

**DARTMOUTH-HITCHCOCK HEALTH -  
CMC HEALTHCARE SYSTEM**

***FIRST AMENDMENT TO AFFILIATION AGREEMENT***

This FIRST AMENDMENT TO AFFILIATION AGREEMENT (the "First Amendment") is made this 20th day of January, 2010 between **Dartmouth-Hitchcock Health**, a New Hampshire non-profit, voluntary corporation with a principal place of business at One Medical Center Drive, Lebanon, New Hampshire ("DHH") and **CMC Healthcare System**, a New Hampshire non-profit, voluntary corporation with a principal place of business at 100 McGregor Street, Manchester, New Hampshire ("CMCHS") (Each of DHH and CMCHS is referred to as a "Party" and collectively are referred to as the "Parties").

*Preamble:*

This First Amendment is based on the following circumstances and mutual understandings of the Parties:

A. On July 22, 2009 the Parties entered into an Affiliation Agreement (the "Original Agreement") to provide for a more effective means of providing physician and community hospital resources and services through the creation of a more fully-integrated health care delivery system in the greater Manchester, New Hampshire service area, and the further affiliation of that system with the regional integrated health care delivery system established, managed and governed by DHH.

B. Pursuant to the requirements of RSA 7:19-b(II)(g), the Parties published notice of the proposed terms of the Affiliation, established a web site, [www.ahealthiertomorrow.org](http://www.ahealthiertomorrow.org), through which the public could review the Affiliation documents, responses to frequently asked questions, and post comments, and conducted three public hearings, two in Manchester and one in Lebanon.

C. The Boards of Trustees of each Party have reviewed: (i) the public testimony and question and answer sessions from the forums (both in video and written form); (ii) commentary posted to the web site; and (iii) various media articles pertaining to the Affiliation. Many of such Trustees attended one or more public forums in person.

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D. The Boards of Trustees of the Parties have considered and deliberated over such community input regarding the transaction, and pursuant to and in satisfaction of the condition described in Section 4.4.4 of the Original Agreement, have ratified the following modifications to the Original Agreement in response to such community concerns.

E. To the extent that the Original Agreement is not modified by this First Amendment, the Boards of Trustees of the Parties have concluded that the Original Agreement adequately anticipates and addresses the remaining public concerns and comments.

F. This First Amendment also includes revisions recommended to ensure compliance with applicable laws and regulations based on the results of the Parties' due diligence.

G. Capitalized terms not defined in this First Amendment will have the same meaning ascribed to them in the Original Agreement. The term "Agreement" includes the Original Agreement as modified by this First Amendment.

*Terms of First Amendment:*

IN CONSIDERATION of the mutual promises described below, and for other valuable consideration received, the Parties agree to amend the Original Agreement as follows:

1. Catholic Identity to be Preserved. The following revisions are made to the Original Agreement to confirm the preservation of the Catholic identity of the Manchester System:

(a) CMC to Remain a Catholic Hospital. The following sentence is added after the first sentence of Section 2.5 of the Original Agreement:

*"CMC will remain a Catholic hospital and the care provided to patients within CMC will be consistent with the requirements of the ERDs."*

(b) CMCHS Trustees. The following sections of the Original Agreement are amended to provide both the Bishop and DHH with concurrent reserved powers to approve the appointment or removal of all elected members of the CMCHS Board:

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Section 3.6.2 of the Original Agreement is amended by deleting the last sentence thereof. Section 3.6.4 of the Original Agreement is amended by deleting it in its entirety and replacing it with the following:

*3.6.4. Approval by the Bishop and DHH. As described in Section 3.5 above, Exhibit 3.5 and Section 3.9 below, all candidates elected by the CMCHS Board to serve as its trustees also must receive the approval of each of the Bishop and DHH. If either the Bishop or DHH objects to any nominee, the organization which initially identified and nominated such individual will nominate a replacement for approval by CMCHS, the Bishop and DHH. In addition, any trustee elected by the CMCHS Board, and while serving in such capacity, will be a person who will respect the teachings of the Roman Catholic Church and who will not make public statements or directly engage in public activities which openly oppose the teachings of the Roman Catholic Church.*

Exhibit 3.5 of the Original Agreement is amended by deleting item 4 and item 5 in their entirety and replacing them with the following:

*4. The appointment of each elected trustee of CMCHS as described in section 3.6.4 of the Affiliation Agreement between CMCHS and DHH dated July 22, 2009, as amended by the First Amendment to Affiliation Agreement dated January 20, 2010 (the "Affiliation Agreement");*

*5. The removal of any elected trustee of CMCHS;*

(c) Application of Bishop's Reserved Powers. The last paragraph of Exhibit 3.5 of the Original Agreement, entitled "Reserved Powers of the Roman Catholic Bishop of Manchester Over CMCHS," is amended by adding the phrase "*and its Subsidiaries*" after the phrase "At all times, CMCHS..." in the first line thereof.

2. Additional Health Care Services Subject to ERDs. Section 3.9.2.9 is amended by adding the following at the end thereof:

*", with the understanding that any such new health care service or program by CMCHS, CMC and/or AHS must be in accordance with the ERDs;"*

3. Clarification of Bishop's Role and Rights. The following provisions of the Original Agreement are amended to clarify the role and rights of the Bishop:

(a) Retirement, Resignation, or Incapacity. The definition of "Bishop" in the Definitions section of the Original Agreement is amended by deleting the current definition and replacing it with the following:

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*“The Roman Catholic Bishop of Manchester, New Hampshire, or in the event of the death, retirement, resignation or incapacity of the person who holds the office of the Roman Catholic Bishop of Manchester, New Hampshire, the duly-appointed Diocesan Administrator until such time as a successor has been duly-installed or the Bishop is able to resume his duties.”*

(b) Interpretation of ERDs. Section 5.5.1.4 is amended by adding after the phrase “A subsequent and material change in the ERDs” the following phrase:

*“, or a binding interpretation thereof by the Bishop resulting from new procedures or treatments arising after the Closing Date and which interpretation is a material change, in either case...”*

(c) Specific Performance. Section 5.7.4 of the Original Agreement is amended by adding the words “; *Specific Performance*” to the section heading, by replacing “Section 3.5” with the following reference “Sections 3.5, 5.5.1.4 and 5.5.2.4”, and by adding the following at the end thereof:

*“The Parties acknowledge and agree that, if the Bishop determines in his discretion that CMCHS or one of the Manchester System Members has failed to implement or has violated the ERDs, then the Bishop will have the right to commence a civil proceeding to enjoin such violation and to seek specific performance of the obligations to implement and abide by the ERDs.”*

(d) Recovery of Costs. Section 5.5.2.4 of the Original Agreement is amended by adding the following sentence at the end thereof:

*“If the Bishop is required to pursue enforcement of his rights and remedies under this Agreement, then CMCHS will reimburse the Bishop for all of his reasonable costs, expenses and attorneys’ fees arising from such enforcement.”*

4. Financial Matters. The following revisions are made to the Original Agreement to clarify certain financial matters.

(a) Potential Financial Support of the Manchester System by the Regional System. Section 3.9.3.2 of the Original Agreement is amended by adding the following to the end thereof:

*“The Parties also acknowledge and understand that, from time to time and in its discretion, DHH may propose to deploy outside resources of the Regional System to the Manchester System to enable it to better serve the needs of the greater Manchester communities.”*

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(b) Budget Approval. Section 3.9.2.2 of the Original Agreement is amended by adding the phrase “*entirety of each*” prior to the phrase “annual and any revised operating and capital budgets...” and by inserting the following after the first sentence thereof:

*“If the DHH Board does not approve any annual or revised operating or capital budgets, the entire such budget will be returned for reconsideration and resubmission by the CMCHS Board. It is the Parties’ understanding that the DHH Board will not have a “line item veto” over any annual or revised operating or capital budgets of CMCHS.”*

5. Advance Directives. Section 3.9.6 is amended by adding the following at the end thereof:

*“The Parties acknowledge and agree that, consistent with the ERDs, CMC and other health care providers within the Manchester System will honor and abide by any legally-valid advance directives of its patients.”*

6. Termination of Amended and Restated Professional Services Agreement. In recognition of the importance to the Original Agreement of the restated professional services agreement attached thereto as Exhibit 4.3-1 and known as the “DHC-Manchester Services Agreement,” the Original Agreement is amended as follows:

(a) CMCHS Approval of DHC-Manchester Services Agreement Termination. Section 3.3.10 of the Original Agreement is amended by renumbering it “Section 3.3.11” and inserting the following new provision after Section 3.3.9:

*“ 3.3.10. DHC-Manchester Services Agreement. The CMCHS Board must approve any proposed termination or material amendment to the DHC-Manchester Services Agreement;”*

Section 2 of Article II of the Second Amended and Restated Bylaws of AHS, attached as Exhibit 4.1-2 to the Original Agreement, will be amended to incorporate the above addition to CMCHS’ reserved powers.

(b) Reevaluation of Affiliation Terms Upon DHC-Manchester Services Agreement Termination. Section 4.3 of the Original Agreement is amended by adding the following to the end of such section:

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*"The parties acknowledge that the DHC-Manchester Services Agreement is an integral component of, and co-terminous with, this Agreement and the affiliation among the Parties. If the DHC-Manchester Services Agreement is terminated because of an unremedied default thereunder, then the Parties agree to review and consider, in accordance with the process described in Section 5.7.8 below, any mutually-acceptable revision to the affiliation created under this Agreement to reflect such termination."*

7. Specific Terms of Amended and Restated Professional Services Agreement. Attached as Exhibit A are amendments to the form of the DHC-Manchester Services Agreement attached as Exhibit 4.3-1 to the Original Agreement.


8. Effective Date of First Amendment. The amendments described in this First Amendment will be effective as of the date set forth in the introductory paragraph.

9. Reaffirmation of Existing Provisions. The parties affirm that the provisions of the Original Agreement which are not affected by this First Amendment remain in full force and effect.

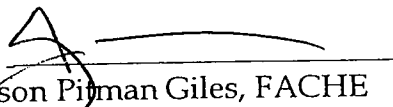
*Execution by the Parties:*

Each of the Parties indicates its understanding and acceptance of the terms of this First Amendment by signing below through its duly-authorized representative.

DARTMOUTH-HITCHCOCK  
HEALTH

By:   
Thomas A. Colacchio, M.D.  
President, duly authorized.

CMC HEALTHCARE SYSTEM

By:   
Alyson Pitman Giles, FACHE  
President and CEO,  
duly authorized.

**EXHIBIT A**

**Amendments to DHC-Manchester Services Agreement**

Exhibit 4.3-1 to the Original Agreement, entitled "Amended and Restated DHC-AHS Professional Services Agreement," (the DHC-Manchester Services Agreement) is amended as follows:

(a) Integrated Health Care Delivery. The preamble to the DHC-Manchester Services Agreement is amended by deleting paragraph (H) , replacing it with the following new paragraph (A) to be inserted at the beginning of the preamble, and re-lettering each subsequent paragraph of the preamble through paragraph (G) accordingly:

*"A. To enhance the availability and delivery of health care services in the greater Manchester service area, CMCHS has entered into an Affiliation Agreement (the "Affiliation Agreement") with Dartmouth-Hitchcock Health ("DHH") to integrate the clinical and health care services of CMCHS, Catholic Medical Center ("CMC"), and AHS (the "Manchester System") with the regional integrated health care delivery system operated by DHH (the "Regional System") to be comprised of non-profit health care providers delivering coordinated quality, innovative and cost-effective health care services to the general public of Northern New England, supported by a strong academic program. In accordance with the mission expressed in the Affiliation Agreement, DHH is the sole member of CMCHS and DHC. The parties desire that this Agreement serve as a vehicle for advancing the mission expressed in the Affiliation Agreement, and to set forth the terms of that arrangement in the context of a unified integrated health care delivery system operated under DHH."*

The preamble is further amended by amending paragraph (G), re-lettered paragraph (H) by the above, by deleting the phrase "AHS desires to broaden" in the last sentence thereof and replacing it with the following:

*"AHS desires to enhance the integration of delivery of health care services by broadening..."*

The preamble is further amended by adding to paragraph (I) the phrase "to document the respect for the ERDs in the context of services provided by AHS," following the phrase "professional staff services to AHS" and by adding the following to the end thereof:

*"and the shared mission of DHC and AHS to enhance the availability and delivery of health care services in the greater Manchester service area."*

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The preamble is further amended by deleting the word “solely” from the fourth sentence of paragraph (J) thereof, and by adding the following sentence to the end thereof:

*“Thus, this Agreement serves, in part, to document the intent of the parties that the healthcare services provided to and through AHS shall be compliant with the ERDs. Services provided by DHC Providers (as defined below) other than through this Agreement are not subject to the conditions and limitations of this Agreement.”*

(b) Charitable Missions. Section 1(b)(1) of the DHC-Manchester Services Agreement is amended by replacing the phrase “and otherwise to assist AHS in the performance of its charitable purposes and its participation in the integrated health care delivery systems described above” as it appears in the last sentence and replacing it with the following:

*“and otherwise to assist AHS and DHC in the performance of their charitable purposes and their participation in the integrated health care delivery systems described above...”*

(c) No Consideration for Referrals. Section 1(b)(2) of the DHC-Manchester Services Agreement is amended by deleting the penultimate sentence thereof and replacing it with the following:

*“An employee, agent or contractor of or with DHC may apply for medical staff membership, affiliation, or the receipt of any particular clinical privileges at CMC on terms as established by CMC, however such terms may not take into consideration the volume or value of referrals from the employee, agent, or contract of or with DHC to CMC.”*

Furthermore, Section 6(f) of the DHC-Manchester Services Agreement is amended by adding the following new paragraph (6) thereto and renumbering existing paragraph (6) to paragraph (7):

*“6. It is further understood that the determination of compensation levels paid by DHC to its individual physicians shall be fair market value and shall not take into consideration the volume or value of referrals generated by the individual physicians for AHS, CMC or any other health care provider.”*

(d) Patient Choice. Section 1(b)(2) of the DHC-Manchester Services Agreement is further amended by adding the following at the end thereof:

*“Furthermore, nothing in this Agreement will be construed to restrict or prevent any DHC Provider from honoring the choice of any patient regarding the receipt*

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*of health care services at facilities or from providers not affiliated with CMCHS or the Manchester System Members."*

(e) Personnel Restrictions and Discipline. Section 1(b)(4) of the DHC-Manchester Services Agreement is amended by adding the phrase "*, when rendering services required by this Agreement,*" after the phrase "All personnel supplied by DHC pursuant to this Agreement" in the first sentence thereof, and by deleting the phrase "*the sole right and*" before the phrase "responsibility of DHC" in the penultimate sentence thereof.

(f) Patient Information. Section 1(b)(5) of the DHC-Manchester Services Agreement is amended by adding the following after the third sentence thereof:

*"Such training will include, however, direction to personnel supplied by DHC pursuant to this Agreement as to those activities which can be performed in compliance with the ERDs, including but not limited to the provision to patients of information available in the public domain regarding treatments or procedures which cannot be performed in compliance with the ERDs."*

(g) Segregation of Non-Affiliation Revenue. Section 1(c)(3) of the DHC-Manchester Services Agreement is amended by replacing the last sentence thereof with the following:

*"DHC agrees to establish and maintain a billing procedure to distinguish between Affiliation services and procedures and activities outside of the Affiliation but provided at the Facilities, and any revenues from the latter will be segregated from those billing receipts collected on behalf of AHS."*

(h) Excluded Facility Space. Section 4 of the DHC-Manchester Services Agreement is amended by ending the sentence after the phrase "pursuant to this Agreement," deleting the remainder of the sentence beginning with the words "but excluding," and adding the following at the end thereof:

*"Notwithstanding the foregoing, a portion of such Facilities in Manchester and Bedford, and related furniture, fixtures, medical and office equipment and supplies, will be excluded from this Agreement (the "Excluded Portion"). The Excluded Portion will be a percentage determined by dividing the amount currently billed by DHC for all of the services provided by it at the Facilities in Manchester and Bedford by the current amount billed by DHC for only those services provided by it at the Facilities in Manchester and Bedford which are in compliance with the ERDs. The resulting percentage will be reflected in the budget. Although the Excluded Portion will not be physically segregated or identified from the remainder of the Facilities, it is intended to reflect and permit*

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*those activities of DHC which are not in compliance with the ERDs but which may be conducted outside of the Manchester System at the Manchester and Bedford Facilities.*

(i) Relationship of Parties. The title to Section 10 of the DHC-Manchester Services Agreement is amended by deleting "Independent Contractors" and substituting therefor "*Nature of Relationship.*" Section 10 of the DHC-Manchester Services Agreement is further amended by deleting from the first line of paragraph (a) the phrase "maintain separate and independent governance of" and replacing it with the word "*govern.*" Section 10 of the DHC-Manchester Services Agreement is further amended by deleting from the first sentence of paragraph (b) the phrase "as an independent entity, but..." as it appears before the phrase "as part of the integrated health care delivery systems created under the Manchester System and Regional System."