

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



Contract Number

24-205

SAP Number

Children and Family Services

Department Contract Representative
Telephone Number

Amanda Figueroa
(909) 386-8146

Contractor
Contractor Representative
Telephone Number
Contract Term

Binti, Inc.
Cindy Firestone
(408) 384-9574
Effective upon signature and
continuing until terminated by either
party, or there are no active orders

Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Briefly describe the general nature of the contract:

Master Subscription and Services Agreement, including non-standard terms, with Binti, Inc, for license and support of the Binti Platform.

FOR COUNTY USE ONLY

Approved by County Legal Form

A blue ink signature of Kaleigh Ragon.

Kaleigh Ragon, Deputy County Counsel

Date 3/6/2024

Reviewed by Contract Compliance

A blue ink signature of Christopher Lange.

Christopher Lange, Administrative Analyst III

Date 3/6/2024

Reviewed and Approved by Department

A blue ink signature of Jeany Zepeda.

Jeany Zepeda, Director

Date 3/6/2024

MASTER SUBSCRIPTION AND SERVICES AGREEMENT

This Master Subscription and Services Agreement ("**Agreement**") is made as of April 1st, 2024 ("**Effective Date**"), between Binti, Inc. with an address at 1111 Broadway, Suite 300, Oakland, California 94607 ("**Binti**"), and the San Bernardino County with an address at 412 W Hospitality Lane, San Bernardino, CA 94612 ("**Client or County**"). Binti and Client will be referenced to individually herein as "**Party**" and collectively as the "**Parties**."

Accordingly, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Purpose.** Binti has developed a Software-as-a-Service platform, as described at www.binti.com and as set forth in **Exhibit A, Specifications** attached hereto, which includes the individually licensable platform modules for Approvals, Case Management, Placements and Family Finding. This Agreement creates a legally binding and enforceable contract whereby Binti (i) will grant Client access to the Binti platform including one or more of the platform module(s), as indicated in the applicable Order Form (collectively the platform will be referred to as the "**Platform**" and each module will be referred to as a "**Licensed Module**"); and (ii) may provide certain professional services ("**Professional Services**"), as described in **Exhibit B, Professional Services** attached hereto, if any.
2. **Proprietary Rights; Usage.**
 - (a) **Platform.** Subject to the terms and conditions of this Agreement, Binti hereby grants to Client during the Term (defined below) a revocable, non-exclusive, non-transferable and non-sublicensable license to access and use the Licensed Modules as specified in the Order Form, subject to Client's employees and contractors accepting Binti's online Terms of Service (<https://binti.com/terms/>) and receiving valid access credentials by Binti ("**Authorized Users**"). The Parties may add additional Platform access, including adding access to any additional modules, though a new or updated Order Form(s).
 - (b) **Restrictions.** Client, and its Authorized Users, 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; (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; (vi) access or use the Platform in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party, including the right to privacy; (vii) bypass or breach any security protection used by the Platform or access or use the Platform other than by an Authorized Users through the use of his, her, they own then valid access credentials; (viii) or use the Platform in a manner that violates this Agreement, any third party rights or any applicable laws, rules or regulations.
 - (c) **Feedback.** If Client or any of its employees or contractors sends or transmits any communications or materials to Binti by any means (i.e., email, form, telephone, text, verbally, or otherwise), suggesting or recommending changes to the Binti Platform, including without limitation, for new features or functionality relating thereto, or any comments, suggestions, or questions or the like ("**Feedback**"), Binti is free to use such Feedback irrespective of any other obligation or limitation between the Parties. Client hereby assigns to Binti on Client's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and to the Feedback. Binti is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever. For the avoidance of doubt, Binti is not required to use any Feedback and Client is not required to provide Feedback.
 - (d) **Support.** Binti will provide support and use commercially reasonable efforts to make the Platform available, except for planned downtime and any unavailability caused by Force Majeure Events (defined below) as further set forth in **Exhibit C, Services Level Agreement**, attached hereto.
 - (e) **Binti Ownership; Usage Data.** Except for the rights granted to Client in Section 2(a) above and Client's rights to Client 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 the Platform and/or its use and/or performance (including, without limitation, de-identified Client Data that does not, and cannot reasonably be used to, identify Client or any individual) ("**Usage Data**") (which, notwithstanding anything to the contrary, Binti may fully exploit). Client

agrees that Binti may (i) make Usage Data publicly available in compliance with applicable law, and (ii) use Usage Data to the extent and in the manner permitted under applicable law; provided that such Usage Data do not identify Client Data or Client's Confidential Information and are unable to be reidentified. All rights that Binti does not expressly grant to Client in this Section 2 are reserved and Binti does not grant any implied licenses under this Section 2.

(f) Client Ownership; Client Data. As between the Parties, Client owns all data, information and other materials submitted to the Platform or Binti by Client or its Authorized Users (which, for clarity, excludes Usage Data) (collectively, "**Client Data**"). Client represents and warrants that: (i) it either owns the Client Data or is otherwise permitted to grant the license set forth in this Section; (ii) the posting and use of Client Data on or through the Platform does not violate the privacy rights, publicity rights, copyrights, contract rights, intellectual property rights, or any other rights of any person; and (iii) the posting of Client Data on the Platform does not result in a breach of contract between Client and any third party. Client hereby grants to Binti a non-exclusive and non-transferable license to use and host the Client Data, solely to provide the Services. Binti is not responsible for the content of any client Data or the way Client or its Authorized Users choose to use the Platform to store or process any Client Data. Upon termination or expiration of this Agreement for any reason, Binti will permit Client to download all Client Data from the Platform in .csv format

i. Restrictions. Within the Binti Platform, Client shall not use, share, store, transfer, or transmit (1) any Client Data that infringes, violates, or misappropriates any intellectual property or proprietary right(s) of a third-party, or (2) any Client Data that violates any applicable laws, rules or regulations including any applicable data privacy laws. Where Client accesses or uses the Platform for the exchange or transmission of "Highly Sensitive Personal Information" defined as an (a) individual's government-issued identification number (including Social Security number, driver's license number, or state-issued identification number); (b) confidential financial information, financial account number, credit or debit card number, or credit report information; (c) federal or state tax return information or records; (d) biometric or genetic information, Client represents and warrants that it has (and will have for the Term) the requisite rights to exchange or transmit such Highly Sensitive Personal Information.

(g) Data Use and Protection. Binti will maintain commercially reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of Client Data. Binti will process any personal information submitted by Client or Client's Authorized Users in accordance with Binti's Privacy Policy, available at www.binti.com/privacy.

3. Professional Services.

(a) General. Subject to Client's compliance with the terms and conditions of this Agreement, Binti will perform the Professional Services according to the fee schedule and as set forth in **Exhibit B**, the Professional Services "**Statement of Work**" ("**SOW**"), attached hereto, if any. The Parties may add additional Professional Services through a new or updated SOW. Client 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 Client obligations in a timely manner; and (iii) responding to Binti's reasonable requests related to Professional Services in a timely manner. Binti will not be liable for any delays in performing the Professional Services that arise, in whole or in part, from Client's acts or omissions, including, without limitation, its failure to comply with this Section 3(a) or in result of a Force Majeure Event.

(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 Client 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 Client under **Exhibit B** (if any) 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. Client will pay Binti the fees set forth in the Order Form(s), those set forth in Exhibit B, if any, and those set forth in any additional SOW(s) (collectively, "Fees"). Where an affiliate or partner agency ("Related Agency") is seeking access to the Platform, it may be granted pursuant to an additional Order Form issued and fully executed under this Agreement ("Related Agency Order Form"). In the event of the execution of a Related Agency Order Form, Client shall be responsible for payment of any fees set forth in the Related Agency Order Form and Client shall also remain responsible any Related Agency's compliance with the terms of this Agreement, the Terms of Service, and/or any other applicable terms and conditions.

(b) Reserved.

(c) Payment. All Fees are due and payable within sixty (60) 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. Binti retains the right, in its sole discretion, to suspend Platform access and providing Professional Services for Client's failure to pay all undisputed invoices, or portions thereof, in a timely manner.

(d) 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"). Client 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 Client. 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 as a matter of law by a court or regulatory body having jurisdiction, 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 and secure a protective order. Notwithstanding the foregoing, with respect to any Binti Confidential Information that constitutes a trade secret (as determined under applicable law), any obligations of non-disclosure under this Section 5 shall survive termination, expiration, and shall be exempt from compelled disclosure for so long as such Binti Confidential Information remains subject to trade secret protection under applicable law.

6. Term and Termination

(a) Term. This Agreement will commence on the Effective Date and continue until there are no active Order Form(s) in place between the Parties, unless earlier terminated in accordance with the terms of this Agreement.

(b) Termination. The Client may terminate this Agreement for convenience at any time, provided that Client provides Binti with at least thirty (30) calendar days' written notice of termination of the Agreement. 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 of this Agreement (except for termination by Binti pursuant to the immediately preceding sentence), Binti will refund to Client any pre-paid portion of the Fees with respect to future annual periods, but no refund will be provided for the then current twelve month term. For example, where Client terminates in September of Year 2 of the Term, no refund will be issued for the remainder of Year 2, but Binti will refund fees with respect to Year 3 of the Term. Upon termination or expiration of this Agreement, Binti will supply the Client with an export of the Client's Data. Binti may additionally suspend or terminate this Agreement (1) at anytime without notice to you in the event of any conduct by Client or by Client's Authorized Users which, in our sole discretion, we consider to be unacceptable or a breach of the Terms of Service or (2) for any or no reason, upon thirty (30) days written notice to Client.

(c) Effect of Termination. Upon expiration or termination of this Agreement for any reason, all outstanding Fees owed pursuant to Section 4 will become immediately due and payable. If this Agreement is terminated by Binti for the material breach by Client, Client will remain responsible for all Fees as set forth herein for the remainder of the then-current Term. If Client terminates this Agreement for material breach by Binti, Binti will provide Client with a pro-rated refund of any prepaid fees with respect to the terminated period.

(d) Survival. The provisions of Sections 2(b), 2(c), 2(e), 2(f), 3(b), 4, 5, 6(b), 6(c), 6(d), 7, 8, 9, 10 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) By Client. Client further represents and warrants that: (i) it owns or otherwise has sufficient rights to the Client Data to grant the license set forth in Section 2(f); (ii) no Client 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; and, (iii) that it is responsible for the use or misuse of the Platform by Authorized Users, and a breach by any Authorized User of any term of this Agreement will be deemed a breach by Client of this Agreement and Client assumes all risk arising from any such use that is not compliant with applicable laws.

(c) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH UNDER THIS SECTION 7, THE SERVICES AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT BY BINTI ARE PROVIDED ON AN "AS-IS" BASIS, AND CLIENT ASSUMES ALL RESPONSIBILITIES FOR SELECTION OF THE SERVICES TO ACHIEVE CLIENT'S INTENDED RESULTS, FOR THE ACCURACY AND/OR QUALITY OF ITS CLIENT DATA, AND FOR ITS USE OF, AND RESULTS OBTAINED FROM, THE SERVICES. BINTI DOES NOT WARRANT THAT THE SERVICES OR ANYTHING ELSE PROVIDED IN CONNECTION WITH THIS AGREEMENT WILL BE ERROR-FREE OR THAT THE SERVICES WILL WORK WITHOUT INTERRUPTIONS. EXCEPT AS EXPRESSLY SET FORTH IN 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, BINTI'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, AND VIOLATIONS OF LAW, 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. NOTWITHSTANDING ANYTHING TO THE CONTRARY, BINTI'S LIABILITY FOR CLAIMS ARISING UNDER SECTION 9, BINTI'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, AND VIOLATIONS OF LAW SHALL BE LIMITED TO ONE MILLION U.S. DOLLARS (\$1,000,000).

9. Indemnification.

(a) By Client. 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 Client or any of its Authorized Users in connection with the Service, then Client 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 Client or any of its affiliates, officers, employees or contractors (each, a "**Client Indemnified Party**") alleging that the Platform (not including any Client Data) infringes, violates, or misappropriates such third party's intellectual property or proprietary right(s) ("**Infringement Claim**"), then Binti will defend the Client Indemnified 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 Client 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 Client a pro-rata portion of the prepaid Fees. Notwithstanding the foregoing sentences, Binti will have no liability for an Infringement Claim if the actual or alleged infringement results from (a) any breach of this Agreement by Client or any Authorized Users; (b) any modification, alteration or addition made to the Platform by Client or any Authorized Users, including any combination of the Platform with software not provided by Binti; (c) any failure by Client or any Authorized Users to use any updates made available by Binti; or (d) any settlements entered into by Client or costs incurred by Client for the Infringement Claim that are not pre-approved by Binti in writing. This Section 9(b) constitutes Client's sole and exclusive remedies and Binti's entire obligation to Client with respect to any claim that the Platform or Professional Services infringe the rights of any third party.

(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.

(a) No Partnership, Agency or Joint Venture. Each Party hereto is an independent contractor with respect to the other Party. This Agreement does not create or imply any partnership, agency or joint venture between the Parties.

(b) Injunctive Relief. Nothing in the Agreement shall prevent a Party from seeking injunctive relief in addition to all available remedies.

(c) Assignment. 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, however, that either Party may assign this Agreement to an affiliate or 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.

(d) Severability. 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.

(e) Governing Law; Venue. This Agreement will be governed by and construed under the laws of California without reference to its conflict of laws principles. The parties agree that the venue of any action or claim brought by any party to these terms will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning these Terms is brought by any third-party and filed in another venue, the parties hereto agree to use commercially reasonable efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District. 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.

(f) Conflicting Terms. If there is any conflict or inconsistency between the terms of any Exhibit and the terms in the body of this Agreement, then the terms in the body of the Agreement will control solely to the extent of the conflict.

(g) Amendment, Modification & Waiver. Any amendment must be in writing and expressly state that it is amending this Agreement. 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.

(h) Notices. 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:

Binti, Inc.

Attn: Legal Department / Notices

1111 Broadway, Unit 300

Oakland, CA 94607

With a copy to :

contract-notices@binti.com;

In the case of Client:

San Bernardino County

Human Services

Attn: Contracts Unit

150 S. Lena Road

San Bernardino, CA 92415-0515

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.

(i) Force Majeure. Binti will not be liable or responsible to Client, 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**").

(j) Counterparts. 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.

(k) Entire Agreement. This Agreement is the Parties' entire agreement relating to its subject, and supersedes any prior or contemporaneous agreements on that subject. The Parties may execute this Agreement in counterparts, including facsimile, PDF, or other electronic copies, which taken together will constitute one instrument.

(l) Insurance. Binti agrees to provide insurance set forth in accordance with the requirements herein. If Binti uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements,

Binti agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, Binti shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

1. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Binti and all risks to such persons under this Agreement.
 2. Commercial/General Liability Insurance – Binti shall carry General Liability Insurance covering all operations performed by or on behalf of Binti providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - (a) Premises operations and mobile equipment.
 - (b) Products and completed operations.
 - (c) Broad form property damage (including completed operations).
 - (d) Explosion, collapse and underground hazards.
 - (e) Personal injury
 - (f) Contractual liability.
 - (g) \$2,000,000 general aggregate limit.
 3. Automobile Liability Insurance. Intentionally Omitted.
 3. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits
or
Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits.
or
Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.
- If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.
4. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

Umbrella Liability Insurance: An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

Additional Insured: All policies, except for Worker's Compensation, shall contain additional endorsements including County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for County to vicarious liability but shall allow coverage for County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights: Binti shall require the carriers of required coverages to waive all rights of subrogation against County, its officers, employees, agents, volunteers, Contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Binti and its employees or agents from waiving the right of subrogation prior to a loss or claim. Binti hereby waives all rights of subrogation against County.

Policies Primary and Non-Contributory: All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by County.

Waiver of Subrogation Rights: Binti agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between Binti and County or between County and any other insured or additional insured under the policy.

Proof of Coverage: Binti shall furnish Certificates of Insurance to the County Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without written notice to the Department, and Binti shall maintain such insurance from the time it commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, Binti shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request. Binti shall provide thirty (30) day prior written notice of any cancellation to the County Department.

Acceptability of Insurance Carrier: Unless otherwise approved by County's Risk Management Department (Risk Management), insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

Deductibles and Self-Insured Retention: Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

Failure to Procure Coverage: In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by County will be promptly reimbursed by Binti or County payments to Binti will be reduced to pay for County's purchased insurance.

Insurance Review: Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against County, inflation, or any other item reasonably related to County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Binti agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of County.

Electronic Signature: This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (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 Contract upon request.

BINTI, INC. Signed by:

By: Jamie Gray
961E96AA93344ES...

Name: Jamie Gray

Title: Assistant Secretary

SAN BERNARDINO COUNTY

By: Dawn Rowe

Name: Dawn Rowe

Title: Chair, Board of Supervisors

MAR 12 2024

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

By: _____



EXHIBIT A

SPECIFICATIONS

This Exhibit A defines the specifications of each Licensed Module and Binti's public API. Only the Licensed Module(s) specified on the Order Form (usually Page 1 of the Agreement) of this document are licensed to the Client.

The Licensing Module includes the following:

- A. Licensure and Relicensure Templates: The Applicant Portal and Client Staff Dashboard outlined in Sections B and C below consist of features for two templates (constituting a single "Track"): the initial foster parent application (before someone is licensed/approved for the first time) and the renewal application (for ongoing maintenance of an active foster parent license and re-licensure requirements). Each template consists of a unique set of forms (both applicant and agency worker forms) and training. Additional templates requested by Client may be developed at an additional fee, as set forth in an applicable Order Form, if any.
- B. Applicant Portal: The Applicant Portal includes:
 - a. Applicant form completion functionality ("Applicant Form"): Foster Family applicants will be able to complete specific application forms (up to 60 forms) required by Client. As an applicant completes an online form, their answers are mapped to the appropriate places on Client's PDFs
 - i. Auto Population of forms: While the same question may be asked more than once across the same or different forms, the answer previously entered populates through into all spaces in which that same question is asked
 - ii. Conditional Logic within the forms either expands or hides relevant questions based on previously entered information
 - b. Supporting document completion functionality ("Supporting Documentation"): Applicants can upload supporting documents required by Client, such as proof of identification, income verification, etc. All supporting documents can be configured to require an expiration date, which is then tracked on the Client staff dashboard
 - c. Electronic Signatures ("BintiSign"): Both Applicants and Client Staff will be able to electronically sign forms and other indicated documents, including those that are to be signed by both parties (Applicant and Client Staff)
 - d. Applicant Training Completion ("Training Tracking"): Applicants can watch embedded training and/or orientation information within the Applicant Portal, including the ability to complete a "quiz" or enter a passcode to confirm understanding before moving onto the next stage of the process
 - e. References ("References") and other adults ("Other Adults"): Applicants can list other adults in the home and references' names and emails, and the software will email them to complete their portions of the process in Binti.
 - i. Other Adults: Other Adults have their own Binti portal access in which they can complete the requirements specific to them, such as background check clearance forms or uploading proof of identification (this is specific to each agency).
 - ii. References: References will be able to click the link from the automated email they receive and complete and e-sign an online reference form (the reference form itself is specific to each agency)
 - f. Personal Information/Ethnicity: Within the Applicant Portal, Applicants can enter/update their personal information, such as ethnicity, tribal membership, and preferred language. While Client's Applicant Forms or Agency Forms may also gather this information, this information is separately gathered in Binti.
 - g. Spanish Language Support: Hosting of the Applicant Portal in both English and Spanish, provided that Client provides Spanish-translated forms and documents for inclusion in the Applicant Portal. Provision of the Applicant Portal in additional languages (beyond English and Spanish) may be available at an additional cost to Client.
 - h. Email Reminders: Automated email reminders to applicants reminding them to complete the applicable steps in the process.

- i. Configurability: For the Licensure and Recertification Tracks the following items are configurable by Client (subject to Binti's prior approval): Applicant Forms, Supporting Documentation, BintiSign, Applicant Training Completion, Affiliated Persons, Personal Information, and Spanish Applicant Portal, and cadence of renewal reminder emails. Work done by Binti to configure such features is referred to as "Professional Services" and addressed in Exhibit B.
 - i. Spanish Applicant Portal: The entire Applicant Portal can be offered in Spanish for Applicants to use if Client provides Binti with the designated application forms in Spanish. Where Client provides English forms for translation, translation work shall be subject to an additional cost and is subject to Binti's available resources.
 - j. Where Client requires or requests tracks separate from or additional to the Licensure and Recertification Tracks, those may be available at an additional cost to Client, as described in Section A.
- C. Client Staff Dashboard: For both the Licensure and Recertification Tracks, the following dashboard features are available to Client:
- a. Dashboard View: As Applicants complete the forms in the Applicant Portal, the Application dashboard will display the percentage completion of applicant forms and supporting documents, completion of background checks and training hours, percentage completion of agency forms (completed by Client staff), and number of days since Application signed.
 - b. Dashboard view by status: Client Staff will be able to view both current/active and inactive applicants in separate tabs divided by status across the dashboard: Recruiting, Applying, In Renewal Process, Inactive, Dropped Out, Withdrawn, Denied, and Closed.
 - c. Agency Form Completion: Client staff will be able to complete forms within the dashboard (similar to the Applicant Portal), such as the home study evaluation. As Client staff completes an online form, their answers are mapped to the appropriate place on Client's PDFs. Like the Applicant Form, these forms can also be electronically signed (by one or both parties).
 - i. Auto Population of forms: While the same question may be asked more than once across the same or different forms, the answer previously entered populates through into all spaces in which that question is asked
 - ii. Conditional Logic within the forms either expands or hides relevant questions based on previously entered information
 - d. Background Checks: Client staff can indicate status/completion of applicant background checks, which are listed in the dashboard where Client so requires (i.e. DOJ requested, Adam Walsh, etc.)
 - e. Trainings: Client staff can indicate completion (or waive, as applicable) specific trainings per applicant, per the Client's training requirements. Custom trainings (specific to certain individual(s)) can also be logged by Client staff.
 - f. Complaints: Client staff can log specific complaints about applicant(s), with dropdowns for complaint type and more detailed information about the allegation.
 - g. Case Notes: Caseworkers can record case notes for a given family, including note, date and type of case note.
 - h. Reporting: Client Staff can generate the following reports in the dashboard:
 - i. Case Loads Report: Shows case loads of each worker broken down by initial applications, renewals coming in next 60 days, and renewals coming up in more than 60 days
 - ii. Recruiting Progress Report: Shows the cohort of applicants that made an inquiry with Client in a certain month, and in what status those applicants are during the time of the report
 - iii. Days Since Placement Report: shows all cases categorized by whether there is an emergency (pre-licensure) placement in the home and how long the child has been there
 - iv. Family Map: shows applicant families as pins on a map, with filter capability by applicant status
 - v. Status Change Reason: Graph based on reasons applicants have dropped out of the process
 - vi. Time to Approval Report: shows the amount of time it takes each family to be approved so that you can see trends over time as well as outliers

- i. Configurability: For the Licensure and Recertification Tracks, the Agency Forms, BintiSign, Training Tracking, and Background Checks, are configurable by Client (subject to Binti's prior approval). Work done by Binti to configure such features is referred to as "Professional Services" and addressed in Exhibit B.

The Placements Module includes the following:

- A. Client Staff Placement Dashboard ("Placement Dashboard"): Client staff will be able to access/manage families available to take placement(s) ("Family Placements"), access/manage children/youth awaiting placement or in care ("Intake Child"), and access/manage placement searches for specific children or sets of siblings:
 - a. Family Placements: Staff will be able to see Family Placements and their availability and capacity as well as basic characteristics/preferences related to a potential placement in their home
 - i. Relative Placement Information: The Placements Dashboard shows county/community families and has a separate tab for relative families. The relative families tab also includes families that are still within the licensing process (clearly labeled) in the case that a pre-approval/emergency placement with a relative is needed.
 - ii. Complaints and Licensing Information: the Placements Dashboard highlights any overdue renewals or trainings, as well as any open/outstanding Complaints against this family (pulled from Licensing Module)
 - iii. Hold Functionality: Complaints (logged within the Licensing Module) are viewable in the Placement Dashboard and where staff determine that a placement should be placed on hold, they can so indicate in the Placement Dashboard, along with a note about whether the hold is voluntary and if there is an end date applicable to the hold.
 - iv. Dashboard Filters: Staff have the ability to filter Approved Families based on capacity, availability, location, preferences and specific attributes (e.g., emergency placement, medically trained, respite provider).
 - v. Map View: The ability to view Approved Families on a map, with the option to view within county boundary lines.
- B. Child/Youth Referral Tracking: Client staff can input information about Intake Children directly into Binti, indicating basic demographic information, school information, and strengths/placement recommendations. Siblings can also be directly connected in the system by entering the name of a child already within Binti (if not entered, first sibling can be entered and then additional siblings can then be added/connected).
 - a. All children/youth can be viewed on the Children/Youth dashboard, displayed by status (awaiting placement, in care, and permanency/non-permanency exits). Client Staff can see whether a child is currently placed and name of current placement, as well as whether there's currently an in-progress placement search
 - b. Track placement of Intake Children with placements and number of Intake Children not placed.
 - c. Record when a child no longer needs a placement, the placement close date, and the reason the placement is no longer needed.
- C. Search Functions Based on Child Characteristics and Needs ("View Matching Families"): On the View Matching Families dashboard:
 - a. Filter and view Family Placements that could be a match for each child or sibling set based on the child characteristics and the families' location and preferences (including both county/community and relative families, as applicable).
 - i. View these Family Placements either via list view or via Map View- the Map View shows pins for each Family Placement as well as separate pin/"graduation cap" for the child's community of origin and school location.
 - b. Record Placement Contact and Calling Logs: Client Staff can send bulk emails with standard placement availability messages directly from Binti, and record individual reach-outs (such as phone calls) and Family Placements' responses. All calls made to a Family Placement and the child/youth called on

behalf of, as well as date and response can be viewed in a call log by Family Placement or by Child/Youth.

- D. Share Child Profile: When staff indicate in Binti that a child has been placed, they can opt to “Share Child Profile” with the new family placement that has been indicated. This allows the family placement to view basic information about the child that has been placed with them, including the child’s allergies, medications, school information, and strengths/interests. This information is found in the same application portal accessed by the family as part of the Licensing Module.

Features across all Licensed Modules:

- A. Unlimited number of Client users
- Subject to the terms of the Agreement, Client may set up an unlimited number of applicant and admin user accounts
 - Client may establish multiple levels of permissions/ access available, including agency admins, caseworkers, trainers, case carrying workers, placements workers, eligibility workers, and clerical workers.
- B. Module Access
- All users (including applicants, Affiliated Persons, and Client staff) can access each Licensed Module from any secure computer, tablet or mobile device with access to a modern browser using username and password, or SSO (if enabled by Client)

API access includes the following:

- Binti’s Application Programming Interface (API) is available to agencies as a method to programmatically connect systems for performing a secure data exchange. The Binti API provides access to agency data as defined by the core Binti data model.
- Binti has specific endpoints within our API available for data integration, as described here: <https://family.binti.com/api-docs/index.html>. Technical documentation is available upon request to provide additional information.
- Any additional set-up/configuration with regards to Binti’s API (if any) for Client shall be discussed and agreed upon by both parties, and then would be described in Exhibit B (Professional Services)

Exhibit B

PROFESSIONAL SERVICES

THIS SECTION IS INTENTIONALLY OMITTED

EXHIBIT C**SUPPORT AND SERVICE LEVEL AGREEMENT**

This Support and Service Level Agreement (“SLA”) is incorporated by reference into the Master Subscription and Services Agreement (“Agreement”). 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. Service Availability. Binti will use commercially reasonable efforts to make the Licensed Modules available in accordance with the following standards:

System Availability Measure	Standard
Service monthly uptime (“Availability”)	99.5%*

*Excludes scheduled downtime (of which Binti will give prior written notice and which Binti will schedule between the hours of 10PM and 4AM Pacific Standard Time).

2. Failure to Meet Availability Standards. In the event the Licensed Modules do not meet the Availability standard, Client will be eligible to receive a service credit as described below. Service credits are calculated as a percentage of the Fees paid by you for the Licensed Modules in a given billing cycle in accordance with the schedule below:

Monthly Availability	Service Credit Percentage
Less than 99.5% but greater than or equal to 99.0%	10%
Less than 99.0% but greater than or equal to 95%	15%
Less than 95%	25%

Binti will apply any service credits only against future payments or Fees otherwise due from Client. At Binti’s discretion, Binti may issue the service credits as a refund in the original method of payment where no further fees are due or payable. Client’s sole and exclusive remedy for any unavailability or failure to meet Availability standards or non performance of failure by Binti to provide the Licensed Modules is the receipt of Service Credits in accordance with the terms of this SLA.

To be eligible for for service credits, Client will need to submit a written claim to Binti (SLA@binti.com) within thirty (30) days of the incident and include the following:

- Identification of the Licensed Module with respect to which Client is claiming the service credits, together with the specific dates, times and availabilities for the periods with less than 99.5% Availability
- Any supporting documentation that supports the claimed outage

3. Support. Binti will provide technical support (“Support”) to Client from 9 AM-10 PM ET Monday through Friday during the Term except for national holidays in the United States and June 19th. Support may be non-live and/or limited for up to four (4) days per year due to staff training. To request Support, Client must contact Binti via Live Chat within family.binti.com, via phone at 844-424-6844, or via email at help@binti.com. Support will return/answer all messages received outside of the aforementioned hours during the following business day.

(a) Provision of Support. Binti will provide technical Support to the following Client technical contact, or his/her/their designate: [TO BE ADDED]. Binti will not be responsible for addressing or resolving Events (defined below) that Binti reasonably determines are caused by Client’s systems, any misuse of the Platform, and/or any breach of the Agreement.

(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 four classes of Events as follows:

- (i) **Critical Event:** A complete loss of the Platform's functionality such that no user can use the Platform, with no workaround available.
- (ii) **High Event:** The Platform's functionality is materially impaired such that at least approximately 10% of users cannot use the Platform for its intended purpose. There is a major impact on users and minimal functionality is available.
- (iii) **Medium Event:** An event causing users to lose some level of functionality but users are still able to utilize the Platform for its intended purpose or an event not meeting the criteria of Critical or High because there is a workaround available which does not negatively impact the User from using the Platform for its intended purpose. Such events will be consistent and reproducible.
- (iv) **Low Event:** Any other problems or issues that do not rise to Critical, High, or Medium events. Most users would not notice or be impacted if not addressed.

(c) Target Response Times. Binti will use commercially reasonable efforts to meet the following target time frames for response to Events, from the time Binti receives a Support request:

<u>Event Level</u>	<u>Target Response Time</u>
Critical	4 hours or better
High	24 hours or better
Medium	3 business days
Low	

(d) Resolution. Binti will use commercial reasonable efforts to resolve Events within a reasonable time following response, as determined in Binti's reasonable discretion after assessing the Event.