

MASTER SUBSCRIPTION AND SERVICES AGREEMENT

This Master Subscription and Services Agreement ("**Agreement**") is made as of [____], 2019 ("**Effective Date**"), between Binti, Inc. with an address at 1625 Clay Street, Suite 600, Oakland, California 94612 ("**Binti**"), and Humboldt County through its Department of Health and Human Services, with an address at 507 F St. Eureka, CA 95501 ("**Licensee**"). Binti and Licensee will be referenced to individually herein as "**Party**" and collectively as the "**Parties**." Upon the Effective Date, all provisions of, rights granted and covenants made in the Prior Agreement of 1/17/2017 are hereby waived, released and superseded in their entirety and shall have no further force or effect.

Binti has developed a Software-as-a-Service platform, as described at www.binti.com ("**Platform**"). The Approvals Platform allows users to apply online to become approved to foster children and allows social workers to manage their approval workflow online. The Placements Platform allows for the matching of child referrals to approved foster families ("**Authorized Purpose**"). This Agreement governs a relationship whereby Binti will (i) grant Licensee access to the Platform; and (ii) perform the professional services set forth in **Exhibit A** attached hereto and incorporated herein by reference ("**Professional Services**," together with the Platform, the "**Services**"). Accordingly, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Proprietary Rights

(a) **Platform**. Subject to the terms and conditions of this Agreement, Binti hereby grants to Licensee during the Term (defined below) a non-exclusive, non-transferable and non-sublicensable license to allow its employees and contractors who have been issued valid access credentials from Binti ("**Authorized Users**") to access and use the Platform solely to help facilitate foster care and adoptions for children. Binti will provide access to the Service to end-users who obtain valid access credentials from Binti, subject to Binti's Terms of Use and Privacy Policy. Binti will provide Licensee with the support services set forth in **Exhibit B** attached hereto and incorporated herein by reference.

(b) **Restrictions**. Licensee will not, and will not permit any third party to: (i) copy, modify, translate, or create derivative works of the Platform; (ii) reverse engineer, decompile, disassemble or otherwise attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Platform (except to the extent such prohibition is contrary to applicable law); (iii) lend, lease, offer for sale, sell or otherwise use the Platform for the benefit of any third party except as permitted under Section 1(a); (iv) attempt to disrupt the integrity or performance of the Platform; (v) attempt to gain unauthorized access to the Platform or its related systems or networks; or (vi) use the Platform in a manner that violates this Agreement, any third party rights or any applicable laws, rules or regulations.

(c) **Binti Ownership**. Except for the rights granted to Licensee in Section 1(a) above and Licensee's rights to Data (defined below), as between the Parties, Binti retains all right, title and interest, including all intellectual property rights, in and to the Platform (including all Updates thereto) and all aggregated and de-identified information that Binti's systems or applications automatically collect regarding use of the Platform and its performance ("**Diagnostic Data**") (which, notwithstanding anything to the contrary, Binti may fully exploit). All rights that Binti does not expressly grant to Licensee in this Section 1 are reserved and Binti does not grant any implied licenses under this Section 1.

(d) **Licensee Ownership**. As between the Parties, Licensee owns all data, information and other materials submitted to the Platform or Binti by Licensee or Authorized Users (which, for clarity, excludes Diagnostic Data) (collectively, "**Data**"). Licensee hereby grants to Binti a non-exclusive and non-transferable (except under Section 10) license to use and host the Data, solely to provide the Services. Upon termination or expiration of this Agreement for any reason, Binti will permit Customer to download all Data from the Platform in .csv format.

2. Use of the Services

(a) **Binti's Obligations**. Binti will use commercially reasonable efforts to make the Service available at all times, except for planned downtime and any unavailability caused by Force Majeure Events (defined below). Binti will maintain commercially reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of Data. Binti will abide by the obligations contained in **Exhibit C**, attached hereto and incorporated herein by reference.

(b) **Licensee's Obligations**. Licensee acknowledges and agrees that it is responsible for the use or misuse of the Service by Authorized Users, and a breach by any Authorized User of any term of this Agreement will be deemed a breach by Licensee of this Agreement.

3. Professional Services.

(a) General. Subject to Licensee's compliance with the terms and conditions of this Agreement, Binti will perform the Professional Services in accordance with any specifications set forth in Exhibit A. Each Party will communicate with the point of contact set forth in Exhibit A in connection with the Professional Services. Licensee will reasonably cooperate with Binti to facilitate provision of Professional Services. This cooperation will include, without limitation, (i) performing any tasks reasonably necessary for Binti to provide the Professional Services and to avoid unnecessary delays; (ii) fulfilling any Licensee obligations described in Exhibit A in a timely manner; and (iii) responding to Binti's reasonable requests related to Professional Services in a timely manner. Notwithstanding anything in Exhibit A to the contrary, Binti will not be liable for any delays in performing the Professional Services that arise, in whole or in part, from Licensee's acts or omissions, including, without limitation, its failure to comply with this Section 3(a).

(b) Intellectual Property Rights. Binti solely owns all right, title and interest in and to any software, notes, records, drawings, designs or other copyrightable materials, inventions (whether or not patentable), improvements, developments, discoveries and trade secrets conceived, discovered, authored, invented, developed or reduced to practice by Binti, solely or in collaboration with others, arising out of, or in connection with, Binti performing the Professional Services, including any copyrights, patents, trade secrets, mask work rights or other intellectual property rights relating to the foregoing ("Inventions"). Binti hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable, royalty-free and worldwide right during the Term to use the portion of the Inventions that is incorporated into any deliverables that Binti provides to Licensee under Exhibit A solely to use any such deliverables. Binti reserves all rights not expressly granted in the prior sentence and does not grant any implied licensed under this Section 3.

4. Fees

(a) Fees. Licensee will pay Binti (i) \$26,000 for access to the Approvals Platform during each 12 month term and for Professional Services set forth in Sections 2(a)-(b) of Exhibit A hereto, (ii) \$20,000 for access to the Placements Platform during each 12 month term and for Professional Services set forth in Sections 2(a)-(b) of Exhibit A hereto (collectively, "Fees") for a not to exceed amount of \$46,000 per 12 month term. All Fees are billed annually and will be due and payable within thirty (30) days from the date of the applicable invoice issued by Binti. Except as expressly set forth herein, all Fees are non-cancellable and non-refundable. Late Fee payments will accrue interest at the rate of one and one half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

(b) Taxes. The Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any applicable taxing authorities (collectively, "Taxes"). Licensee is responsible for paying all Taxes associated with its receipt of the Services (except for any Taxes based on Binti's net income).

5. Confidential Information

(a) Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a Party ("Disclosing Party") to the other Party ("Receiving Party"), that is marked in writing as "confidential" or by a similar designation. For clarity, Confidential Information of Binti also includes the Binti technology underlying the Platform and any related non-public specifications, documentation or technical information that Binti makes available to Licensee. Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party without restriction prior to its disclosure by the Disclosing Party and without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without restriction and without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party without use of or reference to any Confidential Information of the Disclosing Party.

(b) Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care). The Receiving Party may only use Confidential Information of the Disclosing Party to perform its obligations or exercise its rights under this Agreement. Except as expressly authorized by the Disclosing Party in writing, the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees, contractors or agents who need such access to perform obligations under this Agreement and who agree to abide by the terms set forth in this Section 5.

(c) Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6. Term and Termination

(a) Term. This Agreement will commence on the Effective Date and continue for a period of **thirty-six (36) months** ("Term").

(b) Termination. Either Party may terminate this Agreement for any or no reason (in its sole and absolute discretion), upon written notice to the other Party. Either Party may terminate this Agreement upon thirty (30) days' prior written notice if the other Party is in material breach of this Agreement and the breaching Party fails to remedy such material breach within the thirty (30)-day notice period. Upon termination (except for termination by Binti pursuant to the immediately preceding sentence), the Licensee will have access to the Platform for the remainder of the then-current Term. Upon termination by either party for any reason, Binti will supply the Licensee with an export of the Licensee's Data.

(c) Effect of Termination. Upon expiration or termination of this Agreement for any reason, the licenses granted by each Party will automatically terminate and all outstanding Fees owed pursuant to Section 4 will become immediately due and payable. The provisions of Sections 1(b), 1(c), 2(b), 3(b), 4, 5, 6(c), 7, 8, 9, 10, applicable sections of Exhibit C and all defined terms used in those Sections will survive any expiration or termination of this Agreement.

7. Representations and Warranties

(a) Mutual. Each Party represents and warrants that: (i) it has the right, power and authority to enter into this Agreement and to grant the rights and licenses granted hereunder and to perform all of its obligations hereunder; (ii) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary organizational action of the Party; and (iii) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(b) Licensee. Licensee further represents and warrants that: (i) it owns or otherwise has sufficient rights to the Data to grant the license set forth in Section 1(d); and (ii) no Data submitted to the Platform does or will violate the privacy, intellectual property or other rights of any person or entity or any applicable laws, rules or regulations.

(c) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH UNDER THIS SECTION 7, BINTI MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICES, AND BINTI HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY LOCAL JURISDICTIONAL ANALOGUES TO THE FOREGOING.

8. Limitations on Liability

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, (I) EXCEPT WITH RESPECT TO SECTION 9, IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAYABLE TO BINTI DURING THE TERM; AND (II) EXCEPT TO THE EXTENT SUCH DAMAGES ARE PAID OR PAYABLE TO UNAFFILIATED THIRD PARTIES PURSUANT TO EITHER PARTY'S OBLIGATIONS PURSUANT TO SECTION 9, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, FOR LOST PROFITS, DATA OR OTHER BUSINESS OPPORTUNITIES), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. THIS SECTION 8 DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9. Indemnification

(a) Licensee. If a third party asserts a claim (each, a “**Third Party Claim**”) against Binti or any of its affiliates, officers, employees or contractors (each, a “**Binti Released Party**”) alleging or arising from (a) that any Data infringes, violates, or misappropriates any intellectual property or proprietary right(s), (b) that any Data, or its provision to Binti, violates any applicable law or regulation, or (c) any negligent act or intentional misconduct by Licensee or any of its Authorized Users in connection with the Service, then Licensee will defend the Binti Released Party from the Third Party Claim and hold such Binti Released Party harmless from and against all damages, settlements, costs, and/or expenses, in each case, that are paid or payable to third party(ies) with respect to the Third Party Claim (including, without limitation, reasonable attorneys’ fees).

(b) Binti. If a Third Party Claim is asserted against Licensee or any of its affiliates, officers, employees or contractors (each, a “**Licensee Released Party**”) alleging that the Platform (not including any Data) infringes, violates, or misappropriates such third party’s intellectual property or proprietary right(s) (“**Infringement Claim**”), then Binti will defend the Licensee Released Party from the Infringement Claim and hold such Party harmless from and against all damages, settlements, costs, and/or expenses, in each case, that are paid or payable with respect to the Infringement Claim (including, without limitation, reasonable attorneys’ fees). In the event of an Infringement Claim, Binti, at its sole option and expense, may: (i) procure for Licensee the right to continue using the Platform or infringing part thereof; (ii) modify the Platform or infringing part thereof; (iii) replace the Platform or infringing part thereof with other software having substantially the same or better capabilities; or, (iv) if the foregoing are not commercially practicable, terminate this Agreement and repay to Licensee a pro-rata portion of the Fees. Notwithstanding the foregoing sentences of this Section 9(b), Binti will have no liability for an Infringement Claim if the actual or alleged infringement results from (a) any breach of this Agreement by Licensee or any Authorized Users; (b) any modification, alteration or addition made to the Platform by Licensee or any Authorized Users, including any combination of the Platform with software not provided by Binti; (c) any failure by Licensee or any Authorized Users to use any Updates made available by Binti; or (d) any settlements entered into by Licensee or costs incurred by Licensee for the Infringement Claim that are not pre-approved by Binti in writing.

(c) Procedures. Each Party’s obligations pursuant to Sections 9(a) and 9(b) above (respectively) are expressly conditioned on: (a) the Party seeking indemnification under this Section 9 (“**Indemnified Party**”) providing the other Party (“**Indemnifying Party**”) with prompt written notice of the applicable Third Party Claim for which the Indemnified Party seeks indemnification; (b) the Indemnified Party reasonably cooperating in the defense and/or settlement of such Third Party Claim, at the Indemnifying Party’s sole expense; and (c) the Indemnifying Party having sole control over the defense and/or settlement of such Third Party Claim. The Indemnifying Party may not agree to any settlement of any Third Party Claim against the Indemnified Party that admits wrongdoing by the Indemnified Party, or otherwise imposes any material obligation on the Indemnifying Party (not entirely covered by an indemnification obligation hereunder), without the Indemnified Party’s prior express written consent, which consent will not be unreasonably withheld, conditioned or delayed. The Indemnified Party may participate in the defense of a Third Party Claim through counsel of its own choice at its own expense.

10. Miscellaneous. Each Party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the other Party, entitling such Party to seek injunctive relief in addition to all available remedies. Neither Party may assign this Agreement or any rights under it, in whole or in part, without the other Party’s prior written consent; provided that either Party may assign this Agreement or any rights under it without prior written consent to a successor in connection with a merger, acquisition, reorganization, consolidation, or sale of all or substantially all of its assets or the business to which this Agreement relates. Any attempt to assign this Agreement other than as permitted above will be void. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, then the remaining provisions of this Agreement will remain in full force and effect. This Agreement will be governed by and construed under the laws of California without reference to its conflict of laws principles. This Agreement, including all Exhibits attached hereto, embodies the entire agreement between the Parties with respect to the subject matter set forth herein and supersedes any previous or contemporaneous communications, whether oral or written, express or implied. This Agreement may be modified or amended only by a writing signed by both Parties. All waivers made under this Agreement must be made in writing by the Party making the waiver. Any notice required or permitted to be given under this Agreement will be effective if it is (i) in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate Party at the address set forth above and with the appropriate postage affixed; or (ii) sent via email to the following: in the case of Binti: Felicia@binti.com; and in the case of Licensee: vchasedunn@co.humboldt.ca.us. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section. Notices are deemed given two (2) business days following the date of mailing, one (1) business day following delivery to a courier, and/or on the same day a facsimile or electronic mail is sent to the recipient. Binti will not be liable or responsible to Licensee, nor be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Binti including, without limitation, acts of God, natural

disaster, denial or services attacks and/or service provider system outages (collectively, "**Force Majeure Events**"). This Agreement may be signed in counterparts, each of which will be deemed an original, and all of which together will constitute a single agreement. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement, and any amendments hereto, for all purposes.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

BINTI, INC

By: Felicia Carcon

Name: Felicia Carcon

Title: CEO + President

BINTI, INC.

By: Gabe Kopley

Name: GABE KOPLEY

Title: CTO & Secretary

COUNTY OF HUMBOLDT:

By: _____

Rex Bohn
Chair, Humboldt County Board of Supervisors

Date: _____

INSURANCE AND INDEMNIFICATION REQUIREMENTS

APPROVED:

Kaufman

Risk Manager

EXHIBIT A
PROFESSIONAL SERVICES

All capitalized terms that are used but not defined in this Exhibit will have the meanings ascribed to them in the body of the Agreement above.

1. Contact. The principal contacts in connection with the Professional Services are as follows:

Binti:	Licensee:
Name: Felicia Curcuru	Name: Ivy Breen
Title: CEO	Title: Deputy Director
Address: 1999 Harrison St, Suite 1575, Oakland, CA 94612	Address: 2440 6th Street, Eureka, CA 95501
Phone: 732-547-3957	Phone: 707-476-4700
Email: Felicia@binti.com	Email: ibreen@co.humboldt.ca.us

2. Services. Binti will use commercially reasonable efforts to provide the following Professional Services:

(a) Data Migration. Migrate Data into the Platform based on reasonably written instructions from Licensee within 4 weeks of receiving data with documentation from Licensee.

(b) Form Customizations. Customize up to 60 documents provided to Binti by Licensee for inclusion within the Platform within 4 weeks of Licensee providing the documents. Any additional Professional Services to be performed by Binti will be mutually agreed upon by the Parties in writing and attached to this **Exhibit A** as successively numbered Schedule "A"s (e.g., Schedule A-1, Schedule A-2, etc.).

EXHIBIT B
SUPPORT

All capitalized terms that are used but not defined in this Exhibit will have the meanings ascribed to them in the body of the Agreement above.

1. **Support.** Binti will provide technical support to Licensee from 6AM-5PM Pacific Standard time every day during the Term except for national holidays in the United States (“**Support**”). To request Support, Licensee must contact Binti at 844-424-6844 or via email at contact@binti.com.

(a) **Provision of Support.** Binti will provide Support to the following Licensee contact: Julie Perata, 707-388-6592, jperata@co.humboldt.ca.us. Binti will not be responsible for addressing or resolving Events (defined below) that Binti reasonably determines are caused by Licensee’s systems or any misuse of the Platform.

(b) **Events.** “**Events**” are occurrences that impact the availability of the Platform, except for scheduled downtime, as determined by Binti in its reasonable discretion. Binti distinguishes among three classes of Events as follows:

- (i) **Class 1 Event:** A complete loss of the Platform’s functionality such that no user can use the Platform.
- (ii) **Class 2 Event:** The Platform’s functionality is materially impaired such that at least approximately 10% of users cannot use the Platform for its intended purpose.
- (iii) **Class 3 Event:** Any other problems or issues, including, without limitation, any general questions about the Platform or problems that do not rise to Class 1 Events or Class 2 Events.

(c) **Target Resolution Times.** Binti will use commercially reasonable efforts to meet the following target time frames for resolution of Events from the time Binti receives a Support request:

<u>Class</u>	<u>Target Resolution Time</u>
1	4 hours or better
2	24 hours or better
3	5 business days

(d) **Scheduled Maintenance Downtime.** Binti will schedule maintenance between the hours of 10PM and 4AM Pacific Standard time. Binti will provide Licensee with reasonable advance written notice of scheduled downtime. Binti may access the Platform during the scheduled maintenance downtimes for maintenance purposes and to implement Updates, bug fixes and/or any other changes that Binti deems necessary or advisable.

(e) **Resolution.** If Binti has not resolved an Event within the targeted time frame, then, upon Licensee’s written request, Binti and Licensee will discuss a resolution plan. From that point forward until the issue is resolved, Binti will notify Licensee’s designated contact of the status of resolution at least once daily.

2. **Training.** The Parties may agree in writing upon commercially reasonable training that Binti will provide to Licensee Authorized Users during the Term. This may include, by way of example only, a web-based tutorial about how to use the Platform. Training will not exceed a total of 25 hours during the Term.

**EXHIBIT C
TO
MASTER SUBSCRIPTION AND SERVICES AGREEMENT
BETWEEN
COUNTY OF HUMBOLDT (LICENSEE)
AND
BINTI INC. (BINTI)**

1. TAX EXEMPT STATUS

The COUNTY OF HUMBOLDT (LICENSEE) is a political subdivision of the State of California. As such, the LICENSEE is tax exempt under Internal Revenue Code section 115.

2. REPORTS:

BINTI agrees to provide LICENSEE with any and all reports that may be required by local, state and/or federal agencies for compliance with this Agreement. Reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the format required by the State of California as appropriate. BINTI shall also submit all reports in the following format: one (1) hard copy and one (1) electronic copy that complies with the Americans with Disabilities Act of 1990 and any other applicable accessibility laws, standards, regulations, policies and procedures.

3. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. BINTI agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the services provided hereunder.
- B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of BINTI, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. BINTI hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by LICENSEE and any duly authorized local, state and/or federal agencies. BINTI further agrees to allow interviews of any of its employees who might reasonably have information related to such records by LICENSEE and any duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement.
- C. Audit Costs. In the event of an audit exception or exceptions, the party responsible for not meeting the program requirements shall be responsible for the deficiency and for the cost

of the audit. If the allowable expenditures cannot be determined because BINTI's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by LICENSEE.

4. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. In the performance of this Agreement, BINTI may receive information that is confidential under local, state or federal law. BINTI hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, but not limited to: Division 19 of the California Department of Social Services Manual of Policies and Procedures – Confidentiality of Information; California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act (“CMIA”); the United States Health Information Technology for Economic and Clinical Health Act (“HITECH Act”); the United States Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations (“C.F.R.”) Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.
- B. Continuing Compliance with Confidentiality Laws. The parties acknowledge that federal and state confidentiality laws are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws or regulations.

5. NON-DISCRIMINATION COMPLIANCE:

- A. Nondiscriminatory Delivery of Social Services. In connection with the execution of this Agreement, BINTI, and its subcontractors, shall not unlawfully discriminate in the administration of public assistance and social services programs. BINTI hereby assures that no person shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving local, state or federal financial assistance because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service or any other classifications protected by local, state or federal laws or regulations. LICENSEE reserves the right to monitor the BINTI's provision of services in order to ensure compliance with the requirements of this section.
- B. Professional Services and Employment. In connection with the execution of this Agreement, BINTI, and its subcontractors, shall not unlawfully discriminate in the

provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.

- C. Compliance with Anti-Discrimination Laws. BINTI further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

6. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

BINTI certifies by its signature below that it is not a Nuclear Weapons Contractor, in that BINTI is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. BINTI agrees to notify LICENSEE immediately if it becomes a Nuclear Weapons Contractor as defined above. LICENSEE may immediately terminate this Agreement if it determines that the foregoing certification is false or if BINTI subsequently becomes a Nuclear Weapons Contractor.

7. DRUG-FREE WORKPLACE:

By executing this Agreement, BINTI certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, et seq.) and will provide a drug-free workplace by doing all of the following:

A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.

B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:

1. The dangers of drug abuse in the workplace;
 2. BINTI's policy of maintaining a drug-free workplace;
 3. Any available counseling, rehabilitation and employee assistance programs; and
 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services hereunder will:
1. Receive a copy of BINTI's Drug-Free Policy Statement; and
 2. Agree to abide by the terms of BINTI's Drug-Free Policy as a condition of employment.
- D. Effect of Noncompliance. Failure to comply with the above-referenced requirements may result in suspension of payments under this Agreement and/or termination thereof, and BINTI may be ineligible for award of future contracts if LICENSEE determines that the foregoing certification is false or if BINTI violates the certification by failing to carry out the above-referenced requirements.

8. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by LICENSEE, and BINTI is not entitled to any rights hereunder, unless certificates of insurance or other sufficient proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. General Insurance Requirements. Without limiting BINTI's indemnification obligations provided for herein, LICENSEE shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of this Agreement, and any extended term thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Best's rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of BINTI, its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:
1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one incident, including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
 2. BINTI will not drive an automobile in the performance of services for LICENSEE. If that changes, BINTI will take out and maintain Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles. Said coverage shall be at least as broad as Insurance Service Offices Form Code 1 (any auto).

3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against LICENSEE, its agents, officers, officials, employees and volunteers.
 4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Four Million Dollars (\$4,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which BINTI may be exposed to liability. LICENSEE shall require that such coverage be incorporated into its professional services agreements with any other entities.
- B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:
1. The Comprehensive or Commercial General Liability Policy shall provide that LICENSEE, its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by or on behalf of BINTI. The coverage shall contain no special limitations on the scope of protection afforded to LICENSEE, its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to as "XCU Hazards."
 - c. Is the primary insurance with regard to LICENSEE.
 - d. Does not contain a pro-rata, excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.
 2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to LICENSEE in accordance with the notice provisions set forth herein. It is further understood that BINTI shall not terminate such coverage until LICENSEE receives adequate proof that equal or better insurance has been secured.
 3. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

4. For claims related to this Agreement, BINTI's insurance is the primary coverage to LICENSEE, and any insurance or self-insurance programs maintained thereby are excess to BINTI's insurance and will not be used to contribute therewith.
5. Any failure to comply with the provisions of this Agreement, including breach of warranties, shall not affect coverage provided to LICENSEE, its agents, officers, officials, employees and volunteers.
6. BINTI shall furnish LICENSEE with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, LICENSEE. If BINTI does not keep all required policies in full force and effect, LICENSEE may, in addition to other remedies under this Agreement, take out the necessary insurance, and BINTI agrees to pay the cost thereof. LICENSEE is also hereby authorized with the discretion to deduct the cost of said insurance from the monies owed to BINTI under this Agreement.
7. LICENSEE is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and BINTI shall be required to purchase additional coverage to meet the above-referenced aggregate limits.

C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt
Attn: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

CONTRACTOR: Binti, Inc.
Attention: Felicia Curcuru
1625 Clay Street, Suite 600
Oakland, California 94612

9. RELATIONSHIP OF PARTIES:

It is understood that this is an Agreement by and between two (2) independent contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that BINTI shall not be entitled to any benefits to which LICENSEE's employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation. BINTI shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

10. COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:

BINTI agrees to comply with any and all local, state and federal laws, regulations, policies and procedures applicable to the services covered by this Agreement. BINTI further agrees to comply with any and all applicable local, state and federal licensure and certification requirements.

11. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations, or conditions that may affect the provisions, terms or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

12. REFERENCE TO LAWS AND RULES:

In the event any law, regulation, policy or procedure referred to in this Agreement is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date of such amendment.

13. PROTOCOLS:

Both parties recognize that the inclusion of additional protocols may be required to make this Agreement specific. All such protocols shall be negotiated, determined and agreed upon by Director and BINTI.

14. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

15. WAIVER OF DEFAULT:

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by LICENSEE constitute a waiver of any breach of this Agreement or any default which may then exist on the part of BINTI. Nor shall such payment impair or prejudice any remedy available to LICENSEE with respect to any breach or default. LICENSEE shall have the right to demand repayment of, and BINTI shall promptly refund, any funds disbursed to LICENSEE which, in the judgment of LICENSEE, were not expended in accordance with the terms of this Agreement.

16. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of LICENSEE shall be personally liable for any default or liability under this Agreement.

17. STANDARD OF PRACTICE:

BINTI warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. BINTI's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

18. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

19. ADVERTISING AND MEDIA RELEASE:

All informational material related to this Agreement shall receive approval from LICENSEE prior to being used as advertising or released to the media, including, but not limited to, television, radio, newspapers and internet. BINTI shall inform LICENSEE of all requests for interviews by the media related to this Agreement before such interviews take place; and LICENSEE shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to Director.

20. SUBCONTRACTS:

BINTI shall obtain prior written approval from LICENSEE before subcontracting any of the services to be provided hereunder. Any and all subcontracts will be subject to all applicable terms and conditions of this Agreement, including, without limitation, the licensing, certification, privacy, security and confidentiality requirements provided herein. BINTI shall remain legally responsible for the performance of all terms and conditions of this Agreement, including work performed by third parties under subcontracts, whether approved by LICENSEE or not.

21. ATTORNEYS' FEES:

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

22. SURVIVAL:

The duties and obligations of the parties set forth in, Section 3 – Record Retention and Inspection,

Section 4 – Confidential Information and Section 8 – Insurance shall survive the expiration or termination of this Agreement.

23. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Exhibit C, the terms and conditions set forth herein shall have priority notwithstanding any language to the contrary contained in the Master Subscription and Services Agreement.

24. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

25. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

26. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.