Office for People With Developmental Disabilities

ADDENDUM 1 – Update to Contract Boilerplate: Limitation of Liability Insurance

Date: February 21, 2025

PLEASE ADDRESS INQUIRIERS TO:
Danielle Lapre, Contract Management Specialist 1
Email: procurement@opwdd.ny.gov

Request for Proposal (RFP) #: OPD-2024-04

Title: Self-Direction System Solution

Subject: Changes to Posted Contract Boilerplate

Due Date for Questions / Clarification on Addendum 1: 4:00 p.m., February 26, 2025

OPWDD made revisions to the Contract Boilerplate that was published on February 7, 2025, with this RFP.

Section 8.3 Limitation of Liability stated, "For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation," and regardless of the basis on which the claim is made, the Contractor's liability under the Contract for direct damages shall be limited to the greater of the following: (i) $1,000,000.00; or (ii) two times the amounts paid to the Contractor under the Contract during the 12 months of the Contract term that precede the giving of notice of the claim by OPWDD. For this purpose, amounts paid shall include, but not be limited to, payments made electronically, by check, by offset, or by the application of credits from the Contractor to OPWDD. Unless otherwise specifically enumerated herein, neither party shall be liable for any incidental, punitive, consequential, indirect, or special damages of any kind that may result directly or indirectly from the performance of this Contract, including, without limitation, damages resulting from loss of use or loss of profit by OPWDD, the Contractor, or by others, however caused, and regardless of the theory of liability, even if such party has been informed of the possibility of such damages. The limitations of liabilities, disclaimers of warranties, exclusivity of remedies, and other limitations are an essential element of the bargain between the parties (without which the transactions contemplated by this agreement would not occur) and will apply even if a remedy fails in its essential purpose." **Is now replaced with:**

"Unless otherwise specifically enumerated herein, neither party shall be liable for any incidental, punitive, consequential, indirect, or special damages of any kind that may result directly or indirectly from the performance of this Contract, including, without limitation, damages resulting from loss of use or loss of profit by OPWDD, the Contractor, or by others, however caused, even if such party has been informed of the possibility of such damages. The limitations of liabilities, disclaimers of warranties, exclusivity of remedies, and other limitations are an essential element of the bargain between the parties (without which the transactions contemplated by this agreement would not occur) and will apply even if a remedy fails in its essential purpose. Notwithstanding the foregoing, the Contractor remains liable, without monetary limitation, for direct damages for personal injury, death or damage to real property or tangible personal property or intellectual property attributable to the negligence or other tort of the Contractor, its officers, employees or agents."

This notification is to be signed and submitted as part of your proposal.

Signature_____

Date_____