



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia Master Agreement

Order Date: 07-16-2025

CORRECT ORDER NUMBER MUST
APPEAR ON ALL PACKAGES, INVOICES,
AND SHIPPING PAPERS. QUESTIONS
CONCERNING THIS ORDER SHOULD BE
DIRECTED TO THE DEPARTMENT
CONTACT.

Order Number:	CMA 0623 8500 DAS2500000001 1	Procurement Folder:	1693725
Document Name:	BODE Technology	Reason for Modification:	
Document Description:	Forensic Testing.		
Procurement Type:	Central Sole Source		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2025-07-15
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2026-07-14

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000198758 BODE CELLMARK FORENSICS INC 10430 FURNACE RD STE 107 LORTON VA 22079 US Vendor Contact Phone: 703-644-1200 Extension: Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>No</td><td></td><td></td></tr><tr><td>#3</td><td>No</td><td></td><td></td></tr><tr><td>#4</td><td>No</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			#4	No			Requestor Name: Herbert Mickey Skeens Requestor Phone: (304) 558-2350 Requestor Email: herbert.m.skeens@wv.gov 2026 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No																				
#3	No																				
#4	No																				

INVOICE TO	SHIP TO
DIVISION OF ADMINISTRATIVE SERVICES 1124 SMITH STREET SECOND FLOOR CHARLESTON WV 25301 US	DIVISION OF ADMINISTRATIVE SERVICES 1124 SMITH STREET SECOND FLOOR CHARLESTON WV 25301 US

7/17/25 61

Total Order Amount:

Open End

Purchasing Division's File Copy

DATE: 7/16/25
ELECTRONIC SIGNATURE ON FILE

DATE: 7/21/2025
ELECTRONIC SIGNATURE ON FILE

DATE: 7-21-25
ELECTRONIC SIGNATURE ON FILE

Extended Description:

Direct Award

The Vendor, BODE Technology, agrees to enter with the West Virginia Division of Administrative Services into a contract for one (1) year subscription with two (2) optional renewals with BODE Technology for a contract to provide forensic casework services for DNA Forensic Testing and is certified by the ANSI National Accreditation Board in Serological screening for the presence of blood, semen, saliva or hair, STR Testing, Y-STR Testing, STR Testing using Rapid DNA technology, Mini-STR Analysis, and Legal Paternity Testing, per the attached documents.

7/15/2025 to 7/14/2026. Additional years will be added by change order.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	46151700			EA	910.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: DNA Analysis of known reference

Extended Description:

See attached quote

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	46151700			HOUR	395.000000
	Service From	Service To	Service Contract Amount		
			0.00		

Commodity Line Description: Comparison to Previously Generated DNA Profile

Extended Description:

See attached quote

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☒ **Term Contract**

Initial Contract Term: The Initial Contract Term will be for a period of One(1) year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to Two(2) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for _____ years;

☐ the contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's Office (Attorney General approval is as to form only).

☐ **One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and continues until the project for which the vendor is providing oversight is complete.

☐ **Other:** Contract Term specified in _____

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☒ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☒ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

☐ **Construction:** This Contract is for construction activity more fully defined in the specifications.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

☐☐☐☐

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☒ **Automobile Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: _____ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: _____ per occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

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9. WORKERS' COMPENSATION INSURANCE: Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. VENUE: All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ _____ for _____.

☐ Liquidated Damages Contained in the Specifications.

☐ Liquidated Damages Are Not Included in this Contract.

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

20. TIME: Time is of the essence regarding all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in www.state.wv.us/admin/purchase/privacy.

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

34. VENDOR NON-CONFLICT: Neither Vendor nor its representatives are permitted to have any interest, nor shall they acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

35. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

37. NO DEBT CERTIFICATION: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

38. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

39. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☐ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.division@wv.gov.

40. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
 1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
 2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

44. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

45. VOID CONTRACT CLAUSES: This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

46. ISRAEL BOYCOTT: Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name and Title) Renee Walker, Contracts Manager

(Address) 10430 Furnace Road, Suite 107, Lorton, VA 22079

(Phone Number) / (Fax Number) 703-646-9875

(email address) contracts@bodetech.com

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

Bode Cellmark Forensics, Inc.

(Company)



(Signature of Authorized Representative)

Mike Cariola, CEO/President 5/20/2025

(Printed Name and Title of Authorized Representative) (Date)

703-646-9876

(Phone Number) (Fax Number)

mike.cariola@bodetech.com

(Email Address)

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): WV Division of Administrative Services

Vendor: BODE Technology

Contract/Lease Number ("Contract"): CRQM 0623 DAS2500000002


Commodity/Service: Forensic Testing


The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** -- Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.
Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** -- Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** -- The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** -- Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** -- Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** -- Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** -- Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** -- Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** -- Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-6-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.
- Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *italics* to identify language being added and ~~striking through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: WV Division of Administrative Services
By: 
Printed Name: Tina Desmond
Title: Director
Date: 6/3/2025

Vendor: Bode Cellmark Forensics, Inc.
By: 
Printed Name: Mike Cariola
Title: CEO/President
Date: 5/20/2025



Terms and Conditions

The pricing and scope of work attached is valid until **September 30, 2025** unless entered into a contract. Terms of payment are Net-30 directly billed to the Client. All testing at Bode is subject to our Terms and Conditions.

Budgetary Estimate for Approximately 100 Reference Comparisons

Item Name	Description	Price
DNA Analysis of Known Reference - Subsequent Submission or Processing	DNA analysis of known reference (e.g. Suspect or Consensual Partner) if submitted after the kit has been processed. Fee includes statistical analysis in the report.	\$910 per sample
Comparison	Comparison to Previously Generated DNA Profile (per hour)	\$395 per hour



February 7, 2025

West Virginia State Police

Re: Sole Source/Single Source Provider of Comprehensive Forensic DNA Services

To Whom It May Concern,

I am writing this letter to inform you that Bode Technology (Bode) is the only laboratory that provides a comprehensive suite of forensic DNA while maintaining all the accreditations detailed below. By providing these extensive services, Bode is best suited to meet the Department's forensic DNA testing needs.

Bode is a leader in providing forensic DNA analysis to crime laboratories, law enforcement agencies, prosecutor's offices, and defense/post-conviction agencies throughout the United States and around the world. Bode has tested over 150,000 forensic cases in the last ten years, offering DNA technologies that drive cold case investigations. Bode's laboratory holds ISO/IEC 17025:2017 accreditation for forensic testing through ANSI National Accreditation Board (ANAB). This accreditation also ensures compliance with the *FBI Quality Assurance Standards for Forensic Testing and DNA Databasing Laboratories*.

Bode Technology offers all the following forensic casework services at our ISO 17025 accredited laboratory:

- Serological screening for the presence of blood, semen, saliva; or hair examination
- STR Testing of non-differential items, differential items (sexual assault samples), skeletal remains and rootless hairs and comparison to original work
- Y-STR Testing of non-differential items, differential items (sexual assault samples), and skeletal remains
- mtDNA Testing
- STR testing using Rapid DNA technology
- Massive Parallel Sequencing for forensic genetic genealogy (FGG) analysis
- Mini-STR Analysis
- Legal Paternity Testing

Bode X-traction is a proprietary, advanced DNA extraction process that can be applied to spent shell casings and rootless hairs for the recovery of challenging and degraded DNA samples.

Bode also offers developed proprietary bone processing methods which have been optimized over several years to obtain DNA from highly challenged and degraded human remains. These methods were first developed during testing of samples from the World Trade Center and have been continually improved over the years on projects worldwide. Utilizing this method, Bode has tested over 30,000 human remains samples with an unsurpassed success rate.



West Virginia Division of Administrative Services
2/7/25

Bode provides forensic genealogy services to our clients. Bode's forensic genealogy service is unique to other service providers by including all the following:

- Targeted and whole genome sequencing in-house, validated and accredited to ISO/IEC 17025 standards;
- Genetic profile search capabilities in multiple genealogy databases;
- Forensic Genealogy services led by a Board-certified genealogist;
- Advance forensic genealogy investigative searches for surnames;
- STR Confirmation in our ISO 17025 Accredited Laboratory.

In addition, Bode was the sole provider of Sexual Assault Kit (SAK) testing on approximately 500 SAKs for the state of West Virginia from 2016 to 2018. As a provider of the follow-up testing to these cases, Bode is the only vendor to

- Provide continuity to the project
- Protect the chain custody by limiting transfer of the evidence
- Prevent subsequent testing and testimony costs

Please feel free to contact me directly to answer any further questions.

Best Regards,

Sincerely,

Tabitha A. Bandy

Tabitha A. Bandy
Director Sales (North America)
Bode Technology

Appendix 1- Certification



CERTIFICATE OF ACCREDITATION

The ANSI National Accreditation Board

Hereby attests that

Bode Cellmark Forensics, Inc.
dba Bode Technology
10430 Furnace Road, Lorton, Virginia 22079 USA

Fulfills the requirements of

ISO/IEC 17025:2017

Accreditation Requirements for Forensic Testing and Calibration (2023)
FBI Quality Assurance Standards for Forensic DNA Testing Laboratories:2020
FBI Quality Assurance Standards for DNA Databasing Laboratories:2020

In the field of

Forensic Testing

This certificate is valid only when accompanied by a current scope of accreditation document.
The current scope of accreditation can be verified at www.anab.org.


Pamela L. Sale, Vice President, Forensics

Expiry Date: 30 April 2025
Certificate Number: FT-0268



TERMS OF SERVICE

This Terms of Service Agreement ("Agreement") is made by and between Bode Cellmark Forensics, Inc. ("Bode") and the user ("Client"). Bode and Client may be alternately referred to herein as "party," individually, and "parties," collectively.

By requiring Products or Services ("Services") from Bode, Client agrees to be bound by the following Agreement unless otherwise specified in a separate Contract or Agreement with the Client. In the event there is a preceding Contract or Agreement, that must be noted in any request for Service. These Terms of Service apply to all users of the Services.

Please read these Terms of Service carefully before requesting Services. By requesting Services, Client agrees to be bound by these Terms of Service. If you do not agree to all the terms and conditions of this agreement, then you may not access to Services. If these Terms of Service are considered an offer, acceptance is expressly limited to these Terms of Service.

Bode offers this website, including all information, tools and services to Client conditioned upon acceptance of all terms, conditions, policies and notices stated herein. By visiting Bode's site, Client shall engage Bode's Services and agrees to be bound by the following Agreement, including those additional terms and conditions and policies referenced herein. By accessing or using any part of the site, Client agrees to be bound by this Agreement. Bode reserves the right to update this Agreement at any time and it is Client's responsibility to check this page for changes prior to requesting Services.

ARTICLE I - PURPOSE:

Client desires to engage Bode to render certain professional Services and Deliverables, as those terms are hereafter defined; and Bode desires to render such Services and Deliverables under the terms and conditions of this Agreement. The term "Services" means those forensic DNA Services, and other related Services that Client may request, and Bode may agree to provide from time to time. The term "Deliverables" means any Case Report, Product or other material that Client may request and Bode may agree to provide from time to time. The parties have determined that the Services required by Client will vary in scope, Deliverables, requested personnel (including subcontractors) and performance period, and that such Services may occur from time to time, at Client's request, throughout the term of this Agreement. To accommodate each request for Services, Client will issue to Bode a completed "Quote" that will identify in detail each expected service request and the associated requirements. Client agrees not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service, use of the Service, or access to the Service or any contact on the website through which the service is provided, without express written permission from Bode.

ARTICLE II - PAYMENT AND OTHER EXPENSES:

2.1 Prices are defined in a Quote or pre-existing Contract and are valid for the term as specified. If client is submitting a case requiring a Case Submission Form, it must reference the corresponding quotation number or contract number in order to receive the quoted price. Client agrees to pay Bode the total amount specified for the performance of the Services described in a Case Submission Form. Unless otherwise indicated, prices do not include travel nor shipping.

2.2 Unless otherwise specified, Client will pay Bode within thirty (30) days of the date of Bode's invoice..

2.3 Bode reserves the right to assess a late fee equal to one and one-half percent (1.5%) per month or, if lower, the maximum amount permitted by applicable law, on all amounts not paid when due, calculated on a daily basis beginning with the first day following the invoice due date. Any check or remittance received from or for the account of Client may be accepted and applied by Bode against any indebtedness owing by Client, without prejudice to, or the discharge of, the remainder of any such indebtedness regardless of any condition, provision, statement, legend or notation appearing on, referring to or accompanying any check or remittance.

2.4 If Client desires to change or modify the Services, Client will so advise Bode, in writing. If such a change or modification appears to substantially change the Services as recited in a Case Submission Form, Bode and Client will negotiate in good faith an addendum; provided that, the terms and conditions of the addendum are mutually agreeable and expressed as a writing signed by both parties hereto.

2.5 Client will be liable for any and all fees (including any sales, customs, import or the like taxes) levied by any local, state, country or international taxing government authority as applicable to the receipt of Services or Deliverables hereunder, and Bode will be entitled to invoice for such fees as such fees occur during or following the Term, as defined in Article III herein. Client will include such taxes with the payment or provide Bode with the appropriate information or documentation to support exemption from such taxes. Client will have no other or further liability to Bode with respect to any tax, duty, levy or like imposition for which Bode may be liable as a result of the supply of the Services or Deliverables.

2.6 Unless otherwise provided in this Agreement, Client will not be liable for any other expenses, costs or fees incurred by Bode in the performance of Services other than those specifically identified therein.

ARTICLE III - TERM:

3.1 These Terms of Service are effective unless and until terminated by Bode or Client. Client may terminate these Terms of Service at any time by notifying Bode that Client no longer desires its Service,. This Agreement may be terminated if in Bode's sole judgement suspects that Client has failed to comply with any term or provision of these Terms of Service and Client shall remain liable for all amounts due up to and including the date of termination.

3.2 It is understood by the parties that a Quote may be terminated independently of this Agreement, and that a termination of one or more Quotes does not result in termination of this Agreement, unless this Agreement is terminated as specified in Article VIII.

ARTICLE IV - SHIPMENT AND DELIVERY:

4.1 Except as otherwise specified, Client will bear all shipping and transport expenses.

4.2 Deliverable dates are estimated as accurately as possible at the time orders are placed, unless Bode has given an expressly binding commitment. Deliverables are sent to the contact listed on the Case Submission Form or Purchase Order.

ARTICLE V - BODE'S REPORTING, DELIVERABLES, AND ENGAGEMENT OF SUBCONTRACTORS:

5.1 Bode will report to Client's Point of Contract, which will be identified in writing to Bode via the Case Submission Form. If Products are ordered, Bode will deliver to the Point of Contact listed on a Purchase Order supplied by the Client

5.2 Bode will provide to Client the Deliverables based on a schedule as specified in each Case Submission Form or Purchase Order. If Client requires any other items, material, devices, software, documents, studies, data, analysis or reports which will be considered additional Deliverables, the creation and provision of such additional Deliverables will be the subject of a subsequent order.

5.3 Client acknowledges that Bode will be entitled to engage subcontractors to perform certain Services described in a Case Submission Form, which subcontractor will be under terms and conditions commensurate with this Agreement.

ARTICLE VI - CONFIDENTIAL AND/OR PROPRIETARY INFORMATION:

6.1 All non-public, confidential, or proprietary information of the parties ("Confidential Information"), including but not limited to specifications, samples, designs, plans, drawings, documents, data, business operations, customer lists, pricing, manuals, discounts or rebates, that the disclosing party discloses to the receiving party, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with the Agreement is confidential, solely for the use of performing the Agreement, the Deliverables, or the Services, and may not be disclosed or copied unless authorized in advance by the disclosing party in writing. Upon the disclosing party's request, the receiving party will promptly return all documents and other materials received from the disclosing party. The disclosing party will be entitled to injunctive relief for any violation of this Article VI, without having to post bond or establish the insufficiency of a remedy at law.

ARTICLE VII - IN THE EVENT THE RECEIVING PARTY OR ANYONE TO WHOM THE RECEIVING PARTY SUPPLIES THE CONFIDENTIAL INFORMATION RECEIVES A REQUEST UNDER THE TERMS OF A SUBPOENA OR ORDER ISSUED BY, OR IN CONJUNCTION WITH LITIGATION PENDING IN, A COURT OF COMPETENT JURISDICTION OR A GOVERNMENTAL BODY, TO DISCLOSE ALL OR ANY PART OF THE CONFIDENTIAL INFORMATION. THE RECEIVING PARTY AGREES, TO THE EXTENT LAWFUL, TO (I) PROMPTLY NOTIFY THE DISCLOSING PARTY OF THE EXISTENCE, TERMS, AND CIRCUMSTANCES SURROUNDING THE REQUEST; (II) COOPERATE AND CONSULT WITH THE DISCLOSING PARTY ON THE ADVISABILITY OF TAKING LEGAL STEPS TO RESIST, NARROW THE SCOPE OF, OR LIMIT THE DISCLOSURE OF SUCH CONFIDENTIAL INFORMATION; (III) IF DISCLOSURE OF SUCH CONFIDENTIAL INFORMATION IS REQUIRED, FURNISH ONLY THAT PORTION OF THE CONFIDENTIAL INFORMATION THAT, IN THE OPINION OF ITS COUNSEL, THE RECEIVING PARTY IS REQUIRED TO DISCLOSE; AND (IV) USE ITS BEST EFFORTS TO ENABLE THE DISCLOSING PARTY, AT ITS OWN EXPENSE, TO OBTAIN A PROTECTIVE ORDER OR OTHER RELIABLE ASSURANCE THAT CONFIDENTIAL TREATMENT WILL BE ACCORDED TO THE DISCLOSED CONFIDENTIAL INFORMATION THAT THE DISCLOSING PARTY SO IDENTIFIES.

ARTICLE VIII - THIS ARTICLE VI DOES NOT APPLY TO INFORMATION THAT IS: (I) IN THE PUBLIC DOMAIN; (II) KNOWN TO THE RECEIVING PARTY AT THE TIME OF DISCLOSURE; OR (III) RIGHTFULLY OBTAINED BY THE RECEIVING PARTY ON A NON-CONFIDENTIAL BASIS FROM A THIRD PARTY.

ARTICLE IX - INTELLECTUAL PROPERTY/ ACKNOWLEDGMENTS:

9.1 Intellectual Property is defined as any of Bode's Confidential Information as well as ideas, concepts, know-how, techniques, methods, processes, research, developments, software, in whatever form, documents, apparatus, devices, work products or expressions, having either patent, copyright, trade secret, maskwork or any other proprietary right, whether statutory or common law, associated therewith, which are developed, created or generated by Bode, either solely or jointly, during the Term of this Agreement and/or in the performance of Services under each Quote, and/or which arise under or relate to Bode's Confidential Information.

9.2 In the event that Intellectual Property is created, is generated, arose under, is related to or resulted from, as described above in Paragraph 6.1, Client acknowledges that the Intellectual Property, therein or associated therewith, will be held by, vested in and owned entirely by Bode. Client will execute, without additional consideration, all documents reasonably required to confirm Bode's ownership of such Intellectual Property and to secure protection thereon for Bode. Client acknowledges that this Agreement and the Services rendered under any Quote will not be construed as a "work for hire" or, in the alternative, as applicable, the generation and/or development of a work product will not be solely for the benefit and ownership of Client. Further, all associated and underlying Intellectual Property in any and all work products will solely vest in and be for the benefit and ownership of Bode; and as a result Client hereby assigns, transfers and conveys all rights, title and interests therein from Client to Bode, and this document will be considered to confirm such assignment, transfer and conveyance. In the event Client is unavailable or uncooperative after exercising reasonable efforts to obtain Client's signature to execute such additional required documents to confirm assignment, transfer and conveyance of the foregoing Intellectual Property, Client appoints Bode as its agent for the purpose of effectuating such confirmation of ownership and transfer of right, title and interest

described herein, and to execute documents on behalf of Client to confirm such assignment, transfer and conveyance.

9.3 The Deliverables as described in the Quote will be delivered to Client subject to Article XV, and Client will not in any way or manner, either by the inclusion of a corporate name, logo, copyright, marking, trademark or the like, in combination or otherwise, indicate that Client is the source, creator, generator or originator of any such Confidential Information related to the Confidential Information, Deliverables or holder or owner of associated Intellectual Property.

9.4 It is understood by Bode that Client will retain all rights, title and interests in any proprietary technology, including but not limited to, existing software or applications in Client's possession prior to the Effective Date hereof, and utilized by Bode in performing the Services under any Quote. This Paragraph 9.4 will survive termination of this Agreement.

9.5 The parties acknowledge that in the event the Deliverables contemplate significant and material development work, the parties will describe in more detail the obligations associated therewith under a contract.

ARTICLE X - USE OF NAMES/NON-SOLICITATION:

10.1 During the Term and following the termination of this Agreement, neither party will use the name of the other party, or the name of any of its subsidiaries or affiliated entities, in any advertising, literature or other publication material or as a reference unless the party seeking to do so seeks written permission from the other party, except that Bode may list Client on its customer list in any marketing materials, and collaterals and in any advertising medium. In addition, neither party will refer to any employee of the other without written permission to do so from the other party. This Paragraph 10.1 will survive termination of this Agreement.

ARTICLE XI - WARRANTIES/ACCEPTANCE:

11.1 Bode represents and warrants to Client that it is an independent contractor that makes its services available to the general public, that it has its own regular place of business and that it maintains its own set of books and records, which reflect all items of income and expense of its business and trade. Bode will operate as an independent contractor and will not represent itself to be the agent, employee, partner or joint venturer of Client, nor will Client represent itself to be the agent, employee, partner or joint venturer of Bode. Neither party will obligate the other party in any manner, nor cause the other party to be liable under any contract or under any other type of commitment.

11.2 Bode represents and warrants that the Services performed in connection with each Quote issued hereunder will be of a professional quality.

11.3 Bode represents and warrants that the Deliverables developed, created and provided under a Quote will be original works, and that any third party material that is included in any such Deliverables will be provided to Client with the same rights as provided under such third party obligations, and Bode will not grant any greater rights than provided by such third party.

11.4 EXCEPT WHERE OTHERWISE STATED, THE DELIVERABLES ARE PROVIDED "AS IS." BODE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BODE MAKES NO WARRANTY THAT THE DELIVERABLES WILL MEET CLIENT'S REQUIREMENTS, RESULT IN ANY CONTEMPLATED BUSINESS OR FINANCIAL RESULT, BE SECURE FROM ANY DATA BREACHES OR OPERATE UNDER CLIENT'S SPECIFIC CONDITIONS OF USE. BODE MAKES NO WARRANTY THAT OPERATION

OF THE DELIVERABLE WILL BE SECURE, FREE OF MALICIOUS CODE, VIRUSES, ERROR FREE, BUG FREE OR FREE FROM INTERRUPTION. CLIENT MUST DETERMINE WHETHER THE DELIVERABLE SUFFICIENTLY MEETS CLIENT'S REQUIREMENTS FOR SECURITY AND UNINTERRUPTABILITY. CLIENT WILL BEAR SOLE RESPONSIBILITY AND ALL LIABILITY FOR ANY LOSS INCURRED DUE TO FAILURE OF THE DELIVERABLE TO MEET CLIENT'S REQUIREMENTS. BODE WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE FOR THE LOSS OF DATA ON ANY COMPUTER OR INFORMATION STORAGE DEVICE THAT UTILIZES OR ACCESSES THE DELIVERABLES.

11.5 If applicable, and as more particularly recited in or as addressed under a Quote, Bode will provide the Deliverables, identified under each Quote, for acceptance by Client. Except where otherwise recited in a Quote, such acceptance must occur within ten (10) days following the date of delivery of the Deliverables under the relevant Quote. During such ten (10) days, if Client identifies any problems or non-conformance, Client will notify, in writing, Bode of such problem or non-conformance, and Bode will be permitted thirty (30) days to correct and remedy the problem or non-conformance. Thereafter, Bode will provide a new or corrected Deliverable and the acceptance procedure will start again as provided herein. If Client fails to provide acceptance within such ten (10) days, the Deliverable will be deemed accepted under the acceptance criteria provided herein. If Client substantially modifies, without Bode's authorization, the Deliverable prior to acceptance, then acceptance will likewise be deemed to have occurred.

11.6 Client agrees that Bode's sole liability, and Client's sole and exclusive remedy for breach of the limited warranty contained in this Article XI, pursuant to any claim of any kind against Bode will be, at Bode's option, (a) reperformance of any non-conforming Services or (b) a refund of the price allocable to the non-conforming Deliverables or Services.

ARTICLE XII - LIMITATION OF LIABILITY AND REMEDY:

12.1 Bode represents and warrants that the Services performed in connection with each Quote issued hereunder will be of a professional quality.

12.2 IN NO EVENT WILL BODE'S AGGREGATE LIABILITY UNDER OR AS A RESULT OF THIS AGREEMENT AND/OR CLIENT'S USE OR INABILITY TO USE THE DELIVERABLES OR SERVICES, WHETHER UNDER CONTRACT, NEGLIGENCE, TORT, INDEMNITY, WARRANTY, STRICT LIABILITY OR ANY OTHER BASIS EXCEED THE LESSER OF (I) THE COST OF CORRECTING ANY NON-CONFORMITIES IN THE DELIVERABLES OR SERVICES OR (II) THE COST OF REPLACING THE DELIVERABLES OR REPERFORMING THE SERVICES. IN NO EVENT (INCLUDING UNENFORCEABILITY OF THE ABOVE LIMITATIONS AND INDEPENDENT OF ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED WARRANTY AND REMEDIES PROVIDED HEREUNDER) WILL BODE'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT EXCEED THE PURCHASE PRICE PREVIOUSLY PAID BY CLIENT FOR THE NON-CONFORMING DELIVERABLES OR SERVICES.

12.3 With regard to proprietary and/or Confidential Information and rights and interests, Bode will be entitled to pursue any legal and/or equitable action, including injunctive relief and damages, against Client with regard to any misuse, misappropriation or breach of any term or condition recited herein with regard to Bode's confidential and/or proprietary claims, including Confidential Information and Intellectual Property or third party proprietary interests. IN NO EVENT, HOWEVER, WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES ARISING FROM THE PERFORMANCE OF THE SERVICES UNDER ANY QUOTE, OR THE OBLIGATIONS RECITED IN THIS AGREEMENT OR ANY QUOTE, EXCEPT WITH RESPECT TO DAMAGES INCURRED WITH REGARD TO CLAIMS OF MISUSE OR MISAPPROPRIATION OF BODE'S PROPRIETARY AND/OR CONFIDENTIAL INFORMATION, INCLUDING CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY OR THIRD PARTY PROPRIETARY INTERESTS.

12.4 The parties acknowledge that the limitations set forth in this Article IX are integral to the prices charged under this Agreement and that, were Bode to assume any further liability other than as set forth herein, such prices would of necessity be set substantially higher. Bode's entire liability hereunder for the breach of this Agreement or any individual Quote will be limited only to actual and provable damages up to the amounts of monies payable hereunder or thereunder to Bode. Client expressly agrees that this limitation of damages and remedies will constitute the exclusive remedies and measure of damages available to Client and all other remedies and measures of damages which might otherwise be available under the law of any jurisdiction are hereby waived by Client.

12.S Without limitation to the generality of the foregoing, Bode will not be liable for any damage or loss caused by the improper or unapproved use of the Deliverables provided hereunder.

ARTICLE XIII - INDEMNIFICATION:

13.1 Client will defend, indemnify, and hold harmless Bode and its respective subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) ("Claims") arising out of or occurring in connection with the negligence or willful misconduct of Client or its employees or agents, including but not limited to: (i) any misuse or modification of the Deliverables or Services by Client or its employees or agents, (ii) any act (or failure to act) by Client or its employees or agents in contravention of any safety procedures or instructions that Bode provides to Client or its employees or agents or (iii) the failure to store, install, operate, or maintain the products in accordance with the instructions of Bode.

13.2 Client will defend, indemnify and hold Bode harmless from any Claims by a third party of liability, loss or damage resulting from claims of tort, contract, negligence or any other cause of action from a third party as a result of Bode's activities with respect to the provision of Services hereunder or the breach of any representations, warranties, covenants, agreements or other obligations hereunder, or the use of third party products or Services as provided by Client, or Services or violation of local laws and regulations in connection with its business operations or any with applicable local laws and regulations in connection with its business operations or any non-compliance with local, federal or international laws.

ARTICLE XIV - NO LICENSE:

14.1 Unless otherwise set forth in this Agreement, the sale of any Deliverables or rendering of Services will not confer upon Client any license, express or implied, under any patents, trademarks, trade name or other proprietary rights owned or controlled by Bode; it being specifically understood and agreed that all such rights are reserved to Bode.

ARTICLE XV- OTHER:

15.1 The parties will comply with all applicable laws, rules, and regulations.

15.2 Neither party will be deemed to have breached this Agreement by reason of delay or failure in performance resulting from causes beyond the control, and without the fault or negligence, of the party. Such causes include, but may not be limited to, an act of God, an act of war, riot, epidemic, fire, flood or other disaster. This Agreement will terminate, if such delay or failure persists for thirty (30) consecutive days and there is no foreseeable remedy or cure available.

15.3 With regard to the subject matter recited herein, this Agreement, any exhibits, any agreements referenced herein, and any addenda or amendments added hereto, comprise the entire understanding of the parties hereto and as such supersedes any oral or written agreement. In the event of a conflict between this Agreement and any other written agreement between the parties specifically covering the same Services or Deliverables, the terms and conditions of such agreement will prevail to the extent of such conflict. Notwithstanding the above, this Agreement will prevail over any differing or additional terms and conditions proposed by Client, including, without limitation, those contained in any invoice.

15.4 If any of the provisions of this Agreement are declared to be invalid, such provisions will be severed from this Agreement and the other provisions hereof will remain in full force and effect.

15.5 Neither party will transfer, assign or hypothecate, in whole or in part, this Agreement or any rights or obligations hereunder, provided that Bode may hire or engage one or more subcontractors to perform certain Services pursuant to Paragraph

5.3 herein. In the event of any permitted assignment or transfer of this Agreement or the obligations under this Agreement, the parties agree that such obligations will be binding upon the assigning or transferring party's executors, administrators and legal representatives, and the rights of assignor or transferor will inure to the benefit of assignee or transferee.

15.6 Client warrants *that* all access to and users of the Deliverables are authorized users of Client.

15.7 The Agreement may be executed in one or more counterparts, each of which will be deemed to be a duplicate original, but all of which, taken together, will be deemed to constitute a single instrument.

15.8 In connection with a U.S. Government Licensee, the Deliverable and any associated documentation qualify as "commercial items" as that term is defined at Federal Acquisition Regulation ("FAR") 48 CFR 2.101, consisting of "commercial computer software" and "commercial computer documentation" as such items are used in FAR 12.212, Consistent with FAR 12.212 and Department of Defense FAR (OFAR) Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated. U.S. Government Licensee will acquire the Deliverables and associated documentation with only those rights set forth in this Agreement. Further, any U.S. Government download, access and use of the Deliverables and associated documentation constitutes the U.S. Government's acknowledgement that the Deliverables and associated documentation are "commercial computer software" and "commercial computer software documentation." As applicable and so marked with respect to the Deliverables and associated documentation, the U.S. Government will acquire the Deliverables and related documentation with at least applicable Limited Rights and Restricted Rights as defined under the relevant and applicable FARs and DFARs.

15.9 This Agreement is governed by and construed and interpreted in accordance with the laws of the Commonwealth of Virginia without regard to choice of law rules. Any claim or dispute associated with or arising out of this Agreement will be resolved exclusively by a state court located in Fairfax County, Virginia, or by the United States District Court for the Eastern District of Virginia - Alexandria Division where federal jurisdiction exists. The parties agree to submit to the personal jurisdiction of the aforementioned courts for the purpose of litigating all such disputes. The parties waive any objection to the laying of venue for any suit, action, or proceeding in such courts. The substantially prevailing party in any action will be entitled to recover its costs and attorneys' fees.

15.10 In addition to other prohibitions as set forth in this Terms of Service, Client is prohibited from using the site or its content: (a) for any unlawful purpose; (b) to solicit others to perform or participate in any unlawful acts; (c) to violate any international, federal, provincial or state regulations, rules, laws or local ordinances; (d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others; (e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information; (g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Service or of any related website, other websites, or the Internet; (h) to collect or track the personal information of others; (i) to spam, phish, pharm, pretext, spider, crawl, or scrape; (j) for any obscene or immoral purpose; or (k) to interfere with or circumvent the security features of the Service or any related website, other websites, or the Internet. Bode reserves the right to terminate your use of the Service or any related website for violating any of the prohibited uses.

15.11 Questions about the Terms of Service should be directed to contracts@bodetech.com.

WV STATE GOVERNMENT

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency"), and Business Associate ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

Whereas it is desirable, in order to further the continued efficient operations of Agency to disclose to its Associate certain information which may contain confidential individually identifiable health information (hereafter, Protected Health Information or PHI); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy and Security Rules, the HITECH Act and its associated regulations, and the parties do agree to at all times treat the PHI and interpret this Addendum consistent with that desire.

NOW THEREFORE: the parties agree that in consideration of the mutual promises herein, in the Agreement, and of the exchange of PHI hereunder that:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

- a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
- b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
- c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
- d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
- e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111th Congress (2009).

- f. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- g. **Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- h. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- i. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- j. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

2. Permitted Uses and Disclosures.

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.

3. Obligations of Associate.

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than as stated in this Addendum or as required or permitted by law.
- b. **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.
- c. **Safeguards.** The Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Addendum. This shall include, but not be limited to:
 - i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
 - ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
 - iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
 - iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- d. **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.
- e. **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

f. **Support of Individual Rights.**

- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
 - the date of disclosure;
 - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
 - a brief description of the PHI disclosed; and
 - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

- g. Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required under state law.
- h. Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.
- j. Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. Security.** The Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- l. Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology immediately by e-mail or web form upon the discovery of any Breach of unsecured PHI; or within 24 hours by e-mail or web form of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Agency Procurement Officer at www.state.wv.us/admin/purchase/vrc/agencyli.htm and,

unless otherwise directed by the Agency in writing, the Office of Technology at incident@wv.gov or <https://apps.wv.gov/ot/ir/Default.aspx>.

The Associate shall immediately investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, the Associate shall notify the Agency Procurement Officer, and, unless otherwise directed by the Agency in writing, the Office of Technology of: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; and (f) Whether any federal or state laws requiring individual notifications of Breaches are triggered.

Agency will coordinate with Associate to determine additional specific actions that will be required of the Associate for mitigation of the Breach, which may include notification to the individual or other authorities.

All associated costs shall be borne by the Associate. This may include, but not be limited to costs associated with notifying affected individuals.

If the Associate enters into a subcontract relating to the Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Agency Procurement Officer. Failure to include such requirement in any subcontract or agreement may result in the Agency's termination of the Agreement.

- m. **Assistance in Litigation or Administrative Proceedings.** The Associate shall make itself and any subcontractors, workforce or agents assisting Associate in the performance of its obligations under this Agreement, available to the Agency at no cost to the Agency to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Agency, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Associate, except where Associate or its subcontractor, workforce or agent is named as an adverse party.

4. Addendum Administration.

- a. **Term.** This Addendum shall terminate on termination of the underlying Agreement or on the date the Agency terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.
- b. **Duties at Termination.** Upon any termination of the underlying Agreement, the Associate shall return or destroy, at the Agency's option, all PHI received from, or created or received by the Associate on behalf of the Agency that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents

and subcontractors to assist the Agency with any HIPAA required accounting of disclosures survives the termination of the underlying Agreement.

- c. **Termination for Cause.** Associate authorizes termination of this Agreement by Agency, if Agency determines Associate has violated a material term of the Agreement. Agency may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.
- d. **Judicial or Administrative Proceedings.** The Agency may terminate this Agreement if the Associate is found guilty of a criminal violation of HIPAA. The Agency may terminate this Agreement if a finding or stipulation that the Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Associate is a party or has been joined. Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.
- e. **Survival.** The respective rights and obligations of Associate under this Addendum shall survive the termination of the underlying Agreement.

5. General Provisions/Ownership of PHI.

- a. **Retention of Ownership.** Ownership of the PHI resides with the Agency and is to be returned on demand or destroyed at the Agency's option, at any time, and subject to the restrictions found within section 4.b. above.
- b. **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Agency.
- c. **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Agency.
- d. **No Sales.** Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Agency, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.
- g. **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.
- h. **Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process.

AGREED:

Name of Agency: Division of Administrative Services Name of Associate: Bode Cellmark Forensics, Inc.

Signature: T. D. V.

Signature: [Signature]

Title: Director

Title: CEO/President

Date: 6/19/2025

Date: 6/19/2025

Form - WVBA-012004
Amended 06.26.2013

APPROVED AS TO FORM THIS 26th
DAY OF Jun 20 13
BY [Signature]
Patrick Morrissey
Attorney General

Appendix A

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. PHI not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Associate: Mandy Parsons

Name of Agency: Division of Administration Services

Describe the PHI (do not include any actual PHI). If not applicable, please indicate the same.

Bode Technology will develop a genetic short tandem repeat (STR) DNA profile of a known individual using a forensically available commercial testing kit. The individual's STR DNA profile will be compared to the STR DNA profile previously developed from crime scene evidence. The applicable law enforcement agency will obtain a buccal sample from the individual to submit to Bode Technology. The sample collected from the individual will contain personal identifying information (PII) such as first, middle, last name, date of birth, social security number, state identification number, and/or FBI number. Once testing is completed by Bode Technology, a laboratory report will be provided to the submitting law enforcement agency with the results of testing to include the developed STR DNA profile and PII. A copy of this report may also be supplied to the West Virginia State Police Forensic Laboratory for supplemental case documentation.