

4.1 LIABILITY; INDEMNIFICATION

The contractor's liability to the State and its employees in third party suits shall be as follows:

A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly ~~or indirectly~~ from the work and/or materials supplied under this contract but only if such claims, demands, suits, actions, recoveries, judgements, costs and expenses directly result from acts or omissions constituting willful misconduct or gross negligence in connection with the performance by the contractor or its officers, agents or employees of any of the contractor's duties, responsibilities or obligations herein, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;

B. The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and

C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

D. The contractor, its subsidiaries and its affiliates shall not be liable for any indirect, incidental, special consequential or exemplary damages, including but not limited to, damages for loss of profits, opportunity, systems, reputation, goodwill, use, data or other intangible losses resulting from any act, omission or mistake of judgment in the course of, or connected with, the performance of its responsibilities hereunder, except for its own gross negligence, willful misconduct, or fraud. Contractor, its subsidiaries and its affiliates shall in no way be responsible for any misrepresentation made by the private investment funds or fund managers that the contractor researches or recommends. Nothing in these Terms and Conditions shall delegate to the contractor any investment decisions or any of the contractor's duties and responsibilities under applicable law.