



**COUNTY OF ORANGE
SOCIAL SERVICES AGENCY**

**CONTRACT
No. MA-063-17011318**

WITH

BINTI, INC.

FOR

**WEB APPLICATION FOR
RESOURCE FAMILY APPROVAL PROGRAM**

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SECTION I

This Agreement MA-063-17011318 (referred to as "Contract") is made and entered into upon execution of all necessary signatures between the County of Orange, Social Services Agency (SSA), a political subdivision of the State of California, with a place of business at 500 N. State College Blvd., Orange CA 92868-1673 (referred to as "County"), and Binti Inc., having its principal place of business at 155 9th St., San Francisco, CA 94103 (referred to as "Contractor") for Web Application For Resource Family Approval Program. County and Contractor may be individually referred to as "Party", or collectively as "Parties".

RECITALS

WHEREAS, County desires to enter into a Contract for Web Application For Resource Family Approval Program; and

WHEREAS, Contractor is agreeable to supplying the Web Application For Resource Family Approval Program as described in Exhibit 1, Section I.A. (referred to as "Services") on the terms and conditions set forth hereinafter; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract with Contractor for obtaining said Services; and

WHEREAS, County and Contractor agree that this Contract is effective upon mutual agreement of both Parties and County of Orange Board of Supervisor's approval; and

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. Scope Of Contract

This Contract specifies the contractual terms and conditions by which the County will enter into a Contract for the Services with Contractor. The services to be provided are more fully set for in Section III. Scope of Work, attached hereto and incorporated by this reference as if fully set forth herein.

2. Term Of Contract

The term of this Contract shall be for a three-year term from August 1, 2017 through July 31, 2020, unless otherwise terminated by either party. This Contract may be renewed thereafter for two additional one-year terms upon mutual written agreement of both Parties. The County does not have to give a reason if it elects not to renew this Contract.

3. Compensation & Payment

Contractor agrees to provide the Services as set forth in Section III. Scope of Work at the fixed rates specified in Section IV. Compensation / Payment Schedule. The total cost of this Contract shall not exceed \$450,000.

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SECTION II

GENERAL TERMS AND CONDITIONS

A. Governing Law And Venue

This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

B. Entire Contract

This Contract, when accepted by the Contractor in writing, contains the entire Contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee, "Purchasing Agent."

C. Amendments

No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. Taxes

Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

E. Delivery

Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not materially conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. Acceptance/Payment

Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. Warranty

Contractor expressly represents and warrants that:

- a. Contractor has and will continue to have the unconditional and irrevocable right, power, and authority, including all permits and licenses required, to provide the Services and to grant all rights and licenses granted or required to be granted by it under this Contract.
- b. Contractor has not and will not assign or otherwise enter into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Contract.

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- c. Contractor will and has the expertise to perform all Services in a timely, professional and workmanlike manner with a level of care, skill, practice, and judgment consistent with the highest professional standards and with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience, and qualifications, and will devote adequate resources to meet Contractor's obligations under this Contract.
- d. Contractor acknowledges that County is relying on its representation of its experience and expert knowledge and that any substantial misrepresentation may result in damage to County.
- e. Contractor will use its commercially reasonable efforts to ensure that no harmful code, malware, or similar items are introduced into County's computing and network environment by the Services, and that, where such items are transferred to County through the Services, Contractor shall reimburse County the actual cost incurred by County to remove or recover from such items, including the costs of persons employed by County.
- f. the Services covered by this Contract are and will remain free of liens or encumbrances.
- g. the Services covered by this Contract do not infringe any intellectual property rights of any third party and there are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
- h. the Binti System is free of harmful code (e.g., computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or software); will remain free of harmful code or such harmful code will be promptly eliminated by Contractor once Contractor becomes aware of such harmful code; and no loss of County Data will result from such items if present in the Services.
- i. the Binti System will conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings prescribed in Exhibits 1, 2, and 3) and will provide all material functionality required thereby.
- j. Contractor will not knowingly use the services of any ineligible person or subcontractor for any purpose in the performance of the Services under this Contract.

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, CONTRACTOR MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICES OR THIS AGREEMENT, AND CONTRACTOR HEREBY DISCLAIMS ALL IMPLIED WARRANTIES.

H. Patent/Copyright Materials/Proprietary Infringement

Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software underlying the Services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third Party.

I. Assignment Or Sub-Contracting

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-Contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. Non-Discrimination

In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

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In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. Consent To Breach Not Waiver

No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. Remedies Not Exclusive

The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

N. Independent Contractor

Contractor shall be considered an independent Contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

O. Performance

Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to the specifications set forth in this Agreement. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

P. Insurance Provisions

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is

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approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
2. Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer:

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability*	\$1,000,000 per claims made
Technology Errors & Omissions*	\$1,000,000 per claims made \$1,000,000 aggregate
Professional Liability*	\$1,000,000 per claims made \$1,000,000 aggregate

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The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements:

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange its elected and appointed officials, officers, agents and employees as Additional Insureds or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.
2. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.
2. A primary and non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Professional Liability, Technology Errors & Omissions and/or Network Security & Privacy Liability are "Claims Made" policy(ies), Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract. (Only include this provision when Professional Liability, Technology Errors & Omissions and/or Network Security & Privacy Liability Insurance are required. Only reference the type(s) of insurance required in the contract.)

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

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Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

Q. Bills And Liens

Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, satisfy its obligations, if applicable, in accordance with the requirements of paragraph "HH" below.

R. Changes

Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

S. Change Of Ownership

Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract in which the new owners are assigned this Agreement (by operation of law, contract, or otherwise), the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.

T. Force Majeure

Contractor shall not be assessed with any damages, liability, or unsatisfactory performance penalties during or as a result of any delay beyond the time named for the performance of this Contract, or any other breach of this Agreement, to the extent caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any reasonably available remedies.

U. Confidentiality

Contractor agrees to maintain the confidentiality of all County and County -related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

V. Compliance With Laws

Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and Contractor agrees that it shall

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defend, indemnify and hold County and County Indemnitees harmless from all third party claims, and all liability, damages, costs and expenses in each case, that are paid or payable by County or County Indemnities to third parties arising from or related to a violation of such laws by Contractor.

W. Freight (F.O.B. Destination)

Contractor assumes full responsibility for all transportation scheduling, packaging, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.

X. Pricing

The Contract bid price shall include full compensation for providing all required goods, in accordance with required specifications, or services, as specified herein or when applicable, in the scope of services attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.

Y. Intentionally Left Blank**Z. Terms And Conditions**

Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.

AA. Headings

The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

BB. Severability

If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

CC. Calendar Days

Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

DD. Attorney Fees

In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

EE. Interpretation

This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.

FF. Authority

The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitute the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

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GG. Employee Eligibility Verification

The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.

HH. Indemnification Provisions

Contractor agrees to indemnify, defend with counsel approved in writing by County, (not to be unreasonably withheld), and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County of Orange Board of Supervisors acts as the governing Board ("County Indemnities") harmless from and against any third party claims, allegations, suits, actions, proceedings, and/or demands and all liability, cost and expenses of any kind or nature, in each case, that are paid or payable by County Indemnities to third parties resulting therefrom, to the extent arising from Contractor's (including any of its affiliates, agents, subcontractors, or employees): breach of its confidentiality obligations pursuant to this Contract; grossly negligent acts or omissions; willful misconduct; alleged infringement or misappropriation of any copyright, patent, trade mark, trade secret, or any other intellectual property rights by the Services (excluding County Confidential Information, and any data provided by or on behalf of County or any end-user of the Services). Contractor will not, without County's express prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, suit, action, or proceeding. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Contractor's obligations pursuant to Section HH and the second sentence of Section V are expressly conditioned on : (a) County Indemnitees providing it with prompt written notice of the applicable third party claim for which the County Indemnitee(s) seeks indemnification, (b) County Indemnitees reasonably cooperating in the defense and/or settlement of such claims, at Contractor's sole expense, and (c) Contractor having control over the defense and/or settlement of all such claims and/or demands, subject to approval by County not to be unreasonably withheld. County has the right to participate at its own expense in the defense and/or settlement of such claims using counsel of its own choice.

II. Audits/Inspections

Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of contractor for the purpose of auditing or inspecting any aspect of performance under this contract. The inspection and/or audit will be confined to those matters connected with the performance of the contract including, but not limited to, the costs of administering the contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records.

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Should the contractor cease to exist as a legal entity, the contractor's records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

ADDITIONAL TERMS AND CONDITIONS

1. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
2. **Correspondence to Buyer:** Any correspondence related to the terms, prices and conditions of this Contract must be directed to the agency/department purchasing division to the attention of the assigned buyer. Correspondence not directed through the buyer for resolution will not be regarded as valid.
3. **Contractor Bankruptcy/Insolvency:** If the Contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the Contractor's insolvency, the County may terminate this Contract.
4. **Conflict of Interest:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interest of the County.
5. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.
6. **Fiscal Appropriations:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, the Contract will be terminated without penalty to the County.
7. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the state of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
8. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the contractor shall submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the contractor. Upon termination County agrees to pay the contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
9. **Debarment:** Contractor shall certify that neither contractor nor its principals are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any federal department or agency. Where Contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, Contractor must include an explanation with their bid/proposal. Debarment,

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pending debarment, declared ineligibility or voluntary exclusion from participation by any federal department or agency may result in the bid/proposal being deemed non-responsible.

- 10. Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11426 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.
1. Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.
 2. Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.
- 11. Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

FOR COUNTY:	COPY TO:
County of Orange	County Of Orange
SSA/Procurement Services	SSA/Children and Family Services
500 N. State College Blvd., 5th Floor	800 N. Eckhoff
Orange, CA 96868-1673	Orange, CA 92868
Attn: Angie Villalpando	Attn: Victor Chavez
Telephone: 714-541-7768	Telephone: 714-704-8827
Fax: 714-541-7772	Fax: 714-704-8965

FOR CONTRACTOR:
Binti, Inc.
155 9 th St.
San Francisco, CA 94103
Attn: Felicia Cucuru
Telephone: 732-547-3957
Mobile: n/a

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12. County Of Orange Child Support Enforcement (Within 30 Days Of Award Of Contract): In order to comply with the child support enforcement requirements of the County of Orange, within 30 days of award of Contract, the contractor agrees to furnish to the Contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:

1. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
2. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity;
3. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
4. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the contractor to timely submit the data and/or certifications required or to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract

13. Conditions Affecting Work: The contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the contractor to do so will not relieve contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the County are expressly stated in the contract.

14. Contractor's Project Manager and Key Personnel: Contractor shall appoint a project manager to direct the contractor's efforts in fulfilling contractor's obligations under this contract. This project manager shall be subject to approval by the County and shall not be changed without the written consent of the County's project manager, which consent shall not be unreasonably withheld.

The contractor's project manager and key personnel shall be assigned to this project for the duration of this contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the contractor's project manager.

15. Disputes – Contract:

1. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this contract is not disposed of in a reasonable period of time by the contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
 - a) The contractor shall submit to the agency/department assigned buyer a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this contract, unless the County, on its own initiative, has already rendered such a final decision.
 - b) The contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the contract, the contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that

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the supporting data are accurate and complete, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the County is liable.

2. Pending the final resolution of any dispute arising under, related to, or involving this contract, the contractor agrees to diligently proceed with the performance of this contract, including the delivery of goods and/or provision of services. The contractor's failure to diligently proceed shall be considered a material breach of this contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the contractor's demand, it shall be deemed a final decision adverse to the contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.

- 16. News/Information Release:** The contractor agrees that it will not issue any news releases in connection with either the award of this contract or any subsequent amendment of or effort under this agreement without first obtaining review and written approval of said news releases from the County through the County's project manager.

- 17. Project Manager, County:** The County shall appoint a project manager to act as liaison between the County and the contractor during the term of this contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the contractor.

The County's project manager shall have the right to require the removal and replacement of the contractor's project manager and key personnel. The County's project manager shall notify the contractor in writing of such action. The contractor shall accomplish the removal within 14 calendar days after written notice by the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the contractor's project manager and key personnel. Said approval shall not be unreasonably withheld.

- 18. Limitations on Liability:** To the fullest extent permitted under applicable law, in no event will either party's total liability arising out of or related to this contract and/or the services provided by contractor exceed the amount payable to the contractor during the term of this contract; In no event will either party have any liability for any indirect, incidental, or special damages arising out of or related to this contract (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 does not limit either party's liability for infringement of the other party's intellectual property rights.

The limitations contained in this Section shall not apply to: (1) claims arising out of Contractor's indemnification obligations to third parties; (2) Claims arising from the Contractor's confidentiality obligations pursuant to Paragraph U and Exhibit 3; (3) Claims arising of Contractor's security obligation pursuant to Exhibit 3; (4) claims arising out of Contractor's gross negligence, fraud, or willful misconduct. The limitation of liability does not act in any way to reduce the policy coverage and limits available from the insurer.

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SECTION III

SCOPE OF WORK

A. Description of Services

Contractor shall create and maintain two related web-based tools to assist in recruiting and approving families for the new Resource Family Approval (RFA) Program recently initiated by the California Department of Social Services (CDSS). The first web-based tool (Recruitment Website) is a public facing web page for the recruitment of RFA families. The second web-based tool (SSA Resource Application Management Portal or RAMP) enables the County to manage and approve RFA family applicants (Applicants). Contractor shall provide County a non-exclusive, non-transferable and non-sub licensable license to allow Applicants to access and input data and allow County authorized end-users (Users) to access and process that data to help facilitate the care and adoption of children under the Juvenile Court's Jurisdiction. Contractor shall provide Applicants and Users valid access credentials. Users will be subject to the Contractor's Terms of Use and Privacy Policy, attached as Exhibit 3 Privacy and Security Agreement. Contractor will be in compliance with the California Child Welfare Digital Services Certification, Approval, and Licensing Services (CALs) data standards as they current exist or are amended.

County will not, and will not permit any third party to: (i) copy, modify, translate, or create derivative works of the Services; (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 Services (except to the extent such prohibition is contrary to applicable law); (iii) lend, lease, offer for sale, sell or otherwise use the Services for the benefit of any third party except as permitted under this Section A; (iv) attempt to disrupt the integrity or performance of the Services; (v) attempt to gain unauthorized access to the Services or its related systems or networks; or (vi) use the Services in a manner that violates this Agreement, any third party rights or any applicable laws, rules or regulations.

1. Recruitment Website:

Contractor shall develop, implement and maintain the Recruitment Website which will consist of interactive webpages that provide information to prospective RFA families and allow them to contact County and other County approved RFA partners. Webpages shall also have the ability to collect data on prospective RFA families in order to coordinate recruitment efforts.

Contractor shall:

- a) Launch the Recruitment Website and host the Recruitment Website and associated webpages on an ongoing basis;
- b) Conduct website maintenance, including upgrading software, renewing domain name, renewing Secure Sockets Layer(SSL) certificate, and any other related activities; and
- c) Update information, images, calendar of events, and any other aspects of the Recruitment Website as needed on an ongoing basis and with input from County.
- d) Develop a Spanish language version of entire Recruitment Website. Contractor agrees to develop other language versions such as but not limited to Farsi and Vietnamese to meet the need of County's service population upon written request of County and for no additional charge.

County reserves the right to request changes be made to the Recruitment Website. Contractor shall make these changes in a timely manner per software industry standards. The timing of the changes shall be agreed upon before implementation and must be agreeable to both County and Contractor. Contractor shall complete requested changes at no additional cost to County. Any undue delay, as determined by County, will result in financial penalties per Exhibit 2.

During the Contract period, Contractor shall:

- a) Launch the Recruitment Website and host the Recruitment Website and associated webpages on an ongoing basis;

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- b) Conduct website maintenance, including upgrading software, renewing domain name, renewing Secure Sockets Layer (SSL) certificate, and any other related activities; and
- c) Update information, images, calendar of events, and any other aspects of the Recruitment Website as needed on an ongoing basis and with input from County.

SSA Resource Application Management Portal

Contractor shall design and maintain RAMP to be an interactive, mobile optimized, web-based tool that allows Applicants and Users to enter data and upload, track and approve documents necessary to obtain approval to become a RFA family.

RAMP must include the following features for Applicants:

- a) Ability for Applicants to create and update, as necessary, a username and password that allows them to access RAMP via a computer, tablet or mobile device.
- b) An unlimited number of applicant accounts for Applicants
- c) The ability to track and save progress on online for applicants, and generate FCS-approved forms based on the data provided online.
- d) Full digital signature capability for all forms as required for County business.
- e) Conditional logic for applicant questions, allowing applicants to answer alternative questions based on their previous responses.
- f) Automatic population of multiple forms based on information provided by the applicant (i.e. home address).
- g) Ability to upload documents as attachments both via scanner and smartphone.
- h) Ability to send emails to prospective references, and process references online, including providing email notifications and reminders to prospective references and providing email notifications to the applicant when their reference has completed the reference.
- i) Full encryption of all data entered in RAMP.
- j) Ability for multiple users to apply and provide online information for each Applicant, so that co-applicants and other adults can provide information online.

RAMP must include the following features for Users:

- a) Ability for Users to create and update, as necessary, a username and password that allows them to access RAMP via a computer, tablet or mobile device.
- b) An unlimited number of administrative accounts, with multiple levels of access based on the User and the need for data. Levels of access for data will be determined by County.
- c) Ability for Users to track progress of the Applicants assigned to them online, and to generate or download and print all documents necessary for the RFA process.
- d) Ability for Users and supervisors to assign Applications to caseworkers, sort the applications by caseworker, and monitor progress and completion by caseworker.
- e) Ability for Users to customize email notifications and other content agreed to by County and Contractor, including adding email notifications to other County staff.
- f) Ability for Users to grant access to specific partner agencies involved in the RFA approval process.
- g) Ability for Users by County to grant and limit access to other County staff and partners.
- h) Ability for caseworkers, supervisors and administrative staff to track individual and aggregate progress of all resource family applications for each step of the process.
- i) Full digital signature capability for all forms as required for County business.
- j) Ability to filter families by attributes or characteristics specified by County.
- k) Ability for staff selected by County to download comma-separated values (.csv) files for custom data analysis reports.
- l) Ability to generate ongoing reports and customized forms, with data agreed to by Contractor and County.
- m) Ability for caseworker to record case notes for a given family, including note, date and type of case note.

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- n) Ability to generate automated email notifications and reminders for County staff, resource families, and other related partners.
- o) Ability to record user complaints, as well as record if and how they are resolved.
- p) Ability to manage reminders and processes for annual renewals for approved resource families, including training requirements.
- q) Ability for County staff to classify and sort applications by specific statuses determined by County and Contractor.

Contractor shall:

- a) Launch the RAMP and host it on an ongoing basis;
- b) Conduct maintenance, including upgrading software, renewing domain name, renewing SSL certificate and any activities deemed necessary by SSA;
- c) Work with County staff to add features to RAMP. Contractor will work with County to create a plan for inclusion of additional features, and a timeline which will be approved by County and Contractor. The plan will be revisited monthly to determine progress and identify any additional features to integrate. Additional features will be provided in a timely manner consistent with industry standards at no additional cost to County. Any undue delay, as determined by SSA, will result in financial penalties as defined in Exhibit 2;
- d) Provide forty (40) hours of formal classroom type training to County staff of the entire suite of products offered, which may include, by way of example only a web based tutorial;
- e) Provide specific user manual documentation to County identifying clearly all application workflows and functionality descriptions;
- f) Update the application per an enhancement request process for County. The requests will come from County in writing. These requests will be given priority over other Contractor customers. Contractor will have five (5) business days to provide a reasonable/acceptable timeline for completion to County. This has to be a mutually agreed upon timeline between County and Contractor that is deemed appropriate with software industry standards as determined by County. There will be no additional charges to Contractor for any and all enhancement requests by County. Requests for enhancements requests that are not provided in a timely manner not meeting software industry standards, as agreed upon by County, shall be subject to a reduction in County's billing as defined in Exhibit 2;
- g) Allow unlimited number of County staff to access this application 24/7 except during occasional predetermined maintenance windows; and
- h) Perform maintenance only during non-working hours (7:00 pm at 5:00 am and weekends and holidays observed by the County).

2. Reporting Requirements

- a) Contractor shall create and provide Ad Hoc reports as required by the County to be accessible on RAMP.
- b) Contractor shall develop custom reports for County at no additional cost. Contractor will provide the report within five (5) business days, but exceptions may be granted by the County. The reports will be available in MS Excel and PDF formats. Failure to provide reporting requirements will be penalized per Exhibit 2.
- c) Contractor's primary contacts within the County shall be a RFA Manager and Information Technology Manager, or other designee as determined by County.

B. Location and Time of Services

Technical work on the Recruitment Website and RAMP will be provided by Contractor offsite. Contractor will meet with County staff and County identified partners via teleconference at least once monthly between 8:30 am and 5:30 pm PT Monday through Friday to assess progress and identify any proposed new features.

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County shall own all the data stored by Contractor and Contractor shall provide County with a capability to retrieve all data at any time in a CSV format. Contractor shall also provide a data dictionary of the fields for every table along with the relationships between them. Contractor retains all right, title and interest, including all intellectual property rights, in and to the Services and any software developed by Contractor hereunder (including all updates thereto). All rights that Contractor does not expressly grant to County in this Agreement are reserved and Contractor does not grant any implied licenses hereunder.

D. Security

See Exhibit 3 Privacy and Security Agreement.

E. Service Objectives

Contractor will submit for County approval a detailed plan for updates to the Recruitment Webpages and RFA Portal, including timelines for completion.

F. Maintenance and Support Services

Contractor's Maintenance and Support Program for the Software and, if applicable, the Interfaces referred to as "Supported Software" shall consist of two major components: Maintenance and Support.

1. Maintenance: For as long as County continues to participate in the Maintenance Program, County shall be entitled to the following:
 - a) Correction of Defects: Contractor shall maintain the supported software so that it functions without material defects in accordance with the documentation, and will correct any such defects in accordance with the procedures set forth in this document. All efforts by Contractor personnel associated with the identification and resolution of such defects shall be included as part of maintenance. From the moment a problem is reported to contractor, contractor shall track all time spent working on the identification of the nature of the problem. If the problem is determined to be a defect as agreed upon by the County and Contractor, the time spent in identifying the defect, as well as the time spent resolving the defect will be provided without additional charge as part of the maintenance program.
 - b) Maintenance Releases: Contractor shall make available to County all maintenance releases of the supported software and the technical and end user documentation. Contractor shall provide timely response to County inquiries concerning future releases and planned enhancements to functionality, including development road maps.
2. Support Levels
 - a) Standard Support Hours shall be defined as normal business hours; Monday through Friday, 9:00 am to 6:00 pm PT (excluding holidays).

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:

- ii. **Class 1 Event:** A complete loss of the Platform's functionality such that no user can use the Platform.
- iii. **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.
- iv. **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

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Events or Class 2 Events.

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	Next deployment/ within one week

(1) After Hours

Contractor shall make available On-call technical support after 6 pm and before 9:00 am Pacific Time 24-hours a day/7 days a week/365 days a year, including Contractor's Holidays and weekends by emailing contact@Binti.com or calling Contractor's Toll free number 844-424-6844. If there is an afterhours SaaS Security Level 1 issue, County should contact the Contractor's CEO directly at 732-547-3957 and/or Felicia@binti.com.

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SECTION IV

COMPENSATION/PAYMENT SCHEDULE

This is a fixed amount Contract between County and Contractor for the Web Application For Resource Family Approval Program, and the "not to exceed amount" for the three-year term of this Contract is \$450,000.

A. Compensation

Terms of Payment: Payment for all services shall be made to the Contractor within thirty (30) calendar days of receipt of a valid invoice in a format acceptable to the County. The invoice must first be verified and approved by the using agency/department and is subject to routine processing requirements of the County.

Payment in Advance: Invoices are to be submitted quarterly at the beginning of each period for services rendered. Billing shall cover services not previously invoiced. Invoices are to be submitted to the user agency/department, to the "ship to" address, for verification and approvals.

Payments made by the County shall not preclude the right of the County to thereafter dispute any services involved or billed under this Contract and shall not be construed as acceptance of any part of the order.

Invoice Submittal: Responsibility for providing an acceptable invoice rests with the Contractor.

An acceptable invoice format shall minimally include:

1. Contractor's name and address;
2. Invoice number and date;
3. Name of County agency/department ordering services/goods;
4. Description of services and date ordered;
5. Contract No. MA-063-17011318;
6. Total Invoice Amount;
7. Contractor's federal taxpayer's ID number; and
8. Contractor's remittance address (if different from line 1)

Contractor shall submit invoices for payment processing to the following address:
Social Service Agency/Procurement Services
Attn: Processing Desk (MA)
500 N. State College Blvd., 5th Floor
Orange, CA 92868-1673

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B. PAYMENT SCHEDULE

1. Contractor shall be paid according to the following payment schedule.

Compensation Schedule	
Payment at the initial implementation phase is due on August 31, 2017. Payment shall be based on County's written approval that the following items were completed to County's satisfaction: <ul style="list-style-type: none"> - Contractor shall successfully transfer all existing County data [legacy RFA data] to Contractor's database. - Contractor shall set up of all County user access. - Contractor shall set up of website and application access for public users. - Contractor shall provide all necessary training to County staff. - Contractor shall make all critical software changes identified by County. 	\$25,000
Final implementation payment phase is due on October 31, 2017. Payment shall be based on County's written approval that the following items were completed to County's satisfaction.	\$12,500
First year, quarterly payments @ \$37,500/Quarter starting the second quarter of contracted term. Such payment shall be made in arrears subject to Contractor's submission of valid, complete invoices to County. Three (3) quarters total.	\$112,500
Contract Total August 1, 2017 to July 31, 2018	\$150,000

Second and third year quarterly payments @ \$37,500/Quarter. Eight (8) quarters total	
Contract Total August 1, 2018 to July 31, 2020	\$300,000

2. Fee Schedule shall be subject to applicable reductions outlined in Exhibit 2 of this Contract. Subject to the foregoing, all fees paid hereunder are non-refundable; provided that in the event that County terminates this Agreement pursuant to Section 9 of the Additional Terms and Conditions above for Contractor's uncured, material breach of this Agreement, Contractor will refund to County a pro-rata share of any pre-paid fees for Services not received by County as of the effective date of termination.

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SECTION V

SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

BINTI INC.*

By	<u>Felicia Curcuma</u>	By	<u>Gabe Kopler</u>
Print		Print	
Name	<u>Felicia Curcuma</u>	Name	<u>GABE KOPLER</u>
Title	<u>CEO, Chairman of Board</u>	Title	<u>CTO, secretary</u>
	Corporate Officer		Corporate Officer
Date	<u>6/21/2017</u>	Date	<u>6/21/2017</u>

*If the contracting Party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

COUNTY OF ORANGE

a political subdivision of the State of California

By	_____	Date	_____
Print			
Name	_____	Title	_____

COUNTY OF ORANGE

COUNTY COUNSEL

Approved as to Form:

By	<u>Annie Loo</u>	Date	<u>4/22/17</u>
	Deputy County Counsel		

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EXHIBIT 1

SOFTWARE AS A SERVICE (SAAS) APPLICATION & HOSTING SERVICES DESCRIPTION

- I. Description of the SaaS Application and Hosted Services**
- II. SaaS Data Centers**
- III. SaaS Maintenance Services**
- IV. Subscriber Responsibilities**
- V. Technical Support & Training**

I. DESCRIPTION OF THE SAAS APPLICATION AND HOSTED SERVICES: "Software as a Service (SaaS) Application and Hosted Services" include the following services:

A. Software: Use of Contractor's Software operating on hosted equipment located at Binti Inc (Contractor)'s facility and/or any Data Center as further outlined under Section II (SaaS Data Centers) of this Exhibit 2. This includes:

1. A web application that provides automated workflows for child welfare professionals and foster care resource families.
2. Binti runs on Ruby on Rails application servers that connect to a Postgresql database.
3. Binti runs in a private cloud allowing for zero-downtime infrastructure scaling in order to meet load and responsiveness performance requirements.

B. Third Party Software:

1. Providing certain third party software required to operate the SaaS Software, including HelloSign for electronic signatures, and other bundled third-party software packages required to support the operation of the SaaS Software. Contractor shall have Service Level Agreements (SLA) in place with these vendors that meet or exceed the requirements of the (County).
2. Inclusion of regular Software and Contractor-supplied third-party software updates, patches and fixes as scheduled by Contractor.

C. Remote Software: Contractor shall provide access to and use of a remote software tool for County's Authorized Users, access rights and other similar role-based controls as they pertain to the SaaS Services. Method will be published through Contractor portal and be made available to Authorized Users with elevated privileges.

D. Back-Up of Subscriber Data:

1. Contractor shall provide up to thirty six (36) months, based on contracted service duration, of on-line hourly data retention for SaaS Software operation and functionality.
2. Contractor shall provide incremental Subscriber Data backups at a minimum of every four (4) hours to an off-site location other than the primary hosting center.
3. Contractor shall provide weekly, off-site backups not to exceed thirty six (36) months, based on contracted service duration of County Data to a location other than the primary hosting center. Off-site backups to include previous eight (8) weeks.

E. SaaS Environments: The SaaS Application and Hosted Services shall be hosted in a certified and secure Tier-3 data hosting center, which shall provide:

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1. A single Backup Environment available as needed to serve as the backup or “failover” environment for the SaaS and Hosted Services
2. A single Test Environment available to the Subscriber and Service Provider for the evaluation and eventual promotion of SaaS Software updates, patches, fixes or otherwise deemed tests. Test Environment shall perform at 50% or better of Production Environment.

F. Reporting: Contractor shall provide electronic notification within 2 hours of discovery and subsequent monthly reporting of any incidents or breaches that had occurred within the environment or to the hosted application. In the event of a breach, Contractor shall follow the procedures set forth in Section 9(e) of the Agreement.

G. Availability of SaaS Services: Contractor (or its Hosting Service contractor) shall host the **SaaS Services** on computers owned or controlled by the Contractor (or its contractor) and shall provide County with access to both a Production Environment with SaaS Application and data and a Test Environment with SaaS Application via Internet-access to use according to the terms herein.

1. **Hosted System Uptime:** Other than Scheduled SaaS Maintenance Services as outlined in Section III, emergency maintenance described below, Force Majeure as described in the Agreement and lack of internet availability as described below, Contractor shall provide uptime to the SaaS Application and Hosted Service to achieve a 99.9% Service Level Availability.

2. **Scheduled SaaS Maintenance**

a) Scheduled SaaS Maintenance will be conducted during the following hours: Saturdays between 12 AM (Pacific Time) and 8 AM (Pacific Time). With the same exclusions as noted above.

b) Scheduled SaaS Maintenance shall not exceed an average of 4 hours per month over a twelve (12) month period except for major scheduled upgrades.

3. **Unscheduled SaaS Maintenance.** Contractor will use commercially reasonable efforts to prevent more than one (1) hour of continuous down time during Business Hours in any month for which Unscheduled SaaS Maintenance is required. In the event Contractor fails to meet this obligation for a period of three successive calendar months, County shall be due a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month).

4. **Emergency Maintenance.** In the event that Force Majeure or emergencies arise or continue, Contractor shall be entitled to take any actions that Contractor, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the SaaS systems or the SaaS Software. Such emergency maintenance may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the SaaS Software by County is made available. Contractor shall endeavor to provide advance written notice of such emergency maintenance to County as soon as is reasonably possible.

5. **Notice of Unavailability:** In the event there will be more than thirty (30) minutes down time of any SaaS or Hosted Service components for any reason, including but not limited to Scheduled SaaS Maintenance or emergency maintenance, Contractor will provide notice to users by posting a web page that indicates that the site is temporarily unavailable and to please come back later. Contractor will also provide advanced e-mail notice to Victor.Chavez@ssa.ocgov.com which will include at least a brief description of the reason for the down time and an estimate of the time when County can expect the site to be up and available.

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- H. Changes in Functionality.** During the term of this Agreement, Contractor shall not materially reduce or eliminate material functionality in SaaS Services, except where approved in writing by the County. Where Contractor has reduced or eliminated functionality in SaaS Services, County, at County's sole election and in County's sole determination, shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees. Where Contractor increases functionality in the SaaS Services as generally promulgated by Contractor to its customers at no additional charge, such functionality shall be provided to County without any increase in the Services Fees.

II. SAAS DATA CENTERS

- A. Control:** The method and means of providing the Services shall be under the exclusive control, management, and supervision of Contractor, giving due consideration to the requests of County. The Services (including data storage), shall be provided solely from within the continental United States and on computing and data storage devices residing therein.
- B. Location:** Contractor uses 3rd party hosting, Google Cloud. Therefore, the location of Contractor's data centers are on the location of our hosted provider's data centers.
- C. Replacement Hosted Provider:** In the event Contractor changes the foregoing Hosted Provider, Contractor shall provide County with prior written notice of said change and disclose the name and location of the replacement Hosted Provider. The replacement Hosted Provider shall be a reputable Hosted Provider comparable to Contractor's current Hosted Provider, and said replacement Hosted Provider shall be located within the United States. The replacement Hosted Provider shall perform a SSAE 16, SOC 1 and/or 2 Audit Report at least annually and said audit shall be provided to County in accordance with this Agreement.

III. SAAS MAINTENANCE SERVICES.

- A.** The SaaS Software maintained under this Agreement shall be the SaaS Software set forth in Exhibit 2 to this Agreement.
- B.** The following SaaS Maintenance Services are included as part of this Agreement:
- 1. Contractor Software Version Upgrades, Software Revisions and Patches.** Contractor shall provide and implement ALL SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches to ensure: (a) the functionality of the SaaS Software and SaaS Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the SaaS Software and SaaS Services in accordance with the representations and warranties set forth herein, including but not limited to, the SaaS Software and SaaS Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Documentation; (c) the Service Level Standards can be achieved; and, (d) the SaaS Software and SaaS Services work with the non-hosted browser version.
- C. Response to SaaS Issues.** Contractor will provide verbal or written responses to SaaS Issues identified by County in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times as defined under Section VI.
- D. SaaS Hardware:** Contractor will use commercially reasonable efforts to ensure that all hardware (including servers, routers, and other related equipment) on which the applications are deployed are attached to backup power systems sufficient to maintain the site's availability for so long as any power outage could reasonably be expected to occur, based on the experience of Contractor at its deployment location and consistent with the Tier rating of the datacenter.

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EXHIBIT 2

SERVICE LEVEL OBLIGATIONS

I. TIME IS OF THE ESSENCE. For the term of this Agreement, Contractor shall provide SaaS Services, Force Majeure events excepted, during the applicable Service Windows and in accordance with the applicable Service Levels as described herein, time being of the essence.

II. SERVICE LEVELS

A. "Availability" Service Level:

1. Definitions:

- a) "Actual Uptime": The total minutes in the reporting month that the Services were actually available to Authorized Users for normal use.
- b) "Scheduled Downtime": The total minutes in the reporting month during which Scheduled SaaS Maintenance was performed.
- c) "Scheduled Uptime": The total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

2. Service Level Standard. Services will be available to Authorized Users for normal use 100% of the Scheduled Uptime.

- a) Calculation: $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 = \text{Percentage Uptime}$ (as calculated by rounding to the second decimal point)
- b) Performance Credit.
 - (1) Where Percentage Uptime is greater than 99.9%: No Performance Credit will be due to County.
 - (2) Where Percentage Uptime is equal to or less than 99.9%: County shall be due a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Uptime.

3. Enhancement and Reporting Requests Service Level.

- a) **Where tardiness of delivery time, which is set and approved by County's Administrator, for Enhancement and Report requests is greater than 5 business days:** County shall be due a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month) for each request. The Performance Credit will repeat each month for same request until complete.

4. Response Time Service Level

- a) **Definition(s).**
 - (1) **"Response Time":** The interval of time from when an Authorized User requests, via the Services, a Transaction to when visual confirmation of Transaction completion is received by the

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Authorized User. For example, Response Time includes the period of time representing the point at which an Authorized User enters and submits data to the Services and the Services display a message to the Authorized User that the data has been saved.

(2) **“Total Transactions”**: The total of Transactions occurring in the reporting month.

(3) **“Transaction” or “Transactions”**: Services web page loads, Services web page displays, and Authorized User Services requests.

B. Service Level Standard: Transactions will have a Response Time of two (2) seconds or less 95% of the time each reporting month during the periods for which the Services are available.

1. **Calculation.** $((\text{Total Transactions} - \text{Total Transactions failing Standard}) / \text{Total Transactions}) * 100 = \text{Percentage Response Time}$ (as calculated by rounding to the second decimal point).

2. **Performance Credit.**

a) **Where Percentage Response Time is greater than 95.00%:** No Performance Credit will be due to County.

b) **Where Percentage Response Time is equal to or less than 95.00%:** County shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Response Time.

C. “Technical Support Problem Response” Service Level.

1. **Definition.**

a) **“Total Problems”**: The total number of problems occurring in the reporting month.

D. Service Level Standard: Problems shall be confirmed as received by Contractor 100% of the time each reporting month, in accordance with the Request Response Time associated with the SaaS Severity Level.

1. **Calculation.** $((\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems}) * 100 = \text{Percentage Problem Response}$ (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each SaaS Severity Level.

2. **Performance Credit.**

a) **SaaS Severity Level 1 – 2.**

(1) **Where Percentage Problem Response is greater than 99.00%:** No Performance Credit will be due to County.

(2) **Where Percentage Problem Response is equal to or less than 99.00%:** County shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

b) **SaaS Severity Level 3 – 4.**

(1) **Where Percentage Problem Response is greater than 90.00%:** No Performance Credit will be due to County.

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(2) **Where Percentage Problem Response is equal to or less than 90.00%:** County shall be due a Performance Credit in the amount of .5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

III. FAILURE TO MEET SERVICE LEVEL STANDARDS: In the event Contractor does not meet a service level standard described herein, Contractor shall: (a) owe to County any applicable Performance Credit, as liquidated damages and not as a penalty; and, (b) use its commercially reasonable efforts to ensure that any unmet service level standard described herein is subsequently met. Notwithstanding the foregoing, Contractor will use its commercially reasonable efforts to minimize the impact or duration of any outage, interruption, or degradation of Service. In no case shall County be required to notify Contractor that a Performance Credit is due as a condition of payment of the same.

IV. TERMINATION FOR MATERIAL AND REPEATED FAILURES: County shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees where Contractor fails to meet any service level standards described herein: (a) to such an extent that the County's ability, as solely determined by County, to use the SaaS Services is materially disrupted, Force Majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.

V. AUDIT OF SERVICE LEVELS: No more than once per year, County shall have the right to audit Contractor's books, records, and measurement and auditing tools to verify service level obligations achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to County but not paid, Contractor shall immediately owe to County the applicable Performance Credit.

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EXHIBIT 3

PRIVACY AND SECURITY AGREEMENT

I. PREAMBLE

The County and Contractor, enter into this Privacy and Security Agreement (Agreement) in order to ensure the privacy and security of all confidential information shared between the two organizations.

This Agreement covers Contractor workers, who have access to, use or disclose confidential information provided by County while performing an administrative function on behalf of the County.

II. DEFINITIONS

For the purpose of this Agreement, the following terms mean:

- A.** "Breach" refers to actual loss, loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for other than authorized purposes have access or potential access to Medi-Cal PII, whether electronic, paper, verbal, or recorded.
- B.** "Worker" means Contractor employees, Contractor, sub-Contractor vendors and agents performing any functions for County that require access to and/or use of confidential information and that are authorized County to access and use this confidential information.
- C.** "Confidential information" is information obtained in the course of performing an administrative function on behalf of County. Confidential Information may be electronic, paper, verbal, or recorded.
- D.** "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of confidential information, or interference with system operations in an information system which processes confidential information that is under the control of the Contractor or a Contractor, sub-Contractor or vendor of the Contractor.
- E.** "Secure Areas" means any area where:
1. Workers assist in the administration of County business
 2. Workers use or disclose confidential information; or
 3. Confidential information is stored in paper, recorded, or electronic format.

AGREEMENTS

NOW THEREFORE, the County and Contractor mutually agree as follows:

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BINTI, INC.
FOR****WEB APPLICATION FOR RESOURCE FAMILY APPROVAL PROGRAM****I. PRIVACY AND CONFIDENTIALITY**

A. Contractor Workers covered by this Agreement may use or disclose confidential information only as permitted in this Agreement and only to assist in the administration of County business in accordance with Welfare and Institutions Code section 14100.2 and 42 Code of Federal Regulations section 431.300 et.seq., or as required by law. Disclosures, which are required by law, such as a court order, or are made with the explicit written authorization of the subject of this information, are allowable. Any other use or disclosure of confidential information requires the express approval in writing of County. No worker shall duplicate, disseminate or disclose confidential information except as allowed in this Agreement.

B. Pursuant to this Agreement, Contractor's workers may only use confidential information to perform administrative functions directly related to performing preapproved official County business.

C. Access to confidential information shall be restricted to Contractor's workers who need to perform their official duties to assist in the administration of preapproved official County business.

D. Contractor workers, who access, disclose or use confidential information in a manner or for a purpose not authorized by this Agreement may be subject to civil and criminal sanctions contained in applicable federal and state statutes.

II. PERSONNEL CONTROLS

Contractor agrees to advise Contractor workers who have access to confidential information, of the confidentiality of the information, the safeguards required to protect the information, and the civil and criminal sanctions for non-compliance contained in applicable federal and state laws. For that purpose, Contractor shall implement the following personnel controls:

A. Employee Training. Train and use reasonable measures to ensure compliance with the requirements of this Agreement by Contractor workers, including, but not limited to:

1. Provide initial privacy and security awareness training to each new Contractor worker within 30 days of employment and;
2. Thereafter, provide annual refresher training or reminders of the privacy and security safeguards in this Agreement to all Contractor workers. Three or more security reminders per year are recommended;
3. Maintain records indicating each Contractor worker's name and the date on which the privacy and security awareness training was completed;
4. Retain training records for a period of three years after completion of the training.

B. Employee Discipline.

1. Provide documented sanction policies and procedures for Contractor workers who fail to comply with privacy policies and procedures or any provisions of these requirements.
2. Sanction policies and procedures shall include termination of employment when appropriate.

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C. Confidentiality Statement. Ensure that all Contractor workers sign a confidentiality statement. The statement shall be signed by Contractor workers prior to accessing confidential information and annually thereafter. Signatures may be physical or electronic. The signed statement shall be retained for a period of three years.

The statement shall include at a minimum:

1. General Use;
2. Security and Privacy Safeguards;
3. Unacceptable Use; and
4. Enforcement Policies

D. Background Screening.

1. Conduct a background screening of Contractor workers before they may access confidential information to include at a minimum, a local and national law enforcement agency check.
2. Any adverse finding from these background checks or that arise during the course of employment should be reported to the County prior to the employee in question being provided with access to confidential information. The County reserves the right to decline access to confidential access to employees with questionable background checks.
3. The background screening should be commensurate with the risk and magnitude of harm the employee could cause. More thorough screening shall be done for those employees who are authorized to bypass significant technical and operational security controls.
4. Contractor shall retain each Contractor worker's background screening documentation for a period of three years following conclusion of employment relationship.

III. MANAGEMENT OVERSIGHT AND MONITORING

To ensure compliance with the privacy and security safeguards in this Agreement Contractor shall perform the following:

- A.** Conduct periodic privacy and security review of work activity by Contractor workers to ensure compliance with this agreement.
- B.** The periodic privacy and security reviews must be performed or overseen by Contractor management level personnel who are knowledgeable and experienced in the areas of privacy and information security.

IV. SECURITY TESTING

Contractor shall perform a series of steps to verify the security of applications to be defined. Contractor shall:

Look for vulnerabilities at various layers of the target environment. In the lowest layer, the Contractor's testing team will look for flaws in the target network environment, including:

- A.** Any routers and firewalls designed to control access to the web server and related target components. The team will attempt to determine whether such filters provide adequate protection at the network layer of the target hosts that the team can reach across the Internet.

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B. Look for flaws in the Internet-accessible hosts associated with the target infrastructure, including the web server. This host-based component of the test will analyze which network-accessible services are available on the target hosts across the Internet, including the web server process. The testing team will look for incorrect configuration, unpatched or enabled services, and other related problems on the target hosts.

C. Use a combination of tools, utilities and methodologies to review the various points of potential security failure.

This review will include but not be limited to:

1. The web application (i.e., the software that interacts with users at their web browsers; typically custom-crafted code created by the web development team)
2. The web server application (the underlying software that sends and receives information via HTTP and HTTPS, typically off-the-shelf software such as Microsoft's IIS or the open-source Apache software)
3. Any separate backend application servers that process information from the web application
4. The backend database systems that house information associated with the web application
5. Infrastructure diagrams illustrating best practices and security weaknesses;
6. Configuration host review of settings and patch versions, etc.
7. Full code review
8. Identification of well-known web server, code engine, and database vulnerabilities
9. Identification of any server and application administration flaws and an exploitation attempt of same
10. Analysis of user interface, normal application behavior, and overall application architecture for potential security vulnerabilities
11. Analysis of data communications between the application and databases or other backend systems
12. Manual analyses of all input facilities for unexpected behavior such as SQL injection, arbitrary command execution, and unauthorized data access
13. Analyses of user and group account authentication and authorization controls to determine if they can be bypassed
14. Identification of information leakage across application boundaries, including the capability to enumerate other users' data and "show code" weaknesses that reveal internal application logic
15. Identification of areas where error handling is insufficient or reveals too much sensitive information
16. Identification of opportunities to write to the host file system or execute uploaded files
17. Identification of product sample files, application debugging information, developer access or other legacy functionality that allows inappropriate access
18. Determination as to whether or not fraudulent transactions or access can be performed
19. Attempts to view unauthorized data, especially data that should be confidential
20. Examination of client-side cached files, temporary files, and other information that can yield sensitive information or be altered and re-submitted
21. Analysis of encoded and encrypted tokens, such as cookies, for weakness or the ability to be reverse engineered.

V. INFORMATION SECURITY AND PRIVACY STAFFING

Contractor agrees to:

A. Designate information security and privacy officials who are accountable for compliance with these and all other applicable requirements stated in this Agreement.

B. Assign Contractor workers to be responsible for administration and monitoring of all security related controls stated in this Agreement.

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Contractor shall ensure confidential information is used and stored in an area that is physically safe from access by unauthorized persons at all times. Contractor agrees to safeguard confidential information from loss, theft, or inadvertent disclosure and, therefore, agrees to:

- A.** Secure all areas of Contractor facilities where Contractor workers assist in the administration of County business and use, disclose, or store confidential information.
- B.** These areas shall be restricted to only allow access to authorized individuals by using one or more of the following:
 - 1.** Properly coded key cards
 - 2.** Authorized door keys
 - 3.** Official identification
- C.** Issue identification badges to Contractor workers.
- D.** Require Contractor workers to wear these badges where confidential information is used, disclosed, or stored.
- E.** Ensure each physical location where confidential information is used, disclosed, or stored, has procedures and controls that ensure an individual who is terminated from access to the facility is promptly escorted from the facility by an authorized employee and access is revoked.
- F.** Ensure there are security guards, or a monitored alarm system at all times at Contractor facilities where confidential information is used, disclosed, or stored. Video surveillance systems are recommended.
- G.** Ensure data centers with servers, data storage devices, and/or critical network infrastructure involved in the use, storage, and/or processing of confidential information have perimeter security and physical access controls that limit access to only authorized Contractor workers. Visitors to the data center area must be escorted at all times by authorized Contractor workers.
- H.** Store paper records with confidential information in locked spaces, such as locked file cabinets, locked file rooms, locked desks, or locked offices. All confidential information shall be locked up when unattended at any time.
- I.** Contractor shall have policies that include, based on applicable risk factors, a description of the circumstances under which Contractor workers can transport confidential information, as well as the physical security requirements during transport. A Contractor that chooses to permit its workers to leave records unattended in vehicles must include provisions in its policies to ensure that confidential information is stored in a non-visible area such as a trunk, that the vehicle is locked, and under no circumstances permit confidential information to be left unattended in a vehicle overnight or for other extended periods of time.
- J.** Contractor shall have policies that indicate Contractors workers are not to leave records with confidential information unattended at any time in airplanes, buses, trains, or other public and non-secure areas, including baggage areas. This should be included in training due to the nature of the risk.

VII. TECHNICAL SECURITY CONTROLS

- A. Workstation/Laptop Encryption.** All workstations and laptops, which use, store and/or process confidential information, must be encrypted using a FIPS 140-2 certified algorithm 128 bit or higher, such as Advanced Encryption

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Standard (AES). The encryption solution must be full disk. It is encouraged, when available and when feasible, that the encryption be 256 bit.

B. Server Security. Servers containing unencrypted confidential information must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review. It is recommended to follow the guidelines documented in the latest revision of the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53, Security and Privacy Controls for Federal Information Systems and Organizations.

C. Minimum Necessary. Only the minimum necessary amount of confidential information required to perform required business functions may be accessed, copied, downloaded, or exported.

D. Mobile Device and Removable Media. All electronic files, which contain confidential information, must be encrypted when stored on any mobile device or removable media (i.e. USB drives, CD/DVD, smartphones, tablets, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm 128 bit or higher, such as AES. It is encouraged, when available and when feasible, that the encryption be 256 bit.

E. Antivirus Software. All workstations, laptops and other systems, which process and/or store confidential information, must install and actively use an anti-virus software solution. Anti-virus software should have automatic updates for definitions scheduled at least daily.

VIII. PATCH MANAGEMENT

A. All workstations, laptops and other systems, which process and/or store confidential information must have critical security patches applied, with system reboot if necessary.

B. There must be a documented patch management process that determines installation timeframe based on risk assessment and vendor recommendations.

C. At a maximum, all applicable patches deemed as critical must be installed within thirty (30) days of vendor release. It is recommended that critical patches which are high risk be installed within seven days.

D. Applications and systems that cannot be patched within this time frame, due to significant operational reasons, must have compensatory controls implemented to minimize risk.

IX. USER IDS AND PASSWORD CONTROLS – ADHERE TO NIST SPECIAL PUBLICATION 800-63B

A. All users must be issued a unique user name for accessing confidential information.

B. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee, at maximum within 24 hours.

C. Passwords are not to be shared.

D. Passwords must be at least eight characters.

E. Passwords must be a non-dictionary word.

F. Passwords must not be stored in readable format on the computer or server.

G. Passwords must be changed if revealed or compromised.

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- H. User Access.** Contractor management should exercise control and oversight of the function of authorizing individual user access to confidential information.
- I. Data Destruction.** When no longer needed, all confidential information must be cleared, purged, or destroyed consistent with NIST SP 800-88, Guidelines for Media Sanitization, such that the Medi-Cal PII cannot be retrieved.
- J. System Timeout.** The systems providing access to confidential information must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.
- K. Warning Banners.** The systems providing access to confidential information must display a warning banner stating, at a minimum:
1. Data is confidential;
 2. Systems are logged;
 3. System use is for business purposes only, by authorized users; and
 4. Users shall log off the system immediately if they do not agree with these requirements.
- L. System Logging.**
1. The systems which provide access to confidential information must maintain an automated audit trail that can identify the user or system process which initiates a request for confidential information, or alters confidential information.
 2. The audit trail shall:
 - a) Be date and time stamped;
 - b) Log both successful and failed accesses;
 - c) Be read-access only; and
 - d) Be restricted to authorized users.
 3. If confidential information is stored in a database, database logging functionality shall be enabled.
 4. Audit trail data shall be archived for at least three years from the occurrence.
- M. Access Controls.** The system providing access to confidential information shall use role based access controls for all user authentications, enforcing the principle of least privilege.
- N. Transmission Encryption.**
1. All data transmissions of confidential information outside of a secure internal network must be encrypted using a FIPS 140-2 certified algorithm that is 128 bit or higher, such as AES or TLS. It is encouraged, when available and when feasible, that 256 bit encryption be used.
 2. Encryption can be end to end at the network level, or the data files containing confidential information can be encrypted.
 3. This requirement pertains to any type of confidential information in motion such as website access, file transfer, and email.
- O. Intrusion Prevention.** All systems involved in accessing, storing, transporting, and protecting confidential information, which are accessible through the Internet, must be protected by an intrusion detection and prevention solution.

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1. Contractor must ensure audit control mechanisms are in place.
2. All systems processing and/or storing confidential information must have at least an annual system risk assessment/security review that ensures administrative, physical, and technical controls are functioning effectively and provide an adequate level of protection.
3. Reviews should include vulnerability scanning tools.

B. Log Reviews. All systems processing and/or storing confidential information must have a process or automated procedure in place to review system logs for unauthorized access.

C. Change Control. All systems processing and/or storing confidential information must have a documented change control process that ensures separation of duties and protects the confidentiality, integrity and availability of data.

XI. IT SECURITY POLICY AND PROCEDURES

Contractor shall be required to have formal, published IT security policies that address how they manage and maintain the internal security posture of their own infrastructures. Contractor shall also clearly demonstrate that additional security features are in place to protect systems and data in the unique environment of the service provider model: namely, security issues associated with storing County-owned data on a remote server that is not under direct County control and the necessity of transferring this data over an untrusted network.

Provide all security policies and procedures to the County for review and approval upon the County's request and, at a minimum provide said policies and procedures yearly for County's review and approval. All documentation shall be provided in electronic format for the County's review.

These policies shall include, but not be limited to, the following:

- **IT Staff Usage Agreement.** All Contractor employees performing services for the County shall sign and agree to an IT usage agreement as part of an overall security training and awareness program. At a minimum, Contractor employees shall sign a statement of understanding regarding Internet dangers, IT security, and IT ethics and best practices,
- **IT Security Policies and Procedures.** Contractor shall provide its IT security policies and procedures for review by the County.
- **IT Operations Security Policy.** Contractor shall provide for review by County its written standards for operational security for any facilities where County data, staff or systems shall exist. These documents shall include, but not be limited to, physical security, network security, logical security, systems/platform security, wireless access, remote access, and data protections.
- **Data Management Security Policy.** Contractor shall provide its policy for the safeguarding and management of all data provided by the County or accessed as part of system integration testing and maintenance. This policy shall, at a minimum, cover check-in, check-out, copy control, audit logs and separation of duties.

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- **Security Incident Notification and Management Process.** Contractor shall provide a detailed document that outlines the contact names and order and escalation of events that will occur in the case of a security breach concerning County staff, data, or systems. This document shall be updated immediately upon any change. The Contractor shall be held liable to the time-tables and protections outlined in the document.

In addition to developing, maintaining, and enforcing the above named policies, the Contractor shall:

- Comply with all legal and regulatory requirements as they relate to the County's systems and data. These include, but are not limited to SB1386 compliance, Payment Card Industry (PCI) Data Security Standards, and Sarbanes-Oxley (SOX).
- Bear the cost of compliance for changed security policies and procedures, unless such change is either unique to the County or customarily paid for by the vendor's other customers.
- Comply with reasonable requests by the County for audits of security measures, including those related to ID and password administration.
- Comply with reasonable requests by the County for onsite physical inspections of the location from which the vendor provides services.
- Provide the County with any annual audit summaries and certifications, including but not limited to ISO or SOX audits.
- Designate a single point of contact to facilitate all IT security activities related to services provided to the County. Such contact shall be available on a 7/24/365 basis.

XII. BUSINESS CONTINUITY / DISASTER RECOVERY CONTROLS

A. **Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of confidential information in the event of an emergency. Emergency means any circumstance or situation that causes normal operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours. It is recommended that counties conduct periodic disaster recovery testing, including connectivity exercises, if requested.

B. **Data Centers.** Data centers with servers, data storage devices, and critical network infrastructure involved in the use, storage and/or processing of confidential information, must include environmental protection such as cooling, power, and fire prevention, detection, and suppression.

C. **Data Backup Plan.**

1. Contractor shall have established documented procedures to backup and maintain retrievable exact copies of confidential information.
2. The documented backup procedures shall contain a schedule which includes incremental and full backups.
3. The procedures shall include storing backup's offsite.
4. The procedures shall ensure an inventory of backup media. It is recommended that the county periodically test the data recovery process.

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A. **Supervision of Data.** Confidential information in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information may be observed by an individual not authorized to access the information.

B. **Data in Vehicles.** Contractor shall have policies that include, based on applicable risk factors, a description of the circumstances under which Contractor workers can transport confidential information, as well as the physical security requirements during transport. A Contractor that chooses to permit its workers to leave records unattended in vehicles must include provisions in its policies to provide the confidential information is stored in a non-visible area such as a trunk, that the vehicle is locked, and under no circumstances permit Medi-Cal PII be left unattended in a vehicle overnight or for other extended periods of time.

C. **Public Modes of Transportation.** Confidential information in paper form shall not be left unattended at any time in airplanes, buses, trains, public, or unsecure areas, including baggage areas. This should be included in training due to the nature of the risk.

D. **Escorting Visitors.** Visitors to areas where confidential information is contained shall be escorted, and confidential information shall be kept out of sight while visitors are in the area.

E. **Confidential Destruction.** Confidential information must be disposed of through confidential means, such as cross cut shredding or pulverizing.

F. **Removal of Data.** Confidential information must not be removed from the premises of County except for justifiable business purposes.

G. **Faxing.**

1. Faxes containing confidential information shall not be left unattended and fax machines shall be in secure areas.
2. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them and notify the sender.
3. Fax numbers shall be verified with the intended recipient before sending the fax.

H. **Mailing.**

1. Mailings containing confidential information shall be sealed and secured from damage or inappropriate viewing to the maximum extent possible.
2. Mailings that include 500 or more individually identifiable records containing confidential information in a single package shall be sent using a tracked mailing method that includes verification of delivery and receipt.

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XIV. NOTIFICATION AND INVESTIGATION OF BREACHES AND SECURITY INCIDENTS

During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any Breach or Security Incident, and to take the following steps:

A. Initial Notice to the County:

Immediately upon discovery of a suspected security incident that involves data provided to Contractor by the County, Contractor shall notify the County by email or telephone.

Within one working day of discovery, Contractor shall notify the County by email or telephone of confidential information that was, or is reasonably believed to have been accessed or acquired by an unauthorized person, any suspected security incident, intrusion, or unauthorized access, use, or disclosure of confidential information in violation of this Agreement, or potential loss of confidential data affecting this Agreement. Notice shall be made to the County contract administrator and include:

- Agency point of contact information;
- A description of the breach or loss;
- Number of files or records affected;
- Type of equipment or media used;
- Approximate time and location of breach or loss;
- Description of how the data was physically stored, contained, or packaged (e.g. password protected, encrypted, locked briefcase, etc.);
- Whether any individuals or external organizations have been contacted;
- Whether any other reports have been filed; and
- Description of corrective actions taken to mitigate risk or damage.

A breach shall be treated as discovered by Contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach), who is an employee, officer or other agent of Contractor.

Upon discovery of a breach, security incident, intrusion, or unauthorized access, use, or disclosure of confidential information, Contractor shall take:

1. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
2. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

B. Investigation and Investigative Report. Contractor shall immediately investigate breaches and security incidents involving confidential information, and, if the initial report did not include all of the required information, or if new or updated information is available, submit an updated report **within 72 hours of the discovery**.

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C. Complete Report. If all of the required information was not included in either the initial report, or the investigation report, then a separate complete report must be submitted **within ten (10) working days of the discovery**. The Complete Report of the investigation shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of state and federal law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the County requests information in addition to that listed on the report, Contractor shall make reasonable efforts to provide County with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the Completed Report is submitted, by submitting the revised or additional information on an updated report. County will review and approve or disapprove the determination of whether a breach occurred, and if individual notifications and corrective action plans are required.

D. Notification of Individuals. When applicable state or federal law requires notification of individuals of a breach or unauthorized disclosure of their confidential information, the following provisions apply: If the cause of the breach is attributable to Contractor or its sub-Contractor, agents or vendors, Contractor shall pay any costs of such notifications, as well as any and all costs associated with the breach and remediation efforts. The notifications shall comply with the requirements set forth in California Civil Code Section 1798.29, and 42 U.S.C. section 17932, and its implementing regulations, including but not limited to the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. County shall approve the time, manner and content of any such notifications and their review and approval must be obtained before notifications are made. County may elect to assign responsibility for such notification to Contractor. In the event County assigns notification responsibility to Contractor, County shall provide Contractor with the appropriate direction and procedures to ensure notice is provided pursuant to applicable law. If the cause of the breach is attributable to County, County shall pay any costs associated with such notifications. If there is any question as to whether the County or Contractor is responsible for the breach, County and Contractor shall jointly determine responsibility for purposes of allocating the costs of such notices.

E. Responsibility for Reporting of Breaches when Required by State or Federal Law. If the cause of a breach is attributable to County or Contractor or its agents, sub- Contractor or vendors, County or Contractor is responsible for reporting the breach and all costs associated with the breach. If the cause of the breach is attributable to County, County is responsible for reporting the breach and for all costs associated with the breach. When applicable law requires the breach be reported to a federal or state agency or that notice be given to media outlets, County and Contractor shall coordinate to ensure such reporting is in compliance with applicable law and to prevent duplicate reporting, and to jointly determine responsibility for purposes of allocating the costs of such reports, if any.

XV. ASSESSMENTS AND REVIEWS

In order to enforce this Agreement and ensure compliance with its provisions, Contractor agrees to allow County to inspect the facilities, systems, books, and records of Contractor, with reasonable notice from County, in order to perform assessments and reviews. Such inspections shall be scheduled at times that take into account the operational and staffing demands Contractor agrees to promptly remedy any violation of any provision of this Agreement and certify the same to County in writing, or to enter into a written corrective action plan with County containing deadlines for achieving compliance with specific provisions of this Agreement.

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In the event of litigation or administrative proceedings involving County based upon claimed violations by Contractor of the privacy or security of confidential information, or federal or state laws or agreements concerning privacy or security of confidential information, Contractor shall make all reasonable effort to make itself and Contractor Workers assisting in the administration of County business available to at no cost to County to testify as witnesses. County shall also make all reasonable efforts to make itself and any sub-Contractor, agents, and employees available to Contractor at no cost to Contractor to testify as witnesses, in the event of litigation or administrative proceedings involving Contractor based upon claimed violations by County of the privacy or security of confidential information, or state or federal laws or agreements concerning privacy or security of confidential information.

XVII. COUNTY DEPARTMENT'S AGENTS AND SUBCATS

CONTRACTOR agrees to enter into written agreements with any agents, including sub-Contractor and vendors, to whom Contractor provides confidential information received from or created or received by Contractor Contractor in performing functions or activities related to the administration of County business that impose the same restrictions and conditions on such agents, subCATS and vendors that apply to Contractor with respect to confidential information, including restrictions on disclosure of confidential information and the use of appropriate administrative, physical, and technical safeguards to protect such confidential information. Contractor shall incorporate, when applicable, the relevant provisions of this Agreement into each subcontract or sub-award to such agents, sub-Contractor and vendors, including the requirement that any breach, security incident, intrusion, or unauthorized access, use, or disclosure of confidential information be reported to Contractor.

XVIII. AMENDMENT OF AGREEMENT

County and Contractor acknowledge that federal and state laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. Upon request by County, Contractor agrees to promptly enter into negotiations concerning an amendment to this Agreement as may be needed by developments in federal and state laws and regulations. County may terminate this Agreement upon thirty (30) days written notice if Contractor does not promptly enter into negotiations to amend this Agreement when requested to do so, or does not enter into an amendment that County deems necessary.

XIX. TERMINATION

This Agreement shall terminate at end of contract period, regardless of the date the Agreement is executed by the parties. The parties can agree in writing to extend the term of the Agreement; requests for an extension must be justified to and accepted by County. Regardless of the extension status, all provisions of this Agreement that provide restrictions on disclosures of confidential information and that provide administrative, technical, and physical safeguards for the confidential information in Contractor's possession shall continue in effect beyond the termination of the Agreement, and shall continue until the confidential information is destroyed or returned to County.