

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

**AFFILIATION AGREEMENT**

This AFFILIATION AGREEMENT (the "Agreement") is made this 22nd day of July, 2009 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 Agreement is based on the following circumstances and mutual understandings of the Parties:

A. DHH was formed to establish, manage and govern an integrated, academic health care delivery system (the "Regional System"). The Regional System is intended 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. The current provider organizations of the Regional System are Dartmouth-Hitchcock Clinic of Lebanon, New Hampshire ("DHC") and Mary Hitchcock Memorial Hospital also of Lebanon, New Hampshire ("MHMH").

B. CMCHS is the sole member and supporting organization of Catholic Medical Center, a non-profit hospital located in Manchester, New Hampshire ("CMC"). CMCHS is a public juridic person of diocesan right under the canon law of the Roman Catholic Church and is responsible for assuring that CMC operates in adherence to the Ethical and Religious Directives for Catholic Health Care Services ("ERDs") and subject to the powers reserved to the Roman Catholic Bishop of Manchester (the "Bishop"). CMCHS also is the sole member and supporting organization of Alliance Health Services ("AHS"), which is a non-profit operator of clinical services and currently leases certain professional services and facilities from DHC.

C. DHC and CMC entered into a non-binding letter of intent dated February 18, 2009 (the "Letter of Intent") in which they acknowledged the compatibility of their charitable missions to enhance the health status of

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individuals in the communities they serve and to advance health care through education, research, and the improvement of clinical practice. They further agreed to seek a more effective means of providing physician and community hospital resources and services by creating a more fully-integrated health care delivery system in Manchester, New Hampshire (the “Manchester System”).

D. In accordance with the Letter of Intent, representatives of CMC and DHC worked collaboratively to analyze and negotiate the myriad issues involved in creating a more integrated health care delivery system which could further their mutual interests and respective charitable missions, and better address the health care needs of the Manchester community.

E. As a result of such analysis and negotiation, CMC and DHC desire to create the Manchester System by combining their Manchester-based resources under a common parent, CMCHS. CMCHS will maintain certain reserved powers over CMC and AHS, which entities will retain their separate corporate identities. CMCHS will continue to serve as a public juridic person of diocesan right under the canon law of the Roman Catholic Church and the Bishop will continue to retain certain reserve powers over CMCHS. The professional services and facilities lease between DHC and AHS will be broadened to incorporate more of the resources of the DHC Manchester Division, and the governance of AHS will be modified to reflect the further integration of the Parties within the Manchester System.

F. The Parties further desire to integrate the Manchester System into the Regional System to provide additional specialty services and support, and to benefit from a strong academic program to help achieve excellence in clinical innovations and outcomes and to integrate research, training, information technology and academic medicine among the Regional System’s provider organizations. An *ad hoc* Joint Trustee Committee of the Parties also considered various hypothetical situations to illustrate the practical application of principles underlying their proposed integration as well as the potential results of that integration. To achieve this integration, DHH will become the sole member of CMCHS and will retain certain reserve powers as described below.

G. DHH and CMCHS wish to describe the components of the Manchester System and its relation to the Regional System, and the various steps which need to be taken to create the Manchester System and integrate it into the Regional System. The Parties also wish to evidence their commitment to creating the Manchester System and integrating it into the Regional System, subject to: (i) further due diligence; (ii) review by appropriate regulatory bodies and the public pursuant to New Hampshire RSA 7:19-b; (iii) any mutually-acceptable

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modifications resulting from such due diligence and review; and (iv) review and approval of the Bishop.

*Definitions:*

Capitalized terms used in this Agreement will have the meaning ascribed to them in the relevant provision described below. The following listing of definitions is intended for the convenience of the Parties:

“Agreement”	This Affiliation Agreement as defined in the Introductory Paragraph.
“AHS”	Alliance Health Services, a tax-exempt New Hampshire voluntary corporation of Manchester, New Hampshire.
“AHS CPE”	The Chief Physician Executive of AHS.
“Bishop”	The Roman Catholic Bishop of Manchester, New Hampshire.
“Chair”	The President and Chief Executive Officer of DHH serving as the Chair of the Leadership Council.
“CMC”	Catholic Medical Center, a tax-exempt New Hampshire voluntary corporation of Manchester, New Hampshire.
“CMC CEO”	The President and Chief Executive Officer of CMC.
“CMCHS”	CMC Healthcare System, a tax-exempt New Hampshire voluntary corporation of Manchester, New Hampshire.
“CMCHS Board”	The Board of Trustees of CMCHS.
“CMCHS CEO”	The President and Chief Executive Officer of CMCHS.
“Dartmouth-Hitchcock”	Dartmouth-Hitchcock Clinic and Mary Hitchcock Memorial Hospital acting jointly.
“D-H Board of Governors”	The Board of Governors described in the restated AHS Bylaws attached as Exhibit 4.1-2.

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“D-H Members”	Those members of the AHS Board of Trustees designated as such in Section 3.1.1.
“DHC”	Dartmouth-Hitchcock Clinic, a tax-exempt New Hampshire voluntary corporation of Lebanon, New Hampshire.
“DHC-Manchester Services Agreement”	The professional services agreement between DHC and AHS described in Section 3.1.2 and attached as Exhibit 4.3-1.
“DHH”	Dartmouth-Hitchcock Health, a New Hampshire voluntary corporation of Lebanon, New Hampshire.
“DHH Board”	The Board of Trustees of DHH.
“Effective Date”	The effective date of the Parties’ affiliation described in Section 4.5.
“ERDs”	The Ethical and Religious Directives for Catholic Health Care Services.
“Governing Documents”	The Articles of Agreement or Charter and Bylaws of each of the Parties and their affiliates, as the case may be.
“Key Strategic Relationship”	Ownership of or contractual participation in an arrangement described in Section 3.9.2.7.
“Leadership Council”	The President and Chief Executive Officer of each of DHH, MHMH, DHC and CMCHS as described in Section 3.7.6.
“Leases”	The DHC-Manchester Services Agreement and the facilities lease amendment described in Section 4.3.
“Letter of Intent”	The non-binding letter of intent entered into by DHC and CMC dated February 18, 2009, as described in the Preamble.

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“Manchester Provider Organizations”	The health care provider organizations which are participants in the Manchester System, initially CMCHS, AHS and CMC.
“Manchester System”	The integrated health care delivery system serving the Greater Manchester, New Hampshire area among the Manchester Provider Organizations of which CMCHS is the sole member.
“Manchester System Members”	CMC and AHS.
“Manchester System Service Area”	The primary and secondary service areas of the Manchester System described in Exhibit 3.9.7.
“Material Amount”	A dollar amount equal to or greater than the capital expenditure threshold for acute care facilities set forth in New Hampshire RSA 151-C:5(II)(a) as adjusted for inflation from time to time by the Health Services Planning and Review Board as set forth in Section 3.3.5.
“MHMH”	Mary Hitchcock Memorial Hospital, a tax-exempt New Hampshire voluntary corporation of Lebanon, New Hampshire.
“Parties”	DHH and CMCHS.
“Post-Affiliation Surplus”	The positive change in net asset value of CMCHS after the Effective Date attributable to Affiliation-related matters, as described in Section 3.9.3.1.
“Regional System”	The integrated health care delivery system serving Northern New England among the Regional Provider Organizations of which DHH is the sole member.
“Regional Provider Organizations”	The health care provider organizations which are participants in the Regional System (including CMCHS).

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“Termination Event” An event giving rise to the right of a Party to terminate this Agreement and un-wind the Affiliation as described in Section 5.5.1.

*Elements of Affiliation:*

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

1. STATEMENT OF PURPOSE AND MUTUAL VISION.

To help various regulatory authorities and the public understand the proposed affiliation, and the Parties evaluate their affiliation over time, the Parties declare the following purposes for the affiliation and the shared vision of its results.

1.1. Furtherance of Compatible Missions. Each of DHH and CMCHS seeks to further its charitable mission, and that of its respective subsidiaries, to enhance the health status of individuals in the communities they serve and to advance health care through education, research, and the improvement of clinical practice. Based on the Parties’ successful experiences with the integration, to varying degrees, of physician and community hospital resources and services, they believe that their respective missions will be achieved best by creating a more fully-integrated health care delivery system in Manchester to avoid the duplication of services, and to maximize the benefits of the health care delivery decisions they make to serve better the health care needs of the community.

1.2. Integration and Collaboration. The Manchester System will integrate financial and governance services among the Parties and their subsidiaries, and physician and administrative collaboration will be established at all leadership levels. The Manchester System will continue quality improvement efforts and the integration of clinical operations. Clinical collaboration will be encouraged by promoting local care when available in the Manchester community and enhancing regional clinical integration for select programs such as cancer, musculoskeletal and neurosciences. Growth of ambulatory care will be aligned with national trends.

1.3. Enhancement of Services in Manchester Service Area. If successful, the Manchester System will make additional specialized, tertiary and primary care services available to citizens in the greater Manchester community. A successful Manchester System also will establish and maintain strong collaborative and supportive relationships with independent physicians and

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other health care providers in the greater Manchester area and throughout the State of New Hampshire.

1.4. Support of Regional System. The Parties expect that the Manchester System will be enhanced by its participation in, and the support of, the Regional System and its strong academic program. By participating in the Regional System, the Manchester System will benefit from innovative and best practices in quality improvement, clinical services, research, information technology, financial planning and administrative services, and the provider organizations in the Manchester System (the “Manchester Provider Organizations”) will develop collaborative relationships with the provider organizations in the Regional System (the “Regional Provider Organizations”, which term also includes CMCHS) to allow for more effective and efficient health care services on a regional basis.

1.5. Focus on Local Decision-Making. The Parties envision that both the Manchester System and the Regional System will be dynamic networks rather than static, hierarchical structures. Because the missions of the Manchester System, the Regional System and their respective Provider Organizations focus on the provision of necessary and beneficial health care services to their communities, it is expected that most clinical and strategic planning initiatives and decisions will originate at the “local” level from the Provider Organizations which deliver the health care and have the most direct interaction with patients and community members. CMCHS, through the exercise of its reserved approval powers, will be responsible for assuring that these initiatives and decisions, and the activities of all Manchester Provider Organizations generally, are consistent with the broad goals and parameters established for the Manchester System.

2. GUIDING PRINCIPLES.

The Parties understand that their relationship will not be static, but instead will evolve with changing patient needs and improvements in medical care and hospital and provider administration. The Parties also acknowledge that the myriad of circumstances and decisions which the Manchester System will have to address cannot be anticipated or addressed fully in a written agreement. The following principles will help guide the evolution of the Parties’ relationship and the operation of the Manchester System so that the spirit of this Agreement, and the purpose and mutual benefits of the relationship, can be preserved.

2.1. Commitment to Health Care Needs of the Community. The health care needs of the communities served by the Manchester System and Regional

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System are paramount, and the Manchester System will be designed and operated to address best the needs of the residents of the communities served throughout greater Manchester. Needed inpatient and outpatient services will be provided in a convenient fashion at locations that maximize accessibility to all residents and consistent with the charitable mission of each of the respective Parties.

2.2. Commitment to Quality, Effective and Efficient Services through Integration. Through the creation and operation of the Manchester System, the Parties seek to provide the highest quality and most effective health care services in an efficient manner by integrating more fully the services provided by, and the governance and administration of, the Parties and their subsidiaries. To achieve such integration, and consistent with the terms of this Agreement, the Parties agree to honor the responsibilities of CMCHS and DHH and the exercise of their reserve powers and to align their activities and those of their subsidiaries with the strategic plans established for the Manchester System and the Regional System, respectively.

2.3. Furtherance of Charitable Mission. The Parties have acknowledged the compatibility of their charitable missions, and those of their subsidiaries, and no party will be required to take any action which is materially inconsistent with, or in contravention of, its respective charitable mission.

2.4. Promotion of Collaborative and Open Relationships. The Parties recognize and respect DHH's need to maintain multiple relationships outside the Manchester System to further its mission and vision and further recognize and respect CMC's need, as an open-staff Catholic hospital, to maintain multiple relationships, including those with both employed physicians and those in private practice as well as others outside the Manchester System to further its mission and vision. Multi-specialty group practice will be the featured and preferred model in the Manchester System. The physician-based multi-specialty group practice will retain a pluralistic character to allow CMC to support private practice physicians oriented to its hospital, to retain its employed physicians, and enable them to maximize their delivery system in conjunction with the DHC physicians within the Manchester System. Collaboration will be promoted at all levels: clinical, governance and administrative (including financial).

2.5. Adherence to ERDs and Collective Goals of Manchester System. The Parties understand the need to preserve and respect the Catholic elements of the Manchester System and the charitable purposes for which they were established, as well as the ERDs and the Bishop's reserved powers described below. The Parties acknowledge that these elements currently are compatible with the goals and purposes of the Manchester System.

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2.6. Compliance with Applicable Charitable and Tax-Exempt Requirements. The Manchester System at all times will be operated in a manner consistent with the charitable missions of the Parties and their subsidiaries, and none of them will be required to take any action pursuant to this Agreement which may impair or jeopardize its tax-exempt or public charity status under federal income tax law, or its charitable status under state law.

2.7. Principles Underlying the Provision of Health Care Services. In providing health care services within the Manchester System and the Regional System, the Parties are committed to observing the following principles:

2.7.1. The inherent dignity and worth of all people;

2.7.2. The promotion and maintenance of good health through health education and the achievement of high quality clinical outcomes;

2.7.3. Meeting local community expectations regarding service;

2.7.4. Advancing the knowledge and training of health care professionals;

2.7.5. Preserving universal access to appropriate health care services for all in need, regardless of ability to pay; and

2.7.6. The provision of a true continuum of health care services and the creation of opportunities for joint participation in a wide variety of health care ventures including managed care products, rehabilitation services, primary care development, long-term care, wellness and prevention services.

3. DESCRIPTION OF AFFILIATION.

The Parties agree to take, or cause to be taken, the following actions to create the Manchester System and its affiliation with the Regional System.

3.1. Alliance Health Services. AHS currently is a subsidiary of CMCHS and is party to a certain professional services agreement effective as of January 1, 2007 with the Manchester Division of DHC. On or prior to the Effective Date, the following changes will be made to AHS.

3.1.1. *Restatement of Articles and Bylaws; Governance.* The Articles of Agreement and Bylaws of AHS will be amended and restated to reflect

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that AHS will be a multi-specialty group practice-oriented organization and to provide DHC with a role in its governance. Specifically, the AHS Board of Trustees will be reconstituted to be comprised of the following seventeen (17) members, a majority of whom will not be employees of a Manchester Provider Organization or a Regional Provider Organization:

- a. The CMCHS Chief Physician Executive, *ex officio*;
  - b. The AHS Medical Director, *ex officio*, provided that if the same individual holds the office of CMCHS Chief Physician Executive and the AHS Medical Director, then the AHS Associate Medical Director will serve on the AHS Board of Trustees, *ex officio*;
  - c. The DHC President, *ex officio*;
  - d. The Dartmouth-Hitchcock Vice President of Community Group Practices, *ex officio*;
  - e. The CMCHS CEO, *ex officio*;
  - f. The CMC Physician Practice Associates Medical Director, *ex officio*;
  - g. Two (2) members nominated by the D-H Manchester Board of Governors (defined below);
  - h. Five (5) members nominated by the DHC Board of Trustees;
- and
- i. Four (4) members nominated by the Board of Directors of CMC.

The members identified in (a), (b), (c), (d), (g) and (h) will be known as the “D-H Members” of the AHS Board of Trustees because all will have been chosen directly or indirectly by Dartmouth-Hitchcock. The AHS Bylaws also will reflect the delegation by the AHS Board of Trustees of certain management and oversight responsibilities regarding AHS clinical activities to a Board of Governors (the “D-H Board of Governors”), similar in role and structure to the existing Board of Governors of DHC.

3.1.2. *Professional Services Agreement.* The existing professional services agreement will be replaced with a broader professional services agreement between DHC and AHS to conduct substantially the same physician and clinical services presently conducted by the Manchester Division of DHC (the “DHC-Manchester Services Agreement”).

3.1.3. *Continued Applicability of ERDs.* AHS will continue to be subject to the ERDs, and the following provision of the AHS Articles of Agreement will remain after the Effective Date:

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At all times, AHS shall be operated in accordance with the Canon Law and teachings of the Roman Catholic Church as well as with the *Ethical and Religious Directives for Catholic Health Care Services*, issued by the United States Conference of Catholic Bishops, as amended from time to time. In regard to the foregoing, AHS shall, in all such matters, rely upon and defer to the authority of the Bishop of the Roman Catholic Diocese of Manchester who, in such manner as he deems appropriate -- whether directly or by delegation of authority -- shall monitor AHS' implementation of and compliance with the *Ethical and Religious Directives for Catholic Health Care Services*.

3.2. CMCHS as Manchester System Parent Company; Reserved Powers. CMCHS will continue to be the sole member of CMC and AHS (the "Manchester System Members"), but all other existing subsidiaries of CMCHS will become subsidiaries of CMC on the Effective Date.

3.3. CMCHS Reserved Powers over AHS. So that it can serve as the coordinator and steward of the Manchester System, CMCHS will retain the following reserved powers over AHS which powers will be set forth in the AHS Articles of Agreement or Bylaws (and which may vary from the existing reserved powers which CMCHS holds over CMC). Each of the following actions must be addressed by the CMCHS Board of Trustees (the "CMCHS Board") as stated below:

3.3.1. *Amendments of AHS Articles of Agreement and Bylaws.* The CMCHS Board must approve any proposed amendment or repeal of the Articles of Agreement or Bylaws of AHS which proposed amendment or repeal would (i) impact the powers reserved to CMCHS in this Section 3.3, or (ii) reasonably be expected to have any material strategic, competitive or financial impact on one or more Manchester System Members or on the Manchester System as a whole, subject to the approval of DHH and the Bishop as applicable;

3.3.2. *Changes to Mission or Ethical and Religious Standards of AHS.* The CMCHS Board must approve any change in the mission, objectives or purposes of AHS or its ethical and religious standards, subject to the approval of the Bishop;

3.3.3. *Appointment or Removal of AHS Trustees.* The CMCHS Board must approve the appointment or removal of each trustee of AHS;

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3.3.4. *Appointment of AHS Chief Physician Executive.* The CMCHS Board must approve the appointment and termination of the AHS Chief Physician Executive;

3.3.5. *Operating and Capital Budgets of AHS.* The CMCHS Board must approve the final adoption of, and any proposed action which may result in a deviation in a Material Amount from, the annual and any revised operating and capital budgets of AHS, subject to DHH approval to the extent applicable as described in Section 3.9.2.2 below (for purposes of this Agreement, the term "Material Amount" will mean a dollar amount equal to or greater than the capital expenditure threshold for acute care facilities set forth in New Hampshire RSA 151-C:5(II)(a) as adjusted for inflation from time to time by the Health Services Planning and Review Board);

3.3.6. *Conveyance of Assets; Indebtedness.* The CMCHS Board must approve any unbudgeted conveyance, purchase, sale or lease of, or grant of mortgages, trust deeds or creation of other liens or encumbrances on, real property assets of AHS in excess of \$1 million or any conveyance of any assets of AHS (other than real property assets) or the incurring of any unbudgeted indebtedness (other than any such indebtedness secured by real property assets) which exceeds \$1 million;

3.3.7. *Clinical Service or Programs.* The CMCHS Board must approve any elimination or addition of any material health care service or program proposed by AHS, subject to the approval of DHH;

3.3.8. *Merger or Acquisition.* The CMCHS Board must approve any merger with or consolidation of AHS into another entity, or the acquisition by AHS of substantially all of the assets of another entity which may have a material effect on the Manchester System, or the sale or lease of substantially all of the assets of AHS to any person or entity;

3.3.9. *New Affiliations.* The CMCHS Board must approve any creation of an affiliate or subsidiary organization, or any affiliation of AHS with any other entity for the purpose of the joint conduct of business or other programs, whether in the form or participation in a corporation (either through the holding of stock or membership), partnership, joint venture, co-tenancy or any other form of ownership or control; and

3.3.10. *Dissolution.* The CMCHS Board must approve the dissolution or liquidation of AHS.

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3.4 CMCHS Reserved Powers over CMC. To properly empower CMCHS as the coordinator and steward of the Manchester System, the CMC Articles of Agreement and Bylaws will be amended as of the Effective Date to provide CMCHS with reserved powers over CMC similar to those reserved powers described in Section 3.3 above. This provision will not prevent CMCHS from holding any additional reserved powers over CMC.

3.5. Public Juridic Person. CMCHS will remain a public juridic person of diocesan right under the canon law of the Roman Catholic Church and will be responsible for assuring that the Catholic elements of the Manchester System operate in accordance with the ERDs. The Parties acknowledge, however, that activities of DHH and DHC outside of the Manchester System (including without limitation DHC activities which are not included within the DHC-Manchester Services Agreement or facilities lease described in Section 4.3 below) will not be subject to the ERDs. In furtherance of CMCHS' role as a public juridic person, the Parties acknowledge and agree that the Bishop will retain the reserved powers over CMCHS and its activities described in the attached *Exhibit 3.5*.

3.6. Board of Trustees Representation. The rights and responsibilities of CMCHS will be conducted by the CMCHS Board. To ensure that the Board balances the various interests and needs of the Manchester System Members, the members of the CMCHS Board will be determined as follows:

3.6.1. *Ex-Officio Members.* The President/CEO of DHH, the President/CEO of CMCHS and the Bishop's Health Care Delegate, who also serves on the CMC Board of Directors each will serve on the CMCHS Board *ex-officio*, with full voting rights.

3.6.2. *Members Nominated by CMC.* In addition to the *ex-officio* positions described above, the CMC Board of Directors will identify and nominate to the CMCHS Board seven (7) candidates for election to the CMCHS Board, one of whom is expected to be the President of the CMC Medical Staff. Nominees may, but need not, be members of the CMC Board of Directors. If the CMCHS Board does not approve any of such candidates, the CMC Board of Directors will nominate to CMCHS a new candidate for approval. As noted in Section 3.5 above and as set forth in Exhibit 3.5, the nomination by the CMC Board of Directors of candidates for election to the CMCHS Board also is subject to the Bishop's approval.

3.6.3. *Members Nominated by D-H Members of AHS.* In addition to the *ex-officio* positions described above, the D-H Members of the AHS Board of Trustees will identify and nominate to the CMCHS Board five (5) candidates for election to the CMCHS Board. If the CMCHS Board does

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not approve any of such candidates, then the D-H Members of the AHS Board of Trustees will nominate to the CMCHS Board a new candidate for approval.

3.6.4. *Approval by DHH.* As described in Section 3.9 below, all candidates elected by the CMCHS Board to serve as its trustees also must receive the approval of DHH. If DHH objects to any nominee, the organization which initially identified and nominated such individual will nominate a replacement for approval by both CMCHS and DHH, and by the Bishop under Section 3.5 and Exhibit 3.5, if applicable.

3.6.5. *Admission of Other Organizations to Manchester System.* The Parties acknowledge that if additional organizations become Manchester System Members, such new Manchester System Members might require representation on the CMCHS Board, as recommended by the CMCHS Board and approved by an amendment to the CMCHS Bylaws in accordance with its provisions and the various reserved powers. The Parties agree that if new Members to the Manchester System require representation on the CMCHS Board, a majority of the CMCHS Board always will be comprised of CMC-affiliated trustees.

3.7. Management and Reporting.

3.7.1. *CMCHS President and CEO.* On the Effective Date, CMCHS will enter into a management agreement with CMC to procure the management services of the current President and Chief Executive Officer of CMC (the "CMC CEO") who then also will serve as the President and Chief Executive Officer of CMCHS (the "CMCHS CEO"). Following the end of this management agreement, the CMCHS Board will be responsible for appointing a new CMCHS CEO, who may or may not be the CMC CEO, depending upon circumstances at the time and the needs of CMCHS and the Manchester System. As noted in Sections 3.5 above and 3.9.2.8 below, the appointment of a CEO of CMCHS is subject to the approval of the Bishop and DHH, respectively.

3.7.2. *CMCHS CFO and CPE.* On the Effective Date, the CMCHS Board also will establish the positions of Chief Financial Officer and Chief Physician Executive. Initially, the current Chief Financial Officer of CMC will become the Chief Financial Officer of CMCHS, and the current Medical Director of the Manchester Division of DHC will become the Chief Physician Executive of CMCHS.

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3.7.3. *CMC Leadership.* The current CMC CEO will continue to serve in such capacities after the Effective Date. If the position of the CMC CEO becomes vacant, a successor will be appointed in accordance with the CMC Bylaws, and subject to the reserved powers of CMCHS and the Bishop.

3.7.4. *AHS Leadership.* The AHS Chief Physician Executive (the “AHS CPE”) will be the chief executive officer of AHS. The current Medical Director of the Manchester Division of DHC also will serve as the AHS CPE as of the Effective Date. Thereafter, each successor AHS CPE also will serve as the CMCHS CPE. If the position of the AHS CPE becomes vacant, DHC, as the provider of professional services under the DHC-Manchester Services Agreement, will form a search committee comprised of members of the AHS Board of Governors, representatives of CMC, CMCHS and DHH, respectively, which committee will follow a process consistent with DHC historical practice. This search committee will recommend a candidate to the AHS Board for approval, subject to the approval of the CMCHS Board. Upon approval by the AHS Board and by the CMCHS Board, the appointment then must be approved by DHH.

3.7.5. *Review of Executive Performance and Compensation.*

3.7.5.1. CMCHS CEO. The CMCHS Board, acting through its Executive Compensation Committee, will be responsible for evaluating the overall performance, and determining the compensation, of the CMCHS CEO. The DHH CEO will be an *ex-officio* member of the CMCHS Executive Compensation Committee with full voting rights, and will deliver his or her evaluation of the CMCHS CEO’s performance to the Committee. The CMCHS Executive Compensation Committee will make decisions regarding the CMCHS CEO’s compensation based on overall performance, compliance with the ERDs, market conditions and any regulatory restraints.

3.7.5.2. CMC CEO. If and when the CMC CEO is not also the CMCHS CEO, the CMC Board of Directors will be responsible for evaluating the performance, including compliance with the ERDs, and determining the compensation, of the CMC CEO, except as may be otherwise agreed in the management services agreement described in Section 4.4.6 below.

3.7.5.3. AHS CPE. The AHS Board of Trustees, acting through its Executive Compensation Committee, will be

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responsible for evaluating the overall performance, including compliance with the ERDs, and determining the compensation, of the AHS CPE. Each of the CMCHS CEO and the DHC President will be an *ex-officio* member of the AHS Executive Compensation Committee with full voting rights, and will deliver his or her evaluation of the AHS CPE's overall performance to the Committee.

3.7.6. *Leadership Council.* To ensure that the operations of DHH and the Regional Provider Organizations are aligned to achieve their respective missions, a Leadership Council will be established. The Leadership Council will be comprised of the President/Chief Executive Officer of each of DHH, MHMH, DHC and CMCHS, with the DHH President/CEO serving as the Leadership Council's chair (the "Chair"). If new Regional Provider Organizations are added to the Regional System, it is likely that the chief executive officer of each such entity may become a member of the Leadership Council. The role of the Leadership Council will be to:

- Develop and recommend DHH strategic plans for review and approval by the DHH Board of Trustees;
- Develop and recommend strategic plans to the Boards of Trustees of Regional Provider Organizations which plans are aligned with DHH strategic plans;
- Coordinate the development of Five-year Capital Plans and Annual Operating and Capital Budgets that support DHH and Regional Provider Organization strategic plans, including but not limited to the use of Regional System resources as described in Section 3.9.3.2 below;
- Develop and coordinate quality improvement plans among the Regional Provider Organizations;
- Oversee the coordination and integration of clinical and administrative services and processes to advance the goals of DHH and the Regional Provider Organizations in a manner consistent with their respective charitable missions and, where applicable, the ERDs;

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- Monitor the performance of DHH and the Regional Provider Organizations, including but not limited to their commitment to their community benefit, educational and research programs; and
- Resolve conflicts that may arise.

Certain senior leaders of DHH and the Regional Provider Organizations may be identified by the Chair to support the Leadership Council and participate in meetings as appropriate. To fulfill its duties, it is expected that the Leadership Council will meet at least monthly. The Parties recognize that the Leadership Council may consider strategic, clinical or administrative issues which, directly or indirectly, may be inconsistent with the ERDs, in which circumstance the Parties agree that the CMCHS President and CEO would be permitted to recuse herself or himself and have no involvement in such issues.

3.8. Financial Matters. The financial management of the Manchester System will be conducted substantially in accordance with the DHH financial principles described in the attached *Exhibit 3.8*.

3.9. Integration into Regional System. The Manchester System will become integrated into the Regional System as follows.

3.9.1. *DHH as Sole Member of CMCHS.* Upon the Effective Date, DHH will become the sole member of CMCHS.

3.9.2. *DHH Reserved Powers.* As the sole member of CMCHS, DHH will retain certain reserved powers over CMCHS and, if and to the extent expressly stated below, its direct subsidiaries so that DHH can serve as the coordinator and steward of the Regional System. DHH normally reserves all of the powers described in its Bylaws attached as *Exhibit 3.9.2*. As permitted by Section 1.4 of the DHH Bylaws, however, DHH agrees that it will reserve only the following powers over CMCHS, which modified powers will be set forth in the CMCHS Articles of Agreement or Bylaws and are in the best interests of the Regional System:

3.9.2.1. Appointment or Removal of CMCHS Trustees. The DHH Board of Trustees (the "DHH Board") must approve the appointment or removal of a member of the CMCHS Board, provided that if new members are appointed as a slate, the DHH Board will exercise its approval power with respect to the entire slate;

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3.9.2.2. Manchester Provider Organization Capital and Operating Budgets. The DHH Board must approve the final adoption of the annual and any revised operating and capital budgets of CMCHS approved by the CMCHS Board, and any proposed action which may result in a deviation in a Material Amount from such budgets. The DHH Board also must approve the final adoption of, and any approval of a deviation in a Material Amount from, only those components of the annual and any revised operating and capital budgets of CMC and AHS, respectively, that constitute a Material Amount and have strategic implications for the Regional System;

3.9.2.3. Transfer of Assets. The DHH Board must approve any unbudgeted transfer by CMCHS, CMC and/or AHS to any person or organization, with or without consideration, during any twelve (12) month period of tangible, intangible or mixed assets with a value of a Material Amount (which amount need not be equal among Regional Provider Organizations);

3.9.2.4. Indebtedness. The DHH Board must approve any unbudgeted single incurrence, or unbudgeted cumulative incurrences in any twelve (12) month period, of debt by CMCHS, CMC and/or AHS in a Material Amount, which amount need not be equal among Regional Provider Organizations (for purposes of this Agreement, the term "debt" is defined as short-term and long-term indebtedness and financial obligations of all types, including, but not limited to, capitalized leases, notional principal contracts, and guarantees, except "debt" shall not include loans or guarantees incurred to facilitate routine business transactions, not to exceed a Material Amount, or accounts payable incurred in the ordinary course of business);

3.9.2.5. New Affiliations. The DHH Board must approve the creation of any affiliate or subsidiary of CMCHS or any merger with or consolidation of CMCHS, CMC and/or AHS into another entity, or the acquisition by CMCHS, CMC and/or AHS of substantially all of the assets of another entity which acquisition the Leadership Council determines may have a material effect on the Manchester System and/or the Regional System;

3.9.2.6. Dissolution. The DHH Board must approve the corporate division, dissolution, or liquidation of CMCHS, CMC and/or AHS;

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3.9.2.7. Key Strategic Relationships. The DHH Board must approve the participation by CMCHS, CMC and/or AHS in a “Key Strategic Relationship” defined as the ownership of, or contractual participation in, a network, system, affiliation, joint venture, alliance or similar arrangement (not including ordinary academic programs, managed care contracts, or other payment arrangement with third party payors), entered into with an organization that is not a Manchester Provider Organization;

3.9.2.8. Appointment of CMCHS CEO. The DHH Board must approve the appointment and termination of the CMCHS CEO;

3.9.2.9. Health Care Service or Program. The DHH Board must approve the elimination or addition of any material health care service or program by CMCHS, CMC and/or AHS; and

3.9.2.10. Amendments of Manchester Provider Organization Articles of Agreement and Bylaws. The DHH Board must approve the amendment of the Articles of Agreement and/or Bylaws of CMCHS, CMC and/or AHS where such proposed amendment would (i) impact the powers reserved to DHH in this Section 3.9.2, or (ii) reasonably be expected to have any material strategic, competitive or financial impact on one or more Regional Provider Organizations or on the Regional System and Manchester System as a whole.

DHH acknowledges and agrees that some of its reserved powers must be exercised concurrently with the reserved powers of the Bishop as set forth in Section 3.5 and Exhibit 3.5.

3.9.3. *Regional System Resources and Expenses.*

3.9.3.1. For the purposes of this Section 3.9.3 regarding the resources and expenses of the Regional System, on and as of the Effective Date the Parties will determine the value of the consolidated net assets of CMCHS as reported on its financial statements, which net asset value will be set forth on *Exhibit 3.9.3.1* and attached hereto. After the Effective Date, the Parties will track changes in such net asset value annually and attribute those changes to either non-Affiliation related matters, such as investment return and mark-to-market adjustments on swap agreements, and Affiliation related matters such as the benefit

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which may be derived from hospital basing physician services or from administrative cost efficiencies, as illustrated on Exhibit 3.9.3.1. The positive changes in net asset value attributable to Affiliation related matters will be referred to in this Agreement as the "Post-Affiliation Surplus."

3.9.3.2. As described in Section 1 above, participation by the Manchester System in the Regional System will be mutually-beneficial to the Manchester Provider Organizations and the Regional Provider Organizations. The Regional System, like the Manchester System, will be operated as a fully-integrated health care delivery system to further the missions of the Regional Provider Organizations in a coordinated manner. One of the primary responsibilities of DHH is to ensure that the collective resources of the Regional System are used to address as effectively as possible the health care needs of all of the communities served by the Regional Provider Organizations. Therefore, upon consultation with the Leadership Council, DHH will have the responsibility and power to propose in any annual budget or five-year capital plan of CMCHS an allocation of Post-Affiliation Surplus for use within the Regional System, provided that such allocation is consistent with the financial principles attached as Exhibit 3.8 and with the ERDs. Such proposal will be part of the CMCHS budget process, thus requiring approval by the CMCHS Board and approval by DHH as described in Sections 3.3.5 and 3.9.2.2 above.

3.9.3.3. The cost of the services which DHH will perform on behalf of the Regional Provider Organizations and the Regional System will be reasonably allocated among the Regional Provider Organizations. To effect such allocation of expenses, DHH will have the authority and responsibility to propose in each annual operating budget of CMCHS an assessment to cover CMCHS' share of the operating expenses of DHH and reasonable contingency amounts for its activities. Such proposed assessment will be part of the annual CMCHS operating budget process and subject to the approvals described above.

3.9.4. *Representation on DHH Board of Trustees.* DHH agrees that it will cause its Board of Trustees to appoint three (3) representatives nominated by the CMCHS Board to the DHH Board pursuant to Section 3.2.3 of the DHH Bylaws. The initial DHH Board will have eighteen (18) members, although such number is subject to change if additional

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provider organizations join the Regional System. The Parties recognize that the DHH Board may consider strategic, clinical or administrative issues which, directly or indirectly, may be inconsistent with the ERDs, in which circumstance the Parties agree that the CMCHS representatives to the DHH Board would be permitted to recuse themselves and have no involvement in such issues.

3.9.5. *Strategic Planning.* DHH will develop a long-term strategic plan for the Regional System based on input from provider organizations regarding their community needs and consistent with the Regional System goals. CMCHS then will develop a strategic plan for the Manchester System which is compatible with the Regional System plan and which addresses those portions of the Regional System plan for which CMCHS is responsible. CMC, AHS and other Manchester System Members will ensure that their local activities are compatible with the Manchester System plans developed by CMCHS.

3.9.6. *Clinical Operations; Financial and Administrative Matters.* Most of the significant clinical and other programmatic initiatives and development in Manchester will be identified by CMCHS management and its Board (or by the Manchester System Members), which initiatives will require the approval of DHH to ensure compatibility with the goals and plans of the Regional System. DHH agrees that any change (expansion or reduction) in program services that may impact the Manchester System in any material way will be presented to the CMCHS Board for discussion, approval and implementation. In exercising its oversight and reserved powers, including without limitation the reserved power described in Section 3.3.7 above, DHH will respect CMCHS' need to assure its continued authenticity as a Catholic healthcare system and provider through programs and services which are deemed to be "mission critical." CMCHS will be accountable to DHH for adherence within the Manchester System to overall quality goals established for the Regional System.

3.9.7. *Affiliations and External Organization Relationships.* DHH reserves the power to both identify and approve affiliations and relationships among Regional Provider Organizations and other organizations. DHH nonetheless agrees that it will involve CMCHS significantly in the identification and development of such relationships within the Manchester System primary or secondary service areas as identified on *Exhibit 3.9.7* (the "Manchester System Service Area"), and it will obtain the prior approval of CMCHS prior to developing a Key Strategic Relationship with any organization with its principal place of

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business (i.e. its primary service facility and not its primary business/administrative offices) located within the Manchester System Service Area. DHH also recognizes that certain relationships within the Manchester System Service Area may be subject to the Bishop's approval.

4. IMPLEMENTATION OF AFFILIATION.

4.1. Amendments to AHS and CMC Organizational Documents.

Following the satisfaction of the conditions described in Section 4.4 below and on or prior to the Effective Date, CMCHS will file with the New Hampshire Secretary of State and the City Clerk of the City of Manchester, New Hampshire the amended and restated Articles of Agreement and Bylaws of AHS described in the attached *Exhibits 4.1-1 and 4.1-2*, respectively and the amendments to the Articles of Agreement and Bylaws of CMC described in the attached *Exhibit 4.1-3* to incorporate the revisions described in Section 3.4 above.

4.2. Amendments to CMCHS Organizational Documents. Following the satisfaction of the conditions described in Section 4.4 below and on or prior to the Effective Date, CMCHS will file with the New Hampshire Secretary of State and the City Clerk of the City of Manchester, New Hampshire the amendments to its Articles of Agreement and Bylaws described in the attached *Exhibits 4.2-1 and 4.2-2*, respectively, in order to establish DHH as the sole member of CMCHS with the reserved powers described in Section 3.9.2 above, and to make any further amendments necessary to conform to this Agreement.

4.3. Physician Service Agreement and Facilities Lease Amendment. Following the satisfaction of the conditions described in Section 4.4 below and on or prior to the Effective Date: (a) DHC and AHS will enter into a professional services agreement substantially in the form attached as *Exhibit 4.3-1*; (b) DHC and AHS will terminate their existing professional services agreement; and (c) DHC will lease to AHS the clinical and administrative office facilities at 100 Hitchcock Way and 87 McGregor Street, Suite 1300 in Manchester, NH, and 25 South River Road in Bedford, NH, by amending the existing lease for 25 South River Road, which lease amendment will be substantially in the form attached as *Exhibit 4.3-2* and will exclude certain portions of such facility which will not be part of the Manchester System nor subject to the reserved powers of CMCHS or the Bishop.

4.4. Conditions to Closing. The obligation of the Parties to effect the affiliation as describe above is expressly conditioned upon the prior satisfaction of the following conditions:

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4.4.1. *Receipt of Regulatory Approvals.* The receipt of all applicable regulatory approvals, including but not limited to the following:

4.4.1.1. Favorable ruling from the Internal Revenue Service determining that the creation of the Regional System and the affiliation of CMCHS with DHH will not jeopardize the tax-exempt status of CMCHS or the Manchester System Members.

4.4.1.2. Anti-trust approvals under the Hart-Scott-Rodino Antitrust Improvements Act and state law.

4.4.1.3. Approval of the New Hampshire Director of Charitable Trusts under the so-called "Change of Control" provisions of RSA 7:19-b.

4.4.2. *Approval of Roman Catholic Bishop of Manchester.* The Bishop's approval of this Agreement and of the amendments to the CMCHS Articles of Agreement and Bylaws as each pertains to the ERDs and Bishop's reserved powers as set forth in Exhibit 3.5.

4.4.3. *Remaining Due Diligence Matters.* The completion by each party, and receipt of satisfactory results, of due diligence into various operational, legal, financial, tax, administrative, political and other issues and matters which may impact the successful consummation of the affiliation transaction. The Parties agree to conduct such diligence as promptly as possible, and in any event prior to the Effective Date.

4.4.4. *Additional Board Votes.* To the extent that any material modifications are required to this Agreement or any of the documents attached as exhibits as a result of the regulatory review and/or public hearings under RSA 7:19-b, then such modifications must be approved and this Agreement ratified by the respective boards of DHH and CMCHS.

4.4.5. *Third Party Consents.* The receipt of any required third party consent under any material agreement or commitment, including but not limited to financing arrangements.

4.4.6. *CMCHS Management Services Contract.* CMCHS and CMC will have executed the management services agreement substantially in the form attached as *Exhibit 4.4.6.*

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4.5. Effective Date. The effective date of the Parties' affiliation and the actions described above to implement such affiliation will become effective on December 31, 2009 at 11:59 p.m., or such later date and time as is necessary to satisfy conditions 4.4.1 and 4.4.2 above and is mutually acceptable to the Parties (the "Effective Date"). If all of the Closing conditions described in Section 4.4 are satisfied prior to December 31, 2009, then the Effective Date will occur within thirty (30) days of the satisfaction of the last condition.

5. MANAGING THE PARTIES' RELATIONSHIP.

5.1. Representations and Warranties. Each Party represents to the other, which representations will be deemed re-affirmed as of the Effective Date, as follows:

5.1.1. *Organization and Standing*. The Party has been duly organized under the laws of the State of New Hampshire as a voluntary corporation and is in good standing under those laws.

5.1.2. *Corporate Action*. The Party has taken all necessary corporate action and has obtained, or by the Effective Date will have obtained, all necessary licenses, permits and approvals in order to execute this Agreement and perform or satisfy any undertaking herein contained.

5.1.3. *Authorization*. The Party has full and complete right, power and authority to execute this Agreement and to carry out the Affiliation subject to the conditions stated herein. This Agreement constitutes a legal, valid and binding obligation, of the Party in accordance with its terms.

5.1.4. *Restrictions*. No provision of the Party's Organizational Documents, no contract, agreement or regulatory ruling or condition by which the Party is obligated and no provision of law has been or will be violated by the execution by the Party of this Agreement or the performance or satisfaction of any undertaking herein contained.

5.1.5. *Tax Status*. The Party is qualified as a tax-exempt 501(c)(3) corporation and a 509(a) public charity pursuant to the Internal Revenue Code of 1986, as amended, and the Affiliation shall not adversely affect such status.

5.1.6. *Litigation; Claims*. Except as set forth on *Exhibit 5.1.6*, no Party or its respective subsidiaries has been served with any summons, complaint or written notice to arbitrate, and no suit, litigation, claim (equitable or legal), administrative arbitration, investigation or other

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proceeding is pending or threatened against the Party or its respective subsidiaries that would materially and adversely affect the Party or its respective subsidiaries or its or their business by or before any court, governmental department, commission, board, bureau, agency, mediator, arbitrator or other person or instrumentality. None of the actions, claims, suits, proceedings and matters set forth in Exhibit 5.1.6 materially and adversely affects the financial condition of each Party or its respective subsidiaries or materially adversely affects the ability of the Party to perform its obligations hereunder.

5.1.7. *Opportunity for Due Diligence.* The Party has had full opportunity to conduct due diligence regarding legal, financial, operational, regulatory, clinical and other matters pertaining to the other Party specifically and the Affiliation generally, and the completion by the Party of the actions described in Section 4 above will be conclusive evidence that the results of such diligence are satisfactory to the Party.

5.2. Joint Working Groups. Each of the working groups identified in Section 3(a) of the Letter of Intent will continue in existence after the execution of this Agreement and until the Effective Date, and will conduct the activities and functions described in the Letter of Intent.

5.3. Confidentiality; Public Communications.

5.3.1. *Confidentiality.* Except as and to the extent required by law, the Parties will not disclose or use, and will direct their representatives not to disclose or use to the detriment of the disclosing party, any Confidential Information (as defined below) with respect to the disclosing party furnished by it or its representatives to the receiving party or its representatives at any time or in any manner other than in connection with the transactions contemplated by this Agreement. For purposes of this paragraph, "Confidential Information" means any information stamped "confidential" or identified in writing as such by the disclosing party to the receiving party promptly following its disclosure, unless (a) such information is already known to the receiving party or its representatives, (b) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the transaction, including in the case of CMCHS, the Roman Catholic Bishop of Manchester, or (c) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings. Upon the written request of the disclosing party, the receiving party will promptly return any Confidential Information furnished to it or its representatives, and will not retain any copies,

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reproductions or extracts thereof and certify in writing to the disclosing that it has done so. Any Confidential Information also is subject to the terms of the Common Interest Agreement, which is intended to supplement and not supersede this provision.

5.3.2. *Public Relations.* Notwithstanding the above, the Parties may disclose the terms of the affiliation transaction to any regulatory authority but only as necessary to obtain requisite approvals, and only upon prior consultation with each other regarding the content and timing of such disclosure. Any press release or other communication to the public will be agreed upon in advance by the Parties.

5.4. Concerns; Conflict Resolution.

5.4.1. Prior to the Effective Date, each party agrees to inform the other promptly of any concerns or of any circumstances which may impair the party's performance of its obligations under this Agreement. The Parties agree to refer any such matters to the appropriate Working Group described in Section 5.2 above to discuss and seek to resolve any such concerns promptly and in good faith.

5.4.2. After the Effective Date, the Parties will use their best efforts to operate the Regional System and the Manchester System in accordance with the applicable organizational documents and in furtherance of the mutual vision and purpose described in Section 1 above. Regular communications will be encouraged, and any concerns or disputes will be addressed promptly, in good faith, and through the application of the guiding principles described in Section 2 above. To the extent that any initiatives or decisions are deemed to be incompatible with the Manchester System and/or the Regional System, the matter will be referred back to the Provider Organization(s) for further consideration and refinement consistent with system goals and parameters. Except with respect to the exercise by the Bishop of his reserved powers described in Section 3.5 and set forth in Exhibit 3.5, which exercise is excluded from this Section 5.4, if any party with final approval rights fails to approve a recommendation submitted to it twice (i.e. upon initial consideration and subsequent reconsideration after refinement) or fails to consider and act upon, within a reasonable time period under the circumstances (including without limitation logistical challenges in scheduling a meeting of the board of trustees of such approving party), any recommendation submitted to it in writing for approval or if the Parties mutually agree, the conflict will be resolved as described in Sections 5.4.3 and 5.4.4 below.

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5.4.3. All conflicts first must be referred to non-binding mediation. The Parties to the conflict will mutually agree on a mediator who is experienced in mediation and health care matters similar to those in contention. The Parties will share equally in the cost of the mediation. The mediation will be held promptly after the mediator is identified and will be conducted in accordance with the procedures prescribed by him or her. This step is non-binding, but the Parties to the dispute will be obligated to exert their best efforts to reach common ground and resolve their differences.

5.4.4. If the mediation fails to achieve a mutually agreeable resolution of the dispute, then a second step is required. This will be binding arbitration. The Parties to the dispute will agree on an arbitration service, such as the American Arbitration Association, the American Health Lawyers Association or other mutually-agreeable service, and will follow their rules of procedure. If the Parties are unable to agree, they will use the American Health Lawyers Association. Three arbitrators will be selected from a panel provided by the arbitration service. The costs will be divided in accordance with the applicable rules. The Parties will present their points of view to the arbitration panel and will be bound by its decision. There will be no further appeal of that decision except for very unusual and rare occurrences, such as allegations of fraud.

5.5. Duration of Affiliation.

5.5.1. *Term and Events of Termination of Affiliation.* Each of DHH, CMCHS and their subsidiaries has expended considerable resources to effect this Affiliation and each is making a long-term commitment to the Manchester System. Therefore, the Parties' relationship under this Affiliation Agreement and related documents will continue in perpetuity unless it is terminated upon the occurrence of one or more of the following events (each a "Termination Event"):

5.5.1.1. The written consent of the Parties upon a determination by their respective Boards of Trustees that the mutual vision and purpose of their affiliation, as described in Section 1 above, is unlikely to be furthered or achieved;

5.5.1.2. A material breach of this Agreement which remains uncured or for which a cure has not been commenced within a period of ninety (90) days after the breaching party's receipt of written notice of such default;

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5.5.1.3. A subsequent and material change in applicable laws or regulations which prohibit, or substantially impair the Parties' abilities to effect, the affiliation contemplated by this Agreement;

5.5.1.4. A subsequent and material change in the ERDs which is incompatible with the goals and purposes of the Manchester System and/or the Regional System, or which substantially impairs the Parties' abilities to effect the affiliation contemplated by this Agreement, or which materially and adversely affect any clinical services permitted under the ERDs in effect on the Effective Date;

5.5.1.5. A subsequent circumstance which prevents Dartmouth-Hitchcock Medical Center from continuing to operate as an academic medical center and which circumstance: (a) is not satisfactorily addressed within nine (9) months; and (b) has a material adverse effect on the Regional System and/or the Manchester System.

5.5.2 *Un-Winding.* Upon the occurrence of a Termination Event as defined in Section 5.5.1, DHH and CMCHS agree to proceed to terminate the Agreement and dissolve and un-wind their Affiliation as follows:

5.5.2.1. *Confidentiality and Public Statement.* The Parties will agree upon a mutually acceptable statement concerning the Termination Event and thereafter each Party will use such statement, and cause its employees, agents and subsidiaries to use such statement, without material modification, omission or addition, in all dealings with third parties insofar as the circumstances of the Termination Event are concerned, or else make no statement regarding the Termination Event. Each Party will continue to keep confidential any and all proprietary information of the other party obtained through the performance of this Agreement.

5.5.2.2. *Rescission of Implementation of Affiliation; Returning the Parties to the Status Quo Ante.* The Parties agree that the actions taken to implement the Affiliation pursuant to this Agreement and any subsequent actions undertaken jointly in furtherance of this Agreement, including, but not limited to, the acquisition of property, the incurrence of debt, the entry into contracts with third-parties, and any and all rights and liabilities arising out of the

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Affiliation, will be rescinded in a manner that will, as nearly as practicable under the circumstances present at the time of the Termination Event, restore the Parties to their respective rights, titles and interests which were enjoyed by each of them immediately prior to the Effective Date. In order to achieve the objectives of this section, among other things, the Parties agree to undertake the following rescission actions:

(a) *Preparing, Approving and Filing Amended and Restated Articles of Agreement.* Pursuant to the Agreement, the Parties' respective Articles of Agreement and Bylaws (the "Governing Documents") were amended and/or restated and filed with regulatory bodies, where applicable. Upon the occurrence of a Termination Event, the Parties agree to act expeditiously to amend and restate their respective Governing Documents so as to restore the Governing Documents to their condition existing immediately prior to the Effective Date, except to the extent that the Party's Board agrees to certain deviations from the same. The representatives of the respective Parties, including members of their respective Boards, will act in good faith to facilitate the un-winding of the Affiliation through appropriate corporate actions undertaken to achieve the objectives of this Section 5.5.2.2(a). Each Party agrees to cooperate with the preparation of all necessary amendments to the Governing Documents in order to return the Parties to the *status quo* prior to the Effective Date, to the extent feasible.

(b) *Terminating or Amending AHS Professional Services Agreement and Facilities Lease.* Pursuant to the Agreement, including but not limited to Section 4.3, the Parties entered into the DHC-Manchester Services Agreement and a facilities lease amendment (the "Leases"). Upon the occurrence of a Termination Event, the Parties agree that they will act expeditiously to terminate or modify the Leases and any contractual agreements pertaining to the same in such a way as to assure the smooth and orderly transfer of the personnel and property associated with the Leases in a manner which encourages and reflects the unfettered choice of AHS patients regarding physician services following the Termination Event, and otherwise to a condition approximating as closely as possible that which existed

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immediately prior to the Effective Date. To the extent the termination of the Leases involve certain reconciliation of finances, the transfer of fixtures and equipment, or the amendment of contracts with third parties, the Parties will work expeditiously and in good faith to allocate any net assets and liabilities equally among themselves, taking into consideration the contribution of resources made by the respective Parties during the term of the Leases and the respective interests of the Parties following the termination of the Leases in order to restore them to the *status quo* immediately prior to the Effective Date. The Parties further agree that if any Manchester System physician changes employment from one Party or its affiliate to the other Party or its affiliate (e.g. from CMC to DHC, or DHC to CMC) as a result of the termination of the Leases and Affiliation, then the Party which no longer will be the employer of such physician will be credited with the sum of Two Hundred Thousand Dollars (\$200,000) per physician to compensate it for its training and support of such physician and the cost of finding a replacement.

(c) *Coordinating Filings with Regulatory Bodies.* The Parties will act in good faith to make complete, impartial and coordinated disclosures and filings with appropriate regulatory bodies, including, but not limited to, the Director of Charitable Trusts, the State of New Hampshire Department of Health and Human Services and the United States Centers for Medicare and Medicaid Services.

(d) *Communicating with Third Party Vendors and Amending Contracts.* The Parties will act in good faith to make complete, impartial and coordinated disclosures and filings with third party vendors in order to affect a smooth and orderly assignment of rights and liabilities under contracts in existence upon the occurrence of the Termination Event and to work cooperatively to amend said contracts in such a way as to preserve and assign their respective benefits and rights by cooperating in negotiating and consummating appropriate amendments to said contracts and further by taking such steps as to avoid disrupting beneficial relationships with third parties.

(e) *Financial Reconciliation; Transfer of Property; Resolving Due to/Due from Accounts.* The Parties agree to appoint a committee of representatives sufficiently conversant and familiar with the financial condition of the Regional and Manchester Systems as well as each member within said Systems so as to be able to assess and recommend to the management and the Boards of each Party a mechanism for reconciling the financial statements of the Parties; assign assets and liabilities to appropriate entities; allocate and assign accounts receivable and accounts payable to appropriate entities; and otherwise resolve any internal due to/due from accounting issues so as to restore each Party to its relative financial condition existing immediately prior to the Effective Date. To the extent at the time of the Termination Event there is any net Post-Affiliation Surplus as defined in Section 3.9.3.1 of the Agreement or there are any net liabilities realized as a result of the Affiliation and this Agreement, the Parties will allocate such net Post-Affiliation Surplus and/or net liabilities equally (i.e. each will receive one-half) between them.

5.5.2.3 *Cooperation; Non-Solicitation/Interference; Non-Disparagement.* In the event of a Termination Event, the Parties agree promptly and in good faith to extend such cooperation, execute such instruments, and generally take such action as may be needed to formulate and implement the rescission, dissolution and un-wind of the Affiliation and the Agreement as set forth in this Section 5.5.2. Each Party agrees that it will not interfere with the relationships between the other Party and any of its trustees, officers, managers, employees or agents, and third-party vendors and relationships during the un-wind period and that they will not disparage each other.

5.5.2.4 *Each Party to Bear their Own Costs.* The Parties agree to bear their own costs, including but not limited to consultant and attorneys' fees, incurred in conjunction with this Section 5.5.2.

5.5.2.5 *Dispute Resolution.* In the event the Parties reach an impasse or are unable to resolve any issues relating to this Section 5.5, they agree to submit to the dispute resolution procedures of Section 5.4 of the Agreement.

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5.6. No Assignment. The identity of the Parties is an essential element of their relationship, and so neither party may assign its rights or duties under this Agreement without the other party's prior written consent.

5.7. Application of Legal Principles. The following legal principles will apply to the interpretation of this Agreement and the Parties' actions under it.

5.7.1. *Choice of Law and Jurisdiction*. This Agreement and the obligations of the Parties under it will be governed by and interpreted under New Hampshire law. Any legal action will be brought and conducted in a New Hampshire court with appropriate jurisdiction over the dispute, and any choice of law provisions to the contrary will not apply.

5.7.2. *Waiver*. A waiver of any right under this Agreement will be effective only if it is written and signed by the waiving party, and no waiver of any right will be deemed to be a waiver of any future right under this Agreement.

5.7.3. *Integration*. This Agreement represents the entire understanding and agreement between the Parties and supersedes all prior negotiations, representations and agreements, both written and oral, made by and between them, excluding the Common Interest Agreement as amended as of February 18, 2009, which remains in effect. This Agreement may be amended or modified only by a written document signed by the Parties.

5.7.4. *No Third Party Beneficiaries*. Except for the Bishop with respect to the rights reserved under Section 3.5 and Exhibit 3.5, no person, organization or other party not a signatory to this Agreement will be regarded as a beneficiary of its terms or will have the standing or right to enforce any of the provisions of this Agreement.

5.7.5. *Severability*. If any particular provision of this Agreement is determined to be invalid or illegal, it will not affect the other provisions of this Agreement. Instead, the Agreement will be construed as if the invalid or unenforceable provisions were limited to the fullest extent permitted by law and consistent with the spirit and intent of this Agreement.

5.7.6. *Availability of Rights and Remedies*. Nothing in this Agreement is intended to limit the nature or extent of legal or equitable rights and remedies available to the Parties under New Hampshire law.

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The Parties agree that non-performance of this Agreement cannot be remedied by monetary damages, and that the equitable remedy of specific performance should be available to them as an appropriate remedy.

5.7.7. *Provisions Surviving Effective Date.* The Parties intend that this Agreement will guide their future actions regarding the Affiliation, and thus its provisions will survive the Effective Date. If and to the extent there is an inconsistency or conflict in the terms or operation of this Agreement with the terms or operation of Articles of Agreement and Bylaws of CMCHS, CMC and/or AHS, then the terms or operation of the latter will govern.

5.7.8. *Future Review and Revision or Renewal of Certain Provisions.* The Parties recognize that their Affiliation will evolve over time and under changing circumstances. To ensure that the structure of their Affiliation remains appropriate and effective in the future, and if the Parties have not already done so on an ongoing basis, the Parties agree to review in good faith on or about the fifth anniversary of the Effective Date the terms of their Affiliation under this Agreement. The Parties will determine whether the existing provisions remain appropriate and should be renewed, or whether they should be modified or ended. If the Parties cannot reach mutual agreement regarding the renewal or modification of any provisions, then they will follow the mechanism set forth in Sections 5.4.3 and 5.4.4 above to resolve their disagreement. The Parties will execute: (i) an amendment to this Agreement reflecting any modification of the above provisions; and (ii) any amendments to any ancillary documents referenced in this Agreement as may be necessary to effect such modifications.

*[The remainder of this page intentionally is left blank]*

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***Execution by the Parties:***

Each of the Parties indicates its understanding and acceptance of the terms described above as of the Effective Date by signing below through its duly-authorized representative.

DARTMOUTH-HITCHCOCK  
HEALTH

By: /s/ Thomas A. Colacchio  
Thomas A. Colacchio, M.D.  
President, *Pro Tempore*,  
duly authorized.

CMC HEALTHCARE SYSTEM

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

**EXHIBITS:**

- *Exhibit 3.5:* Bishop's Reserved Powers
- *Exhibit 3.8:* Manchester System Financial Management: DHH Financial Principles
- *Exhibit 3.9.2:* DHH Bylaws
- *Exhibit 3.9.3.1:* Post-Affiliation Surplus
- *Exhibit 3.9.7:* CMCHS Primary and Secondary Service Areas
- *Exhibit 4.1-1:* AHS Articles of Agreement, as Amended and Restated
- *Exhibit 4.1-2:* Second Amended and Restated AHS Bylaws
- *Exhibit 4.1-3:* CMC Articles of Agreement and Bylaws, as Amended and Restated
- *Exhibit 4.2-1:* CMCHS Articles of Agreement, as Amended and Restated
- *Exhibit 4.2-2:* Amended and Restated CMCHS Bylaws
- *Exhibit 4.3-1:* Amended and Restated DHC-AHS Professional Services Agreement
- *Exhibit 4.3-2:* Amendment to DHC-AHS Facility (Bedford, Manchester) Lease
- *Exhibit 4.4.6:* CMCHS Management Services Agreement with CMC
- *Exhibit 5.1.6:* Pending Litigation or Claims
- *Exhibit 5.5.3.3:* Stable Patrimony as of Effective Date

**EXHIBIT 3.5**

***Reserved Powers of the Roman Catholic Bishop of Manchester Over CMCHS***

Although many of the reserved powers of the person who holds the office of the Bishop of the Roman Catholic Diocese of Manchester are delegated to the Board of Trustees of CMC Healthcare System (“CMCHS”), the following actions require the express approval of the Bishop of the Roman Catholic Diocese of Manchester before they can be effective and implemented:

1. Any repeal, alteration or amendment of the Articles of Agreement or Bylaws of CMCHS;
2. Any change in the philosophy, objectives or purposes of CMCHS or its ethical or religious standards;
3. Any conveyance, purchase, sale or lease of, or grant of mortgages, trust deeds or creation of other liens or encumbrances on, real property assets of CMCHS or those of its Subsidiaries<sup>1</sup> with a fair market value in excess of the maximum amount approved by the Holy See for the United States of America<sup>2</sup> or any conveyance of any non-real property assets of CMCHS or those of its Subsidiaries or the incurring of any general indebtedness by CMCHS or those of its Subsidiaries which exceeds the same maximum amount;
4. The appointment of each CMC-affiliated trustee of CMCHS as described in section 3.6.2 of the Affiliation Agreement between CMCHS and DHH dated July 22, 2009 (the “Affiliation Agreement”);
5. The removal of any CMC-affiliated trustee of CMCHS;
6. The appointment of the President and Chief Executive Officer of CMCHS as described in section 3.7.1 of the Affiliation Agreement;
7. The removal of the President and Chief Executive Officer of the CMCHS;
8. Any merger with or consolidation of CMCHS or any of its Subsidiaries into another entity, or the acquisition by CMCHS or any of its Subsidiaries of

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<sup>1</sup> The term “Subsidiary” means any voluntary corporation over which either CMCHS or Catholic Medical Center serves as sole member or in the case of other forms of entities, where either CMCHS or Catholic Medical Center exercises control over the organization.

<sup>2</sup> The approved amount is \$5,000,000, indexed according to the cost-of-living index. For 2008-2009, the maximum amount is fixed at \$5,699,000.

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substantially all of the assets of another entity or the sale or lease of substantially all of the assets of CMCHS or any of its Subsidiaries to any person or entity;

9. Any creation by CMCHS or one of its Subsidiary organizations of an affiliate or subsidiary organization, or any affiliation of CMCHS or any of its Subsidiaries with any other entity for the purpose of the joint conduct of business or other programs, whether in the form of or participation in a corporation (either through the holding of stock or membership), partnership, joint venture, co-tenancy or any other form of ownership or control; and

10. The dissolution or liquidation of CMCHS.

At all times, CMCHS shall be operated in accordance with the Canon Law and teachings of the Roman Catholic Church as well as with the *Ethical and Religious Directives for Catholic Health Care Services*, issued by the United States Conference of Catholic Bishops, as amended from time to time. In regard to the foregoing, CMCHS shall, in all such matters, rely upon and defer to the authority of the Bishop of the Roman Catholic Diocese of Manchester who, in such manner as he deems appropriate -- whether directly or by delegation of authority -- shall monitor CMCHS' implementation of and compliance with the *Ethical and Religious Directives for Catholic Health Care Services*.

**EXHIBIT 3.8**  
***Manchester System Financial Management***

**DARTMOUTH-HITCHCOCK HEALTH  
(DHH)**

**Financial Principles**

INTRODUCTION

Dartmouth-Hitchcock Clinic and Mary Hitchcock Memorial Hospital have a 75 year history of working collaboratively to optimize each other's ability to meet the needs of the population which they serve. In recent years, this relationship has evolved into Dartmouth-Hitchcock, two legal entities working together as one economic unit to fulfill a single mission and, most recently, to achieve a vision of the healthiest population possible. Recognizing that forging substantive relationships with other health care providers is a requirement to fully realizing this vision, DHH was formed to support the creation of a regional integrated health care delivery system.

It is important to note that optimizing the population's health within a given region is not necessarily the same as maintaining or expanding the existing health care delivery system. DHH is committed to improving the health of the population; to being a good steward of its resources and those within the community; and to ensuring the optimal deployment of those collective resources to achieve the greatest value for the community. These financial principles have been developed to guide the DHH Leadership in achieving these goals.

PURPOSE

This document sets forth financial principles to be generally utilized by DHH organizations in developing long-term financial plans, annual operating and capital budgets and in conducting their financial affairs.

These financial principles have been developed to provide a basis for the DHH organizations to evaluate their financial position, establish financial objectives, and create financial plans that provide for future operating and capital needs and achieve financial objectives. In short, following these principles will help to ensure the long-term financial health of DHH and the Regional Provider Organizations.

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DHH recognizes that these financial principles reflect its understanding of financial planning and operating practices which should be utilized. It also understands that regulators and others may have differing views. It is DHH's responsibility to communicate the logic and rationale of these concepts to other parties and in the case that DHH does not follow them, to analyze the impact of those decisions on DHH's future financial position.

The DHH Board of Trustees (or appropriate Committee) will employ these principles in the review and approval of Regional Provider Organization annual budgets and long-term financial plans and projects. These principles will also be helpful in presenting and explaining our financial plans to regulators, bond holders, rating agencies and others.

**I. GENERAL FINANCIAL PRINCIPLES**

- A. DHH will strive to maintain an actual (if applicable) or a shadow credit rating equivalent to Standard & Poor's A+ rating or higher as reflected by financial ratios and credit market analysis. Individual Regional Provider Organizations will establish a goal of achieving and maintaining the following targets for their overall financial condition:
  - 1. D-H will strive to achieve and maintain an "A+" actual (if applicable) or shadow rating; and
  - 2. Other Regional Provider Organizations will strive to achieve and maintain an "A-" actual (if applicable) or shadow rating.
- B. DHH organizations should maintain working capital reserves rather than relying on external lines of credit or Regional System support to finance operations.
- C. Debt should be issued when it is most economical to borrow and with consideration for future capital project needs over time.
  - 1. Tax-exempt debt generally remains the least costly means to finance capital expenditures. The establishment of an Obligated Group (or Groups) will be utilized as appropriate to maximize access to capital markets at the lowest cost possible.
  - 2. Borrowings through a DHH Revolving Loan Program (should one be developed) will require a financial analysis which reflects reasonable assumptions and an ability of the borrower to repay the loan according to the original terms.

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- 3. Equipment leases should only be used when they result in lower financing costs compared to other alternatives or when they improve the ability to manage technological obsolescence.
  - 4. Operating leases should be considered for financing real estate that is used for non-core purposes or programs with unpredictable long-term funding sources.
- D. Significant new program, facility and equipment investments proposed by Regional Provider Organizations will be reviewed to ensure a full understanding of the immediate and long-term financial impacts of the proposal.

**II. PRINCIPLES FOR LONG-TERM FINANCIAL PLANNING**

- A. Organizations should periodically assess the adequacy of their financial position. They should calculate financial indicators and compare them to minimum acceptable levels and target levels. Minimum or maximum acceptable levels have been established for five key ratios as follows:

<u>Ratio</u>	<u>Capital Intensive</u>	<u>Non- Capital Intensive</u>
▪ Debt Service Coverage - Annual	Minimum of 2x	(same)
▪ Days Cash on Hand	Minimum of 100	Minimum of 45
▪ Debt-to-capitalization	Maximum of 50%	(same)
▪ Days in A/R, net	Maximum of 70	(same)
▪ Average Age of Fixed Assets	Maximum of 12	(same)

- B. Financial objectives should be established by the Regional Provider Organization Boards based on their evaluation of the adequacy of current financial position and projected financial requirements.
- 1. Minimum and maximum levels of liquid and unencumbered assets (“reserves”) should be established by the Board. Appropriate levels of conservatism should be considered when establishing reserves, or committing funds to various operating and strategic purposes. Specific financial objectives should be established if any reserves are not minimally adequate.

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2. Organizations should maintain reserves sufficient to maintain their facilities and equipment and to handle unanticipated cash flow requirements. Reserve levels should be based on the following:
    - a) Equipment replacement reserves should be at least equal to 100% of accumulated equipment depreciation.
    - b) Plant replacement reserves should be at least equal to 40% of accumulated facility depreciation.
    - c) Other specific reserves should be identified where appropriate.
    - d) The adequacy of general undesignated reserves should be based on the evaluation of funds for general purposes and the evaluation of contingencies and provisions for uncertainties.
- C. A Five Year Financial Plan should be prepared and/or updated annually and projections compared to financial objectives.
1. Cash provided from operations reflected in the Five Year Plan should be adequate to cover the following:
    - Equipment and plant replacement and/or reserve funding
    - New technology
    - Debt retirement, including funding of sinking funds for the retirement of debt
    - Working capital needs
    - Provision for certain strategic initiatives
    - Funding requirements for defined benefit plans
  2. If capital and strategic reserves are inadequate, non-operating income should be added to reserves until adequate levels are reached.
  3. If capital and strategic reserves are adequate, consideration should be given to using non-operating income (including unrestricted income earned on permanently restricted funds via an endowment spending policy) for investing in mission related objectives.

III. PRINCIPLES FOR ANNUAL OPERATING AND CAPITAL BUDGETS

- A. Each year, the budgeted operating margin will approximate the operating margin projected in the current Five Year Financial Plan.
- B. A level of conservatism sufficient to accommodate normal variation in market conditions and errors in estimates shall be incorporated into the annual operating budget in order to achieve financial objectives in normal situations. Organizations with a less than desired financial position should incorporate additional levels of conservatism to increase the probability of attaining their financial goals. All organizations should meet their budgeted operating margins at least 75% of the time (i.e. 3 out of 4 years).
- C. Impacts of current budgeting decisions on future periods must be considered.
  - a) Pricing of products and services should be consistent with the organization's overarching strategy and be based on an understanding of costs, competition, and consumer expectations.
  - b) Employee compensation should be set at levels appropriate to attract and retain skilled personnel.
  - c) The organization should annually and systematically replace equipment and maintain facilities.
- D. Non operating income should generally not be used to support operations unless specifically justified.

**EXHIBIT 3.9.2**  
*DHH Bylaws*

*See Attached*

**EXHIBIT 3.9.3.1**  
**Post-Affiliation Surplus**

**Hypothetical Example of the Computation of Post-Affiliation Surplus  
as Defined Section 3.9.3.1**

	Attributable to Affiliation Matters	Attributable to non- Affiliation Matters	Total
	<u>                    </u>	<u>                    </u>	<u>                    </u>
Pre-Affiliation Value of Net Assets	\$ -	100,000,000	100,000,000
Operating Margin			
Due to HBAS	3,000,000	-	3,000,000
Due to incremental volume	4,000,000	2,000,000	6,000,000
All Other		2,000,000	2,000,000
Investment Income	-	5,000,000	5,000,000
Pension Charges	-	(12,000,000)	(12,000,000)
Post-Affiliation Value of Net Assets	\$ <u>7,000,000</u>	<u>97,000,000</u>	<u>104,000,000</u>

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**EXHIBIT 3.9.7**  
***CMCHS Primary and Secondary Service Areas***

Primary

Allenstown 03275  
Auburn 03032  
Bedford 03110  
Candia 03034  
Deerfield 03037  
Goffstown 03045  
Dunbarton 03046  
Hooksett 03106  
Manchester 03101 thru 03109  
New Boston 03070

Secondary

Amherst 03031  
Bow 03304  
Chester 03036  
Derry 03038  
Londonderry 03053  
Raymond 03077  
Weare 03281

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**EXHIBIT 4.1-1:**  
***AHS Articles of Agreement, as Amended and Restated***

*See Attached*

**EXHIBIT 4.1-2:**  
*Second Amended and Restated AHS Bylaws*

*See Attached*

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**EXHIBIT 4.1-3:**  
***CMC Articles of Agreement and Bylaws, as Amended and Restated***

*See Attached*

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**EXHIBIT 4.2-1**  
***CMCHS Articles of Agreement, as Amended and Restated***

*See Attached*

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**EXHIBIT 4.2-2**  
***Amended and Restated CMCHS Bylaws***

*See Attached*

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**EXHIBIT 4.3-1**  
***Amended and Restated DHC-AHS Professional Services Agreement***

*See Attached*

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**EXHIBIT 4.3-2**  
***DHC-AHS Facilities (Bedford, Concord) Lease Amendment***

*See Attached*

**EXHIBIT 4.4.6**  
*CMCHS Management Agreement with CMC for  
Management Services of the Chief Executive Officer and  
the Chief Financial Officer*

*See Attached*

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**EXHIBIT 5.1.6**  
*Pending Litigation and Claims having Material, Adverse Effect*

*[To Be Attached at Closing]*

**EXHIBIT 5.5.3.3:**  
*Stable Patrimony as of Effective Date*

*[To Be Attached at Closing]*