



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Marathon Health Limited T/A Marathon Health
(AG2022/2415)

MARATHON HEALTH ENTERPRISE AGREEMENT 2022

Health and welfare services

DEPUTY PRESIDENT EASTON

SYDNEY, 12 AUGUST 2022

Application for approval of the Marathon Health Enterprise Agreement 2022.

[1] Marathon Health Limited T/A Marathon Health (**the Employer**) has made an application for the approval of the *Marathon Health Enterprise Agreement 2022 (the Agreement)*. The application was made under s.185 of the *Fair Work Act 2009 (the Act)*. The Agreement is a single enterprise agreement.

[2] The Employer has provided written undertakings, a copy of which are attached as Annexure A to this decision. The undertakings can be accepted under s.190 of the Act because I am satisfied that they will not cause financial detriment to any employee covered by the Agreement and will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the agreement pursuant to s.191 of the Act.

[3] Subject to the Employer's undertakings, I am satisfied that each relevant requirement in sections 186, 187, 188 and 190 of the Act has been met.

[4] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[5] Pursuant to s.205(2) of the Act, the model consultation term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[6] The Australian Nursing and Midwifery Federation (**ANMF**) was a bargaining representative for the Agreement and has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the ANMF.

[7] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 19 August 2022. The nominal expiry date of the Agreement is 12 August 2026.



DEPUTY PRESIDENT

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Annexure A**IN THE FAIR WORK COMMISSION***Fair Work Act 2009 (Cth) (FW Act)***Matter number:**

AG2022/2415

Employer:Marathon Health Limited (**Employer**)**Application:**Section 185 – Application for approval of a single enterprise agreement, namely the Marathon Health Enterprise Agreement 2022 (**Agreement**)**Authorised representative:**Margaret Kelly
General Manager, People and Capability**Undertaking- Section 190**

For and on behalf of the Employer I, Justine Elizabeth Summers:

1. declare that as Chief Operating Officer of the Employer I have:
 - (a) authority to give this undertaking on behalf of the Employer,
 - (b) sought the views of all bargaining representatives for this undertaking pursuant to s.190(4) of the FW Act,
2. understand that each undertaking is to be taken to be a term of the Agreement,
3. give the following undertakings with respect to the Agreement.
4. Schedule 2 – Rates of Pay - Trainees

Schedule 2 – Rates of Pay in the Agreement shall apply from commencement on the basis that the Trainee rates of pay are as follows:

Classification	Hourly Rate of Pay	Full Time Annual Rate of Pay
Trainees (Adult)	\$18.39 \$17.94	\$35,857.58 \$35,448.40

The hourly or annual rate of pay for a Trainee (adult) thereafter shall be in accordance with the Agreement.

5. Overtime

The Agreement shall be read on the basis that the following is included as a new clause 25.10, immediately following clause 25.9:

25.10 An Employee (including a Casual Employee) who is to be paid at an overtime penalty rate for working Overtime (as defined by clause 25.2) rather than accruing Time in Lieu for working Overtime shall be paid:

- (a) the overtime penalty rate provided by this clause, or
- (b) at a rate per hour equivalent to the overtime penalty rate on the minimum rate of pay for the Employee's classification under the Health Professionals and Support Services Award 2020 (HPSS Award) or the Nurses Award 2020 (Nurses Award),

whichever rate is a higher actual rate of pay for the Employee.



For clarity, in the case of Casual Employees this clause does not apply in respect of work on the After Hours Program (see clause 16.4).

6. Schedule 2 – Rates of Pay – After Hours Program

The Agreement shall be read on the basis that the following is included at Schedule 2 – Rates of Pay – After Hours Program in lieu of the current table of rates:

These rates of pay apply only to Casual Rates who are eligible to work on the After Hours Program (see clause **Error! Reference source not found.**) and are inclusive of the 25% casual loading

Classification	Casual Hourly Rate of Pay		
	Saturday	Sunday	Public Holiday
<i>Stream D - Direct Service Delivery</i>			
<i>Band 2</i>	\$67.88	\$67.88 \$69.27	\$83.63
<i>Band 3</i>	\$67.88	\$67.88 \$75.12	\$83.63 \$85.85
<i>Stream A – Administration Employees</i>			
<i>Band 1</i>	\$54.87	\$54.87	\$78.38
<i>Band 2</i>	\$58.88	\$58.88	\$84.11

Date signed:	10 August 2022
For and on behalf of the Employer by: [In accordance with s.190(5) of the FW Act]	Justine Elizabeth Summers
Signature:	
Witness name:	Jessica Kop
Witness signature:	

MARATHON HEALTH ENTERPRISE AGREEMENT 2022

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Note - the model consultation and flexibility terms are taken to be terms of this agreement. This agreement is to be read together with an undertaking given by the employer. The undertaking is also taken to be a term of this agreement. A copy of these terms can be found at the end of the agreement.

PART 1 - FRAMEWORK PROVISIONS

1 OVERVIEW AND OBJECTIVES

- 1.1 The objective of this Enterprise Agreement (**EA**) is to set out clearly the safety net of terms and conditions that apply to all Employees.
- 1.2 The terms and conditions in this EA may be supplemented by Marathon Health Policies and Procedures, or by individual arrangements agreed with employees but those Policies and Procedures do not form part of this EA.
- 1.3 By implementing this EA, Marathon Health and the Employees aim to:
 - (a) maintain a clear, simple and secure set of minimum terms and conditions of employment;
 - (b) align the employment terms and conditions within Marathon Health to its objectives, funding limitations and stakeholder expectations;
 - (c) encourage a focus on building skills and organisational capacity to achieve Marathon Health's objectives and goals, including by adopting flexible, integrated work practices that allow employees to function across various departments and business units where appropriate as needs dictate;
 - (d) recognise that individuals who choose to work for Marathon Health aspire to serve the community as a team and that achieving Marathon Health's objectives together provides Employees with significant personal and professional rewards to supplement the remuneration under this EA;
 - (e) allow sufficient scope and flexibility for Marathon Health to:
 - (i) reward Employees for individual growth, career progression and productivity improvements;
 - (ii) accommodate and encourage diversity within the workforce; and
 - (iii) accommodate and support individual work/life preferences where feasible.

2 HOW THIS EA OPERATES

- 2.1 This agreement is an enterprise agreement made pursuant to Part 2-4 of the Fair Work Act 2009 (Cth) (**FW Act**) and shall be known as the *Marathon Health Enterprise Agreement 2022*.
- 2.2 This EA shall commence operating from the date that is 7 days after the date it is approved by the Fair Work Commission (**FWC**) and shall have a nominal expiry date (**NED**) of 4 years from the date it is approved by the FWC. The EA will continue to operate after the NED unless and until terminated or replaced by a new enterprise agreement.
- 2.3 The EA operates subject to the FW Act. If any term in the EA is unlawful or contravenes the FW Act, then that provision has no effect to the extent it would be unlawful.
- 2.4 The meanings of defined terms used in this document are set out in Schedule 1 – 'Definitions'. They may also be referenced in inverted commas and bold text for ease of initial recognition and reference.

3 APPLICATION AND SCOPE OF THE AGREEMENT

3.1 This EA covers and applies to:

- (a) Marathon Heath Limited [ABN 86 154 318 975] (**Marathon Health**);
- (b) all persons employed by Marathon Health in a classification in the EA, but not **Excluded Employees (Employees)**; and
- (c) any bargaining representatives named as being covered by the EA in the decision of the FWC approving this EA.

3.2 The following employees are Excluded Employees, who are not covered by this Agreement:

- (a) the Chief Executive Officer (**CEO**), the Chief Financial Officer (**CFO**) and the Chief Operating Officer (**COO**);
- (b) an employee appointed by Marathon Health in the most senior Human Resources manager role in the organisation; and
- (c) all individuals who are employed by Marathon Health but whose labour is supplied on an on-hire basis to another business or organisation (**On Hired Employees**).

4 INTERPRETATION OF THE AGREEMENT

4.1 In this EA:

- (a) references to Employees are taken to be references to each Employee jointly and severally, as the context dictates; a reference in this EA to a separate document, policy, procedure, instrument or legislation of any kind does not incorporate it or any part of it into this EA and no such reference shall create, imply or infer any right or entitlement that is enforceable against Marathon Health;
- (b) unless expressly stated, a reference in this EA to a separate document, policy, procedure, instrument or legislation of any kind is a reference to it as amended, replaced or retracted from time to time;
- (c) other than the express terms of this document no other terms may be inferred, implied or incorporated into this EA;
- (d) an obligation upon or benefit afforded to a person under this EA shall not infer a reciprocal or equivalent obligation or benefit to another person;
- (e) a reference to a person under this EA may refer to an individual, corporation, partnership or association;
- (f) cognates of defined terms have a corresponding meaning; and
- (g) any gendered reference includes a reference to any other gender.

5 EFFECT ON OTHER AWARDS AND AGREEMENTS

5.1 This EA is to be read and interpreted in conjunction with the National Employment Standards in the FW Act (NES**). Where there is inconsistency between this EA and the NES, the more beneficial provision will apply to the extent of the inconsistency. This EA may provide terms that are ancillary or incidental to the operation of an entitlement under**

the NES.

- 5.2 While this EA operates, no Award applies to or covers Marathon Health or the Employees. The EA replaces the *Western NSW Medicare Local Enterprise Agreement 2013*, and any other enterprise agreement that may otherwise have covered and applied to an Employee.
- 5.3 Marathon Health and the Employees acknowledge that before the FWC may approve this EA, it must ensure that the Employees are "better off overall" under this EA than they would be if a Modern Award applied to their employment.
- 5.4 An Employee's hourly rate of pay will not be reduced by operation of this EA.

6 VARYING THIS EA FOR INDIVIDUAL EMPLOYEES (FLEXIBILITY TERM)

- 6.1 Marathon Health and a particular Employee may make an Individual Flexibility Arrangement (IFA) to vary the effect of the terms of this EA as they would otherwise apply to that Employee and Marathon Health in respect of their employment.
- 6.2 An IFA may be used to vary any terms of Part 3 of this EA that would be "permitted matters" for the purposes of the FW Act if the IFA were an enterprise agreement.
- 6.3 An IFA will only be effective if genuinely agreed to by both Marathon Health and the Employee.
- 6.4 Marathon Health must ensure that each IFA sets out the details of:
 - (a) the terms of this EA that will be varied by the IFA;
 - (b) how the IFA will vary the effect of those terms; and
 - (c) how the Employee will be better off overall in relation to their terms and conditions of employment as a result of the IFA.
- 6.5 Marathon Health must ensure that the terms of each IFA:
 - (a) are about permitted matters under section 172 of the FW Act;
 - (b) are not unlawful terms under section 194 of the FW Act; and
 - (c) genuinely agreed to by Marathon Health and the Employee.
- 6.6 Marathon Health must ensure that each IFA:
 - (a) is in writing;
 - (b) includes the name of Marathon Health and the Employee;
 - (c) is signed by Marathon Health and the Employee;
 - (d) is signed by a parent or guardian of the Employee if the Employee is under 18 years of age;
 - (e) states the date the IFA commences;
 - (f) can be terminated by Marathon Health and the Employee at any time if they agree, in writing, to the termination; and

- (g) can be terminated by either Marathon Health or the Employee giving written notice of 13 weeks' or less by agreement.
- 6.7 IFAs will not need the approval or consent of anyone other than Marathon Health, the individual Employee and, in the case of Employees under 18 years of age, their parent or guardian.
- 6.8 Marathon Health must give the individual Employee a copy of the IFA within 14 days after it is signed by both the Employee and Marathon Health and keep a copy of the IFA as a time and wages record.
- 6.9 The flexibility provisions in this clause supplement, and do not extinguish, any other arrangements for flexibility between Marathon Health and Employees or any other terms of this EA that provide for flexibility.

7 RESOLVING DISPUTES ABOUT THIS EA OR OTHER MATTERS

- 7.1 In the event of a grievance or dispute about a matter under this EA or in relation to the NES (**Dispute**), in the first instance the parties to the Dispute must attempt to resolve it at the workplace level.
- 7.2 If a Dispute arises, the following procedure must be followed:
- (a) **Step 1:** The Employee concerned must first raise the Dispute with their immediate manager for resolution.
 - (b) **Step 2:** If the Dispute is not resolved within 7 business days, either party may escalate the Dispute for consideration by the next level manager.
 - (c) **Step 3:** If the Dispute is not resolved within a further 7 business days, either party may refer the Dispute to the CEO for a decision within 7 business days (provided the CEO did not already consider the Dispute for the purposes of Step 2 above).
 - (d) **Step 4:** If either party remains dissatisfied with the decision of the CEO, the Dispute may be referred to FWC to deal with the Dispute. The FWC, as it considers appropriate, may attempt to resolve the Dispute by mediation, conciliation, expressing an opinion or making a recommendation.
- 7.3 While the Dispute settlement procedures are being followed:
- (a) each party may be represented in connection with the Dispute by a representative of their choice;
 - (b) the parties must not engage in industrial action; and
 - (c) work shall continue as normal in accordance with the EA, unless an Employee has a reasonable concern about an imminent risk to their health or safety.
- 7.4 Subject to applicable workplace health and safety legislation, an Employee must not unreasonably fail to comply with a direction issued by Marathon Health to perform work in accordance with clause 7.3, whether at the same or another workplace, that is within the skills and competence of the Employee and is safe and appropriate for the Employee to perform.

PART 2 - EMPLOYMENT RELATIONSHIP & TERMINATION

8 EMPLOYEE CATEGORIES AND CLASSIFICATIONS

8.1 Marathon Health may employ an Employee on one of the following bases:

- (a) Casual;
- (b) Maximum Term;
- (c) Permanent; or
- (d) Trainee

8.2 Trainee Employees will have no guarantee of further employment with Marathon Health beyond the expiry or completion date of the traineeship agreement unless otherwise agreed in writing.

8.3 Employees shall on commencement be appointed to a classification in Schedule 3, and thereafter during the appointment movement within or between classifications shall be by appointment only.

9 CASUAL EMPLOYMENT

9.1 A Casual Employee is an Employee who is:

- (a) employed on a basis that is consistent with the definition of a casual employee in section 15A of the FW Act; and
- (b) is paid as a Casual Employee according to the terms of this EA.

9.2 A Casual Employee has no:

- (a) firm advance commitment to continuing or indefinite work, or any work at all;
- (b) right to an agreed or consistent pattern of work, or work on a particular day, week or work cycle;
- (c) no right to be offered work, and no obligation to accept work if offered by Marathon Health, but if an offer of work is accepted by a Casual Employee then there is an obligation to attend and perform the work as offered and accepted; and
- (d) no expectation for ongoing employment, or that employment with Marathon Health may continue on the incidence of casual work offered and worked according to the terms of the Agreement.

9.3 If a Casual Employee is advised of a roster with hours of work allocated to the Casual Employee, that roster is for planning purposes only and the work or shift(s) allocated may be changed or cancelled according to Marathon Health's operational requirements with or without notice.

9.4 A Casual Employee is paid a 25% casual loading in addition to the appropriate base hourly rate of pay for the employee's classification in Schedule 2, for each ordinary hour worked (**Casual Loading**). The Casual Loading is paid in lieu of entitlements that a Casual Employee is not entitled to including, but not limited to annual leave, paid personal leave, notice of termination and Redundancy Pay.

- 9.5 The right or access of a Casual Employee to an offer for casual conversion shall be in accordance with the NES.

10 MAXIMUM TERM EMPLOYMENT

- 10.1 Maximum Term employment for the purposes of this EA is employment for the duration of a specified term (such as a program), or on a project or task basis where the employment can continue until Marathon Health determines that the Employee's work on the project or task is complete, but where Marathon Health and the Employee each have the right to terminate the employment with notice (or without notice for Serious Misconduct by the Employee).

11 PERMANENT EMPLOYMENT

- 11.1 Permanent employment is ongoing subject to each party having a right to terminate the employment with notice (or without notice in the case of Serious Misconduct by the Employee).

12 EMPLOYEE DUTIES

- 12.1 Employees are engaged to perform the duties and responsibilities of their position. These duties and responsibilities may be set out in a position description by Marathon Health and may be amended from time to time. In addition, an Employee may be directed to perform any other incidental or ancillary duties, or other duties required by Marathon Health from time to time that are within their competency and training.
- 12.2 Employees are to follow all lawful and reasonable directions issued by Marathon Health. This includes complying with expectations and requirements set out in Policies and Procedures.
- 12.3 Nothing in this EA extinguishes the duties that Employees have under the general law, including duties of fidelity and good faith and a duty to not do anything that is calculated or likely to destroy Marathon Health's trust and confidence in the Employee concerned.

13 PROBATION AND ENDING EMPLOYMENT (PERMANENT & MAXIMUM TERM)

- 13.1 This clause does not apply to Casual Employees.

13.2 Probationary Period:

- (a) Unless a shorter period is specified in an Employee's individually negotiated terms of employment, the first 6 months of an Employee's continuous employment with Marathon Health shall be a probationary period. During this period, either party may end the employment by providing the other party with written notice in writing of 1 week in advance (or, in the case of Marathon Health, by providing payment in lieu of some or all of the notice period).
- (b) For abundant clarity, where an employee transfers to a different position but remains employed by Marathon Health (other than as an Excluded Employee), the change in position will not trigger a new probationary period but may be subject to a trial period in the new position. If the employee is still within their first 6 months of employment, the original probationary period will continue until expiry of that original 6-month period. This does not prevent Marathon Health from implementing an initial trial period for an employee who has transferred to a different position.

13.3 After an Employee's probationary period ends, either party may end the employment at any time by providing notice in writing in advance or paying the Employee in lieu of some or all of the notice period. The required period of notice shall be:

- (a) for Employees who immediately before the employment ends have:
 - (i) not more than 1 year's continuous service: 1 week
 - (ii) more than 1 but not more than 3 years' continuous service: 2 weeks
 - (iii) more than 3 years but not more than 5 years' continuous service: 3 weeks
 - (iv) more than 5 years' continuous service: 4 weeks; or
- (b) where Marathon Health ends the employment of an Employee on notice, then where the Employee has at least 2 years' continuous service and is 45 years or older at the time notice is given, Marathon Health will provide one additional weeks' notice or payment in lieu of notice.

13.4 In the case of a Maximum Term Employee, no notice is required if the employment ends at the last working day in the term as the employment will automatically end on that date. During that term, either party can end the employment:

- (a) during the probationary period in accordance with clause 13.2; or
- (b) by providing notice of an earlier termination date in accordance with clause 13.3 (or notice to the end date if the end date is less than the notice period).

13.5 In the case of a Maximum Term Employee, if the employment is for a specified task or project then either party can end the employment on giving notice in accordance with clause 13.3.

13.6 If an Employee resigns or abandons their employment without giving the required notice in advance, Marathon Health will only be required to pay the Employee for the period up to and including their last day worked. Further, Marathon Health may withhold up to one weeks' wages, for any Employee who is at least 18 years of age, from any payment due to the Employee on termination.

13.7 No notice is required if employment of an Employee is terminated for reason of Serious Misconduct.

13.8 During part or all of any notice period, Marathon Health may require an Employee to:

- (a) perform special duties instead of their usual work (eg, handover duties); and/or
- (b) not attend or perform work; and/or
- (c) deal with or refrain from dealing with Marathon Health's property, other Employees, Staff, funding bodies and other stakeholders in a manner specified by Marathon Health.

14 REDEPLOYMENT AND JOB SEARCH SUPPORT

14.1 A Maximum Term Employee may take up to 1 day off per week, without loss of pay, to seek alternative employment during:

- (a) the 2-week period immediately prior to the End Date of their Maximum Term employment, if the period of their Maximum Term employment is for less than 6 months; or
 - (b) the 4-week period immediately prior to the End Date of their Maximum Term employment, if the period of their Maximum Term employment is for 6 months or more.
- 14.2 After receiving notice of termination in accordance with clause 13.3, a Permanent Employee may take up to 1 day off per week, without loss of pay, to seek alternative employment.
- 14.3 An Employee wishing to take time off in accordance with this clause must consult with Marathon Health about convenient times and days and obtain Marathon Health's approval in advance of any absence.
- 14.4 As a condition of paying for the time off, Marathon Health may require evidence to confirm the nature of the job search activities undertaken by the Employee during the time off.
- 14.5 A Maximum Term Employee will not be entitled to the benefits in this clause at any time after they have already accepted an offer of employment for the period after the Maximum Term (whether with Marathon Health or another employer), or if they have been offered ongoing employment by Marathon Health in a comparable role after the Maximum Term.

15 REDUNDANCY PAY

- 15.1 In some situations, the NES provides for "**Redundancy Pay**" if an Employee's employment ends for reason of redundancy.
- 15.2 In particular, the parties acknowledge and agree that:
- (a) in order to be able to engage and retain Employees, Marathon Health relies on the continuance or renewal of periodically rotating funding contracts that are awarded by client funding bodies;
 - (b) the continuance or renewal of funding from client and other funding bodies are not guaranteed and depend on a range of factors outside Marathon Health's control, including Government policy which regularly dictates the variation and cessation of funded activities;
 - (c) the client does not allow Marathon Health to use its funding for Redundancy Pay other than in exceptional circumstances;
 - (d) if Marathon Health loses funding generally, or for particular programs or services, and is unable to relocate Employees to another contract or funded program or service, Marathon Health must, regrettably, end the employment of Employees engaged in connection with those funded activities;
 - (e) as a consequence of these factors, it is part of the ordinary and customary turnover of labour that Marathon Health Employees will from time to time cease employment with

Marathon Health because funding ends; and

- (f) Redundancy Pay is not payable in situations where an Employee is employed in a position that is aligned with a particular funding arrangement and the position is no longer required because the funding ceases or that is part of the ordinary and customary turnover of labour;

15.3 In light of the above, the parties acknowledge that Redundancy Pay will generally not be paid to:

- (a) an Employee whose position is associated with a program that is part of a specific funding arrangement and where the funding has a designated end date, the position will no longer be required from the date the funding for the program ceases and this results in the employment of that Employee ceasing;
- (b) Maximum Term Employees whose employment ends upon expiry of their Maximum Term (eg. where this aligns with the end of a periodic funding period); or
- (c) Permanent Employees (or other Employees) whose employment ends because Marathon Health loses funding for their position or for activities upon which the need for their position depends (whether or not this occurs at the scheduled expiry of a periodic funding period).

15.4 Redundancy Pay is also not payable to Casual Employees (or in other situations where Redundancy Pay would not be payable under the NES or by order of FWC).

15.5 Where there is any Dispute between the parties, or between Marathon Health and particular Employees, about the application of this clause or Redundancy Pay under the NES, the Dispute is to be handled in accordance with clause 6.

PART 3 – HOURS, LEAVE, PAY & BENEFITS

16 PAY RATES

16.1 Full time

The minimum annual rate of pay for a Full Time Employee shall be as set out in Schedule 2 for their classification.

16.2 Part time

The minimum hourly rate of pay for a Part Time Employee shall be the **Minimum Hourly Rate** in Schedule 2 for their classification.

16.3 Casual

The minimum hourly rate of pay for each ordinary hour worked by a Casual Employee shall be the Minimum Hourly Rate in Schedule 2 for their classification, with the exception of Casual Employees engaged in the After Hours Program (see clause 16.4).

16.4 After Hours Program

For the purpose of the Agreement, the **After Hours Program** is a primary care service provided by Marathon Health that operates outside of normal business hours on weekends and Public Holidays.

A Casual Employee engaged in a Stream D (Band 2 or 3) and Stream A (Band 1 or 2) classification is eligible to be offered work on the After Hours Program. Where a Casual Employee is offered and agrees to work on the After Hours Program, the Casual Employee shall be paid the hourly rate of pay in the table in Schedule 2 for After Hours Program, for each ordinary hour worked in the After Hours Program on a weekend or public holiday. These rates are paid in lieu of the casual hourly rate of pay provided in clause 9.4 of the Agreement.

- 16.5 The minimum period of engagement of a Casual Employee is 3 hours.
- 16.6 Until the nominal expiry date of this EA, the Minimum Hourly Rates and the Annual Rates of pay specified in Schedule 2, and each Employee's actual ordinary rate of pay, shall increase annually on the following basis:
- (a) from the first full pay period commencing on or after 1 July each year; and
 - (b) the amount of each increase will match the positive percentage increase (if any) in CPI (Sydney, all groups) published for the 12 month period up to the March quarter immediately prior to the increase, up to a maximum of 2.5%%. In the event of negative CPI in a 12 month period, the rates in Schedule 2 will remain and will not be increased or decreased.
- 16.7 For clarity, the annual increases set out in the EA shall not continue automatically after the NED.
- 16.8 Marathon Health will also conduct performance reviews for Employees covered by this EA at or about the time as the increases under clause 16.5 take effect each year. Such performance reviews may, at Marathon Health's discretion, result in a performance-based wage increase or bonus being awarded to a particular Employee. Participation in a performance review is no guarantee an Employee shall receive a wage increase or bonus amount (subject to the minimum rates in this EA).
- 16.9 The performance review process and the timing and amount of any wage increase or bonus (if any) are at Marathon Health's complete discretion.

17 PAY FREQUENCY

- 17.1 Payment of wages and/or salaries shall be made fortnightly in arrears, by electronic funds transfer, not more than 4 working days after the end of each pay period (**Ordinary Payrun**).
- 17.2 Payment of allowances for each pay period will be made with the Ordinary Payrun to which they relate.
- 17.3 Expense payments that have not been approved in time for payment in the Ordinary Payrun in which they were incurred will be processed in the earliest practicable Ordinary Payrun after approval of the expenses.

18 ALLOWANCES

- 18.1 Higher Duties Allowance
- (a) An Employee may be required to act temporarily in a position that is classified at a higher level than their substantive salary. Employees required to act in a higher position for 5 or more consecutive working days, will be paid as follows:

- (i) If required to perform the full range of duties in which they are required to act, the minimum Salary rate application to the classification of the acting position and;
 - (ii) In other cases the amount payable will be an allowance determined by Marathon Health having regard to factors such as the duties that the employee is required to perform but not less than the proportion of the role being performed.
- (b) For the purposes of this clause, the relevant classification rate will be the Minimum Hourly Rate for the higher classification or, where the salary bands overlap, the Employee's usual rate of pay, whichever is the higher.

18.2 Professional Development Allowance

- (a) An Employee who has completed their probationary period may apply for or be eligible for an annual training allowance of up to a maximum of \$1,500 per financial year (pro rata for part time employees) to assist in the costs of professional development relevant to their current position (Training Allowance). Eligibility for the Professional Development Allowance will be in accordance with Marathon Health policy. The maximum Professional Development Allowance for which Part Time Employees are eligible under clause 18.2(a) will not be \$1,500 but will instead be limited to the pro rata equivalent of \$1,500 (in the same proportion as their ordinary part time hours bear to 37.5 per week). This clause does not apply to casual Employees.
- (b) Professional Development Allowances, if not used or not used in full, cannot be banked or accumulated from year to year without CEO consent in writing.

19 EXPENSES

19.1 Immunisation Expenses

- (a) Where an Employee is required to be immunised for the purposes of their employment, Marathon Health will pay for and facilitate such immunisations.
- (b) Marathon Health may also facilitate voluntary immunisations for Employees, either at its own expense or on a user-pays basis.

19.2 Motor Vehicle Expenses

- (a) Where an Employee is required and authorised to use their own motor vehicle in the course of their duties, Marathon Health will ensure that the expense reimbursement paid to the Employee (per kilometre of work-related use) will be no less than the rate per kilometre that is published by the Australian Tax Office (ATO) (as amended from time to time) for the purposes of claiming income tax deductions using the "cents-per-km" method.
- (b) Where an Employee chooses to use their own motor vehicle when a company vehicle is available to use in the course of their duties and the Employee's manager approves the Employee to use their personal motor vehicle, Marathon Health will provide the Employee with reimbursement of 50% per kilometre of the ATO rate and in accordance with the Travel Policy as amended from time to time.

19.3 Other Expenses

- (a) Other expenses may be claimed in accordance with and subject to Marathon Health's Policies and Procedures applying from time to time.

20 AUTHORISED DEDUCTIONS FROM PAYMENTS

- 20.1 All payments are subject to withholding of any applicable taxation or other amounts required to be withheld by law (eg, HECS contributions).
- 20.2 Any entitlement paid to an Employee in advance or anticipation of its accrual may be deducted from future payments owed to the Employee by Marathon Health (eg, a **Termination Payment** or Ordinary Payrun payment), provided:
 - (a) the Employee is notified of the deduction in writing at least 5 working days prior to the Ordinary Payrun from which the amount will be deducted; or
 - (b) if the amount is to be deducted from a Termination Payment, the Employee is notified of the deduction prior to the date the Termination Payment is processed; and
 - (c) the Employee authorises the deduction and the amount of the deduction.

21 ANNUAL SALARIES AND SALARY PACKAGING

Annual Salaries

- 21.1 This clause applies to all Employees other than casual employees. An Employee may agree with Marathon Health to be paid an annual salary. This includes an Employee who is paid an annual salary at the time the EA commences.
- 21.2 An annual salary agreement is to take account of the usual hours of work and roster the Employee works. An annual salary agreement will take into account:
 - (a) the appropriate annual rate of pay in the case of a Full Time Employee;
 - (b) the Minimum Hourly Rate in the case of a Part Time Employee (based on the agreed contract hours per clause 23.2); and
 - (c) any other rostered hours, overtime, on call, call back or other work arrangements(collectively, **Annual Salary**).
- 21.3 An Annual Salary will be paid in satisfaction of all rates of pay, penalty rates, loadings and allowances that may otherwise apply under the terms of the EA.
- 21.4 An Annual Salary shall not result in an Employee being paid less in a year (or part of a year, if the employment ends part way through that year) than if the Employee had been paid the minimum Award rate for the Employee's classification, and any other amounts in this EA satisfied by the Annual Salary with the exception of the call back arrangements in clauses 24.2 – 24.5 of the EA as call backs are intended to cover ad-hoc, inherently unpredictable occasions typically caused by needs outside the influence of the Employee or Marathon Health.
- 21.5 An Employee who is paid an Annual Salary by agreement under this clause and who is required to work on a public holiday is entitled to paid time off work of equal length to the time worked on the public holiday ie. time for time. This time off can be added to the Employee's annual leave entitlement or taken on any other day by agreement.
- 21.6 If an Annual Salary paid to an Employee has the result mentioned in clause 21.4 at the end of

a year or period of employment, Marathon Health shall pay the Employee the difference in the next full pay period, or final pay as appropriate.

Salary Packaging

- 21.7 An Employee may agree with Marathon Health to salary package their remuneration under this EA, subject to compliance with applicable taxation laws and subject to Marathon Health's Policies and Procedures on salary packaging from time to time.
- 21.8 Salary packaging may involve:
- (a) payment of pre-tax entitlements in the form of non-cash benefits or additional superannuation contributions; and/or
 - (b) payment of after-tax entitlements to a superannuation fund to supplement Marathon Health's superannuation contributions.
- 21.9 An agreement to salary package must be in writing, signed by the CEO or his or her/their nominee from time to time on behalf of Marathon Health and will be subject to the conditions set out in the agreement.
- 21.10 Marathon Health may change its Policies and Procedures relating to salary packaging at any time, eg., where Marathon Health ceases to be eligible for a fringe benefits exemption or concession.
- 21.11 For abundant clarity, nothing in this EA extinguishes or amends any existing salary packaging agreement between an individual Employee and Marathon Health.

22 SUPERANNUATION

- 22.1 Marathon Health will pay the superannuation guarantee contribution in accordance with the *Superannuation Guarantee (Administration) Act 1992* (as amended from time to time) on behalf of the Employee.
- 22.2 Voluntary superannuation contributions may be made from either pre-tax or after-tax remuneration in accordance with clause 21 – Salary Packaging.
- 22.3 Employees may nominate a complying superannuation fund for the purposes of superannuation payments. In the absence of a complying nomination, Marathon Health will pay superannuation contributions to its default fund, which is HESTA.

23 HOURS OF WORK

- 23.1 Ordinary hours of work for a Full Time Employee shall be 75 hours per two-week period, between the hours of 7:00am and 8:00pm, Monday to Saturday (**Span**).
- 23.2 Ordinary hours of work for a Part Time Employee shall be the number of contract hours agreed between Marathon Health and the Employee from time to time (being less than 75 hours per two-week period), between the hours of 7:00am and 8:00pm, Monday to Saturday.
- 23.3 Except in extenuating circumstances, there will be no expectation or requirement for Employees to work more than 10 hours per day, exclusive of meal breaks.

24 ON CALL & CALL BACK

On Call

- 24.1 An Employee may be rostered to be on call, outside the Span of hours of work. Where an Employee is rostered to be on call then the following arrangements shall apply:
- (a) the Employee must remain contactable by phone and email, and available to attend to any work activity associated with the on call arrangement;
 - (b) the on call roster will be for a 24 hour period (or less by agreement), or up to a week of 7 days;
 - (c) the on call allowance in Schedule 2 will apply for each rostered day, or the week as the case may be; and
 - (d) where an Employee who is on call is required to work for more than 30 minutes in a 24 hour period (outside of any rostered or usual work hours in that period), the Employee shall be entitled to payment at the ordinary rate of pay for all time worked in excess of 30 minutes in that period. On call work of up to 30 minutes in a 24 hour period will not be eligible for payment other than the On Call allowance.

Call back

- 24.2 An Employee called back by Marathon Health to the workplace after leaving work for a day shall be paid a minimum of 3 hours at the appropriate ordinary rate of pay, except where the call back is continuous (subject to a meal break) with the end of the rostered or usual work on the day (where TIL applies).
- 24.3 Where the Employee is called back to the workplace, the Employee will not be required to work the full 3 hours if the work activity the Employee is called back to perform are completed within a shorter period.
- 24.4 If the Employee is called back to the workplace a second time on the same day after leaving work for a day, then the periods that the Employee worked in the first and any subsequent call backs each count towards the calculation of the 3 hours minimum engagement.
- 24.5 These call back arrangements will not apply in circumstances where an Employee can attend to the work activity over the telephone or via a remote or work from home arrangement.

25 OVERTIME

- 25.1 This clause does not apply to Stream F employees (Senior Managers).
- 25.2 Where Marathon Health requests or requires an Employee to work hours in excess of the Employee's roster or outside the span of ordinary hours in clause 23 that additional time worked shall be **Overtime**. Make Up Time, On call and Call Back work is not Overtime.
- 25.3 Employees are not to work Overtime unless expressly required and approved by their immediate manager in advance of the Overtime being worked and, on a case-by-case basis. Despite this, Marathon Health has discretion to consider a reasonable request to approve as Overtime work in excess, or outside of, ordinary hours of work that has already been performed by an Employee for any reason.
- 25.4 Subject to clause 25.1, all approved Overtime that occurs adjacent to, or incidental to an

Employees' rostered ordinary hours of work will be compensated through accrual of paid time off in lieu (TIL) on an hour for hour basis.

25.5 However, where an Employee is required or requested to work additional hours that are outside the span of ordinary hours on a day, or on a day that is in addition to the Employees' rostered hours of work in a pay period, then at the election of Marathon Health the Employee shall be compensated by one of the following methods only:

- (a) TIL at the rate of 1.5 hours leave for each hour so worked;
- (b) payment of an overtime penalty rate at 150% of the Employees' minimum hourly rate for the relevant classification and banding;
- (c) TIL at the rate of 2 hours for each hour so worked on a Sunday or Public Holiday only; or
- (d) payment of an overtime penalty rate at 200% of the Employees' minimum hourly rate for the relevant classification and banding for each hour so worked on a Sunday or Public Holiday.

Where more than one TIL or penalty rate could apply on a day for time worked, they shall not be cumulative and only the highest rate shall apply.

For clarity, this clause 25.5 does not apply to on-call work described in clauses 29.4 to 29.5.

25.6 The overtime penalty rate for a Casual Employee is based on the minimum hourly rate excluding casual loading.

25.7 Unless otherwise agreed in writing by an Employee's supervisor, any Employee who accrues TIL is to take the TIL within the six (6) months immediately following the time of accrual, at a convenient time(s) agreed with the Employee's supervisor.

25.8 Up to 20 hours of accrued but unused TIL (pro rata for part time employees) will be paid to Employees on termination of employment.

25.9 Employees agree and acknowledge that the provisions in this clause are reasonable taking into account Marathon Health's not for profit, charitable status and its reliance on periodic public funding.

26 MAKE UP TIME

26.1 On a particular day, if it is convenient for an Employee to take time off work to attend to personal matters and make up those missed hours the following day or on another day during the same pay period, the Employee may request this flexibility in writing (eg, by email to their supervisor). Approval of such requests is at Marathon Health's discretion, taking into account what is convenient to Marathon Health, including any TIL accrued by the Employee the operational needs of the organisation.

26.2 "Make Up Time" worked to make up for time off pursuant to clause 26.1 will be treated as Ordinary time for all purposes, even if (at the Employee's election) it is performed outside the usual span of Ordinary hours under clause 23.1. Marathon Health will not require any Employee to undertake Make Up Time outside the span of Ordinary hours under clause

23.1.

27 BREAKS

- 27.1 Employees are entitled to an unpaid meal break of between 30 – 60 minutes for each day on which 5 or more hours are worked.
- 27.2 Employees are responsible for taking any meal or rest breaks at times convenient to, or agreed with, Marathon Health and must ensure that they do not work more than 5 hours without taking a break of at least 30 minutes, unless discussed and agreed with their supervisor in advance (or, if this is not reasonably practicable, unless approved by another manager).

28 PUBLIC HOLIDAYS

- 28.1 Public Holidays are as set out in the FW Act. Employees will not ordinarily be required to work on Public Holidays.
- 28.2 Where work is required to be performed on a Public Holiday, Employee's will not be required to work more than 7.5 hours, unless agreed in writing in advance of the Public Holiday.
- 28.3 If any Employee is requested and agrees to work on a Public Holiday, the Employee will accrue an equivalent amount of TIL for each hour worked on the Public Holiday in addition to payment for each hour worked at the ordinary rate of pay. However, this will not apply with respect to a Casual Employee working in the After Hours Program on a weekend or Public Holiday (see clause 16.4).

29 ANNUAL LEAVE

- 29.1 Annual leave will be provided in accordance with, and subject to, the NES.
- 29.2 For the purpose of this clause, an Employee (other than a Casual Employee) shall accrue 5 weeks' annual leave progressively for each completed year of continuous service.
- 29.3 At the time an Employee takes a period of annual leave, the Employee shall be paid at the Employee's ordinary rate for the period of annual leave. No penalty rates, allowances or annual leave loading shall apply or be payable in respect of a period of annual leave.
- 29.4 In addition, a day between Christmas and New Year's Day that is a usual work day for a full time or part time Employees, and is not a public holiday will be provided to that Employee by Marathon Health as a leave day without loss of pay (**Christmas Shutdown**). Leave days during the Christmas Shutdown are non-accruing and made not be substituted for another day.
- 29.5 However, where Marathon Health requests an Employee to be on call during the Christmas Shutdown to meet program requirements, and the Employee agrees to be on call the Employee shall accrue TIL on an hour for hour basis up to a maximum of 7.5 hours in any 24-hour period that may be taken at an agreed time and in accordance with clause 24 and clause 25.6. For clarity, this clause applies in lieu of clause 25.5.
- 29.6 Marathon Health may require or request an Employee to take annual leave at a particular time if the Employee has more than 8 weeks of accrued, unused annual leave. However, Marathon Health will not require or request any Employee to use annual leave if this would cause the Employee's accrued annual leave balance to fall below 6 weeks. The

Employees acknowledge and agree that a requirement to take annual leave in accordance with this clause is reasonable.

- 29.7 Marathon Health will not approve an Employee to take unpaid leave unless the Employee has exhausted his or her/their annual leave entitlement at the time the leave is to be taken.

30 PERSONAL/CARER'S LEAVE

- 30.1 Subject to this clause, paid personal/carer's leave will be provided in accordance with, and subject to, the NES.
- 30.2 Employees must provide a medical certificate or statutory declaration upon request by the Employee's supervisor/manager as evidence of the reason for personal/carer's leave.
- 30.3 An Employee may apply for paid personal/carer's leave in circumstances not covered by the NES. Approval of such requests is at Marathon Health's discretion, in accordance with and subject to its Policies and Procedures in place from time to time.

31 UNPAID CARER'S LEAVE

- 31.1 Unpaid carer's leave will be provided in accordance with and subject to the NES.
- 31.2 An Employee may apply for unpaid carer's leave in circumstances not covered by the NES. Approval of such requests is at Marathon Health's discretion, in accordance with and subject to its Policies and Procedures in place from time to time.

32 COMPASSIONATE LEAVE

- 32.1 Compassionate leave will be provided in accordance with and subject to the NES.
- 32.2 An Employee may apply for paid or unpaid compassionate leave in circumstances not covered by the NES. Approval of such requests is at Marathon Health's discretion, in accordance with and subject to its Policies and Procedures in place from time to time.

33 CEREMONIAL LEAVE

- 33.1 An Employee who is legitimately required by Aboriginal tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to 10 working days unpaid leave in any one year, with the approval of Marathon Health.

34 CULTURAL LEAVE

- 34.1 An Employee who identifies as an Aboriginal or Torres Strait Islander will be entitled to utilise one day off in any one year, without loss of pay, to participate in a cultural community event with the approval of Marathon Health.

35 COMMUNITY SERVICE LEAVE

- 35.1 Community service leave will be provided in accordance with and subject to the NES.
- 35.2 In other situations not covered by the NES, Marathon Health will consider approving paid community service leave on a case-by-case basis.

36 FAMILY AND DOMESTIC VIOLENCE LEAVE

- 36.1 Family and domestic violence leave will be provided in accordance with and subject to the

NES.

37 STUDY LEAVE

- 37.1 Marathon Health may at its discretion approve paid study leave of up to 5 days per annum for a full-time Employee or pro-rata for a part-time Employee, on a case-by-case basis.

38 PARENTAL LEAVE

- 38.1 Employees, including Casual Employees, with 12 months continuous service are entitled to unpaid parental leave in accordance with and subject to the NES.
- 38.2 The parties acknowledge that Employees may also be eligible to receive payment for periods of parental leave through a Government paid parental leave scheme and that these payments may be administered (in whole or in part) through the Marathon Health, but that Marathon Health shall not be required to make these payments to Employees.
- 38.3 Where any Employee is eligible to take unpaid parental leave under the NES during a period, Marathon Health will pay the Employee at their ordinary rate of pay for up to 6 weeks of parental leave in addition to any monies received under a Government payment scheme, provided that:
- (a) where more than one Employee is eligible for leave in respect of the same child, the total payment will be 6 weeks leave for the primary caregiver but may, at the Employees' election be shared between the eligible Employees and 1 weeks' paid leave for the Partner to the primary caregiver; and
 - (b) upon request, Marathon Health may approve payment of 12 weeks at half pay for the primary caregiver, rather than 6 weeks at ordinary pay; and
 - (c) this sub-clause 38.3 will not apply during any period where the Government provides a scheme of payment for which eligible employees receive 6 months of pay or more.
- 38.4 An Employee is eligible to take unpaid parental leave in accordance with the NES. For the avoidance of doubt, an eligible Employee must have 12 months continuous service with Marathon Health at the commencement of parental leave; an eligible Casual Employee must be a regular casual employee; and in the case of adoption, the child must be less than 16 years of age at the time of placement.'
- 38.5 To re-qualify for subsequent entitlement to parental leave, Employee's must have performed 12 months continuous service commencing no earlier than the date the Employee returns to work (other than for a stay in touch day) from the previous period of parental leave, whether paid or unpaid.
- 38.6 Without limiting the matters that are relevant considerations, if an Employee requests an extension of parental leave and, at the time of the request, Marathon Health does not have guaranteed funding for the Employee's position from and for a reasonable period after the proposed return to work date, it shall be reasonable for Marathon Health to refuse the request on those grounds.

39 LONG SERVICE LEAVE

- 39.1 Long service leave will be provided in accordance with and subject to the *Long Service Leave*

Act 1955 (NSW), the Long Service Leave Act 1976 (ACT) and the Long Service Leave (Portable Schemes) Act 2009 (ACT), as applicable and as amended or replaced from time to time.

PART 4 – OTHER EXPECTATIONS & COMMITMENTS

40 NO SMOKING AND HEALTH PROMOTION

- 40.1 As a health promotion organisation, Marathon Health discourages both active and passive smoking and encourages healthy lifestyle options. Employees are expected to model conduct which is consistent with these objectives while at work and representing Marathon Health in our communities. This includes not smoking at work, during work related activities or while in uniform.

41 UNIFORMS

- 41.1 Where an employee is required by Marathon Health to wear a uniform, Marathon Health will provide up to \$180 towards the cost of uniforms. This provision is available upon commencement of employment or from the time the uniform is required and subsequently every 2 years thereafter. It is a condition of access to this benefit that an Employee purchases and wears the uniform items as required by Marathon Health.

42 CONSULTATION GENERALLY

- 42.1 From time to time, Marathon Health will consult with Employees individually or collectively about work-related matters including work health and safety (whether as a whole or through one or more “**Consultative Committees**”).
- 42.2 Subject to any specific consultation obligations (eg, work health and safety consultation requirements), Marathon Health will determine the appropriate method of consultation in the circumstances.

43 CONSULTATION ABOUT MAJOR WORKPLACE CHANGES

- 43.1 Where Marathon Health has made a definite decision to introduce a major workplace change likely to have Significant Effects on Employees, before implementing the changes Marathon Health must:
- (a) notify the Employees who may be affected by the proposed changes;
 - (b) discuss the proposed changes with the affected Employees;
 - (c) provide relevant information to the affected Employees in writing;
 - (d) allow affected Employees an opportunity to respond to the proposed changes if they wish to do so; and
 - (e) consider any concerns raised by affected Employees about the proposed changes.
- 43.2 In any consultation about major workplace change under clause 43.1, the Consultative Committee may represent affected Employees generally and individual Employees may elect to appoint a different person or body to represent their personal interests. Where an Employee wishes to appoint a personal representative they are to notify Marathon Health of the representative's name and contact details in writing.
- 43.3 Nothing in this clause or EA requires Marathon Health to disclose confidential information to Employees or their representatives for the purposes of consultation if it would be contrary to Marathon Health's interests to do so.

SIGNING PAGE

Signed in accordance with 185(5) of the FW Act and Regulation 2.06A of the Fair Work Regulations:

Signed for and on behalf of Marathon Health Ltd

Witness

In the presence of:

Megan Callinan

Name (print)

Chief Executive Officer

Position

Donna Aubler

Witness Name (print)

106 Talbragar Street, Dubbo NSW 2830

Address

Donna Aubler

Witness Signature

Megan Callinan

Signature

11.7.22

Date

11/7/22

Date

Signed for and on behalf of Employees

Witness

In the presence of:

Leanne Taylor
Name (print)

Executive Assistant
Employee Representative Position

106 Talbragar Street Dubbo NSW 2830
Address

[Signature]
Signature

11/7/22
Date

JUANITA STREICHER
Witness Name (print)

[Signature]
Witness Signature

11/7/22
Date

SCHEDULE 1 – DEFINITIONS

Annual Salary	has the meaning in clause 21.2 of this EA.
Casual Employee	has the meaning in clause 9 of this EA.
CEO	means the Chief Executive Officer of Marathon Health from time to time, however titled.
Christmas Shutdown	means the period during December and January that is nominated by Marathon Health from year to year for the purposes of clause 29.5 of this EA.
Consultative Committee	means a defined group of Employees with which Marathon Health communicates about one or more matters for the purposes of consulting with Employees.
Day Worker	is an Employee, other than a Casual Employee, who is regularly rostered or engaged to work their ordinary hours of work during the span of ordinary hours of work under clause 23.1 or 23.2.
Dispute	means a grievance or dispute between Marathon Health and another person(s) covered by this EA, about a matter under this EA or in relation to the NES.
EA	means this enterprise agreement.
Employee	means an individual employed by Marathon Health in a classification in this EA to perform work required under one or more of Marathon Health's Primary Funding Streams at or principally from its branch offices, other than an Excluded Employee.
Excluded Employee	has the meaning in clause 3.2 of this EA.
FW Act	means the <i>Fair Work Act 2009</i> (Cth).
FWC	means the Fair Work Commission.
IFA	means an individual flexibility agreement between an Employee and Marathon Health under this EA to vary the effect of the terms under this EA that would otherwise apply to the Employee and Marathon Health.
Maximum Term employment	has the meaning in clause 10 of this EA.
Minimum Hourly Rate	means the hourly rate of pay applicable to Part Time Employees in a particular classification under this EA.
Marathon or Marathon Health	means Marathon Health Ltd [can 154 318 975], however named from time to time, or any other employer required to comply with this EA by operation of law.
NED	means the Nominal Expiry Date of this EA for the purposes of the FW Act, being 4 years from the date this EA is approved by the FWC.

NES	means the National Employment Standards under the FW Act.
Ordinary Payrun	means a payment of salary or wages under this EA in accordance with clause 17.1.
Permanent Employment	has the meaning in clause 11 of this EA.
Policies and Procedures	means any policy, procedure, code of conduct or behaviour, handbook or guideline of Marathon Health, however described, whether or not in writing and whether or not referenced in this EA, as amended, retracted or replaced from time to time.
Redundancy Pay	<p>means payment to an Employee upon termination of employment because of redundancy, in compensation for non-transferable credits, such as service for the purposes of personal/carer's leave, and the inconvenience and hardship imposed by the termination, but does not include payments:</p> <ul style="list-style-type: none"> • of ordinary salary or wages for the period prior to termination; • in lieu of notice of termination of employment; • in respect of contingent entitlements payable on termination (eg, pro rata long service leave for employees with 5 or more years service); or • for accrued entitlements payable on termination (eg, annual leave and crystallised long service leave entitlements).
Serious Misconduct	has the meaning in the <i>Fair Work Regulations 2009</i> (Cth).
Significant Effects	<p>means:</p> <ul style="list-style-type: none"> • the termination of the employment of Employees; or • a major change to the composition, operation or size of Marathon Health's workforce or to the skills required of Employees; or • the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or • the alteration of hours of work; or • the need to retrain Employees; or • the need to relocate Employees to another workplace; or • the restructuring of jobs, <p>but does not include outcomes or effects that are expressly permitted or anticipated by this EA or by any contract of employment with a particular Employee.</p>

Staff	means individuals other than Employees that are engaged by Marathon Health to perform work (eg. contractors).
Termination Payment	<p>means payment to an Employee at the time of, or as a consequence of, termination of the Employee's employment, including but not limited to any payment:</p> <ul style="list-style-type: none"> • of ordinary salary or wages for the period prior to termination; • in lieu of notice of termination; • in respect of contingent entitlements payable on termination (eg, pro rata long service leave for employees with 5 or more years service); • for accrued entitlements payable on termination (eg, annual leave and crystallised long service leave entitlements); • of Redundancy Pay.
TIL	means paid time off in lieu of payment for Overtime.
Trainee	means an Employee undertaking a traineeship under a training contract, where a training contract means an agreement for a traineeship made between the Employee and Marathon Health that is registered by a NSW or ACT training authority.

SCHEDULE 2 - RATES OF PAY**ALLOWANCES**

On Call (cl. 24)	Rate per 24-hour period	Rate per week (full time equivalent)
Monday – Saturday	\$20.65	\$103.25
Sunday, Public Holidays	\$41.21	

RATES OF PAY

Classification	Hourly Rate of Pay	Full Time Annual Rate of Pay
Trainees (Adult)	\$17.94	\$35,448.40
Stream A - Admin		
Band 1	\$27.03	\$52,708.50
Band 2	\$32.61	\$63,589.50
Band 3	\$38.46	\$75,000.00
Stream B - Program Support Employees	\$26.62	\$51,909.00
Stream C - Specialists		
Band 1	\$30.76	\$59,982.00
Band 2	\$36.01	\$70,219.50
Band 3	\$43.59	\$85,000.00
Stream D - Direct Service Delivery		
Band 1	\$30.76	\$59,982.00
Band 2	\$33.45	\$65,227.50
Band 3	\$42.67	\$83,206.50
Band 4	\$51.75	\$100,912.00
Stream E - Program Managers		
Band 1	\$44.88	\$87,516.00
Band 2	\$47.18	\$92,000.00
Band 3	\$56.41	\$110,000.00
Stream F - Senior Managers	\$62.11	\$121,114.50

RATES OF PAY - AFTER HOURS PROGRAM

These rates of pay apply only to Casual Rates who are eligible to work on the After Hours Program (see clause 16.4) and are inclusive of the 25% casual loading

Classification	Casual Hourly Rate of Pay		
	Saturday	Sunday	Public Holiday
Stream D - Direct Service Delivery			
Band 2	\$67.88	\$67.88	\$83.63
Band 3	\$67.88	\$67.88	\$83.63
Stream A – Administration Employees			
Band 1	\$53.53	\$53.53	\$76.47
Band 2	\$57.44	\$57.44	\$82.06

SCHEDULE 3 - CLASSIFICATION DESCRIPTIONS

Classification	Description
Trainees	An employee at this level is undertaking a traineeship under a training contract, where a training contract means an agreement for a traineeship made between Marathon Health and an Employee that is registered by a NSW or ACT training authority.
Stream A - Administration Employees	
Band 1	<p>An employee at this level:</p> <ul style="list-style-type: none"> works under routine supervision for straightforward tasks; works within established Policies and Procedures; provides basic general information, advice and assistance about the organisation to members of the public, and other Employees and Staff; typically performs duties including reception work, travel bookings; data entry and retrieval; mail procedures; routine maintenance of office equipment etc.
Band 2	<p>In addition to the characteristics of Group 1 Band 1, an employee at this level may:</p> <ul style="list-style-type: none"> supervise the work of more junior administrative employee(s); have responsibility for such things as managing administrative functions such as purchasing stationery, maintaining fleet service schedules, managing diaries,

	<p>providing high level support to members of the Executive, preparing reports with information provided by others; paying accounts etc;</p> <ul style="list-style-type: none"> • contribute to the development, implementation and evaluation of Policies and Processes within the Administration area.
Band 3	<p>In addition to the characteristics of Group 1 Band 1 and Band 2 Employees, an employee at this level may:</p> <ul style="list-style-type: none"> • have achieved a level of organisational specific knowledge sufficient for them to give advice or information to the organisation in relation to specific areas of their responsibility. <p>Employees at this level require only limited guidance or direction and would normally report to more senior Employees as required.</p> <p>Employees at this level exercise high level of initiative, complete discretion and judgment at times in performing their duties.</p>
Stream B - Program Support Employees	<p>An employee at this level:</p> <ul style="list-style-type: none"> • is employed to support a specific funded project; • is not responsible for the work of other Employees or Staff; • possesses high level technical skills such as database design and management, project management, and/or advanced skills in specialised computer programs, along with high level skills specific to the project or program they are supporting (eg. may have mental health qualifications and experience if supporting a mental health project or program); • works under broad direction from a program manager; • may represent the organisation within the local community; • assists the program manager to develop, implement and evaluate Policies and Processes specific to the program they work on.
Stream C - Specialists	
Band 1	<p>An employee at this level:</p> <ul style="list-style-type: none"> • is employed for specialist professional qualifications and expertise of a non-clinical type typically not recognised specifically within the HP&SS Award or Nurses Award; • is typically a new Graduate, with knowledge and training at degree level and little related workplace experience; • may be a member of an external Professional Association or other body that sets professional standards for the profession; • provides specialist technical services and advice to others within Marathon Health; • may assist in developing proposals for resource allocation • may report to a more senior person within their area of specialisation.
Band 2	<p>An employee at this level:</p>

	<ul style="list-style-type: none"> • is employed for specialist professional qualifications and expertise of a non-clinical type typically not recognised specifically within the HP&SS Award or Nurses Award; • requires knowledge and training at degree level combined with relevant experience, or at a lesser level combined with extensive experience; • may have supervisory responsibility for technical or administrative Employees within their area of specialisation; • provides specialist technical services and advice to others within Marathon Health; • shapes policy and processes within their area of expertise; • undertakes planning involving use of resources, and develops proposals for resource allocation for approval by Executive; • analyses and reports on data.
Band 3	<p>An employee at this level:</p> <ul style="list-style-type: none"> • in addition to Band 1 and 2, is considered to be the senior specialist in their field; • belongs to a Professional Association that sets standards for that specific profession; • may report to a Senior Manager.

Stream D - Direct Service Delivery Employees	
Band 1	<p>An employee at this level:</p> <ul style="list-style-type: none"> • is responsible for the direct delivery of program-related services to those outside Marathon Health; • is typically qualified to Certificate III level, with relevant experience; • may provide a range of clinical services, or in the case of eHealth, support clinical services; • has specialist training in assessment, diagnosis and treatment of health issues relevant to their qualifications (or in systems that support clinical services); • provides expert opinion on clinical matters relevant to their qualifications; • performs their work under the guidance of established policies, procedures, clinical guidelines, and professional standards; contributes to the program reporting by providing data relevant to their program.
Band 2	<p>In addition to the characteristics of Stream D Band 1, an employee at this level:</p> <ul style="list-style-type: none"> • is degree qualified, with relevant work experience, or has other qualifications and significant work experience in the area of their expertise; and is responsible for resource allocation within established and agreed guidelines, within their program; • and may mentor, advise or supervise the work of more junior Employees within the area of their expertise.
Band 3	<p>In addition to the characteristics of Stream D Bands 1 and 2, an employee at this level:</p> <ul style="list-style-type: none"> • possesses post-graduate qualifications and experience in their area of expertise; • Supervises and mentor the work of Employees within the area of their expertise.
Band 4	<p>In addition to the characteristics of Stream D Bands 1, 2 and 3, an employee at this level:</p> <ul style="list-style-type: none"> • is considered a senior subject matter expert in the area of their expertise; • maybe required to represent the organisation in forums and workshops.
Stream E - Program Managers	
Band 1	<p>An employee at this level:</p> <ul style="list-style-type: none"> • is responsible for the work of others (either Employees or Staff); • is responsible for the management of significant program budgets and resources; • is responsible for the development, implementation, evaluation and reporting on a program; and may develop, implement and manage Policies and Procedures relating to their specific program.

Band 2	<p>In addition to the characteristics of Steam E Band 1, an employee at this level:</p> <ul style="list-style-type: none"> • reports to a Senior Manager; • is responsible for leading the successful implementation and delivery programs.
Band 3	<p>In addition to the characteristics of Steam E Band 1 and 2, an employee at this level:</p> <ul style="list-style-type: none"> • reports to Senior Manager or the Executive team; • supervises Managers and Employees relating to the programs and services delivered across multiple programs or projects; • manages budgets and resources; • provides high level support to Senior Managers.
Stream F - Senior Managers	<p>An employee at this level:</p> <ul style="list-style-type: none"> • reports to a member of the Executive team; • functions autonomously and manages the work of others across multiple programs or projects; • manages significant budgets and resources; • provides high level support to the Executive team and the Board; • makes a significant contribution to the development of organisational strategy, goals, and business plans; and exercises leadership within their own Directorate, and across the whole organisation.

Schedule 2.2—Model flexibility term

(regulation 2.08)

Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) includes details of:
 - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing—at any time.

Schedule 2.3—Model consultation term

(regulation 2.09)

Model consultation term

- (1) This term applies if the employer:
 - (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

- (2) For a major change referred to in paragraph (1)(a):
 - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
 - (a) discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
 - (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is *likely to have a significant effect on employees* if it results in:

- (a) the termination of the employment of employees; or
- (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- (10) For a change referred to in paragraph (1)(b):
 - (a) the employer must notify the relevant employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (12) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
 - (a) discuss with the relevant employees the introduction of the change; and
 - (b) for the purposes of the discussion—provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:

relevant employees means the employees who may be affected by a change referred to in subclause (1).

IN THE FAIR WORK COMMISSION

Fair Work Act 2009 (Cth) (FW Act)

Matter number:

AG2022/2415

Employer:

Marathon Health Limited (**Employer**)

Application:

Section 185 – Application for approval of a single enterprise agreement, namely the Marathon Health Enterprise Agreement 2022 (**Agreement**)

Authorised representative:

Margaret Kelly
General Manager, People and Capability

Undertaking- Section 190

For and on behalf of the Employer I, Justine Elizabeth Summers:

1. declare that as Chief Operating Officer of the Employer I have:
 - (a) authority to give this undertaking on behalf of the Employer,
 - (b) sought the views of all bargaining representatives for this undertaking pursuant to s.190(4) of the FW Act,
2. understand that each undertaking is to be taken to be a term of the Agreement,
3. give the following undertakings with respect to the Agreement.
4. Schedule 2 – Rates of Pay - Trainees

Schedule 2 – Rates of Pay in the Agreement shall apply from commencement on the basis that the Trainee rates of pay are as follows:

Classification	Hourly Rate of Pay	Full Time Annual Rate of Pay
Trainees (Adult)	\$18.39 \$17.94	\$35,857.58 \$35,448.40

The hourly or annual rate of pay for a Trainee (adult) thereafter shall be in accordance with the Agreement.

5. Overtime

The Agreement shall be read on the basis that the following is included as a new clause 25.10, immediately following clause 25.9:

25.10 An Employee (including a Casual Employee) who is to be paid at an overtime penalty rate for working Overtime (as defined by clause 25.2) rather than accruing Time in Lieu for working Overtime shall be paid:

- (a) the overtime penalty rate provided by this clause, or
- (b) at a rate per hour equivalent to the overtime penalty rate on the minimum rate of pay for the Employee's classification under the Health Professionals and Support Services Award 2020 (**HPSS Award**) or the Nurses Award 2020 (**Nurses Award**),

whichever rate is a higher actual rate of pay for the Employee.


For clarity, in the case of Casual Employees this clause does not apply in respect of work on the After Hours Program (see clause 16.4).

6. Schedule 2 – Rates of Pay – After Hours Program

The Agreement shall be read on the basis that the following is included at Schedule 2 – Rates of Pay – After Hours Program in lieu of the current table of rates:

These rates of pay apply only to Casual Rates who are eligible to work on the After Hours Program (see clause **Error! Reference source not found.**) and are inclusive of the 25% casual loading

Classification	Casual Hourly Rate of Pay		
	Saturday	Sunday	Public Holiday
<i>Stream D - Direct Service Delivery</i>			
<i>Band 2</i>	\$67.88	\$67.88 \$69.27	\$83.63
<i>Band 3</i>	\$67.88	\$67.88 \$75.12	\$83.63 \$85.85
<i>Stream A – Administration Employees</i>			
<i>Band 1</i>	\$54.87	\$54.87	\$78.38
<i>Band 2</i>	\$58.88	\$58.88	\$84.11

Date signed:	10 August 2022
For and on behalf of the Employer by: [In accordance with s.190(5) of the FW Act]	Justine Elizabeth Summers
Signature:	
Witness name:	Jessica Kop
Witness signature:	