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**AFFILIATION AGREEMENT**

**by and between**

**BETH ISRAEL LAHEY HEALTH**

**and**

**EXETER HEALTH RESOURCES, INC.**

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**June 28, 2022**

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## AFFILIATION AGREEMENT

This Affiliation Agreement (“Agreement”) is entered into this 28th day of June, 2022 (the “Execution Date”), by and between Beth Israel Lahey Health, Inc., a Massachusetts non-profit corporation (“BILH”), and Exeter Health Resources Inc., a New Hampshire non-profit corporation (“Exeter”). Each of BILH and Exeter shall be referred to herein individually as a “Party” and collectively as the “Parties” to this Agreement.

### RECITALS

**WHEREAS**, Exeter is a New Hampshire non-profit corporation that is the sole corporate member of Exeter Hospital, Inc., Core Physicians, LLC, Exeter Med Real, Inc., and Rockingham Visiting Nurse Association and Hospice;

**WHEREAS**, BILH is a Massachusetts non-profit corporation that is the parent company of a health care system comprised of a network of hospital facilities and other health care services that serve the residents of greater Boston, Massachusetts, as well as national and international patients;

**WHEREAS**, the Parties believe that the integration of the Exeter Entities (as defined herein) with and into the Beth Israel Lahey Health system will strengthen and improve access to high-quality, affordable health care services for the communities served by the Exeter Entities and BILH by (i) enhancing the depth and breadth of services provided by the Exeter Entities, in partnership with BILH’s top-tier academic and tertiary institutions and their associated physicians, and (ii) generating efficiencies to improve the effectiveness of patient care services while slowing the overall rate of growth in the cost of providing health care to the population served by the Exeter Entities;

**WHEREAS**, the Parties further believe that the integration of the Exeter Entities with and into the Beth Israel Lahey Health system will allow the Parties to maximize their support for the delivery and management of physical and behavioral health programs to meet community needs in a coordinated and cost-effective manner;

**WHEREAS**, through the Affiliation (defined below), the Parties intend to position Exeter, including all of the Exeter Entities, as the destination center of BILH in New Hampshire through local program development, specialist recruitment, and deployment of population health tools and resources to manage complex patient needs;

**WHEREAS**, the Parties seek to preserve, sustain, and enhance the Exeter Entities’ status as a recognized value-based health care system for the region in furtherance of its charitable mission, including the continued provision of care to vulnerable populations, and develop and expand its capabilities to adapt to both health care reform and continued industry transformation;

**WHEREAS**, Exeter wishes to achieve certain goals and objectives developed by its governing board regarding Exeter’s long-term sustainability and response to industry evolution, substantially in the form of Exhibit A; and

**WHEREAS**, the Parties executed a Letter of Intent dated January 31, 2022 (the “Letter of Intent”) confirming their shared commitment to the goals described above and documenting their shared vision for the proposed Affiliation, whereby BILH would become the sole corporate member of Exeter.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and in order to effectuate the above-described affiliation in accordance with the terms set forth below (the “Affiliation”), the Parties agree as follows:

**ARTICLE I**  
**THE TRANSACTION**

1.1 Form of Affiliation. Upon and subject to the terms and conditions of this Agreement, on the Effective Date (as defined herein), BILH shall become the sole corporate member of Exeter, and Exeter shall become a BILH First-Tier Entity (as defined herein).

1.2 Exeter Organizational Documents. On or before the Closing Date, to effectuate the Affiliation as of the Effective Time, Exeter shall take such actions and obtain such approvals as are necessary and appropriate to amend and restate (i) Exeter’s articles of agreement and bylaws, substantially in the form of Exhibits B and C attached hereto, to be effective at the Effective Time (as defined herein) to identify BILH as Exeter’s sole corporate member, to effectuate the Affiliation and to conform to the articles of agreement and bylaws of other BILH First-Tier Entities, and (ii) any other of Exeter’s Organizational Documents (as defined herein) necessary to effectuate the Affiliation and implement the terms of this Agreement (collectively, and as may be amended by their respective terms, the “Amended Exeter Organizational Documents”).

1.3 Exeter Subsidiaries’ Organizational Documents. On or before the Closing Date, Exeter and other applicable Exeter Entities shall take such actions and obtain such approvals as are necessary and appropriate to amend and restate the Exeter Subsidiaries’ Organizational Documents, to be effective at the Effective Time to conform to the Organizational Documents of comparable BILH Entities that are not BILH First-Tier Entities, except as set forth herein (collectively, and as may be amended by their respective terms, the “Amended Exeter Subsidiary Organizational Documents”). The Amended Exeter Subsidiary Organizational Documents (articles of agreement and bylaws) for Exeter Hospital, Inc. shall be in substantially in the form of Exhibit D attached hereto, and the Amended Exeter Subsidiary Organizational Documents of the other applicable Exeter Entities shall be in form and substance mutually agreed by the Parties consistent with the applicable terms of this Agreement (each Party’s approval not to be unreasonably withheld or delayed).

1.4 Closing Memorandum. Upon satisfaction or waiver of all of the conditions precedent set forth in **Article VIII** and unless this Agreement is earlier terminated pursuant to **Article XI**, an authorized representative of each of Exeter and BILH shall execute a written memorandum (the “Closing Memorandum”) which confirms their agreement, on behalf of their respective institutions, that all of the conditions precedent to the closing of the Affiliation have been satisfied or waived.

1.5 Assets and Liabilities. For the avoidance of doubt, all Assets, liabilities (both known and unknown) and operations associated with the Exeter Entities shall be included in the Affiliation, unless otherwise specified in this Agreement.

## ARTICLE II DEFINITIONS

2.1 Certain Definitions. The following terms are used in this Agreement with the meanings set forth below:

“Acquisition Proposal” has the meaning set forth in **Section 6.2(d)(i)**.

“Adverse Action” has the meaning set forth in **Section 6.1(g)**.

“Affiliate” means any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, membership interests, the power to appoint directors or trustees, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Affiliation” has the meaning set forth in the recitals.

“Agreement” has the meaning set forth in the preamble.

“AHLA” has the meaning set forth in Section 13.18(b).

“Amended Exeter Organizational Documents” has the meaning set forth in **Section 1.2**.

“Amended Exeter Subsidiary Organizational Documents” has the meaning set forth in **Section 1.3**.

“Antitrust Enforcement Authority” includes the U.S. Department of Justice, the Federal Trade Commission, the Massachusetts Attorney General, the New Hampshire Attorney General and any other official or agency of a domestic or foreign government who is authorized to enforce that government’s antitrust, competition or merger control Laws.

“Antitrust Guidelines” has the meaning set forth in **Section 6.1(c)**.

“Asset” or “Assets” means any properties and assets (whether real or tangible personal), including any real property owned by the respective Party, together with all buildings, improvements, and component parts thereon and all appurtenances and rights thereto, and assets reflected in the respective Party’s Financial Statements (except as sold or otherwise disposed of since the date of such Financial Statements in the Ordinary Course of Business and consistent with past practice).

“Balance Sheet Date” means, in the case of each Party, May 31, 2022.

“Bed Recapitalization Plan” has the meaning set forth in **Section 3.1(a)(i)(1)**.

“BILH” has the meaning set forth in the preamble.

“BILH Articles Amendment” has the meaning set forth in **Section 9.1(g)**.

“BILH Bylaw Amendments” has the meaning set forth in **Section 9.1**.

“BILH Entity” or “BILH Entities” means BILH and any Affiliate of BILH.

“BILH Financial Statements” has the meaning set forth in **Section 7.2(g)**.

“BILH First-Tier Entity” or “BILH First-Tier Entities” means any BILH Entity for which BILH is the direct sole corporate member.

“BILH Named Entities” means BILH, Lahey Clinic Foundation, Inc., and Beth Israel Deaconess Medical Center, Inc. as a group, and “BILH Named Entity” means any of such BILH Named Entities, individually.

“BILH Regulatory Requirements” has the meaning set forth in **Section 7.2(e)**.

“BILH Third-Party Requirements” has the meaning set forth in **Section 7.2(e)**.

“Business Day” means any day ending at 11:59 P.M. (Eastern Standard Time) other than a Saturday or Sunday or any day on which the principal commercial banks located in the Commonwealth of Massachusetts or State of New Hampshire, as applicable, are authorized or obligated to close under the Laws of such state.

“CMS” means the Centers for Medicare & Medicaid Services.

“Capital Commitment” has the meaning set forth in **Section 3.1(a)**.

“Claim” or “Claims” means pending, threatened and potential (i) professional liability and/or responsibility claims; (ii) malpractice claims; (iii) employment related claims; (iv) workers’ compensation claims; (v) claims for injury to person; (vi) claims for damage to property; (vii) tort claims of other types; (viii) claims for breach of contract or breach of lease; (ix) claims which result from a violation of any federal, state and/or local Laws or rule or regulation thereunder as constituted prior to the Closing Date; (x) claims from any third-party payers; (xi) claims from any patient; and (xii) claims of any other type for Damages.

“Clean Team Agreement” means the Clean Team Agreement between the Parties dated March 28, 2022, as the same may be amended or restated.

“Clean Team Evaluation Materials” means (i) Competitively Sensitive Information contemplated by, and as defined within, the Clean Team Agreement, and (ii) any Common Interest Information (as defined in the Joint Defense, Common Interest and Nondisclosure Agreement) subject to “counsel only” or “outside counsel only” treatment under the terms of the Joint Defense, Common Interest and Nondisclosure Agreement.



“Clinical Affiliation Plan” has the meaning set forth in **Section 10.8**.

“Clinical Services Growth Plan” has the meaning set forth in **Section 10.6**.

“Closing” has the meaning set forth in **Section 4.1**.

“Closing Date” has the meaning set forth in **Section 4.1**.

“Closing Memorandum” has the meaning set forth in **Section 1.4**.

“COBRA” means Title I, Subtitle B, Part 6 of ERISA, as amended, and the rules and regulations promulgated thereunder.

“Code” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“Committee” has the meaning set forth in **Section 6.2(b)(i)**.

“Continuing Exeter Employees” has the meaning set forth in **Section 9.3(a)**.

“Contract” means any legally binding agreement, indenture, undertaking, debt instrument, contract, lease, understanding, arrangement or commitment, whether oral or in writing.

“Contracting Parties” has the meaning set forth in **Section 13.15**.

“Coronavirus Legislation” means the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) (including the Provider Relief Fund and the Payment Protection Program (“PPP”) thereunder), the Families First Coronavirus Response Act, U.S. Centers for Medicare & Medicaid Services Accelerated and Advance Payment Program and any other U.S. federal, state, local or non-U.S. Law relating to COVID-19, including, for the avoidance of doubt, any administrative guidance or action implementing or interpreting any such legislation.

“Court” means any court or arbitration tribunal of the United States, any domestic state, or any foreign country, and any political subdivision thereof.

“Covid Event” means any local, regional, national or international political or social conditions resulting from pandemics (including, without limitation, COVID-19 or COVID-19 Measures) or public health emergencies and events (as declared by an applicable Governmental Authority), including any future resurgence, variants or mutations thereof.

“Covid-MAE Trigger” has the meaning set forth in **Section 6.2(b)(i)**.

“COVID-19 Measures” means all actions or inactions required to respond to a Covid Event or to comply with any quarantine, “shelter in place,” “stay at home,” workforce reduction, social distancing, shut down, closure, sequester, ban on elective procedures or any other applicable Law, directive, guidelines or recommendations of any Governmental Authority in connection with or in response to a Covid Event.

“Cure Committee” has the meaning set forth in **Section 13.18(a)**.

“Cure Period” has the meaning set forth in **Section 13.18(a)**.

“Cure Request” has the meaning set forth in **Section 11.1(b)(i)**.

“Curing Party” has the meaning set forth in **Section 13.18(a)**.

“Damages” means any and all losses, damages, costs, fines, fees, penalties, interest obligations and deficiencies (including, without limitation, reasonable attorneys’ fees and other expenses of litigation).

“Data Room” has the meaning set forth in **Section 9.4(a)**.

“DNV” has the meaning set forth in **Section 7.1(g)(v)**

“Effective Date” has the meaning set forth in **Section 4.1**.

“Effective Time” has the meaning set forth in **Section 4.1**.

“Entity” or “Entities” means, as the context requires, the BILH Entities and/or the Exeter Entities.

“Environmental Law” means any Law, including, without limitation, all applicable executive, judicial or administrative orders, applicable consent decrees and binding judgments relating to the regulation and protection of the environment and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation), or to pollution, contaminants, hazardous waste and hazardous substances, including, the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §§9601 *et seq.*), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§6901 *et seq.*), the Clean Air Act (42 U.S.C. §§7401 *et seq.*), the Clean Water Act (33 U.S.C. §§1251 *et seq.*), or to threats to human health and safety arising from any of the foregoing, and any other statutory or common law or order relating to or involving Hazardous Materials, including, without limitation, statutory or common laws relating to nuisance or tort, any state or local counterpart or equivalent of any of the foregoing, and any federal, state or local transfer of ownership notification or approval statutes.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any organization that is or has ever been treated as a single employer with Exeter under Sections 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

“Exclusion Lists” means the U.S. Department of Health & Human Services/U.S. Office of Inspector General List of Excluded Individuals/Entities, the General Services Administration System for Award Management, the U.S. Food and Drug Administration Debarment List, and any state Medicaid agencies’ exclusion lists and databases.

“Execution Date” has the meaning set forth in the preamble.

“Exeter” has the meaning set forth in the preamble.

“Exeter Entity” or “Exeter Entities” means Exeter and each Exeter Subsidiary (including, without limitation, Exeter Hospital, Inc.; Core Physicians, LLC; Exeter Med Real, Inc., Rockingham Visiting Nurse Association and Hospice and NH-Cares ACO, LLC).

“Exeter Executive Leadership Team” has the meaning set forth in **Section 9.2(b)**.

“Exeter Financial Statements” has the definition set forth in **Section 7.1(m)(i)**.

“Exeter Hospital” means that certain hospital owned and operated by Exeter Hospital, Inc., the main campus of which is located at 5 Alumni Drive, Exeter, New Hampshire 03833.

“Exeter Joint Venture” or “Exeter Joint Ventures” means each direct or indirect Joint Venture of Exeter.

“Exeter Landlord Lease” has the meaning set forth in **Section 7.1(i)(iv)**.

“Exeter Leased Real Estate” means all of the real property leased or subleased, in whole or in part, by one or more Exeter Entities.

“Exeter Material Contracts” has the meaning set forth in **Section 7.1(s)**.

“Exeter Owned Real Estate” means all of the real property for which one or more of the Exeter Entities is a record owner.

“Exeter Plan” means each “employee benefit plan,” as such term is defined in Section 3(3) of ERISA, and each other incentive plan, deferred compensation plan, paid or unpaid leave policy, insurance plan, cafeteria plan, tuition or education assistance plan, change in control or other material fringe benefit plan, arrangement, agreement or policy sponsored, maintained or contributed to by any Exeter Entity.

“Exeter Regulatory Requirements” has the meaning set forth in **Section 7.1(e)**.

“Exeter Representative” has the meaning set forth in **Section 9.1**.

“Exeter Subsidiaries” means each Subsidiary of Exeter and each direct or indirect Subsidiary of such Subsidiary.

“Exeter Tenant Lease” has the meaning set forth in **Section 7.1(i)(iii)**.

“Exeter Third-Party Requirements” has the meaning set forth in **Section 7.1(e)**.

“Five-Year Capital Plan” has the meaning set forth in **Section 3.1(b)**.

“Force Majeure Event” means any event or condition beyond a Party’s reasonable control, including acts of God, fire, flood, explosion, earthquake, pandemic flu, or other natural forces, war, civil unrest, acts of terrorism, accident, destruction or other casualty or any other event or condition similar to those enumerated above.

“GAAP” means United States generally accepted accounting principles and practices consistently applied.

“Government Contract” has the meaning set forth in **Section 7.1(p)(iii)**.

“Governmental Authority” means any national, state, or local government, any political subdivision thereof or any other governmental, quasi-governmental, judicial, public, or statutory instrumentality, authority, body, agency, department, bureau, commission, or entity, any entity that contracts with a governmental entity to administer or assist in the administration of a government program (including any Medicare or Medicaid intermediaries, carriers or administrative contractors) or any Antitrust Enforcement Authority, or any arbitrator with authority to bind a Party at law.

“Governmental Payment Program” means the Medicare, Medicaid and CHAMPUS/TRICARE programs as well as all other federal health care programs, as defined by 42 U.S.C. § 1320a-7b(f).

“Hazardous Materials” means any chemicals, compounds, mixtures substances or materials defined as “hazardous substances,” “hazardous wastes,” “hazardous materials,” “acutely hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “infectious wastes,” “radioactive wastes,” “biohazardous wastes,” “contaminant,” or “toxic substances” in, or otherwise regulated under Environmental Laws, including (a) any substances designated as having properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “EP toxicity” or “TCLP toxicity”; (b) petroleum, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel; (c) any flammable substances or explosives; (d) any radioactive materials; (e) asbestos in any form; (f) urea formaldehyde foam insulation; (g) polychlorinated biphenyls; (h) radon in indoor air at concentrations exceeding applicable standards; (i) per- and polyfluoroalkyl substances, perfluorooctanoic acid, perfluorooctane sulfonate, (j) mold in quantities and locations that pose a material and negative impact on human health or the environment, and (k) any other chemical, material, or substance with respect to which any Environmental Law or Governmental Authority requires environmental investigation, regulation, monitoring or remediation, or which would give rise to liability or standards of conduct under any Environmental Law.

“Health Care Laws” means all Laws pertaining to health care providers and facilities; federal and state health care program conditions of participation; and accreditation standards of any applicable accrediting organization. Health Care Laws include the following Laws, as amended and the rules and regulations promulgated thereunder: the federal (Title XIX of the Social Security Act) and state Medicaid programs, the Medicare Program (Title XVIII of the Social Security Act), the federal False Claims Act (31 U.S.C. §§ 3729 *et seq.*), the Federal Health Care Program Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Federal Physician Self-Referral Law (42 U.S.C. § 1395nn), the Federal Administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Civil Monetary Penalties Law (42 U.S.C. §§ 1320a-7a and 1320a-7b), the Exclusion Laws, 42 U.S.C. § 1320a-7, the Health Insurance Portability and Accountability Act of 1996 and the HIPAA Privacy Rule, the HIPAA Security Rule and the HIPAA Standards for Transactions and Code Sets (42 U.S.C. § 1320d-1320d-9; 45 C.F.R. Parts 160 and 164) (collectively, “HIPAA”), the federal Confidentiality of Alcohol and Drug Abuse Patient Records Act (42 U.S.C.

§ 290ee-3), the Rehabilitation Act, the Americans with Disabilities Act, the Occupational Safety and Health Administration statutes for blood borne pathogens and workplace risks, and any state and local Laws that address the same or similar subject matter and the rules and regulations promulgated thereunder, as the same be amended. Health Care Laws also include Laws related to: federal and state health care program billing, cost reporting and related revenue reporting, health care provider payment and reimbursement; federal and state health care program fraud, abuse, theft or embezzlement; procurement of health care services; state and federal controlled substance and drug diversion Laws, including, the Federal Controlled Substances Act (21 U.S.C. § 801 *et seq.*); credentialing and licensure of health care facilities and providers; certificate/determination of need Laws; state Laws and restrictions on the corporate practice of medicine (or the corporate practice of any other health related profession); patient information and medical record confidentiality, including psychotherapy and mental health records; splitting of health care fees; patient brokering, patient solicitation, patient capping, and/or payment of inducements to recommend or refer, or to arrange for the recommendation or referral of, patients to health care providers or facilities; standards of care, quality assurance, risk management, utilization review, peer review, and/or mandated reporting of incidents, occurrences, diseases and events; advertising or marketing of health care services; and Laws in connection with or in response to the COVID-19 virus, as well as all requirements having the force of Law related thereto of each Governmental Authority having jurisdiction over each BILH Entity or Exeter Entity (including the Exeter Joint Ventures), as applicable, and its business.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Intellectual Property” means all intellectual property and industrial property rights of any kind or nature throughout the world, including all United States and foreign (i) patents, patent applications, patent disclosures, and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions thereof; (ii) trademarks, service marks, names, corporate names, trade names, domain names, logos, slogans, trade dress, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing; (iii) copyrights and copyrightable subject matter; (iv) rights in computer programs (whether in source code, object code, or other form), algorithms, databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing; (v) trade secrets and all other confidential information, know-how, inventions, proprietary processes, formulae, models, and methodologies; (vi) rights of publicity, privacy, and rights to personal information; (vii) moral rights and rights of attribution and integrity; (viii) telephone numbers and internet protocol addresses; (ix) all rights in the foregoing and in other similar intangible Assets; (x) all applications and registrations for the foregoing; and (xi) all rights and remedies against past, present, and future infringement, misappropriation, or other violation thereof.

“Initial Exeter Trustees” has the meaning set forth in **Section 9.1(b)**.

“Initial Exeter Trustee Commitment Period” has the meaning set forth in **Section 9.1(b)**.

“Integration Committee” has the meaning set forth in **Section 10.2(a)**.

“IT Plan” has the meaning set forth in **Section 3.1(a)(i)(2)**.

“IRB” has the meaning set forth in **Section 7.1(v)**.

“Joint Defense, Common Interest and Nondisclosure Agreement” means the Joint Defense, Common Interest and Nondisclosure Agreement between the Parties dated February 9, 2022, as the same may be amended or restated.

“Joint Venture” means at the time of reference thereto, any partnership, corporation, limited liability company, or similar entity with respect to which a specified Person owns or controls a majority or minority interest, directly or indirectly, and that is not (i) a Subsidiary or (ii) an entity in which such Person holds a passive equity position through a trading account in the Ordinary Course of Business.

“Knowledge of BILH” (and any similar expression, including the expression “BILH’s Knowledge”) means, as to a particular matter, (a) the actual knowledge of its Chief Executive Officer, General Counsel, or Chief Financial Officer, after reasonable inquiry of such Person’s immediate subordinates with respect to the matters at hand; or (b) written notice received by any of the foregoing individuals from a Governmental Authority or other third party regarding such matter.

“Knowledge of Exeter” (and any similar expression, including the expression “Exeter’s Knowledge”) means, as to a particular matter, (a) the actual knowledge of its Chief Executive Officer, General Counsel, or Chief Financial Officer, after reasonable inquiry of such Person’s immediate subordinates with respect to the matters at hand; or (b) written notice received by any of the foregoing individuals from a Governmental Authority or other third party regarding such matter.

“Law” or “Laws” means any statute, law, directive, policy, ordinance, code, executive order, injunction, judgment, decree, rule or regulation, in each case having the effect of law, of any Governmental Authority, including Health Care Laws and Environmental Laws, as the same may be amended.

“Lease” or “Leases” means any real estate lease, sublease, timeshare, occupancy agreement or other arrangement regarding the use of space to which any Entity is bound.

“Letter of Intent” has the meaning set forth in the recitals.

“Liability” means, with respect to any Person, any liability or obligation of such Person, whether determined, determinable or otherwise, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether due or to become due.

“Lien” means any mortgage, lien, pledge, hypothecation, security interest, encumbrance, equitable interest, claim, preference, right of possession, lease, tenancy, license, encroachment, infringement, interference, proxy, option, right of first refusal, conditional sale agreement, preemptive right, community property interest, impediment or exception to title, reservation of right, limitation or impairment of use, imperfection of title, attachment, easement, lien (statutory or otherwise), condition or restriction of any nature, including any restriction on the transfer of any

asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset (including any agreement to give any of the foregoing).

“Litigation” means a Claim, litigation, arbitration, proceeding, investigation or inquiry before any court, arbitrator, mediator or Governmental Authority.

“Local Community Benefit Allocation” has the meaning set forth in **Section 10.11**.

“Material Adverse Effect” means, with respect to the business, operations, results of operations, properties, assets, or condition (financial or otherwise), any state of facts, change, event or occurrence that, either individually or in the aggregate, has created, imposed, caused or resulted in, or would reasonably be expected to create, impose, cause or result in:

- (a) An aggregate reduction in net worth from the applicable Balance Sheet Date to the Closing Date (or such earlier date after the Execution Date that such Material Adverse Effect occurs) exceeding Six Hundred Million Dollars (\$600,000,000.00) with respect to the BILH Entities, taken as a whole, or exceeding Sixty Million Dollars (\$60,000,000.00) with respect to the Exeter Entities, taken as a whole;
- (b) The loss of a BILH Named Entity’s or Exeter Entity’s license issued by the Massachusetts Department of Public Health or New Hampshire Department of Health and Human Services (as applicable);
- (c) Exclusion by a BILH Named Entity or Exeter Entity from a Governmental Payment Program; or
- (d) Loss of Tax exemption for any Tax-exempt BILH Named Entity or Exeter Entity.

Notwithstanding anything to the contrary, “Material Adverse Effect” shall not include any one or more of the following, and none of the following shall be deemed, either alone or in combination to constitute or be taken into account in determining whether there has been or could be, a Material Adverse Effect:

- (i) Changes relating to or resulting from the announcement or pendency of the transactions contemplated by this Agreement, compliance by the Parties with the terms of this Agreement, any action taken by a Party with the written consent of the other Party, or the consummation of the transactions contemplated hereby;
- (ii) Changes or proposed changes to any Law, reimbursement rates or policies of Governmental Authorities that are generally applicable to comparable businesses operating in the industries in which the Person conducts business;
- (iii) Changes in requirements, reimbursement rates, policies or procedures of third-party payers or accreditation commissions or organizations that are generally applicable to comparable businesses operating in the industries in which the Person conducts business;
- (iv) Any Covid Event, subject to **Section 6.2(b)** below;
- (v) Local, regional, national or international political or social conditions, including relating to or resulting from natural disasters, weather, sabotage, terrorism, social unrest, or the engagement by the United States in acts of

- war or hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack or any stoppage or shutdown of any Governmental Authority;
- (vi) Changes affecting the United States or foreign economies or financial, credit, banking or securities markets in general (including any disruption thereof and any decline in the price of any security or any market index) or any changes in interest rates;
  - (vii) Any insured loss;
  - (viii) Changes in accounting rules including GAAP;
  - (ix) Changes or events in the hospital or health services industry generally or the health insurance industry generally; or
  - (x) The failure of any or all of the Exeter Entities to meet or achieve the results set forth in a budget, forecast, plan or projection in and of itself;

*provided*, that any changes or events described in clauses (ii) through (ix) (inclusive) do not disproportionately affect the applicable Person taken as a whole as compared to the effect such changes or events have on other similarly-situated Persons.

“Material Consents” has the meaning set forth in **Section 8.2(h)**.

“Material Reduction in Services” has the meaning set forth in **Section 10.5(b)**.

“Nonparty Affiliates” has the meaning set forth in **Section 13.15**.

“OHRP” has the meaning set forth in **Section 7.1(v)**.

“Order” means any judgment, order, award, writ, injunction, ruling, verdict, decision or decree of, or any settlement under the jurisdiction of any Court or other Governmental Authority.

“Ordinary Course of Business” means a Person’s act, omission or conduct that is (i) generally consistent in nature, scope and magnitude with the past practices of such Person and taken in the ordinary course of the normal day-to-day operations of such Person, measured as of the Execution Date, or (ii) consistent with the most recently approved capital or operating budget of such Person.

“Organizational Documents” means, with respect to any Person, such Person’s articles or certificate of incorporation, organization or formation, bylaws (including medical staff bylaws), charter, limited liability company agreement, partnership agreement, shareholder agreement, operating agreement, subscription agreement, option agreement or other similar formation and governance documents, each as amended to the relevant date.

“Outside Date” shall mean July 1, 2024 or as extended in accordance with the terms of this Agreement.

“Pandemic Related Relief Programs” has the meaning set forth in **Section 7.1(t)**.

“Party” or “Parties” has the meaning set forth in the preamble.



“Permits” means all licenses, accreditations, franchises, rights, registrations, approvals, authorizations, consents, notices, qualifications, certifications, permits, waivers, exemptions, releases, certificates/determinations of need, variances or orders of, or filings with, or otherwise issued by, any Governmental Authority or accrediting body in connection with the ownership, operation or development of any of the BILH Entities or Exeter Entities, as applicable.

“Permitted Liens” means (a) Liens for Taxes, assessments and governmental charges or levies not yet delinquent, for which adequate reserves are maintained on the BILH Financial Statements or Exeter Financial Statements (as applicable), or the amount or validity of which is being contested in good faith; (b) Liens imposed by Law, such as materialmen’s, mechanics’, carriers’, workmen’s and repairmen’s liens and other similar liens, arising in the Ordinary Course of Business; (c) pledges or deposits to secure obligations under workers’ compensation or unemployment Laws or similar legislation or to secure public or statutory obligations; (d) all matters of record, including, without limitation, survey exceptions, reciprocal easement agreements and other encumbrances on title to real property that do not materially impair the occupancy or use of such real property for the purpose for which it is used as of the date hereof in the Ordinary Course of Business; (e) all applicable zoning, entitlement, conservation restrictions and other land use and environmental regulations; (f) all exceptions, restrictions, easements, charges, rights-of-way and other Liens set forth in any Permit, or other state, local or municipal franchise applicable to any of the BILH Entities or Exeter Entities (as applicable) or any of their respective properties which do not, individually or in the aggregate, materially interfere with the use, occupancy or operation of such properties as currently used, occupied or operated by any of the BILH Entities or Exeter Entities (as applicable); (g) non-exclusive licenses granted by the BILH Entities or Exeter Entities (as applicable) in the Ordinary Course of Business; and (h) with respect to the Exeter Entities, Liens referred to on Schedule 2.1.

“Person” means any individual, corporation, limited liability company, partnership, limited partnership, joint venture, syndicate, sole proprietorship, association, joint stock company, company with or without share capital, trust, trustee, executor, administrator or other legal personal representative, unincorporated organization, court, agency, tribunal, commission, arbitrator, board, bureau, Governmental Authority or other entity or authority, however designated or constituted.

“Recruitment Plan” has the meaning set forth in **Section 6.1(e)**.

“Regulatory-Related Costs” means all reasonable fees and expenses of lawyers, consultants and advisors (but specifically excluding HSR Filing Fees and the NH AG Expense Reimbursement, as each such term is defined in **Section 6.1(b)**) that have been or will be incurred by a Party with respect to the Exeter Regulatory Requirements, the Exeter Third-Party Requirements, the BILH Regulatory Requirements, and the BILH Third-Party Requirements, including as to the preparation for, and the defense of, any initial filings or further filings and/or responsive actions made to any Governmental Authority or made in connection with any litigation commenced by any plaintiff that challenges or seeks to enjoin this Agreement or the Affiliation, during the period running from the Execution Date through the earlier of (i) the termination of this Agreement, or (ii) the Effective Date.

“Related Party” means (a) each individual who is an officer, member, trustee or director of a Party or any subsidiary, and (b) any Affiliate of any Person described in clause (a) of this definition.

“Rights” means, with respect to any Person, ownership or membership interests in, contractual rights with respect to, or securities or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, or any options, calls, warrants or commitments relating to, or any equity appreciation right or other instrument the value of which is determined in whole or in part by reference to the market price or value of, the membership or equity interests of such Person.

“Schedule Supplement” has the meaning set forth in **Section 6.1(e)**.

“Section 11.1(c) Notice” has the meaning set forth in **Section 11.1(c)**.

“Subsidiary” means at the time of reference thereto (i) any corporation with respect to which a specified Person owns a majority of the common stock or membership rights or has the power to vote or direct the voting of sufficient securities or membership rights to elect a majority of the directors (or Persons performing similar functions), (ii) any corporation with respect to which a specified Person is a member and has the right to exercise reserved power or authorities, (iii) any corporation a majority of the governing board of which is made up of persons who are also members of the governing board of the specified Person and (iv) any entity of which a specified Person is a 50% or more beneficial owner.

“Tax” or “Taxes” means all federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto.

“Tax Returns” means all reports, estimates, declarations, schedules, disclosures, information statements, claims for refunds and returns required to be filed in connection with any Taxes, including any amendments thereto.

“Transitional Period” shall have the meaning set forth in **Section 6.1**.

“Undisclosed Liability” means any liability of any BILH Entity or Exeter Entity, as applicable, for borrowed money or under any guaranty, or under any contract, lease or other agreement, or for any Claim, which exists as of the Closing and has not been disclosed pursuant to the relevant Party’s Financial Statements, as applicable, or any schedule to this Agreement and which would be required to be recognized under GAAP, but excluding from the definition of Undisclosed Liability any liability for accounts payable or other financial or contractual liabilities (other than those for borrowed money or guaranties) arising in the Ordinary Course of Business of the applicable BILH Entity or Exeter Entity.

“Union” has the meaning set forth in **Section 7.1(p)(ii)**.

“VEVRAA” has the meaning set forth in **Section 7.1(p)(iii)**.

“Withdrawing Party” has the meaning set forth in **Section 11.1(c)**.

## 2.2 General Rules of Interpretation; Schedules.

(a) The words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” All terms defined in this Agreement shall have the defined meanings contained herein when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Any reference to this Agreement includes the Agreement as well as any exhibits or schedules hereto. Any agreement, instrument, statute, rule or regulation defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument, statute, rule or regulation as from time to time amended, qualified or supplemented, including (in the case of agreements and instruments) by waiver or consent and (in the case of statutes, rules or regulations) by succession of comparable successor statutes, rules or regulations and all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns. References to financial terms such as liabilities and assets shall, unless such term is specifically defined herein, have the meaning accorded to that term by GAAP.

(b) A disclosure in any section of the schedules hereto shall apply only to the indicated section of this Agreement to which the schedule pertains, unless appropriately and clearly cross-referenced or it is reasonably apparent that such disclosure is related to such other section or sections.

## ARTICLE III

### CAPITAL COMMITMENT; LIABILITIES; LONG-TERM INDEBTEDNESS

#### 3.1 Capital Commitment.

(a) In support of the vision of the Affiliation, during the time period beginning on the Effective Date and ending on the ten (10)-year anniversary of the Effective Date, BILH covenants and agrees to a minimum combined capital commitment of Three Hundred Seventy-Five Million Dollars (\$375,000,000.00) (the “Capital Commitment”), comprised of the following:

(i) During the time period beginning on the Effective Date and ending on the five (5)-year anniversary of the Effective Date, a minimum of Two Hundred Fifty Million Dollars (\$250,000,000.00), including :

(1) Approximately One Hundred Sixty-Five Million Dollars (\$165,000,000.00) shall be dedicated to Exeter's inpatient bed recapitalization project ("Bed Recapitalization Plan").

(2) Approximately Thirty-Five Million Dollars (\$35,000,000.00) shall be dedicated to the implementation of information technology and electronic medical records systems, in accordance with **Section 10.1** of this Agreement (the "IT Plan").

(3) A minimum of Fifty Million Dollars (\$50,000,000.00) shall be dedicated to other routine and strategic capital needs in accordance with **Section 3.1(c)** below and the Five-Year Capital Plan (defined below).

(ii) During the time period beginning on the five (5)-year anniversary of the Effective Date and ending on the ten (10)-year anniversary of the Effective Date, a minimum of One Hundred Twenty-Five Million Dollars (\$125,000,000.00).

(b) The Parties hereby mutually agree upon the capital plan described in **Section 3.1(a)(i)** above (the "Five-Year Capital Plan"). Capital expenditures made pursuant to the Five-Year Capital Plan shall be considered in their normal and customary meaning, and shall include amounts used to buy or improve fixed or movable assets, to add to the value of an existing fixed asset with a useful life that extends beyond the then-current tax year, amounts used to fund new capital leases, the acquisition of or investment in a health provider practice or practice location (excluding costs associated with routine physician recruitment), or the investment in a new business or recapitalization or an existing business venture. Capital investments in areas not contemplated in the Five-Year Capital Plan shall be funded separate and apart from the Capital Commitment described in **Section 3.1(a)(i)**. For the avoidance of doubt, the Capital Commitment, including the Five-Year Capital Plan, is in addition to BILH system-wide ambulatory and physician network capital investments in New Hampshire, which shall be funded by BILH, at its sole expense, separate and apart from the Capital Commitment. In addition, any costs of the information technology and electronic medical record systems to be provided by BILH (including the cost of any other software or hardware that BILH requires the Exeter Entities to implement during such five-year period) in excess of the amounts specified in the IT Plan, and not otherwise specified in the Five-Year Capital Plan, shall be in addition to the Capital Commitment and funded by BILH at its sole expense.

(c) The Parties mutually agree to draw upon appropriate sources of funds for the aggregate Capital Commitment, which shall include without limitation, operating cash flow, BILH unrestricted cash and investments, debt and/or other sources. In no event shall Exeter's endowment funds or Board-designated funds, whether restricted or unrestricted, including all investment gains, dividends, income or principal appreciation derived thereof on or after the Effective Date, be considered a source of funds for the Capital Commitment.

(d) Any material modifications to the Capital Commitment, including the Five-Year Capital Plan, or any capital or strategic initiatives or agreed source of funds contemplated therein or herein (including the strategies, underlying assumptions and resource priorities) that may be necessary or appropriate to address the changing landscape of the health care environment

during the ten (10)-year aggregate Capital Commitment period will be subject to input by Exeter senior management, and approved by both the Exeter and BILH Boards; *provided* that there shall be no reduction to the aggregate ten (10)-year Capital Commitment specified in **Section 3.1(a)** of this Agreement.

(e) The Parties shall implement the Bed Recapitalization Plan and the IT Plan materially in accordance with the Five-Year Capital Plan. Other than as described in the Five-Year Capital Plan, the disbursements of the aggregate Capital Commitment will be determined and made, as to amounts and timing, by BILH, based on a determined need for such funds in excess of annual cash flows provided by the operating activities of the Exeter Entities and a recommendation by the BILH Chief Executive Officer following input from Exeter senior management, *provided* that the aggregate ten (10)-year Capital Commitment shall not be less than the amount specified in **Section 3.1(a)** of this Agreement.

3.2 Liabilities; Long-Term Indebtedness. BILH shall take actions reasonably necessary or appropriate to allow the Exeter Entities to fully meet the terms of, and/or avoid defaulting under, outstanding debt and other financial liabilities of the Exeter Entities, including, without limitation, taking the following actions:

(a) BILH shall take actions reasonably necessary or appropriate for Exeter Hospital, Inc., and other Exeter Entities as appropriate, to join BILH's obligated group as soon as practicable after the Effective Time, taking into account Exeter's existing debt obligations and associated agreements. Each applicable Exeter Entity shall execute a joinder to become a party to the BILH Obligated Group Master Trust Indenture and shall take such other steps as BILH may require in connection with such status.

(b) Following the Effective Time, BILH shall ensure the availability of all funds necessary to satisfy all of the Exeter Entities' debt obligations, capital lease obligations, and other liabilities of the Exeter Entities and shall support the Exeter Entities in meeting any administrative requirements associated with the Exeter Entities' debt obligations until such time that full defeasance or termination of such obligations occurs.

#### ARTICLE IV CLOSING

4.1 Closing. Unless otherwise agreed in writing by the Parties, the closing of the transactions that are the subject of this Agreement (the "Closing") shall take place no later than the last day of the month following the satisfaction or waiver of the conditions set forth in **Article VIII** (other than those conditions that by their nature cannot be satisfied until the Affiliation is consummated) (the "Closing Date"). Unless the Parties otherwise agree in writing, the Closing shall be done remotely through an exchange of documents, other closing deliverables and signatures by electronic mail. The Closing shall become effective on the date immediately following the Closing Date (the "Effective Date") at 12:00:01 A.M. (Eastern Standard Time) (the "Effective Time").

**ARTICLE V**  
**CLOSING DELIVERABLES**

5.1 Exeter Deliverables. At the Closing, Exeter shall deliver, or cause to be delivered, the following to BILH:

(a) Certificates of legal existence and/or good standing, as applicable, of each Exeter Entity, issued by the Secretary of State in which each such Exeter Entity is domiciled and the Secretary of State of any other state or jurisdiction in which each such Exeter Entity is qualified to do business, in each event dated no earlier than thirty (30) days prior to the Closing Date;

(b) A certified copy of the resolutions of the Exeter Board of Trustees by which, *inter alia*, Exeter is authorized to enter into this Agreement, to adopt the Amended Exeter Organizational Documents and to consummate the transactions contemplated by this Agreement, and authorizing adoption of each Amended Exeter Subsidiary Organizational Document by the applicable Exeter Entity;

(c) A certified copy of the resolutions of the governing board of each Exeter Entity by which, *inter alia*, the applicable Exeter Entity is authorized to adopt the Amended Exeter Subsidiary Organizational Documents applicable to such Exeter Entity;

(d) The Amended Exeter Organizational Documents;

(e) The Amended Exeter Subsidiary Organizational Documents;

(f) A certificate of incumbency for the officers of each Exeter Entity signing any documents contemplated by this Agreement, as applicable, making certifications for Closing or signing agreements or instruments contemplated hereby as of the Closing;

(g) The Closing Memorandum executed by an authorized representative of Exeter; and

(h) All other documents required of the Exeter Entities by any other provision of this Agreement or as reasonably required to give effect to the Affiliation (*provided*, that no such document or instrument shall require a substantive change to the contemplated transactions, unless mutually agreed by the Parties).

5.2 BILH Deliverables. At the Closing, BILH shall deliver, or cause to be delivered, the following to Exeter:

(a) Certificates of legal existence and/or good standing, as applicable, of BILH, issued by the Secretary of the Commonwealth of Massachusetts and the Secretary of State of any other state or jurisdiction in which BILH is qualified to do business, in each event dated no earlier than thirty (30) days prior to the Closing Date;

(b) A certified copy of the resolutions of the Board of Trustees of BILH by which, *inter alia*, BILH is authorized to enter into this Agreement, to adopt the BILH Bylaw

Amendments and the BILH Articles Amendment, and to consummate the transactions contemplated by this Agreement;

(c) The BILH Bylaw Amendments;

(d) A certificate of incumbency for the officers of each BILH Entity signing any documents contemplated by this Agreement, as applicable, making certifications for Closing or signing agreements or instruments contemplated hereby as of the Closing;

(e) The Closing Memorandum executed by an authorized representative of BILH; and

(f) All other documents required of the BILH Entities by any other provision of this Agreement or as reasonably required to give effect to the Affiliation (*provided*, that no such document or instrument shall require a substantive change to the contemplated transactions, unless mutually agreed by the Parties).

## **ARTICLE VI** **INTERIM COVENANTS**

6.1 Mutual Covenants. BILH and Exeter agree that, as of the Execution Date and until the Closing or the earlier termination of this Agreement (the “Transitional Period”):

(a) *Regulatory and Third-Party Requirements.* The Parties shall use their reasonable best efforts to make any and all filings and declarations with the New Hampshire Department of Justice - Office of Attorney General, including without limitation its Charitable Trusts Unit; the Massachusetts Office of Attorney General; the U.S. Department of Justice, the U.S. Federal Trade Commission (“FTC”), the New Hampshire Department of Health and Human Services, and any other Governmental Authority, as applicable, as promptly as practicable but in any event no later than forty-five (45) calendar days after the Execution Date, in order to obtain all authorizations, consents and approvals necessary or appropriate to effectuate the Affiliation, including taking such actions as may be reasonably necessary or appropriate to cause the conditions to the Closing in **Article VIII** to be satisfied. Without limiting the generality of the foregoing, to the extent such requirements are applicable, the Parties shall work collaboratively to (i) obtain, file, or declare, as applicable, the Exeter Regulatory Requirements, the Exeter Third-Party Requirements, the BILH Regulatory Requirements, and the BILH Third-Party Requirements; and (ii) perform other actions, if any, necessary to obtain approvals for the Affiliation under all applicable Laws; *provided*, however, that each Party’s obligations in connection with (i) and (ii) shall extend only to their respective Entities; *provided, further*, that neither Party shall be required to take any such action the effectiveness or consummation of which is not conditioned on the occurrence of the Closing. With respect to actions taken to obtain clearance, approval or consent from applicable Governmental Authorities, the Parties shall, to the extent permitted by applicable Law, (1) promptly notify the other of, and if in writing, furnish the other with copies of (or, in the case of oral communications, advise the other of) any communications from or with any Governmental Authorities, (2) permit the other to review and discuss in advance, and consider in good faith the view of the other in connection with, any proposed written or oral communication with any Governmental Authorities, (3) not participate in

any substantive meeting or have any substantive communication with any Governmental Authorities unless it has given the other Party a reasonable opportunity to consult with it in advance and, to the extent permitted by such Governmental Authorities, gives the other the opportunity to attend and participate therein, and (4) use its reasonable best efforts to timely, accurately and appropriately respond to any requests for additional information from Governmental Authorities as required by Law related to any clearance, approval, authorization or consent sought for the Affiliation and cooperate in good faith with the other Party related to same. In the event that the Parties receive a request for information or documentary material from the FTC pursuant to the HSR Act (a “Second Request”), the Parties will use their respective reasonable best efforts to submit an appropriate response to, and to certify substantial compliance with, any Second Request without undue delay, to cause the expiration or termination of the applicable waiting periods under the HSR Act as promptly as reasonably practicable.

(b) *Costs and Expenses.* Subject to **Section 11.1(c)** below, (i) each Party shall be solely responsible for all costs and expenses related to obtaining any approvals, authorizations, and consents related exclusively to their respective Affiliates; (ii) BILH shall pay all fees payable in connection with any filings made pursuant to the HSR Act (“HSR Filing Fees”); and (iii) the Parties shall equally share in payment of all expense reimbursements paid to the New Hampshire Attorney General pursuant to the State Process Agreement between the Parties and such Attorney General (“NH AG Expense Reimbursement”).

(c) *Antitrust Guidelines.* The Parties acknowledge and agree that, in evaluating the Affiliation, exchanging and evaluating due diligence information and conducting pre-Affiliation discussions, negotiations and other activities, the Parties have adopted and shall use reasonable efforts to continue to abide by the antitrust guidelines attached hereto as Exhibit E (the “Antitrust Guidelines”), which shall be in addition to, and not in lieu of, the terms of the Joint Defense, Common Interest and Nondisclosure Agreement, Clean Team Agreement and any additional similar agreements entered into by the Parties.

(d) *Access to Records.* To facilitate the evaluation of the Affiliation, to the extent permitted by Law, each Party shall grant to the other Party and the other Party’s representatives, reasonable access to books and records in accordance with mutually agreeable due diligence procedures and subject to the Joint Defense, Common Interest and Nondisclosure Agreement, Clean Team Agreement, and Antitrust Guidelines. Each Party shall use reasonable efforts to provide timely response to the other Party’s reasonable due diligence requests and conduct due diligence in a manner that is as non-disruptive as possible to the normal business operations of the other Party.

(e) *Exhibits and Schedules.* From time to time prior to the Closing Date, the Parties covenant and agree to promptly supplement, amend, and complete the Schedules hereto and may disclose additional exceptions to the representations and warranties set forth in **Article VII** by delivering written notice of such exceptions to the other Party (each, a “Schedule Supplement”). Each such Schedule Supplement shall be deemed to be incorporated into and made a part of the schedules and written disclosures for all purposes as of the date of such Schedule Supplement, including for purposes of qualifying the accuracy of the Parties’ representations and warranties for purposes of **Section 8.1** and **Section 8.2** as of the date of such Schedule Supplement. Notwithstanding the foregoing, if any Schedule Supplement made by a Party discloses a Material



Adverse Effect, the other Party shall have the right after receipt of such Schedule Supplement, to terminate this Agreement by providing written notice thereof to the Party making such Schedule Supplement in accordance with **Section 11.1(e)**. Notwithstanding any provision to the contrary in this Agreement, the Parties acknowledge and agree that the BILH Financial Statements referred to in clause (ii) of Schedule 7.2(g) may not be completed as of the Execution Date, and BILH shall work in good faith to complete such Schedule as soon as reasonably practicable following the Execution Date, it being an express condition to Closing that such Schedules be completed to the mutual satisfaction of the Parties.

(f) *Notice of Developments.* Each Party shall promptly notify the other Party of: (i) all events arising subsequent to the Execution Date that could result in any material breach of a representation, warranty or covenant made by such Party in this Agreement or that would be reasonably likely to make any representation or warranty of such Party in this Agreement or the disclosure schedules provided herewith, untrue or incorrect in any material respect; (ii) any written notice or, to the Knowledge of such Party, other communication from any Person alleging that the consent of such Person is or may be required in connection with, or as a condition to, the Closing; or (iii) to the extent not covered under **Section 6.1(a)**, any material written notice or other material written communications from any Governmental Authority in connection with the Affiliation; or (iv) all other developments affecting the BILH Entities or Exeter Entities, as applicable, and constituting a Material Adverse Effect on either Party; *provided*, that a Party's good faith failure to comply with this subsection (f) shall not provide the other Party with a right not to consummate the transactions contemplated by this Agreement, except to the extent that such other provision of this Agreement independently provides such right.

(g) *Limitations.* In the event that an administrative or judicial action or proceeding is initiated, whereby a decree, judgment, injunction or other order, whether temporary, preliminary or permanent, is sought by a Governmental Authority challenging the Affiliation (an "Adverse Action"), the Parties and their respective counsel shall promptly confer and use their respective commercially reasonable efforts with respect to providing a joint response and defense to such action or order in a form that is mutually agreeable to the Parties. Notwithstanding the foregoing, nothing in this **Section 6.1** shall require, or be construed to require, BILH, Exeter or any of their Affiliates to (i) litigate or contest any Adverse Action; or (ii) agree to (A) sell, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of BILH or any of its Affiliates that represented, individually or in the aggregate, more than Ten Million Dollars (\$10,000,000.00) in annual direct patient service revenue in BILH's fiscal year 2022, or any assets, businesses or interests of Exeter or any of its Affiliates that represented, individually or in the aggregate, more than Five Million Dollars (\$5,000,000.00) of annual direct patient service revenue in Exeter's fiscal year 2022; (B) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect individually or in the aggregate with all other actions; or (C) a material modification or waiver of the terms and conditions of this Agreement as a means of resolving or avoiding such Adverse Action.

(h) *Clinical Contingency Plans.* Subject to applicable Law, the Parties shall cooperate in good faith to develop contingency plans that would support the Exeter Entities' ongoing provision of key clinical services that are currently provided through Clinical Affiliations agreed to in writing by the Parties on or before the Execution Date, in the event any such Clinical

Affiliation is terminated by a third party as a result of the announcement or pendency of the transactions contemplated by this Agreement or the consummation of the transactions contemplated hereby.

6.2 Exeter Covenants.

(a) *Exeter Operations.* Exeter, on behalf of the Exeter Entities, covenants and agrees that during the Transitional Period, except as otherwise expressly contemplated by this Agreement, as required by Law, as approved by BILH (such approval not to be unreasonably withheld, conditioned or delayed) or as set forth in Schedule 6.2(a), each Exeter Entity shall:

(i) Exercise commercially reasonable efforts to preserve and maintain its business, operations, facilities, and Assets in the Ordinary Course of Business;

(ii) Comply with all applicable Laws and Orders in all material respects;

(iii) Not enter into any material transaction or make capital expenditures in excess of Five Million Dollars (\$5,000,000.00), or enter into any new Contracts in excess of Five Million Dollars (\$5,000,000.00) in annual expense, in either case, outside of the Ordinary Course of Business or as set forth in a budget approved by Exeter's Board;

(iv) To the extent consistent therewith and financially feasible, use its commercially reasonable efforts to preserve intact its current business organization, keep available the services of its current officers and employees and preserve its relationships with third parties having business dealings with it;

(v) Not issue or incur any indebtedness (including any bond, letter of credit reimbursement obligations, capital lease obligations and guarantees) or other liabilities, other than: (1) accounts payable in the Ordinary Course of Business; (2) indebtedness associated with purchase money security interests for the purchase of equipment incurred in the Ordinary Course and (3) indebtedness incurred to refinance existing indebtedness (*provided* in the case of this item (v)(3), Exeter shall provide BILH with at least ten (10) Business Days' prior written notice of such refinancing and not take any actions that Exeter would reasonably expect to impact its ability to join BILH's obligated group following the Effective Time);

(vi) Not pay, discharge or satisfy any indebtedness (including any bond, letter of credit reimbursement obligations, capital lease obligations and guarantees) or other liabilities in excess of Five Hundred Thousand Dollars (\$500,000.00) individually, or Three Million Dollars (\$3,000,000.00) in the aggregate, to the extent such payment, discharge, or satisfaction would occur on or after the Effective Date, other than regularly scheduled payments of such indebtedness;

(vii) Not make any material change in any method of accounting, keeping of books of account or accounting practices or change in any material respects any methods or procedures for billing or collection of customer accounts or recording of customer accounts receivable or reserves for doubtful accounts, except to the extent required by applicable accounting standards or Law;

(viii) Not amend, modify or terminate any Exeter Material Contract except in the Ordinary Course of Business, or assume any material obligation other than in the Ordinary Course of Business;

(ix) File when due all Tax Returns and other reports that it is required to file, pay when due all Taxes, fees, assessments, and other governmental charges against it, or upon its Assets and income, including without limitation, health care facility Taxes and fees, make all required withholdings and other Tax deposits, and establish adequate reserves for the payment of all such items, and shall provide to BILH, upon request, satisfactory evidence of its timely compliance with the foregoing;

(x) Not make or change any Tax election, change an annual accounting period, adopt or change any accounting method, file any amended Tax Return (except as Required by Law or to correct errors in previously filed returns), surrender any right to claim a refund of Taxes, take any action that is likely to adversely affect the tax-exempt status of any of the Entities or take any other action relating to the filing of any Tax Return or the payment of any Tax, but only to the extent such action could materially increase an Exeter Entity's Tax liability for any taxable period (or portion thereof) commencing on or after the Effective Date;

(xi) Pay all costs, expenses, accounts payable and other debts (including installments due on long term indebtedness) owed by such Exeter Entity when due and perform and discharge in a timely manner all other obligations undertaken by such Exeter Entity, in each case in the Ordinary Course of Business consistent with past practice;

(xii) Not sell, exclusively license, abandon or allow to lapse any material Intellectual Property used in the conduct of its business, except to the extent such Intellectual Property is no longer used in the conduct of the business;

(xiii) Exercise commercially reasonable efforts to comply in all material respects with each Material Contract or Lien to which such Exeter Entity is a party or by which such Exeter Entity is bound;

(xiv) Renew and maintain in good standing (without restriction, suspension, etc.) all Permits necessary to conduct its business in the Ordinary Course and own and operate its Assets;

(xv) Not change the Permits of the Exeter Entities or make any changes in policy or operations that would cause any of the Exeter Entities to lose such Permits except in connection with discontinued operations that do not represent a material portion of the Exeter Entities' combined operations;

(xvi) Continue to maintain the insurance coverages maintained by the Exeter Entities as of the Execution Date or replacement coverage on materially the same terms, subject to the availability of coverage and changes in insurance markets generally; and

(xvii) Not to agree or commit to do any of the foregoing or take any action or omission that would result in any of the foregoing.

(b) *Covid-MAE Events.*

(i) If one or more Covid Events, individually or in the aggregate, has created, imposed, caused or resulted in a Material Adverse Effect on a Party following the Execution Date (without regard to exception (iv) contained in the definition of a Material Adverse Effect) (a “Covid-MAE Trigger”) or a Party reasonably expects a Covid MAE Trigger to occur during that period, or if such Covid Events have caused a failure by Exeter to satisfy any of the covenants set forth in **Section 6.2(a)** above, then that Party shall provide the other Party with written notice of the Covid Events that constitute the actual or expected Covid-MAE Trigger. Thereafter, the Parties will collaborate in good faith to address the Covid-MAE Trigger, as follows: A committee including an equal number of senior executives from both Parties who have operational authority (“Committee”) shall meet to address such Covid-MAE Trigger in a mutually satisfactory manner that preserves the original intent of the Parties and the terms of this Agreement to the greatest extent possible. The Committee will comply with the Antitrust Guidelines and will have no authority to modify or waive any covenant or requirement set forth in this Agreement and its role is advisory.

(ii) In the event that, notwithstanding any such efforts, if BILH experiences a reduction in net worth in excess of Six Hundred Million Dollars (\$600,000,000.00) as a result of one or more Covid Events or Exeter experiences a reduction in net worth in excess of Sixty Million Dollars (\$60,000,000.00) as a result of one or more Covid Events, the Committee will meet to evaluate the implications of such reduction in net worth on the Affiliation contemplated herein, and to make recommendations to the Parties with respect thereto. The Committee’s recommendations may include deferring the post-Closing implementation of the Five-Year Capital Plan or the terms of the ten (10)-year aggregate Capital Commitment period for up to twenty-four (24) months, or both, provided that Exeter shall not be obligated to agree to a reduction in the total value of Five-Year Capital Plan, the total value of the Capital Commitment or the elimination of any of the post-closing initiatives or other post-closing covenants set forth in this Agreement.

(iii) If the Parties are unable to agree on a resolution to address the reduction or reductions in net worth resulting from one or more Covid Events within ten (10) Business Days of receiving the Committee’s recommendations (or, if the Committee fails to provide recommendations for any reason, within a thirty (30) day period following the determination that a Material Adverse Effect has occurred), BILH may, at its sole option and with written notice to Exeter, delay the implementation of all or some of the elements of the Five-Year Capital Plan and/or the terms of the ten (10)-year aggregate Capital Commitment period for up to twenty four (24) months. In the event of a delay in the funding of the Capital Plan or Capital Commitments, Exeter shall not be required to self-fund any of such projects.

(iv) For the avoidance of doubt, the occurrence of a Covid-MAE trigger or one or more Covid Events shall not be grounds for termination of this Agreement or excuse either Party from completing the Affiliation.

(v) Nothing in this **Section 6.2(b)** or any other provision of this Agreement shall limit the ability of either Party to take any action it deems reasonably necessary to respond to the continuation of the COVID-19 pandemic, or any “surge” or recurrence of the

same, or the emergence of any SARS-CoV-2 variant or other virus, comply with public health orders, comply with recommendations of the U.S. Centers for Disease Control, or as needed to respond to any other epidemic, pandemic, or emergency of any nature.

(c) *Employee Matters.* Exeter shall obtain consent or approval of BILH of any changes to a severance agreement and/or retention agreement disclosed in response to Section 7.1(p)(i). Except as otherwise consented to or approved in writing by BILH, no Exeter Entity shall: (i) enter into, amend or modify any employment, consulting, severance, retention, bonus, change of control or other similar Contract, policy, plan or arrangement with any executive officer of any of the Exeter Entities except: (1) to the extent required by applicable Law; (2) to the extent required to satisfy contractual obligations existing as of the Execution Date; (3) in the Ordinary Course of Business (*provided* that written notice of any such item or action under clauses (1), (2) or (3) that exceed, individually or in the aggregate, a payment of One Hundred Thousand Dollars (\$100,000.00) or retention of an employee for more than eighteen (18) months shall be delivered promptly to BILH); or (4) in accordance with this Agreement, including the covenants in **Article IX**; or (ii) enter into, establish, adopt, amend, or increase benefits under any pension, retirement, savings, profit sharing, deferred compensation, consulting, bonus, group insurance or other employee benefit, incentive or welfare Contract, policy, plan or arrangement, or any trust agreement (or similar arrangement) related thereto or take any action to accelerate the vesting or exercisability of any compensation or benefits in respect of any director, trustee, officer or executive-level employee of any of the Exeter Entities, in each case except: (1) to the extent required by applicable Law; (2) to the extent required to satisfy contractual obligations existing as of the Execution Date; or (3) in the Ordinary Course of Business (*provided* that written notice of any such item or action shall be delivered promptly to BILH).

(d) *Exclusivity.*

(i) Exeter shall not, without the prior consent of BILH, directly or indirectly, nor shall it permit any of its Affiliates, subsidiaries, members, trustees, officers, managers, employees, independent contractors, agents or other representatives, to, directly or indirectly, through any representative or otherwise (including, without limitation, through any third party, including, without limitation, any legal, financial, operational or accounting advisors and other representatives retained, directly or indirectly, by Exeter or, as applicable, its Affiliates, subsidiaries, members, directors, trustees, officers, managers, employees, independent contractors, agents or other representatives): (i) solicit, initiate, or encourage, or take any other action to facilitate, any Acquisition Proposal (as defined below) or any inquiries or the making of any proposal that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal, or (ii) respond to, assist with, continue or otherwise participate in any discussions or negotiations regarding, furnish to any person or entity any information with respect to, enter into, or otherwise cooperate in any way with, any Acquisition Proposal. As used herein, the term "Acquisition Proposal" means any inquiry, proposal, or offer from any person or entity (other than BILH or any representatives of BILH) relating to, or that could reasonably be expected to lead to, in one transaction or a series of transactions, any of the following with respect to the Exeter Entities: any direct or indirect transfer of control, affiliation, membership substitution or addition, merger, consolidation, asset sale (other than as permitted by **Section 6.2(a)**), membership interest transfer, business combination, recapitalization, liquidation, dissolution, issuance of any equity interest exclusive lease or license of all or substantially all assets, management agreement, joint venture,

or any other similar transaction or transactions, including, but not limited to, any transaction that could restrict or impair the ability of BILH from negotiating or consummating the Affiliation with Exeter. Exeter shall immediately notify BILH, in writing, regarding any contact between Exeter (or, as applicable, its Affiliates, subsidiaries, members, directors, trustees, officers, managers, employees, independent contractors, agents or other representatives) and any other person or entity regarding any Acquisition Proposal or any related inquiry, and if made in writing furnish a copy thereof to BILH.

(ii) During the Term, BILH shall not, without the prior consent of Exeter, directly or indirectly, through an intermediary, an Affiliate or otherwise, make, solicit, investigate or entertain discussions or offers, negotiate the terms of or otherwise pursue in any manner any acquisition, merger, consolidation, purchase of all or substantially all assets, member substitution, comprehensive management services agreement or similar transaction that involves all or substantially all of the operations and assets of any other health care system, hospital, or outpatient health care facility located in any of: Rockingham, Strafford, Hillsborough or Merrimack County, New Hampshire, or in York or Cumberland County, Maine.

(e) If Exeter is required by this **Section 6.2** to request BILH's permission to take an action and if Exeter delivers written notice to BILH (with a copy delivered via email to the BILH Office of the General Counsel) of its intent to take such action or actions, BILH shall use good faith efforts to promptly evaluate and respond to such request in writing. Failure to respond to such request within ten (10) Business Days shall be deemed approval thereof. If BILH denies such request, it shall provide a written response to Exeter which response shall set forth the grounds for such denial.

## ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of Exeter. Exeter represents and warrants to BILH (subject to the limitations and exceptions disclosed in the appropriate Schedules to this Agreement) that the statements contained in this **Section 7.1** are true and correct. Such representations and warranties shall be deemed to be continuously made by Exeter through the Closing Date (taking into account any Schedule Supplements permitted hereunder).

(a) *Organization; Good Standing; Tax Exemption.*

(i) Schedule 7.1(a) contains a list of each Exeter Entity and Exeter Joint Venture, its form of organization, the state or jurisdiction in which it is domiciled and each state or jurisdiction in which it is qualified to do business, its tax classification or tax exempt status for federal income tax purposes and all trade names or other fictitious names under which it operates its businesses. Each of the Exeter Entities (and, to the Knowledge of Exeter, the Exeter Joint Ventures) has been duly formed, is validly existing and in good standing under the Laws of its state of jurisdiction set forth on Schedule 7.1(a).

(ii) Each Exeter Entity has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, and is qualified to do business and is in good standing as a foreign corporation (or other

applicable entity) in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification. No Exeter Entity is in default under or in violation of any provision of its Organizational Documents. Each Exeter Entity has registered with the proper Governmental Authority all trade names or other fictitious names under which it operates its businesses as set forth on Schedule 7.1(a), and all such registrations are in good standing.

(iii) Each Exeter Entity designated in Schedule 7.1(a) as a tax-exempt entity is an exempt organization under Section 501(c)(3) of the Code (other than Exeter Med Real, Inc. which is an exempt organization under Section 501(c)(25) of the Code) and is not a “private foundation” within the meaning of Section 509(a) of the Code. NH-Cares ACO LLC is a subsidiary of Core Physicians, LLC and treated as a “disregarded entity” under the Code. The Internal Revenue Service has not taken or proposed to take, any action to revoke the tax-exempt status of any of such Exeter Entities and has not announced, or proposed to announce, that any of such Exeter Entities is a “private foundation” within the meaning of Section 509(a) of the Code. To the Knowledge of Exeter, there is no reasonable basis on which the tax-exempt status of any such Exeter Entity would be revoked or that would cause such Exeter Entity to be treated as a “private foundation” within the meaning of Section 509(a) of the Code or which could cause any of the facilities in which such Exeter Entity conducts exempt operations to become other than fully exempt from property taxation.

(b) *Membership or Other Equity Interests.*

(i) Schedule 7.1(b) contains a complete and accurate listing of the Exeter Entities and the Exeter Joint Ventures, and an indication of the Person(s) (with respect to the Exeter Joint Ventures, the Person that is an Exeter Entity) that directly own(s) the equity interests or that are the corporate members, as applicable, of each such Exeter Entity and Exeter Joint Venture. All of the equity interests owned or held by any Exeter Entity are fully paid and non-assessable and all of the equity and member interests held by any Exeter Entity are owned or held free and clear of any Lien except as described in Schedule 7.1(b).

(ii) Except as set forth on Schedule 7.1(b), no Exeter Entity has any authorized, issued or outstanding Rights of any kind, including Rights which would obligate such Exeter Entity to issue, sell, redeem or acquire any of its equity interests (as applicable) or to designate any other Person as a corporate member of such Exeter Entity. Except as set forth on Schedule 7.1(b), no Exeter Entity (and, to the Knowledge of Exeter, the Exeter Joint Ventures) is a party to any Contract relating to the voting or transfer of any of its equity interests or restrictions on the sale, issuance, direct or indirect disposition or other transfer of any of its equity interests. True and complete copies of the Organizational Documents of each Exeter Entity, as amended to date, have been provided to BILH in the Data Room.

(iii) Except as set forth on Schedule 7.1(b), no Exeter Entity (and the Exeter Joint Ventures, but only to the Knowledge of Exeter) owns or controls a majority or minority interest, directly or indirectly, in any partnership, corporation, limited liability company, joint venture or similar entity (except any passive equity positions owned by an Exeter Entity in trading accounts or investment funds in the Ordinary Course of Business).

(c) *Authority; Binding Obligations.*

(i) Exeter has the corporate power and authority to sign and deliver this Agreement and to make the representations and warranties under this **Section 7.1** and the pre-Closing covenants under **Article VI** on behalf of the Exeter Entities, all of which have been duly authorized by all necessary corporate action, including approval by Exeter's Board of Trustees. No Person other than the Exeter Board of Trustees is required to approve the aforementioned actions of Exeter.

(ii) This Agreement, and any document contemplated by this Agreement which any Exeter Entity executes or becomes a party, shall constitute the valid and legally binding obligations of such Exeter Entity, and shall be enforceable against such Exeter Entity in accordance with the respective terms hereof or thereof, except to the extent such enforceability is limited by applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally, and limitations on the enforcement of equitable remedies.

(d) *No Conflict.*

(i) Neither the signing and delivery of this Agreement nor any of the other documents to be entered into or executed by any Exeter Entity pursuant to the terms of this Agreement, nor the consummation of any of the transactions contemplated hereby or thereby, shall:

(1) With or without notice or the passage of time, violate, conflict with, result in a breach or termination of the terms, conditions or provisions of, constitute a default under or entitle any Person to terminate or accelerate (i) the Organizational Documents of any Exeter Entity or Exeter Joint Venture; (ii) any Order to which any Exeter Entity (or, to the Knowledge of Exeter, any Exeter Joint Venture) is a party or by which any Exeter Entity is bound, or (iii) any requirements of Law affecting any Exeter Entity (or, to the Knowledge of Exeter, any Exeter Joint Venture) in any material respect, *provided*, however, that no representation or warranty is given with respect to any state or federal antitrust Law; or

(2) Result in the creation or imposition of any Lien upon any of the assets of any Exeter Entity (except for Permitted Liens); or

(3) Except as set forth in Schedule 7.1(d)(i)(3), require a Permit or the making by any Exeter Entity (and the Exeter Joint Ventures, but only to the Knowledge of Exeter) of any declaration, filing, notice or registration with, any Governmental Authority or accrediting body (and the Exeter Joint Ventures, but only to the Knowledge of Exeter); or

(4) Except as provided by Exeter to BILH in writing on or before the Execution Date, require the consent, approval, authorization, clearance, declaration or notice of or to any party to an Exeter Material Contract, or that would result in a breach or default thereunder or entitle any Person to terminate or accelerate any rights or obligations of an Exeter Entity (or of any Exeter Joint Venture, but only to the Knowledge of Exeter) thereunder.



(e) *Regulatory and Other Third-Party Approvals.* Except as set forth on Schedule 7.1(e), the execution and delivery of this Agreement does not, and the performance by Exeter of its obligations under this Agreement shall not, require any Exeter Entity (or, to the Knowledge of Exeter, any Exeter Joint Venture) to obtain any approval of, or make any filing with or notification to, any Governmental Authority (the “Exeter Regulatory Requirements”) or any other Person (the “Exeter Third-Party Requirements”).

(f) *Permits; Compliance with Laws.*

(i) Each of the Exeter Entities (and the Exeter Joint Ventures, but only to the Knowledge of Exeter) holds all material federal, state, and local Permits as are necessary to permit each such Exeter Entity to conduct its business as currently operated, all of which are in good standing (subject to renewals in the Ordinary Course of Business, or where failure to maintain any such Permit in good standing would not reasonably be expected to give rise to a material violation of Law). To the Knowledge of Exeter, except as disclosed on Schedule 7.1(f), there are no facts or circumstances which may reasonably be expected to give rise to any material violation of any such Permit. A list or copies of all such material Permits have been provided or made available to BILH in the Data Room.

(ii) Exeter Hospital is duly licensed as an acute care hospital pursuant to the applicable Laws of the State of New Hampshire. Rockingham Visiting Nurse Association and Hospice, and all other ancillary businesses, departments, or services owned and operated by the various Exeter Entities, which are required to be specially licensed, registered or accredited are duly licensed, registered or accredited by the appropriate accrediting body or Governmental Authority. All non-physician personnel providing services to any Exeter Entity required to be accredited, licensed or registered to provide such services are so accredited, licensed or registered, except where the failure of such personnel to be accredited, licensed or registered would not be materially adverse to the operation of the applicable Exeter Entity.

(iii) Each of the Exeter Entities (and each of the Exeter Joint Ventures, but only to the Knowledge of Exeter) is in compliance in all material respects with all Permits required by Law in connection with operating its business. There are no provisions in, or agreements relating to, any such Permits which preclude or limit in any material respect any Exeter Entity from operating its business as it is currently operated. There is not now pending or, to the Knowledge of Exeter, threatened, any action by or before any Governmental Authority to revoke, cancel, rescind, modify or refuse to renew any of the Permits, or any other action that could reasonably lead to a potential cancellation, rescission, modification or refusal to renew any of the Permits.

(iv) Except as disclosed in Schedule 7.1(f)(iv): (A) each Exeter Entity (and the Exeter Joint Ventures, but only to the Knowledge of Exeter) and each business and service owned and operated by such Exeter Entity, is in compliance in all material respects with all Laws, including Health Care Laws; (B) during the past six (6) years from the date of this Agreement, each Exeter Entity (and the Exeter Joint Ventures, but only to the Knowledge of Exeter) has timely filed all reports, data, and other information required to be filed with any Governmental Authority in all material respects; and (C) no Exeter Entity (and the Exeter Joint Ventures, but only to the

Knowledge of Exeter) has committed a material violation of any Law, including any Health Care Law, in the timeframe that represents the applicable statute of limitations for each such Law.

(v) Except as disclosed in Schedule 7.1(f)(v), no Exeter Entity (and no Exeter Joint Venture, but only to the Knowledge of Exeter): (A) has pending, or has had in the last six (6) years, any Claims, actions or appeals before any Governmental Authority with respect to any cost reports or claims filed on or before the Execution Date of this Agreement or otherwise on or prior to the Closing Date; (B) has pending, or has had in the last six (6) years, any disallowances by any Governmental Authority in connection with any audit of such cost reports, other than any such disallowances in the Ordinary Course of Business; (C) has any other Claims, actions, appeals or, to the Knowledge of Exeter, investigations pending before any Governmental Authority with respect to compliance with Laws; (D) is a party to any corporate integrity agreement, deferred prosecution agreement, non-prosecution agreement or other similar arrangement with the U.S. Department of Justice, the Office of Inspector General, the U.S. Department of Health and Human Services and/or the Centers for Medicare & Medicaid Services or any other Governmental Authority; (E) has any reporting obligations pursuant to any settlement agreement entered into with any Governmental Authority; (F) has in the last six (6) years, been a defendant in any *qui tam*/False Claims Act Litigation; (G) has, in the last six (6) years, been served with or received any search warrant, subpoena, civil investigative demand or contact letter by or from any Governmental Authority regarding an investigation into actual or potential non-compliance with any Laws by any Exeter Entity; (H) has, to the Knowledge of Exeter, had any written complaints or reports from any Exeter Entity employee, independent contractor, vendor, physician or any other Person in the last two (2) years that any Exeter Entity has violated any Law, except to the extent such complaint or report was investigated by the applicable Exeter Entity in accordance with its policies and procedures and the investigation thereof revealed no material violation of Law or as otherwise disclosed to BILH in writing; or (I) has, in the last six (6) years, made any self-disclosures to or has any self-disclosures pending with any Governmental Authority for actual or potential violations of a Health Care Law.

(vi) Exeter has provided or made available to BILH in the Data Room a true, correct and complete copy of the current corporate compliance program materials applicable to the Exeter Entities which are consistent with the Federal Sentencing Guidelines and constitute an “effective compliance program” under applicable U.S. Department of Health and Human Services Office of Inspector General Compliance Program Guidance. Except as disclosed on Schedule 7.1(f)(vi), there have been no compliance program audits or investigations conducted by any Exeter Entity in the last six (6) years that identified any action or omission, facts, occurrence or circumstance that would reasonably be expected to give rise to a material violation of Law.

(vii) No Exeter Entity (and the Exeter Joint Ventures, but only to the Knowledge of Exeter) has:

(1) Knowingly or willfully offered, paid, solicited or received any remuneration (including any kickback, bribe or rebate, but excluding any legally permissible copayment or other payment), directly or indirectly, overtly or covertly, in cash or in kind: (i) in return for referring an individual to a person for the furnishing, or arranging for the furnishing, of any item or service for which payment may be made in whole or in part by a Governmental Payment Program; or (ii) in return for purchasing, leasing, ordering or arranging for or

recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by any Governmental Payment Program;

(2) Knowingly or willfully made a payment, directly or indirectly, to a physician as an inducement to reduce or limit medically necessary services to individuals who are under the direct care of the physician and who are entitled to benefits under a Governmental Payment Program, in a manner that would violate applicable Law; or

(3) Knowingly or willfully made or caused to be made or induced or sought to induce the making of any false statement or representation (or omitted to state a material fact) required to be stated therein (or necessary to make the statement contained therein not misleading) of a fact with respect to (i) the conditions or operations of an Exeter Entity in order that such entity would qualify for a Governmental Payment Program certification or (ii) information required to be provided under Section 1124A of the Social Security Act (42 U.S.C. § 1320a-3a).

(viii) Each Exeter Entity that has received any funds from any Pandemic Related Relief Programs maintains, as of the date hereof, an accurate accounting of the use, expenditure, repayment and/or recouplement of such Pandemic Related Relief Program. At the time of application for any Pandemic Related Relief Program, the applicable Exeter Entities satisfied all certification and eligibility requirements therefor and all certifications made by or on behalf of such Exeter Entities were accurate and complete in all material respects. The Exeter Entities have used all funds from any Pandemic Related Relief Program, and maintained records in respect thereof, in accordance with all applicable Laws.

(g) *Government Program Participation; Accreditation.*

(i) All Exeter Entities (and the Exeter Joint Ventures, but only to the Knowledge of Exeter) are in compliance in all material respects with the conditions of participation of all Governmental Payment Programs in which each such Entity participates. There is neither pending nor, to the Knowledge of Exeter, threatened Litigation under any Governmental Payment Programs involving the Exeter Entities (and the Exeter Joint Ventures, but only to the Knowledge of Exeter). Exeter has delivered to BILH in the Data Room true, correct and complete copies of each participating Exeter Entity's most recent Medicare and Medicaid certification survey reports, if applicable to such Exeter Entity, including any statements of deficiencies and plans of correction.

(ii) For the past five (5) years, each Exeter Entity has filed and caused to be filed all cost reports and all other material reports that are required by Law or contract to have been filed or made with respect to such Exeter Entity by third-party payers, including Governmental Payment Programs and other insurance carriers. Except as set forth on Schedule 7.1(g)(ii), each such Exeter Entity is in material compliance with filing requirements with respect to such cost reports and such reports do not claim, and each such Exeter Entity has not received, in the past six (6) years, payment or reimbursement in excess of the amount provided by applicable Law or any applicable agreement, except where excess reimbursement was noted on the cost report or was repaid to the applicable Governmental Payment Program or third-party payor. Schedule 7.1(g)(ii) indicates which of such cost reports have been audited by the Medicare Administrative

Contractor and finally settled. To the Knowledge of Exeter, there are no facts or circumstances which may reasonably be expected to give rise to any material disallowance under any such cost reports. Exeter, or the applicable Exeter Entity, has established adequate reserves to cover any reimbursement obligations that Exeter or the applicable Exeter Entity reasonably expects to arise with respect to any such cost reports, and such reserves are set forth or reflected in the Exeter Financial Statements.

(iii) Except as set forth on Schedule 7.1(g)(iii), all of the Exeter Entities' (and the Exeter Joint Ventures, but only to the Knowledge of Exeter) billing and coding practices with respect to private insurance companies are and have been, for the past six (6) years, in material compliance with all applicable Laws and any applicable Contracts of such private insurance companies.

(iv) Except as set forth on Schedule 7.1(g)(iv), all of the Exeter Entities' (and the Exeter Joint Ventures, but only to the Knowledge of Exeter) billing and coding practices with respect to all Governmental Payment Programs are and have been, for the past six (6) years, in material compliance with all applicable Laws, including provider-based rules, incident-to rules and provider supervision requirements. No Exeter Entity has, in the past six (6) years, billed or received any payment or reimbursement from any Governmental Payment Program materially in excess of amounts allowed by Law, other than overpayments that have been remitted back to such Governmental Payment Program in accordance with applicable Law.

(v) Exeter Hospital, Inc. is duly accredited by Det Norske Veritas Healthcare, Inc. ("DNV"). Exeter has provided to BILH in the Data Room copies of the most recent accreditation or certification survey reports which have been provided in writing to Exeter that relate to the Exeter Entities, together with the most recent statement of deficiencies and plan of correction (if any), and a list setting forth the date of expiration of accreditation of the Exeter Entities and the year of the next accreditation survey.

(vi) None of the current officers, trustees, directors, governing board members, employees or agents of any Exeter Entity (and the Exeter Joint Ventures, but only to the Knowledge of Exeter) have been excluded from Governmental Payment Programs, or been subject to sanctions pursuant to 42 U.S.C. § 1320a-7a or 1320a-8 or been convicted of a crime described at 42 U.S.C. § 1320a-7b and, to the Knowledge of Exeter, there is no action, investigation, proceeding or inquiry pending or, to the Knowledge of Exeter, threatened against any such officer, trustee, director, governing board member, employee or agent that could reasonably lead to an exclusion or sanction.

(vii) Exeter has provided or made available to BILH in the Data Room true, correct and complete copies of the most recent accreditation survey report performed with respect to the Exeter Entities by any Governmental Authority, along with written responses thereto of the applicable Exeter Entity. To the Knowledge of Exeter, there are no pending audits by any Governmental Authority outside of the Ordinary Course of Business.

(h) *Books and Records.* The minute books and stock or unit record books (or their equivalents) of the Exeter Entities, all of which from the last three (3) years have been made

available to BILH in the Data Room (subject to redaction with respect to certain matters with mutual agreement of the Parties), are complete and correct in all material respects.

(i) *Real Property.*

(i) Schedule 7.1(i) sets forth a complete and accurate list of all Exeter Owned Real Estate which is owned by any of the Exeter Entities, including the address of each such parcel of Exeter Owned Real Estate. The Exeter Entities own good, marketable and insurable fee simple title to the Exeter Owned Real Estate, together with all buildings, improvements and component parts thereon and all appurtenances and rights thereto, subject to Permitted Liens. For the three (3)-year period prior to the Execution Date, no Exeter Entity has received written notice of any pending condemnation, eminent domain, change of grade or access to or from public streets or rezoning affecting all or any portion of the Exeter Owned Real Estate that has not been corrected or will be corrected prior to the Closing Date. The Exeter Owned Real Estate is not subject to any easements, restrictions, ordinances or other limitations on title so as to make such property unusable for its current use or the title uninsurable or unmarketable or which materially restrict or impair the use, marketability or insurability of the Exeter Owned Real Estate.

(ii) For the three (3)-year-period prior to the Execution Date, (i) no Exeter Entity has received written notice of any currently outstanding material violation of any applicable ordinance or other Law, order, regulation or requirement (including the Americans with Disabilities Act of 1990) relating to any part of the Exeter Owned Real Estate or the operation thereof which has not been resolved and Exeter has not received any written, or to the Knowledge of Exeter, oral threats of Litigation or administrative action (whether from any Governmental Authority or any Person) relating to compliance of any of the Exeter Owned Real Estate with any such Law; and (ii) no Exeter Entity has received with respect to any of the Exeter Owned Real Estate any written currently unresolved notice of violation or claimed violation of any applicable building, zoning, subdivision, environmental and other land use Laws.

(iii) Schedule 7.1(i) sets forth a complete and accurate list of all Exeter Leased Real Estate, including the date and names of the parties to the applicable lease. Exeter has made available to BILH in the Data Room complete and accurate copies of real estate Leases under which any Exeter Entity is a tenant, lessee, subtenant, sublessee, licensee or occupant (each such Lease being an “Exeter Tenant Lease”). During the last six (6) years each of the Exeter Entities has complied and is in compliance in all material respects with the terms of the Exeter Tenant Leases to the extent that non-compliance would give the counterparty a valid right to terminate the applicable Exeter Tenant Lease, and no Exeter Entity during the last six (6) years has received any written notice that it is in material default under any Exeter Tenant Lease. All Exeter Tenant Leases are in full force and effect. To the Knowledge of Exeter, neither the applicable Exeter Entity nor the other party to any Exeter Tenant Lease is in material default of any obligations under the particular Exeter Tenant Lease.

(iv) Exeter has made available to BILH in the Data Room complete and accurate copies of real estate Leases under which any Exeter Entity is a landlord, lessor, sublandlord, sublessor or licensor (each Lease being an “Exeter Landlord Lease”). No Exeter Entity has received any written notice that it is in material default under any Exeter Landlord Lease that has not been resolved with no ongoing liability and without obtaining a full release from the

other party(ies) thereto. To the Knowledge of Exeter, neither the applicable Exeter Entity nor the other party to any Exeter Landlord Lease is in material default of any obligations under the particular Exeter Landlord Lease.

(v) The Affiliation shall not result in any Exeter Entity being obligated to repay any loans, grants, or loan guarantees related to the Hill Burton Act (42 U.S.C § 291(a) *et seq.*) program or to provide uncompensated care in consideration thereof.

(vi) The Exeter Owned Real Estate, together with the Exeter Tenant Leases, comprise all of the real property utilized in the conduct of the business of the Exeter Entities.

(j) *Intellectual Property.* To the Knowledge of Exeter, each Exeter Entity owns or has the right to use (or as of the Closing Date will own or have the right to use) the Intellectual Property rights and licenses as are necessary to conduct the business of the Exeter Entities as currently conducted. Schedule 7.1(j) sets forth a listing of all registered trademarks, service marks, patents and copyrights owned or held by any Exeter Entity. To Exeter's Knowledge, within the last six (6) years no Person has asserted claims of infringement by any Exeter Entity of the Intellectual Property rights of any Person, which claims result in any way from the operations of the Exeter Entities. To the Knowledge of Exeter, no other Person is engaged in infringing use of any of the Intellectual Property owned by any Exeter Entity. There are no Orders, Claims or Litigation proceedings currently pending or, to the Knowledge of Exeter, threatened against any Exeter Entity that challenge the validity of any Exeter Entity's ownership of or right to use any Intellectual Property.

(k) *Personal Property.* Each of the Exeter Entities is in possession of, and, except for Permitted Liens, has good and valid title to, or has valid leasehold interests in or valid rights under contract to use, all of the material personal property used in the conduct of its business, other than personal property disposed of in the Ordinary Course of Business. All such personal property is in good condition and repair, ordinary wear and tear excepted, taking into account the age of such personal property and the current use thereof.

(l) *Inventory.* Substantially all of the inventory, supplies, food, pharmaceuticals, janitorial and office supplies and other similar disposables included in the assets of the Exeter Entities as of the Closing Date shall be of a quality and quantity useable in the Exeter Entities in the Ordinary Course of Business, except for obsolete items or items of below-standard quality that have been written-down to net realizable value on Exeter Financial Statements.

(m) *Financial Statements; Undisclosed Liabilities.* Exeter has delivered to BILH copies of the following consolidated financial statements of or pertaining to the Exeter Entities, which Exeter Financial Statements are maintained on an accrual basis:

(i) Attached as Schedule 7.1(m)(i) are true, correct and complete copies of (i) the audited balance sheets of the Exeter Entities as of September 30 in each of 2019, 2020, and 2021 and the related audited statements of income and cash flows for the fiscal years then ended; and (ii) an unaudited balance sheet of Exeter as of May 31, 2022 and the related unaudited statements of income for the five (5) months then ended (such financial statements and notes

contained therein in clauses (i) and (ii), collectively, the “Exeter Financial Statements”). The Exeter Financial Statements fairly present in all material respects the financial condition of the Exeter Entities as of the dates indicated, and the results of operations and cash flows of the Exeter Entities for the respective periods indicated. The Exeter Financial Statements have been prepared from the books and records of the Exeter Entities (which are true and correct in all material respects) and in accordance with GAAP except that the unaudited financial statements have no notes, and are subject to final adjustments on audit. Since May 31, 2022, no Exeter Entity has experienced any Material Adverse Effect.

(ii) Except as provided by Exeter to BILH in writing on or before the Execution Date, the Exeter Entities do not have any material Undisclosed Liability of any nature (whether accrued, absolute, direct or indirect, matured or unmatured, contingent or otherwise) that are of a type required to be disclosed or reflected in financial statements in accordance with GAAP or in accordance with past prior practice of the Exeter Entities.

(n) *Legal Proceedings; Orders; Litigation.*

(i) Except as set forth on Schedule 7.1(n)(i), there is no Litigation or other action pending or, to Exeter’s Knowledge, threatened, relating to or affecting (a) any Exeter Entity, (b) the Exeter Entities’ Assets, or (c) the operation of the Exeter Entities’ business that if determined adversely to any Exeter Entity would, with or without the lapse of time, constitute a Material Adverse Effect on an Exeter Entity. To Exeter’s Knowledge, there are no underlying facts that would reasonably be expected to give rise to any such action. There is no action pending or, to Exeter’s Knowledge, threatened, which questions the validity of this Agreement or which, if adversely determined or publicly disclosed, with or without the lapse of time, could reasonably be expected to: (i) adversely affect the ability of the Exeter Entities to consummate the transactions contemplated by this Agreement; (ii) constitute a Material Adverse Effect on any of the Exeter Entities; or (iii) materially impair the operation of the Exeter Entities’ business after the Closing Date in substantially the same manner as currently conducted. No Exeter Entity is subject to any Order or other governmental restriction applicable to the Exeter Entities or the Exeter Entities’ Assets that is material to the Exeter Entities, the operation of their business, or their Assets and that is not generally applicable to similarly situated entities operating in New Hampshire. Except as set forth on Schedule 7.1(n)(i), no insurer has issued a denial of coverage or refused to assume the defense, with respect to each of the matters set forth on Schedule 7.1(n)(i).

(ii) Schedule 7.1(n)(i) sets forth a true, correct and complete list of all Litigation to which an Exeter Entity or, to the Knowledge of Exeter, any member of the Exeter Executive Leadership Team is or was a party, and that meets each of the following criteria: (A) is currently pending or with respect to which any Exeter Entity has ongoing obligations; and (B) has a value in excess of applicable insurance coverage, constitutes a felony or involves fraud, or otherwise involves a willful violation of any law, rule or regulation that would reasonably be expected to endanger Exeter’s governmental approvals. To the Knowledge of Exeter, except as disclosed on Schedule 7.1(n)(ii), there are no facts or circumstances which may reasonably be

expected to give rise to any matter meeting each of the foregoing criteria and not otherwise disclosed on such Schedule 7.1(n)(ii).

(o) *Medical Staff Matters.* Exeter has provided to BILH in the Data Room true, correct, and complete copies of the bylaws and rules and regulations of the medical staff of Exeter Hospital as well as a list of all current members of each medical staff. To the Knowledge of Exeter, and except as provided by Exeter to BILH in writing on or before the Execution Date, there are no adverse actions pending with respect to any of its medical staff or any applicant thereto for which a medical staff member or applicant has requested a peer review or other hearing which has not been scheduled or has been scheduled but has not been completed, and, to the Knowledge of Exeter, there are no pending or threatened disputes with applicants, staff members, or health professional affiliates and all appeal periods in respect of any medical staff member or applicant against whom an adverse action has been taken have expired. Except as provided by Exeter to BILH in writing on or before the Execution Date, in the past two (2) years there have been no: (1) adverse actions taken against any medical staff member of Exeter Hospital or any applicant thereto that could reasonably be expected to result in Claims or actions against Exeter Hospital, Inc.; or (2) reports made by any Exeter Entity to the National Practitioner Data Bank or any state equivalent. All physician members of the medical staff of Exeter Hospital and all physician employees of Core Physicians, LLC are each duly licensed by the State of New Hampshire to practice medicine, without restriction, and are properly credentialed by Exeter Hospital or Core Physicians, LLC, respectively in their medical specialty. All other members of the medical staff of Exeter Hospital and other employees of Core Physicians, LLC are properly accredited, licensed or registered in their respective area of expertise, if required to be so accredited, licensed or registered, by the appropriate accrediting body or Governmental Authority, as the case may be. Notwithstanding the foregoing, Exeter is not and will not be required to disclose any information pursuant to this **Section 7.1(o)** where such disclosure is prohibited by applicable Law or where such disclosure would jeopardize any applicable privilege which would protect the disclosure of such information to third parties.

(p) *Employment and Labor Matters.*

(i) Exeter has provided to BILH complete and accurate copies of all employment, consulting, independent contractor, severance pay, continuation pay, retention, termination or indemnification Contracts between an Exeter Entity and any officer, director, trustee, employee, consultant or independent contractor employed or otherwise engaged by an Exeter Entity. Exeter has provided to BILH in writing on or before the Execution Date a complete and correct list of each employment, consulting, independent contractor, severance pay, continuation pay, retention, termination or indemnification Contract currently in force (or with surviving obligations related thereto) between an Exeter Entity and any officer, director, trustee, employee, consultant or independent contractor employed or otherwise engaged by an Exeter Entity with annual compensation greater than or equal to One Hundred Thousand Dollars (\$100,000.00), complete and accurate copies of which have been provided to BILH. Each Exeter Entity has complied in all material respects in the last six (6) years with all applicable Laws concerning the employer-employee relationship and with all Contracts relating to the employment of the Exeter Entity's employees and engagement of Exeter Entity independent contractors, including applicable wage and hour Laws, the Fair Labor Standards Act, safety Laws, worker compensation Laws, unemployment, anti-discrimination and harassment Laws, and social security



Laws. All compensation, including wages, commissions and bonuses, payable to all employees, independent contractors or consultants of the Exeter Entities for services performed have been paid in full (other than amounts not yet due). Further, except as provided by Exeter to BILH in writing on or before the Execution Date, no Exeter Entity has decreased compensation payable or provided to any trustee, officer, employee, or consultant arising in connection with the COVID-19 pandemic, nor has any Exeter Entity entered into any reduction in force or furloughing of employees arising in connection with the COVID-19 pandemic.

(ii) Except as set forth on Schedule 7.1(p)(ii), no Exeter Entity is, and has not been for the past three (3) years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "Union"). There is not, and has not been for the past three (3) years, any Union representing or purporting to represent any employee of any Exeter Entity and, to Exeter's Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has not in the last three (3) years been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting any Exeter Entity or any of their respective employees. No Exeter Entity has a current or, to the Knowledge of Exeter, reasonably anticipated duty to bargain with any Union.

(iii) With respect to each Contract with a Governmental Authority to which an Exeter Entity is a party (each, a "Government Contract"), such Exeter Entity is and has been in compliance with E.O. 11246, Section 503 and the Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA"), including all implementing regulations. Each Exeter Entity maintains and complies with affirmative action plans in compliance with E.O. 11246, Section 503 and VEVRAA, including all implementing regulations. No Exeter Entity is, and has not been for the past three (3) years, the subject of any audit, investigation or enforcement action by any Governmental Authority in connection with any Government Contract or related compliance with E.O. 11246, Section 503 and VEVRAA. No Exeter Entity has been debarred, suspended or otherwise made ineligible from doing business with the United States government or any government contractor.

(q) *Employee Benefit Plans.*

(i) Exeter has provided to BILH in writing on or before the Execution Date a complete and correct list of each Exeter Plan that provides benefits in respect of any current or former employee, officer, director, trustee or independent contractor of each Exeter Entity. During the last six (6) years, each Exeter Plan has been administered in all material respects in accordance with its terms and applicable Law, including ERISA and the Code. All contributions reasonably required to have been made by the Exeter Entities under the terms of each Exeter Plan have been remitted in accordance with all applicable Law and the applicable terms of each Exeter Plan.

(ii) Except as provided by Exeter to BILH in writing on or before the Execution Date, no Exeter Entity nor any ERISA Affiliate maintains or contributes to or otherwise participates in or has any liability under any Exeter Plan which is (i) a "defined benefit plan" within the meaning of Section 3(35) of ERISA or Section 414(j) of the Code, (ii) a plan that is subject to

the requirements of Section 412 of the Code or Title IV of ERISA, (iii) a “multiemployer plan” within the meaning of Section 3(37), 4001(a)(3), 4063 or 4064 of ERISA or Section 414(f) of the Code, (iv) a multiple employer pension plan as contemplated by Section 4063 of ERISA, (v) a multiple employer welfare benefit plan within the meaning of Section 3(40) of ERISA, (vi) a plan that provides for or promises post-termination medical or life insurance benefits to any employee (or dependent of an employee) of an Exeter Entity, except to the extent required by state insurance laws or COBRA, or (vii) a plan that provides employee welfare benefits which are not fully insured by a third party not affiliated with an Exeter Entity.

(iii) Except as provided by Exeter to BILH in writing on or before the Execution Date, there are no change of control, retention arrangements, severance, bonus, stock appreciation, phantom stock, or similar payments due to any Person or any other accelerations or increases in rights or benefits of any Person, including, without limitation any Exeter Entity’s employees (whether payable or occurring prior to, on or after the Closing Date), under any plan, agreement, or arrangement (whether written or oral) of any Exeter Entity, which obligation, in each case, arises either on or before the Closing Date or in whole or in part as a result of the consummation of the transactions contemplated hereunder.

(r) *Taxes.*

(i) Except as set forth on Schedule 7.1(r)(i), each Exeter Entity (and the Exeter Joint Ventures, but only to the Knowledge of Exeter) has timely filed all material federal, state and local Tax Returns required to be filed by it and has duly paid or made provision for the payment to the appropriate Governmental Authority of all Taxes which are shown as due and payable on such Tax Returns and has paid all other Taxes for which a notice of assessment or demand for payment has been received (other than Taxes that are being contested in good faith and in accordance with appropriate procedures).

(ii) Each Exeter Entity has complied in all material respects with all material Tax withholding and deposit requirements imposed by applicable Law (including any material related information reporting requirements) in connection with amounts paid or owing to any Exeter Entity, employee, creditor, independent contractor or other third party.

(iii) No Exeter Entity has taken or shall take any action in respect of any federal, state or local Taxes (including any withholdings required to be made in respect of Exeter Entity) constituting a Material Adverse Effect on the Exeter Entities. To the Knowledge of Exeter, no Exeter Entity has any material liability for Taxes that is not properly reserved on the most recent Exeter Financial Statements.

(iv) Except as set forth on Schedule 7.1(r)(iv), no Exeter Entity has requested any extension of time within which to file any Tax Return that has not yet been filed. Since January 1, 2016, no Exeter Entity has: (i) waived any statute of limitations in respect of Taxes or granted any extension of time with respect to a Tax assessment or deficiency; or (ii) requested to enter into an agreement or waiver extending any statute of limitations in respect of Taxes.

(v) Except as provided by Exeter to BILH in writing on or before the Execution Date, since January 1, 2016, no Exeter Entity has been the subject of an audit or other examination of Taxes by any Governmental Authority. There are no pending Tax audits with respect to any Exeter Entity and, since January 1, 2016, to the Knowledge of Exeter, no Tax audit has been threatened. Except for any payroll processor or similar entity, no Exeter Entity has granted any power of attorney that is currently in force with respect to any Taxes or Tax Returns. To the Knowledge of Exeter, no deficiencies for any Taxes have been asserted or threatened against any Exeter Entity that have not been paid. There are no Liens with respect to Taxes on any of the assets, rights or properties of any Exeter Entity, other than Permitted Liens and no reasonable basis exists for the imposition of any such Liens.

(vi) Except as set forth on Schedule 7.1(r)(vi), the Exeter Entities designated as tax exempt on Schedule 7.1(a) are exempt from federal income taxation, each as an organization described in Section 501(c)(3) or Section 501(c)(25) of the Code, as set forth in a Determination Letter issued by the Internal Revenue Service, each of which has been provided to BILH in the Data Room, and no such letter has been modified, limited or revoked. Each such Exeter Entity is in compliance with the material terms, conditions and limitations in each respective Determination Letter applicable to each such Exeter Entity. No proceedings are pending with respect to any such Exeter Entity, and none of such Exeter Entities have been served or, to the Knowledge of Exeter, threatened in any way, contesting or affecting its tax-exempt status as an organization described in Section 501(c)(3) or 501(c)(25) of the Code, as applicable, or which would subject any income of such entity to federal income taxation to such an extent as would result in the loss of such status.

(s) *Material Contracts.* Complete and accurate copies of all of the following Contracts have been made available to BILH (or its outside counsel, in accordance with the terms of the Clean Team Agreement) in the Data Room:

(i) Contracts with physicians, physician groups, physician practice management companies or referral sources, including employment agreements, medical director agreements, call coverage agreements, consulting agreements, professional or other services agreements, or other like kind agreements or contracts;

(ii) Contracts with third-party payers (including Governmental Payment Programs) and commercial insurers, health maintenance organizations, preferred provider organizations, or other alternative delivery systems;

(iii) Affiliation, joint venture or partnership agreements, or management agreements;

(iv) Employment Contracts or any other Contracts with individual employees of any Exeter Entity (other than those disclosed pursuant to clause (i));

(v) Equipment leases, equipment use agreements or other personal property leases involving an annual payment by Exeter Entities in excess of One Hundred Thousand Dollars (\$100,000.00);

(vi) Equipment maintenance agreements involving an annual payment by Exeter Entities in excess of One Hundred Thousand Dollars (\$100,000.00);

(vii) Contracts with Governmental Authorities (other than those disclosed pursuant to clause (ii));

(viii) Agreements evidencing indebtedness, including bonds, notes, loan agreements, letter of credit reimbursement agreements, capital leases and guarantees, and any related collateral or security agreements;

(ix) Contracts providing for payments based in any manner on the revenues or profits of any of the assets of any Exeter Entity;

(x) Contracts or commitments providing for the performance of, or other guaranty of, any other Person's debts;

(xi) Contracts for third parties who access or transfer protected health information (as defined in HIPAA) of patients of any Exeter Entity, including business associate agreements;

(xii) Contracts containing restrictive covenants or exclusivity provisions binding any Exeter Entity, including any Contracts no longer in effect that contained restrictive covenant or exclusivity provisions that are binding on any Exeter Entity as of the Execution Date or as of the Closing Date;

(xiii) Contracts which (A) otherwise involve or could involve future payments, obligations (contingent or otherwise), performance of services or delivery of goods to or by any Exeter Entity in an amount or value in excess of One Hundred Thousand Dollars (\$100,000.00) per year or (B) are otherwise material to the business or operations of any Exeter Entity

(Collectively, the Contracts described in clauses (i) through (xiii) above, together with the Exeter Tenant Leases and Exeter Landlord Leases are referred to as "Exeter Material Contracts").

(t) *COVID-19 Matters.* Exeter has provided to BILH in writing on or before the Execution Date a complete and correct list of all funds, grants and/or loan(s), as applicable, any Exeter Entity has applied for and/or received from Coronavirus Legislation stimulus or relief programs and/or other stimulus or relief programs sponsored or offered by any state or federal governmental entity in connection with or relating to COVID-19 (collectively, the "Pandemic Related Relief Programs"), including, without limitation any PPP loans from the U.S. Small Business Administration. Exeter has made available to BILH true and complete copies of all material documentation related to such funds, grants and/or loans applied for and/or received by the Exeter Entities from the Pandemic Related Relief Programs, including, without limitation, any applications, promissory notes, or other documentation related to the same. The Exeter Entities have and shall continue to use all funds received and/or any funds that it may receive following the Execution Date from the Pandemic Related Relief Programs in material compliance with all Laws, including, without limitation the regulations and other requirements promulgated under or in connection with the Pandemic Related Relief Programs and/or the Coronavirus Legislation. To

Exeter's Knowledge, all funds, grants, or loans received from the Pandemic Related Relief Programs have been fully earned in accordance with the terms of the respective Pandemic Related Relief Programs, or to the extent any funds, grants, or loans have not been fully earned for forgiven, as the case may be, Exeter has made appropriate reserves therefore on its financial statements, and no material amounts are currently refundable to any Pandemic Related Relief Program. The Exeter Entities have and shall continue to comply in all material respects with (i) the terms of all Pandemic Related Relief Programs, (ii) all Coronavirus Legislation related to work-from-home or leave accommodations, safe working environment, patient safety, paid time off and sick leave, and (iii) all of its obligations under such Pandemic Related Relief Programs and/or Coronavirus Legislation, including, without limitation, filing any reports to any Governmental Authority as required pursuant to such Pandemic Related Relief Programs and/or Coronavirus Legislation, as applicable. No Tax elections have been made (or are pending) and no actions relating to Taxes have been taken (or are pending), by the Exeter Entities pursuant to any Coronavirus Legislation (including, without limitation, Tax credits or Tax deferrals) that would give rise to any material liability to any Exeter Entity.

(u) *Environmental Laws.*

(i) Except as provided by Exeter to BILH in writing on or before the Execution Date, the Exeter Entities are, and for the last three (3) years prior to the Execution Date have been, in material compliance with and have not been during such period and are not now in material violation of any applicable Environmental Laws or any Permit that any Exeter Entity is or has been required to hold under any applicable Environmental Laws. No Exeter Entity has received, any actual or, to the Knowledge of Exeter, threatened order, notice or other communication from either (i) any Governmental Authority or other Person, or (ii) the current or prior owner or operator of any parcel of the Exeter Owned Real Estate or Exeter Leased Real Estate, of such Exeter Entity's actual or potential material violation or failure to materially comply with any applicable Environmental Laws or of any actual or, to the Knowledge of Exeter, threatened obligation of such Exeter Entity to undertake or bear the cost of any material liability under any applicable Environmental Laws with respect to the Exeter Owned Real Estate or Exeter Leased Real Estate.

(ii) Except as provided by Exeter to BILH in writing on or before the Execution Date, there are no pending or, to the Knowledge of Exeter, threatened Claims, Liens or other restrictions arising under or pursuant to applicable Environmental Laws with respect to or affecting the Exeter Entities, the Exeter Owned Real Estate, the Exeter Leased Real Estate. Except as provided by Exeter to BILH in writing on or before the Execution Date, no order has been issued that is currently in effect, and no penalty or fine has been assessed within the last six (6) years (or at any time if such penalty or fine remains unpaid) against the Exeter Entities or the assets constituting part of the Exeter Entities relating to or arising out of any applicable Environmental Laws.

(iii) Except as provided by Exeter to BILH in writing on or before the Execution Date, to the Knowledge of Exeter, Hazardous Materials have not been released, spilled, emitted, discharged, leaked, pumped, injected, deposited, disposed, dispersed, leached or migrated to or from any Exeter Owned Real Estate or Exeter Leased Real Estate, or any other property, and no Person has been exposed to any Hazardous Materials, in each case in a manner that has given,

or could reasonably be expected to give, rise to any material liability under any Environmental Laws to any Exeter Entity.

(iv) The Exeter Entities have delivered to BILH in the Data Room copies in the possession or reasonable control of any Exeter Entity of any material reports or studies possessed or initiated by any Exeter Entity pertaining to Hazardous Materials in, on or under the Exeter Owned Real Estate, the Exeter Leased Real Estate, or concerning material violations by any Exeter Entity of, or material liability under applicable Environmental Laws, said reports and studies to include (a) any and all Phase I and Phase II environmental reports produced during the last six (6) years, and (b) any health or safety or industrial hygiene reports (including, without limitation, any related to asbestos or silica) generated during the last six (6) years, in each case, regarding any Exeter Owned Real Estate or the Exeter Leased Real Estate in the possession or control of any Exeter Entity.

(v) Except as provided by Exeter to BILH in writing on or before the Execution Date, to the Knowledge of the Exeter Entities, there are no above ground or underground storage tanks for the storage of Hazardous Materials located on the Exeter Owned Real Estate, nor any above ground or underground storage tanks for the storage of Hazardous Materials owned or operated by the Exeter Entities at the Exeter Leased Real Estate.

(v) *Clinical Trials.* All clinical trials currently being conducted at the Exeter Entities are being conducted: (a) with the approval and/or waiver of an appropriately constituted and duly registered institutional review board (“IRB”); and (b) in compliance with the applicable IRB policies and procedures, study agreements with trial sponsors and/or contract research organizations and/or applicable Awards, and all applicable Laws, in each case in all material respects. To Exeter’s Knowledge, no principal investigator employed by the Exeter Entities has received within the past two (2) years written notice that a clinical trial conducted by the Exeter Entities or at the Exeter Entities has been subject to suspension (other than a routine IRB continuing review notification that has been remedied) or termination (other than by the sponsor of the trial due to reasons unrelated to the Exeter Entities’ performance of their respective obligations) due to patient safety concerns, non-compliance with the applicable study agreement or applicable Law. Within the past two (2) years, none of the Exeter Entities’, nor to Exeter’s Knowledge, any investigator involved in a clinical trial at the Exeter Entities, has received any correspondence or written communication relating to any Exeter Entities’ conduct from any trial sponsor, contract research organization, IRB, Governmental Authority or accrediting organization or body, including without limitation the New Hampshire Department of Health and Human Services, the U.S. Food and Drug Administration, or the U.S. Department of Health and Human Services Office for Human Research Protections (“OHRP”), regarding patient safety breaches, material billing issues associated with care provided to clinical trial subjects, failure to observe obligations to register and report results of clinical trials, research misconduct, notice of pending debarment or disqualification, or other non-compliance with the applicable study agreement or applicable Law.

(w) *Transactions with Related Parties.* Except as provided by Exeter to BILH in writing on or before the Execution Date, no Related Party is currently a party to any transaction with any Exeter Entity (including, but not limited to, any Contract providing for the employment

of, furnishing of goods or services by, rental of real or personal property from, borrowing money from or lending money to, or otherwise requiring payments to, any such Person).

(x) *Insurance.* Exeter has provided in the Data Room a true and correct list of all insurance policies of Exeter Entities, including the policies' numbers, terms, and identity of insurers, amounts, and coverages. All of such policies are in full force and effect with no premium arrearage. Each Exeter Entity has given in a timely manner to its insurers all notices required to be given under its insurance policies with respect to all of the Claims and actions covered by insurance, and no insurer has denied coverage of any such Claims or actions. No Exeter Entity has received any written notice or other communication from any such insurer canceling or materially amending any of such insurance policies and, to the Knowledge of Exeter, no such cancellation or amendment has been threatened.

(y) *No Brokers.* No agent, broker, investment banker, financial advisor or other Person shall be entitled to any broker's or finder's fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement as a result of any Exeter Entity's actions.

(z) *No Reliance.* Exeter acknowledges that it is not relying upon any representation, warranty or other inducement, other than those made expressly herein, that may have been made by BILH or its respective Affiliates, members, trustees, directors, officers, employees, agents, representatives, attorneys or accountants with respect to any aspect of the Affiliation.

7.2 Representations and Warranties of BILH. BILH represents and warrants to Exeter (subject to the limitations and exceptions disclosed in the correspondingly numbered Schedules to this Agreement) that the statements contained in this **Section 7.2** are true and correct. Such representations and warranties shall be deemed to be continuously made by BILH up to the Closing Date (taking into account any Schedule Supplements permitted hereunder).

(a) *Organization; Good Standing; Tax Exemption.* BILH is a nonprofit corporation duly formed, validly existing and in good standing under the Laws of the Commonwealth of Massachusetts. BILH is qualified or licensed to do business in each jurisdiction where the nature of its operations or properties owned or leased require such qualification or licensing and is exempt from United States federal income taxes under Section 501(a) of the Code as an organization described under Section 501(c)(3) of the Code and not a "private foundation" as such term is defined in Section 509 of the Code.

(b) *Membership or Other Equity Interests.* BILH has no corporate members.

(c) *Authority; Binding Obligations.*

(i) BILH has the corporate power and authority to sign and deliver this Agreement and to make the representations and warranties under this **Section 7.2** and the pre-Closing covenants under **Article VI**, all of which have been duly authorized by all necessary corporate action, including approval by BILH's Board of Trustees. No Person other than the BILH Board of Trustees is required to approve the aforementioned actions of BILH.

(ii) This Agreement, and any document contemplated by this Agreement which BILH shall execute and/or become a party, shall constitute the valid and legally binding obligations of BILH, and shall be enforceable against BILH in accordance with the respective terms hereof or thereof, except to the extent such enforceability is limited by applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally, and limitations on the enforcement of equitable remedies.

(d) *No Conflict.*

(i) Neither the signing and delivery of this Agreement nor any of the other documents to be entered into or executed by BILH pursuant to the terms of this Agreement, nor the consummation of any of the transactions contemplated hereby or thereby, shall:

(1) With or without notice or the passage of time, violate, conflict with, result in a breach or termination of the terms, conditions or provisions of, constitute a default under or entitle any Person to terminate or accelerate (i) the Organizational Documents of BILH; (ii) any Order to which BILH is a party or by which BILH is bound, or (iii) any requirements of Law affecting BILH, *provided*, however, that no representation or warranty is given with respect to any state or federal antitrust Law; or

(2) Result in the creation or imposition of any Lien upon any of the assets of BILH (except for Permitted Liens); or

(3) Except as set forth in Schedule 7.2(d)(i)(3), require a Permit or the making by BILH of any declaration, filing, notice or registration with, any Governmental Authority or accrediting body; or

(4) Except as set forth in Schedule 7.2(d)(i)(4), require the consent, approval, authorization, clearance, declaration or notice of or to any party to any material Contract to which BILH is a party, or that would result in a breach or default thereunder or entitle any Person to terminate or accelerate any rights or obligations of BILH.

(e) *Regulatory and Other Third-Party Approvals.* Except as set forth on Schedule 7.2(e), the execution and delivery of this Agreement does not, and the performance by BILH of its obligations under this Agreement shall not, require BILH to obtain any approval of, or make any filing with or notification to, any Governmental Authority ("BILH Regulatory Requirements") or any other Person ("BILH Third-Party Requirements").

(f) *Litigation.* Except as set forth on Schedule 7.2(f), there is no material Litigation or other action pending, or to BILH's Knowledge, threatened, against BILH, which constitutes a Material Adverse Effect on BILH or that has or would reasonably be expected to materially adversely affect the ability of BILH to consummate the Affiliation contemplated in this Agreement.

(g) *Financial Statements; Undisclosed Liabilities.* Attached as Schedule 7.2(g) are true, correct and complete copies of the (i) audited balance sheets of BILH as of September 30 in each of 2019, 2020, and 2021 and the related audited statements of income and cash flows for the fiscal years then ended; and (ii) an unaudited balance sheet of BILH as of May 31, 2022 and



the related unaudited statements of income for the five (5) months then ended (such financial statements and notes contained therein in clauses (i) and (ii), collectively, the “BILH Financial Statements”). The BILH Financial Statements fairly present in all material respects the financial condition of BILH and its subsidiaries as of the dates indicated, and the results of operations and cash flows of BILH and its subsidiaries for the respective periods indicated. The BILH Financial Statements have been prepared from the books and records of the BILH Entities (which are true and correct in all material respects) and in accordance with GAAP except that the unaudited financial statements have no notes, and are subject to final adjustments on audit. Since May 31, 2022, BILH has not experienced any Material Adverse Effect.

(h) *Assurance of Discontinuance.* A true and complete copy of the BILH Assurance of Discontinuance has been provided to Exeter.

(i) *No Brokers.* No agent, broker, investment banker, financial advisor or other Person shall be entitled to any broker’s or finder’s fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement as a result of BILH’s or any of its Affiliates’ actions.

(j) *No Reliance.* BILH acknowledges that it is not relying upon any representation, warranty or other inducement, other than those made expressly herein, that may have been made by Exeter or its respective Affiliates, members, trustees, directors, officers, employees, agents, representatives, attorneys or accountants with respect to any aspect of the Affiliation.

## ARTICLE VIII CONDITIONS TO CLOSING

8.1 Conditions to the Obligation of Exeter to Close. The obligation of Exeter to close the Affiliation shall be subject to the satisfaction of all of the following conditions, any of which may be waived in writing by Exeter, *provided* that such waiver would not be in violation of applicable Law:

(a) Each of the representations and warranties of BILH set forth in this Agreement shall be true and correct in each case when made and as if made on and as of Closing (other than such representations and warranties that speak only as of a specific date or time, which will be true and correct a of such specified date or time), and taking into account any Schedule Supplements made after the Execution Date in accordance with **Section 6.1(e)**, except where the failure of such representation or warranty to be true and correct does not constitute a Material Adverse Effect on the BILH Entities;

(b) BILH shall have in all material respects performed and complied with each of the agreements, covenants, and obligations hereof applicable to BILH;

(c) No action, suit, investigation or proceeding shall be threatened (in writing) or pending before any Court or quasi-judicial or administrative agency of any federal, state, local or foreign jurisdiction, or before any arbitrator, wherein an unfavorable injunction, judgment, Order, decree, ruling, or charge would, and no valid judgment, Order or decree of any Court or quasi-judicial or administrative agency of any federal, state, local or foreign jurisdiction shall

reasonably be excepted to (i) prevent consummation of the Affiliation; (ii) cause the Affiliation to be rescinded following consummation; or (iii) have or potentially have a Material Adverse Effect with respect to the BILH Entities, *provided* however that a “close at your own risk” letter issued by the Federal Trade Commission or the U.S. Department of Justice shall not be deemed to be an action, suit, investigation or proceeding for the purposes of this **Section 8.1(c)**.

(d) No agreement with or commitment to any Governmental Authority not to consummate the Affiliation, or to delay consummation of the Affiliation, shall be in effect;

(e) Since the Execution Date, the BILH Entities shall not have suffered a Material Adverse Effect;

(f) All items to be delivered pursuant to **Section 5.2** of this Agreement shall have been duly delivered to Exeter; and

(g) Any applicable waiting period (including any timing agreement with the FTC not to consummate or to delay consummation of the Affiliation) under the HSR Act relating to the Affiliation shall have expired or been terminated.

8.2 Conditions to the Obligation of BILH to Close. The obligation of BILH to close the Affiliation shall be subject to the satisfaction of all of the following conditions, any of which may be waived in writing by BILH, *provided* that such waiver would not be in violation of applicable Law:

(a) Each of the representations and warranties of Exeter set forth in this Agreement shall be true and correct in each case as if made on and as of the Closing (other than such representations and warranties that speak only as of a specific date or time, which will be true and correct as of such specified date or time), but taking into account any Schedule Supplements made after the Execution Date in accordance with **Section 6.1(e)**, except where the failure of such representation or warranty to be true and correct has not constituted a Material Adverse Effect on the Exeter Entities;

(b) Exeter shall have in all material respects performed and complied with each of the agreements, covenants, and obligations hereof applicable to Exeter;

(c) No action, suit, investigation or proceeding shall be threatened in writing or pending before any Court or quasi-judicial or administrative agency of any federal, state, local or foreign jurisdiction, or before any arbitrator, wherein an unfavorable injunction, judgment, Order, decree, ruling, or charge would, and no valid judgment, Order or decree of any Court or quasi-judicial or administrative agency of any federal, state, local or foreign jurisdiction shall reasonably be excepted to (i) prevent consummation of the Affiliation; (ii) cause the Affiliation to be rescinded following consummation, (iii) have or potentially have a Material Adverse Effect with respect to the Exeter Entities, *provided* that a “close at your own risk” letter from the Federal Trade

Commission or the U.S. Department of Justice shall not be deemed an action, suit, investigation or proceeding for the purposes of this **Section 8.2(c)**;

(d) No agreement with or commitment to any Governmental Authority not to consummate the Affiliation, or to delay consummation of the Affiliation, shall be in effect;

(e) Since the Execution Date, the Exeter Entities shall not have suffered a Material Adverse Effect;

(f) All items to be delivered pursuant to **Section 5.1** of this Agreement shall have been duly delivered to BILH;

(g) Any applicable waiting period (including any timing agreement with the FTC not to consummate or to delay consummation of the Affiliation) under the HSR Act relating to the Affiliation shall have expired or been terminated; and

(h) The Parties shall have received all the authorizations, consents, licenses, Permits, approvals of Governmental Authorities, and other approvals agreed to in writing by the Parties on or prior to the Execution Date ("Material Consents").

8.3 Frustration of Closing Conditions. No Party may rely on the failure of any of the conditions set forth in **Sections 8.1** or **8.2**, as the case may be, to be satisfied if such failure was caused by such Party's or any of its Affiliates' failure to comply with its obligations to consummate the Affiliation, as required by and subject to this **Article VIII**.

8.4 Best Efforts. The Parties covenant and agree to use their respective best efforts, unless a provision in this Agreement calls for a different standard, to cause all of the covenants, agreements, and all conditions to the Closing to be performed, satisfied and fulfilled.

8.5 Effect of the Closing. All transactions and deliveries at the Closing which are required by this Agreement shall be dependent upon each other and thereby constitute conditions to the Closing, and they shall be deemed to take place contemporaneously.

## **ARTICLE IX**

### **POST-CLOSING COVENANTS**

The Parties agree to the following covenants, each of which shall take effect following the Effective Time unless another time period is otherwise stated:

9.1 Governance. As of the Effective Time, BILH shall amend its bylaws (the "BILH Bylaw Amendments") to permit Exeter to have one voting representative on the BILH Board of Trustees (the "BILH Board"), who shall be a then-current trustee serving on the Exeter Board of Trustees as of the Effective Time (the "Exeter Representative") and on the BILH Board, as follows. During the period commencing on the Effective Date and expiring on the third (3<sup>rd</sup>) anniversary of such date (the "Initial Period"), the Exeter Representative shall be appointed by Exeter, and if that position shall become vacant during the Initial Period, Exeter shall fill such vacancy. Upon the expiration of the Initial Period, Exeter's designation rights shall expire and the BILH Board shall elect, appoint and re-appoint individuals to serve as BILH Trustees without designation;

*provided*, however, that for the three (3)-year period subsequent to the Initial Period, one BILH Trustee shall be a current Exeter Board member residing in Exeter's service area and shall have been nominated by the Exeter Board and approved by the BILH Board. The Exeter Representative shall have the same rights and responsibilities as all other trustees serving on the BILH Board of Trustees.

(a) Following the Effective Time, Exeter shall have the opportunity for trustees to participate on committees of the BILH Board of Trustees in accordance with the BILH Bylaw Amendments and the then-current practices of BILH relative to the other BILH First-Tier Entities.

(b) In support of a smooth integration and the Affiliation more broadly, under the Amended Exeter Organizational Documents (i) the Exeter Board of Trustees shall be comprised of a minimum of ten (10), and up to fifteen (15), trustees for such period as is necessary to allow all individuals serving on the Exeter Board of Trustees as of the Effective Time (the "Initial Exeter Trustees") to continue to serve through the expiration of their respective Initial Exeter Trustee Commitment (as defined herein), (ii) the initial Exeter Board of Trustees shall be comprised of all such Initial Exeter Trustees, plus one *ex officio* trustee designated by BILH; (iii) the initial term for each such Initial Exeter Trustee following the Effective Time shall be no less than the remainder of such trustee's remaining term as of the Effective Time, and (iv) subject in each case to the individual maximum term limits set forth on Exhibit F hereto, each such Initial Exeter Trustee shall be eligible for re-election for at least one (1) three (3)-year renewal term following the completion of his or her initial term (the "Initial Exeter Trustee Commitment Period"). Under the terms of the Amended Exeter Organizational Documents, including commitments therein to (i) membership diversity (including but not limited to racial, gender and socioeconomic diversity) of the Board and (ii) geographic representation from within the Exeter service area. In the event a vacancy occurs during the Initial Exeter Trustee Commitment Period with respect to any such Initial Exeter Trustee, the Exeter Board of Trustees shall have the right to recommend a candidate to fill such vacancy for the balance of the applicable Initial Exeter Trustee Commitment Period, subject to approval by the BILH Board of Trustees, which shall not be unreasonably withheld, conditioned or delayed.

(c) Following the expiration of all applicable Initial Exeter Trustee Commitment Periods, under the Amended Exeter Organizational Documents, the number of trustees comprising the Exeter Board of Trustees shall be within a range consistent with the other BILH First-Tier Entities and trustees serving on the Exeter Board of Trustees shall serve three (3)-year terms, subject to a limit of three (3) consecutive terms. Under the terms of the Amended Exeter Organizational Documents, a governance/nominating committee of the Exeter Board of Trustees initially comprised of Exeter's President and Board Chair and such other individuals as Exeter and BILH mutually agree, shall be responsible for recommending appointments of trustees and officers (other than those serving *ex officio*) to the Exeter Board of Trustees, subject to approval by the BILH Board of Trustees which shall not be unreasonably withheld; *provided* that the Exeter Board of Trustees shall be composed of persons (other than those serving *ex officio*)

who are members of the communities served by Exeter and able to serve as representatives of Exeter to those communities.

(d) Under the terms of the Amended Exeter Organizational Documents and the Amended Exeter Subsidiary Organizational Documents (as applicable), the Exeter Board of Trustees shall have certain rights and authorities regarding the actions set forth on Exhibit G.

(e) Under the terms of the Amended Exeter Subsidiary Organizational Documents for Exeter Hospital, Inc., the individuals serving as officers and trustees of Exeter Hospital, Inc. shall continue to be the same individuals serving as officers and trustees, respectively, of Exeter.

(f) The Exeter Board of Trustees and Exeter Hospital, Inc. Board of Trustees shall retain local standing committees consistent with New Hampshire Law and other BILH First-Tier Entities as set forth in the Amended Exeter Organizational Documents and Amended Exeter Subsidiary Organizational Documents.

(g) Following the Closing Date, BILH shall file with the Secretary of the Commonwealth of Massachusetts an amendment to the BILH Articles of Organization (the "BILH Articles Amendment"), identifying Exeter Hospital, Inc. as a supported organization therein.

## 9.2 Management Structure.

(a) The Parties acknowledge that BILH's operating model includes system services to support core administrative functions across its hospitals and business units, to realize economies of scale while achieving higher service levels, expertise and focus. Such system services include Supply Chain, Finance, Strategic Planning & Business Development, Marketing & Communications, Legal, Compliance, Human Resources, Philanthropy, Quality, Medical Staff Credentialing and Verification, and Information Technology, among other areas. At or after the Closing, on a mutually agreed timetable designed to support a smooth integration and the Affiliation more broadly, the Exeter Entities shall participate in all such BILH system services, either as a user of central services or through the coordination of local services with system services.

(b) Exeter shall maintain a dedicated executive leadership team within the context of the BILH operating model (the "Exeter Executive Leadership Team") and supported by the BILH system services described in **Section 9.2(a)** above to provide infrastructure and support to improve efficiency and effectiveness. The Exeter Executive Leadership Team will have dual reporting relationships to the Exeter President and BILH management functions, as appropriate and consistent with other BILH First-Tier Entities. As of the Effective Time, the Exeter Executive Leadership Team shall continue in the respective roles each held immediately prior to the Closing, subject to existing retention agreements and/or existing severance agreements.

(c) BILH shall honor each of those employment, retention, severance or similar agreements in place with any of the Exeter Executive Leadership Team agreed to in writing by the Parties on or before the Execution Date. BILH will, subject to the preceding sentence, provide members of the Exeter Executive Leadership Team with appropriate advance written notice of any proposed significant changes or elimination of any other compensation or benefit program or

practice applicable to any such members of the Exeter Executive Leadership Team during the twenty-four (24) month period following the Closing Date. Such notice shall be given no less than thirty (30) days in advance, or such longer period as may be required under the terms of such compensation or benefit program.

(d) Consistent with comparable executive roles within the BILH system, (i) the Exeter Executive Leadership Team shall have opportunities to participate in broader BILH system leadership roles, including, without limitation, system-wide strategic planning, supply chain and value analysis, process improvement, operational re-design and transformation, diversity and health equity, community benefit, system capital review, quality and safety forums, and physician leadership and collaboration forums, and (iii) the Exeter President and the Exeter Executive Leadership Team shall have an active role in developing Exeter's strategic plan as well as its operating and capital budgets.

(e) No Exeter employees are anticipated to become employees of BILH upon the Effective Time. However, the Exeter President is anticipated to transition to BILH employment on a reasonable timetable following the Closing, to be consistent with the employment status of presidents of other BILH First Tier Entities. In addition, certain shared services roles may transition to BILH employment over time, in accordance with the timetable and transition described in **Section 9.2(a)** above.

### 9.3 Employee Matters.

(a) BILH commits that substantially all employees of the Exeter Entities who are in good standing as of the Closing Date and who meet customary BILH employment mandatory screening requirements and other human resource diligence, shall be retained (the "Continuing Exeter Employees"), at a minimum, on terms and conditions substantially similar to those in effect immediately prior to the Closing, including base salaries and wages. Such commitment shall extend for at least twenty-four (24) months after the Effective Date, *provided* such employees remain in good standing under BILH standard performance reviews and subject to for cause terminations. Prior to the Closing, the Parties shall work together to determine appropriate solutions for any compliance issues or violations noted during the employment screening and human resources diligence process.

(b) Following the Effective Date, working through the Integration Committee, BILH and Exeter will work together to align and harmonize benefits, consistent with other BILH First-Tier Entities. BILH shall honor each Continuing Exeter Employee's applicable prior service credit under the Exeter employee plans for purposes of eligibility and vesting under employee benefit plans maintained by BILH, with no gaps in coverage, and for purposes of determining the amount of benefits under any severance or vacation plan, program or arrangement of BILH and shall waive any eligibility requirement or pre-existing condition limitation for persons previously covered under any Exeter Plan. BILH shall honor all Continuing Exeter Employees' vacation/paid time off that is accrued as of the Effective Date. In the event that a Continuing Exeter Employee is transitioned to coverage under BILH benefit plans on any date other than January 1, BILH shall provide to each Continuing Exeter Employee credit for any co-payments, co-insurance, and deductibles paid prior to the Continuing Exeter Employee's transition date. Such credit will be applied to the applicable deductible or out-of-pocket requirements of the welfare plans of BILH or

its Affiliates that the Continuing Exeter Employee has been transitioned to for the calendar year in which such transition date occurs. In no event shall credit for any co-payments, co-insurance, and deductibles be carried over or applied beyond the calendar year in which such transition date occurs.

(c) For the avoidance of doubt, except as provided in a written employment agreement between either Party (or its Entities) and an employee or between either Party (or its Entities) and a union for the purposes of collective bargaining, nothing contained in this Agreement shall constitute an employment agreement or a promise or guarantee of continued employment with respect to any current, future or former employee of each Party and its Entities. All employees who are employed “at will” prior to the Closing shall remain employees “at will” after the Closing and nothing herein shall be deemed to alter such employees’ status unless any employees become part of a collective bargaining unit pursuant to the procedures of the National Labor Relations Act.

(d) Notwithstanding anything to the contrary in this Agreement, no provision of this Agreement is intended, or does, constitute the establishment of, or an amendment to, any Exeter Plan or any employee benefit plan of BILH or its Affiliates.

#### 9.4 Data Room.

(a) Promptly after the Execution Date, each Party shall deliver or cause to be delivered to counsel for the other Party (i) one digital copy, in a manner fully readable by such counsel, of all the documents posted to the Party’s electronic data room (the “Data Room”) as of the Execution Date other than Clean Team Evaluation Materials, and (ii) a separate digital copy of the Clean Team Evaluation Materials posted to the Data Room as of the Execution Date, clearly labeled as such, with such transmission described in this clause (ii) to be held by counsel in accordance with the Clean Team Agreement.

(b) Promptly after the Closing Date (and in any event not more than thirty (30) days after the Closing Date), each Party shall deliver or cause to be delivered to counsel for the other Party one digital copy, in a manner fully readable by such counsel, of all the documents posted to the Data Room prior to the Closing Date, inclusive of any Clean Team Evaluation Materials.

### ARTICLE X POST-CLOSING OPERATIONAL COVENANTS

The Parties agree to the following provisions, each of which shall take effect following the Effective Time unless another time period is otherwise stated:

#### 10.1 Information Technology.

(a) Within twenty-four (24) months of the Effective Date, BILH shall install and implement an integrated clinical and financial Epic electronic medical record system across all applicable Exeter programs and sites in accordance with the terms of the IT Plan. The electronic medical record system and associated systems shall include the following capabilities: (i) integrated hospital inpatient and outpatient systems; (ii) ambulatory (*i.e.*, physician offices)

systems, in each case including revenue cycle/patient accounting systems; (iii) population health management systems; and (iv) data warehouse/data analytics systems.

(b) In addition to the electronic medical record system, following the Effective Date, BILH shall transition Exeter to other enterprise resource planning software and systems, including but not limited to Workday, utilized across the BILH system in furtherance of a system-wide information technology strategy.

#### 10.2 Integration Committee.

(a) Exeter and BILH shall create a committee, consisting of appropriate representatives of each Party which, for a period of at least twelve (12) months following the Effective Date, shall coordinate the integration of the Exeter Entities and BILH (the “Integration Committee”). It is the intent of the Parties that the Integration Committee shall continue to exist in its original form and purpose until all such integration activities are substantially complete. The Integration Committee shall serve advisory and coordination functions, and shall strive to act by consensus.

(b) The Integration Committee shall generally be responsible for oversight of integration activities; development of a plan to realize operating efficiencies, as applicable, to be achieved as a result of integration; coordinating and supporting development of the Clinical Services Growth Plan as described in **Section 10.6** of this Agreement; and various other responsibilities. The Clinical Services Growth Plan shall be completed within six (6) months after the Effective Time.

#### 10.3 Operating Commitments.

(a) The Exeter Entities shall have access to all of BILH’s operating and clinical resources, expertise and innovations on a par equal to the access provided to other similarly situated BILH Entities.

(b) BILH shall provide the Exeter Entities with full and complete access to services and resources currently provided across the BILH system, including: (i) comprehensive support and back-office services; (ii) comprehensive physician infrastructure services; (iii) expertise and infrastructure to achieve operational efficiencies, including joint purchasing programs; (iv) programs, services and infrastructure that support the transition and advancement towards population health management and value-based care; (v) quality, compliance and patient safety programs and infrastructure, (vi) medical management policies and programs and post-acute



care management; (vii) technology, data, analytics, best practices, including BILH's Data Connect platform, and performance analytics; and (viii) captive insurance and risk management programs.

(c) BILH and Exeter agree to collaborate jointly on the implementation and extension of any of the resources discussed in this **Section 10.3** to Exeter through the Integration Committee.

(d) The Exeter Entities shall reimburse BILH for the resources discussed in this **Section 10.3** at a rate and in the manner consistent with the basis of assessment for other similarly situated BILH Entities.

#### 10.4 Quality and Safety.

(a) Exeter shall have access to all quality resources data collection, and financial tools and systems that enhance care quality, sustainability, and growth provided by BILH to other BILH First-Tier Entities.

(b) BILH shall share with Exeter BILH's rigorous, scientific evidence-based best practices, standardized care and managed protocols to improve clinical quality.

#### 10.5 Commitment to Maintain Facilities, Services and Programs.

(a) BILH shall continue to operate the Exeter Entities as a health system after the Closing Date and shall continue to operate substantially all existing facilities, services and programs of the Exeter Entities in a manner consistent with each such Exeter Entity's mission and operations that immediately preceded the Closing Date, or as such facilities, services and programs may be changed in response to future demands over time under the oversight and authority of the Exeter Board of Trustees and/or the BILH Board of Trustees. In all events and at all times, the assets of Exeter shall remain dedicated to promoting the health of Exeter's communities.

(b) During the ten (10)-year period following the Effective Date, the Parties shall collaborate in good faith regarding any proposed Material Reduction in Services (as defined herein). For purposes hereof, a "Material Reduction in Services" means a permanent, substantial reduction or elimination, outside the Ordinary Course of Business, of a material clinical service or program as operated by an Exeter Entity as of the Execution Date and immediately prior to the Closing Date. Any proposed Material Reduction in Services during the ten (10)-year period following the Effective Date will be submitted for review and input from Exeter senior management, and subject to the respective approvals of the Exeter Board of Trustees and BILH.

(c) Subject to **Section 6.2(b)** above, the Parties agree that the provisions contained within **Sections 10.5(a)–(b)** shall not prevent authorized BILH and Exeter management from appropriately taking COVID-19 Measures or from responding to the occurrence of a Force Majeure Event.

10.6 Clinical Growth Initiatives. As overseen by the Integration Committee, BILH shall work with Exeter leadership and physicians to develop jointly a plan to expand the breadth and depth of services provided locally in Exeter's service areas, including access to tertiary and quaternary services for the communities served by Exeter (the "Clinical Services Growth Plan").

The key goals of the Clinical Services Growth Plan shall include, at a minimum: primary care, cardiology, vascular surgery, general surgery, gastroenterology, oncology, women's health, orthopedics, pediatrics, behavioral health, urgent care and ambulatory site development, extension of clinical trials and extension of medical education programs. The Clinical Services Growth Plan shall be informed by, and consistent with, Exeter's Community Health Needs Assessment as mandated by New Hampshire and federal law.

10.7 Medical Staff; Physicians.

(a) As a guiding principle, the Parties agree that the implementation of the Affiliation shall be designed to minimize Exeter physician disruption.

(b) The medical staff of Exeter Hospital shall remain constituted in accordance with its medical staff bylaws, and such Exeter Hospital medical staff bylaws shall be consistent with the requirements of applicable Law and the applicable accrediting agencies. The Parties agree that the medical staff members of Exeter Hospital who are in good standing immediately prior to the Closing shall maintain their medical staff privileges, subject to the Exeter Hospital medical staff bylaws then in effect.

(c) For at least three (3) years following the Effective Date, Exeter shall remain the sole corporate member of Core Physicians, LLC with physician representation in clinical governance, unless mutually agreed upon by the Parties. BILH shall plan to support and integrate Core Physicians, LLC within its system over time, through a collaborative approach defined by the Integration Committee and as part of the Clinical Service Growth Plan. Any significant changes in the corporate structure of Core Physicians, LLC during the two (2)-year period following the Effective Date, such as a change in its governing board structure, shall first be reviewed and approved by the Exeter Board of Trustees.

(d) BILH shall support the medical staff development efforts of Exeter Hospital and the employment efforts of Core Physicians, LLC by providing significant recruitment assistance for physicians across key specialties, based upon community need, at levels consistent with those provided to other comparable BILH Entities. For purposes of this **Section 10.7**, following the Execution Date, the Parties will cooperate in good faith to develop a mutually agreed recruitment assistance strategy for Exeter Hospital, Inc. and Core Physicians, LLC (the "Recruitment Plan"), which shall be completed within six (6) months after the Effective Time.

(e) Exeter Hospital, Inc. and Core Physicians, LLC shall participate in (i) the BILH Quality Forum, (ii) development of BILH's system-wide quality goals, and (iii) other

clinical leadership meetings and processes at BILH and the BILH Performance Network in a manner consistent with other BILH First-Tier Entities.

(f) BILH shall make available to physicians employed by Exeter all BILH physician resources, expertise, intellectual capital, entities and associated operational support functions that are available to physicians employed by a BILH Entity.

(g) BILH shall support the maintenance of Exeter's existing employment agreements for physicians and dentists who are employed by Exeter or Core Physicians, LLC and in good standing immediately prior to the Closing in accordance with **Section 9.3** above.

(h) BILH shall continue to support independent physicians on the Exeter Hospital medical staff and shall provide physician programs and services that are substantially comparable to those that are available to the independent physicians at other BILH acute care hospital locations including, but not limited to, interoperable information systems and software under similar economic terms as currently available to physicians serving those BILH acute care hospital locations.

10.8 Existing Exeter Entity Affiliations. BILH shall develop a plan to maintain, enhance and, to the extent applicable, eventually replace the Exeter Entities' legacy commitments, relationships and other clinical affiliations agreed to in writing by the Parties on or before the Execution Date (the "Clinical Affiliates", and the plan so developed, the "Clinical Affiliation Plan"), which Clinical Affiliation Plan shall be designed to minimize disruption to the care the Exeter Entities provide and their community receives in the context of any changes to such clinical affiliations. To the extent certain clinical relationships currently in place with Clinical Affiliates are replaced with programs provided by BILH, the Clinical Affiliation Plan shall be reviewed by the Exeter Board of Trustees to ensure such replacement programs offer services that are on par or more beneficial to the community than those currently offered by the Exeter Entities and their current Clinical Affiliates, and the transition to such replacement programs minimizes disruptions to physicians, employees and patient care. In all cases, BILH shall ensure that the access and quality of services provided to the community by or in collaboration with the Exeter Entities' Clinical Affiliates are maintained, should the terms of any such affiliations be materially altered. The Clinical Affiliation Plan shall be coordinated with the Clinical Contingency Plan described in **Section 6.1(h)**.

10.9 Branding. The Parties recognize the local value and community connection associated with legacy hospital branding but recognize the need to promote "systemness" through an overarching enterprise branding strategy. Prior to the Effective Date, the Parties will develop and adopt a mutually agreeable strategy for co-branding the Exeter Entities as a member of the BILH system. From and after the Effective Date, BILH and the Exeter Entities shall cooperate to build such BILH - Exeter co-branding across the communities served by the Exeter Entities. The Exeter Entities shall use the BILH brand in accordance with BILH's graphic standards, guidelines and policies and protocols and advertising, marketing and promotional policies and protocols, all of which shall be provided to Exeter. BILH shall promote Exeter Hospital, Inc., Core Physicians, LLC and Rockingham Visiting Nurse Association and Hospice and identify each of them as member organizations of BILH in the same manner as the other BILH Entities with a similar scope of services.

10.10 Care to Vulnerable Populations. As of the Closing Date, BILH shall adopt policies for the provision of care to vulnerable populations served by the Exeter Entities that are no less generous than the written policies of the Exeter Entities immediately prior to Closing, in conformance with New Hampshire law and to changes in Laws, as applicable. Any changes to such policies must comply with applicable Law. Should the Exeter Entities' current policies governing the provision of care to vulnerable populations be less generous than those provided by BILH, BILH shall take actions necessary to ensure such policies in effect at the Exeter Entities are enhanced to a level commensurate with those utilized by BILH as of the Closing Date.

10.11 Community Programs and Initiatives. BILH shall maintain all community health and charitable initiatives provided by the Exeter Entities, in accordance with this **Section 10.11**, consistent with the Exeter Entities' historical clinical and financial support, *provided* that if a third party withdraws from or terminates participation in any such initiative, any obligation of the Parties to such third party shall cease. On and after the Effective Time, the Exeter Board of Trustees and Exeter Executive Leadership Team shall be responsible for identifying needs, developing plans and determining the use of up to Three Million Dollars (\$3,000,000.00) per year (as determined by the Exeter Board of Trustees), subject to an annual inflation-based escalator not to exceed the *lesser* of (i) the annual increase in the Inpatient Prospective Payment System market basket as published by CMS and covering the same period and (ii) three percent (3%) (the "Local Community Benefit Allocation") to be specifically used in support of community benefit programs and initiatives for purposes of advancing the Exeter Entities' charitable mission within the communities they serve. Each year, in accordance with BILH practice for similarly situated BILH practice for similarly situated First Tier Entities, the Exeter Board of Trustees and Exeter Executive Leadership Team shall determine and approve the Local Community Benefit Allocation, based on community needs and in coordination with broader BILH system activities related to community programs and initiatives. The annual Local Community Benefit Allocation for any given year shall be equal to Three Million Dollars (\$3,000,000.00), as adjusted by applying all annual inflation escalators to date, without regard to whether the entire budget is spent in a given year.

10.12 Philanthropy, Donor Funds and Board-Designated / Unrestricted Charitable Funds.

(a) Philanthropic funds raised in the State of New Hampshire (whether restricted or unrestricted) shall continue to be deployed in a manner consistent with the direction of the respective donors, for the support of the Exeter charitable mission in its service area and shall remain subject to the oversight and control of the Exeter or Exeter Hospital, Inc. Board of Trustees, as applicable. For the avoidance of doubt, any and all funds raised in New Hampshire shall be used within New Hampshire only.

(b) Legal title to Exeter Board-designated and unrestricted funds held by the Exeter Entities shall not change as a result of the Affiliation. The Affiliation Agreement and the amended and restated bylaws of Exeter shall provide that such funds may be spent only to advance the charitable purposes of each applicable Exeter Entity for the benefit of the communities served by Exeter.

(c) The Exeter Board of Trustees and Exeter Executive Leadership Team shall have an active, central consultative role in determining the use of all existing Boards of Trustees-designated and unrestricted funds for the Exeter Entities' charitable mission in New Hampshire.

At all times, the use of such funds shall be determined in coordination with the broader BILH system and in a manner consistent with the restrictions otherwise contained in this Agreement.

## ARTICLE XI TERMINATION

11.1 Termination. This Agreement may be terminated, and the Affiliation may be abandoned:

(a) *Mutual Consent*. At any time prior to the Closing Date, by the mutual consent of the Parties.

(b) Breach of Covenants or Agreements.

(i) Subject to **Section 13.18** below, at any time prior to the Closing, by BILH if Exeter has materially breached or failed to perform any of the covenants or agreements contained herein in any material respect such that the closing conditions set forth in **Section 8.2** would not be satisfied, and such breach or failure to perform (A) is not cured prior to the Outside Date after the giving of written notice to Exeter of such breach specifying the particulars of such breach ("Cure Request"), or (B) is incapable of being cured by Exeter.

(ii) Subject to **Section 13.18** below, at any time prior to the Closing, by Exeter if BILH has materially breached or failed to perform any of the covenants or agreements contained herein in any material respect such that the closing conditions set forth in **Section 8.1** would not be satisfied, and such breach or failure to perform (A) is not cured prior to the Outside Date after the giving of written notice to BILH of a Cure Request, or (B) is incapable of being cured by BILH.

(c) *Delay*. At any time prior to the Closing, upon written notice provided by Exeter or BILH (the Party giving such notice, a "Withdrawing Party") to the other such Party (the "Non-withdrawing Party"), in the event that the Closing has failed to occur on or before the Outside Date (or such later date, if any, as the Parties agree upon in writing) except to the extent that such failure arises out of or results from the breach of this Agreement by the Withdrawing Party seeking to terminate pursuant to this **Section 11.1(c)**, *provided that*, the Non-Withdrawing Party shall have ten (10) Business Days following receipt of a termination notice received under this **Section 11.1(c)** (a "Section 11.1(c) Notice") to elect to continue the Agreement by providing a return written notice to the Withdrawing Party, subject to the following: (i) the Non-Withdrawing Party shall promptly reimburse the Withdrawing Party any HSR Filing Fees and NH AG Expense Reimbursement amounts previously incurred by the Withdrawing Party, and shall be solely responsible for all Regulatory-Related Costs and additional NH AG Expense Reimbursement amounts incurred from and after the date of the Section 11.1(c) Notice; and (ii) except with respect to the obligations of payment as set forth in item (i) hereof, the Parties shall continue to comply with the provisions of **Section 6.1** in all instances, including, without limitation, provisions obligating the Non-Withdrawing Party to work collaboratively to perform actions necessary to obtain approvals for the Affiliation under all applicable Laws, and provisions ensuring the Non-

Withdrawing Party the right to remain apprised of and to participate in all substantive communications with Governmental Authorities, with its own counsel and at its own expense.

(d) *Government Restraint.* At any time prior to the Closing, by either Party if any permanent, non-appealable injunction, Order or other order, decree, or ruling of any court or other Governmental Authority of competent jurisdiction permanently restraining, permanently enjoining or otherwise permanently preventing the Affiliation shall have been issued and is in full force and effect. For the avoidance of doubt, the receipt by either Party of a governmental “close at your own risk,” “notice of intent to sue” or “objection” to the Affiliation, without more, shall not be cause for termination of this Agreement; *provided* that upon receipt of any such governmental “notice of intent to sue,” “close at your own risk,” or “objection” to the affiliation, the Outside Date shall be extended for up to six (6) months, each time by a period of two (2) months, or such other period as shall be mutually agreed by the Parties to allow the Parties to address such notice or objection (if and to the extent required), and if not resolved to the reasonable satisfaction of either Party by such amended Outside Date, either Party may exercise its rights to be a Withdrawing Party under **Section 11.1(c)** above and subject to its terms.

(e) *Material Adverse Effect.* At any time prior to the Closing, upon a Material Adverse Effect for either Party, *provided* that such Material Adverse Effect is unable to be avoided or cured to the other Party’s reasonable satisfaction prior to the Outside Date.

11.2 Effect of Termination and Abandonment. In the event of termination of this Agreement and the abandonment of the Affiliation pursuant to this **Article XI**, no Party shall have any liability or further obligation to any other Parties hereunder except that: (a) **Section 6.1(b)** (Costs and Expenses), **Section 13.1** (Press Releases and Public Announcements), **Section 13.3** (Fees and Expenses), **Section 13.9** (Confidentiality), **Section 13.12** (Remedies; Waiver; Enforcement), **Section 13.14** (Governing Law; Venue; Waiver of Jury Trial), **Section 13.17** (Limitation on Liability), this **Section 11.2** (Effect of Termination and Abandonment), and **Section 12.1** (Survival) shall survive such termination; and (b) no such termination shall relieve any Party from any liability for any breach of its representations, warranties, covenants or other obligations under this Agreement prior to such termination.

## ARTICLE XII SURVIVAL

12.1 Survival. All representations and warranties in this Agreement, including those set forth in **Article VII**, and the Schedules and Exhibits attached hereto (but excluding any agreements attached as exhibits hereto, which shall be governed by the terms set forth therein) shall expire at Closing. All covenants in this Agreement that by their terms are intended to be observed after the Closing shall survive the Closing and be performable in accordance with their terms. Each Party acknowledges that it has had the opportunity to conduct due diligence and investigation with respect to the other Party, and in no event shall a Party have any liability to the other Party with respect to a breach of representation or warranty under this Agreement to the extent that: (i) the Party claiming breach of representation or warranty has actual knowledge of such matter prior to the Closing Date and does not provide written notice thereof to the breaching Party; or (ii) such matter was disclosed on the Party’s Schedules referenced in **Article VII** in a manner such that the event or circumstance giving rise to the alleged breach was reasonably foreseeable. The foregoing

notwithstanding, and by way of clarification, the Parties acknowledge and agree that no Party shall have any liability to the other Party arising out of, due to or by reason of a representation or warranty following Closing.

### ARTICLE XIII GENERAL

13.1 Press Releases and Public Announcements. Except as and to the extent required by Law; (i) neither Party shall share this Agreement or the LOI, or any terms herein and therein, or the existence of this Agreement or the LOI with any third party (other than its respective advisors retained in connection with the Affiliation and other third parties as may be required to obtain consents or approvals required for the Closing) without the other Party's prior written consent; and (ii) neither Party shall, and each Party shall cause their respective representatives not to, directly or indirectly, make any public comment, statement, announcement or communication with respect to, or otherwise to disclose or to permit the disclosure of any of the terms, conditions or other aspects of the Affiliation, including this Agreement and the LOI, without the prior written consent of the other Party. The Parties shall plan, coordinate and determine in advance, by mutual written agreement and consent, the timing and content of any public comments, statements, announcements and communications, including but not limited to any employee, medical staff, or internal communication, press release or other public statement. Following the Closing, the Parties shall issue a mutually agreed-upon press release announcing the transactions contemplated hereunder. In the case of a disclosure required by Law, the disclosing Party shall share a draft of the required disclosure with the other Party in advance, if possible, or if advance notice is not possible, as soon as reasonably practicable thereafter. In the event that the Affiliation is not consummated for any reason, the Parties shall mutually agree on a statement to that effect prior to any such disclosure to the public or to the press.

13.2 Notices. The Parties agree as follows:

(a) All notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered to the party to whom notice is to be given, to the notice addresses set forth below, either (i) by personal delivery (in which case such notice shall be deemed given on the date of delivery); (ii) by next Business Day courier service (*e.g.*, Federal Express, United Parcel Service or other similar service) (in which case such notice shall be deemed given on the Business Day following the date of deposit with the courier service); or (iii) by United States mail, first class, postage prepaid, certified, return receipt requested (in which case such notice shall be deemed given on the third (3rd) Business Day following the date of deposit with the U.S. Postal Service):

**If to BILH:** Beth Israel Lahey Health  
20 University Road, Suite 700  
Cambridge, MA 02138  
Attn: Kevin Tabb

With a copy to:

Beth Israel Lahey Health  
20 University Road, Suite 700

Cambridge, MA 02138  
Attn: General Counsel

AND

Foley & Lardner LLP  
111 Huntington Ave, Suite 2500  
Boston, Massachusetts 02199  
Attn: Adria Warren  
awarren@foley.com

**If to Exeter:** Exeter Health Resources  
5 Alumni Drive  
Exeter, NH 03833  
Attn: President

With a copy to:

Locke Lord LLP  
111 Huntington Avenue  
Boston, MA 02199  
David S. Szabo, Esq.  
David.Szabo@lockelord.com

(b) Any party shall have the right to change its address, the Person to whose attention copies of notices and other communications are to be given to it, and the Person to whom copies of notices and other communications to it are to be given by written notice to all of the other notice recipients in the manner provided in **Section 13.2(a)**.

13.3 Fees and Expenses. Unless the Parties agree otherwise in writing or as expressly set forth in **Section 11.1(c)** above, each Party shall bear all fees and expenses and those of its agents, advisors, attorneys and accountants which it incurs in connection with the Affiliation, whether or not the Closing occurs, including without limitation: (a) the conduct of due diligence; (b) the negotiation of this Agreement; (c) making any filings and declarations with Governmental Authorities, and obtaining clearance and approvals for the Affiliation in accordance with **Section 6.1** hereof; and (d) the Closing of the Affiliation.

13.4 No Third-Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of the Parties hereto and their respective successors in interest, and it is not the intention of the Parties to confer, and this Agreement shall not confer, third-party beneficiary rights upon any other Person.

13.5 Further Assurances. Each of the Parties agrees, at the Closing and thereafter, to sign and deliver such other documents and instruments, and take such other action, as reasonably may be requested by or on behalf of the other Party to implement, evidence and perfect the Affiliation, in each instance with reasonable promptness after such a request is made. Notwithstanding the foregoing, no Party to which or whom such a request is made shall, in satisfying the request, be obligated to assume any liability or undertake any obligation not specifically provided for herein.



13.6 Severability; Invalid Provisions. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, in any jurisdiction, such term or provision shall be ineffective to the extent of such invalidity or unenforceability, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such term or provision in any other jurisdiction.

13.7 Entire Agreement. Except for documents and agreements signed and delivered pursuant to this Agreement or contemplated hereby or thereby, this Agreement contains the entire understanding and agreement of the Parties with respect to the subject matter hereof, supersedes all prior agreements and understandings between the Parties (excepting the Joint Defense, Common Interest and Nondisclosure Agreement and Clean Team Agreement), and may not be amended or modified unless pursuant to a written instrument which refers specifically to this Agreement and is signed by all of the Parties directly affected thereby.

13.8 Assignment. No Party hereto shall assign or otherwise transfer this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder, without the prior written consent of the other Parties hereto. Subject to the foregoing, this Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each of their respective successors and permitted assigns.

13.9 Confidentiality. The Parties' shall abide by the terms of the Joint Defense, Common Interest and Nondisclosure Agreement and Clean Team Agreement with respect to the confidentiality of all information obtained in connection with this Agreement.

13.10 Signed and Delivered. This Agreement shall not be binding on any of the Parties until it is duly signed and delivered by all of the Parties.

13.11 Binding Agreement. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, but neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by either Party hereto without the prior written consent of the other Party.

13.12 Remedies; Waiver; Enforcement. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement shall operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by Law, (i) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given; and (ii) no notice to or demand on one Party shall be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement. The Exeter Board of Trustees shall have exclusive authority to enforce all covenants and obligations of BILH set forth in this Agreement, including the Interim Covenants set forth in **Article VI**, the Post-Closing Covenants in **Article IX**, and the Operational Covenants set forth in **Article X**, in accordance with the Amended Exeter Organizational Documents.

13.13 Headings; Exhibits. Headings and titles of articles, sections, schedules and exhibits herein are included for convenience only and shall not be considered a part of this Agreement when interpreting or enforcing this Agreement. All exhibits and schedules to this Agreement to which reference is made in this Agreement are incorporated in, and shall constitute a part of, this Agreement by reference thereto.

13.14 Governing Law; Venue; Waiver of Jury Trial. This Agreement shall be governed by and construed under and in accordance with the substantive Laws of the State of New Hampshire, without regard to conflicts of laws principles. Venue for any action between the Parties which relates to this Agreement shall be in Rockingham County, New Hampshire. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, THE PARTIES HEREBY WAIVE, AND COVENANT THAT THEY WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING IN WHOLE OR IN PART UNDER OR IN CONNECTION WITH THIS AGREEMENT, AND THAT ANY SUCH ACTION WILL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

13.15 Non-Parties. Except as expressly set forth in this Agreement, all Claims, obligations, or Litigation (whether in contract or in tort, in Law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement) and the transactions contemplated hereby, may be made, only against (and such representations and warranties are those solely of) the Persons that are expressly identified as parties in the preamble to this Agreement (the "Contracting Parties"). No Person who is not a Contracting Party, including any past, present or future director, officer, employee, incorporator, member, partner, manager, equity holder, Affiliate, agent, attorney, representative or assignee of, and any financial advisor, lender or financing source to, any Contracting Party, or any past, present or future director, officer, employee, incorporator, member, partner, manager, equity holder, Affiliate, agent, attorney, representative or assignee of, and any financial advisor, lender or financing source to, any of the foregoing (collectively, the "Nonparty Affiliates"), shall have any liability (whether in contract or in tort, in Law or in equity, or granted by statute) for any Claims, actions, obligations, or liabilities arising under, out of, in connection with, or related in any manner to this Agreement or the transactions contemplated hereby or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance or breach of this Agreement and the transactions contemplated hereby, and, to the maximum extent permitted by Law, each Contracting Party hereby waives and releases all such liabilities, Claims, actions and obligations against any such Nonparty Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, except to the extent otherwise set forth in the Confidentiality Agreement, each Contracting Party disclaims any reliance upon any Nonparty Affiliates with respect to the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement.

13.16 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or e-mail transmission of any signed original counterpart transmission shall be deemed the same as the delivery of an original.

13.17 Limitation on Liability. Neither Party shall be liable to the other Party for consequential, special, exemplary or punitive damages, arising out of any breach of this Agreement, even if the other Party has advised it of the possibility of such damages.

13.18 Remedies.

(a) In the event that (A) either Party has delivered a Cure Request to the other Party under **Section 11.1(b)** above (the Party receiving such Cure Request, the “Curing Party”), and (B) *provided* that the matter specified in the Cure Request is capable of being cured before the Outside Date or if the Outside Date is more than ninety (90) days in the future, within ninety (90) days (or such longer period as otherwise mutually agreed by the Parties) (“Cure Period”) or the Curing Party fails to use commercially reasonable efforts to cure the matter specified in the Cure Request or is otherwise acting in bad faith with respect to the Curing Party’s obligation(s) hereunder in a way that will or is reasonably likely to result in a termination of this Agreement, the Parties agree to an escalating dispute settlement process, as follows. In the first instance, the respective Chief Executive Officers and General Counsel of both Parties (“Cure Committee”) shall meet and seek to address the matter specified in the Cure Request in a mutually satisfactory manner. The Cure Committee will comply with the Antitrust Guidelines in performing such role. If the Cure Committee is unable to agree on a resolution to address the matter specified in the Cure Request within the Cure Period, the dispute settlement process described in **Section 13.18(b)** below will apply.


(b) The process described in this **Section 13.18(b)** shall apply in the event that the Parties fail to agree on a resolution to address the matter specified in a Cure Request under **Section 13.18(a)**. After following the process described in **Section 13.18(a)** the Parties may jointly submit the matter to voluntary confidential mediation with the American Health Lawyers Association (“AHLA”) Alternative Dispute Resolution Service for such period as the parties may mutually agree; *provided*, that if the matter is not resolved by mutual agreement of the Parties within ninety (90) days following the expiration of the last applicable negotiation period under **Section 13.18(a)**, as applicable, then either Party may seek any remedy available in court in accordance with Section 13.14. The proceedings of the mediation may not be entered into evidence before any tribunal, and shall be treated as confidential settlement discussions. The Parties shall share equally in the costs and expenses associated with any mediation hereunder, except that each party shall pay its own attorneys’ fees and costs.

*[Signature page to follow]*

*CONFIDENTIAL*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in counterparts by their duly authorized officers, all as of the day and year first above written.

**BETH ISRAEL LAHEY HEALTH, INC.**

By  \_\_\_\_\_

Kevin Tabb, M.D.  
Its President and Chief Executive Officer

**EXETER HEALTH RESOURCES, INC.**

By \_\_\_\_\_

Kevin Callahan  
Its President and Chief Executive Officer

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in counterparts by their duly authorized officers, all as of the day and year first above written.

**BETH ISRAEL LAHEY HEALTH, INC.**

By \_\_\_\_\_

Kevin Tabb, M.D.  
Its President and Chief Executive Officer

**EXETER HEALTH RESOURCES, INC.**

By  \_\_\_\_\_

Kevin Callahan  
Its President and Chief Executive Officer

## EXHIBIT A

## Exeter Board of Trustees Goals and Objectives

Topic	Objective
Mission and Culture	<p>Ensure Exeter continues as a community focused and mission driven organization with a demonstrated long-term commitment to serve the evolving needs of the Exeter region</p> <p>Ensure cultural alignment with Exeter’s core values continually emphasizing a steadfast commitment to service the community through access to the best possible health care for everyone</p>
Strategy & Long-Term Vision	<p>Enable Exeter to achieve scalable infrastructure and capabilities required for rapid evolution and improved agility aimed at enhancing population health management expertise to ensure the delivery of affordable value-based accountable care</p> <p>Position Exeter to enhance long-term sustainability and preparedness to adapt and respond to industry evolution through consumer-focused innovation and transformational strategies</p>
Clinical	<p>Sustain, optimize and expand breadth and depth of scope of services provided locally in the service area, including (but not limited to) primary care, cardiology, vascular surgery, general surgery, gastroenterology, oncology, women’s health, orthopedics, pediatrics and behavioral health</p> <p>Ensure access to high quality health care by enhancing sustainability of current programmatic offerings, supporting care network growth and regional access to expanded care, and improving virtual care capabilities</p>
New Care Models and Quality	<p>Provide value-based accountable care infrastructure and expertise to enhance clinical effectiveness and reduce costs through population health management and alternative payment models</p> <p>Embrace the evolving quality, convenience and consumerism preferences of patients/consumers by accessing expertise to deploy related strategies in the communities served by Exeter and enhance patient engagement</p>
Information Technology	<p>Provide Exeter with the IT resources and expertise to support the implementation of an integrated, leading, enterprise-wide IT strategy and EMR implementation either by extending its own instance (or build) or by providing a new installation</p> <p>Enhance Exeter’s data and business analytics capabilities required to support successful population health management and value-based care transformation driving improved health outcomes</p>
Physicians and Employees	<p>Strengthen human capital at Exeter by enhancing recruitment and retention of physicians, nurses, other providers and employees</p> <p>Provide an environment where Exeter employees can thrive; offering opportunities for professional development and long-term growth</p> <p>Continue the support of an aligned and engaged physician enterprise (independent and employed) characterized by collaboration across the broader organization</p>

Topic	Objective
Financial Sustainability	<p>Ensure future long-term financial sustainability by accessing economics of scale and efficiencies to better manage the unit cost of delivering health care services and successfully deliver affordable care</p> <p>Enhance access to affordable capital to support future strategic investments, including commitments to the planned inpatient bed recapitalization project, and critical growth initiatives required for organizational evolution.</p> <p>Ensure board designated and unrestricted funds held by Exeter may be spent only to advance the charitable purposes of Exeter for the benefits of the communities served by Exeter.</p>
Branding	<p>Achieve meaningful differentiation characterized by strong brand reputation that enhances and complements Exeter's existing brand</p> <p>Maintain an appropriate level of local branding for a period of time after completion of a transaction</p>
Governance	<p>Allow for appropriate influence over local decisions and strategic direction to the extent possible considering proposed structure and other commitments being contemplated</p> <p>Ensure appropriate governance-management connectivity (both local and parent level) across the combined organization post-transaction.</p> <p>Implement a governance structure that is responsive to local community needs.</p>
Execution Confidence	<p>Ability to successfully execute a partnership strategy, including satisfying all applicable regulatory requirements.</p>