

RESOLUTION NO. 26611

A RESOLUTION AUTHORIZING THE DIRECTOR OF PERSONNEL TO EXECUTE A HEALTH SERVICES AGREEMENT BETWEEN THE CITY OF CHATTANOOGA AND MARATHON HEALTH, INC. TO PROVIDE CITY EMPLOYEES CERTAIN PREVENTIVE, WELLNESS, AND DISEASE MANAGEMENT, HEALTH CONSULTATION, AND PRIMARY CARE SERVICES FOR A TERM OF THREE (3) YEARS IN THE AMOUNT OF TWO MILLION TWO HUNDRED NINETY-TWO THOUSAND THREE HUNDRED NINETY DOLLARS (\$2,292,390.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Director of Personnel is authorized to execute a Health Services Agreement between the City of Chattanooga and Marathon Health, Inc. to provide City employees certain preventive, wellness, and disease management, health consultation, and primary care services for a term of three (3) years in the amount of \$2,292,390.00.

ADOPTED: March 1, 2011.

KOF/mms/add

HEALTH SERVICES AGREEMENT

Between City of Chattanooga and Marathon Health, Inc.

THIS HEALTH SERVICES AGREEMENT (this "Agreement") is made and entered into to be effective as of February 25, 2011 (the "Effective Date") by and between City of Chattanooga ("Client"), with principal offices at City Hall, 101 East 11th Street, Chattanooga, TN 37402, and Marathon Health, Inc. ("Marathon"), a Delaware Corporation with principal offices at 354 Mountain View Drive, Suite 300, Colchester, VT 05446. 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 and/or primary care services and or occupational health care services.

WHEREAS, Client desires to retain Marathon to furnish such occupational, preventive, wellness, disease management, health consultation and 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 an appropriately licensed 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 an appropriately licensed 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 3 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. Marathon shall instruct Participants to seek outside assistance for such matters with an alternate healthcare provider. Marathon shall 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 May 2, 2011 (the "Commencement Date"), unless terminated earlier as provided for in Article VIII, below.
- 3.2 Renewal Terms. This Agreement shall automatically renew for two (2) 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 VIII 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 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 one percent (1%) per month late fee may be charged for payments on undisputed charges not received when due. The Client will ACH Deposit to Marathon's designated account within ten (10) days of receipt of invoice.
- 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 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.

Article V
Duties of Marathon

- 5.1 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, 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 concerning licensure and payment of professional privilege taxes for appropriately licensed Care Providers where applicable.
- 5.2 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, and payment for professional privilege taxes 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 provided to Client's employees. 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 for payment or benefits shall solely be that of Marathon.

- 5.3 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.
- 5.4 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.
- 5.5 Client and Marathon acknowledge that a related but separate contract exists between Client and Health To You, LLC ("H2U") for the provision of health and wellness programs. In the event that H2U is unable or unwilling to commence or continue said health and wellness programs for the Client, Marathon agrees to, upon Client's request, provide said health and wellness programs. Client agrees to pay for these additional services and any additional staff that may be required at its own expense, based upon a mutually agreeable increase in the Compensation before prior to the commencement of said additional services.

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 AS SET FORTH IN SCHEDULE C, INCLUDING BUT NOT LIMITED TO, TELEPHONE SERVICE, UTILITIES AND UNRESTRICTED INTERNET CONNECTIONS. CLIENT IS RESPONSIBLE FOR ROUTINE CLEANING OF THE CLINIC 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 1.54mbps connection (up/down), and 5 publicly addressable IP addresses.

- 6.3 Publicity and Promotion. Client will publicize and provide descriptive information, including those standard marketing materials provided by Marathon as described in **Schedule A1**, 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.
- 6.4 Client Reports. Client will provide to Marathon on a monthly basis a Participant update and such other standard reports as are mutually agreed upon by Marathon and Client, which are necessary to enable Marathon to provide the Marathon Services. The Participant update will report the following changes regarding Client's Participant status to the extent that Client has been informed of such changes: new hires, terminations, retirements, deaths, number of dependents, and changes in marital and familial status.
- 6.5 Medical Claims Data. To assist in the identification and treatment of employees 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 employees 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 and shall keep such data confidential to the extent required by applicable state or federal law.
- 6.6 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 to Client's employees. Client and Marathon will identify a single primary point of contact for implementation project management and ongoing account management.
- 6.7 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 state or federal 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 Reports

- 7.1 Marathon Health Reports. Marathon will provide to Client the reports described in **Schedule A2.**
- 7.2 Client Reports. Client will provide to Marathon the client reports described in Section 6.4.

Article VIII Events of Default, Remedies and Termination

- 8.1 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.
- 8.2 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.

8.3 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 at any time by a written agreement signed by an authorized individual of both parties. Notwithstanding any of the foregoing provisions, on or after the twelfth (12th) month of the Commencement of Services Date, either Party may send written notice of termination to the other Party providing for termination of this Agreement without cause. Such notice shall provide for an effective date of termination that is on or after the 90th day following such written notice. In such event, Marathon shall, (i) continue to provide Services through the date of termination, and (ii) receive no less than the remainder of the implementation fees (\$74,791) amortized over the three years of the initial term. The right of a Party to provide notice of termination shall be conditioned upon such Party having fully performed its obligations under this Agreement through the date such notice is given. In addition, if Client provides a notice of termination while any outstanding disputes exist regarding payments to be made under this Agreement, or, if an unresolved payment dispute exists, Client shall deposit in an interest-bearing escrow account with a mutually agreed upon financial institution an amount equal to any disputed payment amount.

8.4 Consequences of Termination.

- (a) Termination under any section of this Article VIII 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 state or federal Law.
- (b) In the event this Agreement is terminated by reason of Client's event of default as defined in 8.1, 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, including reasonable attorneys' fees, which the other Party may incur or sustain which are directly due to such default, including but not limited to, reasonable attorneys' fees which may be approved under Tennessee law. 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 in Section 8.3 under this Agreement.

- (d) Except as expressly provided below in this Section 8.4(d), notwithstanding anything in this Agreement to the contrary, (a) no Party shall be liable to the other party for incidental or consequential damages resulting from any breach of this Agreement, and (b) the maximum liability of either Party to the other for any breach or violation of this Agreement or any addendum to this Agreement shall not exceed an amount equal to the costs for replacement services until a comparable contractor is obtained by the Client. Notwithstanding the foregoing, the limitations on liability set forth in this subsection shall not apply to any Event of Default by a Party constituting fraud, gross negligence, or willful misconduct in connection with this Agreement, or claims for indemnification under Article XII 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 and provide confidentiality for such records as required by state and federal law beyond termination of this Agreement in accordance with applicable laws. No access fee will be required by the Client.

Article IX

Confidentiality of Participant Records

- 9.1 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.
- 9.2 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 laws and 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 Participant and all electronic medical records shall be made available to the Participant during the Term of this Agreement and following any termination or expiration thereof subject to each Participant's rights to his/her individual medical information. Marathon Health and all Marathon Health Care Providers and their agents will safeguard Participant Information and will afford access to Participant Information only as allowed, or required by state or federal law.

9.3 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 state or federal 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 9.3.

9.4 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 as designated in Schedule C.

Article X

Confidentiality of Business Information

10.1 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 or any Business Service Agreement established between Client and Marathon.

10.2 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 IX, 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 state or federal 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.

- 10.3 Indemnification. Each Party hereby agrees to indemnify and hold harmless the other Party from any damage, loss, cost or liability (including attorneys' fees and the cost of enforcing this indemnity) arising out of or resulting from its unauthorized use or disclosure of Confidential Information. Each Party acknowledges and agrees that monetary damages would be both incalculable and an insufficient remedy for any breach of this Agreement and that any such breach would cause either Party irreparable harm. Accordingly, each Party also agrees that, in the event of any breach or threatened breach of this Agreement, the disclosing Party, in addition to any other remedies at law or in equity it may have, shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance in any court of competent jurisdiction in the State of Tennessee.

Article XI Non-Solicitation

- 11.1 Non-Solicitation. Marathon grants Client the permission at Client's discretion to solicit 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, upon termination of this Agreement or upon completion of the Contract Period.

Article XII Indemnification and Insurance

- 12.1 Indemnification. Marathon shall defend, indemnify and hold harmless the Client, its subsidiaries and affiliated companies, and their respective directors, officers, employees and agents (the "Indemnified Parties") from and against all claims, causes of action, suits, losses, damages, reasonable attorneys' fees and costs (collectively referred to in this Article XII as "Liabilities") that arise directly from or out of any third party claim asserted against any Indemnified Party alleging negligence by Marathon or its employees or agents in the performance of services and other duties and responsibilities in connection with this Agreement.
- 12.2 Marathon Insurance. Marathon shall maintain and pay 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) Technology related errors and omissions liability coverage with limits of \$5 million per claim and \$5 million aggregate.
- (d) 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.
- (e) Workers' compensation and other statutory insurances as required.

12.3 Client Insurance. Client is a self insured governmental entity under the provisions of the Tennessee Governmental Tort Liability Act at T.C.A. § 29-20-101 et.seq. Client shall be responsible and shall indemnify Marathon for the negligent acts or omissions of its employees in the course and scope of their employment or for any dangerous or defective condition of any public building or improvement to the extent allowed under Tennessee law up to the limits of liability for governmental entities established pursuant to T.C.A. § 29-20-403. No indemnification under this section shall exceed the limits of liability for governmental entities under Tennessee law.

12.4 Waiver. Notwithstanding any other provisions of this Article XII, to the fullest extent allowable under all policies they hold and obligations 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 or governmental entity limits of liability 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, a governmental entity limit of liability or a depreciated or lesser value.

Article XIII Miscellaneous

- 13.1 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.
- 13.2 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.

13.3 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.

13.4 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: Donna Kelley
City of Chattanooga
101 East 11th Street
Chattanooga, TN 37402
Tel - (423) 757-5200
Fax - (423) 757-5456

To Marathon Health: Marathon Health, Inc.
354 Mountain View Drive
Suite 300
Colchester, VT 05446
Tel - (802) 857-0400
Fax - (802) 655-3607 Fax
Attn: Jerry Ford, CEO

13.5 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 in any court of competent jurisdiction in the State of Tennessee.

- 13.6 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee to the extent not preempted by federal law.
- 13.7 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.
- 13.8 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.
- 13.9 Third Party Beneficiaries. Nothing contained herein shall be construed to confer any benefit on persons who are not Parties to this Agreement.
- 13.10 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.
- 13.11 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. If the parties fail to meet within thirty (30) days after the notice of dispute is given or if the parties fail to resolve the dispute within forty-five (45) days after they first meet, either party may initiate arbitration of the dispute as provided hereinafter and in accordance with the American Arbitration Association Arbitration Rules and Mediation Procedures for Commercial Disputes. The parties agree to submit any and all unresolved disputes directly or indirectly arising under this Agreement or any addendum to this Agreement to final and binding arbitration before a neutral arbitrator. The parties agree to waive their right to a trial by jury or court and agree that they will not make a demand, request or motion for a trial by jury or court. The parties agree that it is their intention that arbitration is to be the sole method for resolving any dispute covered by this Agreement (or any addendum to this Agreement), and that there will be no resort to court action except to compel arbitration, to enforce the arbitrator's award. The agreement to arbitrate shall in no way limit any parties' right to seek an injunction or other equitable remedies from any court of competent jurisdiction in the State of Tennessee. In the event that any provision regarding arbitration is held to be in conflict with a mandatory provision of applicable Law, the conflicting provision shall be modified to conform to applicable Law of the State of Tennessee.

13.12 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 _____, 2011.

Client

Marathon Health, Inc.

By: _____
Donna Kelley
Administrator of Personnel

By: _____
Jerry Ford
CEO

Schedule A

I. DESCRIPTION OF SERVICES

SERVICES INCLUDED IN BASE FEE

Primary care:

- Urgent care (Infections, gastrointestinal symptoms, rashes, common illnesses) using appropriate CPT-4 or ICD-9 Codes
- Annual exams
- Lab draws with wide panels
- Immunizations
- Allergies
- Pregnancy support & education
- Acute Care seen in no more than 48 hours
- Acute pediatric care(not wellchild)
- Specialist Referral of Blue Cross Blue Shield Blue Book of best providers
- Acute care seen within 48 hours

Occupational Health Services:

- Work-related injuries – First treatment with follow up and coordination with network, MMI & Return to work verification
- Orthopedic injury treatment – sprains, strains
- Occupational/pre-employment physicals
- Travel medicine
- DOT Physicals
- Drug screening
- Audiometric testing
- Physical therapy
- Return to work
- Respiratory fit testing
- Pulmonary function testing
- Fitness for Duty evaluations
- NFPA 1582 required Fire Fighter Physicals
- Ordering Diagnostic Imaging, and follow up

Biometric Screening (in-clinic screenings only; see optional mass screenings below)

- Blood testing to include a Hematology and Chemistry Panel Blood pressure, height, weight, body mass index and body fat composition.
- Lab draws with wide panels

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 all and follow up with necessary referrals 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, and to measure achievement

- Delivered as follows: Face-to-face to employees at the 274 East 10th Street and 3167 Elmendorf Circle location(s) (Including transferring 274 East 10th Street to City lot on 10th Street.)

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
- Delivered as follows: Face-to-face to employees at the 274 East 10th Street and 3167 Elmendorf Circle location(s)

Disease management – For individuals with chronic diseases (Diabetes, COPD, Asthma, CHF, CAD, HTN): etc.

- 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
- Delivered as follows: Face-to-face to employees at the 274 East 10th Street and 3167 Elmendorf Circle location(s)

Integrated Health Engagement Technology Platform -- For up to 110% of the 2,175 employees and 3,629 spouses and retirees eligible to participate as of the Effective Date:

- Personal Health Record with risk profile, wellness score, interactive nutrition and activity trackers, and Healthwise medical content
- Online scheduling system and secure messaging
- Electronic Medical Record

Management Reporting and Analysis:

- Management “Dashboard” for real-time reporting on the population’s health status & improvement, clinic utilization & return on investment
- Monthly, quarterly & annual reports on clinic activity, population health status and return on investment
- Primary Care, Occupational Health, Disease Management, and Lifestyle Risk Reduction reporting

Participant Communications Materials – See Schedule A1

OPTIONAL SERVICES NOT INCLUDED IN BASE FEE

Mass Biometric Screenings

Onsite Pre-Packaged Pharmaceutical Dispensing

Cost of other drugs and vaccinations

Cost of clinic furnishings

Cost of medical equipment

Annual license for Integrated Health Engagement Technology Platform and training for any Wellness providers Client selects to provide supplemental health and wellness services.

ALSO INCLUDED IN THE FEES OF THIS HEALTH SERVICES AGREEMENT:

- 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
- Implementation fee covers the cost of initial recruitment & training of staff, initial supplies, technology user setup, travel costs for up to three onsite visits by the project manager, signage and décor, initial roll-out communications materials for participants and programming for a participant eligibility file interface.
- Hazardous material disposal for the clinics

NOT INCLUDED IN THE FEES OF THIS HEALTH SERVICES AGREEMENT:

- Non CLIAA waived diagnostic tests, other than follow-up tests listed under biometric screening above
- Travel costs for clinicians and health screeners to visit participants at offsite locations
- Fit-up clinic space for private consultations with employees
- Clinic furnishings
- Medical equipment
- Office equipment including 10 laptops for clinicians, 2 kiosks for employees, 4 printers, and 2 copiers.

- Internet connectivity and telephone service for Marathon Health staff
- Excess and custom communications costs to promote the Marathon Health services, such as customer-only branded or additional materials, consultation travel, excess consultation time and postage costs for mailing communication materials to participants' homes.
- Excess software programming costs, such as for custom interfaces for Marathon Health uploads of prior provider data, or more than 3 activity reports (data extractions in standard format) of encounter, lab or HRA data.
- Annual license for Integrated Health Engagement Technology Platform and training for any Wellness providers Client selects to provide supplemental health and wellness services.

II. LOCATION AND TIME OF SERVICES

- A. The services provided under this Agreement will be provided at sites to be located at 274 East 10th St, Chattanooga, TN 37403 and 3167 Elmendorf Circle, Chattanooga, TN 37406 or a new facility of the City's choice.
- B. Hours of operation at 274 East 10th will be Monday through Friday 7:30am to 4:30pm. Hours of operation at 3167 Elmendorf Circle will be Monday through Friday 8:00am to 5:00pm, Saturday from 8:00am to 12:00pm, and Tuesday and Thursday evenings from 5:00pm to 8:00pm.
- C. Notwithstanding the hours of operation described above, the clinics shall be closed for all Client holidays and for 4 professional development days per year.
- D. In the event of an unexpected clinician absence due to illness, the clinic shall remain open for services to be continued, to the extent possible, by the other regular clinic staff member(s). Up to 5 days of such absences that result in no direct care services being provided shall be allowed per year. Marathon will maintain a list of providers on PRN and attempt to fill all absences.

III. STAFFING

Staffing will include 2 physicians, 3 nurse practitioners, 2 registered nurses or health educators and 3 medical office assistants with appropriate licensure. A Director of Clinic Operations will be designated as the central point of contact on location.

Schedule A1

MARKETING SERVICES TO BE INCLUDED IN BASE FEE

Standard Communication Package	Deliverables (exact media to be determined)
Introductory Announcement Text	Copy provided by Marathon. Client will distribute.
Introductory Manager's Presentation	Marathon to present introductory presentations within first ninety days of the Implementation Date to members of Client management as identified by Client.
Welcome Package	Marathon to provide Welcome Packages as of the Implementation Date to be distributed by Client. Additional Welcome Packages will be prepared for new employees of the Firm on an as-needed basis thereafter.
Welcome Package will include:	
-Letter	Co-branded and personalized from Client On-site Care Provider.
-Portal Log on	Imprinted with user name and password.
-Brochure	Co-branded to reflect incentive structure, service mix, and Client logo and program name.
Biometric Screening Flyer	Marathon will provide Biometric Screening Flyers annually. All such flyers shall be co-branded.
Biometric Screening Announcement Poster	Marathon will provide posters, co-branded for scheduled screening events.
Teachable Moment Handouts	Marathon will provide Teachable Moments brochures on an as needed basis based on Participant population.
MHQ HRA	Marathon will provide MHQ HRA brochures annually.
Clinic Opening Postcard	Marathon will provide Clinic Opening Postcards as of the Implementation Date. The postcards will be co-branded with Client and program name.
Site Posters	Marathon will provide site posters for the Live Date and annually thereafter. The posters will be co-branded.
Associate Presentation / Group meeting	Marathon will provide presentations annually to Participant population at times and dates to be mutually agreed upon by Client and Marathon.
DM Brochure	Marathon will provide DM brochures on an as-needed basis, based on Participant population.
Med Risk Handouts	Marathon will provide Med Risk brochures on an as-needed basis, based on Participant population.

Additional Communication Support Available for Additional Fees	
Contest design and promotion	
Wellness seminar publicity	
Health fair planning and promotion	
Monthly health newsletter	
Table top tent cards	
Web copy and design	
Mailing of materials to participants' homes	

- Standard Communication Package includes all production and printing costs.

Schedule A2

SCHEDULE OF REPORTS

No.	Report Name	Individual	Clinician	Company	Frequency	Description
1	Individual Screening Results	x	x		On Demand	Individual results relative to healthy ranges on 20 key risk factors
2	Individual Wellness Score	x	x		On Demand	Health scorecard predicting the individual's overall risk of diseases
3	Wellness Scores Prioritized		x		Monthly	List of employees prioritized based upon seriousness of condition
4	Progress Towards Goals: Individual	x	x		On Demand	Graph of changes to biometrics over time
5	Progress Towards Goals: Company		x	x	Quarterly	Percent of population making progress on risk factors
6	High Risk Employees		x	x	Annual	Count of high risk employees and associated excess costs
7	Population Stratification		x	x	Annual	Analysis of risk severity used to develop intervention strategy
8	Population Risk Profile		x	x	Annual	Prevalence rates vs. US average for all chronic conditions and risk factors
9	Excess Costs Tied to Risk Profile		x	x	Annual	Excess cost due to chronic conditions and identified risks
10	Risk Prevalence vs. Targets		x	x	Annual	Targeted modifications to company risk profile and estimated savings
11	Risk Profile Executive Summary		x	x	Annual	Executive summary of risk profile and excess cost associated with profile
12	Risk Profile Change Over Time		x	x	Annual	Actual changes vs. target
13	Encounters by ICD-9 and CPT-4 Code		x	x	Monthly	Onsite clinic visit volume by procedure and diagnosis
14	Changes to Claims Costs Over Time		x	x	Semi-Annual	Pre and post implementation costs for preventable claims
15	Accident Totals by Company			x	On Demand	Department specific Accident total by OSHA Recordability, Restricted Days, Lost Days
16	Nature of Injury Report		x	x	On Demand	Total number of incidents by nature of injury graph
17	Injuries Identified as Potential Lost Time		x	x	On Demand	Injury type identified against number of lost days
18	Incident Report		x	x	On Demand	Injury incident report
19	Action Plan Report		x	x	On Demand	Incident Action Plan
20	OSHA 300 Log		x	x	On Demand	Log of Work-Related Injuries and Illnesses
21	OSHA's Form 301 Report		x	x	On Demand	OSHA Form 301 Report
22	Root Cause Analysis Report		x	x	On Demand	Root Cause Analysis Report
23	Injury by Department Report		x	x	On Demand	Detailed report of Injuries by Department, Division, Work Group
24	Injury by Employee Report		x	x	On Demand	Detailed report of Injuries by Employee
25	Injuries by Body Part		x	x	On Demand	Detailed report of Injuries by Body Part
26	Nature of Injuries		x	x	On Demand	Detailed Nature of Injuries Analysis Report
27	Trend Analysis Report		x	x	On Demand	Monthly Trend Analysis
28	Tennessee First Report of Injury		x	x	On Demand	First Report Log of Injury for Tennessee
29	Unsafe Actions Report		x	x	On Demand	Report of Unsafe Workplace Actions
30	Unsafe Conditions Report			x	On Demand	Report of Unsafe Workplace Conditions

Schedule B

FEES AND PAYMENT SCHEDULE

Service fees:

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

Annual base service fee*\$2,292,390

Mass biometric screening fee (optional)* \$50-\$60 per participant
Actual fee is dependent on number of individuals screened and the number of locations.

Onsite Pre-Packaged Pharmaceuticals (optional) 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.

** First-year fee only; first year annual fee of \$2,142,630 increases by 5% in subsequent years. \$149,760 due at contract signing.*

Payment schedule:

Service fees are due as follows:

- Implementation fee at contract signing
- 1/12 of annual base service fees at beginning of each month of service
- Biometric screening fees on a per participant basis as incurred.
- Dispensed pharmaceutical charges, billable travel costs, excess communications or software programming costs, and other unexpected costs incurred as a result of service modifications requested by Client are due as incurred.

At Risk Fees and Pay for Performance

10 % of the annual base 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 below. The following conditions also apply:

- 50% of the eligible employee population will visit the clinic during each annual term.
- Any refund of at-risk fees will be credited against the subsequent year’s service fees.

Schedule B1

PAY FOR PERFORMANCE PLAN

Marathon Health Financial Guarantee

Marathon Health will provide a return on investment (“ROI”) versus baseline annual medical claims spend of at least 1:1 over the first year of the onsite health clinics’ operation, 2:1 over the second year, and 3:1 over the third year.

The annual amount at risk is based on 10% of the entire annual base fee paid by the employer based on a floating scale.

The calculation for ROI will be based on the following formula:

- 1) Baseline annual medical claims spend will be determined on the date of the opening of the clinic by analyzing the actual cost the Health Care Plan paid over the most recent 24 month period, excluding all claimants who had expenses paid in excess of \$75,000.
- 2) Anticipated health care trend for all three years (including actual medical inflation) will be determined and agreed to by employer and Marathon Health based on Baseline annual medical claims calculation as determined in #1.
- 3) Actual annual medical claims spend for each successive year following clinic opening date will be determined, excluding all claimants who had expenses paid in excess of \$75,000.
- 4) Annual difference between actual claims paid and the anticipated trended claims will determine Annual Savings.
- 5) Annual Savings will be compared to annual base fee paid for onsite clinic to determine ROI.

The amount of fees at risk to be refunded to the Employer will be determined based on the actual ROI results calculated at the end of each 12 months of operation based on the following schedule:

<u>Savings Year 1</u>	<u>Risk to be Refunded</u>
>\$2,142,630	\$0.00
>\$1,606,972<\$2,142,630	\$53,565
>\$1,071,315<\$1,606,972	\$107,131
>\$535,657<\$1,071,315	\$160,697
<\$535,657	\$214,263

<u>Savings Year 2</u>	<u>Risk to be Refunded</u>
>\$4,499,524	\$0.00
>\$3,374,643<\$4,499,524	\$56,244
>\$2,249,762<\$3,374,643	\$112,488
>\$1,124,881<\$2,249,762	\$168,732
<\$1,124,881	\$224,976

Savings Year 3

Risk to be Refunded

>\$7,086,750	\$0.00
>\$4,724,500<\$7,086,750	\$59,056
>\$3,543,375<\$4,724,500	\$118,112
>\$2,362,250<\$3,543,375	\$177,168
<\$2,362,250	\$236,225

In order to qualify for this guarantee, the Employer must meet the following criteria:

- 1) All levels of management will actively support and encourage utilization of the onsite clinic. Incentive programs while not required, are highly recommended.
- 2) Employer must mandate that all eligible employees attend at least one introductory session facilitated by Marathon Health explaining services.
- 3) Minimum 40% of employee population complete HRA and biometric screening.
- 4) Employees are not required to clock-out to access the onsite clinic.
- 5) Employer and Marathon Health agree to all calculations used to measure financial ROI prior to the opening of the onsite clinic.
- 6) Employer agrees to provide Marathon Health detailed medical claims information and employee and dependent demographic data for the 24 month period prior to the onsite clinic opening and on a monthly basis after the opening date.

ADD NEW SCHEDULE C WITH INFRASTRUCTURE SPACE REQUIREMENTS
PRESENTLY AVAILABLE AT TWO WELLNESS CENTER LOCATIONS FOR CITY
EMPLOYEES