

February 20, 2018

34930

This Memorandum of Understanding ("MOU") is made and entered as of 4/05, 2018, by and between ANDREW J WONG INCORPORATED DBA AJW INC., a California corporation ("AJWI"), with a place of business at 44 Montgomery Street, Suite 2310, San Francisco, California 94104, and the CITY OF LONG BEACH, a municipal corporation ("City").

AJWI and the City agree as follows:

RECITALS

WHEREAS, the City has adopted an internal Administrative Regulation 8-32, Inter Department Data Sharing, which allows City departments to share individually identifiable, protected health and criminal justice information internally ("Reg") dated May 11, 2017 covering all City departments; and

WHEREAS, the purpose of contracted services with AJWI is to implement the data system outlined in the Reg; and

WHEREAS, in order for AJWI to perform those services, AJWI will have access to the City's protected client information, as defined below; and

WHEREAS, the City will allow access to protected client information on the terms and conditions set forth below; and

WHEREAS, the City wishes to disclose certain information to AJWI pursuant to the terms of this MOU, some of which may constitute protected client information (PCI) (defined below); and

WHEREAS, the City and AJWI intend to protect the privacy and provide for the security of PCI disclosed to AJWI pursuant to this MOU in compliance with CA Civil Code 1798; and

WHEREAS, AJWI enters into agreements with the City that require the City to disclose certain identifiable protected client information to AJWI. The parties desire to enter into this MOU to permit AJWI to have access to such information and comply with the AJWI requirements of CA Civil Code Section 1798.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this MOU, the parties agree as follows:

1. Definitions.

- a. **Breach** means the unauthorized acquisition, access, use, or disclosure of PCI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.
- b. **AJWI** is a private entity authorized under CA Civil Code Section 1798.19 for research on behalf of the City.
- c. **Data Aggregation** means the combining of private information from the City by AJWI with PCI received by AJWI in its capacity as a contractor for any other agency, to permit data analyses that relate to the operations of the respective entities.
- d. **Privacy Rule** shall mean the CA Civil Code 1798.
- e. **Protected Client Information or PCI** means any information, including electronic PCI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future City contact for an individual; the contact by the City with an individual; or the past, present

or future contact by the City with an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

- f. **Protected Information** shall mean PCI provided by the City to AJWI or created, maintained, received or transmitted by AJWI on the City's behalf.
- g. **Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

2. Obligations of AJWI.

- a. **Permitted Uses.** AJWI may use, access, and/or disclose PCI only for the purpose of performing AJWI's obligations for or on behalf of the City and as permitted or required under this MOU, or as required by law. Further, AJWI shall not use PCI in any manner that would constitute a violation of the Security Rule if so used by the City. However, AJWI may use Protected Information as necessary (i) for the proper management and administration of AJWI; (ii) to carry out the legal responsibilities of AJWI; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Reg or the Privacy Rule.
- b. **Permitted Disclosures.** AJWI shall disclose Protected Information only for the purpose of performing AJWI's obligations for or on behalf of the City and as permitted or required under the Reg, or as required by law. AJWI shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule. However, AJWI may disclose Protected Information as necessary (i) for the proper management and administration of AJWI; (ii) to carry out the legal responsibilities of AJWI; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the work of the City.
- c. **Prohibited Uses and Disclosures.** AJWI shall not use or disclose PCI other than as permitted or required by the Reg and this MOU, or as required by law. AJWI shall not use or disclose Protected Information for fundraising or marketing purposes. AJWI shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of the City;.
- d. **Appropriate Safeguards.** AJWI shall take the appropriate security measures to protect the confidentiality, integrity and availability of PCI that it creates, receives, maintains, or transmits on behalf of the City, and shall prevent any use or disclosure of PCI other than as permitted by the Contract or this MOU, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule. AJWI shall comply with the policies and procedures and documentation requirements of the Security Rule.
- e. **Contracting Agency's Subcontractors and Agents.** AJWI shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of AJWI, agree in writing to the same restrictions and conditions that apply to AJWI with respect to such PCI and implement the safeguards required by paragraph 2.d.
- f. **Accounting of Disclosures.** Within ten (10) calendar days of a request by the City for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which the City is required to account to an individual, AJWI and its agents and subcontractors shall make available to the City the information required to provide an accounting of disclosures to enable the City to fulfill its obligations under the Privacy Rule, as determined by the city. AJWI agrees to implement a process that allows for an accounting to be collected and maintained by AJWI and its agents and subcontractors for at least five (5) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information 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 individual's authorization, or a copy of the written request for disclosure. If an individual or an individual's

representative submits a request for an accounting directly to AJWI or its agents or subcontractors, AJWI shall forward the request to the City in writing within five (5) calendar days.

- g. **Access to Protected Information.** AJWI shall make Protected Information maintained by AJWI or its agents or subcontractors in Designated Record Sets available to the City for inspection and copying within (5) days of request by the City to enable the City to fulfill its obligations under state law. If AJWI maintains Protected Information in electronic format, AJWI shall provide such information in electronic format as necessary to enable the City to fulfill its obligations under the Reg and the Privacy Rule.
- h. **Amendment of Protected Information.** Within ten (10) days of a request by the City for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, AJWI and its agents and subcontractors shall make such Protected Information available to the City for amendment and incorporate any such amendment or other documentation to enable the City to fulfill its obligations under the Privacy Rule. If an individual requests an amendment of Protected Information directly from AJWI or its agents or subcontractors, AJWI must notify the City in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by AJWI or its agents or subcontractors.
- i. **Governmental Access to Records.** AJWI shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the City for purposes of determining AJWI's compliance with the Reg and the Privacy Rule.
- j. **Minimum Necessary.** AJWI, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. AJWI understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the City with respect to what constitutes "minimum necessary" to accomplish the intended purpose in accordance with the Reg and California Code.
- k. **Data Ownership.** AJWI acknowledges that AJWI has no ownership rights with respect to the Protected Information.
- l. **Notification of Breach.** AJWI shall notify the City immediately upon discovery any breach of Protected Information; any use or disclosure of Protected Information not permitted by this MOU; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by AJWI or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the AJWI to have been, accessed, acquired, used, or disclosed, as well as any other available information that the City is required to include in notification to the individual, the media, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. AJWI shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws.
- m. **Breach Pattern or Practice by Contracting Agency's Subcontractors and Agents.** If the AJWI knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this MOU, the AJWI must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the AJWI must terminate the contractual arrangement with its subcontractor or agent, if feasible. AJWI shall provide written notice to the City of any pattern of activity or practice of a subcontractor or agent that AJWI believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this MOU immediately upon discovery and shall meet with the City to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

n. **Insurance Requirements**. As a condition precedent to the effectiveness of this MOU, AJWI shall procure and maintain at AJWI's expense for the duration of this MOU from an insurance company that is admitted to write insurance in the State of California or that has a rating of or equivalent to an A:VIII by A.M. Best and Company the following insurance:

- (a) Commercial general liability insurance or self-insurance equivalent in coverage scope to ISO CG 00 01 10 93 naming the City of Long Beach, and its officials, employees, and agents as additional insureds on a form equivalent in coverage scope to ISO CG 20 26 11 85 from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the AJWI in an amount not less than One Million Dollars (US \$1,000,000) per occurrence and Two Million Dollars (US \$2,000,000) in general aggregate.
- (b) Workers' compensation coverage as required by the Labor Code of the State of California and Employer's liability insurance with minimum limits of One Million Dollars (US \$1,000,000) per accident or occupational illness. The policy shall be endorsed with a waiver of the insurer's right of subrogation against the City of Long Beach, and its officials, employees, and agents.
- (c) Automobile liability insurance equivalent in coverage scope to ISO CA 00 01 06 92 in an amount not less than Five Hundred Thousand Dollars (US \$500,000) combined single limit (CSL) covering Symbol 1 ("Any Auto")
- (d) Professional liability or errors and omissions liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim covering the services provided pursuant to this Agreement.
- (e) Electronic data processing liability and cyberspace/online liability in an amount not less than One Million Dollars (\$1,000,000) per claim covering the services provided pursuant to this Agreement.
- (f) Electronic errors and omissions liability in an amount not less than One Million Dollars (\$1,000,000) per claim covering the services provided pursuant to this Agreement.
- (g) Umbrella liability (In excess of all coverages from above except (b)) in an amount not less than Two Million Dollars (\$2,000,000) per claim covering the services provided pursuant to this Agreement.

Any self-insurance program or self-insurance retention must be approved separately in writing by City and shall protect the City of Long Beach, and its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party except after thirty (30) days prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by City.

Any subcontractors which AJWI may use in the performance of this MOU shall be required to indemnify the City to the same extent as the AJWI and to maintain insurance in compliance with the provisions of this section.

AJWI shall deliver to City certificates of insurance and original endorsements for approval as to sufficiency and form prior to the start of performance hereunder. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. "Claims-made" policies are not acceptable unless City Risk Manager determines that "Occurrence" policies are not available in the market for the risk being insured. In a "Claims-made" policy is accepted, it must provide for an extended reporting period of not less than one hundred eighty (180) days. Such insurance as required herein shall not be deemed to limit Contractor's liability relating to performance under this MOU. City reserves the right to require complete certified copies of all said policies at any time. Any modification or waiver of the insurance requirements herein shall be made only with the approval of City Risk Manager. The

procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification provisions of this MOU.

3. Termination.

- a. **Material Breach.** A breach by AJWI of any provision of this MOU, as determined by the City, shall constitute a material breach of this MOU and shall provide grounds for immediate termination of this MOU.
- b. **Judicial or Administrative Proceedings.** The City may terminate this MOU, effective immediately, if (i) AJWI is named as defendant in a criminal proceeding for a violation of California Code or other security or privacy laws or (ii) a finding or stipulation that the AJWI has violated any standard or requirement of the Reg or California Code or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. **Effect of Termination.** Upon termination of this MOU for any reason, AJWI shall, at the option of the City, return or destroy all Protected Information that AJWI and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by the City, AJWI shall continue to extend the protections and satisfy the obligations of Section 2 of this MOU to such information, and limit further use and disclosure of such PCI to those purposes that make the return or destruction of the information infeasible. If the City elects destruction of the PCI, AJWI shall certify in writing to the City that such PCI has been destroyed.
- d. **Civil and Criminal Penalties.** AJWI understands and agrees that it is subject to civil or criminal penalties applicable to AJWI for unauthorized use, access or disclosure of Protected Information in accordance with the Privacy Rule.
- e. **Disclaimer.** The City makes no warranty or representation that compliance by AJWI with this MOU, CA Code or corresponding California law provisions will be adequate or satisfactory for AJWI's own purposes. AJWI is solely responsible for all decisions made by AJWI regarding the safeguarding of PCI.

4. Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this MOU may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of any other applicable state or federal laws relating to the security or confidentiality of PCI. The parties understand and agree that the City must receive satisfactory written assurance from AJWI that AJWI will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this MOU embodying written assurances consistent with the standards and requirements of California Code regulations or other applicable state or federal laws. The City may terminate this MOU upon thirty (30) days written notice in the event (i) AJWI does not promptly enter into negotiations to amend this MOU when requested by the City pursuant to this section or (ii) AJWI does not enter into an amendment to this MOU providing assurances regarding the safeguarding of PCI that the City, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

5. Reimbursement for Fines or Penalties. In the event that the City pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of PCI by AJWI or its subcontractors or agents, then AJWI shall reimburse the City in the amount of such fine or penalties or damages within thirty (30) calendar days.

6. Indemnification. AJWI shall defend, indemnify, and hold harmless the City, its Commissions and Boards, and their officials, employees, and agents from and against any and all demands, claims, causes of action, liability, loss, liens, damage, costs, and expenses (including attorney's fees) arising from or in any way connected or alleged to be connected with AJWI's performance under this MOU, from any act or omission, willful misconduct, or negligence (active or passive) by or alleged to be by AJWI, its employees, agents, or subcontractors either as a sole or contributory cause, sustained by any person or entity (including employees or representatives of City or AJWI), or with respect to the use and disclosure of the City's PCI. The foregoing shall not apply to claims or causes of action caused by the sole negligence or willful misconduct of the City, its Commissions and Boards, or their officials, employees, or agents.

7. Miscellaneous provisions.

7.1 Assistance in Litigation or Administrative Proceedings.

AJWI shall make itself, and any employees or agents assisting AJWI in the performance of its obligations under this MOU, available to the City, at no cost to the City, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against the City, its officers, agents or employees based upon claimed violation of the Reg, California Code, or other laws relating to security and privacy.

7.2 Independent Contractor.

AJWI is an independent contractor and nothing in this MOU is intended to create or imply an agency or employment relationship between the City and AJWI.

7.3 No Third-Party Beneficiaries.

Nothing express or implied in this MOU is intended to confer, nor shall anything herein confer, any rights, remedies, obligations or liabilities whatsoever upon any person or entity other than the City, AJWI and its respective agents, successors or assigns.

7.4 Survival.

The obligations of AJWI under this MOU shall survive the termination of the Contract.

7.5 Health Insurance Portability and Accountability Act of 1996 (HIPAA)

a. AJWI acknowledges the existence of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations. AJWI understands and agrees that the City has obligations with respect to the confidentiality, privacy, and security of patients' medical information, and must take certain steps to preserve the confidentiality of this information, both internally and externally, including the training of its staff and the establishment of proper procedures for the release of such information, including the use of appropriate consents and authorizations specified under HIPAA. AJWI agrees to execute a HIPAA Business Associate Agreement, attached hereto as Exhibit "A" attached and incorporated herein by this reference.

b. AJWI agrees and acknowledges that its access to the City's HIPAA-protected information and/or records constitutes its own separate and independent obligations

with respect to HIPAA, and that such obligations relate to transactions and code sets, privacy, and security. AJWI understands and agrees that it is separately and independently responsible for compliance with HIPAA in all these areas when related to its scope of work under this MOU and that it assumes responsibility for compliance on City's behalf. AJWI has not relied, and will not in any way rely, on the City for legal advice or other representations with respect to AJWI's obligations under HIPAA, but will independently seek its own counsel and take the necessary measures to comply with the law and its implementing regulations.

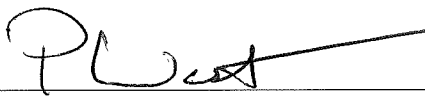
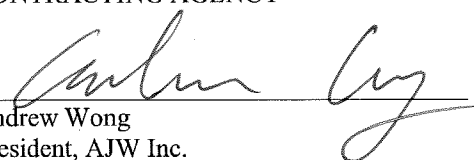
c. AJWI and the City understand and agree that each is independently responsible for HIPAA compliance and agree to take all necessary and reasonable actions to comply with the requirements of the HIPAA laws and implementing regulations related to transactions and code sets, privacy, and security.

d. AJWI further agrees that, should it fail to comply with its obligations under HIPAA, it shall indemnify and hold harmless the City (including the City's officers, employees, and agents), for damages to the City that are attributable to such failure.

7.6 Confidentiality.

AJWI and City acknowledge that efforts to share data, both within and across organizations, are subject to confidentiality concerns. Each party is subject to numerous specific confidentiality mandates based on local, state, and federal laws and regulations. Federal laws, for example, concerning the confidentiality of health data (Health Insurance Portability and Accountability Act, HIPAA), education data (Family Educational Rights and Privacy Act, FERPA), and child welfare data (45 CFR 205.50), and each's overlay city and state laws and regulations. Where the law is vague, AJWI and City acknowledge that specific data are shared only with permitted staff using the information for a set purpose ("if you don't need it, you don't see it").

IN WITNESS WHEREOF, the parties hereto have executed this MOU on 4/25/18.

City of Long Beach  Patrick H. West City Manager	CONTRACTING AGENCY  Andrew Wong President, AJW Inc. 44 Montgomery St., Suite 2310 San Francisco, CA 94104 ajw@ajwi.com Phone: (415) 541-9008
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APPROVED AS TO FORM

April 16, 2018
CHARLES PARKIN, City Attorney

By 
SARAH E. GREEN
DEPUTY CITY ATTORNEY



CITY OF LONG BEACH

2525 GRAND AVENUE • LONG BEACH, CALIFORNIA 90815 • (562) 570-4000 • FAX: (562) 570-4049

Health Information In Compliance With the Health Insurance Portability And Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH Act)

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made and entered
as of 04/05, 2018 by ALW INC. and 456 MONTGOMERY
[corporation, partnership, dba], whose business address is
ST. STE. 1350, SF CA 94104
(hereinafter referred to as "Business Associate"), and the CITY OF LONG BEACH, a
municipal corporation (hereinafter referred to as "City" or "Covered Entity").

WHEREAS, the City, a municipal corporation under the laws of the State of California, is a single legal entity which has various departments, including a Department of Health and Human Services that provides a multitude of health care and related services, and other departments that may have access to and use individually identifiable health information, such as human resources, a parks, recreation and marine department, a technology department, a fire department with ambulance services, and a police department; and

WHEREAS, in the course of providing health care, related and other services, the City obtains and may share amongst the various City departments protected health information; and

WHEREAS, Business Associate performs particular duties, functions, activities, or services for, or on behalf of the City; and

WHEREAS, Business Associate receives, has access to or creates protected health information in order to perform such duties, functions, activities or services; and

WHEREAS, the City and Business Associate intend to protect the privacy and provide for the security of protected health information in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

NOW, THEREFORE, in consideration of the mutual terms covenants, and conditions in this Agreement, the parties agree as follows:

1. DEFINITIONS. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations, including the Privacy Rule and the Security Rule codified in Title 45, Sections 160-164 of the Code of Federal Regulations, and under the HITECH Act.
2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.
 - A. Non-disclosure. Business Associate agrees to not use or disclose protected health information other than as permitted or required by the Agreement or as required by law.
 - B. Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the protected health information. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Regulations.
 - C. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of protected health information by Business Associate in violation of the requirements of this Agreement.
 - D. Notice of Use or Disclosure, Security Incident or Breach. Business Associate agrees to notify the designated privacy official of the Covered Entity of any use or disclosure of protected health information by Business Associate not permitted by this Agreement, any security incident involving electronic protected health information, and any breach of unsecured protected health information without unreasonable delay, but in no case more than thirty (30) days following discovery of breach.
 1. Business Associate shall provide the following information in such notice to Covered Entity:
 - (a) The identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach;
 - (b) A description of the nature of the breach including the types of unsecured protected health information that were involved, the date of the breach and the date of discovery;
 - (c) A description of the type of unsecured protected health information acquired, accessed, used or disclosed in the breach (e.g., full name, social security number, date of birth, etc.);
 - (d) The identity of the person who made and who received

- (if known) the unauthorized acquisition, access, use or disclosure;
 - (e) A description of what the Business Associate is doing to mitigate the damages and protect against future breaches; and
 - (f) Any other details necessary for Covered Entity to assess risk of harm to individual(s), including identification of each individual whose unsecured protected health information has been breached and steps such individuals should take to protect themselves.
- 2. Covered Entity shall be responsible for providing notification to individuals whose unsecured protected health information has been disclosed, as well as the Secretary and the media, as required by the HITECH Act.
- 3. Business Associate agrees to establish procedures to investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.
- 4. The parties agree that this section satisfies any notice requirements of Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful security incidents for which no additional notice to Covered Entity shall be required. For purposes of this Agreement, unsuccessful security incidents include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic public health information.
- E. Reporting of disclosures. Business Associate agrees to report to Covered Entity any use or disclosure of the protected health information not provided for by this Agreement of which it becomes aware.
- F. Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- G. Availability of Information to City. Business Associate agrees to provide prompt access to protected health information in a designated record set to Covered Entity or, as directed by Covered Entity, to an individual upon Covered Entity's request in order to meet the requirements under 45 CFR § 164.524. If Business Associate maintains an electronic health record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.
- H. Amendment of Protected Health Information. Business Associate agrees to promptly make any amendment(s) to protected health information in a designated record set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an individual.
- I. Internal Practices. Business Associate agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by Business Associate on behalf of, covered entity available to the Secretary of the U.S. Department of Health and Human Services for purposes of the Secretary determining the Business Associate's compliance with the Privacy Rule.
- J. Reporting of Disclosures. Business Associate agrees to document such disclosures of protected health information and information related to such disclosures as would be required for the City to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with the Privacy Rule, including but not limited to 45 CFR § 164.528, and the HITECH Act.
- K. Availability of Information to Covered Entity. Business Associate agrees to promptly provide to Covered Entity or an individual information collected in accordance with Section 2(j) of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with the Privacy Rule, including but not limited to 45 CFR § 164.528, and the HITECH Act.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

Except as otherwise limited in this Agreement, Business Associate may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule or the HITECH Act if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. The specific use and disclosure provisions are as follows:

- A. Except as otherwise limited in this Agreement, Business Associate may use protected health information for the proper management and administration of the Business Associate.
 - B. Except as otherwise limited in this Agreement, Business Associate may disclose protected health information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the business associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - C. Except as otherwise limited in this Agreement, Business Associate may use protected health information to provide data aggregation services to covered entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
 - D. Business Associate may use protected health information to report violations of law to appropriate federal and state authorities, consistent with § 164.502(j)(1).
4. PROHIBITED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.
- A. Business Associate shall not use or disclose protected health information for fundraising or marketing purposes.
 - B. Business Associate shall not disclose protected health information to a health plan for payment or health care operations purposes if the individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the protected health information solely relates.
 - C. Business Associate shall not directly or indirectly receive payment or remuneration in exchange for protected health information, except with the prior written consent of Covered Entity and as permitted by law, including HIPAA and the HITECH Act. This prohibition shall not effect payment by Covered Entity to Business Associate.
5. OBLIGATIONS OF COVERED ENTITY.
- A. Notification of Limitations in Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of covered entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
 - B. Notification of Change or Revocation of Permission. Covered entity shall notify Business Associate of any changes in, or revocation of,

permission by individual to use or disclose protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.

- C. Notification of Restrictions. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of protected health information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may effect Business Associate's use or disclosure of protected health information.

- 6. PERMISSIBLE REQUESTS BY COVERED ENTITY. Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that this restriction is not intended and shall not be construed to limit Business Associate's capacity to use or disclose protected health information for the proper management and administration of the Business Associate or to provide data aggregation services to Covered Entity as provided for and expressly permitted under Section 3 (a), (b), and (c) of this Agreement.

- 7. TERM AND TERMINATION.

- A. *Term.* The term of this Agreement shall be effective upon execution, and shall terminate when all of the protected health information 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 protected health information, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. *Termination for Cause.* Upon either party's knowledge of a material breach by the other party, the party with knowledge of the other party's breach shall either:
 - 1. Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party;
 - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is feasible, the violation shall be reported to the Secretary.
- C. *Effect of Termination.*

1. Except as provided in paragraph (2) of this Section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the protected health information.
 2. In the event that Business Associate determines that returning or destroying the protected health information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible and shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such protected health information.
8. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS.
- Business Associate shall make itself and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under this Agreement with the Covered Entity, available to Covered Entity, at no cost to Covered Entity to testify as witnesses or otherwise, in the event of litigation or administrative proceedings commenced against Covered Entity, its directors, officers, or employees based on a claimed violation of HIPAA, the HIPAA Regulations, the HITECH Act, or other laws relating to security or privacy, except where Business Associate or its subcontractors, employees or agents are named as an adverse party.
9. MISCELLANEOUS.
- A. *References.* A reference in this Agreement to a section in the HIPAA Regulations or the HITECH Act means the section as in effect or as amended.
 - B. *Amendment.* The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for covered entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, the HITECH Act and other privacy laws governing protected health information. Amendments must be in writing and signed by the parties to the Agreement.
 - C. *Survival.* The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement.

- D. *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Regulations and the HITECH Act.
10. LAW. This Agreement shall be governed by and construed pursuant to federal law and the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Business Associate shall comply with all laws, ordinances, rules and regulations of all federal, state and local governmental authorities.
11. ENTIRE AGREEMENT. This Agreement, including Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.
12. INDEMNITY.
- A. Business Associate shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Business Associate's breach or failure to comply with any of its obligations contained in this Agreement, or (2) negligent or willful acts, errors, omissions or misrepresentations committed by Business Associate, its officers, employees, agents, subcontractors, or anyone under Business Associate's control, in the performance of work or services under this Agreement (collectively "Claims" or individually "Claim").
- B. In addition to Business Associate's duty to indemnify, Business Associate shall have a separate and wholly independent duty to defend Indemnified Parties at Business Associate's expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Business Associate shall be required for the duty to defend to arise. City shall notify Business Associate of any Claim, shall tender the defense of the Claim to Business Associate, and shall assist Business Associate, as may be reasonably requested, in the defense. .
13. AMBIGUITY. In the event of any conflict or ambiguity in this Agreement, such ambiguity shall be resolved in favor of a meaning that complies and is consistent with HIPAA, HIPAA Regulations, the HITECH Act and California law.
14. COSTS. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies

hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees and court costs, including appeals.

15. NOTICES. Any notice or approval required hereunder by either party shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Business Associate at the address first stated herein, and to the City at 333 West Ocean Boulevard, Long Beach, California 90802 Attention: Director, Health Department. Notice of change of address shall be given in the same manner as stated herein for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever first occurs.
16. WAIVER. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement, or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.
17. CONTINUATION. Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 12 and 14 prior to termination or expiration of this Agreement, and shall not extinguish any warranties hereunder.
18. ADVERTISING. Business Associate shall not use the name of City, its officials or employees in any advertising or solicitation for business, nor as a reference, without the prior approval of the City Manager or designee.
19. THIRD PARTY BENEFICIARY. This Agreement is intended by the parties to benefit themselves only and is not in any way intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all of the formalities required by law as of the date first stated herein.

4/05, 2018

4/05, 2018

4/25, 2018

AJW INC,
(Name of Business Associate)

a CORPORATION
(corporation, partnership, individual)

By [Signature]

Title: PRESIDENT

By _____

Title: _____

CITY OF LONG BEACH, a municipal corporation

By PL West
City Manager or designee

"City"

The foregoing Agreement is hereby approved as to form this 16th day of April, 2018.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy