



STATE OF DELAWARE

Department of Justice

1/10/17

ISSUED BY: Tom Cuccia
Director of Operations
302-577-8387

SUBJECT: **AWARD NOTICE**
CONTRACT NO. LGL 16101
DNA Test

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KEY CONTRACT INFORMATION**

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KEY CONTRACT INFORMATION

1. CONTRACT PERIOD

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Each contractor's contract shall be valid for a two year period period from 12/29/16 to 12/29/18 each contract may be renewed for two (2) one (1) year periods through negotiation between the contractor and Government Support Services. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

2. VENDORS

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Bode Cellmark Forensics, Inc.
10430 Furnace Road, Suite 107
Lorton, VA 22079

Contact:

POC: Jessica Danso

Phone: (703) 646-9742

Email: contracts@bodetech.com

3. SHIPPING TERMS

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F.O.B. destination; freight pre-paid.

4. DELIVERY AND PICKUP

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N/A

5. PRICING

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Prices will remain firm for the term of the contract year.

ADDITIONAL TERMS AND CONDITIONS

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6. BILLING

The successful vendor is required to **"Bill as Shipped" to the respective ordering agency(s).** Ordering agencies shall provide at a minimum the contract number, ship to and bill to address, contract name and phone number.

7. PAYMENT

The agencies or school districts involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt. The contractor or vendor must accept full payment by procurement

Award Notice

Contract No.

(credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

8. PRODUCT SUBSTITUTION

All items delivered during the life of the contract shall be of the same type and manufacture as specified unless specific approval is given by Tom Cuccia to do otherwise. Substitutions may require the submission of written specifications and product evaluation prior to any approvals being granted.

9. ORDERING PROCEDURE

Successful contractors are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, fax or computer on-line systems. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

10. PURCHASE ORDERS

Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **LGL 16101** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

11. REQUIREMENTS

For a complete list of contract specifications please refer to the original bid solicitation document(s). Any contract specific documentation will be accessible through the hyperlink(s) provided on this contract's details page.

12. HOLD HARMLESS

The contractor agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the contractor, its employees, and invitees on or about the premises and which arise out of the contractor's performance, or failure to perform as specified in the Agreement.

13. NON-PERFORMANCE

In the event the contractor does not fulfill its obligations under the terms and conditions of this contract, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the contractor. Under no circumstances shall monies be due the contractor in the event open market products can be obtained below contract cost. Any monies charged to the contractor may be deducted from an open invoice.

14. FORCE MAJEURE

Neither the contractor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

15. AGENCY'S RESPONSIBILITIES

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Contractor to the Agency and render to the Contractor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Contractor.
- b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.
- c. When an ordering agency first experiences a relatively minor problem or difficulty with a vendor, the agency will contact the vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the purchase order and the merchandise received. Ordering agencies should stress to vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.
- d. The state has several remedies available to resolve non-performance issues with the contractor. The Agency should refer to the Contract Terms and Conditions to view these remedies. When a default occurs, the Agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the Agency or GSS - Contracting must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue.
- e. If there is a performance deficiency, a Corrective Action Report (CAR) may be used. Complete this form to report concerns with vendors or commodities. Be sure to furnish as much detail as possible. <http://gss.omb.delaware.gov/divisionwide/forms.shtml>.

16. If required, identify additional key items and conditions – or – delete this line entry

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of December 28, 2016 ("Effective Date") and will end on December 27, 2018, by and between the State of Delaware, Department of Justice ("DDOJ"), and Bode Cellmark Forensics, Inc., a Delaware corporation, with offices at 10430 Furnace Road, Suite 107, Lorton, VA 22079 ("BODE").

WHEREAS, DDOJ desires to obtain DNA analysis services based upon a critical need of these services; and

WHEREAS, BODE desires to provide such services to DDOJ on the terms set forth below;

WHEREAS, DDOJ and BODE represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the promises and mutual agreements herein, DDOJ and BODE agree as follows:

1. Services.

1.1 BODE shall perform for DDOJ the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) BODE's Technical Specification, attached hereto as Attachment A; and (c) BODE's Casework Package Pricing, attached hereto as Attachment B. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 DDOJ may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by BODE shall be furnished without the written authorization of DDOJ. When DDOJ desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify BODE, who shall then submit to DDOJ a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by BODE for any aspect of its performance under this Agreement. Changes, including service level upgrades and/or downgrades, shall be processed within (7) seven calendar days. Pricing of changes shall be consistent with those established within this Agreement.

1.4 BODE will not be required to make changes to its scope of work that result in BODE's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the Agreement is for two years and shall run from December 29, 2016 through December 29, 2018.

2.2 DDOJ will pay BODE to conduct DNA analysis for crime scene evidence related to the criminal investigation of crimes occurring within the jurisdiction of the DDOJ. Successful identifications require that profiles be uploaded into Combined DNA Index System (CODIS), a computer software program that operates local, state, and national databases of DNA profiles collected from convicted offenders, unsolved crime scene evidence and missing persons. The work described in this Agreement and Attachment A encompasses the Statement of Work for this Agreement. The fee will be paid in accordance with the Casework Pricing Package attached hereto as Attachment B.

2.3 DDOJ's obligation to pay BODE for the performance of services described in this Agreement including attachments will not exceed the fixed fee amount in the fee proposal. It is expressly understood that the work defined in this Agreement including attachments must be completed by BODE and it shall be BODE's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee with the exception of additional services as outlined in Attachment B. DDOJ's total liability for all charges may be subject to Federal/State grant requirements and/or appropriations for services that may become due under this Agreement and is limited to the total maximum expenditure(s) authorized in DDOJ's purchase order(s) to BODE.

2.4 The parties agree that should the DDOJ find that there is an increased number of cases that require the services under this Agreement, the DDOJ will be permitted to opt to a higher level of service and will be responsible for paying the difference between the pricing of the two levels as shown on Attachment B.

2.5 BODE shall submit quarterly invoices to DDOJ equal to 1/4 of the price of Levels I through IV (whichever is applicable) Casework Package Pricing. DDOJ agrees to pay those invoices within thirty (30) days of receipt. In the event DDOJ disputes a portion of an invoice, DDOJ agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide BODE a detailed

statement of DDOJ's position on the disputed portion of the invoice within thirty (30) days of receipt. DDOJ's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle BODE to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to BODE, VENDOR ADDRESS.

2.6 Unless provided otherwise in an Attachment, all expenses incurred in the performance of the services are to be paid by BODE.

2.7 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.9 BODE shall submit monthly activity reports to the DOJ Controller. Once the allowable number of units is used within the applicable service level, BODE shall not accept any requests for services/testing without written authorization from the State Prosecutor, by and through, the DOJ Controller.

2.9(a) BODE shall not process any requests for services/testing by any other law enforcement and/or government agencies without the express written consent of the State Prosecutor, by and through, the DOJ Controller.

2.9(b) Invoices shall be submitted to:

Delaware Department of Justice
c/o Andrea Godfrey Controller
820 N. French Street, 6th floor
Wilmington, DE 19801

3. Responsibilities of BODE.

3.1 BODE shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by BODE, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, BODE shall follow practices consistent with generally accepted professional and technical standards.

3.2 It shall be the duty of Bode to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. BODE will not produce a work product that violates or infringes on any copyright or patent rights.

BODE shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by DDOJ of any products or services furnished by BODE shall not in any way relieve BODE of responsibility for the professional and technical accuracy and adequacy of its work. DDOJ's review, approval, acceptance, or payment for any of BODE's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and BODE shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOJ caused by BODE's performance or failure to perform under this Agreement.

3.4 BODE shall furnish to DDOJ's designated representative copies of all correspondence to regulatory agencies related to the services performed under this Agreement for review prior to mailing such correspondence.

3.5 BODE agrees that its officers and employees will cooperate with DDOJ in the performance of services under this Agreement and will be available for consultation with DDOJ at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.6 BODE has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by DDOJ or any other political subdivision of the State of Delaware.

3.7 BODE will not use DDOJ's name, either express or implied, in any of its advertising or sales materials without DDOJ's express written consent.

3.8 The rights and remedies of DDOJ provided for in this Agreement are in addition to any other rights and remedies provided by law.

3.9 For each case/test submission by DDOJ, BODE shall conduct a conflict check/assessment to determine whether BODE is conducting testing for the same individual, case, item, matter, or otherwise for any other entity, including but not limited to the Office of Defense Services, private defense counsel and/or their representatives. In the affirmative, BODE shall notify DDOJ within (7) seven calendar days.

4. Time Schedule.

4.1 A project schedule is included in Attachment B for the provision of services on individual cases.

4.2 Any delay or change of services must be approved in writing by DDOJ.

4.3 In the event that BODE fails to complete the services for an individual case or any phase thereof within the time specified in the Agreement, or with such additional time as may be granted in writing by DDOJ, with such diligence as will insure its completion within the time specified in this Agreement, DDOJ shall have the option to terminate the Agreement as outlined in Section 12.

5. DDOJ Responsibilities.

5.1 In connection with BODE's provision of the Services, DDOJ shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 DDOJ agrees that its officers and employees will cooperate with BODE in the performance of services under this Agreement and will be available for consultation with BODE at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by BODE under this Agreement shall be subject to review for compliance with the terms of this Agreement by DDOJ's designated representatives. DDOJ representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform BODE by written notice before the effective date of each such delegation.

5.4 The review comments of DDOJ's designated representatives may be reported in writing as needed to BODE. It is understood that DDOJ's representatives' review comments do not relieve BODE from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 DDOJ shall, without charge, furnish to or make available for examination or use by BODE as it may request, any data which DDOJ has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

BODE shall return any original data provided by DDOJ.

5.6 DDOJ shall assist BODE in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is

necessary for the completion of the services specified by this Agreement.

5.7 BODE will not be responsible for accuracy of information or data supplied by DDOJ or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 DDOJ agrees not to use BODE's name, either express or implied, in any of its advertising or sales materials. BODE reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by BODE for DDOJ relating to the services to be performed hereunder shall become the property of DDOJ and shall be delivered to DDOJ's designated representative upon completion or termination of this Agreement, whichever comes first. BODE shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by DDOJ. DDOJ shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by BODE prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of BODE even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. DDOJ's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 BODE warrants that its services will be performed in a good and workmanlike manner. BODE agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by BODE for DDOJ in connection with the provision of the Services, BODE shall pass through or assign to DDOJ the rights BODE obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 BODE shall indemnify and hold harmless the State, the DDOJ, its agents and employees, from any and all third party liability, suits, actions or claims, together with all reasonable costs and expenses (including reasonable attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of BODE, its agents or employees, or (B) BODE's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) BODE shall have been notified promptly in writing by DDOJ of any notice of such claim; and (ii) BODE shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If DDOJ promptly notifies BODE in writing of a third party claim against DDOJ that any Deliverable infringes a copyright or a trade secret of any third party, BODE will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOJ. BODE will not indemnify DDOJ, however, if the claim of infringement is caused by (1) DDOJ's misuse or modification of the Deliverable; (2) DDOJ's failure to use corrections or enhancements made available by BODE; (3) DDOJ's use of the Deliverable in combination with any product or information not owned or developed by BODE; (4) DDOJ's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in BODE's opinion is likely to be, held to be infringing, BODE shall at its expense and option either (a) procure the right for DDOJ to continue using it, (b) replace it with a non-infringing equivalent, (c) modify it to make it non-infringing. The foregoing remedies constitute DDOJ's sole and exclusive remedies and BODE's entire liability with respect to infringement.

9.3 DDOJ agrees that BODE' total liability to DDOJ for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or BODE negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to BODE.

In no event shall BODE be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost

profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if BODE has been advised of the likelihood of such damages.

10. Employees.

10.1 BODE has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by BODE in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DDOJ's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, BODE shall be, and is, an independent contractor, and is not an agent or employee of the DDOJ or the State of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. BODE shall be solely responsible for, and shall indemnify, defend and save DDOJ harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 BODE acknowledges that BODE and any subcontractors, agents or employees employed by BODE shall not, under any circumstances, be considered employees of DDOJ, and that they shall not be entitled to any of the benefits or rights afforded employees of DDOJ, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. DDOJ will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of DDOJ or any of its officers, employees or other agents.

11.3 BODE shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, BODE has no authority to bind or commit DDOJ. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Termination.

12.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

12.2 This Agreement may be terminated in whole or in part by DDOJ for its convenience, but only after BODE is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with DDOJ prior to termination.

12.3 If termination for default is effected by DDOJ, DDOJ will pay BODE that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to BODE at the time of termination may be adjusted to the extent of any additional costs occasioned to DDOJ by reason of BODE's default.
- c. Upon termination for default, DDOJ may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event BODE shall cease conducting business, DDOJ shall have the right to make an unsolicited offer of employment to any employees of BODE assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

12.4 If after termination for failure of BODE to fulfill contractual obligations it is determined that BODE has not so failed, the termination shall be deemed to have been effected for the convenience of DDOJ.

12.5 The rights and remedies of DDOJ and BODE provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

12.6 Gratuities.

12.6.1 DDOJ may, by written notice to BODE, terminate this Agreement if it is found after notice and hearing by DDOJ that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by BODE or any agent or representative of BODE to any officer or employee of DDOJ with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

12.6.2 In the event this Agreement is terminated as provided in 12.6.1 hereof, DDOJ shall be entitled to pursue the same remedies against BODE it could pursue in the event of a breach of this Agreement by BODE.

12.6.3 The rights and remedies of DDOJ provided in Section 12.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

13. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

14. Assignment; Subcontracts.

14.1 Any attempt by BODE to assign or otherwise transfer any interest in this Agreement without the prior written consent of DDOJ shall be void. Such consent shall not be unreasonably withheld.

14.2 Services specified by this Agreement shall not be subcontracted by BODE, without prior written approval of DDOJ.

14.3 Approval by DDOJ of BODE's request to subcontract or acceptance of or payment for subcontracted work by DDOJ shall not in any way relieve BODE of

responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

14.4 BODE shall be and remain liable for all damages to DDOJ caused by negligent performance or non-performance of work under this Agreement by BODE, its subcontractor or its sub-subcontractor.

14.5 The compensation due shall not be affected by DDOJ's approval of the BODE's request to subcontract.

15. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

16. Non-Appropriation of Funds.

16.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DDOJ may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the DDOJ requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

16.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DDOJ's obligations under it shall be extinguished at the end of the fiscal year in which DDOJ fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

17. State of Delaware Business License.

BODE and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

18. Complete Agreement.

18.1 This agreement and its Appendices shall constitute the entire agreement between DDOJ and BODE with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the

subject matter of this Agreement.

18.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

18.3 BODE may not order any product requiring a purchase order prior to DDOJ's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

19. Miscellaneous Provisions.

19.1 In performance of this Agreement, BODE shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Should BODE lose any necessary credentials, certifications or otherwise, needed to perform, BODE shall immediately notify DDOJ. BODE shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

19.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

19.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

19.4 BODE covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. BODE further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

19.5 BODE acknowledges that DDOJ has an obligation to ensure that public funds

are not used to subsidize private discrimination. BODE recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, DDOJ may declare BODE in breach of the Agreement, terminate the Agreement, and designate BODE as non-responsible.

19.6 BODE covenants that it has not employed or retained any company or person who is working primarily for BODE, to solicit or secure this agreement, by improperly influencing the DDOJ or any of its employees in any professional procurement process; and, BODE has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for BODE, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement. For the violation of this provision, the DDOJ shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

19.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

19.8 BODE shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of DDOJ may inspect or audit BODE's performance and records pertaining to this Agreement at the BODE business office during normal business hours.

20. Insurance.

20.1 BODE shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
- B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- C. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or

- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- E. Product Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- F. If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

20.2 BODE shall provide forty-five (45) days written notice of cancellation or material change of any policies.

20.3 Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies shall be filed with the DDOJ. The certificate holder is as follows:

20.4 In no event shall the State of Delaware or the DDOJ be named as an additional insured on any policy required under this agreement.

21. Assignment of Antitrust Claims.

As consideration for the award and execution of this Agreement by the DDOJ, BODE hereby grants, conveys, sells, assigns, and transfers to DDOJ all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the DDOJ pursuant to this Agreement.

22. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. BODE consents to jurisdiction and venue in the State of Delaware.

23. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices

shall be sent to the following addresses:

TO DDOJ:

Delaware Department of Justice
c/o Controller
820 N. French Street, 6th floor
Wilmington, DE 19801
Andrea.Godfrey@state.de.us
Fax: (302) 577-6630

TO BODE:

Jessica Danso Contract Administrator
Bode Cellmark Forensics, Inc.
10430 Furnace Road, Suite 107
Lorton, Virginia 22079
contracts@bodetech.com
Fax: (703) 646-9742

With a copy to:
Laboratory Corporation of America Holdings
531 South Spring Street
Burlington, NC 27215
Attention: Law Department

SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

Original On File

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

Original On File

Witness

Name:

Tom Cuccia

Title: Director of Operations

Date:

1/4/17

Date:

1/4/17

BODE CELLMARK FORENSICS, INC.

Original On File

Original On File

Witness

Nam

Mike Cariola

Title: General Manager

Date:

1-04-17

Date:

1/4/17

ATTACHMENT A
TECHNICAL SPECIFICATIONS

1. Bode Cellmark Forensics shall extract DNA, using any validated extraction method from evidentiary items and shall amplify and type using the Promega PowerPlex® 16 kit (after January 1, 2017 using PowerPlex® Fusion 6C kit) and the Applied Biosystems 3130xl Genetic Analyzer (after January 1, 2017 using 3500 or 3500XL). The analysis shall be produced using GeneMapper ID-X v.1.4 (or later version).
2. Quantification shall occur via real-time PCR using Plexor HY kits.
3. Allele sizes and designations shall be determined with an appropriate internal lane standard and allelic ladder which represents all of the common alleles for that particular locus.
4. Bode Cellmark Forensics shall issue a signed court-ready report to the DDOJ that includes the DDOJ case number, items tested, analysis results, conclusions with statistical analysis when appropriate, and DNA profile results from each sample. The court-ready report shall be well organized and comprehensible.
5. DDOJ shall assist Bode Cellmark Forensics in obtaining data on documents for public officers or agencies whenever such material is necessary for the completion of services specified.
6. An on-site visit of Bode Cellmark Forensics lab must be done by the DFS technical leader, designated employee of an NDIS lab that uses the same

technology, platform, and amplification kit or by a designated FBI employee prior to initiation of analysis. If the outsourcing agreement extends beyond one year, an annual on-site visit must be conducted.

7. Successful identifications require that profiles be uploaded into Combined DNA Index System (CODIS), a computer software program that operates local, state and national databases of DNA profiles collected from convicted offenders, unsolved crime scene evidence and missing persons.
8. For cases requiring review by an NDIS laboratory for possible CODIS upload, copies of casefiles including but not limited to copies of all extraction, amplification, and electrophoresis information, including electropherograms and raw data, shall be provided to the NDIS lab (DFS). All documentation shall be properly labeled in accordance with American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) criteria to permit a quality review to be conducted by the NDIS lab. Contract lab must have approval from an NDIS lab before starting the case if CODIS entry is desired. Profiles generated pursuant to this contract cannot be searched against or maintained in a local database.
9. Provide unit pricing for Expert Witness Court testimony when needed. Break out all associated costs for this service including but not limited to travel, staff costs, etc.....
10. Provide pricing for Litigation packets when needed including raw data. Break out costs for review purposes. Include all associated costs for this service.

11. Maximum of 6 week turnaround is permissible.

**Contract laboratory Qualifications and
Quality Assurance:**

Bode Cellmark Forensics shall maintain ASCLD/LAB accreditation and maintain ISO/IEC 17025 accreditation at all times during the Contract and, upon request by the State, shall provide the State with written evidence of such accreditations.

ATTACHMENT B: PRICING

Casework Package Pricing

Level I \$14,000/yr Up to 4 cases in the given year (up to 5 tests per case*)	Level II \$24,000/yr Up to 8 cases in the given year (up to 5 tests per case*)
Level III \$48,000/yr Up to 18 cases in the given year (up to 5 tests per case*)	Level IV \$72,500/yr Up to 28 cases in the given year (up to 5 tests per case*)
Level V \$95,000/yr Up to 38 cases in the given year (up to 5 tests per case*)	Level VI \$150,000/yr Up to 65 cases in the given year (up to 5 tests per case*)

* A test consists of STR, Y-STR, miniSTR, or serology

Guidelines:

- All cases for package pricing must be submitted for processing prior to the one-year anniversary of initiation of the package. Unused cases will be forfeited after one year.
- Cases can be submitted on an as-needed basis. No requirements for sending batches of cases.
- Cases requiring more than 5 tests will be counted as 2 cases; more than 10 tests as 3 cases, etc.
- "Unused" tests from one case cannot be applied to another case.
- All items for a case must be submitted together. Additional evidence submissions at a later date will be counted as a separate case.
- The testing strategy will generally be based on discussions with the client and the Bode casework team. All tests will be conducted according to Bode's validated protocols. Any special test requested may count as more than a single test.

Package Turnaround Time:

- Cases submitted will be processed in 6 weeks from receipt of evidence.
- A Case submitted for an expedited turnaround of 2 - 3 weeks will be counted as 2 cases.
- Additional charges will apply for less than 2 weeks turnaround.

Additional Services:

- Mitochondrial DNA (mtDNA) Testing: Each item submitted for mtDNA analysis counts as 3 tests. Turnaround time for mtDNA is 10-12 weeks.
- Expert Witness Testimony: \$1900/day plus travel expenses; Remote video testimony \$250/hour

