

HEALTH SERVICES AGREEMENT

Between Lexington Fayette Urban County Government and Marathon Health, LLC.

THIS HEALTH SERVICES AGREEMENT (this "Agreement") is made and entered into to be effective as of July 31, 2018 (the "Effective Date") by and between Lexington Fayette Urban County Government aka LFUCG ("Client"), an urban-county government pursuant to KRS Chapter 67A, with principal offices located at 200 East Main Street, Lexington, KY 40507, and Marathon Health, LLC. ("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 and family members 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 2 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") and consistent with *RFP #7-2018: The Administration of Near Site Health and Wellness Center for LFUCG* and *Marathon's Response to the RFP* (collectively the "RFP"), both of which are attached hereto as **Schedule C** and incorporated herein by reference as if fully stated. In the event of a conflict, the terms of this Contract shall govern followed by the RFP. Services that do not clearly fall within the description set forth on **Schedule A** shall be outside the scope of this Agreement, and Client shall instruct Participants to seek outside assistance for such matters with an alternate healthcare provider. Marathon may provide some of the Marathon Services by engaging the services of third party contractors, particularly for professional services.
- 2.2 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.
- 2.3 Employee Benefit Plans. The programs and services provided under this Agreement are not designed or intended to be provided under any Client employee benefit plan or program. Accordingly, neither Marathon, nor any of the third party contractors it may engage, is a fiduciary, trustee, or sponsor with respect to these programs or services. In the event the programs and services become part of a Client employee benefit plan or program, Marathon, and each of the third party contractors it may engage, shall be considered to be acting only as a consultant to Client with respect to such matters and shall not be considered in a fiduciary, trustee or sponsor relationship in such plan.

Article III

Contract Period

- 3.1 Term. The "Initial Term" of this Agreement shall begin on the Effective Date, and shall continue with the Marathon Services for a period of three (3) years, commencing on January 18, 2019 (the "Commencement Date"), unless terminated earlier as provided for in Article VII, below.
- 3.2 Renewal Terms. This Agreement shall automatically renew for two (2) additional terms of two (2) years (each a "Renewal Term" and together, the "Renewal Terms"), unless either Party terminates this Agreement by giving written notice not less than three (3) months prior to the expiration of the then current term. Such Renewal Term(s) shall be subject to the termination provisions set forth in Article

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

Article IV

Payment Terms; Pricing

- 4.1 **Fees.** Marathon will submit invoices to Client for the initial fees as set forth in **Schedule B**. With the exception of reimbursement of reasonable expenses as otherwise provided in this Agreement, such fees shall be the only compensation to Marathon under this Agreement. Upon each anniversary of the Commencement Date, fees shall automatically increase by 2.5% over the previous period, unless material changes are otherwise agreed to by the Parties in accordance with Section 3.2. Payment is due for all undisputed charges within thirty (30) 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.
- 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 sixty (60) days after the invoice due date. Marathon reserves the right to refrain from providing services to Client, if full payment is not made when due for undisputed charges, until such time as payment in full has been made. In the event that Marathon continues to provide services during a period of time when Client is in breach, such continuance of services will not operate as a waiver of Marathon's right and ability to utilize any and all remedies available to Marathon under applicable laws.
- 4.3 **Tax Obligations.** All fees for services purchased or licensed in this Agreement, unless otherwise noted, are exclusive of applicable taxes. Client agrees to pay all applicable sales, use or service taxes imposed by any state or local tax authority on the services or payments provided hereunder (other than taxes calculated on the basis of the net income of Marathon) which Marathon may be required to pay or collect. Any such tax due is in addition to the fees charged by Marathon herein and will be listed separately on invoices. To the extent Marathon has not collected and remitted any applicable tax for Client in reliance upon an erroneous representation of Client as to its tax status, Client's obligation to pay taxes shall include any interest and penalties imposed by any taxing authorities. If a certificate of exemption or similar document or proceeding is necessary in order to exempt the sale from sales or use tax liability, Client shall obtain and produce such certificate, document or proceeding, at its sole expense.

Article V
Duties of Marathon

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

law or regulation. Marathon shall not act in any way which, to its knowledge, could implicate or involve Client in a violation of any such law or regulation.

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

Article VI Duties of Client

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

personnel dedicated for the Marathon Services, as recruitment processes are reliant on this.

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

Article VII

Events of Default, Remedies and Termination

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

default after written notice of such default by the aggrieved Party to the defaulting Party specifying in detail the nature of the default, and provided further that the defaulting Party shall have up to ninety (90) days to cure such default if it has commenced to cure such breach within thirty (30) days of receipt of such notice and is continuing to diligently pursue a cure of such breach; and

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

7.2 Remedies.

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

7.3 Termination Events.

- (a) This Agreement may be terminated by either Party upon the occurrence of an Event of Default by the other Party.
- (b) This Agreement may be terminated by a written agreement signed by an authorized individual of both Parties.

7.4 Consequences of Termination.

- (a) Termination under any section of this Article VII shall not cause either Party to waive any rights it may have to exercise any remedies available to it under any other section of this Agreement or under any applicable Law.
- (b) In the event this Agreement is terminated by reason of a Party's default, the 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. 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.

- (c) Except as expressly provided below in this Section 7.4(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 total fees payable under this Agreement. 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 XI of this Agreement.
- (d) 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, 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.
- (e) Marathon shall maintain Participants' health records beyond termination of this Agreement in accordance with applicable laws, and shall provide Client and/or Participant with access to such data at no cost

Article VIII

Confidentiality of Participant Records

- 8.1 Access to Participant Information. Marathon acknowledges and agrees that in the course of performing its duties under this Agreement, Marathon, its Care Providers and/or their agents may acquire or obtain access to or knowledge of health records or other personal and confidential information regarding Participants.
- 8.2 Safeguard of Information. Marathon, its Care Providers and their agents will safeguard Participants' health records and other personal and confidential information to ensure that the information is not improperly disclosed and to comply with any applicable law, rule or regulation, including, but not limited to, regulations

promulgated by the United States Department of Health and Human Services, pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as the same may be amended from time to time (collectively the "HIPAA Regulations"), the Health Information Technology for Economic and Clinical Health (HITECH) Act, and other federal and state regulations governing the confidentiality of health information, including without limitation mental health, substance abuse and HIV-related information. Individual electronic medical record information is the property of Marathon, subject to each Participant's rights to his/her individual medical information.

- 8.3 Granting of Access. Marathon will afford access to Participant's health records or personal and confidential information to other persons only as allowed, or required by law. Marathon shall not grant access to patient records, patient information, and other personal and confidential data to any individual or to Client except as provided in this Section 8.3.
- 8.4 Compliance Assistance. To the extent Marathon utilizes space provided by Client in providing services under this Agreement, the Parties shall discuss how Client can assist Marathon in complying with these requirements, including the physical access to such space.

Article IX

Confidentiality of Business Information

- 9.1 Restriction of Use; Confidentiality. Each of the Parties agrees not to use any Confidential Information (as defined below) for any purpose other than to accomplish the intent of this Agreement. No other rights, or licenses to trademarks, inventions, copyrights, or patents are implied or granted under this Agreement. Confidential Information supplied shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Each Party agrees to keep all such Confidential Information confidential and, at a minimum, treat this Confidential Information in the same confidential manner it would treat its own most confidential information, and shall not disclose it to others or use it for any purpose except as required to accomplish the intent of this Agreement.
- 9.2 Confidential Information. For purposes of this provision, the term "Confidential Information" shall mean any business practices, methods of doing business, or written or electronic materials relating to its business and shall also include without limitation any written material of the type that is proprietary, including, without limitation, software programs, technical information, patent applications, patent disclosures, prototypes, samples, business apparatus, forms of reports, know-how, and other materials marked "confidential", or confidential information disclosed verbally if set forth in a writing which is provided to the recipient within 15 days of verbal disclosure thereof. Confidential Information shall not, however, include information that is governed by the confidentiality provision of Article VIII, or any information which recipient can establish (i) was publicly known and made

generally available in the public domain prior to the time of disclosure to recipient; (ii) becomes publicly known and made generally available after disclosure to recipient through no action or inaction of recipient or its affiliates; or (iii) is in the possession of recipient, without confidentiality restrictions, at the time of disclosure as shown by recipient's files and records immediately prior to the time of disclosure. Nothing in this Agreement shall be deemed to prohibit recipient from disclosing any Confidential Information that is (i) required by law (provided, however, that in the event of such requirement, prior to disclosing any Confidential Information, recipient will notify the disclosing Party of the scope and source of such legal requirements and shall give the disclosing Party the opportunity to challenge the need to disclose and/or limit the scope of disclosed information) or (ii) pursuant to the written consent of the disclosing Party.

- 9.3 Indemnification. To the extent allowable by law and consistent with the RFP, each Party hereby agrees to indemnify and hold harmless the other Party from any damage, loss, cost or liability (including legal fees and the cost of enforcing this indemnity) arising out of or resulting from its unauthorized use or disclosure of Confidential Information. 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.

Article X

Non-Solicitation

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

Article XI

Indemnification and Insurance

- 11.1 Indemnification. To the extent allowable by law and consistent with the terms of the RFP, each Party shall defend, indemnify and hold harmless the other Party, 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 XI as "Liabilities") that arise directly from or out of any third party claim asserted against any Indemnified Party alleging negligence by the first Party or its employees or agents in the performance of services and other duties and responsibilities in connection with this Agreement. This shall not act as a waiver of sovereign immunity or any other third party defenses available to the Client.

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

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

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

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

- 11.4 Waiver. Notwithstanding any other provisions of this Article XI, to the fullest extent allowable under all policies they hold and under law, Marathon and Client hereby mutual waive (1) all rights of subrogation against one another and their directors, officers, employees, agents and representatives, (2) all rights of indemnification, to the extent 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 XII Miscellaneous

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

- 12.4 Notices. All notices to be delivered under this Agreement shall be in writing and shall be delivered by hand or deposited in the United States mail, first-class, registered or certified mail, postage prepaid, to the following addresses:

To Client: LFUCG-Division of Human Resources
200 East Main Street, 8th Floor
Lexington, KY 40507
(859) 258-3033
Attn: John Maxwell, Director-Division of Human Resources

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

- 12.5 Severability. If any provision of this Agreement is determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the Parties to enforce such provision in another circumstance. Neither does it affect the rights of the Parties to enforce any other provision of the Agreement at any time.
- 12.6 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky to the extent not preempted by federal law and venue shall lie a court of competent jurisdiction in Fayette County, Kentucky.
- 12.7 Amendment. This Agreement may be amended by Client and Marathon only by a writing duly executed by an appropriate officer of Marathon and Client. This requirement is not intended to preclude the Parties from making decisions regarding day to day operations.
- 12.8 Assignment. This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. The rights and duties of Marathon and Client under this Agreement shall not be assignable by either Party without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.
- 12.9 Third Party Beneficiaries. Nothing contained herein shall be construed to confer any benefit on persons who are not Parties to this Agreement.

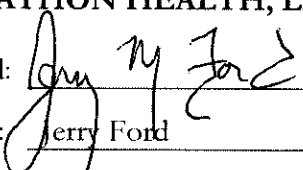
- 12.10 Waiver. A failure or delay of either party to this Agreement to enforce at any time any of the provisions of this Agreement, or to exercise any option which is herein provided, or to require at any time performance of any of the provisions hereof, shall in no way be construed to be a waiver of such provision of this Agreement or shall not excuse the other party's performance of such, nor affect any rights at a later time to enforce the provision.
- 12.11 Disputes. Any disputes relating to this Contract, or any rights of obligations arising thereunder, shall be governed by the legal process set forth in the RFP.
- 12.12 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, the undersigned have executed this Agreement effective as of the date first above written.

CLIENT

Signed: _____
Name: _____
Title: _____
Date: _____

MARATHON HEALTH, LLC.

Signed:  _____
Name: Jerry Ford
Title: CEO
Date: 7/31/2018

**Schedule A
MARATHON SERVICES**

DESCRIPTION OF SERVICES

Ongoing Services: As of the Commencement Date, Marathon shall provide onsite health services as follows for eligible employees, spouses, and children.

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

Individuals eligible to participate as of the Commencement Date:

Employees	4,400
Spouses.....	1,850
Children	2,250

Health Center Staffing:

Staffing will include 1.0 FTE physicians, 3.0 FTE physician assistants or nurse practitioners, 3.5 FTE medical assistants and 1.0 FTE receptionist.

Location and time of services:

- a. The services provided under this Agreement will be provided at a site to be located at 100 Trade Street, Lexington, KY 40511, or an alternative site in the greater Lexington area
- b. Hours of operation will be 48 hours per week, between 8:00 am and 5:00 pm Monday, Wednesday and Friday, 8:00AM and 7:00 PM Tuesday and Thursday and 8:00 AM and 12:00 PM Saturday.
- c. Notwithstanding the hours of operation described above, the health center shall be closed for eight (8) holidays per year as follows: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve, and Christmas Day.
- 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 health center staff member(s).

ONGOING SERVICES INCLUDED IN ANNUAL FEE

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

Primary care:

- Acute Care
 - Assessment and treatment of medical conditions that are episodic in nature and short in duration. Examples include, but are not limited to, upper respiratory infections, rashes, urinary tract infections, and first treatment of minor injuries.
- Management of Chronic Conditions
 - Management of chronic conditions for individuals who do not have a primary care provider. Examples include, but are not limited to, hypertension, hypothyroidism, allergic rhinitis, hypercholesterolemia and diabetes.

- For those individuals with an existing primary care provider and/or specialist, and in particular for those individuals who have multiple complicated medical conditions requiring specialty care and/or significant oversight, the Marathon Health clinician will work in collaboration with said provider to provide adjunct care and education to the patient.
- For those individuals who do not have a primary care provider, we can function as the medical home and provide full primary care, including the management of multiple chronic conditions requiring significant oversight. After hours coverage and in-hospital care not included. The physician will work in collaboration with specialty care providers if specialty referral is indicated.
- Routine annual exams and screenings
 - Annual Physicals – Includes a physical exam. Any required external lab processing and imaging is not included in the annual fees.
 - Annual women's health exams to include pelvic exam and pap smear. Pap smear requires external lab processing not included in the annual fees.
- Travel Medicine
 - Consultation with clinician to receive guidance on recommended immunizations, medications, and travel precautions. Vaccines can be administered in-house for most required immunization but are purchased in advance per agreement with Client, and the cost of vaccines is not included in the annual fees.

Pediatric Care:

- Episodic care of minor acute illnesses such as ear infections, upper respiratory infections, rashes, diarrhea, nausea and vomiting for children ages 2 and higher.
- Well child care for children ages 6 and higher – School physicals, sports physicals, annual physicals, health coaching, and chronic condition coaching.

Supplemental Primary Care Services:

- Lab draws
 - Labs may be drawn for diagnostic and monitoring purposes at the recommendation of the onsite clinician. The cost of external lab processing is a third party charge to Client that not included in the annual fee.
- Immunizations
- Allergies
 - Work collaboratively with an individual's allergist to administer allergy injections as a convenience to the employee.
- CLIA-waived labs
 - Processed in-house during the provision of care, as needed (pending review of state regulations). The following tests are included in the annual fee: A1C Hemoglobin, Fecal Occult Blood Test, Glucose, HCG Pregnancy, Influenza A & B, Lipid Profile, Mono, Strep A, Urinalysis.

Occupational Health Services:

- Work-related injuries
 - First treatment of minor work related injuries. Examples include, but are not limited to, minor strains, sprains, dermatitis, insect bites.
- Routine pre-employment physicals
 - Includes history and physical examination. External lab processing is not included in annual fees.
- Role-specific pre-employment or annual physicals
 - Firefighter

- Includes history and physical examination, pulmonary function testing, OSHA audiometric testing and EKG. External lab processing and immunizations required are not included in annual fees.
- Police
 - Includes history and physical examination, color vision testing, audiometry and EKG. External lab processing and immunizations required are not included in annual fees.
- DOT physicals per Department of Transportation regulations
- Drug screening
- Audiometric testing
- Return to work
 - An examination to determine one's ability to return to work after a worker's comp injury.
 - Pulmonary function exams
- Fitting of Respiratory Masks
 - Assurance that an individual's respiratory mask appropriately fits. Respiratory masks are provided by employer.

Health Maintenance and Disease Prevention:

- 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 Health History and Risk Assessment (HHRA)
 - 1:1 consultation with the onsite clinician to review assessment results, health history and risk appraisal, set goals and recommend strategies to achieve goals
- Lifestyle Risk Reduction - For high risk individuals agreeing to follow-up with the Marathon Health Care provider as their personal health coach:
 - Work 1:1 with individuals to change behaviors putting them at risk for certain conditions, addressing lifestyle habits such as physical activity, smoking, diet, stress, weight control, cholesterol and blood pressure.
 - Marathon Health Providers incorporate Transtheoretical Model, Model for Improvement and Motivational Interviewing behavioral change methodologies
 - Individualized change management plans
 - Proactive support

Chronic Condition Coaching

- 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

Health Engagement System technology platform

For up to 110% of the employees, spouses and adult children 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
- Ability to import encounter data from carrier to provide historical patient encounter information
- Export up to three (3) types of data feeds (encounter, lab, or HRA) in Marathon Health standard format

Account Management and Advisory Services

- **One Point of Contact:** An assigned 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.
- **Clinical Coverage Plan:** Marathon Health will establish and provide a coverage plan for clinical staff absences due to illness, vacation or continuing medical education (CME) time off.
- **Monthly Reviews:** Account Manager will hold monthly calls with the client to deliver and discuss the reports described below to ensure that the client has data on health center activity and progress toward goals.
- **Annual Review:** Account Manager will provide face-to-face annual reviews of the health center business, incorporating the Client-specific key performance metrics from the previous year, as well as a strategic plan for the next year.
- **Ongoing Health Promotions:** Account Manager will work together with the Client to manage ongoing communications for the promotion of health center services and operations.
- **Strategic Planning:** Account Manager will work to understand and support client's unique business objectives and goals for the health center. The Account Manager will work collaboratively with the Client's broker/consultant, as well as other health related vendors (EAP, DM, etc.) as needed to ensure that employee health resources are fully leveraged.

Management Reporting and Analysis

- **Monthly client activity and trends report** including visit volume (visits for acute care, occupational health, risk reduction and chronic condition management, group work and telephonic consults), high risk patients engaged, high risk patients making progress, encounters by CPT code, diagnoses by ICD-9 code, prescriptions written, and overall savings from operations.
- **Annual reports including:**
 - Population stratification report identifying percent of the population screened, size and nature of high risk population and size and nature of population with chronic conditions identified through data mining and/or screening.
 - Review of health center operations including health center volumes and patient engagement
 - Examination of outcomes including overall improvement in population health status, patient satisfaction, savings from health center operations and return on investment analysis, results of at-risk pay-for-performance metrics, and plan for continuous quality improvement.
- Up to 20 hours of custom reporting per year.

Additional custom reporting beyond 20 hours per year will be billed as Additional Services at the rate of \$150/hour.

Participant Communications and Promotions

- **Quarterly communication campaign** with customizable, templated material to promote services. Outreach is customized to client's needs, based on review of client's population health risk stratification report.
- **Health Promotion Catalog** including educational sessions, group programs, health center promotional activities, health fair support, health and fitness challenges, and other programs designed to increase engagement.

The standard communication package includes all production and printing costs.

Optional communication services, to be billed as Additional Services:

- **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.

OPTIONAL SERVICES NOT INCLUDED IN QUOTED FEES

Acquisition of flu vaccine and related supplies

Cost of other vaccines, prescription medicine, and durable medical equipment

NOT INCLUDED IN THE QUOTED FEES

- Non-CLIA waived tests, CLIA waived tests not included above, external lab processing for physicals, annual exams and screenings.
- Internet connectivity and telephone service for Marathon staff.
- Additional Account Management and Advisory Services, Communications Services or Reporting Services beyond those described in Schedule A.
- Additional Data Services, such as custom interfaces for uploads of prior provider data, or more than 3 ongoing activity reports.

Schedule B
FEES AND PAYMENT SCHEDULE

Service fees:

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

Annual Service Fee\$1,693,263

Fees for optional services:

Flu vaccinations..... At current rates

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

Additional Services..... At current rates

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

Payment schedule:

Service fees are invoiced and payable as follows:

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

Schedule C

RFP #7-2018 Administration of Near Site Health & Wellness Center (62 pages)

AND

Marathon Health Response to RFP #7-2018 Administration of Near Site Health & Wellness Center (170 pages)

