

**CONTRACT #8**  
**RFS # 344.02-671**  
**FA # 06-16709**

**Finance and Administration**  
**Division of Mental Retardation**  
**Services**

**VENDOR:**  
**Aegis Sciences Corporation**



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF MENTAL RETARDATION SERVICES  
ANDREW JACKSON BUILDING  
500 DEADERICK STREET, SUITE 1500  
NASHVILLE, TENNESSEE 37243

RECEIVED

APR 29 2009

FISCAL REVIEW

April 24, 2009

Jim White, Director  
Fiscal Review Committee  
8th Floor, Rachel Jackson Building  
Nashville, Tennessee 37243

Attention: Leni Chick

Re: Aegis Sciences Corporation  
Contract Number FA-06-16706-00  
Edison # 2766  
Request Amendment Review

Dear Mr. White:

The Division of Mental Retardation Services (DMRS) is submitting proposed Amendment 1 to Contract # FA-06-16709-00 with Aegis Sciences Corporation for review in accordance with requirements of the Fiscal Review Committee announced on September 18, 2008.

The contract, awarded through the State's RFP process, began on January 16, 2006. The proposed amendment decreases the maximum liability amount of this contract because the State has not utilized the services available through this contract at the level originally anticipated. Additionally, this amendment includes language pertaining to prohibition of illegal immigrants and to the voluntary buyout program, which is currently required in all fee for service contracts.

A copy of the proposed amendment along with a copy of the base contract and the "Supplemental Documentation Required for Fiscal Review Committee" form are enclosed. Please let me know if any additional information is required.

Your assistance for review of this proposed amendment is appreciated.

Sincerely,

Stephen H. Norris  
Deputy Commissioner

SHN:dd

Enclosures

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Fred Hix, Assistant Commissioner	*Contact Phone:	253-6710		
*Contract Number:	FA-06-16709-00 Edison # 2766	*RFS Number:	344.02-671		
*Original Contract Begin Date:	January 16, 2006	*Current End Date:	January 15, 2011		
Current Request Amendment Number: <i>(if applicable)</i>	1	APR 29 2009			
Proposed Amendment Effective Date: <i>(if applicable)</i>	July 1, 2009	<b>FISCAL REVIEW</b>			
*Department Submitting:	Finance and Administration				
*Division:	Mental Retardation Services				
*Date Submitted:	April 24, 2009				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Aegis Sciences Corporation				
*Current Maximum Liability:	\$ 460,000.00				
<b>*Current Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2006	FY: 2007	FY: 2008	FY: 2009	FY: 2010	FY: 2011
\$ 46,000.00	\$ 92,000.00	\$ 92,000.00	\$ 92,000.00	\$ 92,000.00	\$ 46,000.00
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: 2006	FY: 2007	FY: 2007	FY: 2009	FY: 2010	FY: 2011
\$ 46,000.00	\$ 92,000.00	\$ 92,000.00	\$ 92,000.00	\$ 39,400.00	\$ 19,700.00
<b>IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:</b>			<p>Contract allocation has exceeded contract expenditures. The three Regional Offices and three Developmental Centers use this contract for drug screens on all new hires. With the continued reductions in the workforce at the Developmental Centers and low turn over and freezing of vacant positions within the Developmental Centers and Regional Offices, the number of new hires has been low and will continue to be low over at least the next couple of years. The contract is utilized in Central Office only on suspicion of drug abuse. Thus far, it has only had to be used once during the contract period.</p> <p>Savings within this contract has been utilized, like all other savings within the</p>		

Supplemental Documentation Required for  
Fiscal Review Committee

		Division, to offset the cost overages in the Division's community MR services waiver program.	
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			
*Contract Funding Source/Amount:	State:	\$10,000.00	Federal:
Interdepartmental:		\$ 450,000.00	Other:
If "other" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A			
Method of Original Award: <i>(if applicable)</i>		RFP	

# C O N T R A C T   A M E N D M E N T   C O V E R

RFS Tracking #	Edison Contract ID #	Amendment #
<b>34402-00671</b>	<b>0000000000000000000000002766</b>	<b>1</b>

Amendment Purpose	Delegated Authority Requisition ID # (ONLY if applicable)
Decrease maximum liability amount and add clauses pertaining to illegal immigrants and voluntary buyout	<b>RECEIVED</b>

Contractor/Grantee	Contractor/Grantee FEIN or SSN
Aegis Sciences Corporation	APR 29 2009
	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 880247158-01

Begin Date	End Date	Subrecipient or Vendor	CFDA #(s)
January 1, 2006	January 15, 2011	<input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	\$1,000.00		\$45,000.00		\$46,000.00
2007	\$2,000.00		\$90,000.00		\$92,000.00
2008	\$2,000.00		\$90,000.00		\$92,000.00
2009	\$2,000.00		\$90,000.00		\$92,000.00
2010	\$200.00		\$39,200.00		\$39,400.00
2011	\$100.00		\$19,600.00		\$19,700.00
<b>TOTAL:</b>	<b>\$7,300.00</b>		<b>\$373,800.00</b>		<b>\$381,100.00</b>

— COMPLETE FOR AMENDMENTS —			Procuring Agency Contact & Telephone #		
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Debra Dunn 253-6812  Procuring Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.)  Melinda Lanza 253-3166		
2006	\$46,000.00				
2007	\$92,000.00				
2008	\$92,000.00				
2009	\$92,000.00				
2010	\$92,000.00	(\$52,600.00)			
2011	\$46,000.00	(\$26,300.00)	Speed Code	Account Code	
<b>TOTAL:</b>	<b>\$460,000.00</b>	<b>(\$78,900.00)</b>			

— OCR Use —	Procurement Process Summary (FA or ED-type only)

**AMENDMENT ONE  
TO FA-06-16709-00**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services, hereinafter referred to as the "State" or "DMRS" and Aegis Sciences Corporation, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section C.1. is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three hundred eighty one thousand, one hundred dollars (\$381,100.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

2. The following provision is added as Contract Section D.20.:

D.20. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

3. The following provision is added as Contract Section E.13.:

E.13. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

4. Contract Attachment 1 attached hereto is added as a new Contract Attachment.

The revisions set forth herein shall be effective July 1, 2009. All other terms and conditions not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,  
AEGIS SCIENCES CORPORATION:**

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**CONTRACTOR SIGNATURE**

**DATE**

**DR. DAVID L. BLACK, PRESIDENT/CEO**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF FINANCE AND ADMINISTRATION,  
DIVISION OF MENTAL RETARDATION SERVICES:**

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**M. D. GOETZ, JR., COMMISSIONER**

**DATE**

**APPROVED:**

---

**COMMISSIONER OF FINANCE & ADMINISTRATION**

**DATE**

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**COMPTROLLER OF THE TREASURY**

**DATE**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Aegis Sciences Corporation
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**

# CONTRACT SUMMARY SHEET

8-8-05

RES #		Contract #	
<b>344.02-671</b>		FA-06-16709-00 <span style="float: right;">2766</span>	
State Agency		State Agency/Division	
Department of Finance and Administration		Division of Mental Retardation Services	
Contractor Name		Contractor ID # (FEIN or SSN)	
Aegis Sciences Corporation		C- or <input checked="" type="checkbox"/> V- 880247158-01	
Service Description			
Clinical Laboratory Drug Confirmation Services			
Contract BEGIN Date	Contract END Date	Subrecipient or Vendor?	CFDA #
1/16/06	1/15/11	Vendor	

Mark if Statement is TRUE

Contractor is on STARS as required       Contractor's Form W-9 is on file in Accounts as required

Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
See Supplemental Summary Sheet	See Supplemental Summary Sheet	See Supplemental Summary Sheet	11	N/A	N/A
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	\$ 1,000.00		\$ 45,000.00	<div style="border: 2px solid black; padding: 5px; display: inline-block;">                     OCR RELEASED                       MAR 15 2006                       TO ACCOUNTS                 </div>	\$ 46,000.00
2007	\$ 2,000.00		\$ 90,000.00		\$ 92,000.00
2008	\$ 2,000.00		\$ 90,000.00		\$ 92,000.00
2009	\$ 2,000.00		\$ 90,000.00		\$ 92,000.00
2010	\$ 2,000.00		\$ 90,000.00		\$ 92,000.00
2011	\$ 1,000.00		\$ 45,000.00		\$ 46,000.00
<b>TOTAL</b>	<b>\$ 10,000.00</b>	<b>\$ -</b>	<b>\$ 450,000.00</b>	<b>\$ -</b>	<b>\$ 460,000.00</b>

COMPLETE FOR AMENDMENTS ONLY			State Agency Fiscal Contact & Telephone #
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Melinda Lanza 253-3166
			State Agency Budget Officer Approval
SCANNED			<i>Melinda Lanza 1/30/06</i>
			Funding Certification (certification required by T.C.A. § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
			TOTAL \$ - \$ -
End Date			

**Contractor Ownership**

<input type="checkbox"/> African American	<input type="checkbox"/> Disabled	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT minority/disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—	

**Contractor Selection Method**

<input checked="" type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Procurement Method
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Government	<input type="checkbox"/> Other

**Procurement Process Summary**

RFP process MAR 16 2006

RECEIVED  
 RECEIVED

DIRECTOR OF ACCOUNTS













**CONTRACT  
BETWEEN THE STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION,  
DIVISION OF MENTAL RETARDATION SERVICES  
AND  
AEGIS SCIENCES CORPORATION**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services, hereinafter referred to as the "State" or "DMRS" and Aegis Sciences Corporation, hereinafter referred to as the "Contractor", is for the provision of Clinical Laboratory Drug Confirmation Testing Services for DMRS staff as further defined in the "SCOPE OF SERVICES".

The Contractor is a for-profit corporation. The Contractor's address is:

345 Hill Avenue  
Nashville, Tennessee 37210

The Contractor's place of incorporation or organization is Tennessee.

**SCOPE OF SERVICES:**

- A.1. The Contractor shall provide drug testing for DMRS staff which involves the collection of specimens for the initial drug screening and confirmation using gas chromatography/mass spectrometry (GC/MS) for only those specimens that indicate a positive result on the initial screening.
- A.2. The Contractor shall be available to provide drug screenings to DMRS staff as requested by the State at the following locations:
- a. Arlington Developmental Center  
11293 Memphis-Arlington Road  
Arlington, Tennessee 38002-0586
  - b. Clover Bottom Developmental Center  
275 Stewarts Ferry Pike  
Nashville, Tennessee 37214-0500
  - c. Greene Valley Developmental Center  
4850 E. Andrew Johnson Highway (1<sup>1</sup> E. Bypass)  
Greeneville, Tennessee 37744-0910
  - d. West Tennessee Regional Office  
8383 Wolf Lake Drive  
Bartlett, Tennessee 38133
  - e. Middle Tennessee Regional Office  
275 Stewarts Ferry Pike  
Nashville, Tennessee 37214
  - f. East Tennessee Regional Office  
Knoxville Regional Office, Greenbriar Cottage  
5908 Lyons View Drive  
Knoxville, Tennessee 37919
  - g. Central Office  
500 Deaderick Street, Suite 1500  
Nashville, Tennessee 37243

A.3. The Contractor shall provide a standard five-panel drug screen for the following drugs:

THC	50 NG/ML;15 NG/ML
Amphetamines	1000 NG/ML;500 NG.ML
Cocaine	300 NG/ML;150 NG/ML
Opiates	300 NG/ML;300 NG/ML
Phencyclidine	25 NG/ML;25 NH/ML

The unit cost per test shall include the cost of collection supplies.

A.4. The Contractor shall transport all specimens indicating a positive result on the initial drug screen to its lab within 24 hours of the positive screening for confirmation through Gas Chromatograph/Mass Spectrometer (GC/MS).

- a. All transport containers shall be labeled with, at a minimum:
  - i. The employee name/and or other identifying information as agreed upon between the Contractor and DMRS
  - ii. Date of test
  - iii. Donor initials
- b. The unit cost per test shall include all costs for transporting referred specimens and all costs for GC/MS confirmation services.
- c. The Contractor shall transport specimens to the lab by the most efficient delivery method depending on the distance between the lab and the specimen collection site.

A.5. The Contractor must provide a medical review officer for telephone consultations, with the State, on interpretations of test results. The hourly rate for telephone consultations shall be included in the unit cost per test.

A.6. The Contractor shall provide, at the State's request, an expert witness who can provide statewide in-court expert witness services. Additional court services shall include, but are not limited to, the following:

- a. testify as to the method used to perform the laboratory test and prepare the report,
- b. provide expert witness testimony about the reliability of the laboratory test results, and
- c. Provide court Affidavits upon request.

A.7. The Contractor shall notify the submitting location, by written notification - facsimile or email accepted, with the reason for the rejection when a specimen is rejected.

A.8. Routine negative test results must be available to the State (by written notification - facsimile or email accepted) by the following morning after shipment is received where appropriate. Both positive and negative written reports must be faxed to the requesting field location within forty-eight (48) hours of the assay.

A.9. A drug screen profile of each test sample submitted to the clinical laboratory for analysis shall be prepared by the clinical laboratory, indicating either positive or negative results, and returned to the appropriate DMRS location contact. The laboratory profile shall contain the following information:

- a. Name and Address of Clinical Laboratory
- b. Account Number
- c. Reason for Test

- d. Specimen/Donor Identification Number
- e. Collection Date

A.10. The Contractor shall include the following statement "Positive results are reported only after confirmation by Gas Chromatography/Mass Spectrometry" on all drug screen profiles.

A.11. The Contractor shall provide the laboratory's policy regarding chain-of-custody to the State.

**B. CONTRACT TERM:**

B.1. Contract Term. This Contract shall be effective for the period commencing on January 16, 2006 and ending on January 15, 2011. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

**C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed four hundred sixty thousand dollars (\$460,000.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, supplies, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

SERVICE	PAYMENT RATE PER UNIT				
	Year 1	Year 2	Year 3	Year 4	Year 5
	1/16/06-1/15/07	1/16/07-1/15/08	1/16/08-1/15/09	1/16/09-1/15/10	1/16/10-1/15/11
Five (5) Panel Drug Screen with GC/MS Confirmation	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
Court Affidavit (each case)	0.00	0.00	0.00	0.00	0.00
In Court Testimony (per hour)	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00

The Contractor shall not be compensated for travel time for in-court testimony. All costs for in-court testimony services shall be included in the unit cost per test.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner; or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not

be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public

liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts: All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Stephen H. Norris, Deputy Commissioner  
Department of Finance and Administration  
Division of Mental Retardation Services  
500 Deaderick Street  
Nashville, Tennessee 37243  
Telephone Number 615-532-6538  
Facsimile Number 615-532-9940

The Contractor:

Frank Moser  
Director of Marketing  
Aegis Sciences Corporation  
345 Hill Avenue  
Nashville, Tennessee 37210  
Telephone Number 615-255-3030  
Facsimile Number 615-255-2400 - ext. 613

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.5. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously

possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.8. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.9. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.
- In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.
- E.10. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

E.11. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.12. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

IN WITNESS WHEREOF:

AEGIS SCIENCES CORPORATION:

David L. Black, Ph.D.      2-6-06  
Dr. David L. Black, President/CEO      Date

DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF MENTAL RETARDATION SERVICES:

M. D. Goetz, Jr.      1-30-06  
M. D. Goetz, Jr., Commissioner      Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr.      3/6/06  
M. D. Goetz, Jr., Commissioner      Date

DEPARTMENT OF PERSONNEL:

NOT APPLICABLE

Randy C. Camp, Commissioner      Date

COMPTROLLER OF THE TREASURY:

John G. Morgan      3/13/06  
John G. Morgan, Comptroller of the Treasury      Date