

## MEMORANDUM

TO: The State of Connecticut  
FROM: [REDACTED]  
DATE: July 1, 2009  
RE: [REDACTED] rationale for requested contract changes

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1. Section 1 [REDACTED] is requesting removal of the words “shareholders, agents, servants & consultants” from the defined terms “Bidder Parties” and “Contractor Parties” because [REDACTED] is the entity entering into the contract with the State [REDACTED] cannot bind these entities/individuals to a contract it enters into; however, the State should feel confident in contracting with [REDACTED] because [REDACTED] will indemnify the State for the acts of its subcontractors.
2. Section 1: [REDACTED] is requesting the word “Goods” be deleted from the contract. [REDACTED] is a service provider. [REDACTED] does not manufacture goods (i.e. pharmaceuticals). As a service provider we will stand behind our services and will agree to the guarantees contained in the State’s contract; but we cannot guarantee the goods.
3. Section 1: [REDACTED] is requesting a change to the contract such that [REDACTED] would retain all right, title and interest in and to its confidential and proprietary information. As written the definitions of “Records” and “Title” would seem to imply that the State would become the owner of [REDACTED] confidential and proprietary information.
4. Section 5: The State currently pays [REDACTED] claims invoices within two days. If the State cannot continue to make payments within 2 days for whatever reason, we are willing to extend payment terms to 15 days from the date of the invoice. [REDACTED] would be agreeable to the payment default terms contained in our 2006 agreement. We have included those terms below for your convenience:

*7.4 Failure by the BOARD to make any payments in accordance with the terms of this Agreement will constitute a payment default. Notwithstanding Section [REDACTED] this Agreement, if the BOARD fails to cure any such payment default within two (2) days, in addition to other available remedies, [REDACTED] may cease performing any or all of its obligations under, or may terminate this Agreement upon notice to the BOARD. After the two (2) day grace period, there will be a late payment fee of 1% per month on the balance due, accruing as of the due date. The BOARD will reimburse [REDACTED] for all collection costs incurred [REDACTED] as a result of any payment default by the BOARD under this Agreement.*

5. Section 11: The State’s contract allows the State to determine when a breach of contract has been committed. Breach should be determined by a court of law. In addition, there is language in the State’s contract that would obligate [REDACTED] to continue to render services whether or not [REDACTED] is being paid for such services. [REDACTED] should not have to perform services if the State is not paying [REDACTED] or services. Should a dispute arise, [REDACTED] will work with the State to resolve such dispute in an expeditious manner and [REDACTED] will continue to perform services through any such dispute; however, the State is obligated to pay [REDACTED] for services rendered.
6. Section 13: The contract requires that [REDACTED] perform services at the contracted guaranteed pricing. To the extent that [REDACTED] does not meet its obligations, the State may claim breach of contract and pursue financial damages. As stated in previous point, the Court should determine breach and related financial penalties.
7. Section 15: With regard to indemnification [REDACTED] would be agreeable to enter into the same indemnification we previously negotiated with the State in the 2006 agreement. [REDACTED] will indemnify the State for negligent acts of its directors, officers, employees, agents and subcontractors under the contract. However, [REDACTED] cannot indemnify the State for any acts which is what the current language would require. As currently written the indemnification language would appear to transform [REDACTED] into the State’s insurance company.
8. Section 16: With regard to Choice of Law, [REDACTED] completely agrees that the laws of the State of Connecticut govern disputes arising out of the contract. However, [REDACTED] mail order pharmacies are governed by Boards of Pharmacy of the state in which the pharmacy is located and any actions related to such mail order pharmacies require that state’s law to control.
9. Multiple Sections: Certain sections of the contract are not applicable to this contract because such sections relate to goods and as stated above [REDACTED] is a service provider. We would request that these provisions not be included in the contract.

10. Multiple Sections: Several sections of the State's contract contain time frames that would require ██████ to develop manual processes that would be costly and time consuming. ██████ will work with the State to develop mutually agreeable timeframes.
11. Section 30: ██████ requests that the word "subcontractor" be removed from sub-sections (f) and (h) so that the language applies only to ██████ has numerous existing subcontractor relationships and it is not feasible to renegotiate these relationships. However, the State should be comforted in the knowledge that ██████ stands behind the contract and ██████ will indemnify the State for the acts of its subcontractors.
12. Section 32: As indicated above, this agreement is between ██████ and the State. ██████ should be defined to include ██████, its subsidiaries and affiliates and their officers, directors and employees. Therefore we request that the word "Affiliate" be removed because the term as defined in the contract is overly broad.
13. Section 39 is modified to state that upon request ██████ will comply.
14. Section 41: ██████ would be agreeable to entering into the same audit provisions that the parties negotiated in our 2006 agreement.
15. Section 47 ██████ understands and agrees that the agreement is subject to FOIA. Consistent with that understanding, we request that information we consider confidential and proprietary be handled in accordance with the FOIA.
16. Section 50: ██████ has requested a few minor edits to Encryption of Data ██████ is committed to data security and protecting all client information. However, as written, ██████ would be required to spend considerable sums of money to comply with the State's contract. ██████ is willing to have our IT team discuss data security with the State so that the State can be assured that ██████ policies and procedures are of the highest standards and ██████ is committed to data security and confidentiality.