

AMENDMENT NUMBER 2
TO
THE AGREEMENT FOR SERVICES AT A WORKSITE MEDICAL FACILITY
BETWEEN
THE CITY OF DELRAY BEACH
AND CONCENTRA HEALTH SERVICES, INC.

THIS AMENDMENT NUMBER 2 ("Amendment Number 2") to the Agreement for Services at a Worksite Medical Facility of December 18, 2012 (the "Agreement") between CONCENTRA HEALTH SERVICES INC. ("Concentra") and the CITY OF DELRAY BEACH, FLORIDA (the "Client"), is entered into as of this 22 day of December, 2015.

WITNESSETH:

WHEREAS, the Client and Concentra mutually covenant and agree to amend and modify the Agreement; and

WHEREAS, the Client desires to migrate its current electronic medical records software platform, currently Webchart, to the Allscripts software platform, and Concentra agrees to waive the implementation fee for such update; and

WHEREAS, the parties also agree to updating the current BAA, hours of operations, and hours to be worked for the physician and physician assistant positions at the Worksite as provided on Schedules I, Schedule II, and Schedule IV; and

NOW, THEREFORE, in consideration of the mutual covenants, stipulations and agreements herein contained, the parties agree as follows:

1. The recitations referred to above are incorporated herein.


2. Schedule I, Schedule II, and Schedule IV of the Agreement and any subsequent amendments thereto are deleted in their entirety and replaced with Schedule I, Schedule II, and Schedule IV attached hereto and incorporated herein.

3. Any modifications to this Amendment are not valid or binding unless they are in writing and formally approved by both parties.

4. All other terms and conditions of the Agreement for Services at a Worksite Medical Facility dated December 18, 2012 shall remain in full force and effect.

ATTEST:


City Clerk

Approved as to Form: 

City Attorney

ATTEST:

Print Name: _____


CITY OF DELRAY BEACH, FLORIDA

By: _____

Cary Glickstein, Mayor

(SEAL)


CONCENTRA HEALTH SERVICES, INC.

By: _____

Print Name: Mike Kosuth

Title: Senior Vice President - Operations East

Schedule I
SCOPE OF SERVICES

I. Staffing

Concentra agrees to provide the appropriate staffing members to operate the City of Delray Beach's Employee Health Center. The level of staffing may change upon agreement of both parties to comply with business need, but will initially begin as the following model:

Physician/Mid-Level		
	FTE Count	Hours Per Week
Physician(s)	0.8	32
Physician Assistant (PA)	0.35	14
General & Support Staff		
	FTE Count	Hours Per Week
Registered Nurse (RN)	0.88	35
Radiology Technician (RT)	0.88	35

Throughout the year, Concentra may utilize additional staff members to support business need (biometric screens, flu shots, blood draws), upon approval from the City of Delray. The cost for these additional staff members will be calculated in accordance with Schedule II of this contract.

II. Eligible Users of the Center

Current employees and their dependents, including children over two years of age, who are covered on City of Delray Beach's benefit plan, are eligible to use the Employee Health Center.

Retirees and their dependents, who are covered on City of Delray Beach's benefit plan, are eligible to use the Employee Health Center.

Persons presenting for care that are not affiliated with City of Delray Beach will not be eligible to use the Employee Health Center.

III. Costs to Patients for Services Rendered at the Center

Current employees, retirees, and their dependents, including children over the age of 2, who are covered on City of Delray Beach's benefit plan are eligible to access the Employee Health Center for urgent care, primary care, and preventive care services with no out of pocket cost.

IV. Operating Hours and Utilization

The initial operating schedule for the City of Delray's Employee Health Center will be:

Monday: 9am-5pm (closed for lunch 1pm-2pm)
 Tuesday: 9am-5pm (closed for lunch 1pm-2pm)
 Wednesday: 9am-5pm (closed for lunch 1pm-2pm)
 Thursday: 7:30am-1:30pm (no lunch closing)
 Friday: 7am-12pm (no lunch closing)

The physician, nurse manager and RT will be scheduled Monday-Friday. The mid-level will work Mondays and Tuesdays.

Clinic utilization shall be monitored monthly by both Concentra and City of Delray Beach to determine the necessary staffing and operating hours. Hours of operations may be modified periodically based on patient needs with mutual approval by Concentra and City of Delray Beach.

This staffing model will support clinical services for an average daily census of 18 - 20 patient encounters per clinician

per 8-hour clinic day. If exceeded, additional clinical or medical support staff will be recommended to support patient demand, medical acuity or complexity. If declines recommendation, this may negatively impact patient satisfaction and clinic wait times and would remove any performance guarantee associated with these items.

V. Scope of Clinical Services

Concentra will provide the following services at the City of Delray Beach Employee Wellness Center.

- Urgent Care
 - o Urgent Care-Episodic Treatment includes (but is not limited to)
 - Allergies (ages 6+)
 - Bladder infection
 - Bronchitis
 - Ear infections
 - Minor eye irritations
 - Sinus infections
 - Colds and influenza
 - Sore throat
 - Swimmer's ear
 - Diarrhea
 - Sprains
 - Splinter removal
 - Minor burns and rashes
 - Minor skin infections
 - Swimmers itch
- Primary Care
 - o Primary Care Treatment, in addition to above conditions, includes but is not limited to
 - Clinical preventive services
 - Common immunizations for adults only
 - Flu shots
 - Health education and training
 - Asthma
 - Diabetes
 - High cholesterol
 - High blood pressure
 - Weight management
 - Emphysema
 - Laboratory testing as ordered by Concentra's clinicians
 - Biometric Screenings & HRA
 - Referrals to employee assistance program
 - Referrals to behavioral health program
 - Allergy and disease modifying agent injections
 - Annual personal physical examinations
 - Regulatory compliance examinations
 - Drug/alcohol testing - pre-employment, post-accident and reasonable suspicion, DOT
 - Cotinine testing
 - X-ray services
 - Police and Firefighter physical examinations
 - Other items as mutually approved in writing by Concentra and the City of Delray Beach.

Concentra's on-site clinician will have the final determination on the appropriateness of any care provided to patients. This clinician may provide less or more than the items mentioned above if deemed appropriate for patient care in an emergency situation.

VI. Worksite Dispensing of Pharmaceuticals

Concentra will dispense prepackaged prescription medications included in a formulary mutually agreed upon by Concentra and City of Delray Beach and will charge for these items as described in Schedule II of this Agreement.

Concentra will dispense prepackaged, over-the-counter medications and will charge for these items as described in Schedule II of this Agreement.

For medications not available on-site, Concentra will prescribe per the formulary guidelines of City of Delray Beach's PBM partner.

VII. Technology & Reporting

Health information will be collected and stored in a secure and professional manner. Concentra will use an electronic medical record system to document and manage health data and support electronic prescribing.

Appointment scheduling will be managed by the worksite medical support staff from the main clinic phone number; online scheduling may also be utilized for self-scheduled appointments.

Quarterly stewardship reports will be delivered within 30 days of the calendar quarter, unless pre-approved by City of Delray Beach.

Concentra will create an electronic data interface with Gehring Group for purposes of transmitting patient treatment data in accordance with the terms outlined in a mutually executed Business Associate Agreement.

VIII. Communications / Promotion

Promotion/Marketing of services to enhance employee engagement will be coordinated with City of Delray Beach's Human Resource representatives and other vendor partners as appropriate.

Concentra will provide Concentra's internally prepared templates for marketing /communication's at no additional cost beyond the fees described in Schedule II.

The City of Delray Beach will be responsible for printing and distribution of any marketing materials.

IX. Supplies & Equipment

Supply inventory will be managed by Concentra; City of Delray Beach will be invoiced monthly for costs.

Routine maintenance will be monitored by Concentra operations; City of Delray Beach will be responsible for any costs associated with these items, as outlined in Schedule II of this Agreement.

X. Quality Assurance / Audits

Concentra will assure quality management, auditing, and physician oversight to this worksite practice.

Each mid-level clinician will have 10 random chart audits per month by the collaborating physician. Deficiencies will be documented and noted in the quarterly stewardship report.

Concentra will conduct periodic quality assurance audits and will provide the results of these audits during regularly scheduled stewardship meetings.

Concentra will conduct patient satisfaction surveys and will provide the results of these surveys during regularly scheduled stewardship meetings.

Concentra will manage all licensing and quality assurance requirements for the on-site radiology equipment.

XI. Client Responsibilities

The following items will be provided by City of Delray Beach during implementation and ongoing to support the worksite medical practice:

- Identify key contacts at beginning of implementation process
- Provide site access for Concentra implementation team during the implementation process
- Construction/ build-out of medical center
- Provide utilities for medical center
- Provide internet connectivity and phone line for medical center
- Provide technology hardware 30 days prior to clinic opening (if client is providing hardware per contract)
- Contract execution prior to first day of clinic operation (Concentra will not be able to provide patient care without an executed agreement)
- Participation in weekly team calls/meetings with Concentra implementation leadership
- Support to mutually develop engagement plan strategy and outreach to employees/dependents
- Final screening of proposed on-site staff members to approve of cultural fit within organization transmit or process information.

Schedule II
COMPENSATION FOR WORKSITE SERVICES

1. Staffing and Labor:

Concentra will bill the City of Delray Beach on a monthly basis for the costs associated with staffing and labor. This "Monthly Labor Fee" will be determined to be the cost of all staff wages during the calendar period, plus a 74.7% markup. Included in this cost are the following items for all regularly staffed positions:

- Staff salaries, wages, employee benefits, recruiting, credentialing, continuing education and training
- Coverage for time off (vacation, personal, sick leave)
- Account management
- Medical direction and oversight
- Professional licenses and fees
- Membership in professional organizations
- General and administrative fees
- Management fees

As described above, this markup includes the cost for backfill for regularly staffed positions, but does not include additional staff members who are utilized on a temporary basis for a specific business need (biometric screenings, flu shots, etc.). The charge for these additional temporary staff members will be consistent with the cost-plus model described above (salary + 74.7% markup).

2. On-going Fees:

Migration/Implementation:

EMR Migration	
¹ Migration from Webchart to Allscripts	\$0
Total	\$0

As of Jan 2016, the rates according to this formula will be as follows:

Estimated Program Costs		
City of Delray Beach		
Staffing and Program Management	Monthly Fee	Annual Fee
Physician - 0.8 FTE	\$24,496.80	\$293,961.57
Midlevel - 0.35 FTE	\$7,442.85	\$89,314.24
Nurse Manager - 0.88 FTE	\$10,718.31	\$128,619.76
Radiology Technician - 0.88 FTE	\$7,070.52	\$84,846.22
TOTAL STAFFING AND PROGRAM MANAGEMENT COSTS	\$49,728.48	\$596,741.80
Technology Costs	Monthly Fee	Annual Fee
² Annual EMR Fee	\$1,333.33	\$16,000.00
XRAY Software Fee	\$500.00	\$6,000.00
TOTAL TECHNOLOGY FEES	\$1,833.33	\$22,000.00
TOTAL 2016 FIXED FEES	\$51,561.82	\$618,742

- ¹The parties mutually agree that the implementation above shall be at no cost to the Client. Client shall provide Concentra with current network structure, access to any portion of the current system, if required, as well as the eligibility file to begin such implementation. Client shall cooperate with, and provide all reasonable assistance to, Concentra to facilitate such implementation
- ²The EMR Annual Fee for 2016 as shown above shall be effective for 2016 during the migration. Upon completion of the migration, the EMR Annual Fee shall be adjusted and agreed to between the parties
- The table above is based on current estimates of scope and volume. Any scope or volume changes may require additional Fees

- Does not include overtime, supplemental pay, holiday pay, on call pay, or bonuses for Concentra personnel, whether requested by Client or deemed medically or operationally necessary for patient care will be billed at current standard applicable rates
- Any mandatory re-certifications necessary to stay in compliance (CAOHC, BAT, UDS, DOT, etc.), and any travel related to this ongoing training will be passed through to Client as incurred
- Includes standard quarterly stewardship reporting. Any ad hoc reporting will be billed on a time and materials basis at \$185 per hour
- Concentra will bill labor, technology, and management fees to the City as a flat monthly fee at 1/12 of the annual rate. All other costs will be passed through as incurred. Our standard payment terms are net thirty (30) days

Medical supplies, office supplies, promotion and communication materials, laundry, waste disposal: Concentra will pass through the cost for these items in the month in which they were incurred with a 10% procurement administration fee .

Laboratory Fees: Concentra will collect laboratory samples and send to the Client's preferred laboratory for processing. The cost for this processing will be coordinated between the lab and the Client's third party administrator.

Pharmacy Fees: Concentra will pass through St. Mary's charges for medication acquisition.

3. Optional Programs:

Staffing for Biometric Events (as needed)

TBD at time of screening Health Risk Assessments

Paper-based HRA

- \$15.00 per participant
- Printing/mailling included

Online HRA

- \$10.00 per participant
- \$ 7.50per participant for printing/mailling (if desired)
- \$15.00 Cholestech Analysis for Biometric Screen (includes cholesterol and blood sugar results)

Cotinine Analysis for Biometric Screen

Sent to the Client's preferred laboratory

4. Other Terms and Conditions:

Upon each anniversary of this Agreement, Staffing and Labor Fees as well as On-going Fees will increase as described in the Master Services Agreement.

Provider(s) hours will be scheduled and mutually agreed by both parties.

Holiday coverage not included in pricing provided under this Schedule II, Concentra observes the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving, Christmas Day and Floating Holiday. To the extent that there is a conflict between the holiday schedule of Concentra and Client, the holiday schedule of Client shall govern this Agreement.

Mutually pre-approved travel and mileage (at the IRS rate) expenses incurred in the performance of required services will be billed back at actual cost without additional markup or management fee.

Costs for additional items purchased through Concentra's vendor relationships necessary to support the operation of the on-site medical programs, including but not limited to medical supplies, office supplies, medical equipment, vaccinations, laboratory testing, and equipment maintenance, will be passed through at 10% procurement administration fee. Client will have the opportunity to review and approve these items prior to purchase or order. Nothing in this Agreement requires Client to purchase items through Concentra's vendor relationships. The Client agrees to provide purchasing data to Concentra as necessary and in a mutually agreed format for purchases made outside of Concentra's vendor relationships for inclusion in Concentra's stewardship reports.

Schedule IV
BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("BA Agreement") is made and entered into as of this day of December, 2015 ("Effective Date") by and between CONCENTRA INC., its subsidiaries, affiliates, parent entities, and managed professional entities (hereinafter referred to as the "Covered Entity") and CITY OF DELRAY BEACH, FLORIDA (hereinafter referred to as the "Business Associate").

WHEREAS, Covered Entity is a "Covered Entity" as defined under Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act (Division A, Title XIII and Division B, Title IV of Public L. 111-5) (which was part of the American Recovery and Reinvestment Act of 2009 ("ARRA")), and Business Associate is a "Business Associate" as defined under HIPAA; and

WHEREAS, Covered Entity and Business Associate have entered into an agreement between each other (the "Agreement"), under which Business Associate shall perform or assist in performing certain functions or activities for or on behalf of Covered Entity that involve the use or disclosure of Protected Health Information, as defined below; and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy, security and integrity of PHI disclosed to Business Associate pursuant to this BA Agreement, which is drafted to satisfy specific components of HIPAA, the HITECH Act, and relevant implementing regulations, including the Privacy Rule (defined below), the Security Rule (defined below) and the Breach Notification Rule (defined below).

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements set forth herein, the parties, intending to be legally bound, agree as follows:

Section 1. Definitions. Capitalized terms used, but otherwise not defined, in this BA Agreement shall have the same meaning as those terms in the Privacy, Security or Breach Notification Rules.

(a) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, codified at 45 CFR Parts 160 and 164, Subparts A and E.

(b) "Security Rule" shall mean the Standards for Security of Individually Identifiable Electronic Health Information, codified at 45 CFR Parts 160 and 164, Subparts A, C and E.

(c) "Breach" shall have the meaning given to such term in 45 C.F.R. § 164.402 or applicable State data breach notification law.

(d) "Breach Notification Rule" shall mean the rule related to breach notification for Unsecured Protected Health Information at 45 C.F.R. Parts 160 and 164.

(e) "Protected Health Information" or "PHI" shall have the meaning given to such term under the Privacy and Security Rules at 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(f) "Electronic Protected Health Information" or "ePHI" shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

Section 2. Privacy Rule Permitted Uses And Disclosures of Business Associate.

(a) Permitted Uses and Disclosures of PHI. Except as provided in Paragraphs (b) and (c), below, Business Associate may only use or disclose PHI to perform functions, activities or services for, or on behalf of Covered Entity, as specified in the Agreement.

(b) Use for Management and Administration. Except as otherwise limited in this BA Agreement, Business Associate may, consistent with 45 C.F.R. 164.504(e)(4), use PHI if necessary (i) for the proper management and administration of Business Associate, or (ii) to carry out the legal responsibilities of Business Associate.

(c) Disclosure for Management and Administration. Except as otherwise limited in this BA Agreement, Business Associate may, consistent with 45 C.F.R. 164.504(e)(4), disclose PHI for the proper management and administration of Business Associate, provided (i) the disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed ("Person") that it will be held confidentially and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the Person, and that the Person agrees to notify Business Associate in writing of any instances of which it becomes aware in which the confidentiality of the information has been breached.

Section 3. Privacy Rule Obligations and Activities of Business Associate.

(a) Limitations on Disclosure. Business Associate shall not use or disclose PHI other than as permitted or required by this BA Agreement, the Agreement, or as Required by Law. Business Associate shall not use or disclose PHI in a manner that would violate the Privacy Rule if done by Covered Entity, unless expressly permitted to do so pursuant to the Privacy Rule and this BA Agreement.

(b) Appropriate Safeguards. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BA Agreement or as Required by Law.

(c) Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BA Agreement.

(d) Reporting of Improper Use or Disclosure. Business Associate shall report within five (5) days to the Covered Entity in writing any use or disclosure of PHI not provided for by the BA Agreement after becoming aware of such use or disclosure.

(e) Obligations on Behalf of Covered Entity. To the extent Business Associate carries out an obligation of Covered Entity's under the Privacy Rule, Business Associate must comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.

(f) Business Associate's Subcontractors. Business Associate shall ensure, consistent with 45 C.F.R. § 164.502(e)(1)(ii), that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate agrees in writing to the same restrictions and conditions that apply through this BA Agreement to Business Associate with respect to such PHI. Business Associate shall implement and maintain sanctions against subcontractors and agents that violate such restrictions and conditions and shall mitigate the effects of such violation.

(g) Access to PHI. Business Associate shall provide access, within five (5) days of a request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to an individual or a third party designated by the individual, in order for Covered Entity to meet the requirements at 45 C.F.R. § 164.524.

(h) Amendment of PHI. Within five (5) days of receipt of a request from Covered Entity, Business Associate shall make any PHI contained in a Designated Record Set available to the Covered Entity (or an individual as directed by the Covered Entity) for purposes of amendment per 45 C.F.R. § 164.526. Within five (5) days of receipt of a request from Covered Entity, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the Privacy Rule, at the request of the Covered Entity, and in the time and manner reasonably designated by the Covered Entity. If an individual requests an amendment of PHI directly from Business Associate or its Subcontractors, Business Associate shall, as soon as possible, but no later than five (5) days after receipt of the request, forward the request to Covered Entity. Any denial of amendment of PHI maintained by Business Associate or its Subcontractors shall be the responsibility of Covered Entity.

(i) Accounting/Documentation of Disclosures. Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Within five (5) days of receipt of a request from Covered Entity, Business Associate shall make available to Covered Entity the written information required to provide an accounting of such disclosures. Business Associate shall implement a process that allows for an accounting to be collected and maintained by Business Associate and its Subcontractors for at least six (6) years prior to the request (except for disclosures occurring prior to the Effective Date). At a minimum, such accounting information shall include the information described in 45 CFR 164.528(b), including, without limitation: (i) the date of disclosure of PHI; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the written request for disclosure. If a request for an accounting is

delivered directly to Business Associate, Business Associate shall forward the request to Covered Entity such that Covered Entity receives the request for accounting, as soon as possible, but no later than five (5) days after Business Associate's receipt of the request.

(j) Governmental Access to Records. Business Associate shall make its internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary and Covered Entity for purposes of determining Covered Entity's compliance with the Privacy Rule as applicable. Such access will be provided to both Covered Entity and the Secretary five (5) days after receipt of a written request and during normal business hours from Covered Entity or the Secretary, unless a shorter duration has been designated by the Secretary.

(k) Minimum Necessary. In accordance with 45 C.F.R. 164.502(b), Business Associate shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. Further, Business Associate will restrict access to PHI to those employees of Business Associate or other workforce members under the control of Business Associate who are actively and directly participating in providing goods or services under the Agreement who need to know such information in order to fulfill such responsibilities.

Section 4. Security Rule Obligations of Business Associate.

(a) Compliance with the Security Rule. Business Associate shall comply with the Security Rule with respect to ePHI and have in place reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of ePHI and to prevent the use or disclosure of ePHI other than as provided for by this BA Agreement or as Required by Law.

(b) Subcontractors. Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits ePHI on behalf of Business Associate agrees in writing to comply with the Security Rule with respect to such ePHI.

(c) Security Incident/Breach Notification Reporting. Business Associate shall report any Security Incident to Covered Entity within 24 hours after becoming aware of such incident. Business Associate shall take prompt corrective action to mitigate and cure any harmful effect that is known to or anticipated by Business Associate resulting from a Security Incident. Separate from the requirements related to Security Incident reporting, Business Associate shall also make the reports and notifications set forth below in Section 5 related to a Breach of Unsecured PHI.

Section 5. Breach Notification (Federal and State) Rule Obligations of Business Associate.

(a) Notification Requirement. Within three (3) days following Business Associate's discovery of a Breach, or upon Business Associate's reasonable belief that a Breach has occurred, Business Associate shall provide written notification of such Breach to Covered Entity. Business Associate shall provide such written notification regardless of whether Business Associate determines that there is a low probability that PHI that is the subject of a Breach has been compromised.

(b) Discovery of Breach. For purposes of reporting a Breach to Covered Entity, the discovery of a Breach shall occur as of the first day on which such Breach is known to Business Associate, by exercising reasonable diligence, would have been known to or suspected by the Business Associate. Business Associate will be considered to have had knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known to, or suspected by, any person (other than the person committing the Breach) who is an employee, officer or agent of the Business Associate.

(c) Content of Notification. Any notice referenced above in Section 5(a) of this BA Agreement will include, to the extent known to Business Associate, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Breach. Business Associate will also provide (on a continuing basis as information is discovered) to Covered Entity other available information that the Covered Entity is required to include in its notification to the individual pursuant to the Breach Notification Rule or applicable State data breach notification laws.

(d) Cooperation with Covered Entity. Business Associate shall:

- (i) Cooperate and assist Covered Entity with any investigation into any Breach or alleged Breach by Covered Entity, including those conducted by any Federal agency, State Attorney General, State agency (or their respective agents);

- (ii) Comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the Breach; and
- (iii) As directed by Covered Entity, assist with the implementation of any decision by Covered Entity or any Federal agency, State agency, including any State Attorney General, or their respective agents, to notify individuals impacted or potentially impacted by a Breach.

Section 6. Term and Termination.

(a) Term. This BA Agreement shall commence on the Effective Date and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy PHI, protections are extended to such PHI, in accordance with the termination provisions of this Article 6.

(b) Termination of Agreement. This BA Agreement will immediately terminate, without notice, upon termination of the Agreement.

(c) Termination for Cause. Upon Covered Entity's knowledge of a material breach of the terms of this BA Agreement by Business Associate, Covered Entity shall:

- (i) Immediately terminate this BA Agreement; or
- (ii) Provide an opportunity for Business Associate to cure, and, if Business Associate does not cure the breach within thirty (30) days, Covered Entity may immediately terminate this BA Agreement and the Agreement; or
- (iii) Immediately terminate this BA Agreement and the Agreement if Covered Entity has determined that (a) Business Associate has breached a material term of this BA Agreement, and (b) cure is not possible.

(d) Effect of Termination. As of the effective date of termination of this BA Agreement, neither party shall have any further rights or obligations hereunder except: (a) as otherwise provided herein or in the Agreement between the parties; (b) for continuing rights and obligations accruing under the Privacy Rule; or (c) arising as a result of any breach of this BA Agreement, including, but not limited to, any rights and remedies available at law or equity. Upon termination of this BA Agreement for any reason, Business Associate shall return or destroy all PHI (regardless of form or medium). The obligation to return or destroy all PHI shall also apply to PHI that is in the possession of Subcontractors of Business Associate. If the return or destruction of PHI is not feasible, Business Associate shall provide Covered Entity written notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the parties that return or destruction of PHI is not feasible, Business Associate shall continue to extend the protections of this BA Agreement to such information, and limit further uses or disclosures of such PHI to those purposes that make the return or destruction of such PHI not feasible, for as long as Business Associate maintains such PHI. If Business Associate elects to destroy the PHI, Business Associate shall notify Covered Entity in writing that such PHI has been destroyed.

Section 7. Assignment. This BA Agreement and the rights and obligations hereunder shall not be assigned, delegated, or otherwise transferred by Business Associate without the prior written consent of Covered Entity, and any assignment or transfer without proper consent shall be null and void.

Section 8. Governing Law and Venue. This BA Agreement shall be governed by, and interpreted in accordance with the Privacy, Security, and Breach Notification Rules, and the laws of Florida.

Section 9. Amendment or Modification. This BA Agreement may only be amended or modified by mutual written agreement of the parties. The Parties agree to take such action as is necessary to amend this BA Agreement from time-to-time as is necessary for Covered Entity to comply with the requirements of the Privacy, Security, or Breach Notification Rules, as well as HIPAA and the HITECH Act.

Section 10. Waiver. The failure of either party at any time to enforce any right or remedy available hereunder with respect to any breach or failure shall not be construed to be a waiver of such right or remedy with respect to any other breach

or failure by the other party.

Section 11. Survival. The respective rights and obligations of Covered Entity and Business Associate under Section 6(d) and 7(b) of this BA Agreement shall survive the termination of the BA Agreement.

Section 12. Regulatory References. A reference in this BA Agreement to a section in the Privacy, Security, or Breach Notification Rules means the section as in effect or as amended, and for which compliance is required.

Section 13. No Third Party Beneficiaries. Nothing express or implied in this BA Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

Section 14. Severability. In the event any provision of this BA Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this BA Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.

Section 15. Entire Agreement. This BA Agreement constitutes the entire agreement between the parties with respect to the matters contemplated herein and supersedes all previous and contemporaneous oral and written negotiations, commitments, and understandings relating thereto.

IN WITNESS WHEREOF, Covered Entity and Business Associate have each caused this BA Agreement to be executed in their respective names by their duly authorized representatives, as of the date written herein above.

CONCENTRA, INC.

By: _____

Robert G. Breighner, Jr., Privacy Officer

CITY OF DELRAY BEACH, FLORIDA

By: _____

Print Name: _____

Title: _____