of this Agreement as an exhibit or the filing of a description thereof in order to preserve the confidentiality and proprietary information contained herein.
- 18.4 Assignment; Successors and Assigns. This Agreement will be binding on the Parties and their respective successors and permitted assigns. No Party may, or will have the power to, assign this Agreement without the prior written consent of all other Parties. Notwithstanding the foregoing, no assignment made in respect of or as a result of any dissolution of Novation will be deemed an assignment for which prior consent is required, and such assignment will be valid (it being understood that this provision does not supersede the Parties' rights and obligations under Section 8.3.2). Notwithstanding the foregoing, nothing shall restrict Service Provider from performing any of its obligations hereunder and/or in connection with services provided to Participating Members through any of its wholly-owned subsidiaries, or through subcontractors in accordance with Section 12 above, provided that Service Provider remains liable for all performance hereunder.
- 18.5 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois, without regard to or application of conflicts of law rules or principles.
- 18.6 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed given if sent by prepaid registered or certified United States mail, return

receipt requested, or overnight mail with a nationally recognized overnight mail courier, or by personal delivery, addressed to another Party at the address shown below or at such other address for which such Party gives notice hereunder. Notices will be deemed given five business days after deposit in the United States Mail, two business days after deposit with an overnight mail courier, or if by personal delivery, when received, as applicable:

IF TO NOVATION:

Novation, LLC  
125 East John Carpenter Freeway  
Irving, Texas 75062  
Attn: General Counsel

IF TO VHA:

VHA, Inc.  
220 East Las Colinas Boulevard  
Irving, Texas 75039-5500  
Attn: Chief Financial Officer

WITH A COPY TO:

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036-6522  
Attn: Nancy A. Lieberman, Esq.

IF TO UHC:

University HealthSystem Consortium  
2001 Spring Road, Suite 700  
Oak Brook, Illinois 60523  
Attn: General Counsel

WITH A COPY TO:

McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, Illinois 60606  
Attn: Dean A. Kant, Esq.

IF TO SERVICE PROVIDER:

Global Healthcare Exchange, LLC  
11000 Westmoor Circle, Suite 400  
Westminster, CO 80021  
Attn: Chief Executive Officer

WITH A COPY TO:

Sidley Austin Brown & Wood LLP  
One South Dearborn Street  
Chicago, Illinois 60603  
Attn: Jeffrey S. Rothstein, Esq.

18.7 No Agency. Except as otherwise expressly provided herein, the Parties are independent contractors and will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency (except as expressly provided herein) or joint venture.

18.8 Force Majeure.

18.8.1 Performance Excused. Subject to 18.8.2, no Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by: flood, earthquake, elements of nature or acts of God, riots, civil disorders, terrorism, rebellions or revolutions in any country, or any other cause beyond the reasonable control of such Party, provided that (i) the non-performing Party has taken reasonable measures to prevent such default or delay and (ii) such default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaroud plans or other means (including with respect to Service Provider, by Service Provider executing its disaster recovery plans).

18.8.2 Period of Excused Performance. In such event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. With respect to Service Provider's performance, such efforts shall be no less than the

efforts used for any other customer of Service Provider. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two days after the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

- 18.8.3 Critical Functions. Notwithstanding anything in this Section 18.8 to the contrary, upon the occurrence of an event described in Section 18.8.1 that substantially prevents, hinders or delays performance of services necessary for the performance of "critical functions" of such Party for more than seven (7) consecutive days, such Party to whom such affected or delayed performance is due will have the right to immediately terminate this Agreement. For the purposes of this Section 18.8.3, "critical functions" means with respect to a Party, those business functions that are essential and critical to its business operations or the business operations of its Members.
- 18.9 Severability. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect.
- 18.10 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which, together, will constitute one and the same instrument.
- 18.11 Headings. Section headings are included for only convenient reference and do not describe the sections to which they relate.
- 18.12 Section 365(n) Matters. Service Provider acknowledges that if Service Provider as a debtor-in-possession or a trustee in bankruptcy in a case under the U.S. Bankruptcy Code rejects this Agreement or any agreement supplementary hereto or thereto, Novation may elect to retain its rights under this Agreement or any agreement supplementary hereto, as and to the extent provided in Section 365(n) of the U.S. Bankruptcy Code. Upon the written request of Novation to Service Provider or the bankruptcy trustee, Service Provider or such bankruptcy trustee, as provided in Section 365(n) of the U.S. Bankruptcy Code, (i) shall provide to Novation the Intellectual Property for the Services as described in this Agreement, including all third-party software and all Service Provider-owned software, and (ii) shall not interfere with the rights of Novation as provided in this Agreement or any agreement supplementary hereto, including or any escrow agreement that may be entered, to obtain such Intellectual Property from the bankruptcy trustee.
- 18.13 Additional Members. In the event of a merger, consolidation, sale of assets or other acquisition transaction between Novation, VHA or UHC and any other GPO, the Parties shall amend this Agreement to adjust Service Fees or implement Member-Based Pricing for such new Members, at the election of the affected Alliance, consistent with Section 2.2.3.
- 18.14 Termination of Neoforma Outsourcing Agreement. Immediately after the Effective Time, the Parties shall execute (or cause their respective Affiliates, as applicable, to execute), and deliver to each of the other Parties, the letter agreement attached hereto as EXHIBIT P and made a part hereof.

19. [\*\*\*\*\*] OF [\*\*\*\*\*]

19.1 [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*]. [\*\*\*\*\*] and [\*\*\*\*\*] agree, [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], that they will [\*\*\*\*\*] [\*\*\*\*\*] for the [\*\*\*\*\*] and [\*\*\*\*\*] of [\*\*\*\*\*] under this Agreement, as follows:

(i) to the [\*\*\*\*\*] that any such [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to any [\*\*\*\*\*] or [\*\*\*\*\*] by [\*\*\*\*\*] or any [\*\*\*\*\*], [\*\*\*\*\*] shall [\*\*\*\*\*] [\*\*\*\*\*];

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(ii) to the [\*\*\*\*\*] that any such [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] to any [\*\*\*\*\*] or [\*\*\*\*\*] by [\*\*\*\*\*] or a [\*\*\*\*\*], [\*\*\*\*\*] shall [\*\*\*\*\*] [\*\*\*\*\*]; and

(iii) to the [\*\*\*\*\*] that the [\*\*\*\*\*] set forth in (i) and (ii) are not applicable, [\*\*\*\*\*] and [\*\*\*\*\*] shall [\*\*\*\*\*] [\*\*\*\*\*] in accordance with a [\*\*\*\*\*] between [\*\*\*\*\*] and [\*\*\*\*\*].

19.2 [\*\*\*\*\*] and [\*\*\*\*\*] [\*\*\*\*\*]. Each of [\*\*\*\*\*] and [\*\*\*\*\*] hereby [\*\*\*\*\*] the following with regard to [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] under this Section 19:

(i) any [\*\*\*\*\*] to [\*\*\*\*\*] [\*\*\*\*\*] to [\*\*\*\*\*] any other [\*\*\*\*\*] in [\*\*\*\*\*]'s [\*\*\*\*\*] whatsoever, other than [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*] or [\*\*\*\*\*] with respect to a [\*\*\*\*\*] described in Section 19.1(i) and (ii);

(ii) any [\*\*\*\*\*] [\*\*\*\*\*] from the [\*\*\*\*\*], [\*\*\*\*\*] or [\*\*\*\*\*] of any [\*\*\*\*\*] of [\*\*\*\*\*], [\*\*\*\*\*] or [\*\*\*\*\*] of [\*\*\*\*\*] or [\*\*\*\*\*] [\*\*\*\*\*] [\*\*\*\*\*], or [\*\*\*\*\*] one another;

(iii) any [\*\*\*\*\*] of [\*\*\*\*\*], [\*\*\*\*\*] or [\*\*\*\*\*] of the [\*\*\*\*\*]'s [\*\*\*\*\*] hereunder based upon a [\*\*\*\*\*] of or [\*\*\*\*\*] [\*\*\*\*\*] under the [\*\*\*\*\*] or [\*\*\*\*\*]'s [\*\*\*\*\*] for any [\*\*\*\*\*] of its [\*\*\*\*\*] under this Agreement based on [\*\*\*\*\*] for the [\*\*\*\*\*] of [\*\*\*\*\*] generally;

(iv) any [\*\*\*\*\*] to be [\*\*\*\*\*] by [\*\*\*\*\*] of the [\*\*\*\*\*] or other [\*\*\*\*\*] of [\*\*\*\*\*] or of [\*\*\*\*\*] or [\*\*\*\*\*] or any [\*\*\*\*\*] therein or any other circumstances bearing upon the [\*\*\*\*\*] of [\*\*\*\*\*] by [\*\*\*\*\*]; and

(v) any [\*\*\*\*\*] of [\*\*\*\*\*] or [\*\*\*\*\*] based on [\*\*\*\*\*] of this Agreement in accordance with its terms.

Each of [\*\*\*\*\*] and [\*\*\*\*\*] agrees that its [\*\*\*\*\*], as set forth in Section 19.1, constitutes a [\*\*\*\*\*] of [\*\*\*\*\*] when [\*\*\*\*\*] and not [\*\*\*\*\*] [\*\*\*\*\*].

19.3 [\*\*\*\*\*] of [\*\*\*\*\*]. Neither [\*\*\*\*\*]'s nor [\*\*\*\*\*]'s [\*\*\*\*\*] and [\*\*\*\*\*] under this Agreement shall [\*\*\*\*\*] [\*\*\*\*\*] to any [\*\*\*\*\*], [\*\*\*\*\*], [\*\*\*\*\*], [\*\*\*\*\*] or [\*\*\*\*\*] for any reason, including, without limitation, [\*\*\*\*\*], and shall not be [\*\*\*\*\*] to any [\*\*\*\*\*] or [\*\*\*\*\*] whatsoever by reason of the [\*\*\*\*\*], [\*\*\*\*\*] or [\*\*\*\*\*] of any of its [\*\*\*\*\*] and [\*\*\*\*\*] under this Agreement; excluding, however, any [\*\*\*\*\*] based upon [\*\*\*\*\*]'s [\*\*\*\*\*] to [\*\*\*\*\*] any of its [\*\*\*\*\*] under this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

GLOBAL HEALTHCARE EXCHANGE, LLC

NOVATION, LLC

By: \_\_\_\_\_

Name:

Title:

Date:

VHA INC.

By: \_\_\_\_\_

Name:

Title:

Date:

UNIVERSITY HEALTHSYSTEM CONSORTIUM

By: \_\_\_\_\_

Name:

Title:

Date:

By: \_\_\_\_\_

Name:

Title:

Date:

HEALTHCARE PURCHASING PARTNERS INTERNATIONAL, LLC

By: \_\_\_\_\_

Name:

Title:

Date:

[SIGNATURE PAGE TO  
OUTSOURCING AGREEMENT]