

HEALTH SERVICES AGREEMENT

between City of Overland Park and Marathon Health, Inc.

THIS HEALTH SERVICES AGREEMENT (this “Agreement”) is made and entered into to be effective as of _____, 2013 (the “Effective Date”) by and between City of Overland Park, Kansas (“Client”), with principal offices at 8500 Santa Fe Road, Overland Park, KS 66212, and Marathon Health, Inc. (“Marathon”), a Delaware Corporation 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, through the operation of an on-site health center, 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 six years or more, eligible to participate in the Marathon Services 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. Subject to the terms and conditions of this Agreement, Marathon may provide certain of the Marathon Services by engaging the services of third party contractors, particularly for professional services, provided Marathon shall adhere to the qualification standards set forth in Section 7.2 below in the selection of individuals to provide 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.** 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 the programs and services provided under this Agreement and shall not be considered in a fiduciary, trustee or sponsor relationship to any Client employee benefit plan or program.

Article III. Client's Reliance on Consultant's Expertise

Marathon agrees and acknowledges that the Client has entered into this Agreement based on Marathon's knowledge, reputation, experience and expertise in designing and operating on-site health centers. Further, the Parties acknowledge that Marathon has represented itself as being capable, experienced and qualified to undertake and perform the services required of it herein. The parties agree and acknowledge that the Marathon is responsible for ensuring that its performance shall result in the design and operation of an on-site health center that meets the needs and expectations of the Client as expressed in this Agreement.

Article IV Quality Assurance

Marathon warrants that all work and service performed pursuant to this Agreement, shall conform to or exceed the recognized professional standards prevalent in the field of on-site health clinics. Further, Marathon warrants that all work and service performed pursuant to this Agreement shall be performed with the professional expertise, skills and knowledge of state of the art procedures and techniques in all relevant subject matters. Marathon accordingly shall be capable of performing the necessary consulting and other service required herein and possess the ready comprehension of the required subject matter and the expertise to provide a reliable Overland Park on-site health clinic.

Article V
Contract Period

5.1 Term. The “Initial Term” of this Agreement shall begin on the Effective Date, and subject to the Parties' renewal of the Agreement at the beginning of each calendar year and subject further to the 18 month limitation set forth in Section 9.3 below, shall continue for a period of three (3) years, commencing on March 5, 2014 (the “Commencement Date”), unless terminated earlier as provided for in Article IX, below.

5.2 Renewal Terms. Subsequent to the Initial Term, this Agreement shall automatically renew for three (3) consecutive 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 IX 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. Unless circumstances dictate otherwise, 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 VI
Payment Terms; Pricing

6.1 Fees. Marathon will submit invoices to Client for the 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. Fees for each year of the Initial Period and for any Renewal Period shall automatically increase by three percent over the previous period, unless otherwise agreed to by the Parties or material changes are otherwise agreed to by the Parties in accordance with Section 5.2. Payment is due for all undisputed charges within thirty days of receipt of an invoice. A one percent (1%) per month late fee will be charged for payments on undisputed charges not received when due.

6.2 Cash Basis and Budget Law. Marathon acknowledges that the City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City’s current budget year. In the event the City does not so budget and appropriate the funds, the parties shall be relieved from all obligations, without penalty, under this Agreement.

6.3 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 that continues more than ninety (90) 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.

6.4 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 VII Duties of Marathon

7.1 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, provided the Parties acknowledge that at such time as Marathon is no longer providing services to the Client, Marathon shall transfer the ownership in such equipment and supplies to the City.

7.2 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 also be the responsibility of Marathon to make certain that all Care Providers engaged by Marathon to provide care in the Client's clinic shall retain at all times all necessary and applicable licenses and certifications. 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, provided Marathon shall engage the Client in the final acceptance process when selecting Care Providers in an effort to engage providers that will be the best fit for Client's employees and work environment. 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, such as those for biometric screenings. 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.

7.3 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 employees 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.

7.4 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.

7.5 Compliance with Law. Marathon shall not direct or encourage Client to act or refrain from acting in any way which, to its knowledge or in the opinion of the Client made known to Marathon, would violate any applicable law or regulation. Marathon shall not act in any way which, to its knowledge or in the opinion of the Client made known to Marathon, could implicate or involve Client in a violation of any such law or regulation. Client will be responsible for operating any Client employee benefit plans or programs in compliance with applicable laws and regulations. Marathon will be responsible for operating the on-site health center, and providing the Services, outlined in this Agreement in compliance with applicable laws and regulations.

7.6 Marathon Health Reports. Marathon will provide to Client the reports described in **Schedule A4**.

Article VIII Duties of Client

8.1 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, telephone service, utilities and unrestricted internet connections, and non-medical furnishings. Other than medical waste that is the responsibility of Marathon, Client is responsible for routine cleaning of the health center space, including vacuuming, trash removal and bathroom cleaning, if applicable, on a daily basis.

8.2 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 5 mbps connection (up/down), and 5 publicly addressable IP addresses. The Parties acknowledge that Marathon computer services will not be connected to City servers or the City's computer network.

8.3 Publicity and Promotion. Client will publicize and provide descriptive information, including those standard marketing materials provided by Marathon as described in **Schedule A3**, 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.

8.4 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.

8.5 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 efforts 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 specifically acknowledges that Client's efforts to provide Marathon with any medical claims data is subject to the Client's discretion and control, including, but not limited to, the file format defining the specifications for the data, the specific chronic conditions for which data is sought, the procedures that Marathon will utilize in contacting Participants, the minimum necessary data to meet the purpose for which Marathon is requesting such data and any requirement that Marathon execute Business Associate Agreements. Any such medical claims data will only be provided to the extent permitted by applicable law, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Moreover, Marathon agrees not to use or disclose medical claims data (or other Participant protected health information), for any purposes other than the Marathon Services specifically identified in this Agreement, or as required by law.

8.6 Availability of Resources. Client agrees to allow Marathon to utilize certain agreed upon 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.

8.7 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. Client will be responsible for operating any Client employee benefit plans or programs in compliance with applicable laws and regulations. Marathon will be responsible for operating the on-site health center, and providing the Services, outlined in this Agreement in compliance with applicable laws and regulations.

Article IX
Events of Default, Remedies and Termination

9.1 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.

9.2 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.

9.3 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 a written agreement signed by an authorized individual of both Parties.

- (c) Subsequent to the first eighteen months of the initial term of this Agreement, the Client reserves the right to terminate this Agreement for the Client's convenience and not for cause, provided the client first informs Marathon of the termination for convenience in writing at least ninety days prior to the termination for convenience.

9.4 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 Client's default, Client shall remain liable for all fees due over the remaining Term of the Agreement.
- (c) In the event this Agreement is terminated by reason of a Party's default, the defaulting Party shall be liable for all direct costs, fees, expenses and damages and/or other amounts, which the other Party may incur or sustain which are directly due to such default. In the event that the other Party claims any additional direct costs, fees, expenses, damages, and/or other amounts, the defaulting Party agrees to provide upon request such additional financial or accounting records as may be reasonably necessary for the other Party to verify such additional direct costs, fees, expenses, damages, and/or other amounts. 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.
- (d) Except as expressly provided below in this Section 7.4(d), notwithstanding anything in this Agreement to the contrary no Party shall be liable to the other Party for incidental or consequential damages resulting from any breach of this Agreement.
- (e) 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.
- (f) Marathon shall maintain Participants' health records beyond termination of this Agreement in accordance with applicable laws, including but not limited to the record retention requirements under HIPAA.
- (g) Marathon shall transfer Participant's electronic health records to any new clinic management organization.

Article X

Confidentiality of Participant Records

10.1 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.

10.2 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 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. The Parties have executed and agreed to the Business Associate Agreement set forth in **Schedule C**.

10.3 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.

10.4 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 XI

Confidentiality of Business Information

11.1 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.

11.2 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 to specifically include the Kansas Open Records Act (KORA) (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, provided Marathon acknowledges that the Client is subject to the KORA and must respond to KORA requests within three days, whether or not Marathon has had an opportunity to challenge the disclosure) or (ii) pursuant to the written consent of the disclosing Party.

11.3 Indemnification. Marathon agrees to indemnify and hold harmless the Client from any damage, loss, cost or liability arising out of or resulting from its unauthorized use or disclosure of Confidential Information.

Article XII Non-Contingency Provisions

Marathon warrants that it has not employed or retained any company or person, other than a bona fide employee working for Marathon, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement.

Article XIII Indemnification and Insurance

13.1 Indemnification.

- (a) Definitions: For purposes of indemnification requirements as set forth throughout the Agreement, the following terms shall have the meanings set forth below:
 - (1) "Marathon" means and includes Marathon, all of its affiliates and subsidiaries, all of the Care Providers and other individuals and entities engaged by Marathon to provide the services Marathon is obligated to provide to Client pursuant to this Agreement, Marathon's sub-vendors, sub-consultants and material men and Marathon's respective officers, directors, servants, agents and employees; and

- (2) “Loss” means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement penalty, fine or otherwise (including attorney’s fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, to also specifically include any claim regarding the medical or other treatment or consultation which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement, whether arising before or after the completion of the performance required hereunder.
- (b) The Indemnity: For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Agreement, Marathon hereby agrees to indemnify, defend and hold harmless the Client, its employees and agents from any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence, gross negligence or other actionable fault of the Marathon. It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the Client or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City’s or any third party’s joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Marathon’s obligation hereunder shall not include amounts attributable to the fault or negligence of the Client. Nothing in this section shall be deemed to impose liability on Marathon to indemnify the Client for loss when the Client’s negligence or other actionable fault is the sole cause of loss.

13.2 Marathon Insurance. Marathon shall maintain, pay for and furnish certificates of insurance to Client for the following insurance coverages during the term of this Agreement and all renewals thereof:

- (a) Professional 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 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) Statutory Workers’ compensation and Employer’s Liability in an amount of no less than \$500,000.

- (g) Employee dishonesty for all employees or contractors of Marathon for the theft of property or securities owned or held by Marathon.

13.3 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 and/or as determined by the City.

13.4 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 mutually 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 Liabilities 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 XIV Miscellaneous

14.1 Compliance with Equal Opportunity Laws, Regulations and Rules. Marathon agrees that:

- (a) Marathon shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin ancestry, or age;
- (b) In all solicitations or advertisements for employees, Marathon shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- (c) If Marathon fails to comply with the manner in which Marathon reports to the Commission in accordance with the provision of K.S.A. 44-1031 and amendments thereto, Marathon shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the Client;
- (d) If Marathon is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Marathon shall be

deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the Client; and

- (e) Marathon shall include the provisions of paragraphs (1) through (4) above in every sub-contract so that such provisions will be binding upon such sub-contractors.
- (f) Marathon shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all federal, state, and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

14.2 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.

14.3 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.

14.4 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.

14.5 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 Overland Park
8500 Santa Fe Road
Overland Park, KS 66212
Tel - (913) 895-6121
Fax – (913) 890-1121
Attn: Michael Garcia, Chief Human Resources Officer

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

14.6 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.

14.7 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas to the extent not preempted by federal law.

14.8 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.

14.9 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 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.

14.10 Third Party Beneficiaries. Nothing contained herein shall be construed to confer any benefit on persons who are not Parties to this Agreement.

14.11 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.

14.12 Disputes. If there is any dispute covered by this Agreement, the disputing party shall give written notice of such dispute to the other party no later than one hundred eighty (180) days after the party knew or should have known that the dispute existed. Within thirty (30) days after notice of the dispute is given, the parties will meet to attempt to resolve the dispute.

14.13 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, Client and Marathon have executed this Agreement on this ____ day of _____, _____.

CITY OF OVERLAND PARK, KANSAS
8500 Santa Fe Drive
Overland Park, Kansas 66212

MARATHON HEALTH, INC.

by _____
Jerry Ford, CEO

Carl Gerlach, Mayor

(SEAL)

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Mike Santos
City Attorney

**Schedule A
MARATHON SERVICES**

DESCRIPTION OF SERVICES

Ongoing Services: As of the Commencement Date, Marathon shall operate an onsite health center at the Myron Scafe Building, including Marathon’s integrated Health Engagement Technology Platform for Participants eligible to participate in the Marathon Services.

All Employees of the Client are eligible for occupational health services provided by Marathon.

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 fixed fees, per Schedule B:

Participants as of the Commencement Date:

Employees	753
Spouses.....	458
Children/Dependents	859
Retirees.....	72
Retiree Spouses	12

Health Center Staffing: Staffing will include 1.5 FTE nurse practitioners, and 1.0 FTE medical assistants. The Marathon Health staffing model also assumes that each mid-level practitioner will have a physician preceptor who provides medical supervision, consultation, chart review, and quality assurance activities.

Location and time of services:

- a. The services provided under this Agreement will be provided at a site to be located at 8500 Antioch Road, Overland Park, KS 66212.
- b. Hours of operation will be 40 hours per week, during Client’s normal business days of operation or as otherwise agreed to by the Parties.
- c. Notwithstanding the hours of operation described above, the health center shall be closed for 8 holidays and for 4 professional development days per year.
- d. 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 equally qualified health center staff member(s). Up to 5 days of such absences that result in no direct care services being provided shall be allowed per year.
- e. In the event of unexpected clinician absence due to staff termination, the health center shall remain open through the use of locum tenens or Marathon Health clinical staff. Up to 5 days of clinic closure shall be accepted due to such transition.

ONGOING SERVICES INCLUDED IN FIXED FEES

Primary care:

- Urgent care (Infections, gastrointestinal symptoms, rashes, common illnesses)
- Routine annual exams and screenings
- Lab draws
- Immunizations
- Allergies
- Pregnancy support & education
- Prescription management

Occupational Health Services:

- Work-related injuries – First treatment
- Orthopedic injury treatment – sprains, strains
- Routine pre-employment physicals
- Drug screening
- Audiometric testing
- Respiratory fit testing
- Pulmonary function testing

Health Maintenance and Prevention:

- *Biometric Screening* (individual in-house follow-up and new hire screenings only; see optional mass screenings below)
 - Finger-stick blood test for lipids (HDL cholesterol, LDL cholesterol and triglycerides) and glucose
 - Blood pressure, height, weight, body mass index and body fat composition.
- *Health Risk Assessment* - Administered online or in paper version screens for:
 - General health and well-being
 - Health history including symptoms, conditions and family history
 - Tobacco use, alcohol use and stress levels
- *Comprehensive Health Review (CHR)* - For high risk individuals and individuals with chronic disease a CHR utilizing:
 - Online access to complete the Problem Knowledge Coupler (PKC) Health History and Risk Assessment (HHRA) – a computerized clinical decision support system
 - 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* - 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

Disease Management – For individuals with chronic diseases (Diabetes, COPD, Asthma, CHF, CAD, HTN, Depression, Low Back Pain):

- 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
- Use of Problem Knowledge Couplers

Integrated Health Engagement Technology Platform -- For up to 110% of the employees and spouses eligible to participate:

- 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

Account Management and Advisory Services

- The Account Management and Advisory Services included in Schedule A2

Participant Communications and Promotions

- The Ongoing Communication Program included in the Communication Services in Schedule A3

Management Reporting and Analysis:

- The Reporting Services included in Schedule A4
- Workforce Productivity Management Solutions
 - Work-related illness and injury, job analysis, OSHA reporting, leave management
 - Safety, industrial hygiene, ergonomics, legal
 - Work and cost analysis reporting

OPTIONAL SERVICES NOT INCLUDED IN FIXED FEES

Mass Biometric Screenings

Cost of drugs and vaccinations

Cost of health center furnishings

ALSO INCLUDED IN THE ONGOING SERVICES:

- Labor costs, medical & office supplies, medical liability insurance, worker's compensation insurance, general liability insurance and all other insurance policies.
- One annual onsite stewardship meeting with Marathon's account manager.
- Data Services - Up to 3 ongoing activity reports (data extractions in standard format) of encounter, lab or HRA data.

NOT INCLUDED IN THE ONGOING SERVICES:

- Non CLIA waived tests, external lab processing related to physicals, annual exams and screenings
- Travel costs for health center staff and health screeners to visit participants at offsite locations.
- Internet connectivity and telephone service for Marathon staff.
- Additional Account Management and Advisory Services, Communications Services or Reporting Services not included in the fixed fees, per Schedules A2, A3 and A4.
- Additional Data Services, such as custom interfaces for uploads of prior provider data, or more than 3 ongoing activity reports.

**Schedule A1
IMPLEMENTATION SERVICES**

Marathon shall provide the following standard Implementation Services, which are included in the fixed 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 A3
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.
Health Center Set Up	
-Decor	Marathon will provide site posters, accent décor throughout health center, and internal signage.
-Medical Furniture	Marathon will provide exam table(s) for 3 exam rooms, phlebotomy chair and medical stool(s).
-Supplies & Maintenance	Marathon will provide office and medical supplies (excluding prescribed medications and vaccinations). Marathon will also provide medical waste management.

Schedule A2
ACCOUNT MANAGEMENT AND ADVISORY SERVICES

ACCOUNT MANAGEMENT AND ADVISORY SERVICES INCLUDED IN FIXED FEES

Account Management and Advisory Services	Deliverables
Account Manager Introduction During Implementation	The Account Manager will be integrated as part of the team early on in the process, allowing him/her to assimilate with the core team on the Client side.
One Point of Contact	The Account Manager provides one point of contact for triaging issues that may be handled by our team of analysts, clinicians, communications resources and others to ensure any issues are identified and addressed quickly.
Monthly Reviews	In order to ensure that the client has the resources and information to inform senior management of progress and return on investment of the health center, the account manager will provide the monthly reports described in Schedule A4 to be reviewed on a formal monthly call.
Annual Review	At a minimum, the Account Manager will provide a face-to-face annual review of the health center business, incorporating the Client-specifics key performance metrics from the previous year, as well as a strategic plan for the next year.
Ongoing Health Promotions	The Account Manager will work together with each Client to ensure that ongoing communications are managed proactively in order to provide timely and appropriate communications and health promotions, and, in collaboration with the Client's wellness initiatives, take advantage of other educational opportunities to provide a seamless, synergistic approach to messaging. The promotional outreach may occur in the form of lunch and learns, mailings, posters, etc., as appropriate for the specific initiative.
Strategic Planning	Working with each Client's unique business needs, the Account Manager will work together with senior management to ensure that the goals of the health center, and the annual cycles (whether it be surveys, annual report-outs, etc.) are aligned with the client's strategic goals and objectives. The Account Manager will work collaboratively with the Client's broker/consultant, as well as other health related vendors (EAP, DM, etc.) to ensure that existing resources are being leveraged.
Clinical Coverage Plan	Marathon will establish and provide a coverage plan for clinical staff absences due to illness, vacation or continuing medical education (CME) time off.
Clinical Training	Marathon will provide on-going training for all health center staff. This includes continuing education on motivational interviewing and mindfulness, CME, training on new features within the electronic medical record, updates from the Marathon Health clinical advisory board and guidelines for disease management from sources such as the CDC.

Schedule A3 COMMUNICATION SERVICES

COMMUNICATION SERVICES INCLUDED IN FIXED FEES

Implementation Communication Program (see Pre-Launch Deliverables in table below)

- During the Implementation period, Marathon shall provide the following standard implementation package:
 - Design, production, and printing of material described below. This material is produced from templated files that will be customized with location specific information as identified for each item and specified below. Descriptions of clinical services are not modifiable.

Ongoing Communication Program (see Post-Launch Deliverables in table below)

- After the Commencement date, Marathon shall provide the following Ongoing Communication Program as part of the Marathon Services:
 - Health Promotions Catalog: Health promotion programs, both group and individual, including program materials (presentations, educational handouts, email promotions) as well as communication materials such as posters, postcards and website awareness.

The standard communication package includes all production and printing costs.

ADDITIONAL COMMUNICATION SERVICES NOT INCLUDED IN FIXED FEES

- Any changes to the material in the table below, beyond that which is identified in the column titled “Customization Available,” or additional materials to be produced or services provided beyond the scope of the deliverables, 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 Flyer	4 color, 8.5x11" flyer describing available services.	Company name, center name, logo, photo selection
Executive Announcement copy	Announcement copy to be delivered by the client.	All custom
Posters- Coming Soon	4 color, 24x36" poster	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

Pre-Launch Deliverables	Description	Customization Available
Welcome Package Letter	1 page letter with user name and password to access the portal.	Company name, center name, logo, photo selection, company messaging, personalized w username and password,
Welcome Package Brochure 8p	4 color, 8 page, 8.5x11" brochure describing the services, the specifics about the center (hours, contact information, location) and details about the portal and confidentiality.	Company name, center name, logo, photo selection, hours, location, ph #, 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, photo selection, hours, location, ph #
Confidentiality Posters (Law)	4 color, 24x36' poster-We Keep your Personal Health Information Confidential...It's the Law	Standard
Confidentiality Posters (EMR)	4 color, 24x36" poster--Our secure EMR technology keeps your PHI confidential and safe.	Standard
Open House Postcard	4x6" jumbo 4 color postcard invitation to open house	Company name, center name, logo, photo selection, hours, location, ph #, open house date and time
Slim Jim	3x8" 4 color rack card, services overview	Company name, center name, logo, photo selection, hours, location, ph #, center-specific FAQ responses
Meet the Staff	4 color, 8.5x11" flyer	Staff photos, bios, company/center name, logo, hours, location, ph #
Travel to site-Open House	Help with open house tours, Marathon Health information table, organize staff participation, media representative, or presentations	
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 (14)	4 color, 24x36" posters mounted and laminated with health and wellness reminders and services overviews	Standard

Post-Launch Deliverables	Description	Includes
Annual Promotions Plan	Annual review of population stratification report to create a promotion plan targeting the specific risk factors and conditions most prevalent in your population.	
2013 Health Promotions Calendar	<p>See options below:</p> <p>Education Sessions- 37 topics available</p> <p>Group Programs - 6 to 12 week courses on weight management, tobacco cessation, stress management, and living with chronic conditions.</p> <p>Health Center Promotions- blood pressure checks, Portal Tours, Open House events, Tell-a-Friend programs, and more</p> <p>Health Fair Support - Marathon Health table with educational material and giveaways</p> <p>Weekly Challenges- challenges available, Biggest Loser, Complete Wellness Challenge, Elevator Campaign, and other fun health-related programs.</p>	Toolkits are provided for all programs, including clinically-approved presentation material, promotional flyers, email announcements, handouts, and evaluations forms.

Additional Communication Services Not Included in Fixed Fees	Description	Includes
Focus Groups	Onsite meetings with employees to understand their thoughts about the health center, document perceptions, and utilize feedback in communication planning.	
Video Production	Short videos to promote the services, success stories, or address concerns	
Design/Production Non Storefront Material	Production of material that requires additional customization	
Mailings to homes	Additional postage cost for mailing of materials to participants' homes, rather than distributing in the workplace	

Schedule A4 REPORTING SERVICES

REPORTING SERVICES INCLUDED IN FIXED FEES

Monthly & annual reports on health center activity, population health status and return on investment:

- Monthly client activity and trends report including visit volume (visits for acute care, occupational health, risk reduction and disease 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.
- Monthly occupational health activity report including applicable CPT codes for all services related to work related injuries.
- Annual reports including:
 - Population stratification report identifying percent of the population which screened, size and nature of high risk population and size and nature of population with chronic conditions identified through data mining and/or screening.
 - Year-end report identifying results of health center operations including health center volumes, patient engagement, overall improvement in population health status, customer 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.
- Up to 20 hours of custom reporting per year.

ADDITIONAL REPORTING SERVICES NOT INCLUDED IN FIXED FEES

- Custom reporting beyond the scope above will be billed as Additional Services.

**Schedule B
FEES AND PAYMENT SCHEDULE**

Service fees:

Fixed fees for the initial three year term of this agreement are as follows:

Annual Service Fee*	\$569,400
Implementation Fee (one-time)	\$149,916

Fees for optional services:

Mass Biometric Screenings*\$50-\$60 per participant
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.

Additional Services At standard 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 Customer 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.

* First-year fee only; fee increases by 3% in subsequent years.

Payment schedule:

Service fees are invoiced and payable as follows:

- Implementation Fee at contract signing
- 1/12 of Annual Service Fees at beginning of each month of service
- Mass Biometric Screening fees as incurred.
- 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
MARATHON PAY FOR PERFORMANCE PLAN**

Ten percent (10%) of the Annual Service Fees for the initial three year term of this agreement are “at-risk” to Marathon and are subject to achieving the performance metrics outlined in the following chart:

PERFORMANCE GUARANTEE FACTORS	YEAR 1	YEAR 2	YEAR 3
Participant Satisfaction.	5.0%	5.0%	5.0%
Engagement of High Risk Eligible Employees	5.0%	5.0%	5.0%
Total	10.0%	10.0%	10.0%

Marathon’s performance, requirements of the Client, and fee credits for these factors are detailed below.

If the Client has not fulfilled all of its requirements (the “Pay for Performance Client Requirements”) for any factor during a given year, then no fee credit will be due the client for that factor for that year.

The Performance Guarantees will be reviewed at the end of Year 1 to assure that both the Client and Marathon are comfortable with these Performance Guarantees based on data exchanged between the Client’s third party health insurance administrator, UnitedHealthCare (“UHC”) and Marathon.

PARTICIPANT SATISFACTION

Marathon’s Performance

Participants will rate that they are satisfied or very satisfied with their overall experience with Marathon via a quarterly satisfaction survey administered by Marathon (Likert Scale).

Fee Credits

The portion of at-risk fees attributable to Participant Satisfaction will be credited back to the Client in accordance with the following scale on an annual basis:

PERCENT OF EMPLOYEES SATISFIED OR VERY SATISFIED	CREDIT TO CLIENT
90+%	0% credited to Client
< 90%	100% credited to Client

ENGAGEMENT OF HIGH RISK ELIGIBLE EMPLOYEES

Marathon’s Performance

Marathon will engage High Risk Eligible Employees identified by biometric screening through the City’s Wellness Program or by other means employed by Marathon utilizing claims data for high risk conditions as provided by UHC. For purposes of this factor, “Engagement” or “Engaged” means one health review and one follow-up visit.

ENGAGEMENT OF HIGH RISK ELIGIBLE EMPLOYEES (continued)

Fee Credits - Marathon

The portion of at-risk fees attributable to Engagement of High Risk Eligible Employees will be credited back to the Client on an annual basis in accordance with the following scale:

ENGAGEMENT OF HIGH RISK ELIGIBLE EMPLOYEES*	CREDIT TO CLIENT
70+%	0% credited to Client
≥ 60% but < 70%	25% credited to Client
≥ 50% but < 60%	50% credited to Client
≥ 40% but < 50%	75% credited to Client
< 40%	100% credited to Client

*For purposes of the Performance Guarantee, Eligible Employees means active employees of the Client covered by the Client's group health plan.

PAY FOR PERFORMANCE CLIENT REQUIREMENTS

- 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.
- 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.
- The medical claims data referred to in Section 8.5 must be received as scheduled.
- Client must utilize Marathon Health branded or co-branded material in the pre-launch communication as described in Schedule A3