



## Agreed Settlement

**Applicant(s):** Western Connecticut Health Network, Inc.  
24 Hospital Avenue  
Danbury, CT 06810

Health Quest Systems, Inc.  
1351 Route 55, Suite 200  
LaGrangeville, NY 12540

**Docket Number:** 18-32238-CON

**Project Title:** Transfer of Ownership of Western Connecticut Health Network, Inc. and Health Quest Systems, Inc. to a New Not-for-Profit Parent Corporation

### I. Project Description

Western Connecticut Health Network, Inc. (“WCHN”) and Health Quest Systems, Inc. (“HQ”), herein collectively referred to as the (“Applicants”), seek authorization to enter into an affiliation that will transfer ownership of WCHN and HQ to a new not-for-profit parent corporation (“NewCo”).

### II. Procedural History:

The Applicants published notice of their intent to file a Certificate of Need (“CON”) application in the *Republican American* (Waterbury) on April 23, 24 and 25, 2018. On June 7, 2018, the Health Systems Planning Unit of the Office of Health Strategy (“OHS”) received the CON application from the Applicants for the above-referenced project. The application was deemed complete on November 2, 2018.

Executive Director Victoria Veltri designated Attorney Micheala Mitchell as the hearing officer in this matter and the Applicants were notified of the date, time, and place of the public hearing. On November 20, 2018, a notice to the public announcing the hearing was published in the *Republican American*, *The Norwalk Hour* and *The News-Times*.

Thereafter, pursuant to Connecticut General Statutes (“Conn. Gen. Stat.”) § 19a-639a(f)(2), a public hearing regarding the CON application was held on December 4, 2018. The hearing was conducted in accordance with the provisions of the Uniform Administrative Procedure Act (Chapter 54 of the Conn. Gen. Stat.) and Conn. Gen. Stat. § 19a-639a(f)(2) and the Hearing Officer heard testimony from witnesses for the Applicants. The public hearing record was closed

on January 11, 2019. Executive Director Victoria Veltri considered the entire record in this matter.

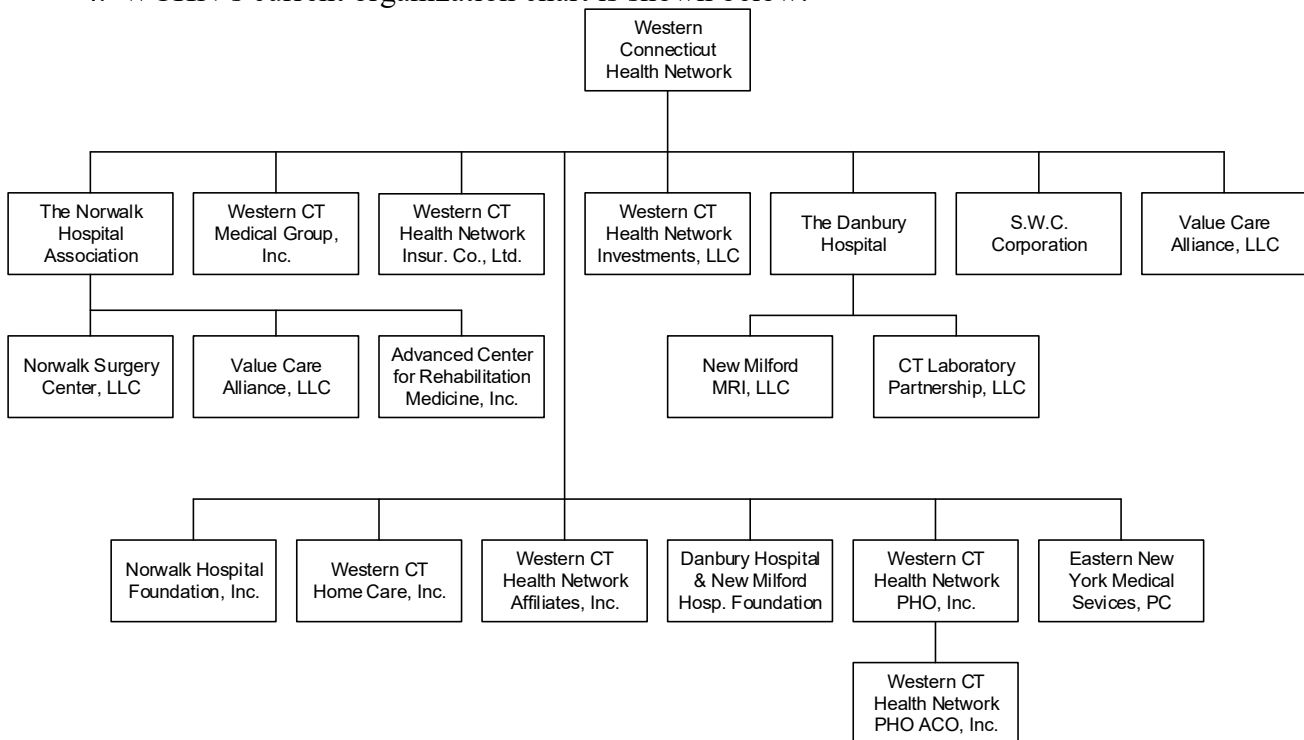
### III. Provisions of Law

The proposal constitutes a transfer of ownership of a health care facility pursuant to Conn. Gen. Stat. § 19-638(a)(2). OHS considered the factors set forth in Conn. Gen. Stat. § 19a-639(a) in rendering its decision.

### IV. Findings of Fact and Conclusions of Law

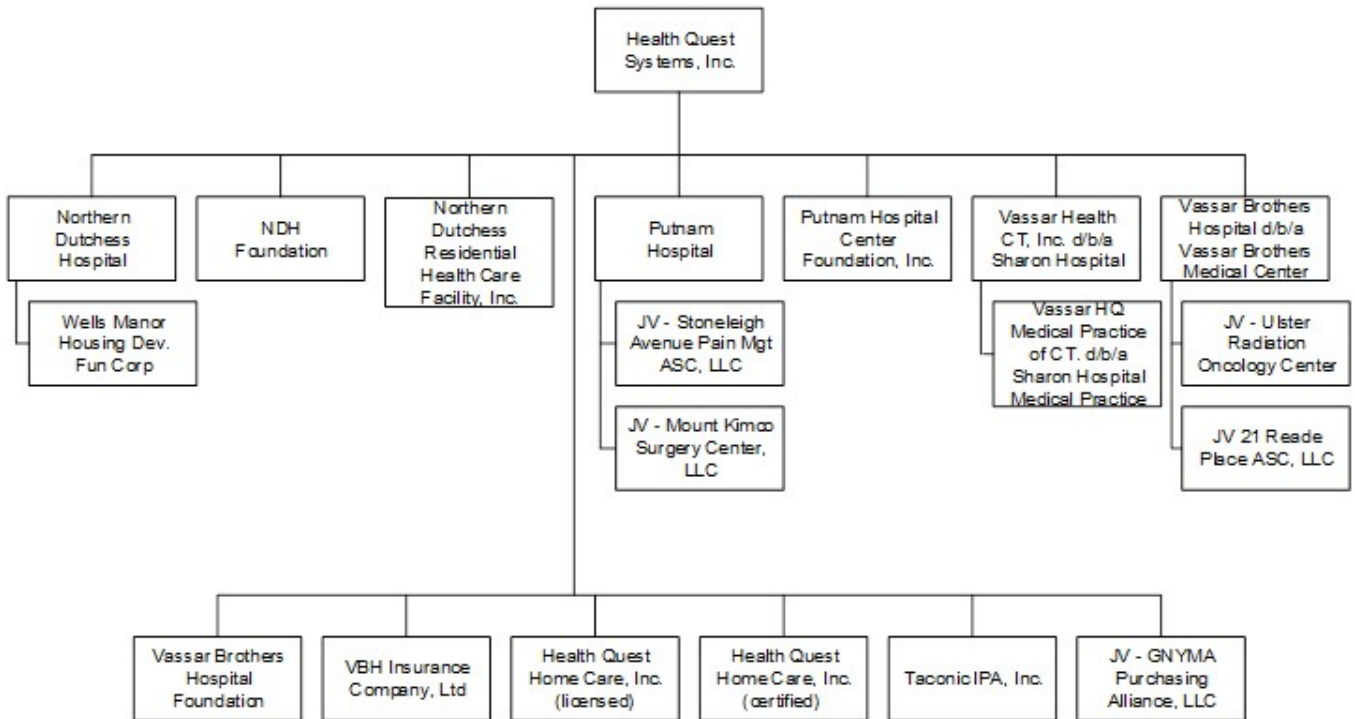
#### A. Introduction and Background

1. WCHN is a Connecticut not-for-profit corporation and parent company of an integrated health network serving Danbury, New Milford, Norwalk and the surrounding communities in Connecticut and eastern New York. Repaginated Ex. A, p. 13
2. WCHN is the sole parent corporation of Danbury and Norwalk Hospitals. Repaginated Ex. A, p. 14
3. Danbury Hospital is a teaching hospital licensed for 430 beds at two campuses (Danbury and New Milford, Connecticut). Norwalk Hospital is a teaching hospital licensed for 328 beds located in Norwalk, Connecticut. Repaginated Ex. A, p. 14
4. WCHN's current organization chart is shown below:



Repaginated Ex. A, p. 15; OHS-Hospital Reporting System

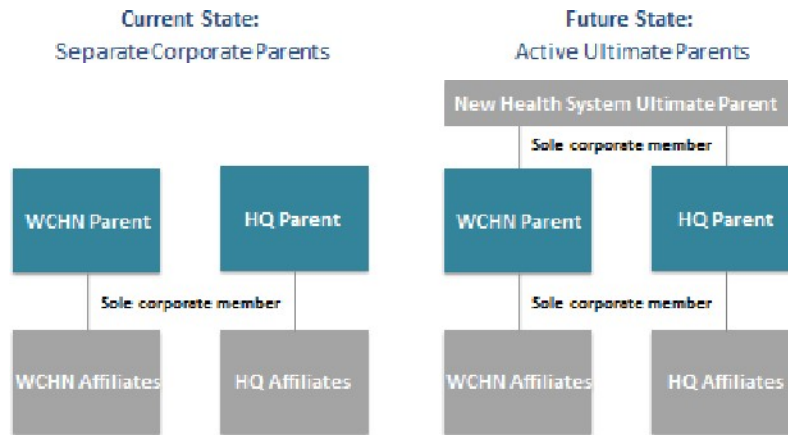
5. HQ is a not-for-profit corporation and parent company of an integrated health network serving the Mid-Hudson Valley in New York and northwestern Connecticut. Repaginated Ex. A, p. 14
6. HQ is the sole parent corporation of Sharon Hospital, a 78 licensed bed community hospital located in Sharon, Connecticut and three additional hospitals located in New York: Putnam Hospital Center (Carmel, NY-164 beds), Northern Dutchess Hospital (Rhinebeck-84 beds), and Vassar Brothers Medical Center (Poughkeepsie-365 beds). Repaginated Ex. A, p. 14
7. The hearing officer takes administrative notice of Certificate of Need Docket No., 16-3212, *Essent Healthcare of Conn., Inc. and Vassar Health Conn., Inc.* (July 17, 2017).
8. HQ's current organization chart is shown below:



Repaginated Ex. A, p. 15; OHS-Hospital Reporting System

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9. WCHN and HQ propose to affiliate through the formation of “NewCo,” a new parent organization that, through amendment of the certificates of incorporation and bylaws, will become the sole member of WCHN and HQ. WCHN and HQ will remain the sole member of their respective affiliates (see below):



Repaginated Ex. A, pp. 14-16

10. “NewCo” will be established as a not-for-profit entity governed by an 18-member board of trustees, consisting of 16 at-large trustees (i.e., eight nominated by WCHN and eight nominated by HQ) as well as the CEO and President of “NewCo,” serving as ex-officio trustees. Repaginated Ex. A, pp. 12, 14
11. The proposal is intended to help WCHN and HQ build on their existing strengths and capabilities in geographically contiguous and complementary markets, allow for greater synergies around healthcare resources, facilitate an enhanced focus on primary care in their respective service areas and to expand local access to specialty care. Repaginated Ex. A, pp. 17, 26 54
12. The Applicants submitted a Hart-Scott-Rodino filing<sup>1</sup> to the Federal Trade Commission (“FTC”) on July 19, 2018. The 30-day waiting period expired on August 20, 2018, with no action taken by the FTC. Ex. F, p. 1

## B. Access

13. Danbury,<sup>2</sup> Norwalk<sup>3</sup> and Sharon<sup>4</sup> Hospitals provide healthcare services to the majority of towns in western Connecticut and numerous bordering New York towns. Ex. A, pp. 19-21; Office of Health Strategy, Hospital Inpatient Discharge Database

14. The Applicants intend to develop and implement a joint approach toward addressing the unmet needs of behavioral health patients in their service areas through the support of community outreach programs and the enhanced delivery of specialized behavioral health services (e.g., telehealth strategies to evaluate health crisis and senior care). Repaginated Ex. A, pp. 32, 36, 41
15. There are no planned terminations or reductions in services as a direct result of the affiliation, however Sharon Hospital is evaluating its ability to maintain maternity services due to challenges in retaining qualified obstetricians for the program. Repaginated Ex. A, pp. 21, 46
16. The Applicants do not anticipate any significant changes to the payer mix composition as a result of the affiliation, including the provision of services to Medicaid patients. Repaginated Ex. A, p. 47

With respect to subsection Conn. Gen. Stat. § 19a-639(a)(5), the Applicants have satisfactorily demonstrated that the proposal will maintain accessibility of health care delivery in the region. Subsection (a)(10) is not applicable as the proposal does not reduce access to services by Medicaid or indigent patients.

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<sup>1</sup>The Hart-Scott Rodino (“HSR”) Act requires that information about large mergers and acquisitions be submitted to the Federal Trade Commission and the Department of Justice prior to their occurrence. The parties may not close their deal prior to the waiting period outlined in the HSR Act without government approval. Source:

<https://www.ftc.gov/enforcement/premerger-notification-program>

<sup>2</sup> Danbury Hospital’s primary service area towns include: Danbury, New Milford, Bethel, Newtown, Ridgefield, Southbury, Brookfield, New Fairfield, Sherman and Bridgewater, Connecticut.

<sup>3</sup> Norwalk Hospital’s primary service area towns include: Norwalk, Westport, Wilton, New Canaan and Weston, Connecticut.

<sup>4</sup> Sharon Hospital’s primary service area towns include: Sharon, North Canaan, Salisbury, New Milford, Winchester, Torrington, Kent, Cornwall, and Goshen, Connecticut and Dover Plains, Millerton, Amenia, Washington, Pine Plains, Wassauc and Wingdale, New York.

### C. Quality

17. In regard to quality, the Applicants assert that they are committed to:
  - Consolidating to one electronic medical record (“EMR”) and enterprise resource planning (ERP)<sup>5</sup> system;
  - Creating common standards for nursing performance, management, and staffing levels;
  - Creating a single quality/safety infrastructure;
  - Achieving top-decile in quality performance;
  - Maintaining a robust compliance program;
  - Building the framework to move the combined integrated delivery system toward being a High Reliability Organization (“HRO”);
  - Implementing operational model alignment across the system;
  - Providing a consistent, seamless patient experience across all sites of care resulting in top-decile performance in all patient experience measures; and
  - Meaningfully engaging patients and their families as partners in their care.Repaginated Ex. A, p. 19
  
18. The Applicants maintain that with the benefit of an integrated EMR across the entire WCHN/HQ system, providers will be able to obtain consultations from specialists across the network, allowing patients to receive the full benefit of the combined system’s resources. Repaginated Ex. A, p. 31
  
19. WCHN has adopted HRO practices focused on the elimination of all-cause preventable harm across its facilities. Specifically, daily safety huddles, leadership rounding, and safety coach programs have been implemented. Repaginated Ex. A, p. 29
  
20. HQ has implemented some elements of HRO (i.e., including daily huddles, establishing rigorous processes for serious safety event determination and root cause analysis) at Sharon Hospital and expects to complete the same training for its hospitals to be consistent with WCHN. Ex. A, p. 29; Hearing Transcript testimony of Robert Friedberg, President and CEO of Health Quest Systems, p. 50
  
21. The Applicants state that they are committed to bringing best practices from both organizations to the combined health system under NewCo and to moving the combined integrated delivery system toward being a HRO. Repaginated Ex. A, pp. 29-30
  
22. The Applicants intend to pursue quality and safety goals established at the board of trustees’ level that are implemented and reinforced throughout the combined health system and tied to performance targets that represent top national performance.  
Repaginated Ex. A, p. 30

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<sup>5</sup> ERP is a business process management software that allows an organization to use a system of integrated applications to manage and automate many back office functions (e.g., technology, services and human resources).

The Applicants have asserted that they have implemented quality initiatives throughout their respective systems. In order to ensure that the proposal will improve the quality of healthcare delivery in the region in accordance with Conn. Gen. Stat. § 19a-639(a)(5), the Applicants must comply with the conditions set forth in the attached Order. Subsection (a)(2) is not applicable as the state-wide health care facilities and services plan does not address the transfers of ownership of hospitals.

#### D. Financial Soundness

23. The proposed affiliation does not require a capital expenditure. Repaginated Ex. A, p. 39
24. The Applicants assert that the affiliation will realize cost savings and synergies due to the:
- Consolidation of administrative positions;
  - Standardization of health and tuition reimbursement benefits;
  - Improved contracting for supplies and drugs; and
  - Savings opportunities from purchased service arrangements, audit & legal fees, agency and employee recruitment, equipment maintenance and food services.
- Repaginated Ex. D, pp. 13-14
25. As a result, cost savings are projected for WCHN's hospitals in each year (FYs 2019-21) following adoption of the proposal and are anticipated to increase to approximately \$34M in FY 2022. Repaginated Ex. D, p. 14
26. Cost savings are also projected for Sharon Hospital in each year (FYs 2019-21) following adoption of the proposal and are anticipated to increase to approximately \$1M in FY 2022. Repaginated Ex. D, p. 14
27. Primarily as a result of anticipated cost savings that will be generated by the affiliation, both WCHN and Sharon hospital project operating gains in excess of \$40M and \$3M, respectively, for the first three years following adoption of the proposal (see tables, below).

#### Financial Projections for WCHN (amounts in thousands)

Description	FY 2019 <sup>1</sup>	FY 2020	FY 2021	FY 2022
Operating Revenue	\$1,235,581	\$1,257,208	\$1,279,847	\$1,302,908
Operating Expenses	\$1,195,151	\$1,202,696	\$1,211,788	\$1,234,929
Operating Gains	\$40,430	\$54,512	\$68,059	\$67,979

<sup>1</sup>Fiscal year 2019 is a partial year and assumes a February 1, 2019 affiliation date. Fiscal years 2020 through 2022 represent the first three full years post-affiliation.

Repaginated Ex. D, pp. 24-25

**Financial Projections for Sharon Hospital (amounts in thousands)**

<b>Description</b>	<b>FY 2019<sup>1</sup></b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Operating Revenue	\$58,873	\$61,877	\$65,039	\$68,364
Operating Expenses	\$55,132	\$57,602	\$60,239	\$63,732
Operating Gains	\$3,741	\$4,275	\$4,800	\$4,632

<sup>1</sup>Fiscal year 2019 is a partial year and assumes a February 1, 2019 affiliation date. Fiscal years 2020 through 2022 represent the first three full years post-affiliation.

Repaginated Ex. D, pp. 25-26

There is no capital cost and the financial projections of WCHN and HQ (Sharon Hospital) post-affiliation, demonstrate that the Applicants are financially strong. In order to ensure that the Applicants meets Conn. Gen. Stat. § 19a-639(a)(4), OHS requires that they comply with the cost-related conditions in the attached Order.

**E. Cost to Consumers**

28. The Applicants represent that the affiliation is intended to lower patient healthcare costs by incentivizing the coordination of care, adding more local specialized care and expanding access to primary care to better manage medical conditions outside of costly care settings to the extent practicable. Repaginated Ex. A, p. 38
29. Each Applicant currently has a charity care policy and anticipates creating a standardized system-wide policy to ensure that all patients are treated equally and fairly, regardless of their ability to pay or the location within the system at which they receive care.  
Repaginated Ex. A, p. 70

WCHN and HQ will work to develop a system-wide charity care policy that maintains access to services for Medicaid and indigent patients. As a result, the Applicants have satisfied Conn. Gen. Stat. §§ 19a-639(a)(5) and (a)(6). However, the Applicants have not provided sufficient evidence to substantiate that the proposal will not adversely affect health care costs to the consumer post-affiliation. Accordingly, the Applicants must comply with cost-related conditions enumerated in the attached Order to ensure that the proposal will not adversely affect consumer costs pursuant to Conn. Gen. Stat. § 19a-639(a)(12).

**F. Existing Providers**

30. This proposed transaction involves two existing health systems (WCHN and HQ) combining under a new parent organization. Access to and utilization of existing providers is expected to remain initially unchanged. Repaginated Ex. A, pp. 53-54; 69



31. The proposed affiliation is intended to expand patient choice by offering patients in the Applicants' combined service area more provider and service choices, closer to home. This will be accomplished by building its regional multispecialty group to provide primary care and specialty sites in a broad geography, the recruitment of additional specialist and sub-specialist physicians, and enhancing telehealth strategies to improve access to behavioral health (e.g., crisis evaluations). Repaginated Ex. A, pp. 31; 36; 54-55

Utilization of services is expected to remain stable and the impact on existing health care facilities minimal. Services currently offered in the service areas and referral patterns are anticipated to remain initially unchanged. As such, Conn. Gen. Stat. §§ 19a-639(a)(8) and (a)(11) are satisfied. However, in order to ensure that the Applicants proposal does not result in an unnecessary duplication of existing or approved health care services pursuant to Conn. Gen. Stat. §§ 19a-639(a)(9), OHS requires the Applicants to comply with the conditions in the attached Order.

### **G. Demonstration of Need**

32. The Applicants do not expect any significant changes to the service area, payer mix or patient population served.
33. The affiliation will provide additional tertiary care services to the population served by Sharon Hospital within an integrated network. The Applicant's assert that this will increase access to healthcare within the region and promote continuity of care. Repaginated Ex. A, pp. 21, 27-28, 47
34. The Applicants' combined service area projects minimal growth in its population, overall, however, the number of residents aged 65 and older is expected to increase significantly (39.8%) by 2027. Repaginated Ex. A, p. 49
35. Overall, the Applicants are projecting inpatient volume to increase from FY 2019 to FY 2022 by approximately three percent at WCHN (Danbury and Norwalk Hospital, combined), and six percent at Sharon Hospital. Repaginated Ex. D, p. 6

Under the new combined WCHN/HQ combined system, all three hospitals will continue to serve the same population. However, the affiliation will provide regional access to multiple levels of patient care within an integrated network. Therefore, the Applicants have identified the patient population to be served and have demonstrated need for the proposal in conformance with Conn. Gen. Stat. §§ 19a-639(a)(3),(6)-(7).

Based upon the foregoing, the Applicants have conditionally met their burden in satisfying Conn. Gen. Stat. § 19a-639(a)(3), (6)-(8), and (11). Due to the nature of the proposal type—a transfer of ownership resulting in no reduction in access for Medicaid patients—Conn. Gen. Stat. §§ 639(a)(10) is not germane to the application. Lastly, the Statewide Facilities and Services Plan

does not address transfers of ownership and OHS currently has no policies or regulations in place regarding such transfers. Accordingly, Conn. Gen. Stat. §§ 19a-639(a)(1) and (2) cannot be applied.

OHS requires the Applicants to comply with the conditions in the attached order to ensure that they have met their burden of satisfying Conn. Gen. Stat. §§ 19a-639(a)(4)(5),(9) and (a)(12).

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## Order

Based upon the foregoing Findings of Fact and Discussion, WCHN's and HQ's (hereinafter collectively referred to as "NewCo") request to enter into an affiliation that will transfer ownership of the Applicants to a new not-for-profit parent corporation is hereby **Approved** under Conn. Gen. Stat. § 19a-639(a), subject to the enumerated conditions (the "Conditions") set forth below.

All references to days in these Conditions shall mean calendar days.

1. For five (5) years following the closing of the affiliation (the "Closing Date" or "Date of Closing"), NewCo shall include at least one (1) community representative to serve as a voting member on the Danbury Hospital and Norwalk Hospital Board of Directors (i.e., post-closing replacement of the hospitals' Boards) with rights and obligations consistent with other voting members under the individual hospital Board of Directors Bylaws. NewCo shall select the community representative in a manner that ensures the appointment of an unbiased individual who will fairly represent the interests of the communities served by the hospitals. NewCo shall, for the appointment of each new community representative, provide notification to OHS that includes:

- a. The name of the community representative;
- b. A resume or curriculum vitae for the appointed representative; and
- c. The rationale for the appointment of the community representative

NewCo shall ensure that such Board meetings are held in such a manner to allow full participation of the one or more community representatives.

2. For five (5) years following the Closing Date, NewCo shall allow for twelve (12) community representatives to serve as a voting members on the Sharon Hospital Board of Directors (i.e., post-closing replacement of the hospitals' Board) with rights and obligations consistent with other voting members under the individual hospital Board of Directors Bylaws. NewCo shall select, from those nominated by Foundation for Community Health in accordance with Section 2.7.1 of the Grant Agreement dated July 31, 2017, the community representatives in a manner that ensures the appointment of an unbiased individual who will fairly represent the interests of the communities served by the hospital.<sup>6</sup> NewCo shall, for the appointment of each new community representative, provide notification to OHS that includes:

- a. The names of each community representative;
- b. A resume or curriculum vitae for each appointed representative; and
- c. The rationale for the appointment of each community representative

NewCo shall ensure that such Board meetings are held in such a manner to allow full participation of the one or more community representatives.

3. For five (5) years following the Closing Date, NewCo shall hold a joint meeting of the Danbury, Norwalk and Sharon Hospital's Boards and the NewCo Board ("Joint Board

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<sup>6</sup> See Exhibit T, pp. 11-31.

Meetings”) at least twice annually. Such Joint Board Meeting shall be followed by a community meeting, held locally for each hospital, to which the public is invited in advance at a convenient time and location for the public and at which the public is informed of the hospitals/system’s activities and afforded an opportunity to ask questions and make comments.

4. NewCo shall make culturally and linguistically appropriate services available and integrated throughout Danbury, Norwalk and Sharon Hospital’s operations. Specifically, each hospital shall take necessary steps to provide meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered in its health programs and activities, in accordance with the implementing regulations of Section 1557 of the Patient Protection and Affordable Care Act (42 USC § 18116). Additionally, NewCo shall provide appropriate insurance navigator services for patients and English as a second language and cultural competency training for employees. In complying with this Condition, the hospitals shall be guided by the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care published by the U.S. Department of Health and Human Services’ Office of Minority Health.<sup>7</sup> In the event NewCo plans to revise the CLAS program at Danbury, Norwalk or Sharon Hospital, NewCo, shall submit the new CLAS program policies to OHS no later than thirty (30) days prior to implementation.
5. NewCo shall ensure that Danbury, Norwalk and Sharon Hospital maintain and adhere to their current policies regarding charity care and indigent care after the Closing Date, or adopt other policies that are at least as generous and benevolent to the community as a member of NewCo and are consistent with state and federal law. These policies shall be prominently posted on the individual hospital’s website and as additionally required by applicable law.
6. For five (5) years following the Closing Date, NewCo shall provide written notice to OHS of any modification, amendment or revision to the charity care and indigent care policies of their respective Connecticut hospitals thirty (30) days prior to implementation of such change. The notice of these changes shall be accompanied by copies of any revised policies. The notice and revised policies shall be prominently posted on the hospitals’ website following OHS approval.
7. NewCo and the hospitals shall participate with key community stakeholders, health organizations and local health departments in Danbury, Norwalk and Sharon, in conducting the next required Community Health Needs Assessments (“CHNAs”) and shall submit each hospital’s CHNA, as well as the CHNA Implementation Strategies, to OHS within thirty (30) days of completion. NewCo, the hospitals and the participants

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<sup>7</sup> U.S. Department of Health and Human Services, Office of Minority Health. National standards for culturally and linguistically appropriate services in health and health care: a blueprint for advancing and sustaining CLAS policy and practice; 2013. Available from <https://www.thinkculturalhealth.hhs.gov/clas/standards>, last accessed on March 13, 2019.

shall utilize Healthy Connecticut [State Health Improvement Plan](#)<sup>8</sup> data and priorities as the starting point for the new CHNAs for its Connecticut hospitals, as well as any applicable community health improvement plan issued by any local health department in the individual hospital's Service Area.<sup>9</sup> The Implementation Strategy shall also adopt the evidence-based interventions identified in the [Centers for Disease Control and Prevention's \("CDC's"\) 6/18 initiative](#)<sup>10</sup> to the extent the health priorities identified in the CHNAs correlate to the health conditions identified by the CDC and provide information on how any patient outcomes related to the Implementation Strategy will be measured and reported to the community. The CHNAs and the Implementation Strategies shall be published on the website of each individual hospital.

8. NewCo shall maintain community benefit programs and community building activities for five (5) years after the Closing Date consistent with each hospital's most recent Schedule H of IRS Form 990, or shall provide such other community benefit programs and community building activities that are at least as generous and benevolent to the community as each hospital's current programs. NewCo shall apply no less than a 1% increase per year for the next five (5) years toward the Connecticut hospitals' net community benefit expenses (Other Benefits, not financial assistance) and net community building expense in terms of dollars spent. In determining NewCo's participation and investment in both community benefits and community building activities, NewCo shall ensure its community benefits and community building activities directly address the health needs identified by the applicable CHNA in effect at the time and the population health management objectives, including social determinants of health, contained in the related Implementation Strategy.
9. NewCo agrees to file the following documents or information within one (1) month of the Closing Date:
  - a. Notice identifying the legal entity that shall directly own and operate the two systems and notice of the identification of any system legal entity operating in Connecticut that has a change to its legal or *doing business as* name.
  - b. Notice to OHS of the effective date of the transfer of ownership transaction. Such notice shall be accompanied by the Final Execution copies of all agreements related to same, including but not limited to:
    - (i) the Affiliation Agreement, including any and all schedules and exhibits; and
    - (ii) Certificate of Incorporation documents, Bylaws or similar governance documents for Danbury, Norwalk and Sharon Hospital.

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<sup>8</sup> Connecticut State Department of Public Health, Healthy Connecticut 2020, State Health Improvement Plan, <https://portal.ct.gov/dph/State-Health-Planning/Healthy-Connecticut/Healthy-Connecticut-2020>, last accessed on March 13, 2019.

<sup>9</sup> Other tools and resources that NewCo is encouraged to consider include County Health Rankings and CDC Community Health Improvement Navigator in order to assist with the Study process in terms of an understanding of social, behavioral, and environmental conditions that affect health, identifying priorities, and the use of evidence-based interventions.

<sup>10</sup> Centers for Disease Control and Prevention, CDC's 6/18 Initiative, <https://www.cdc.gov/sixeighteen/>, last accessed on March 13, 2019.

NewCo shall provide OHS a list of any information required for submission under (9)(b)(i) that NewCo believes is exempt from disclosure under Conn. Gen. Stat. § 1-210, along with an explanation why each proposed redaction is specifically being claimed as exempt for public record purposes. OHS shall determine if such request for exemption is acceptable.

10. Within sixty (60) days after the Closing Date, NewCo shall provide OHS with a list of not less than three (3) candidates to serve as an Independent Monitor, including each candidate's qualifications and experience and an attestation that said candidate has no existing or expected contractual or employment relationship with any party to the affiliation. OHS will review and rank the proposed candidates by preference. NewCo shall offer to contract with a candidate to serve as Independent Monitor from the approved list, in the order ranked.

The Independent Monitor shall be retained at the sole expense of NewCo. The Independent Monitor shall be engaged for a minimum period of five (5) years following the Closing; provided, however, that such obligation to provide an Independent Monitor may be rescinded in the fourth and/or fifth years following the closing at OHS's sole discretion. The Independent Monitor shall be responsible for monitoring NewCo's compliance with the Conditions set forth in this Order. NewCo shall provide the Independent Monitor with appropriate access to Danbury, Norwalk and Sharon Hospital and their applicable records in order to enable the Independent Monitor to fulfill its functions hereunder.

11. The Independent Monitor shall report to OHS. The Independent Monitor shall conduct on-site visits of Danbury, Norwalk and Sharon Hospital on no less than a semi-annual basis to assess adherence to the CON Order. These on-site visits shall include meeting with both the individual hospital and NewCo. The Independent Monitor shall furnish a written report of his or her assessment to OHS within thirty (30) days of the completion of each semi-annual on-site review. Such report shall be comprehensive and shall include a discussion of NewCo's ongoing compliance with the CON Order and the level of community benefits and uncompensated care provided by Danbury, Norwalk and Sharon Hospital during the prior period. Each individual hospital and NewCo shall have the opportunity to review and provide written responses to the report which has been filed with OHS. As OHS deems necessary, the Independent Monitor shall meet with OHS personnel to discuss the written report and shall perform additional periodic reviews as directed by OHS.
12. In addition to the above, NewCo makes the following commitment for a period of five (5) years post-Closing:
  - a. The Independent Monitor shall, at a minimum, meet with representatives of each individual hospital's (i.e., Danbury, Norwalk and Sharon Hospital) community service area at six months after the Date of Closing and annually, thereafter.
  - b. NewCo shall hold a public forum in the Danbury, Norwalk and Sharon communities, within sixty (60) days following the receipt of the Independent

Monitor's report to provide public review and comment on the monitor's reports and findings as provided to OHS.

- c. If the Independent Monitor determines that NewCo is substantially out of compliance with the Conditions to the CON, the monitor shall notify OHS and NewCo in writing regarding the deficiency. Within two (2) weeks of such notice, the monitor shall convene a meeting with representatives from NewCo for the purpose of determining compliance and any appropriate corrective action plan. If NewCo fails to implement a plan of correction satisfactory to the monitor within thirty (30) days of such meeting, the monitor shall report such substantial noncompliance to OHS. OHS shall determine whether such non-compliance has had a material negative impact and what remedy is reasonably necessary to bring NewCo into compliance and shall have the right to enforce these Conditions by all means and remedies available to it under law and equity, including but not limited to Conn. Gen. Stat. 19a-642 and the right to impose and collect a civil penalty under Conn. Gen. Stat. 19a-653. In addition, in the event OHS determines NewCo is in material non-compliance, OHS may order NewCo to provide additional community benefits as necessary to mitigate the impact of such noncompliance.
13. NewCo shall, for a period of three (3) years, comply with the terms and price constraints specified in Attachment A and submit an annual report demonstrating compliance with the requirements below within one (1) year of the Closing Date.
    - a. NewCo shall use reasonable efforts to promote ongoing, annual increases of the number of unduplicated patients attributed to an APM or an Advanced Alternative Payment Model in which employed physicians participating in the WCHN network are accountable for quality and total cost of care during the specified calendar years, and that pursue or continue APMs with public and private payers to improve population health, reduce the rate of unnecessary cost or utilization growth, improve access to primary care, address social determinants of health and to help the state achieve its vision of overall cost containment, and improved quality and access to affordable health care. Such relationships may include value-based purchasing and alternative payment methods that account for total cost of care and quality and address social determinants of health and needs identified in the most recent CHNA.
    - b. Consistent with the terms of Attachment A, WCHN will maintain its participation in the Medicare Shared Savings Program following the Closing Date.
  14. Within one (1) year of the Closing Date, NewCo shall file a complete copy of its Strategic Plan for acute and ambulatory care in the Danbury, Norwalk and Sharon Hospital regions. Such Strategic Plan shall be filed within one (1) month of its completion and shall include any and all exhibits, schedules and/or attachments. No part of this planning document may be redacted from submission to OHS, but OHS shall withhold from disclosure any portion of the Strategic Plan protected from disclosure pursuant to Conn. Gen. Stat. § 1-210(b)(5)(B).

15. NewCo agrees to file the following documents and information on a semi-annual basis.

For purposes of this Order, semi-annual periods are October 1-March 31<sup>st</sup> and April 1-September 30<sup>th</sup>. The required information is due no later than two (2) months after the end of each semi-annual period and due dates are May 31<sup>st</sup> and November 30<sup>th</sup>. The first semi-annual filing will be due November 30, 2019. These semi-annual filings should be submitted to OHS in Excel and PDF format.

- a. Page 14 of Repaginated Exhibit D projects cost savings for Connecticut hospitals in FYs 2020, 2021 and 2022 totaling \$20,381,600, \$34,449,600 and \$35,020,000, respectively. NewCo shall provide a report detailing the actual cost savings achieved, and if different than projected, shall provide an explanation for the variance. This report shall be required for five (5) years following the Closing Date, and be provided for each individual hospital.

- i. The cost saving totals achieved in the following Operating Expense Categories for the Hospital: Salaries and Wages, Fringe Benefits, Contractual Labor Fees, Medical Supplies and Pharmaceutical Costs, Depreciation and Amortization, Interest Expense, Malpractice Expense, Utilities, Business Expenses and Other Operating Expenses. The categories shall be consistent with the major operating expense categories (Categories A, B, C, D, E, G, H, I, J, and K) which are in use at the time of reporting in the OHS Hospital Reporting System ("HRS") Report 175 or successor report.

The semi-annual submission shall also contain narratives describing:

- A. the major cost savings achieved for each expense category for the semi-annual period;
- B. the effect of these cost savings on the clinical quality of care; and
- C. a consolidated Balance Sheet, Statement of Operations, and Statement of Cash Flows for the Hospital and its immediate parent corporation. The format shall be consistent with that which is in use at the time of reporting in OHS's HRS Reports 100/300 (balance sheets), 150/350 (statement of operations) or successor reports.



- b. A report of financial measurements. This report shall be required for five (5) years following the Closing Date and shall be filed with OHS for Danbury, Norwalk and Sharon Hospitals and WCHN. This report shall show current month and year-to-date data and comparable prior year period data. The following financial measurements/ indicators should be addressed in the report:

<b>Financial Measurement/Indicators</b>	
<b>A. Operating Performance</b>	
1.	Operating Margin
2.	Non-Operating Margin
3.	Total Margin
<b>B. Liquidity</b>	
1.	Current Ratio
2.	Days Cash on Hand
3.	Days in Net Accounts Receivables
4.	Average Payment Period
<b>C. Leverage and Capital Structure</b>	
1.	Long-term Debt to Equity
2.	Long-term Debt to Capitalization
3.	Unrestricted Cash to Debt
4.	Times Interest Earned Ratio
5.	Debt Service Coverage Ratio
6.	Equity Financing Ratio
<b>D. Additional Statistics</b>	
1.	Income from Operations
2.	Revenue Over/(Under) Expense
3.	Cash from Operations
4.	Cash and Cash Equivalents
5.	Net Working Capital
6.	Free Cash Flow (and the elements used in the calculation)
7.	Unrestricted Net Assets/Retained Earnings
8.	Bad Debt as % of Gross Revenue
9.	Credit Ratings (S&P, FITCH or Moody's)

16. NewCo agrees to file the following documents and information on an annual basis. These filings are due within one (1) month following the anniversary of the Closing Date for a period of five (5) years and shall be posted on each individual hospital's (Danbury, Norwalk and Sharon Hospital) websites.
  - a. A written report describing the achievement of the Strategic Plan components to retain and enhance healthcare services in the Danbury, Norwalk and Sharon Hospital communities, including with respect to physician recruitment and resource commitments for clinical service programming.
  - b. A written report on its activities directed at meeting condition 4 above, regarding efforts toward making culturally and linguistically appropriate service available and integrated throughout the Hospital's operations.
  - c. An updated plan demonstrating how health care services are currently provided and will be provided by Danbury, Norwalk and Sharon Hospital for the first five (5) years following the Closing, including any consolidation, reduction or elimination of existing services/group practices or introduction of new services/group practices (the "Services Plan"). The Services Plan shall be provided in a format consistent with that provided by WCHN/HQ to OHS in its response to Question 4bi, ii, and iii on pages 66-69 of "Repaginated Exhibit A 18-32238-CON WCHN HQ Affiliation."
  - d. An affirmation document attesting to the following:
    - i. Affirmation that NewCo is meeting the obligations of Conditions 1-2.
    - ii. Affirmation that no Danbury, Norwalk or Sharon Hospital physician office has been converted to hospital-based status.
    - iii. Affirmation that all Danbury, Norwalk and Sharon Hospital commercial health plan contracts in place as of the Date of Closing are/were maintained through the remainder of their terms, and that any new contracts are consistent with the commitments of Condition 13, above.
    - iv. Affirmation that Danbury, Norwalk and Sharon Hospital have each continued to maintain separate emergency room services, inpatient general medicine services, cardiology services, **inpatient obstetrics/gynecology services**, inpatient behavioral health services, critical care unit services and oncology services, such services shall assure patient affordability and adhere to standards of care, quality, and accessibility and reflect local community need.
    - v. Affirmation that there has been no change in the service provision plan submitted on pages 66-69 of "Repaginated Exhibit A 18-32238-CON WCHN HQ Affiliation" or, if services have or are planned to change from the same submission, NewCo shall specify all changes, any consolidation, reduction, or elimination of existing services or introduction of new services.
17. NewCo shall, within ninety (90) days of the Closing Date, submit to OHS data concerning quality performance, including on readmission measures and related quality performance measures, a report quantifying the (30) day readmission rates, infection rates, surgical complication rates, patient safety scores and patient experience ratings for Danbury, Norwalk and Sharon Hospitals.

18. NewCo shall maintain sufficient Obstetrics and Gynecology physician staffing levels at Danbury, Norwalk and Sharon Hospitals to meet the needs of the community served by each facility in a safe and proficient environment consistent with professional standards for high quality obstetrical care. By FY2020, NewCo shall use commercially reasonable efforts to employ, engage or otherwise include on the Sharon Hospital medical staff a minimum of two (2) full-time equivalent Obstetrics and Gynecology physicians that provide obstetrical services at Sharon Hospital, subject to the availability of appropriate physicians and community need. Essent Healthcare of Connecticut, Inc., Vassar Health Connecticut, Inc. & Health Quest Systems, Inc., 16-32132-CON
19. NewCo shall, within one-hundred twenty (120) days of the Closing Date, contract with the Connecticut Health Information Exchange Entity (“HIEE”), if operational or, if the HIEE is not operational, with OHS, to participate in Connecticut’s Core Data Analytics Solution, including but not limited to the electronic clinical quality metrics pilot. In the event that NewCo contracts with OHS for this purpose, NewCo agrees that such contract shall be transferrable to the HIEE when possible.
20. NewCo shall, following submission of the initial data referenced in Condition # 17 submit annual reports to OHS updating the data for a period of five (5) years. NewCo shall provide detailed explanations for any negative changes in rates or scores from the previous year and shall include a plan of action that details how it will address them.
21. NewCo shall, within one (1) year of the Closing Date, provide a written report detailing the implementation and dates of completion of the following initiatives for Danbury, Norwalk and Sharon Hospitals:
  - a. The consolidation to one electronic medical record (“EMR”) and enterprise resource planning (ERP)<sup>11</sup> system;
  - b. The creation of common standards for nursing performance, management, and staffing levels;
  - c. The creation of a single quality/safety infrastructure;
  - d. The achievement of top-decile in quality performance;
  - e. The development and maintenance of a robust compliance program;
  - f. The establishment of the framework to move the combined integrated delivery system toward being a High Reliability Organization (“HRO”);
  - g. The implementation of an operational model alignment across the system;
  - h. The provision of a consistent, seamless patient experience across all sites of care resulting in top-decile performance in all patient experience measures; and
  - i. The meaningful engagement of patients and their families as partners in their care. Repaginated Ex. A, p. 19

The report shall also include information on the impact of these initiatives on the systems and on each of the Connecticut hospitals.

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<sup>11</sup> ERP is a business process management software that allows an organization to use a system of integrated applications to manage and automate many back office functions (e.g., technology, services and human resources).

If the aforementioned initiatives have not been implemented when the initial annual report is due to OHS, NewCo shall disclose the reasons for the delay and shall include a projected date for the completion of any outstanding initiatives.

NewCo will continue to update OHS regarding the status of any outstanding initiatives in a written report every six (6) months following the initial annual report.

22. NewCo shall provide two reports, due February 1, 2021 and February 1, 2023 respectively, on the following items related to the transaction.
  - a. The reports shall include the following information:
    - i. Danbury, Norwalk and Sharon Hospital's prices for services for analysis by OHS of the hospital's relative prices compared to other health care providers for the same services in the same market;
    - ii. Danbury, Norwalk and Sharon Hospital's health status adjusted total medical expense, including the individual hospital's health status adjusted total medical expense, for purposes of OHS' analysis of that expense compared to that of similar health care providers;
    - iii. Danbury, Norwalk and Sharon Hospital's total health care expenditure trends for purposes of analysis by OHS of those trends compared to total health care expenditures state-wide
    - iv. The availability and accessibility of services similar to those provided by Danbury, Norwalk and Sharon Hospital, within each hospital's or the hospital's system's primary service area and dispersed service area, to the extent reasonably known to NewCo;
    - v. The methods used by NewCo to attract patient volume and to recruit or acquire health care professionals or facilities;
    - vi. The role of Danbury, Norwalk and Sharon Hospital's in serving at-risk, underserved and government payer patient populations, including those with behavioral, substance use disorder and mental health conditions, within each hospital's primary service area and dispersed service area; and
    - vii. The role of Danbury, Norwalk and Sharon Hospital in providing low margin or negative margin services within each hospital's primary service area and dispersed service area.;
    - viii. Any allegations that NewCo has engaged in any unfair method of competition or any unfair or deceptive act or practice; and
  - b. The reports required by this condition will be submitted under affirmation attesting to the accuracy and completeness of the reports. Information provided in the reports required pursuant to this condition will be considered to be confidential to the same extent that such information is confidential under Conn. Gen. Stat. § 19a-639f. NewCo shall provide OHS a list of any information required for submission pursuant to this Condition that NewCo believes is exempt from disclosure under Conn. Gen. Stat. § 1-210, along with an explanation why each proposed redaction is specifically being claimed as exempt for public record purposes. OHS shall determine if such request for exemption is acceptable.

- c. If OHS determines that the Danbury, Norwalk and/or Sharon Hospital's prices for services, including their relative prices compared to other health care providers for the same services in the same market, as reported under this condition, result in prices that exceed the relative prices for the same services in the same market, NewCo will meet and confer with the Health Systems Planning Unit to determine whether to develop a plan to address such prices.
23. OHS and NewCo agree that this settlement represents a final agreement between OHS and NewCo with respect to OHS Docket Number: 18-32238-CON. The execution of this agreed settlement resolves all objections, claims and disputes, which may have been raised by NewCo with regard to OHS Docket Number: 18-32238-CON.
24. OHS may enforce this settlement under the provisions of Conn. Gen. Stat. §§ 19a-642; 19a-653 and all other remedies available at law, with all fees and costs of such enforcement to be paid by the Applicant.
25. This settlement shall be binding upon NewCo and its successors and assigns. In the event of a conflict between the terms and conditions of this settlement and the Agreed Settlement entered into under 16-32132-CON, the terms and conditions of this settlement shall supersede and control.

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All of the foregoing constitutes the final order of the Office of Health Strategy in this matter.

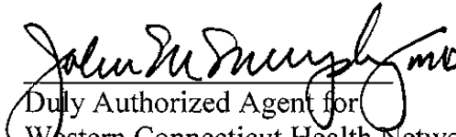
By Order of the  
Office of Health Strategy

04/01/2019

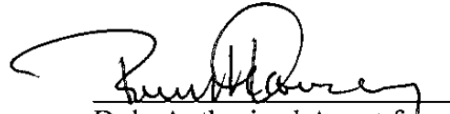
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Date

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Victoria Veltri, JD, LLM  
Executive Director

4/1/19  
Date

  
\_\_\_\_\_  
Duly Authorized Agent for  
Western Connecticut Health Network, Inc.

4/1/19  
Date

  
\_\_\_\_\_  
Duly Authorized Agent for  
Health Quest Systems, Inc.

## Attachment A

a. These terms shall have the following meaning:

1. “Alternative Payment Methods” means any transfer of funds from a Payer to NewCo pursuant to a contract for a commercial health insurance product or a Managed Medicare health insurance product that is not captured by Commercial Unit Price payments, including but not limited to risk payments (e.g., per-member-per-month reimbursement), quality payments, and infrastructure payments.
2. “Baseline Set of Services” shall be the volume of each and every health care service provided by Covered NewCo Providers to a commercial Payer’s enrollees (excluding enrollees in a commercial Payer’s Managed Medicare plans) in the most recently completed Contract Year.
3. “Contract Year” shall mean the twelve (12) month period beginning on the date the rate schedule in a commercial health plan contract takes effect.
4. “Commercial Unit Price” shall mean the negotiated rate of reimbursement to be paid to NewCo or any Covered NewCo Provider in exchange for providing a specified health care service to an enrollee in Connecticut, as is paid in one of the commercial health plan’s “fee-for-service” commercial health insurance products, including but not limited to rates of reimbursement for physician fees, professional fees and/or facility fees.
5. “Covered NewCo Providers” shall mean employed physicians participating in the WCHN network and the Connecticut affiliate of NewCo.
6. “Health Care Cost Growth Benchmark Limit” shall be lesser of either: i) the change in the Consumer Price Index for the Northeast region, as established by the United States Department of Labor, Bureau of Labor Statistics<sup>1</sup> from the preceding year plus 1.0%, or ii) 3.0%.
7. “Payer” means any organization or entity, other than a governmental health care program, that contracts with health care providers and other health care organizations to provide or arrange for the provision of health care services to any person or group of persons and that is responsible for payment to such providers and other health care organizations of all or part of any expense for such health care services, including but not limited to commercial insurance companies, health maintenance organizations, preferred provider organizations, union trust funds, multiple employer trusts and self-insured health plans.
8. “Payer Contract” means a contract between NewCo and a Payer pursuant to which NewCo agrees to provide or arrange for the provision of health care services to enrollees of the Payer’s commercial health insurance products and/or the Payer’s Managed Medicare Insurance Products.
9. “Price Constraint Period” shall mean the three (3) years following the Date of Closing.

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<sup>1</sup> U.S. Department of Labor, BLS Consumer Price Index. Available at <https://www.bls.gov/cpi/home.htm>

10. "System-wide Price Constraint" for any Contract Year beginning during the Price Constraint Period shall not exceed the Health Care Cost Growth Benchmark Limit.
  11. "Total Projected Revenue" shall, for each Contract Year, mean the amount calculated in accordance with subsections (c)(d) and (e) of this Attachment A.
- b. During the Price Constraint Period, NewCo shall not negotiate: 1) commercial health plan contracts with rates first going into effect within the Price Constraint Period, or 2) an existing commercial health plan contract that is extended or renewed during the Price Constraint Period, that result in a Commercial Unit Price Rate Increase (as defined below) for Danbury, Norwalk and Sharon Hospitals that is greater than the Health Care Cost Growth Benchmark Limit. The Commercial Unit Price Rate Increase shall be the percentage change in Total Projected Revenue that would be paid to each of Danbury, Norwalk and Sharon Hospitals from one Contract Year to the immediately following Contract Year.
- NewCo shall not contract with any commercial health plan to impose a single system-wide rate, except that if a commercial Payer proposes a system-wide rate and NewCo can satisfactorily demonstrate to OHS that projected savings of such a proposal in comparison to individual hospital commercial rates will be used to improve the quality of patient care and access to services, including but not limited to, behavioral health and primary care.
- c. To calculate the Projected Revenue for a given service in each Contract Year, the negotiated Commercial Unit Price for that service in that Contract Year is applied to the volume of that service in the Baseline Set of Services (e.g., if the Baseline Net of Services were those provided in the 2019 Contract Year, to calculate the Projected Revenue for a given service for the 2020 Contract Year, the negotiated Commercial Unit Price for that service for 2020 would be applied to the volume of that service provided in the 2019 Contract Year; if the Baseline Set of Services were those provided in a recent trailing twelve-month period, to calculate the Projected Revenue for a given service for the 2020 Contract Year, the negotiated Commercial Unit Price for that service for 2020 would be applied to the volume of that service provided in that twelve-month period).
  - d. The Total Projected Revenue for each Contract Year shall be the sum of the Projected Revenue amounts for all services included in the Baseline Set of Services for that Contract Year.
  - e. To calculate the Commercial Unit Price Rate of Increase for a Contract Year, the Total Projected Revenue for that Contract Year is compared to the Total Projected Revenue for the immediately-preceding Contract Year (i.e., the Commercial



Unit Price Rate of Increase for Contract Year 2020 would be the percentage by which the Total Projected Revenue for Contract Year 2020 exceeds the Total Projected Revenue for Contract Year 2019).

f. Alternative Payment Models

1. For any Contract Year of a Payer contract executed on or after the Closing Date, with rates first going into effect within the Price Constraint Period, NewCo and a commercial health plan are free to enter into an agreement that provides payment for a commercial health insurance product to NewCo or a Covered NewCo Provider through one or more Alternative Payment Methods provided that:
  - i. Any Commercial Unit Price rates used in the calculation of payments to NewCo shall be subject to the System-wide Price Constraint.
  - ii. NewCo, throughout any negotiation with a commercial Payer, shall make available the option for any or all lives and/or services covered by said Payer under a commercial health insurance product to be paid pursuant to a Commercial Unit Price agreement at a rate of increase no-greater-than the System-wide Price Constraint.
    - a) NewCo and the commercial health plan are in no way constrained in negotiating Alternative Payment Methods for commercial health insurance products and may agree to any Alternative Payment Method for any or all lives and/or services that both parties find mutually preferable to a price constrained Commercial Unit Price arrangement for such lives and/or services.
    - b) If NewCo and a commercial health plan are unable to negotiate an Alternative Payment Method for a commercial health insurance product which NewCo and the Payer find acceptable, NewCo and the Payer may choose to implement a Commercial Unit Price arrangement covering such lives and/or services.
    - c) The options described herein preserve the ability of NewCo and a commercial health plan to innovate and develop mutually advantageous arrangements that improve quality and reduce healthcare spending in the State while ensuring that Commercial Unit Price arrangements are constrained by the System-wide Price Constraint.