



INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Intellibind Technologies, LLC**, a Nevada limited liability corporation ("Contractor"), to be effective for all purposes January 31, 2018.

WHEREAS, the County Purchasing Agent determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 18-20 (the "RFP") on October 29, 2017, requesting proposals for Critical Infrastructure Protection ("CIP") Version 5 Comprehensive Patch Management Services, as described in the; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated November 30, 2017 ("Contractor's Response"); and

WHEREAS, based on the evaluation factors set out in the RFP, Contractor was the successful Offeror for the services listed in the RFP; and

WHEREAS, the County Council approved this Agreement at a public meeting held on January 30, 2018; and

WHEREAS, Contractor will provide the Services, as described below, to County.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. SERVICES:

1. Scope of Work:

- a. **Purpose.** The purpose of this agreement is for Contractor to provide to County professional services to include the monthly patch assessment and monthly installation of device patches and updates on the Incorporated County of Los Alamos, Department of Public Utilities ("DPU") owned Electric Supervisory Control and Data Acquisition ("SCADA") System ("Services"). Contractor deliverables are provided below in bracketed bold text.
- b. Contractor agrees and understands that the work to be performed shall be completed in accordance with RFP 18-20, and Contractor's proposal (incorporated herein by reference). The Services shall include patching the various devices associated with the DPU owned Electric SCADA system located at the primary and back-up power operation centers as provided in the RFP, incorporated by reference herein. Contractor shall be responsible for all aspects of patch management of the SCADA system ("Services"), shall comply with applicable Critical Infrastructure Protection Version 5 ("CIP" or "CIP 5") requirements in performance of such work, shall comply with applicable County and Los Alamos National Laboratory CIP procedures, and shall

prepare all required evidence including documents, records, files, or similar, required by applicable CIP regulations.

2. Project Kickoff:

- a. Contractor shall meet with the County team in Los Alamos, and perform all administrative tasks required to gain access to the SCADA systems and facilities, which shall include required CIP training and Personnel Risks Assessments ("PRA"s). Contractor shall schedule dates for these activities and ensure that all Contractor staff working on this project receive required updates to their training (required every 15 months) and PRA (required every 7 years) are met to maintain access to County SCADA resources.
- b. Contractor shall review all related project Cyber Assets as provided in the RFP and as may be agreed by the parties, with associated baselines and patch sources. If anomalies are discovered, Contractor shall discuss with County personnel to adjust and eliminate the anomalies. County shall provide any current Open Enforcement Actions ("OEA") and mitigation plans in place that affect the Contractor's Services. It is understood that Cyber Assets means cyber assets identified under the CIP program including BES Cyber Assets, Protected Cyber Assets ("PCA"s), Electronic Access Control and Monitoring devices ("EACM"s) and devices that are part of any CIP Physical Access Control system ("PAC"s).
- c. Contractor shall use the knowledge gained from participating in Western Electricity Coordinating Council ("WECC") CIP audits and in performing CIP audits when validating the information.
- d. Contractor shall receive training on systems, such as LANL's Change Management procedures, that will be used when performing required tasks.

3. Monthly Patch Management Tracking

- a. Contractor shall review all changes to the baselines for all Cyber Assets that have occurred since the last assessment. Determine whether the patch source list must be modified to add new patch sources. **(Deliverable: Baseline Review Report.)**
- b. Contractor shall add new patch sources where required, or provide its recommendation or explanation of alternative patches or software to make the SCADA System compliant with current regulations. Contractor shall provide a detailed report detailing the current software and installed or necessary software patches to County including, where or if applicable, the Contractor's proposed alternative patches, recommendations, or proposed System alternatives. **(Deliverable: Current Patch Source List).**
- c. For each System patch source, Contractor shall review all patches for applicability since the last review of the patch source. A patch shall be determined to be applicable if:
 - i. It applies to devices on the Cyber Asset Inventory; and
 - ii. Is a security related patch.
- d. Contractor shall electronically maintain a master workbook in electronic form with a

separate tab for each patch source. Each patch source shall show the review date for that patch source and the list of applicable patches reviewed on that date. Other information shall be maintained as identified in the RFP Monthly Patch Assessment section, item 5a to 5f. **(Deliverable: Updated patch assessment workbook showing all patch sources reviewed and the applicable patches identified.)**

- e. Contractor shall contact the cyber asset owners to plan appropriate dates and times to install the identified security patches. Where the planned installation dates exceed or approach the 35-day limit for installation, Contractor shall provide to County a dated mitigation plan identifying the planned dates for installation. Contractor planned patching shall occur first to program development system ("PDS") first, then back-up power operation center Systems, and finally the primary operation center Systems. **(Deliverable: Installation plan for each patch/cyber asset, mitigation plans where appropriate.)**
- f. Contractor shall initiate change orders in accordance with the change management procedures in the County change management system using the dates agreed with the cyber asset owners or the dates documented in any mitigation plan. Contractor will provide a copy of all completed change orders for each group of patches or group of assets as appropriate, ensuring all required patches are applied **(Deliverable: Completed change orders for each group of patches or group of assets as appropriate, ensuring all required patches are applied.)**
- g. Summary of Monthly Deliverables, Monthly Patch Tracking:
 - i. Baseline Review Report;
 - ii. Current Patch Source List;
 - iii. Updated patch assessment workbook showing all patch sources reviewed and the applicable patches identified;
 - iv. Installation plan for each patch/cyber asset, mitigation plans where appropriate; and
 - v. Completed change orders for each group of patches or group of assets as appropriate, ensuring all required patches are applied.

4. Monthly Patch Installation:

- a. Contractor shall coordinate with County staff when patching devices. Contractor shall follow the patch agreed schedule documented in the change management work order.
- b. Contractor shall install security patches associated with approved change orders for the timeframe/schedule being implemented in accordance with the approved change order process.
- c. When patching systems, Contractor shall use, complete, and provide a copy to the County of the standard validation plan worksheet to document the CIP-005 and CIP-007 controls that may be affected by the specific change. Network accessible ports will always be the minimum control validated. **(Deliverable: Validation plan sheet for CIP-005 and CIP-007 controls)**.
- d. Contractor shall use tools agreed upon in a pre-change baseline report with County staff to document the baseline prior to the change. This may take the form of command output, data retained in tools or text files of configurations, such as Cisco

configurations or similar. These shall be used in performing required validations and for determining the updates to baselines. **(Deliverable: Documentation of pre-change baselines.)**

- e. Contractor shall validate and provide a complete report to County of each patch as being a legitimate patch from the patch or Cyber Asset source or manufacturer as required pursuant to the new North American Electric Reliability Corporation ("NERC") Supply Chain Management requirements. **(Deliverable: Worksheets validating that patches to be applied are genuine patches from the vendor)**
- f. Contractor shall install the patches associated with each change order and update the change documentation as appropriate. **(Deliverable: Updated change order.)**
- g. Contractor shall perform the controls validation procedure in the change management guidelines required for change management and documented in the Validation plan sheet for CIP-005 and CIP-007 controls. Contractor shall provide to County the Validation results for CIP-005 and CIP-007 controls. **(Deliverable: Validation results for CIP-005 and CIP-007 controls.)**
- h. Contractor shall validate completion of the change order with County staff and close out the change order. On completion, Contractor shall provide to County all change documentation and closeouts. **(Deliverable: Change documentation completed and closed out change order.)**
- i. Contractor shall update the baselines immediately upon completion of the change or while the change are in progress. The security patch update baseline will be updated at a minimum. Contractor shall provide the updated baselines. **(Deliverable: Updated Baselines.)**
- j. In addition to logging in the change management system, Contractor shall maintain a patch implementation log showing Cyber Assets patched, the patches applied, dates of assessment and application, whether a mitigation plan was used, and any other necessary comments. **(Deliverable: Patch Implementation Log.)**
- k. Summary of Deliverables, Patch Installation:
 - i. Validation plan sheet for CIP-005 and CIP-007 controls;
 - ii. Documentation of pre-change baselines;
 - iii. Worksheets validating that patches to be applied are genuine patches from the vendor;
 - iv. Updated change order;
 - v. Validation results for CIP-005 and CIP-007 controls;
 - vi. Change documentation completed and closed out change order;
 - vii. Updated Baselines; and
 - viii. Patch Implementation Log.

5. Monthly Reporting:

- a. In addition to the deliverables above, Contractor shall provide to the County's Project Manager a monthly summary of activities including number of patch sources monitored, number of applicable patches identified, patches applied, patches outstanding, mitigation plans in progress. County and Contractor shall agree on other data that may be supplied in the monthly summary report.

- b. Using the monthly deliverables outlines in the Patch Management Tracking Section and Patch Installation Section, Contractor shall meet the requirements to “provide a comprehensive monthly report to County demonstrating patching activities, including but not limited to WinAudit files where applicable and screen captures for the prior month. Reports shall contain all required content, to the level of detail required to demonstrate compliance with all SCADA patching required by CIP Version 5 regulations.” **(Deliverable: Monthly patch management activity summary report.)**

6. North American Electric Reliability Corporation (NERC) Audit Support:

- a. Contractor shall maintain documentation of patch assessments and patching performed for the County on an ongoing basis that is “audit ready.” For example, each patch source shall clearly show that no assessment interval exceeds thirty-five (35) days. Contractor shall show through the worksheets that patch sources were updated as required by changes to the baselines (new cyber assets, new applications, and new vendors).
- b. Contractor shall write the Reliability Standards Audit Worksheet (“RSAW”) narratives and shall create direct, complete RSAWs and associated evidence. As related to CIP-007-6 R2, RSAWs and evidence prepared by Contractor shall result in NERC auditor’s determination of “No Data Requests”, indicative of meeting compliance with applicable CIP standards.
- c. Contractor shall make personnel available, in Los Alamos and offsite, during CIP compliance audits performed by NERC for data requests and interviews as Subject Matter Experts (“SME”s). Contractor’s personnel will be CIP enforcement auditors experienced in CIP compliance audits.

SECTION B. TERM: The term of this Agreement shall commence January 31, 2018 and shall continue through January 31, 2020, unless sooner terminated, as provided herein. At County’s sole option the Agreement may be renewed for up to three (3) consecutive one-year periods, unless sooner terminated, as provided therein.

SECTION C. COMPENSATION:

- 1. Amount of Compensation.** County shall pay compensation for performance of the Services in an amount **not to exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)**, which amount does not include applicable New Mexico gross receipts taxes (“NMGRT”), but does include compensation for reimbursable expenses. Compensation shall be paid in accordance with the rate schedule set out in Exhibit “A,” attached hereto and made a part hereof for all purposes.
- 2. Monthly Invoices.** Contractor shall submit itemized monthly invoices to County’s Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County’s receipt of the invoice.

SECTION D. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and will not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

SECTION H. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION I. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
4. **Professional Liability Insurance.** ONE MILLION DOLLARS (\$1,000,000.00) aggregate in professional liability insurance that shall provide coverage for Services provided hereunder during the term of this agreement and for a period of at least three (3) years thereafter.

SECTION J. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION K. APPLICABLE LAW: Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

SECTION L. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

SECTION M. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

SECTION N. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION O. NON-ASSIGNMENT: Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION P. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and

subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION Q. PROHIBITED INTERESTS: Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION R. TERMINATION:

1. **Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION S. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Deputy Utilities Manager
Incorporated County of Los Alamos
1000 Central Avenue, Suite 130
Los Alamos, New Mexico 87544

Contractor:

Bill Addington, CEO
Intellibind Technologies, LLC
14520 Wunderlich Drive
Houston, Texas 77069

SECTION T. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

SECTION U. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY:_____
TIMOTHY A. GLASCO, PE **DATE**
UTILITIES MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

**INTELLIBIND TECHNOLOGIES, LLC, A NEVADA LIMITED
LIABILITY CORPORATION**

BY:_____
BILL ADDINGTON **DATE**
CEO

Exhibit "A"
Compensation Rate Schedule
AGR18-20

Hourly Rate Schedule in US Dollars (\$) per sixty (60) minute hour:

Job Title	Rate Year 1	Rate Year 2	Rate Year 3	Rate Year 4
CIP Project Lead	210	210	220	220
CIP Compliance Support	210	210	220	220
System Analyst	190	190	200	200
QA Support/Documentation	140	140	150	150

Contractor shall not charge for travel time where it will cause hours to exceed forty (40) hours per week onsite.

Reimbursables:

1. Flights paid at cost.
2. Lodging, meals and incidentals paid at current Federal GSA daily rates for Los Alamos, New Mexico (<https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup>).
3. Car rental at Thirty-Five Dollars (\$35.00) per day, (no additional charges for airport parking or mileage).

The above are the only allowed reimbursables for the Agreement Services.