

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

24-673

SAP Number

Human Resources Department

Department Contract Representative	Christine Onyango
Telephone Number	909-388-5943
Contractor	Dovetail Software Inc.
Contractor Representative	Kevin Creedon
Telephone Number	978-973-7259
Contract Term	For the contract period beginning July 23, 2024, until services are no longer provided or terminated by either party.
Original Contract Amount	Non-financial
Amendment Amount	N/A
Total Contract Amount	Non-financial
Cost Center	N/A

Briefly describe the general nature of the contract: Non-financial Health Insurance Portability and Accountability Act Business Associate Agreement with Dovetail Software, Inc., including non-standard terms, for a centralized employee relations case management software as a service subscription to manage and track employee relations inquiries, incidents, and investigations; and to maintain compliance and safeguard the County's employees' confidential information, for the contract period beginning July 23, 2024 until services are no longer provided or terminated by either party.

FOR COUNTY USE ONLY

Approved as to Legal Form

► Bonnie Uphold
Bonnie Uphold, Supv. Deputy County Counsel

Date 7/11/2024

Reviewed for Contract Compliance

► _____

Date _____

Reviewed/Approved by Department

► _____

Date _____

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “BAA”), dated July 24, 2024 (the “Effective Date”) between Dovetail Software, Inc., a Texas corporation located at 13809 Research Blvd, Suite 500, Austin, TX 78750 (“Business Associate”), and San Bernardino County, a political subdivision organized and existing under the laws and constitution of the State of California, with an office located at 175 W. 5th Street, 1st Floor, San Bernardino, CA 92415 (“Covered Entity”) (each, a “Party” and collectively, the “Parties”).

The Parties hereby agree as follows:

1. DEFINITIONS

- 1.1 Unless otherwise specified in this BAA, all capitalized terms used in this BAA that are not otherwise defined in this BAA shall have the respective meanings assigned to them by HIPAA.
- 1.2 “Affiliate,” for purposes of this BAA, shall mean any entity that is under common control or a member of an affiliated service group as determined under Code § 414(b), (c), (m) and/or (o).
- 1.3 “Breach” shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth, in 45 C.F.R. § 164.402.
- 1.4 “Breach Notification Rule” shall mean the Standards and Implementation Specifications for Notification of Breaches of Unsecured Protected Health Information under 45 C.F.R. Parts 160 and 164, Subparts A and D.
- 1.5 “Code” means the Internal Revenue Code of 1986, as amended from time to time, and the interpretive rulings and regulations and other guidance issued thereunder.
- 1.6 “Electronic Protected Health Information” (ePHI) shall mean PHI that is transmitted by or maintained in electronic media.
- 1.7 “Electronic Transactions Rule” shall mean the final regulations issued by HHS concerning standard transactions and code sets under 45 C.F.R. Parts 160 and 162.
- 1.8 “Enforcement Rule” shall mean the Enforcement Provisions set forth in 45 C.F.R. Part 160.
- 1.9 “HHS” shall mean the Department of Health and Human Services.
- 1.10 “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and the interpretive rulings and regulations and other guidance issued thereunder.
- 1.11 “HIPAA Rules” shall mean the Privacy Rule, the Security Rule, the Breach Notification Rule and the Enforcement Rule.
- 1.12 “PHI” shall mean Protected Health Information, as defined in 45 C.F.R. § 160.103, and is limited to the Protected Health Information received from, or received or

created on behalf of, Covered Entity by Business Associate pursuant to the performance of the services.

- 1.13 “Privacy Rule” shall mean the federal privacy regulations issued pursuant to HIPAA, codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- 1.14 “Security Rule” shall mean the federal security regulations issued pursuant to HIPAA, codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

2. RESPONSIBILITIES OF BUSINESS ASSOCIATE

With regard to its use and/or disclosure of PHI, Business Associate agrees as follows.

- 2.1 Business Associate shall use and/or disclose PHI only as necessary to provide the services, as permitted or required by this BAA and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e), or as otherwise Required by Law.
- 2.2 Business Associate shall develop, implement, maintain and use appropriate administrative, physical and technical safeguards to (i) prevent use or disclosure of PHI other than as permitted or required by this BAA; (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity; and (iii) comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316.
- 2.3 Business Associate shall report to Covered Entity: (i) any use or disclosure of PHI not permitted by this BAA, of which Business Associate becomes aware, and/or (ii) any Security Incident, of which Business Associate becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(C). Business Associate shall cooperate with the Covered Entity’s breach analysis procedures, including risk assessment, if requested. A use or disclosure of PHI not permitted by this BAA (including, without limitation, a Breach) or a Security Incident shall be treated as “discovered” by Business Associate as of the first day on which such use, disclosure or Security Incident is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Pursuant to 42 U.S.C. section 17934, subdivision (b), if the Business Associate is aware of any activity or practice by the Covered Entity that constitutes a material Breach or violation of the Covered Entity’s obligations under this BAA, the Business Associate must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the Business Associate has the capability of mitigating said violation. If the Business Associate is unsuccessful in eliminating the violation and the Covered Entity continues with non-compliant activity, the Business Associate must terminate the BAA (if feasible) and report the violation to the Secretary of HHS.
- 2.4 Following the discovery of any use or disclosure of Unsecured PHI not permitted by the Privacy Rule and following the Breach Notification provisions of HIPAA, Business Associate shall provide written notice of such potential Breach to Covered

Entity and cooperate in the Covered Entity's breach analysis procedures, including risk assessment, if requested. As required under 45 C.F.R. § 164.410, such written notification shall, at a minimum, include (i) a description of what happened, including the date of the potential Breach, (ii) a list of Individuals whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed during the potential Breach and (iii) all other information required under 45 C.F.R. § 164.404 to make any required notifications to Individuals. Business Associate agrees to fully cooperate, coordinate and assist Covered Entity in connection with such notifications. If requested by Covered Entity, Business Associate shall provide all legally required notifications to Individuals, HHS and/or the media under 45 C.F.R. §§ 164.404, 164.406 and 164.408, subject to Covered Entity's right to review such notifications in advance.

- 2.5 Business Associate shall be responsible for reasonable costs associated with a breach subject to Section 11 of the Master Subscription Agreement dated July 24, 2024, between the Parties. Costs shall be based upon the required notification type as deemed appropriate and necessary by the Covered Entity and shall not be reimbursable under the BAA at any time. Covered Entity shall determine the method to invoice the Business Associate for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:
- Postage;
 - Alternative means of notice;
 - Media notification; and
 - Credit monitoring services.
- 2.6 Business Associate may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to Covered Entity; failure to provide access to a copy of ePHI to Covered Entity or individual; failure to disclose PHI to the Secretary of HHS when investigating Business Associate's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.
- 2.7 Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of Business Associate, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of Covered Entity's PHI, including without limitation, any breach of PHI or any expenses incurred by Covered Entity in providing required breach notifications subject to Section 11 of the Master Subscription Agreement dated July 24, 2024 between the Parties.
- 2.8 Covered Entity may terminate the Contract, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of

HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the Business Associate has been joined that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

- 2.9 In addition to any general and/or professional liability insurance coverage required of Business Associate under the Contract for services, Business Associate shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of Business Associate, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.
- 2.10 Business Associate shall make itself, and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under the Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- 2.11 In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall (i) require all of its Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate to agree, in writing, to the same restrictions, conditions and requirements that apply to Business Associate and (ii) ensure that any Subcontractors that create, receive, maintain or transmit ePHI on behalf of Business Associate agree to comply with the applicable requirements of the Security Rule by entering into a contract or other arrangement that complies with the requirements of 45 C.F.R. § 164.308(b)(2).
- 2.12 Business Associate shall make available its internal practices, books and records relating to the use and disclosure of PHI to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Rules.
- 2.13 Business Associate shall document the information required to provide an accounting of disclosures of PHI, and, within ten (10) days after receiving a written request from Covered Entity or an Individual, will make available directly to an Individual an accounting of disclosures of PHI about the Individual, in accordance with 45 § C.F.R. 164.528.
- 2.14 Notwithstanding anything in Section 2.7 to the contrary, in the event that Business Associate in connection with the services uses or maintains an Electronic Health Record of PHI of or about an Individual, then Business Associate shall, when and as directed by Covered Entity or when requested by an Individual, make an accounting of disclosures of PHI directly to an Individual within ten (10) days after receiving a written request, in accordance with the requirements for accounting for

disclosures made through an Electronic Health Record in 42 U.S.C. § 17935(c) as of its Compliance Date.

- 2.15 Business Associate shall provide access, within ten (10) days after receiving a written request from Covered Entity or an Individual, to PHI in a Designated Record Set about an Individual, directly to an Individual or to a third party designated by the Individual, in accordance with the requirements of 45 C.F.R. § 164.524.
- 2.16 Notwithstanding anything in Section 2.9 to the contrary, in the event that Business Associate in connection with the services uses or maintains an Electronic Health Record of PHI of or about an Individual, then Business Associate shall provide an electronic copy of the PHI, within ten (10) days after receiving a written request from Covered Entity or an Individual, directly to an Individual or a third party designated by the Individual, all in accordance with 42 U.S.C. § 17935(e) as of its Compliance Date.
- 2.17 To the extent that the PHI in Business Associate's possession constitutes a Designated Record Set, Business Associate make available, within ten (10) days after a written request by Covered Entity or an Individual, PHI for amendment and incorporate any amendments to the PHI, as directed by Covered Entity or an Individual, all in accordance with 45 C.F.R. § 164.526.
- 2.18 Business Associate shall request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure; provided, however, that Business Associate shall comply with 42 U.S.C. § 17935(b).
- 2.19 Business Associate shall comply with any notice from Covered Entity to (i) restrict use or disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or (ii) provide for confidential communications of PHI in accordance with 45 C.F.R. § 164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communications obligations that Business Associate must follow.
- 2.20 Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 U.S.C. § 17935(d) as of its Compliance Date.
- 2.21 Business Associate shall not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date.
- 2.22 Business Associate shall not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) as of its Compliance Date.
- 2.23 Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA Rules.
- 2.24 To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation(s).

- 2.25 Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules, to the extent provided by the HIPAA Rules.
- 2.26 If Business Associate conducts in whole or in part electronic Transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any Subcontractor it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transactions Rule and of any operating rules adopted by HHS with respect to Transactions.
- 2.27 Business Associate shall mitigate, to the extent practicable, any harmful effect known to Business Associate resulting from a use or disclosure in violation of this BAA.

3. OTHER PERMITTED USES AND DISCLOSURES OF PHI

Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or required by this BAA, Business Associate may use and disclose PHI as described in this Section.

- 3.1 Business Associate may make any and all uses and disclosures of PHI necessary to provide the services to Covered Entity. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA Rules if done by the Covered Entity, except as otherwise provided in this Section.
- 3.2 Business Associate may use the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Business Associate. Business Associate may disclose the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Business Associate if (i) the disclosure is Required by Law or (ii) Business Associate obtains reasonable assurances from any person or entity to which Business Associate will disclose PHI that the person or entity will hold the PHI confidentially and use or further disclose the PHI only for the purpose for which Business Associate disclosed PHI to the person or entity or as Required by Law and will promptly notify Business Associate of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

4. TERM, TERMINATION AND COOPERATION

- 4.1 Term. The Term of this BAA shall be effective as of the Effective Date, and shall terminate when Business Associate no longer provides the services, unless earlier terminated in accordance with Section 4.2 of this BAA.
- 4.2 Termination. Upon either Party's knowledge of material breach by the other Party, the non-breaching Party shall provide an opportunity for the breaching Party to cure the breach or end the violation; or terminate the BAA. If the breaching Party does not cure the breach or end the violation within a reasonable timeframe not to exceed 30 days from the notification of the breach, or if a material term of the BAA has

been breached and a cure is not possible, the non-breaching Party may terminate this BAA, upon written notice to the other Party

- 4.3 Effect of Termination or Expiration. Upon termination or expiration of this BAA, Business Associate shall return or, with Covered Entity's prior written approval, destroy all PHI in whatever form or medium, if feasible to do so, including all copies thereof and all data, compilations and other works derived therefrom that allow identification of any Individual who is the subject of the PHI and any PHI in possession of Business Associate. Business Associate's obligation to protect the privacy and security of the PHI as specified in this BAA will be continuous and survive termination or other conclusion of this BAA for as long as Business Associate retains any PHI.
- 4.4 Cooperation. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

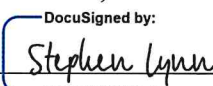
5. MISCELLANEOUS

- 5.1 Other Agreements. This BAA replaces any prior written or oral communications or agreements between the Parties relating to the subject matter of this BAA.
- 5.2 Construction of Terms. The terms of this BAA to the extent they are unclear shall be construed to allow for compliance by Covered Entity and Business Associate with HIPAA.
- 5.3 No Third Party Beneficiaries. Nothing in this BAA shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 5.4 Survival. Sections 4.3, 4.4, 5.2, 5.3, 5.4, 5.6, 5.8, 5.9, and 5.10 shall survive the termination for any reason or expiration of this BAA.
- 5.5 Amendment. This BAA may only be amended through written action of the Parties. The Parties agree to take such action as is necessary to amend the BAA from time to time for compliance with the requirements of the HIPAA Rules and other applicable law.
- 5.6 Assignment. Business Associate may not assign any of its rights or delegate any of its obligations under this BAA without Covered Entity's prior written consent, which should not be unreasonably withheld, and any attempted assignment without such consent shall be null and void.
- 5.8 Conflicts. In the event of a conflict or inconsistency between the terms of this BAA and the terms of any services or other agreement between Covered Entity and Business Associate, the terms of this BAA shall prevail.

- 5.9 Governing Law. This BAA shall be governed and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws provisions.
- 5.10 Counterparts. This BAA may be executed by the parties hereto in two separate counterparts, each of which so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.
- 5.11 Electronic Signatures. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, the undersigned have executed this Business Associate Agreement as of the day and year first written above.

DOVETAIL SOFTWARE, INC.

By: 
Name: Stephen Lynn
Title: CEO
Date: 7/15/2024

SAN BERNARDINO COUNTY


Name: Dawn Rowe
Title: Chair
Date: JUL 23 2024

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD
LYNNA MONELE
Clerk of the Board of Supervisors
of the County of San Bernardino
By: 
Deputy

