

**CONTRACT #1**  
**RFS # 329.01-29110**  
**FA # 11-32342**  
**Edison # 21552**

**Department of Correction**  
**Rehabilitative Services**

**VENDOR:**  
**Medtox Laboratories, Inc.**



STATE OF TENNESSEE  
DEPARTMENT OF CORRECTION  
6<sup>TH</sup> FLOOR RACHEL JACKSON BUILDING  
320 SIXTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243-0465  
OFFICE (615) 741-1000

## MEMORANDUM

TO: Fiscal Review Committee

FROM: Derrick D. Schofield, Commissioner 

DATE: October 8, 2013

SUBJECT: TDOC REQUEST 32901-29110

Approval of the TDOC request RFS # 32901-29110 for Clinical Lab Drug Testing Confirmation is critical to the operation of the agency and to carrying out the agency mission.

This proposed amendment would increase the maximum liability to fund confirmations for positive drug screens from offenders under community supervision. When originally bid by RFP, the Medtox contract was only for confirmations for offenders in prison. BOPP had a contract for the same services with Aegis Labs. During meetings to prepare for the reassignment of adult supervision from BOPP to TDOC, it was determined that two contracts for the same service were not necessary, and the contract with Aegis (which had a higher per confirmation rate), was not extended beyond its October 30, 2012 end date. This amendment will not change the Medtox contract's current end date of June 30, 2015.

A non-competitive amendment request to permit this maximum liability increase is being submitted to the Commissioner of General Services simultaneously with this submission to the Fiscal Review Committee.

We appreciate your consideration of this matter.

CC:  
Bill Gupton  
Wes Landers  
Priscilla Wainwright  
Emily Gibson

RECEIVED  
OCT 24 2013  
FISCAL REVIEW

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Priscilla Wainwright	*Contact Phone:	(615) 253-5571		
*Original Contract Number:	FA11-32342	*Original RFS Number:	32901-29110		
Edison Contract Number: <i>(if applicable)</i>	21552	Edison RFS Number: <i>(if applicable)</i>	N/A		
*Original Contract Begin Date:	July 1, 2010	*Current End Date:	June 30, 2015		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	December 24, 2013				
*Department Submitting:	Department of Correction				
*Division:	Rehabilitative Services				
*Date Submitted:	October 24, 2013				
*Submitted Within Sixty (60) days: <i>If not, explain:</i>	Yes				
*Contract Vendor Name:	Medtox				
*Current Maximum Liability:	\$325,000.00				
<b>*Current Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 11	FY: 12	FY: 13	FY: 14	FY 15	FY
\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$65,000.00	\$
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY	FY
\$ 39,740.00	\$71,189.35	\$166,645.40	\$16,627.00	\$	\$
<b>IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:</b>			Contract expenditures due to increased usage by institutions and community supervision has not left any surplus funds.		
<b>IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:</b>			N/A		
<b>IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:</b>			N/A		
*Contract Funding	State:	\$325,000.00	Federal:	0.00	

## Supplemental Documentation Required for Fiscal Review Committee

Source/Amount:			
<p>For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.</p> <p>If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.</p>			

Interdepartmental:	0.00	<i>Other:</i>	0.00
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>	
There have been no previous amendments.		There have been no previous amendments.	
Method of Original Award: <i>(if applicable)</i>		RFP	
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$325,000.00. Please note this amount was based on institutional use only.	

Supplemental Documentation Required for  
Fiscal Review Committee

<b>Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.</b>					
Deliverable description:	FY 11:	FY 12:	FY 13:	FY 14:	FY 15:
Confirmation	\$65,000.00	\$65,000.00	\$65,000.00	260,000.00	260,000.00
<b>Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.</b>					
Deliverable description:	FY 11:	FY 12:	FY 13:	FY:14	FY:15
Confirmations	N/A	N/A	N/A	\$6,000.00	\$6,000.00
<b>Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.</b>					
Proposed Vendor Cost:	FY 11:	FY 12:	FY 13:	FY 14:	FY 15:
Medtox	N/A	N/A	N/A	\$260,000.00	\$260,000.00
Aegis (Prior BOPP Contract)	FY 11: N/A	FY 12: N/A	FY 13: N/A	FY 14: \$346,667.00	FY 15: \$346,667.00
Drug Test Services web page information	FY 11: N/A	FY 12: N/A	FY 13: N/A	FY 14: \$462,222.00	FY 15: \$462,222.00

**Sum of Sum Amount**

Unit	Edison Contract ID	Vendor Name	Fiscal Year				Grand Total	
			7/1/2010	7/1/2011	7/1/2012	7/1/2013		
32402	00000000000000000000000012924	Aegis Sciences Corp	106,667.00	144,088.00	176,923.00		427,678.00	
32901	00000000000000000000000012924	Aegis Sciences Corp				47,269.00	47,269.00	
	00000000000000000000000021552	Medtox Laboratories Inc		39,740.00	71,189.35	166,645.40	16,627.00	294,201.75
<b>Grand Total</b>			<b>106,667.00</b>	<b>183,828.00</b>	<b>248,112.35</b>	<b>213,914.40</b>	<b>16,627.00</b>	<b>769,148.75</b>



## E-Health Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** Lovel VanArsdale, Office of e-Health Initiatives  
Department of Finance & Administration  
**E-mail :** [Lovel.Vanarsdale@tn.gov](mailto:Lovel.Vanarsdale@tn.gov)

**FROM :** Priscilla Wainwright  
**E-mail :** [Priscilla.Wainwright@tn.gov](mailto:Priscilla.Wainwright@tn.gov)

**DATE :** 8/7/2013

**RE :** Request for eHealth Pre-Approval Endorsement

<b>Applicable RFS # 32901-29110</b>
<b>Office of e-Health Initiatives Endorsement Signature &amp; Date:</b>
 <b>Office of e-Health Initiatives</b>

Office of e-Health Initiatives (eHealth) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with medical/mental health-related professional, pharmaceutical, laboratory, or imaging type services as a component of the scope of service. This request seeks to ensure that eHealth is aware of and has an opportunity to review the procurement detailed below and in the attached document(s).

Please indicate eHealth endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

<b>Contracting Agency</b>	<b>Department of Correction</b>
<b>Agency Contact</b> ( <i>name, phone, e-mail</i> )	<b>Priscilla E. Wainwright</b> (615) 253-5571 <a href="mailto:priscilla.wainwright@tn.gov">priscilla.wainwright@tn.gov</a>
<b>Required Attachments</b> ( <i>as applicable – copies without signatures acceptable</i> )	
<input type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, or Non-Competitive Contract/Amendment Request <input checked="" type="checkbox"/> proposed contract or amendment	
<b>Medical/Mental Health-Related Service Description</b>	
Clinical Laboratory Drug Testing Confirmation Services	

# Non-Competitive Amendment Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: [Agsprs.Agsprs@state.tn.us](mailto:Agsprs.Agsprs@state.tn.us)

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

<b>Request Tracking #</b>	32901-29110	
<b>1. Procuring Agency</b>	Tennessee Department of Correction	
<b>2. Contractor</b>	Medtox Laboratories, Inc.	
<b>3. Contract #</b>	FA11-32342	
<b>4. Proposed Amendment #</b>	1	
<b>5. Edison ID #</b>	21552	
<b>6. Contract Begin Date</b>	July 1, 2010	
<b>7. Current Contract End Date</b> – with ALL options to extend exercised	June 30, 2015	
<b>8. Proposed Contract End Date</b> – with ALL options to extend exercised	June 30, 2015	
<b>9. Current Maximum Contract Cost</b> – with ALL options to extend exercised	\$ 325,000.00	
<b>10. Proposed Maximum Contract Cost</b> – with ALL options to extend exercised	\$715,000.00	
<b>11. Office for Information Resources Endorsement</b> – information technology service (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
<b>12. eHealth Initiative Support</b> – health-related professional, pharmaceutical, laboratory, or imaging	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
<b>13. Human Resources Support</b> – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
<b>14. Explanation Need for the Proposed Amendment</b>	<p>When originally bid, TDOC's five year contract with Medtox was for drug test confirmations only for offenders housed in TDOC facilities. With the integration of adult supervision which was formerly housed at BOPP into TDOC, additional funds must be added to the maximum liability to accommodate the additional usage by supervision of adults who are not incarcerated, but are living and working in the community.</p>	
<b>15. Name &amp; Address of the Contractor's Principal Owner(s)</b> – NOT required for a TN state education institution		

Request Tracking #	32901-29110
<p>David P. King, CEO and Chairman of the Board of Directors  Laboratory Corporation of America  531 South Spring Street  Burlington, North Carolina 27215</p>	
<p><b>16. Evidence Contractor's Experience &amp; Length Of Experience Providing the Service</b></p> <p>Medtox has been a federally-certified SAMHSA lab since 1988 and has over 25 years experience serving the criminal justice and rehabilitation market. It was acquired by LabCorp in 2012.</p>	
<p><b>17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</b></p> <p>The contract under which BOPP procured drug testing confirmations had a \$24 per confirmation rate for 8 panel drug screens. The current contract with Medtox is \$18 per confirmation, a \$6 per confirmation savings for the state. Given the over 1,000 confirmations performed each month, continuing with the incumbent contractor could save the State \$12,000 over the remaining two years of the contract.</p>	
<p><b>18. Justification</b> – <i>specifically explain why non-competitive negotiation is in the best interest of the state</i></p> <p>Permitting TDOC to amend the contract by increasing the maximum liability permits the drug testing confirmation function to continue uninterrupted, furthering the agency mission of public safety.</p>	
<p><b>Agency Head Signature and Date</b> – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i></p> <p style="text-align: center;">  <span style="margin-left: 100px;">10-22-2013</span> </p>	



## CONTRACT AMENDMENT

Agency Tracking # 32901-29110	Edison ID 21552	Contract # FA11-32342	Amendment # 1		
Contractor Legal Entity Name MedTox Laboratories, Inc.			Edison Vendor ID 722		
<b>Amendment Purpose &amp; Effect(s)</b> Increase Maximum Liability to Accommodate additional confirmations by Community Supervision portion of Agency following July 1, 2012 integration of adult offender supervision formerly housed at BOPP into TDOC.					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: June 30, 2015			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			<b>\$ 390,000.00</b>		
<b>Funding —</b>					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	\$65,000.00				\$65,000.00
2012	\$65,000.00				\$65,000.00
2013	\$65,000.00				\$65,000.00
2014	\$260,000.00				\$260,000.00
2015	\$260,000.00				\$260,000.00
<b>TOTAL:</b>	<b>\$715,000.00</b>				<b>\$715,000.00</b>
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>OCR USE</i>		
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT 1  
OF CONTRACT 21552**

This Amendment is made and entered by and between the State of Tennessee, Department of Correction, hereinafter referred to as the "State" and Medtox Laboratories, Inc., 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. 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 Seven Hundred Fifteen Thousand Dollars (**\$715,000.00**). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor 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 is added as Contract section E.10.
  - E.10. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective December 24, 2013. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**Medtox Laboratories, Inc.:**

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**SIGNATURE**

**DATE**

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

**Tennessee Department of Correction:**

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**Derrick D. Schofield, Commissioner**

**DATE**

## ATTACHMENT A

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	21552
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	Medtox Laboratories, Inc.
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)</b>	52-1130579

**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

(FA-type fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Agency Tracking # <b>32901-29110</b>	Edison ID <b>21552</b>
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Contractor <b>MEDTOX Laboratories, Inc.</b>	Contractor Federal Employer Identification or Social Security # <input checked="" type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 52-1130579
------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------

Service  
**CLINICAL LAB DRUG TESTING CONFIRMATION**

Contract Begin Date <b>July 1, 2010</b>	Contract End Date <b>June 30, 2015</b>	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s)
--------------------------------------------	-------------------------------------------	------------------------------------------------------------------------------------------------------------	-----------

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	\$ 65,000.00				\$ 65,000.00
2012	\$ 65,000.00				\$ 65,000.00
2013	\$ 65,000.00				\$ 65,000.00
2014	\$ 65,000.00				\$ 65,000.00
2015	\$ 65,000.00				\$ 65,000.00
<b>TOTAL:</b>	<b>\$ 325,000.00</b>				<b>\$ 325,000.00</b>

American Recovery and Reinvestment Act (ARRA) Funding -  YES  NO

OCR USE FA   <b>F&amp;A Secured Document</b> # <u>FA1132342</u>	Agency Contact & Telephone # Bill Gupton, 615.741.1000 Ext. 8195
	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) Joey Gallaher, 615.741.1000 Ext. 8096 
	Speed Code _____ Account Code 70804000

Contractor Ownership/Control

African American   
  Person w/ Disability   
  Hispanic   
  Small Business   
  Government  
 Asian   
  Female   
  Native American   
  NOT Minority/Disadvantaged   
  Other

Contractor Selection Method

RFP   
  Competitive Negotiation \*   
  Alternative Competitive Method \*  
 Non-Competitive Negotiation \*   
  Other \*

\*Procurement Process Summary

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF CORRECTION  
AND  
MEDTOX LABORATORIES, INC.**

This Contract, by and between the State of Tennessee, **DEPARTMENT OF CORRECTION**, hereinafter referred to as the "State" and **MEDTOX LABORATORIES, INC.**, hereinafter referred to as the "Contractor," is for the provision of **CLINICAL LAB DRUG TESTING CONFIRMATION**, as further defined in the "SCOPE OF SERVICES."

The Contractor is A FOR-PROFIT CORPORATION  
Contractor Federal Employer Identification or Social Security Number: 52-1130579  
Contractor Place of Incorporation or Organization: Delaware

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall provide confirmation testing, which includes the following drugs listed below. All drug testing bids must show detection levels in the parameters indicated below or lower detection levels.

CODE	DRUG	DETECTION LEVEL	
		SCREEN	GC / MS
AMP	Expanded Amphetamine (including MDA and/or MDMA)	400-200 ng/mL	100-75 ng/mL
BAR	Barbituates	300-200 ng/mL	150-100 ng/mL
BZO	Benzodiazepines	300-200 ng/mL	150-75 ng/mL
COC	Cocaine	200-150 ng/mL	100-50 ng/mL
MTD	Methadone	300-200 ng/mL	150-100 ng/mL
MAMP	Methamphetamine	500-300 ng/mL	100-75ng/mL
OPI	Opiates	200-100 ng/mL	75-50 ng/mL
OXY	Oxycodone	200-100 ng/mL	75-50 ng/mL
PCP	Phencyclidine	25-15 ng/mL	10-5 ng/mL
PPX	Propoxyphene	400-200 ng/mL	150-100 ng/mL
THC	Cannabinoids	50-30 ng/mL	10-2 ng/mL
BUP	Buprenorphine	10-5 ng/mL	5-2 ng/mL

- A.3. All specimens identified as positive on the initial test must be confirmed positive using gas chromatography/mass spectrometry (GS/MS) before a positive result can be reported.
- A.4. The Contractor shall provide alcohol confirmation testing as requested by the testing location. Confirmation tests shall specify detection levels in the test sample.
- A.5. The Contractor shall check all test samples for adulteration. All urinalysis test samples will be checked for pH level, creatine level, and specific gravity with results reported on the drug profile result form.

- A.6. The contractor shall provide statewide court testimony services, if needed, at no additional cost to the State. Testimony may be either in person or by affidavit, as required by the court. The Contractor shall provide, at the State's request, a certifying scientist (Ph.D., in one of the natural sciences [or comparable] with appropriate training and experience in toxicology) who can:
- Testify as to the method used to perform the test and prepare the report
  - Provide testimony about the reliability of the test results.
- A.7. Courier Service. All rates shall include statewide daily specimen pick-up service and test report delivery. Typical pick-up service shall be Monday through Friday within twenty-four (24) hours of specimen collection. Occasional Saturday pick-up may be requested by the State. Contractor shall train State personnel in appropriate procedures for preserving specimens when held at the institution for more than twenty-four (24) hours. Contractor shall arrange for all specimens to be delivered to the Contractor's laboratory the next business day after pick-up by overnight express courier (e.g., United Parcel Service, Airborne Express, FedEx, or comparable). In certain circumstances a second pickup may be required in a single day, at no additional cost to the State.
- A.8. The Contractor shall notify the submitting location, in writing, with the reason for rejection when a specimen is rejected.
- A.9. Reporting and Results. 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 designated institutional contract. The laboratory profile shall contain the following information:
- Name and Address of Clinical Laboratory
  - Account Number
  - Reason for Test
  - Specimen/Donor Identification Number
  - Name of Receiving Institution
  - Name of Institutional Contact
  - Collection Date
  - Date Received from Institution
  - Date Reported to the Institution
  - Test Methods by Drug Class and Detection Levels including initial and confirmation
  - Profile Results by Class and Confirmation Detection Levels
  - Name of Certifying Authority
  - Date of Certification
- A.10. The contractor shall include the following statement: "Positive results are reported only after confirmation by Gas Chromatography /Mass Spectrometry" on all drug screens.
- A.11. Specimens. All specimens must be held under refrigeration or consistent with regulatory requirements before discarding, unless otherwise requested from the agency.
- A.12. Specimen Containers. Sufficient materials required to collect referred specimens and transport those specimens to the laboratory shall be supplied at no additional cost by the Contractor. Agency shall initially receive sufficient inventory for one (1) month per location.
- A.13. Specimen Courier Containers. Courier containers, which are self-addressed and prepaid for shipping specimens to the laboratory by overnight express courier, shall be provided by the Contractor at no additional cost.
- A.14. Request Forms. Preprinted request forms designed for ordering tests must be supplied at no additional cost by the State.

- A.15. Telephone Consultations. The Contractor must provide, without charge, a toxicologist for telephone consultations with agency on interpretations of test results.
- A.16. Delivery Time. Routine test results must be received (telephone, telegraph, etc.) by the using agency the following morning after shipment is received by the Contractor. Both positive and negative written reports must be faxed to the agency within forty-eight (48) hours of the assay.
- A.17. Freight on Board (F.O.B) State and Local Government Agencies. All quotations shall be F.O.B. destination, which shall mean delivered and unloaded onto the receiving dock of any State agency and, when applicable, any local government agency or authorized corporation within the State of Tennessee, with all charges for transportation and uploading prepaid by the vendor/contractor.
- A.18. Training. The Contractor shall provide on-site training for State personnel as needed, in matters related to the services including, but not limited to, specimen collection procedures, completion of forms, and drug abuse recognition training.
- A.19. Certification. The Contractor shall maintain College of American Pathologist-Forensic Urine Drug Testing (CAP-FUDT) certification or Substance Abuse and Mental Health Services Administration (SAMHSA) certification throughout the term of this Contract.

**B. CONTRACT TERM:**

This Contract shall be effective for the period commencing on **JULY 1, 2010** and ending on **JUNE 30, 2015**. 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 **THREE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$325,000.00)**. 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.

- C.2. Compensation Firm. The payment 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 payment 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.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	07/01/10 – 06/30/11	07/01/11 – 06/30/12	07/01/12 – 06/30/13	07/01/13 – 06/30/14	07/01/14 – 06/30/15
GC/MS drug confirmation screen	\$ 18.00	\$ 18.00	\$ 18.00	\$ 18.00	\$ 18.00
Alcohol Confirmation Screen	\$ 18.00	\$ 18.00	\$ 18.00	\$ 18.00	\$ 18.00

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

TENNESSEE DEPARTMENT OF CORRECTION, ACCOUNTS PAYABLE  
 3<sup>RD</sup> FLOOR, RACHEL JACKSON BUILDING  
 320 6<sup>TH</sup> AVE. NORTH  
 NASHVILLE, TN 37243-0465

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: TENNESSEE DEPARTMENT OF CORRECTION, ACCOUNTS PAYABLE;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
  - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
  - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
  - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
  - iv. Amount Due by Service; and
  - v. Total Amount Due for the invoice period.

- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
  - (2) not include any future work but will only be submitted for completed service; and
  - (3) not include sales tax or shipping charges.
- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. 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.7. 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.8. 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.9. 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 below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). 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. 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 ONE, 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.
- D.9. Records. The Contractor shall maintain documentation for all charges 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.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. 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.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. 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.14. 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.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. 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, natural disasters, riots, wars, epidemics, or any other similar cause.

- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. 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.19. 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.20. 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.21. 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 certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

BILL GUPTON, DIRECTOR OF SUBSTANCE ABUSE  
 TENNESSEE DEPARTMENT OF CORRECTION  
 6<sup>TH</sup> FLOOR, RACHEL JACKSON BUILDING  
 320 6<sup>TH</sup> AVENUE NORTH  
 NASHVILLE, TENNESSEE 37243-0465

[William.Gupton@tn.gov](mailto:William.Gupton@tn.gov)  
 Telephone # (615) 741-1000 Ext. 8195  
 FAX # (615) 741-1055

The Contractor:

JAMES SCHOONOVER, CHIEF MARKETING OFFICER  
 AND VICE PRESIDENT OF SALES AND MARKETING  
 MEDTOX LABORATORIES, INC.

402 WEST COUNTY ROAD D  
SAINT PAUL, MINNESOTA 55112

[jschoonover@medtox.com](mailto:jschoonover@medtox.com)  
Telephone # 1.800.832.3244  
FAX # 1.866.670.6305

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- 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. 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 (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts 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 TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. 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.

- E.6. **Confidentiality of Records.** Strict standards of confidentiality of records shall be maintained in accordance with the 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 State law and ethical standards and 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 State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

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.

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

- E.7. **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.8. **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.9. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment **TWO** and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to

provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, 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. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

(4) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

b. State Breach— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

IN WITNESS WHEREOF,

MEDTOX LABORATORIES, INC.:

  
\_\_\_\_\_  
JAMES A. SCHOONOVER, VICE PRESIDENT  
CONTRACTOR SIGNATURE

  
\_\_\_\_\_  
DATE

JAMES SCHOONOVER VP, CMO

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF CORRECTION:

Gayle Ray

Gayle Ray, COMMISSIONER

6/30/10

DATE

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	32901-29110
CONTRACTOR LEGAL ENTITY NAME:	MEDTOX LABORATORIES, INC.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	52-113 0579

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.



**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.

JAMES SCHOONOVER VP, CMO

**PRINTED NAME AND TITLE OF SIGNATORY**

6/29/10

**DATE OF ATTESTATION**

**ATTACHMENT TWO**

**BREACHES AND ASSOCIATED LIQUIDATED DAMAGES**

<b>#</b>	<b>Issue</b>	<b>Scope Reference</b>	<b>Cost</b>	<b>Frequency</b>
1	Failure to provide confirmation testing for any of the twelve (12) substances suspected present on initial screen, listed in contract.	A.2	\$250	Per Occurrence
2	Failure to confirm all initial positive tests through GS/MS method.	A.3	\$50	Per Occurrence
3	Failure to provide all alcohol confirmation testing as required by contract.	A.4	\$50	Per Occurrence
4	Failure to check pH levels, creatine levels and specific gravity for adulterants.	A.5	\$50	Per Occurrence
5	Failure to provide statewide court testimony services, if needed, regarding methods, results and reliability.	A.6	\$1,000	Per Occurrence
6	Failure to provide specimen pick-up, Monday-Friday, within twenty four (24) hours of collection.	A.7	\$250	Per Occurrence
7	Failure to notify submitting location, in writing, the reason for a rejection if specimen is rejected.	A.8	\$50	Per Occurrence
8	Failure of laboratory report to contain the information outlined in the contract.	A.9	\$50	Per Occurrence
9	Failure to add the statement "Positive results are reported only after confirmation by GC/MS" on all drug screens.	A.10	\$50	Per Occurrence
10	Failure to hold all specimens under refrigeration or consistent with regulatory requirements before discarding.	A.11	\$50	Per Occurrence
11	Failure to provide facilities with specimen containers at no additional cost.	A.12	\$250	Per Occurrence
12	Failure to provide specimen courier containers at no additional cost.	A.13	\$250	Per Occurrence
13	Failure to provide preprinted request forms for ordering tests at no additional cost.	A.14	\$25	Per Occurrence
14	Failure to provide a toxicologist for telephone consultation without charge.	A.15	\$100	Per Occurrence
15	Failure for all deliveries to be F.O.B. and prepaid by the contractor.	A.17	\$100	Per Occurrence
16	Failure of contractor to provide on-site training as needed for State personnel in related areas.	A.18	\$500	Per Occurrence
17	Failure to meet certification requirements.	A.19	\$1,000	Per Occurrence and Each Additional Thirty (30) Days Problem is Not Addressed



STATE OF TENNESSEE  
**RFP # 32901-29110**  
**AMENDMENT # ONE**

**JUNE 7, 2010**

**THE SUBJECT RFP IS HEREBY AMENDED AS FOLLOWS.**

- 1. The following RFP Schedule of Events updates or confirms scheduled RFP dates.**

EVENT	TIME	DATE	UPDATED / CONFIRMED
1) RFP Issued		May 27, 2010	CONFIRMED
2) Proposal Deadline	2:00 p.m.	June 9, 2010	UPDATED
3) Qualifications Evidence Evaluations Completed		June 14, 2010	UPDATED
4) Cost Proposals Opened & Lowest Cost Identified	2:00 p.m.	June 15, 2010	UPDATED
5) Award Notice Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	June 16, 2010	UPDATED
6) Contract Signed by the State		June 28, 2010	UPDATED
7) Contract Signature Deadline	2:00 p.m.	June 29, 2010	UPDATED
8) Contract Start Date		July 1, 2010	CONFIRMED

- 2. The following State responses to the questions detailed shall amend or clarify this RFP accordingly.** (NOTE: Any restatement of RFP text in the Question/Comment column below shall NOT be construed to change the actual wording of the RFP document.)

QUESTION/COMMENT	STATE RESPONSE
1) Although the RFP title includes Confirmation, my reading indicates that you want samples screened and then confirmed by GC/MS at the lab. Are the samples pre-screened before being sent to the lab or to be screened and confirmed at the lab?	Field test is done at the facility. And positive tests are sent to the lab to be confirmed.
2) 2.5% of 15,000 inmates equates to about 350-400 samples per month to come to the lab. Is this a good estimate?	No. 2.5% of the inmate population is field tested randomly. With the inmate population getting closer to 20,000 as well as reasonable suspicion and program admittance testing, the number field tested may be closer to 500-600/month. Only those specimens testing positive on the field test are sent to the lab for confirmation. The State does not guarantee any volume or minimum purchase quantity.
3) How many DOC facilities will be sending urine samples? Can you tell me where they are in Tennessee?	Eleven (11). See facility list
4) Can you tell me what the positive rate has been the last several years?	Rates by facility range from .5%-12% but as a whole, rates are between 3-6% total since 2006. Please note that the State has used an 8-panel test rather than the 12-panel test required under this RFP, and higher cutoff levels.
5) Can you provide the current vendor and the current cost?	Medtox. \$20 per confirmation.

QUESTION/COMMENT	STATE RESPONSE
6) When is the deadline to submit questions?	No later than the Proposal Deadline detailed in the RFP Section 2, Schedule of Events. (2:00 p.m. - June 8, 2010)
7) Who is the current vendor?	Medtox
8) What is the current pricing?	\$20 per confirmation
9) How can we get a copy of the current contract?	Via e-mail request
10) How many pick up locations are there?	Eleven (11). See facility list
11) How many copies of each proposal are to be submitted?	See RFP Section 3.
12) Can you please provide the current pricing you are paying for the searches being requested?	These aren't "searches", but confirmations run at \$20 each
13) Does the State of Tennessee Department of Correction permit the use of third party services such as outsourcing to offshore/foreign-based national entities?	See Attachment 6.4, Section D.5, concerning subcontracting.
14) Does the State of Tennessee Department of Correction allow its employee data to be aggregated and/or resold by vendors?	This RFP is for clinical laboratory drug testing confirmation services for inmate drug testing only. The scope of services does not include employee drug testing, and no employee data will be provided.
15) Does the State of Tennessee Department of Correction permit it's vendors to utilize any third parties to process services? If so, do you require a certification of services from them to ensure employee data is kept secure?	See Attachment 6.4, Section D.5, concerning subcontracting. This RFP is for clinical laboratory drug testing confirmation services for inmate drug testing only. The scope of services does not include employee drug testing, and no employee data will be provided.
16) Who is current provider of these services and what is their price?	Medtox \$20 per confirmation
17) Is Liquid Chromatography/Mass Spectrometry/Mass Spectrometry (LC/MS/MS) acceptable as a confirmation method? The Federal Government is poised to begin accepting LC/MS/MS as a confirmation method for its regulated programs beginning October 1 of this year.	Not at this time.
<p>18) Section A.16. <u>Delivery Time</u> states that "Routine test results must be received (telephone, telegraph, etc.) by the using agency the following morning after shipment is received by the Contractor. Both positive and negative written reports must be faxed to the agency within forty-eight (48) hours of the assay."</p> <p>a. Please clarify the difference between "routine test results" that must be received by the using agency the following morning after shipment is received and "written reports".</p> <p>b. Is the 48 hour required delivery of the written reports calendar days or business days?</p>	<p>The Contractor must communicate the results of all tests to the using agency the following morning. This communication can be by telephone or other method. Such communication must be followed-up by a written report faxed to the agency within 48 hours of the assay.</p> <p>Business Days</p>



STATE OF TENNESSEE  
DEPARTMENT OF CORRECTION

REQUEST FOR PROPOSALS  
FOR CLINICAL LAB DRUG TEST CONFIRMATION

RFP # 32901-29110

1. INTRODUCTION

The State of Tennessee, DEPARTMENT OF CORRECTION, hereinafter referred to as "the State," has issued this Request for Proposals (RFP) with the intent to award a contract for clinical laboratory drug testing confirmation services. This solicitation will be for statewide use by all TDOC institutions within Tennessee. The TDOC is one of the two largest consumers of clinical laboratory drug testing confirmation services in the state.

The State of Tennessee, Department of Correction, hereinafter referred to as the State, has a responsibility to provide a safe and secure environment for staff and inmates to live and work and to establish and enforce the rules and regulations governing inmate conduct. The State recognizes that illegal drug use within correctional facilities presents a threat to the safety and security of the institution. Therefore, the Tennessee Department of Correction has established a zero-tolerance policy for illegal drug use within state correctional facilities.

All state incarcerated adult inmates are subject to drug and alcohol testing at any time during their incarceration. There are approximately 15,000 adult offenders incarcerated within state operated or state funded correctional facilities in Tennessee. The State randomly tests 2.5-percent of the inmate population each month. The State also drug tests inmates for the following reasons; for cause, initial classification, special program, work release, after visitation, and prior to on parole. Inmates are tested for single and multiple substances that are commonly used by the population being tested.

The RFP defines minimum service requirements, solicits proposals, details proposal requirements, and outlines the State's process for evaluating proposals and selecting a contractor to provide the required service. Through this RFP, the State seeks to buy the best services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are owned by minorities, women, persons with a disability, and small business enterprises, opportunity to do business with the state as contractors and sub-contractors.

1.1. **Scope of Service, Contract Period, & Required Terms and Conditions.** The contract awarded pursuant to this RFP will be drafted in accordance with the RFP Attachment 6.4., *Pro Forma Contract*, which details the State's required:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

1.2. **Nondiscrimination.** No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP 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 pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- 1.3. **RFP Communications.** Reference the RFP identification number, **RFP # 32901-29110**, in all communications relating to this RFP, and direct any such communications to the following person designated as the RFP Coordinator.

William M. Anderson, Director of Contracts Administration  
 Department of Correction  
 3<sup>rd</sup> Floor, Rachel Jackson Building  
 320 Sixth Avenue North  
 Nashville, TN 37243-0465

Telephone: 615-741-1000 ext 8104  
 Fax: 615-741-4605  
 E-mail: [William.M.Anderson@tn.gov](mailto:William.M.Anderson@tn.gov)

**Unauthorized contact about this RFP with employees or officials of the State of Tennessee may result in disqualification from consideration under this procurement process.**

Notwithstanding the foregoing, potential proposers may also contact the following as appropriate: (a) staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, women-owned, and small businesses as well as general, public information relating to this RFP; and (b) the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Ken Locke  
 Office of the Commissioner  
 6th Floor, Rachel Jackson Building  
 320 Sixth Avenue North  
 Nashville, TN 37243-0465  
 Telephone: 615-741-1000 extension 8155  
 E-mail: [Kenneth.W.Locke@tn.gov](mailto:Kenneth.W.Locke@tn.gov)

- 1.4. **Proposer Required Review & Waiver of Objections.** Each potential proposer must carefully review this RFP, including but not limited to, attachments (including the *Pro Forma* Contract) and any amendments, to identify any issues, questions, comments, defects, objections, or other matter requiring clarification or correction (collectively called "issues"). A potential proposer with issues concerning this RFP must provide such in writing to the State no later than the Proposal Deadline detailed in the RFP Section 2, *Schedule of Events*. Protests based on any issues shall be considered waived and invalid if the issues have not been brought to the attention of the State, in writing, by the Proposal Deadline.

## 2. SCHEDULE OF EVENTS

The following RFP Schedule of Events represents the State's best estimate for this RFP. The state reserves the right, at its sole discretion, to adjust the Schedule of Events or to otherwise amend this RFP at any time. The State reserves the right, at its sole discretion, to cancel or to cancel and reissue this RFP in accordance with applicable laws and regulations.

EVENT	TIME (central time zone)	DATE (all dates are state business days)
1. RFP Issued		May 27, 2010
2. Proposal Deadline	2:00 p.m.	June 8, 2010
3. Qualifications Evidence Evaluations Completed		June 11, 2010

4. Cost Proposals Opened & Lowest Cost Identified	2:00 p.m.	June 14, 2010
5. Award Notice Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	June 15, 2010
6. Contract Signed by the State		June 25, 2010
7. Contractor Signature Deadline	2:00 p.m.	June 28, 2010
8. Contract Start Date		July 1, 2010

### 3. PROPOSAL REQUIREMENTS

- 3.1. **Two Part Proposal.** A proposal in response to this RFP must consist of two parts— Qualifications Evidence (including any supporting documentation) and a Cost Proposal. A Proposer is liable for any and all proposal errors or omissions.

#### 3.1.1. QUALIFICATIONS EVIDENCE

The RFP Attachment 6.2., *Qualifications Evidence Guide* details specific mandatory requirements for making a proposal in response to this RFP. A Proposer must duplicate RFP Attachment 6.2. to cover (as a table of contents), organize, reference, and complete the Qualifications Evidence portion of the proposal. All information and documentation included must address a specific requirement item detailed in the RFP Attachment 6.2., *Qualifications Evidence Guide* and must be clearly referenced. The State will deem any information not meeting these criteria to be extraneous and will not review it.

**NOTICE: DO NOT include any pricing or cost information in any part of the Qualifications Evidence. If a Proposer includes any pricing or cost information amount of any type (even pricing relating to other projects) within the Qualifications Evidence, the state will deem the proposal non-responsive and reject it.**

#### 3.1.2. COST PROPOSAL

A Proposer must use an exact duplicate of the RFP Attachment 6.3., *Cost Proposal Guide* to record only the proposed cost exactly as required by the *Cost Proposal Guide*. A Proposer must sign and date the Cost Proposal. The Cost Proposal, recorded as required, must incorporate ALL costs for ALL services under the contract for the total contract period. A Proposer must NOT record any other rates, amounts, or information except that which is specifically required.

**NOTICE: The state will deem the proposal non-responsive and reject it if a Proposer fails to submit a Cost Proposal exactly as required.**

### 3.2. Proposal Delivery

- 3.2.1. A Proposer must submit the Qualifications Evidence (addressing the RFP Attachment 6.2., *Qualifications Evidence Guide*) to the State in a sealed envelope clearly labeled:

**“DO NOT OPEN – RFP # 32901-29110 – QUALIFICATIONS EVIDENCE  
FROM [PROPOSER LEGAL ENTITY NAME]”**

- 3.2.2. A Proposer must submit the Cost Proposal (using an exact duplicate of the RFP Attachment 6.3., *Cost Proposal Guide*) to the State in a separate, sealed envelope clearly labeled:

**“DO NOT OPEN – RFP # 32901-29110 – COST PROPOSAL  
FROM [PROPOSER LEGAL ENTITY NAME]”**

- 3.2.3. The separately sealed Qualifications Evidence and Cost Proposal components of the proposal may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

**“RFP # 32901-29110 – SEPARATELY SEALED QUALIFICATIONS EVIDENCE & COST  
PROPOSAL FROM [PROPOSER LEGAL ENTITY NAME]”**

- 3.2.4. A proposal must be delivered to the following address.

WILLIAM M. ANDERSON, DIRECTOR OF CONTRACTS ADMINISTRATION  
TENNESSEE DEPARTMENT OF CORRECTION  
3<sup>RD</sup> FLOOR, RACHEL JACKSON BUILDING  
320 6<sup>TH</sup> AVENUE, NORTH  
NASHVILLE, TENNESSEE 37243-0465

- 3.3. **Proposal Deadline.** A Proposer must ensure that the State receives a proposal no later than the Proposal Deadline time and date detailed in the RFP Section 2, *Schedule of Events*. A proposal must respond, as required, to this RFP (including its attachments) as may be amended. The State will not accept late proposals, and a Proposer's failure to submit a proposal before the deadline will result in disqualification of the proposal.

3.4. **Proposer/Proposal Prohibitions:**

- A Proposer will NOT be allowed to alter or revise proposal documents after the Proposal Deadline unless such is formally requested, in writing, by the State.
- A proposal must NOT include the Proposer's own contract terms and conditions.
- A proposal must NOT restrict the rights of the State or otherwise qualify either the offer to deliver services as required by this RFP or the Cost Proposal.
- A Cost Proposal must NOT result from any collusion between Proposers.
- A Proposer must NOT provide, for consideration in this RFP process or subsequent contract negotiations, incorrect information that the Proposer knew or should have known was materially incorrect.

4. **GENERAL INFORMATION & REQUIREMENTS**

- 4.1. **Conflict of Interest.** This RFP shall not result in a contract with:

- an individual who is, or within the past six months has been, an employee of the State of Tennessee or who is a volunteer member of a State board or commission that votes for, lets out, overlooks, or in any manner superintends the services being procured in this RFP;
- a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee (this will not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);
- a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,

- any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this RFP or its scope of services (such person or entity being deemed by the State as having information that would afford an unfair advantage over other Proposers).

For the purposes of applying the requirements of this subsection, the State will deem an individual to be an employee of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid, but the term "employee of the State of Tennessee" shall not include individuals performing volunteer services for the State of Tennessee.

- 4.2. **State Right of Rejection.** Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all proposals.

The State may deem as non-responsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, a proposal's minor variances from full compliance with this RFP. If the State waives variances in a proposal, such waiver shall not modify the RFP requirements or excuse the Proposer from full compliance with such, and the State may hold any resulting Contractor to strict compliance with this RFP.

- 4.3. **State Right to Refuse Personnel.** The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing service in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

4.4. **Disclosure of Proposal Contents**

- 4.4.1. Each proposal and all materials submitted to the State in response to this RFP become the property of the State of Tennessee. Selection or rejection of a proposal does not affect this right. By submitting a proposal, a Proposer acknowledges and accepts that the full proposal contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.4.2. The State will hold all proposal information in confidence during the evaluation process. Notwithstanding the foregoing, a list of actual Proposers submitting timely proposals may be available to the public, upon request, after the Proposal Deadline detailed in the RFP Section 2, *Schedule of Events*.
- 4.4.3. Proposals and associated materials will be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7) after the State completes proposal evaluations and issues an Evaluation Notice.

4.5. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Proposers will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

5. **PROPOSAL EVALUATION & CONTRACT AWARD**

The RFP Coordinator will review each proposal for compliance with all general RFP requirements. Then, a Proposal Evaluation Team of at least three procuring agency employees will review the Qualifications Evidence and any supporting documentation for each compliant proposal. For a proposal in response to this RFP to be acceptable and eligible for contract award, all evaluators must determine that the Qualifications Evidence documents that the Proposer meets the mandatory qualifications and experience requirements and is otherwise, at least, minimally acceptable as a contractor for the subject services. The State will document, in writing, any determination (and the specific reasons therefore) that a Proposer's Qualification Evidence failed to adequately address and document both compliance with mandatory requirements and acceptability for contract award.

After the evaluation of Qualifications Evidence is completed, the RFP Coordinator will review the Cost Proposal submitted by each Proposer deemed acceptable for contract award. The RFP Coordinator will assess whether each Cost Proposal complies with RFP requirements without qualification. The RFP Coordinator will document, in writing, any determination (and the specific reasons therefore) that a Cost Proposal is non-compliant with requirements such that the Proposer is non-responsive to the RFP.

The RFP Coordinator will identify the responsive, responsible Cost Proposal indicating the lowest cost to the state, and the procuring agency will award the contract to the Proposer offering the lowest cost. In the event that two or more Proposers offer the same lowest cost, the RFP Coordinator will request a Best and Final Cost Proposal from the tied Proposers. Should a second tie result, the State will award the contract to one of the tied Proposers by chance.

**PROPOSAL STATEMENT OF CERTIFICATIONS AND ASSURANCES**

The Proposer must sign and complete the *Proposal Statement of Certifications and Assurances* below as required, and it must be included in the Qualifications Evidence (as required by the RFP Attachment 6.2., *Qualifications Evidence Guide*).

**The Proposer does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:**

1. The Proposer will comply with all of the provisions and requirements of the RFP.
2. The Proposer will provide all services as defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma Contract* for the total contract period.
3. The Proposer accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma Contract*.
4. The Proposer acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the contract.
5. The Proposer will comply with:
  - (a) the laws of the State of Tennessee;
  - (b) Title VI of the federal Civil Rights Act of 1964;
  - (c) Title IX of the federal Education Amendments Act of 1972;
  - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
  - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the proposal submitted in response to the RFP is accurate.
7. The proposal submitted in response to the RFP was independently prepared, without collusion, under penalty of perjury.
8. No 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 Proposer in connection with the RFP or any resulting contract.

**By signing this *Proposal Statement of Certifications and Assurances* below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If the signatory is not the Proposer (if an individual) or the Proposer's company *President or Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the proposing entity.**

**DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE PROPOSING ENTITY**

**SIGNATURE:**

\_\_\_\_\_

**PRINTED NAME & TITLE:**

\_\_\_\_\_

**DATE:**

\_\_\_\_\_

**PROPOSER LEGAL ENTITY NAME:**

\_\_\_\_\_

**PROPOSER FEDERAL EMPLOYER IDENTIFICATION NUMBER (or SSN):**

\_\_\_\_\_

**QUALIFICATIONS EVIDENCE GUIDE**

The Proposer must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Proposer must also detail the proposal page number(s) for each item in the appropriate space below.

Prior to State evaluation of Qualifications Evidence, the RFP Coordinator will review each proposal for compliance with all RFP requirements, including but not limited to:

- The proposal must be delivered to the State no later than the Proposal Deadline specified in the Schedule of Events.
- The Qualifications Evidence and the Cost Proposal must be packaged separately as required in RFP Section 3.2.
- The Qualifications Evidence must NOT contain cost or pricing information of any type.
- The Qualifications Evidence must NOT contain any restriction(s) of the rights of the State or other proposal limitation.

The Proposal Evaluation Team will, then, review the Qualifications Evidence to determine if the mandatory requirement items are addressed as required and that it documents that the Proposer meets each mandatory qualification and experience requirement and is otherwise, at least, minimally acceptable as a contractor for the subject services.

<b>PROPOSER LEGAL ENTITY NAME:</b>		
<b>Proposal Page # (Proposer completes)</b>	<b>Item Ref.</b>	<b>QUALIFICATIONS EVIDENCE</b>
	<b>6.2.1.</b>	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the proposal.
	<b>6.2.2.</b>	Provide the RFP Attachment 6.1., <i>Proposal Statement of Certifications and Assurances</i> completed and signed by an individual empowered to bind the Proposer to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.
	<b>6.2.3.</b>	Provide a statement, based upon reasonable inquiry, of whether the Proposer or any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.  NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.
	<b>6.2.4.</b>	Provide a statement of whether the Proposer or, to the Proposer's knowledge, any of the Proposer's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.  NOTE: Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.
	<b>6.2.5.</b>	Provide a statement of whether there is any material, pending litigation against the Proposer that the Proposer should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Proposer's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Proposer's performance in a contract pursuant to this RFP.  NOTES: Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.  All persons, agencies, firms, or other entities that provide legal opinions regarding the Proposer must be properly licensed to render such opinions. The State may require the Proposer to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.
	<b>6.2.6.</b>	Provide a statement signed by company officer attesting that company has been performing these services at least three (3) years.
	<b>6.2.7.</b>	Provide a statement attesting that in the last five (5) years, the Proposer has not filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors.

**COST PROPOSAL & SCORING GUIDE**

*NOTICE: THE COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED*

**COST PROPOSAL SCHEDULE**— The Cost Proposal, detailed below, shall indicate the proposed price for all services set forth in the RFP Attachment 6.4., *Pro Forma Contract* and for the entire contract period. The Cost Proposal shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Proposer.

<p>This Cost Proposal must be signed, in the space below, by an individual empowered to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the <i>President or Chief Executive Officer</i>, this document <u>must</u> attach evidence showing the individual's authority to legally bind the proposing entity.</p>								
PROPOSER SIGNATURE:								
PRINTED NAME & TITLE:								
DATE:								
PROPOSER LEGAL ENTITY NAME:								
Cost Item Description	Proposed Cost					State Use ONLY		
	07/01/2010 — 06/30/2011	07/01/2011— 06/30/2012	07/01/2012— 06/30/2013	07/01/2013— 06/30/2014	07/01/2014— 06/30/2015	Sum	Evaluation Factor	Evaluation Cost (sum x factor)
GC/MS drug confirmation screen as specified in Section A.2., of Attachment 6.4.	\$ / EACH	\$ / EACH	\$ / EACH	\$ / EACH	\$ / EACH		4600	
Alcohol Confirmation Screen as specified in Section A.4. of Attachment 6.4.	\$ / EACH	\$ / EACH	\$ / EACH	\$ / EACH	\$ / EACH		900	
<b>EVALUATION COST AMOUNT</b> (sum of evaluation costs above):								
<p><i>The state will use this sum to determine the Cost Proposal reflecting the lowest cost to the state. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i></p>								
<p>State Use – RFP Coordinator Signature, Printed Name &amp; Date:</p>								

***PRO FORMA CONTRACT***

The *pro forma* contract detailed in following pages of this exhibit contains some “blanks” (signified by field descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF CORRECTION  
AND  
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, DEPARTMENT OF CORRECTION, hereinafter referred to as the "State" and CONTRACTOR LEGAL ENTITY NAME, hereinafter referred to as the "Contractor," is for the provision of **CLINICAL LAB DRUG TESTING CONFIRMATION**, as further defined in the "SCOPE OF SERVICES."

The Contractor is A/AN INDIVIDUAL, FOR-PROFIT CORPORATION, NON-PROFIT CORPORATION, SPECIAL PURPOSE CORPORATION OR ASSOCIATION, PARTNERSHIP, JOINT VENTURE, OR LIMITED LIABILITY COMPANY.

Contractor Federal Employer Identification or Social Security Number: ID NUMBER

Contractor Place of Incorporation or Organization: LOCATION

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall provide confirmation testing, which includes the following drugs listed below. All drug testing bids must show detection levels in the parameters indicated below or lower detection levels.

CODE	DRUG	DETECTION LEVEL	
		SCREEN	GC / MS
AMP	Expanded Amphetamine (including MDA and/or MDMA)	400-200 ng/mL	100-75 ng/mL
BAR	Barbituates	300-200 ng/mL	150-100 ng/mL
BZO	Benzodiazepines	300-200 ng/mL	150-75 ng/mL
COC	Cocaine	200-150 ng/mL	100-50 ng/mL
MTD	Methadone	300-200 ng/mL	150-100 ng/mL
MAMP	Methamphetamine	500-300 ng/mL	100-75ng/mL
OPI	Opiates	200-100 ng/mL	75-50 ng/mL
OXY	Oxycodone	200-100 ng/mL	75-50 ng/mL
PCP	Phencyclidine	25-15 ng/mL	10-5 ng/mL
PPX	Propoxyphene	400-200 ng/mL	150-100 ng/mL
THC	Cannabinoids	50-30 ng/mL	10-2 ng/mL
BUP	Buprenorphine	10-5 ng/mL	5-2 ng/mL

- A.3. All specimens identified as positive on the initial test must be confirmed positive using gas chromatography/mass spectrometry (GS/MS) before a positive result can be reported.
- A.4. The Contractor shall provide alcohol confirmation testing as requested by the testing location. Confirmation tests shall specify detection levels in the test sample.

- A.5. The Contractor shall check all test samples for adulteration. All urinalysis test samples will be checked for pH level, creatine level, and specific gravity with results reported on the drug profile result form.
- A.6. The contractor shall provide statewide court testimony services, if needed, at no additional cost to the State. Testimony may be either in person or by affidavit, as required by the court. The Contractor shall provide, at the State's request, a certifying scientist (Ph.D., in one of the natural sciences [or comparable] with appropriate training and experience in toxicology) who can:
- a. Testify as to the method used to perform the test and prepare the report
  - b. Provide testimony about the reliability of the test results.
- A.7. Courier Service. All rates shall include statewide daily specimen pick-up service and test report delivery. Typical pick-up service shall be Monday through Friday within twenty-four (24) hours of specimen collection. Occasional Saturday pick-up may be requested by the State. Contractor shall train State personnel in appropriate procedures for preserving specimens when held at the institution for more than twenty-four (24) hours. Contractor shall arrange for all specimens to be delivered to the Contractor's laboratory the next business day after pick-up by overnight express courier (e.g., United Parcel Service, Airborne Express, FedEx, or comparable). In certain circumstances a second pickup may be required in a single day, at no additional cost to the State.
- A.8. The Contractor shall notify the submitting location, in writing, with the reason for rejection when a specimen is rejected.
- A.9. Reporting and Results. 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 designated institutional contract. 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. Name of Receiving Institution
  - f. Name of Institutional Contact
  - g. Collection Date
  - h. Date Received from Institution
  - i. Date Reported to the Institution
  - j. Test Methods by Drug Class and Detection Levels including initial and confirmation
  - k. Profile Results by Class and Confirmation Detection Levels
  - l. Name of Certifying Authority
  - m. Date of Certification
- A.10. The contractor shall include the following statement: "Positive results are reported only after confirmation by Gas Chromatography /Mass Spectrometry" on all drug screens.
- A.11. Specimens. All specimens must be held under refrigeration or consistent with regulatory requirements before discarding, unless otherwise requested from the agency.
- A.12. Specimen Containers. Sufficient materials required to collect referred specimens and transport those specimens to the laboratory shall be supplied at no additional cost by the Contractor. Agency shall initially receive sufficient inventory for one (1) month per location.
- A.13. Specimen Courier Containers. Courier containers, which are self-addressed and prepaid for shipping specimens to the laboratory by overnight express courier, shall be provided by the Contractor at no additional cost.

- A.14. Request Forms. Preprinted request forms designed for ordering tests must be supplied at no additional cost by the State.
- A.15. Telephone Consultations. The Contractor must provide, without charge, a toxicologist for telephone consultations with agency on interpretations of test results.
- A.16. Delivery Time. Routine test results must be received (telephone, telegraph, etc.) by the using agency the following morning after shipment is received by the Contractor. Both positive and negative written reports must be faxed to the agency within forty-eight (48) hours of the assay.
- A.17. Freight on Board (F.O.B) State and Local Government Agencies. All quotations shall be F.O.B. destination, which shall mean delivered and unloaded onto the receiving dock of any State agency and, when applicable, any local government agency or authorized corporation within the State of Tennessee, with all charges for transportation and uploading prepaid by the vendor/contractor.
- A.18. Training. The Contractor shall provide on-site training for State personnel as needed, in matters related to the services including, but not limited to, specimen collection procedures, completion of forms, and drug abuse recognition training.
- A.19. Certification. The Contractor shall maintain College of American Pathologist-Forensic Urine Drug Testing (CAP-FUDT) certification or Substance Abuse and Mental Health Services Administration (SAMHSA) certification throughout the term of this Contract.

**B. CONTRACT TERM:**

This Contract shall be effective for the period commencing on **JULY 1, 2010** and ending on **JUNE 30, 2015**. 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 WRITTEN DOLLAR AMOUNT (\$NUMBER). 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.

- C.2. Compensation Firm. The payment 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 payment 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.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	07/01/10 – 06/30/11	07/01/11 – 06/30/12	07/01/12 – 06/30/13	07/01/13 – 06/30/14	07/01/14 – 06/30/15
GC/MS drug confirmation screen	\$ each				
Alcohol Confirmation Screen	\$ each				

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

TENNESSEE DEPARTMENT OF CORRECTION, ACCOUNTS PAYABLE  
 3<sup>RD</sup> FLOOR, RACHEL JACKSON BUILDING  
 320 6<sup>TH</sup> AVE. NORTH  
 NASHVILLE, TN 37243-0465

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
  - (1) Invoice/Reference Number (assigned by the Contractor);
  - (2) Invoice Date;
  - (3) Invoice Period (period to which all invoiced charges are applicable);
  - (4) Contract Number (assigned by the State to this Contract);
  - (5) Account Name: TENNESSEE DEPARTMENT OF CORRECTION, ACCOUNTS PAYABLE;
  - (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
  - (7) Contractor Name;
  - (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
  - (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
  - (10) Contractor Remittance Address;
  - (11) Complete Itemization of Charges, which shall detail the following:
    - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
    - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
    - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
    - iv. Amount Due by Service; and
    - v. Total Amount Due for the invoice period.

- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
  - (2) not include any future work but will only be submitted for completed service; and
  - (3) not include sales tax or shipping charges.
- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. 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.7. 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.8. 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.9. 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 below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). 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. 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 **ONE**, 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.
- D.9. Records. The Contractor shall maintain documentation for all charges 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.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated, Section 12-4-401 et seq.*
- D.11. 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.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. 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.14. 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.15. State Liability. The State shall have no liability except as specifically provided in this Contract.

- D.16. 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, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. 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.19. 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.20. 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.21. 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 certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

BILL GUPTON, DIRECTOR OF SUBSTANCE ABUSE  
 TENNESSEE DEPARTMENT OF CORRECTION  
 6<sup>TH</sup> FLOOR, RACHEL JACKSON BUILDING  
 320 6<sup>TH</sup> AVENUE NORTH  
 NASHVILLE, TENNESSEE 37243-0465

[William.Gupton@tn.gov](mailto:William.Gupton@tn.gov)  
 Telephone # (615) 741-1000 Ext. 8195  
 FAX # (615) 741-1055

The Contractor:

NAME & TITLE OF CONTRACTOR CONTACT PERSON  
 CONTRACTOR NAME  
 ADDRESS

EMAIL ADDRESS  
 Telephone # NUMBER  
 FAX # NUMBER

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- 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. 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 (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts 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 TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. 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.

- E.6. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the 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 State law and ethical standards and 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 State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

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.

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

- E.7. 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.8. 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.9. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— The State shall notify Contractor in writing of a Breach.
  - (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
  - (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment **TWO** and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.
 

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.
  - (3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, 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. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

- (4) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.
- b. **State Breach**— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

RFP # 32901-29110

ATTACHMENT 6.4.

---

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF CORRECTION:

---

GAYLE RAY, COMMISSIONER

DATE

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (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.**

---

**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**

---

**DATE OF ATTESTATION**

## ATTACHMENT TWO

## BREACHES AND ASSOCIATED LIQUIDATED DAMAGES

#	Issue	Scope Reference	Cost	Frequency
1	Failure to provide confirmation testing for any of the twelve (12) substances suspected present on initial screen, listed in contract.	A.2	\$250	Per Occurrence
2	Failure to confirm all initial positive tests through GS/MS method.	A.3	\$50	Per Occurrence
3	Failure to provide all alcohol confirmation testing as required by contract	A.4	\$50	Per Occurrence
4	Failure to check pH levels, creatine levels and specific gravity for adulterants.	A.5	\$50	Per Occurrence
5	Failure to provide statewide court testimony services, if needed, regarding methods, results and reliability.	A.6	\$1,000	Per Occurrence
6	Failure to provide specimen pick-up, Monday-Friday, within twenty four (24) hours of collection.	A.7	\$250	Per Occurrence
7	Failure to notify submitting location, in writing, the reason for a rejection if specimen is rejected.	A.8	\$50	Per Occurrence
8	Failure of laboratory report to contain the information outlined in the contract.	A.9	\$50	Per Occurrence
9	Failure to add the statement "Positive results are reported only after confirmation by GC/MS" on all drug screens.	A.10	\$50	Per Occurrence
10	Failure to hold all specimens under refrigeration or consistent with regulatory requirements before discarding.	A.11	\$50	Per Occurrence
11	Failure to provide facilities with specimen containers at no additional cost.	A.12	\$250	Per Occurrence
12	Failure to provide specimen courier containers at no additional cost.	A.13	\$250	Per Occurrence
13	Failure to provide preprinted request forms for ordering tests at no additional cost.	A.14	\$25	Per Occurrence
14	Failure to provide a toxicologist for telephone consultation without charge.	A.15	\$100	Per Occurrence
15	Failure for all deliveries to be F.O.B. and prepaid by the contractor.	A.17	\$100	Per Occurrence
16	Failure of contractor to provide on-site training as needed for State personnel in related areas.	A.18	\$500	Per Occurrence
17	Failure to meet certification requirements.	A.19	\$1,000	Per Occurrence and Each Additional Thirty (30) Days Problem is Not Addressed