

## AGREEMENT AND MEMORANDUM OF UNDERSTANDING

This **AGREEMENT AND MEMORANDUM OF UNDERSTANDING** (the “**Agreement**”) is entered into as of this 4th day of April , 2023, (the “**Effective Date**”), by and between **Catholic Health System, Inc.** (the “**System**”), and the **Communications Workers of America, AFL-CIO** (the “**Union**”).

### **WITNESSETH:**

WHEREAS, the System owns and operates multiple health care facilities commonly and collectively known as Catholic Health System at various locations in the State of New York (collectively, the “**Property**”);

WHEREAS, for the avoidance of doubt, the System shall include all facilities and/or entities that are parties to and obligated under the CBA (defined hereafter) and Pension Plan (as defined below), including without limitation Kenmore Mercy Hospital, Mercy Hospital of Buffalo, and Sisters of Charity Hospital – St. Joseph Campus;

WHEREAS, the Union is the official representative of approximately 2,384 health care employees (the “**Employees**”), all of whom are employed by the System;

WHEREAS, the System and the Union entered into that certain Collective Bargaining Agreement dated effective from July 1, 2021 through June 30, 2025, together with all amendments, modifications, supplements and extensions to the date hereof (the “**CBA**”);

WHEREAS, pursuant to the terms of the CBA, the System agreed to fund (“Pension Funding”) the Retirement Plan of the Catholic Health System (collectively, the “**Pension Plan**”) in a minimum annual amount of \$34 million per year for the years 2022, 2023, 2024 and 2025. The Pension Plan is currently a “church plan”. Catholic Health also maintains a frozen ERISA pension plan for certain employees of Sisters of Charity Hospital – St Joseph Campus. Hereafter, the System’s Pension Funding obligations under the CBA are referred to herein as the “**Obligations**;”

WHEREAS, as of September 1, 2022, the System funded \$22,666,666.70 of the \$34 million it agreed to fund under the CBA for 2022, and approached the Union to request a deferral of the timing of its funding of its Obligations for the remainder of 2022 and 2023 under the CBA;

WHEREAS, the Union has agreed to a deferral of the contributions of Pension Funding Obligations, subject to the terms set forth in this Agreement; and

NOW, THEREFORE, for consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which hereby acknowledged, and intending to be legally bound hereby, the Union and the System agree as follows:

1. Effective Date. This Agreement is effective as of the date first set forth above and identified as the "Effective Date."

2. Recitals and Definitions. Each of the foregoing recitals are incorporated by reference and made a part of this Agreement. All capitalized terms used herein (including in the introductory paragraph and recitals set forth above) and not otherwise defined shall have the meanings assigned to such terms in the CBA.

3. Representations. The System hereby represents that it was and remains fully and legally authorized to execute, enter into this Agreement and perform its Obligations under the CBA and this Agreement. The System further represents and warrants that its execution, entry into, and performance in accordance with this Agreement does not and will not violate any applicable law or agreement by which the parties are bound or to which the System are subject. The System further acknowledges that each and every representation and warranty of the System set forth in the CBA, as modified herein, are hereby ratified and confirmed by the System and such representations and warranties shall be deemed to have been made and undertaken by the System for the benefit of the employees represented by the Union as of the date of this Agreement, as well at the time they were made.

4. Affirmation of the CBA. In consideration of the Union's agreements hereunder, the System hereby agrees, acknowledges and affirms that the CBA constitutes a valid and legally binding obligations of the System; the CBA is enforceable against the System in accordance with its terms; except as set forth herein, neither this Agreement nor any other documents described hereunder shall be deemed or construed to be a satisfaction, novation or release of the Obligations under the CBA or a waiver by Union of any rights of Union under the CBA or at law or in equity; and the System expressly waives, releases and relinquishes any and all such defenses, setoffs, claims, counterclaims and causes of action as to the Obligations existing as of the date of this Agreement.

5. Ratification and Reaffirmation of the CBA. The System hereby agrees, acknowledges and affirms that the CBA is and remains in full force and effect, and constitutes a valid and legally binding obligation of the System. Furthermore, notwithstanding the deferral of the funding of certain of the Obligations as set forth herein, it is agreed, acknowledged and understood that the Obligations remain obligations of the System under the CBA.

6. No Obligation to Modify. Union is under no obligation to: (a) permit deferral of any Obligations under the CBA, or (b) negotiate with System regarding such modification, and Union's execution of this Agreement creates no such obligation.

7. Modification and Deferral. Subject to the System's compliance with all of the terms, provisions and conditions of this Agreement, the Union agrees that it shall not, during the Deferral Period (as defined below), exercise any rights or remedies against System; provided, however, that such deferral shall in no way: (a) relieve System from its Obligations under the CBA as modified herein, or (b) constitute a waiver of any of Union's rights to exercise any and all available rights and remedies after the Deferral Period; or (c) preclude the Union from taking

any actions that Union may deem appropriate to preserve its rights and remedies under the CBA or at law.

8. Deferral Period. The “**Deferral Period**” will be deemed to have commenced as of 5:00 P.M. (Eastern daylight time) on the Effective Date, and will end, without further notice or demand, on the first to occur of the following (the “**Deferral Termination**”): (a) at 5:00 P.M. (Eastern daylight time) on January 1, 2024; (b) if and upon any material breach of this Agreement by the System; (c) if any representation, covenant or warranty of the System in this Agreement is incorrect or misleading in any material respect on or as of the date upon which it was or is made or becomes incorrect or misleading at any time during this Agreement; (d) if a petition for relief under any chapter of title 11 of the United States Code is filed by the System; (e) by mutual written consent of the Union and the System; and/or (f) upon the appointment of a receiver for any or all of the System’s assets or operations.

9. Funding During the Deferral Period. System agrees that it shall contribute to the Pension Plan the following amounts on the following schedule:

a. The \$45,333,333.30 in Pension Funding Obligations otherwise agreed to be contributed under the CBA from September 1, 2022 through December 31, 2023 (collectively, the “**Deferred Contributions**”) shall be deferred and contributed pursuant to the schedule set forth herein, unless a Deferral Termination occurs prior to January 1, 2024 as a result of any of Sections 8(b) – (f) herein in which case the Deferred Contributions shall be due on the date of such Deferral Termination.

b. Beginning in January, 2024 and continuing monthly thereafter, the System will resume regular monthly Pension Funding contributions in the monthly amount of \$2,833,333.33 as required under the CBA; and

c. If the Deferred Contributions have not already been funded as a result of Section 11(a) herein, beginning in January, 2024 and continuing monthly thereafter for a period of twenty four (24) months, the System shall make additional monthly Pension Funding contributions in the amount of \$1,888,888.89 on account of the Deferred Contributions.

10. Union Discretion to Amend Payment Schedule. If System cannot make the agreed upon monthly contributions as set forth in paragraph 11, based upon the current economic conditions or financial circumstances which are not of System’s doing, then it will immediately notify the Union in writing and the parties agree to meet to negotiate the funding schedule in good faith. Any decision to alter the funding schedule meeting shall be at the Union’s sole and absolute discretion.

11. Agreement to Resolve Employee Wage Issues. In addition to any and all other agreements and obligations provided for in this Agreement, the System and Union hereby agree that they shall meet in good faith within fifteen (15) days of the Effective Date in order to address and resolve the following outstanding issues/items: a) Shift Differential retroactivity; and b) STC wage promotion language (collectively, the “**Wage Items**”). The parties shall resolve and execute written agreements for resolution of the Wage Items (“**Wage Items**”).

**Settlements”)** on or before April 30, 2023. Resolution of the Wage Items to the satisfaction of Union is an express condition of entering into this Agreement.

12. Affirmative Covenants. As a material inducement to the Union to enter into this Agreement, the System acknowledges and agrees during the Deferral Period to timely perform or cause to be performed all of the following:

- a. In conjunction with the execution of this Agreement, the System shall provide sufficient financial documentation as of the Effective Date, including without limitation income statements and balance sheets, supporting and evidencing the System’s solvency status and the financial benefits to be realized by the System as a result of entering into this Agreement;
- b. In addition to and notwithstanding the financial reporting requirements of Section 14(a), System agrees to provide the Union on a quarterly basis with quarterly financial statements, including detailed information related to the financial health of System, including without limitation the System’s Strategic Plan (or, at least as detailed and as often as System presents information to the bond holders);
- c. The System shall provide the Union information related to its Operations Plan as outlined in the collective bargaining agreement in Memorandum of Understanding #2 entitled Merger/Consolidation, which specifically requires that, “The Employer shall, as soon as practicable, but in no event less than sixty (60) days prior to the scheduled action, provide the Oversight Committee with notice and information regarding the Employer’s plans”, to close, merge or consolidate a portion of the business.”;
- d. The System shall cooperate with Union and provide any supplemental financial or operational information reasonably requested by Union during the Deferral Period.

#### **OTHER REPRESENTATIONS, WARRANTIES, AND MISCELLANEOUS**

13. Except for the foregoing, all other terms, conditions and provisions of the CBA shall remain unchanged and in full force and effect.

14. No Assumption by Union. Unless specifically assumed herein, the Union does not assume any obligations owed by the System to any person or entity.

15. Performance Covenants. The System covenants that, during the Deferral Period or any extension thereto, it will cooperate with the Union in the performance of all of the System’ obligations under the CBA and this Agreement and will take any reasonable action necessary to the fulfillment of the System’s financial obligations to the Union.

16. Breach. The following shall be considered a breach under this Agreement:

- a. Any other litigation or legal proceedings, including but not limited to proceedings related to receivership, assignment for the benefit of creditors, or any other insolvency proceeding, initiated by the System, which litigation might materially affect the Union's rights hereunder or the likelihood of the Pension Plan receiving the contributions required hereby.
- b. Failure to timely comply with any term or condition of this Agreement, including without limitation failure to comply with any Affirmative Covenant set forth herein, subject to the notice and grievance procedures set forth in the CBA.
- c. Failure to timely comply with any term or condition of, or the occurrence of an event of breach under this Agreement;
- d. Any representation or warranty contained in this Agreement is or becomes materially false or misleading.

17. No Waiver. System strictly and expressly understand that the Union does not waive, forgive or otherwise relinquish any rights, claims, causes of action, indebtedness, liabilities, or other obligations of any kind, or any rights, powers or remedies which the Union has or may have under any applicable agreements or applicable law. Nothing in this Agreement constitutes a novation with respect to the Obligations agreed to under the CBA, as modified herein.

18. Release of Claims. As a material inducement for the Union to enter into this Agreement, which the parties have determined to be to their respective direct advantage and benefit, the System hereby releases, remises, acquits and forever discharges the Union and its present and former parents, subsidiaries, employees, agents, representatives, consultants, attorneys, fiduciaries, servants, officers, directors, partners, members, participants, predecessors, spouses, heirs, beneficiaries, successors and assigns (the "**Released Parties**") from any and all actions, causes of action, judgments, executions, suits, debts, claims, demands, liabilities, accountings, obligations, damages and expenses of any and every character, whether known, unknown or hereafter discovered, direct or indirect, liquidated, unliquidated or contingent, whether at law or in equity, of whatsoever kind or nature, arising out of, related to, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and including the Effective Date, in any way directly or indirectly arising out of or in any way connected to this Agreement and the Deferred Contributions, (collectively, the "**Released Matters**"). The release of the Released Matters is intended to be a full and final release, and it shall survive, and shall remain in full force and effect, after the Deferral Period or any extension thereto terminates or ends.

19. Financial Accommodations Conditional. The System acknowledges and agrees that any accommodations provided by the Union hereby are conditioned upon and expressly provided in order to preserve and provide for the System's financial health and are only deferrals of certain outstanding and continuing Obligations and effective only so long as the Deferral Period is in effect. In the event of any termination of the Deferral Period, a termination of this

Agreement pursuant to Sections 8(b)-(f) herein, or the filing by or against the System of any proceeding under the Bankruptcy Code, or for the appointment of a receiver or custodian related to the System's assets or operations, or the commencement of any similar proceeding or action under applicable law, it is understood and agreed by the System that the Deferred Contributions, shall be immediately due and owing to the Pension Plan under the CBA. Furthermore, in the event of a bankruptcy filing under Title 11 of the United States Code (the "**Bankruptcy Code**"), it is understood, agreed and acknowledged by System that any accommodations agreed to pursuant to this Agreement, including without limitation the contribution deferrals, shall be deemed null and void and that the Bankruptcy Code shall govern and control the requirements for contributions due under the CBA as of the date of any such bankruptcy filing, unless otherwise agreed to by the Union or determined by an order of the bankruptcy court.

20. Continued Effect. The System agrees that the CBA shall, except as expressly modified herein, remain in full force and effect, shall continue to be binding upon the System, and shall not be released, impaired, diminished, or in any other way modified or amended as a result of the execution and delivery of this Agreement or any documents or instruments ancillary or incident to it, or by the agreements and undertakings of the parties contained herein or therein.

21. Traditional Rule of Construction Not Applicable. This Agreement shall be construed as if drafted by both parties.

22. Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns.

23. Integration. This Agreement and the CBA constitute the entire agreement and understanding among the parties relating to the subject matter hereof and supersede all prior proposals, negotiations, agreements and understandings relating to such subject matter.

24. Severability. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability, without in any manner affecting the validity or enforceability of such provision in any other jurisdiction or the remaining provisions of this Agreement in any jurisdiction.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to choice of law principles in such state (and without affecting any provision regarding the governing law in any other document or agreement heretofore or hereafter executed by the System in favor of the Union).

26. Consent to Jurisdiction. The System hereby agrees that any action in any way related to the interpretation or enforcement of this Agreement and/or the CBA may be filed in the state or federal courts [located in the Western District of New York – unless this is unfriendly territory for such actions.

27. Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when so executed, shall be

deemed an original, but all such counterparts shall constitute one and the same agreement. Any party's signature delivered via facsimile transmission shall be deemed to be an original signature hereto.

28. Survival. All of the respective System's representations, warranties, covenants, agreements and undertakings herein shall survive, and shall remain in full force and effect, after the Deferral Period or any extension thereto terminates or otherwise ends.

29. Notices. All notices must be in writing and may be given by overnight delivery using a reputable carrier to the following addresses:

All notices to Union shall be directed to:

Communication Workers of America, AFL-CIO  
821 Elk Street, Suite B  
Buffalo, NY 14210  
Electronic Mail Address: [dhayes@cwa-union.org](mailto:dhayes@cwa-union.org)  
Attention: Debora M. Hayes

And a copy to:

Bernstein-Burkley, P.C.  
601 Grant Street, 9<sup>th</sup> Floor  
Pittsburgh, PA 15219  
Electronic Mail Address: [kburkley@bernsteinlaw.com](mailto:kburkley@bernsteinlaw.com)  
Attention: Kirk B. Burkley, Esq.

All notices to the System shall be directed to:

Catholic Health System, Inc.  
144 Genesee Street, 6<sup>th</sup> Floor West  
Electronic Mail Address: [lcamara@chsbuffalo.org](mailto:lcamara@chsbuffalo.org)  
Attention: Leonardo Sette-Camara, Esq.

And a copy to:

Phillips Lytle, LLP  
125 Main Street  
Buffalo, NY 14203  
Electronic Mail Address: [wkeefer@phillipslytle.com](mailto:wkeefer@phillipslytle.com)  
Attn: William Keefer, Esq.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Union and System have executed this Agreement and Memorandum of Understanding as of the date and year first above written.

WITNESS:

Renee Bray

SYSTEM:

Catholic Health System, Inc.,

By:

Name:

Title:

Diane M. Petraszewski  
Diane M. Petraszewski  
System Director Labor Relations & HR Legal

WITNESS:

Jeanna

UNION:

Communications Workers of America, AFL-CIO

By:

Name:

Title:

Deborah M. Hayes  
DEBORAH M. HAYES  
AREA DIRECTOR