



209-2010 ADDENDUM 6

PRINT SOLUTIONS AND RELATED SERVICES

URGENT

**PLEASE FORWARD THIS DOCUMENT TO
WHOEVER IS IN POSSESSION OF THE BID
OPPORTUNITY**

ISSUED: August 17, 2010
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**THIS ADDENDUM SHALL BE INCORPORATED
INTO THE BID OPPORTUNITY AND SHALL
FORM A PART OF THE CONTRACT
DOCUMENTS**

Template Version: A20070419

Please note the following and attached changes, corrections, additions, deletions, information and/or instructions in connection with the Bid Opportunity, and be governed accordingly. Failure to acknowledge receipt of this Addendum in Paragraph 9 of Form A: Bid may render your Bid non-responsive.

PART D – SUPPLEMENTAL CONDITIONS

Revise D6.4(f) to read

D6.4(f) Notwithstanding anything to the contrary elsewhere in this Contract:

- (i) any term of confidentiality as imposed by the Contract; and
- (ii) any limitations of liability contained in the Contract where the City has misappropriated or infringed the Contractor Tools or otherwise breached its obligations of confidentiality regarding the Contractor Tools.

Replace D20 with the following:

D20 INDEMNITY

D20.1 Notwithstanding C16, the Indemnity shall be in accordance with D20.

D20.2 The Contractor shall save harmless and indemnify the City **up to** the amount of five million dollars (\$5,000,000), against all **direct** costs, damages or expenses **including reasonable legal costs** arising from actions, claims, demands and proceedings, by whomsoever brought, made or taken as a result of acts or omissions of the Contractor, his Subcontractors, employees or agents in the performance or purported performance of the Work, and more particularly from:

- (a) accidental injury to or death of any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
- (b) damage to any **real or tangible** property owned in whole or in part by the City, or which the City by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
- (c) damage to, or trespass or encroachment upon, property owned by persons other than the City;
- (d) any claim for lien or trust claim served upon the City;
- (e) failure to pay a Workers Compensation assessment, or Federal or Provincial taxes;
- (f) unauthorized use of any design, device, material or process covered by letters patent, copyright, trademark or trade name in connection with the Work;
- (g) inaccuracies in any information provided to the City by the Contractor.

D20.2.1 Notwithstanding D20.1, the Contractor will not be responsible for **any** indirect, incidental, consequential, special, punitive or exemplary damages arising out of this Contract.

- D20.2.2 Subject to D20.3, the City has the right, acting reasonably and upon notice to the Contractor, to settle any such action, proceeding, claim or demand and charge the Contractor with the amount so paid or to be paid in effecting a settlement.
- D20.3 The City and the Contractor agree that the applicable insurer will have a priority right to defend insured claims. Within fourteen (14) Calendar Days after the date on which the insurer is provided with a copy of the notice of claim, the insurer must advise the City and the Contractor if it intends to exercise its priority right to defend the claim.
- D20.4 In the event that the claim is settled by the insurer, all costs incurred in effecting the settlement are the responsibility of the Contractor and not the City.
- D20.5 In the event that the claim is unsuccessfully defended, either in whole or in part, then the City may charge the Contractor with the amount to be paid to satisfy the judgment or order.
- D20.6 The Contractor shall pay to the City the value of all reasonable legal fees and disbursements required to settle any such claim or to defend the City against any such action, proceeding, claim or demand, notwithstanding that the settlement or defence of the said action, proceeding, claim or demand was undertaken on behalf of the City by a salaried employee of the City.
- D20.7 If the Contractor fails to make any payment required to be made to the City pursuant to the foregoing, the City shall be entitled to deduct the amount of such payment from any payment required to be made by the City to the Contractor under the Contract and/or take whatever other remedies against the Contractor that the City may have at law.