

HEALTH SERVICES AGREEMENT

between City of Lewisville and Marathon Health, LLC

THIS HEALTH SERVICES AGREEMENT (this "Agreement") is made and entered into to be effective as of October 15, 2018 (the "Effective Date") by and between City of Lewisville ("Client"), with principal offices at 151 W. Church St., Lewisville, TX 75057, and Marathon Health, LLC ("Marathon"), a Delaware limited liability company with principal offices at Champlain Mill, 20 Winooski Falls Way, Suite 400, Winooski, VT 05404. Client and Marathon may each be referred to in this Agreement as a "Party" and, collectively, as the "Parties".

WITNESSETH

WHEREAS, as part of its overall healthcare program, Client desires to furnish to its employees certain preventive, wellness, disease management, health consultation, occupational health and/or primary care services;

WHEREAS, Client desires to retain Marathon to furnish such preventive, wellness, disease management, health consultation, occupational health and/or primary care services; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement together with all exhibits, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Client and Marathon hereby agree as follows:

Article I Definitions

- 1.1 "Care Provider" means a staff member or independent contractor of Marathon who provides care or consultation services directly to Participants.
- 1.2 "Collaborating Physician" means an appropriately licensed physician who has a collaborative relationship with a nurse practitioner or physician's assistant as required under the laws of the state in which such nurse practitioner or physician's assistant is providing services.
- 1.3 "Participant" means an individual, age 6 years or more, eligible to participate in the Marathon Services as determined by the eligibility criteria of Client's health plan or as otherwise determined by Client.

Article II
Services; Relationship Between the Parties

- 2.1 Services. Marathon will provide Client with the services described and set forth in **Schedule A** (the “Marathon Services”). Services that do not clearly fall within the description set forth on **Schedule A** shall be outside the scope of this Agreement, and Client shall instruct Participants to seek outside assistance for such matters with an alternate healthcare provider. Marathon may provide some of the Marathon Services by engaging the services of third party contractors, particularly for professional services.
- 2.2 Implementation Timeline. Marathon and Client mutually agree to modify Marathon’s standard implementation timeline as needed to allow Marathon to commence the Marathon Services on the Commencement Date of the Initial Term of this Agreement.
- 2.3 Independent Contractors. Marathon, and each of the third party contractors delivering services hereunder, is an independent contractor with respect to the services provided under this Agreement and is not the agent or employee of Client. Notwithstanding any authority granted to Client herein, Marathon and/or any Care Provider or Collaborating Physician shall retain the authority to direct or control his, her or its medical decisions, acts or judgments.
- 2.4 Employee Benefit Plans. The programs and services provided under this Agreement are not designed or intended to be provided under any Client employee benefit plan or program. Accordingly, neither Marathon, nor any of the third party contractors it may engage, is a fiduciary, trustee, or sponsor with respect to these programs or services. In the event the programs and services become part of a Client employee benefit plan or program, Marathon, and each of the third party contractors it may engage, shall be considered to be acting only as a consultant to Client with respect to such matters and shall not be considered in a fiduciary, trustee or sponsor relationship in such plan.

Article III
Contract Period

- 3.1 Term. The “Initial Term” of this Agreement shall begin on the Effective Date, and shall continue with the Marathon Services for a period of three (3) years, commencing on January 28, 2019 (the “Commencement Date”), unless terminated earlier as provided for in Article VII, below.
- 3.2 Renewal Terms. This Agreement shall automatically renew for additional terms of one (1) year (each a “Renewal Term” and together, the “Renewal Terms”), unless either Party terminates this Agreement by giving written notice not less than three (3) months prior to the expiration of the then current term. Such Renewal Term(s) shall be subject to the termination provisions set forth in Article VII below. Failure

to provide timely written notice shall act as a Party's intent to automatically renew the Agreement at the end of the then current term. The Parties agree that they shall begin good faith negotiations regarding any material changes to the terms of this Agreement no later than six (6) months prior to the end of the then current term.

Article IV Payment Terms; Pricing

- 4.1 Fees. Marathon will submit invoices to Client for the initial fees as set forth in **Schedule B**. With the exception of reimbursement of reasonable expenses as otherwise provided in this Agreement, such fees shall be the only compensation to Marathon under this Agreement. Payment is due for all undisputed charges within thirty (30) days of receipt of an invoice. A late fee will be charged in accordance with Texas Government Code Chapter 2251 for payments on undisputed charges not received when due.
- 4.2 Failure to Pay. Failure to pay an invoice when due shall constitute a breach of this Agreement and Marathon reserves the right to terminate this Agreement or suspend services upon a breach by Client under this Article that continues more than thirty (30) days after the invoice due date. Marathon reserves the right to refrain from providing services to Client, if full payment is not made when due for undisputed charges, until such time as payment in full has been made. In the event that Marathon continues to provide services during a period of time when Client is in breach, such continuance of services will not operate as a waiver of Marathon's right and ability to utilize any and all remedies available to Marathon under applicable laws.
- 4.3 Tax Obligations. All fees for services purchased or licensed in this Agreement, unless otherwise noted, are exclusive of applicable taxes. Client agrees to pay all applicable sales, use or service taxes imposed by any state or local tax authority on the services or payments provided hereunder (other than taxes calculated on the basis of the net income of Marathon) which Marathon may be required to pay or collect. Any such tax due is in addition to the fees charged by Marathon herein and will be listed separately on invoices. To the extent Marathon has not collected and remitted any applicable tax for Client in reliance upon an erroneous representation of Client as to its tax status, Client's obligation to pay taxes shall include any interest and penalties imposed by any taxing authorities. If a certificate of exemption or similar document or proceeding is necessary in order to exempt the sale from sales or use tax liability, Client shall obtain and produce such certificate, document or proceeding, at its sole expense.

Article V Duties of Marathon

- 5.1 Equipment and Supplies. At its sole cost and expense, Marathon shall provide or arrange for the provision of such equipment, supplies, professional services and such other support services necessary for the performance of its obligations under this agreement. Marathon shall retain ownership of and/or control over the equipment and/or supplies provided under this Agreement.
- 5.2 Qualified Care Providers. Marathon shall employ or engage qualified and appropriately licensed or certified (if applicable) Care Providers to provide the services that Marathon is obligated to provide under this Agreement. It shall be Marathon's responsibility to select, contract with and manage any third party contractors, all in accordance with the terms of this Agreement. Such third party contractors may include an affiliated professional corporation to provide the acute and other health care services, for which it will be paid fair market value by Marathon, and may include other contractors. Marathon shall retain responsibility for any such delegated and/or subcontracted services and shall monitor performance of such services on an ongoing basis to ensure the compliance with all applicable obligations under this Agreement.
- 5.3 Independent Contractor. Marathon shall at all times remain an independent contractor. Nothing contained herein shall be construed to create an agency, joint venture, or joint enterprise relationship between the Parties. Marathon and its personnel and contractors are not Client's personnel or agents, and Marathon assumes full responsibility for their actions. Marathon shall comply with all Laws governing the services being performed under this Agreement. Marathon, at its sole expense, shall obtain any and all licenses and permits required for the services performed by its personnel and Contractors, including but not limited to any and all visas, work permits, etc. required by applicable Law.
- Marathon shall be solely responsible for the payment of compensation of Marathon personnel and contractors performing services hereunder, and Marathon's personnel and contractors are not entitled to the provision of any Client employee benefits. Client shall not be responsible for payment of worker's compensation, disability or other similar benefits, unemployment or other similar insurance or for withholding income or other similar taxes or social security for any Marathon personnel and contractors, but such responsibility shall solely be that of Marathon.
- 5.4 Performance of Client Obligations. Marathon shall not be responsible for any delay or lack of performance of the Marathon Services due to the failure of Client or a Participant to provide information necessary to fulfill its obligations as required under this Agreement.
- 5.5 Compliance with Law. Marathon shall not direct or encourage Client to act or refrain from acting in any way which, to its knowledge, would violate any applicable law or regulation. Marathon shall not act in any way which, to its knowledge, could implicate or involve Client in a violation of any such law or regulation.

- 5.6 Marathon Health Reports. Marathon will provide to Client the reports described in **Schedule A.**

Article VI Duties of Client

- 6.1 Provision of Location. Client shall, at its sole cost and expense, provide or arrange for the provision of such space needed by Marathon for the performance of its obligations under this agreement, including fit-up of the space with basic infrastructure consistent with Marathon's specifications, including but not limited to, utilities, unrestricted internet connectivity, and non-medical furnishings. Client is responsible for routine cleaning of the health center space, including vacuuming, trash removal and bathroom cleaning, if applicable, on a daily basis.
- 6.2 Internet Connections. Client will provide dedicated, unrestricted, business class DSL or business class cable services. Ethernet handoff to be implemented into a Marathon owned and operated firewall/router. Client is responsible for premise wiring to facilitate connectivity from the Marathon firewall to the desktops. Two jacks are required for each employee station. Location of jacks is dependent upon build out of facilities. Minimum requirements include bandwidth requirements of 10 mbps connection (up/down), and 5 static publicly addressable IP addresses.
- 6.3 Telephone and Fax. Client will facilitate and provide all physical wiring needed for telephone connectivity. Wiring must be at least Cat5e terminated at both ends with RJ45 sockets. All wiring shall be terminated in a central location at one end and at each workstation at the other. Marathon will provide telephones and associated services for all of its employees and for the main line to the health center. Client is responsible for providing convenience phones and associated wiring if Client wants its employees to have access to telephones within the health center. Client must also provide service to the health center for 1 analog phone line and associated wiring for the purpose of faxing.
- 6.4 Publicity and Promotion. Client will publicize and provide descriptive information, including those standard marketing materials provided by Marathon as described in **Schedule A**, about the Marathon Services to all of its employees who may seek services at the location or locations agreed upon by the Parties. Client will provide Marathon with copies of other documents and materials prepared independently by Client describing, publicizing, or significantly affecting the Marathon Services prior to the distribution of such materials. Marathon shall review and comment on such materials within a reasonable time after receipt. Client shall use reasonable efforts to seek Marathon's input prior to publicizing and providing such information to its employees, which input shall not be unreasonably delayed. Client expressly permits Marathon to use Client's name in advertisements to recruit Care Providers or other personnel dedicated for the Marathon Services, as the recruitment and implementation processes are reliant on this.

- 6.5 Eligibility Files. Client will provide to Marathon on a weekly basis, or other mutually agreed-upon frequency, a Participant eligibility file, which is necessary to enable Marathon to provide the Marathon Services. The Participant eligibility file will contain the entire population of Participants and will adhere to Marathon's file specifications.
- 6.6 Medical Claims Data. To assist in the identification and treatment of Participants with chronic conditions such as diabetes, asthma, heart disease, pulmonary disease and hypertension, Client agrees to make reasonable effort to provide Marathon, through its carrier, third party administrator, or third party vendor for claims data mining, with access to medical claims data for the Participants enrolled in Client's health plan(s), for the 12 months prior to the initiation of onsite services, and minimally at twelve month intervals thereafter through the term of the contract. Marathon will provide Client with the file format defining the specifications for the data.
- 6.7 Availability of Resources. Client agrees to allow Marathon to utilize any internal resources of Client and to assist Marathon in such utilization, including, but not limited to, training, marketing tools and resources, and technical support necessary to maintain the requirements outlined in Section 6.1, as mutually agreed upon by the Parties, in order to enhance the effectiveness and utilization of the Marathon Services. Client will identify a single primary point of contact for implementation project management and ongoing account management.
- 6.8 Compliance with Law. Client shall not direct or encourage Marathon to act or refrain from acting in any way which, to its knowledge, would violate any applicable law or regulation. Client shall not act in any way which, to its knowledge, could implicate or involve Marathon in a violation of any such law or regulation.

Article VII Events of Default, Remedies and Termination

- 7.1 Events of Default. Any one or more of the following shall constitute an event of default under this Agreement (each to be an "Event of Default"):
- (a) Any failure by Client to pay Marathon in accordance with Article IV of this Agreement;
 - (b) Any material failure by either Party to promptly and fully perform its obligations or comply with the terms of this Agreement, and, provided that such default is not a willful violation of applicable Law or a threat to Participant health and safety, (which failures must be remedied immediately), the defaulting Party shall have sixty (60) days to remedy such default after written notice of such default by the aggrieved Party to the defaulting Party specifying in detail the nature of the default, and provided further that the defaulting Party shall have up to ninety (90) days to cure

such default if it has commenced to cure such breach within thirty (30) days of receipt of such notice and is continuing to diligently pursue a cure of such breach; and

- (c) A Party appoints a custodian, liquidator, trustee or receiver or a material portion of its assets become subject to custodian, liquidator, trustee or receiver; or if a party files a voluntary petition in U.S. bankruptcy court; or a Party is generally not paying its debts as they become due or makes an assignment for the benefit of creditors; or bankruptcy, reorganization, or insolvency proceedings or other proceedings for relief under any bankruptcy or similar Law or Laws for relief of debtors are instituted by or against a Party and are not dismissed within sixty (60) days.

7.2 Remedies.

- (a) Subject to the terms and conditions of this Agreement, upon an Event of Default by Client, Marathon may, at its option, (i) suspend further Services under this Agreement, (ii) pursue any and all remedies that may be available at law or in equity, and/or (iii) terminate this Agreement.
- (b) Subject to the terms and conditions of this Agreement, upon an Event of Default by Marathon, Client may, at its option, (i) suspend further payments to Marathon which are specifically associated with such default, (ii) pursue any and all remedies that may be available at law or in equity, and/or (iii) terminate this Agreement.

7.3 Termination Events.

- (a) This Agreement may be terminated by either Party upon the occurrence of an Event of Default by the other Party.
- (b) This Agreement may be terminated by either Party upon giving the other Party 90 day written notice within 90 days of any annual anniversary of contract Commencement Date.
- (c) Failure to Fund. Marathon agrees that, should the City of Lewisville fail to appropriate sufficient funds for any future fiscal year to support the financial operation of the Employee Health Clinic, the Agreement will be terminated immediately without additional cost or penalty.

7.4 Consequences of Termination.

- (a) Termination under any section of this Article VII shall not cause either Party to waive any rights it may have to exercise any remedies available to it under any other section of this Agreement or under any applicable Law.

- (b) In the event this Agreement is terminated by reason of a Party's default, the other Party shall have no continuing obligations or liabilities under this Agreement except as expressly provided under this Agreement.
- (c) Provided that Client has satisfied all payment obligations under this Agreement, and any disputes regarding payment have been resolved, or, if an unresolved payment dispute exists, Client shall have deposited in an interest-bearing escrow account with a mutually agreed upon financial institution an amount equal to the disputed payment amount, in all cases of termination, Marathon agrees to work with Client to make an orderly transition of the Marathon Services and Client's property pursuant to the terms and conditions of a mutually agreed upon transition plan. Marathon and Client agree to negotiate in good faith the terms and conditions of any such transition plan.
- (d) Marathon shall maintain Participants' health records beyond termination of this Agreement in accordance with applicable laws.

Article VIII Confidentiality of Participant Records

- 8.1 Access to Participant Information. Marathon acknowledges and agrees that in the course of performing its duties under this Agreement, Marathon, its Care Providers and/or their agents may acquire or obtain access to or knowledge of health records or other personal and confidential information regarding Participants.
- 8.2 Safeguard of Information. Marathon, its Care Providers and their agents will safeguard Participants' health records and other personal and confidential information to ensure that the information is not improperly disclosed and to comply with any applicable law, rule or regulation, including, but not limited to, regulations promulgated by the United States Department of Health and Human Services, pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as the same may be amended from time to time (collectively the "HIPAA Regulations"), the Health Information Technology for Economic and Clinical Health (HITECH) Act, and other federal and state regulations governing the confidentiality of health information, including without limitation mental health, substance abuse and HIV-related information. Individual electronic medical record information is the property of Marathon, subject to each Participant's rights to his/her individual medical information.
- 8.3 Granting of Access. Marathon will afford access to Participant's health records or personal and confidential information to other persons only as allowed, or required by law. Marathon shall not grant access to patient records, patient information, and other personal and confidential data to any individual or to Client except as provided in this Section 8.3.

- 8.4 Compliance Assistance. To the extent Marathon utilizes space provided by Client in providing services under this Agreement, the Parties shall discuss how Client can assist Marathon in complying with these requirements, including the physical access to such space.

Article IX Confidentiality of Business Information

- 9.1 Restriction of Use; Confidentiality. Each of the Parties agrees not to use any Confidential Information (as defined below) for any purpose other than to accomplish the intent of this Agreement. No other rights, or licenses to trademarks, inventions, copyrights, or patents are implied or granted under this Agreement. Confidential Information supplied shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Each Party agrees to keep all such Confidential Information confidential and, at a minimum, treat this Confidential Information in the same confidential manner it would treat its own most confidential information, and shall not disclose it to others or use it for any purpose except as required to accomplish the intent of this Agreement.
- 9.2 Confidential Information. For purposes of this provision, the term “Confidential Information” shall mean any business practices, methods of doing business, or written or electronic materials relating to its business and shall also include without limitation any written material of the type that is proprietary, including, without limitation, software programs, technical information, patent applications, patent disclosures, prototypes, samples, business apparatus, forms of reports, know-how, and other materials marked “confidential”, or confidential information disclosed verbally if set forth in a writing which is provided to the recipient within 15 days of verbal disclosure thereof. Confidential Information shall not, however, include information that is governed by the confidentiality provision of Article VIII, or any information which recipient can establish (i) was publicly known and made generally available in the public domain prior to the time of disclosure to recipient; (ii) becomes publicly known and made generally available after disclosure to recipient through no action or inaction of recipient or its affiliates; or (iii) is in the possession of recipient, without confidentiality restrictions, at the time of disclosure as shown by recipient’s files and records immediately prior to the time of disclosure. Nothing in this Agreement shall be deemed to prohibit recipient from disclosing any Confidential Information that is (i) required by law (provided, however, that in the event of such requirement, prior to disclosing any Confidential Information, recipient will notify the disclosing Party of the scope and source of such legal requirements and shall give the disclosing Party the opportunity to challenge the need to disclose and/or limit the scope of disclosed information) or (ii) pursuant to the written consent of the disclosing Party.
- 9.3 Indemnification. Marathon hereby agrees to indemnify and hold harmless Client from any damage, loss, cost or liability (including legal fees and the cost of

enforcing this indemnity) arising out of or resulting from its unauthorized use or disclosure of Confidential Information.

Article X Non-Solicitation

- 10.1 Non-Solicitation. As consideration for the resources dedicated to the development of the Marathon Services and for Marathon entering into this Agreement, Client agrees that it will not, either during the term of this Agreement or for a period of two (2) years after the termination of this Agreement for any reason whatsoever, directly or indirectly, employ or consult in any way, whether in a paid or unpaid capacity, any entity or individual, including but not limited to Care Providers, medical directors, Collaborating Physicians, employees, and independent contractors, furnished by Marathon in performing services under this Agreement, unless Marathon gives prior written approval.

Article XI Indemnification and Insurance

- 11.1 Indemnification. **MARATHON AGREES TO DEFEND, INDEMNIFY AND HOLD CLIENT, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY MARATHON'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY MARATHON, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CLIENT, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF MARATHON AND CLIENT, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CLIENT UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND CLIENT'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO MARATHON'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT**

ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

11.2 Marathon Insurance. Marathon shall maintain and pay for the following insurance coverages during the term of this Agreement and all renewals thereof:

- (a) Medical malpractice liability coverage with limits of \$5 million per claim and \$5 million aggregate.
- (b) General liability coverage with limits of \$5 million per claim and \$5 million aggregate.
- (c) Umbrella/excess liability insurance covering professional and general liability with limits of \$2 million per claim and \$2 million aggregate.
- (d) Technology related errors and omissions liability and cyber-liability coverage with limits of \$5 million per claim and \$5 million aggregate.
- (e) Property and casualty coverage for its materials, equipment, furnishings, supplies, and all owned personal and/or business property and improvements located on Client's premises under the standard "Special Form" coverage to its full replacement cost, without depreciation, adjusted yearly.
- (f) Workers' compensation and other statutory insurances as required.

11.3 Client Insurance. Client shall insure, and pay for the following insurance coverages during the term of this Agreement and all renewals thereof:

- (a) General liability insurance covering Client's business operations on the premises in which the Marathon Services will be performed.
- (b) Property and casualty coverage for all of Client's real and personal property to which Marathon and its employees are granted access or given use, to its full or depreciated value, at Client's option, to include, but not be limited to, insurance on space needed by Marathon for the performance of its obligations under this Agreement and all Client's infrastructure and improvements to such space.
- (c) Other insurances typically maintained within Client's industry.

11.4 Waiver. Notwithstanding any other provisions of this Article XI, to the fullest extent allowable under all policies they hold and under law, Marathon and Client hereby mutual waive (1) all rights of subrogation against one another and their directors, officers, employees, agents and representatives, (2) all rights of indemnification, to the extent claims, causes of action, suits, losses, damages, reasonable attorneys' fees and costs are covered by insurance of the Party that otherwise would be indemnified under the Agreement and, (3) with regard to real or personal property, the waivers under (1) and (2)

of this paragraph apply regardless of whether coverage is for the full replacement cost or a depreciated or lesser value.

Article XII Miscellaneous

- 12.1 Ancillary Agreements. Client agrees to execute or cause to be executed all ancillary agreements appropriate and reasonably necessary to enable the Marathon Services to be performed.
- 12.2 Force Majeure. Neither Party shall be liable for failure or delay in performance due to any cause beyond the reasonable control of such Party (a “Force Majeure Event”); provided that such Party shall have (i) used its best efforts to avoid such Force Majeure Event and to minimize the impact of same on the other Party and (ii) rendered to the other Party prompt written notice thereof when first discovered, fully describing its probable effect and duration. The term “Force Majeure Event” shall include, but not be limited to, acts of God or the public enemy; expropriation or confiscation; war, rebellion, civil disturbances, sabotage, and riots; strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party hereunder; inability to obtain any local, state or federal governmental approval due to actions or omissions by any such governmental authority that were not voluntarily induced or promoted by the affected Party hereunder; and floods or unusually severe weather that could not have been reasonably anticipated, fires, explosions, and earthquakes, and other similar occurrences. Force Majeure Event shall not include economic hardship or changes in market conditions.
- 12.3 Entire Agreement. The Parties acknowledge that this Agreement, including any attachments, schedules and addendum that are attached hereto and incorporated herein by reference, represents the entire agreement and understanding of the Parties with reference to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements, understandings, and any other negotiations and discussions, whether oral or written, of the parties and/or subsidiaries of the parties with respect to the same subject matter hereof. Each Party acknowledges that no other promises, representations or agreements, whether written or verbal, have been made by the other Party, its agents, employees or legal representatives as an inducement for the execution of this Agreement. The Agreement replaces all prior understandings and agreements of the Parties, written or oral, with respect to the subject matter covered herein, with the exception of the Client’s Terms & Conditions. In the event of a conflict between this Agreement and the Client’s Terms & Conditions, this Agreement shall control.
- 12.4 Notices. All notices to be delivered under this Agreement shall be in writing and shall be delivered by hand or deposited in the United States mail, first-class, registered or certified mail, postage prepaid, to the following addresses:

To Client: City of Lewisville
Attn: Donna Barron, City Manager
151 W. Church St.
Lewisville, TX 75057
Tel – (972) 219-3450
Fax – (972) 219-5005

To Marathon: Marathon Health, LLC
Champlain Mill
20 Winooski Falls Way, Suite 400
Winooski, VT 05404
Tel - (802) 857-0400
Fax - (802) 857-0498 Fax
Attn: Jerry Ford, CEO

- 12.5 Severability. If any provision of this Agreement is determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the Parties to enforce such provision in another circumstance. Neither does it affect the rights of the Parties to enforce any other provision of the Agreement at any time.
- 12.6 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas to the extent not preempted by federal law.
- 12.7 Amendment. This Agreement may be amended by Client and Marathon only by a writing duly executed by an appropriate officer of Marathon and Client. This requirement is not intended to preclude the Parties from making decisions regarding day to day operations.
- 12.8 Assignment. This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. The rights and duties of Marathon and Client under this Agreement shall not be assignable by either Party without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.
- 12.9 Third Party Beneficiaries. Nothing contained herein shall be construed to confer any benefit on persons who are not Parties to this Agreement.
- 12.10 Waiver. A failure or delay of either party to this Agreement to enforce at any time any of the provisions of this Agreement, or to exercise any option which is herein provided, or to require at any time performance of any of the provisions hereof, shall in no way be construed to be a waiver of such provision of this Agreement or shall not excuse the other party's performance of such, nor affect any rights at a later time to enforce the provision.

- 12.11 Arbitration. In the event of a dispute which may arise under this Agreement, Client does not agree to arbitration.
- 12.12 Governmental Immunity. Nothing in this Agreement shall be construed as waiving any governmental immunity available to Client under Texas law.
- 12.13 Protection of Resident Workers. Client actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). Marathon shall establish appropriate procedures and controls so no services under the Contract Documents will be performed by any worker who is not legally eligible to perform such services or employment. Client reserves the right to audit Marathon's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under this Agreement. The audit will be at Client's expense.
- 12.14 Immigration Reform and Control Act (8 U.S.C. § 1324a). Client supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. Marathon shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. Marathon shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. Marathon and its Subcontractors shall at all times during the term of the contract with Client comply with the requirements of IRCA and shall notify Client within fifteen (15) working days of receiving notice of a violation of IRCA. Client may terminate a contract with Marathon if the City determines that (a) Marathon or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if Marathon fails to ensure that its subcontractors submit the aforementioned declaration; or (c) Marathon or its subcontractors fail to timely notify Client of an IRCA violation.
- 12.15 ADA Compliance. All goods and services provided to Client must be compliant with the Americans with Disabilities Act ("ADA") and all regulations promulgated pursuant to the ADA. Marathon will be required to certify compliance, if applicable.
- 12.16 Disclosure. Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with Client must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with Client. The

conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of Client no later than the seventh business day after the person or agent begins contract discussions or negotiations with Client or submits to Client an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with Client. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code.

Said person should consult with legal counsel if they have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with Client to comply with the filing requirements of Chapter 176.

12.17 Texas Government Code Chapter 2270. Pursuant to Texas Government Code Chapter 2270, Marathon affirms that execution of this Agreement serves as written verification that Marathon: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement.

12.18 Texas Government Code Chapter 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Marathon affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

12.19 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first above written.

CITY OF LEWISVILLE

MARATHON HEALTH, LLC.

Signed: _____

Signed: _____

Name: Donna Barron

Name: Jerry Ford

Title: City Manager

Title: CEO

Date: _____

Date: _____

**Schedule A
MARATHON SERVICES**

DESCRIPTION OF SERVICES

Ongoing Services: As of the Commencement Date, Marathon shall provide onsite health services as follows for eligible employees, retirees, & dependents.

Implementation Services: During the period beginning on the Effective Date and continuing through the start of the Ongoing Services on the Commencement Date (the “Implementation Period”), Marathon shall provide the Implementation Services detailed in Schedule A1.

The following is included in the annual fees, per Schedule B:

Individuals Eligible to Participate as of the Commencement Date:

Eligible Participants	Number	Comment
Employees	682	
Spouses	214	
Dependents	602	
Retirees	47	

Health Center Staffing:

Staffing*	Number	Comment
Physicians	0.6 FTE	
Nurse Practitioners [Physician Assistants]	1.0 FTE	
Medical assistants	1.5 FTE	
Licensed Clinical Mental Health Counselor	0.5 FTE	

Location and Time of Services:

	Monday – Friday
Hours of Operation	M, W, FR – 8am-4pm T, TH – 11am-7pm

- Notwithstanding the hours of operation described above, the health center shall be closed for eight (8) holidays and for four (4) professional development days per year.
- In the event of an unexpected clinician absence, the health center shall remain open for services to be continued, to the extent possible, by the other regular health center staff member(s). Up to five (5) days of such absences that result in no primary care services being provided shall be allowed per year, per health center.

ONGOING SERVICES INCLUDED IN ANNUAL FEE:

Labor costs, medical & office supplies, medical liability insurance, worker's compensation insurance, general liability insurance and all other insurance policies.

Primary Care	Description
Acute and Episodic Care	<ul style="list-style-type: none"> Assessment and treatment of medical conditions that are episodic in nature and short in duration. Examples include, but are not limited to, upper respiratory infections, rashes, urinary tract infections, and first treatment of minor injuries
Management of Chronic Conditions	<ul style="list-style-type: none"> Management of chronic conditions for individuals who do not have a primary care provider. Examples include, but are not limited to, hypertension, hypothyroidism, allergic rhinitis, hypercholesterolemia and diabetes. For those individuals with an existing primary care provider and/or specialist, and in particular for those individuals who have multiple complicated medical conditions requiring specialty care and/or significant oversight, the Marathon Health clinician will work in collaboration with said provider to provide adjunct care and education to the patient. For those individuals who do not have a primary care provider, Marathon can function as the medical home and provide full primary care, including the management of multiple chronic conditions requiring significant oversight. After hours coverage and in-hospital care not included. The clinician will work in collaboration with specialty care providers if specialty referral is indicated.
Routine annual exams and screenings	<ul style="list-style-type: none"> Annual Physicals – Includes a physical exam. Any required external lab processing and imaging is not included in the annual fees. Annual women's health exams to include pelvic exam and pap smear. Pap smear requires external lab processing not included in the annual fees.
Travel Medicine	<ul style="list-style-type: none"> Consultation with clinician to receive guidance on recommended immunizations, medications, and travel precautions. Vaccines can be administered in-house for most required immunization but are purchased in advance per agreement with Client, and the cost of vaccines is not included in the annual fees.

Supplemental Primary Care Services	Description
Lab Draws	Labs may be drawn for diagnostic and monitoring purposes at the recommendation of the onsite clinician. The cost of external lab processing is a third party charge to Client that is not included in the annual fee.
Immunizations	Administered at no cost with Marathon's cost of vaccine passed through as incurred.
CLIA-waived labs	Processed in-house during the provision of care, as needed (pending review of state regulations). The following tests are included in the annual fee: A1C Hemoglobin, Fecal Occult Blood Test, Glucose, HCG Pregnancy, Lipid Profile, Mono, Strep A, Urinalysis.

Health Maintenance and Disease Prevention	Description
Health Risk Assessment	<ul style="list-style-type: none"> Administered online or in paper version screens General health and well-being Health history including symptoms, conditions and family history Tobacco use, alcohol use and stress levels
Comprehensive Health Review (CHR)	<ul style="list-style-type: none"> For high risk individuals and individuals with chronic disease a CHR Online access to complete the Health History and Risk Assessment (HHRA) 1:1 consultation with the onsite clinician to review assessment results, health history and risk appraisal, set goals and recommend strategies to achieve goals

Lifestyle Risk Reduction	<ul style="list-style-type: none"> For high risk individuals agreeing to follow-up with the Marathon Health Care provider as their personal health coach Work 1:1 with individuals to change behaviors putting them at risk for certain conditions, addressing lifestyle habits such as physical activity, smoking, diet, stress, weight control, cholesterol and blood pressure. Marathon Health Providers incorporate Transtheoretical Model, Model for Improvement and Motivational Interviewing behavioral change methodologies Individualized change management plans Proactive support
--------------------------	---

Chronic Condition Coaching	Description
For individuals with chronic diseases (Diabetes, COPD, asthma, CHF, CAD, HTN, depression, low back pain)	<ul style="list-style-type: none"> Work 1:1 with individuals to empower and educate them to improve their health and quality of life through self-management practices and adherence to a treatment plan that aligns with national clinical guidelines for their disease. Coaching, symptom monitoring, and disease education

Occupational Health Services	Description
Work-related injuries	<ul style="list-style-type: none"> First treatment of minor work related injuries. Examples include, but are not limited to, minor strains, sprains, dermatitis, insect bites

Behavioral Health Services	Description
Individual, couples and family counseling for behavioral health issues	<ul style="list-style-type: none"> Such as stress, depression, anxiety, grief, relationships, eating disorders and substance abuse. If dependents are covered in the contract counseling will be offered to ages 12 and older.

Health Engagement System Technology Platform	Description
Health Engagement System Technology Platform (for up to 110% of the employees and spouses eligible to participate)	<ul style="list-style-type: none"> Personal Health Record with risk profile, wellness score, interactive nutrition and activity trackers, and medical content Online scheduling system and secure messaging Electronic Medical Record Ability to import encounter data from carrier to provide historical patient encounter information Export up to three (3) types of data feeds (encounter, lab, or HRA) in Marathon Health standard format
Health Savings Account processing	<ul style="list-style-type: none"> For patients with a Health Savings Account (HSA) in a High Deductible Health Plan (HDHP), Marathon Health provides the ability to send a claim for non-preventative care visits, at an agreed upon cost, to be applied against the patient's deductible.

Account Management and Advisory Services	Description
One Point of Contact	An assigned Account Manager provides one point of contact for triaging issues that may be handled by Marathon's team of analysts, clinicians, communications resources and others to ensure any issues are identified and addressed quickly.
Clinical Coverage Plan	Marathon Health will establish and provide a coverage plan for clinical staff absences due to illness, vacation or continuing medical education (CME) time off.

Monthly Reviews	Account Manager will hold monthly calls with the client to deliver and discuss the reports described below to ensure that the client has data on health center activity and progress toward goals.
Annual Review	Account Manager will provide face-to-face annual reviews of the health center business, incorporating the Client-specific key performance metrics from the previous year, as well as a strategic plan for the next year.
Ongoing Health Promotions	Account Manager will work together with the Client to manage ongoing communications for the promotion of health center services and operations
Strategic Planning	Account Manager will work to understand and support client's unique business objectives and goals for the health center. The Account Manager will work collaboratively with the Client's broker/consultant, as well as other health related vendors (EAP, DM, etc.) as needed to ensure that employee health resources are fully leveraged.

Management Reporting and Analysis	Description
Monthly client activity and trends report	Including visit volume (visits for acute care, occupational health, risk reduction and chronic condition management, group work and telephonic consults), high risk patients engaged, high risk patients making progress, encounters by CPT code, diagnoses by ICD-9 code, prescriptions written, and overall savings from operations
Annual reports including:	<ul style="list-style-type: none"> Population stratification report identifying percent of the population screened, size and nature of high risk population and size and nature of population with chronic conditions identified through data mining and/or screening. Review of health center operations including health center volumes and patient engagement Examination of outcomes including overall improvement in population health status, patient satisfaction, savings from health center operations and return on investment analysis, results of at-risk pay-for-performance metrics, and plan for continuous quality improvement.

Participant Communications and Promotions	Description
Pre-launch multimedia communication campaign	Including site posters, events, digital communication, and mailings, customized with location-specific information. (Descriptions of clinical services are not modifiable.) See A2 for details on pre-launch communication material.
MyHealth Report	Including email and mailings to homes to promote access to a personalized health report for all participants.
Health Promotion Catalog	Including educational sessions, group programs, health center promotional activities, health fair support, health and fitness challenges, and other programs designed to increase engagement.
Production and Printing	The standard communication package includes all production and printing costs.

SERVICES NOT INCLUDED IN ANNUAL FEE:

- Flu vaccine and related supplies supplied at current rates.
- Pre-packaged pharmaceuticals dispensed onsite supplied at Marathon cost.
- Other prescription medications, vaccines and durable medical equipment supplied at Marathon cost
- Additional Data Services, such as custom interfaces for uploads of prior provider data, or more than 3 ongoing activity reports.
- Mass population biometric screening fees at quoted rates. Actual fee is dependent on number of individuals screened and the number of locations. Individual in-house biometric screenings and all health risk assessments are included in the annual service fee.

- Travel costs for health center staff and health screeners to visit participants at offsite locations (locations other than those regularly operated health centers included at the top of this Schedule A).
- Optional communication services:
 - **Video Production:** Short videos to promote the services, success stories, or address concerns.
 - **Design/Production Non-Storefront Material:** Design/production of material that requires customization to currently available storefront material.
 - **Mailings to homes:** Postage cost for mailing of general health center materials (excluding *MyHealth* Report) to participants' homes, rather than distributing in the workplace.

NOT INCLUDED IN THIS AGREEMENT:

- Non-CLIA waived tests, CLIA waived tests not included above, external lab processing for physicals, annual exams and screenings.
- Internet connectivity and telephone service for Marathon staff.

**Schedule A1
IMPLEMENTATION SERVICES**

Marathon Health shall provide the following standard Implementation Services, which are included in the quoted fees. Additional services provided beyond the scope of the deliverables, such as additional site visit days, will be billed as Additional Services.

Standard Implementation Package	Deliverables (exact media to be determined)
Pre-Kick Off Implementation Meeting	Sales Transition Meeting: Client, Sales VP and Project Manager meet via conference call to initiate steps in the implementation process.
Kick Off Implementation Meeting	Initial Implementation Team meeting to start the implementation process. This conference call will include all members of the implementation team (from both Marathon and Client) to provide the foundation and expectations for the implementation process.
Functional Workgroup Implementation Meeting	Within 3 to 6 weeks, Marathon will provide up to 3 members of the implementation team to be onsite at the Client location for a workgroup session/meeting. Other members of the Marathon Implementation Team will join as needed by conference call.
Recruitment/Onboarding of Clinical Team	Marathon to cover the advertising cost for all staff positions and up to 2 visits to Client site to conduct initial recruitment of clinical team members.
Clinical Coverage Plan	Marathon to establish and provide coverage plan for clinical staff absences.
Clinical Training	Marathon will provide initial implementation training for all health center staff during onboarding and onsite at the health center during the go-live week. This includes travel, lodging, meals and materials for shadowing at other Marathon Health centers, orientation week and go-live week.
Communication Services	Marathon will provide the Pre-Launch Communication Program included in Schedule A.
Information Systems:	
-IT Equipment	Marathon will provide computers for each clinical team staff member, printers, copiers and one kiosk.
-IT Set Up	Marathon to provide an IT staff for set up for up to 2 days at the health center location prior to scheduled go live date.
Project Management	
-Project Manager Client site visits	Marathon will provide up to 3 onsite visits by the Project Manager during the implementation process.
-Weekly Implementation Calls	Marathon will provide weekly implementation calls with the implementation team/Client project manager during implementation process.

**Schedule A2
PRE-LAUNCH COMMUNICATION MATERIAL**

Marathon Health shall provide the following standard pre-launch communication material, which are included in the quoted fees. Additional communication material or changes to the following beyond the standard customization will be billed as Additional Services.

Pre-Launch Deliverables	Description	Customization Available
Audit/ Strategy/ FAQ	Communication audit to understand current practices, target audience, best methods. Strategy document and FAQ/ key message document delivered based on audit results.	
Services Booklet	4 color booklet describing available services.	Company name, center name, logo, photo selection
Executive Announcement copy	Announcement copy to be delivered by the Client.	All custom
Posters	4 color, 11x17" posters, including Coming Soon, Now Open, and Confidentiality	Company name, center name, logo, photo selection
Leadership Toolkit	Presentation and FAQ document explaining business drivers to leadership audience	
Countdown Flyer Sets	Set of 6 flyers, 8.5x11", each counting down from the 6 week mark with messaging to build excitement about healthcare at work.	Company or center logo
Table Tents	Laminated, 4 color, 2 sided, 3x4" table tent cards cueing people to expect the welcome package in the mail.	Company name, center name, logo, photo selection
Welcome Package – Portal Mailer	Mailer with a laminated wallet card with health center details and information about accessing the Portal.	Company name, center name, logo, photo selection, personalized with username and password
Welcome Package – Brochure and Services Roadmap	Interactive brochure that describes services available and roadmap for accessing healthcare.	Company name, center name, logo, photo selection, hours, location, phone number, center-specific FAQ responses

Welcome Package Envelope	9x12" window envelope	Company or center logo
Magnet	4 color, business card size magnet	Company name, center name, logo, location, phone number
Open House Postcard	4x6" jumbo 4 color postcard invitation to open house	Company name, center name, logo, photo selection, hours, location, phone number, open house date and time
Slim Jim	3x8" 4 color rack card, services overview	Company name, center name, logo, photo selection, hours, location, phone number, center-specific FAQ responses
Meet the Staff	4 color, 8.5x11" flyer	Staff photos, bios, company/center name, logo, hours, location, phone number
Open House	Tours, Marathon Health information table, organize staff participation	
Open House Raffle Prize	Gift basket of wellness/health related items--fitness or healthy cooking themes	Standard
Open House Giveaways	Marathon Health branded giveaways such as pens, jump ropes, lip balm	Standard
Wall Hangings (15)	4 color, 24x36" posters (clings or framed) with health and wellness reminders and services overviews	Standard

**Schedule B
FEES AND PAYMENT SCHEDULE**

Service fees:

Fees for the initial year of this agreement are as follows:

Annual Service Fee..... \$465,545

Fees for optional services:

Onsite Pre-Packaged Pharmaceuticals At cost
For drugs paid for directly by the Client. No additional fees are charged for drugs paid for by patients or through health plan claims.

Flu vaccinations At current rates
Includes the acquisition of the vaccine and supplies for administering in the health center by existing staff (excludes the administering through a mass flu clinic).

Additional Services At current rates
Fees for services requested beyond the scope outlined in the schedules above will be billed at Marathon's then current standard rates, and may require authorization via a Statement of Work executed by the Client. Additional service days' onsite are billed at a minimum of eight (8) hours per day for each day requested, and Client shall reimburse Marathon for all out-of-pocket expenses incurred in connection with the services, including travel expenses. Marathon will use reasonable efforts to adhere to Client's travel reimbursement policy, if provided by Client.

Payment schedule:

Service fees are invoiced and payable as follows:

- 1/12 of Annual Service Fees at beginning of each month of service
- Dispensed pharmaceutical charges, billable travel costs, Additional Services, and other unexpected costs incurred as a result of service modifications requested by Client as incurred.

At Risk Fees and Pay for Performance

10% of the Annual Service Fees for the initial three year term of this agreement are "at-risk" to Marathon Health and are subject to achieving the performance metrics outlined in the Marathon Health Pay for Performance Plan summarized in Schedule B1.

**Schedule B1
PAY FOR PERFORMANCE PLAN
Triple Aim**

The Marathon Health Pay for Performance Plan is based on achievement of key metrics covering the three dimensions relating to optimizing healthcare delivery and overall health of a population. The three dimensions are:

- **Improving the Patient Experience**
- **Improving the Health of the Population**
- **Reducing the Per Capita Cost**

The 10% of the annual base service fees for the initial three year term of this agreement that are “at-risk” will be attributed to these three dimensions in the following manner:

	Year 1	Year 2	Year 3
Improving the Patient Experience	2.5%	2.5%	2.5%
Improving the Health of the Population	5.0%	5.0%	5.0%
Reducing the Per Capita Cost	2.5%	2.5%	2.5%
Total	10%	10%	10%

Marathon’s performance, requirements of the Client and fee credits for each of the three dimensions are detailed below. If the Client has not fulfilled all of its requirements for any dimension during a given year, then no fee credit will be due the Client for that dimension for that year.

IMPROVING THE PATIENT EXPERIENCE – PATIENT SATISFACTION

Marathon's Performance

Employees will rate whether they are satisfied with their overall experience with Marathon Health using satisfaction surveys.

Fee Credits

The portion of at-risk fees attributable to Improving the Patient Experience will be credited back to the Client in accordance with the following scale:

% of Employees Satisfied or Very Satisfied	
90+%	0% credited to Client
85+%	50% credited to Client
80+%	75% credited to Client
< 80%	100% credited to Client

IMPROVING THE HEALTH OF THE POPULATION – HEALTH OUTCOMES

Marathon's Performance

Patients with the following risk conditions will achieve health improvements as follows:

		% of Participants with the Condition that Achieve the Results			
	Eligible Participants with the Following Conditions	Will Achieve the Following Results	Minimum target for Year 1	Minimum target for Year 2	Minimum Target for Year 3
1	Systolic BP >= 140	Reduce by 12 mmHg or normal	30.0%	35.0%	40.0%
2	Diastolic BP >= 90	Reduce by 5 mmHg or normal	30.0%	35.0%	40.0%
3	Glucose > 100	Reduce 15% or normal	10.0%	12.5%	15.0%
4	Tot. Cholesterol > 200	Reduce 10% or normal	10.0%	12.5%	15.0%
5	LDL Cholesterol > 160	Reduce 10% or normal	10.0%	12.5%	15.0%
6	HDL Cholesterol M<40, F<50	Increase 10% or normal	10.0%	12.5%	15.0%
7	Triglycerides > 200	Reduce 20% or normal range	10.0%	12.5%	15.0%
8	Overweight / Obesity	Reduce weight 5% or BMI normal	3.0%	4.0%	5.0%
9	Smokers	Quit for at least 90 days	3.0%	4.0%	5.0%

	Participants Under Marathon's Care with the Following conditions	Will Achieve the Following Results	Minimum target for Year 1	Minimum target for Year 2	Minimum Target for Year 3
10	Diabetics	Maintain average Hemoglobin A1C <= 7.5	10.0%	12.5%	15.0%
11	Diabetics	At the standard of care (or not applicable) for 5 out of 6: <ul style="list-style-type: none"> • Pneumococcal at least once • Influenza • Hepatitis B at least once • Self-Glucose Monitoring OR Hemoglobin A1c Result exists at least 2 times per 12 month period • Foot Exam • Eye Exam 	75.0%	75.0%	75.0%
12	Asthmatics	At the standard of care (or not applicable) for 5 out of 7: <ul style="list-style-type: none"> • Influenza • Pneumococcal at least once • Use of inhaled corticosteroid for those with persistent Asthma • Asthma Action Plan • Use of a short acting bronchodilator • Spirometry resulted • Medications appropriate for severity 	75.0%	75.0%	75.0%

The look-back period is 12 months in Year 1 and 18 months in subsequent years.

Fee Credits

The portion of at-risk fees attributable to Improving the Health of the Population will be credited back to the Client in accordance with the following scale:

# of Categories from the Above Table in Which the Minimum Target was Reached	
7-12	0% credited to Client
4-6	50% credited to Client
2-3	75% credited to Client
< 2	100% credited to Client

REDUCING THE PER CAPITA COST – REDUCE PMPM COST TREND

Marathon's Performance

Client's expected PMPM medical claims cost for the eligible population, net of fees paid to Marathon, will be reduced as follows:

	Year 1	Year 2	Year 3
Approximate Gross Reduction	7%	11%	13%
Net Reduction Target	0%	4%	6%

This is computed as follows:

- Client's expected year 1 PMPM medical claims costs for the eligible population, excluding large cost claimants of \$50,000 or above, are agreed upon between Marathon & Client.
- Expected year 2 PMPM costs are computed by increasing expected year 1 costs by 9% for medical inflation. Expected year 3 PMPM costs are computed by increasing expected year 2 costs by 9% for medical inflation.
- Actual PMPM medical claims costs for each year, excluding large cost claimants of \$50,000 or above, are obtained and compared to the expected costs to arrive at the Actual Gross Reduction in PMPM Cost.
- The Actual Gross Reduction in PMPM Cost is decreased by the PMPM fee paid to Marathon to arrive at the Actual Net Reduction in PMPM Cost. The Actual Net Reduction in PMPM Cost is divided by the expected PMPM cost for the year to determine the Actual Net Reduction Percentage.

Fee Credits

The portion of at-risk fees attributable to Reducing the Per Capital Cost will be credited back to the Client in accordance with the following scale:

Variance of Actual Net Reduction Percentage from the Net Reduction Target	
+/-1% (e.g. 5%-7% reduction vs. a 6% target)	0% credited to Client
1%-3% under (e.g. 3%-5% reduction vs. a 6% target)	50% credited to Client
3%-5% under (e.g. 1%-3% reduction vs. a 6% target)	75% credited to Client
5+% under (e.g. 1-% reduction vs. a 6% target)	100% credited to Client

Requirements of Client

For Marathon's fees to be at-risk under this plan, the following requirements of the Client apply:

- Facilitate an annual electronic satisfaction survey of employees within 60 days (+/-) of the end of each contract year.
- A minimum of 40% of the eligible employee population must participate in a separate mass health screening, including biometrics and health risk assessment, within 3 months (+/-) of the Commencement Date, and annually thereafter. Marathon can arrange biometric screening services from its preferred partner to assist Client in meeting this requirement.
- For use of the health center, if the Client requires high co-payments from participants, requires employees to "punch out", locates the health center offsite, or has other significant restrictions on its use, then a minimum of 50% of the eligible population must have at least one acute care or health coaching visit in the clinic during each contract year.
- Provide information on PMPM medical claims cost and large cost claimants of \$50,000 or above for at least the 2 years immediately preceding year 1 of the Agreement.
- Provide the expected PMPM medical claims cost, net of and large cost claimants of \$50,000 or above, for year 1, reflective of the impact of any health plan design changes for that year.

- Provide information on PMPM medical claims cost and large cost claimants of \$50,000 or above within 60 days of the end of each contract year.
- The medical claims data referred to in Section 6.6 must be received as scheduled.
- Client must utilize Marathon Health branded or co-branded material in the pre-launch communication as described in Schedule A.