

UNIVERSITY shall notify the CONTRACTOR in writing of its choice of action under this section.

- 4.8 The provisions on liquidated damages notwithstanding, the UNIVERSITY has the right to take all necessary and appropriate steps to effect an immediate takeover of the construction work either by itself or by another contractor, to forfeit the Performance Bond, and to charge against the CONTRACTOR and its sureties any excess cost occasioned thereby in finishing the PROJECT, together with any liquidated damages that may be due to the UNIVERSITY under any of the following circumstances:
- If the progress of the work is delayed at least twenty percent (20%) of the contract period plus any extension duly granted, or does not conform with the work schedule such that from all indications the CONTRACTOR may not be able to complete the PROJECT within the stipulated time; or
 - If CONTRACTOR violates any of the conditions, warranties, or covenants under this Agreement.
- 4.9 In the event of takeover, whatever contracts entered into by the CONTRACTOR in the pursuit of its obligations under this Agreement which the UNIVERSITY may want to assume are hereby deemed assigned to the UNIVERSITY, provided that the UNIVERSITY shall not be liable for unpaid obligations previously incurred by the CONTRACTOR prior to the takeover. The right of the UNIVERSITY to take over the PROJECT shall be without prejudice to its rights under paragraph 4.8 and other rights and legal remedies it may be entitled to.
- 4.10 The lawful occupation by the UNIVERSITY of any portion of the PROJECT shall not be deemed a waiver of any of its rights nor shall it diminish any liability of the CONTRACTOR for liquidated damages for delays in other portions of the PROJECT.

ARTICLE V PERFORMANCE BOND

- 5.1 The Performance Bond submitted by the CONTRACTOR in the amount of **Three Hundred Forty-Four Thousand Six Hundred Thirty-Nine Pesos Only (Php 344,639.00)**, shall be coterminous with the date of final acceptance of the PROJECT by the UNIVERSITY.
- 5.2 If the PROJECT cannot be completed within the period prescribed under Section 4.1 to the satisfaction of the University for final acceptance, the CONTRACTOR shall post a substitute Performance Bond or effect an extension of the original Performance Bond to cover the period of extension until final acceptance of the PROJECT is made.
- 5.3 The CONTRACTOR shall post the substitute Performance Bond immediately upon exclusive determination by the UNIVERSITY of the inability of the CONTRACTOR to complete the Project for final acceptance. This determination shall be made by the UNIVERSITY within ten (10) working days immediately preceding the expiration date of the Performance Bond.

- 5.4 The CONTRACTOR shall post an additional performance security to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to order or change orders, extra work orders, and supplemental agreements.
- 5.5 Until and unless the CONTRACTOR shall have complied with Sections 5.3 and 5.4, the UNIVERSITY shall withhold all payments due to the CONTRACTOR.

ARTICLE VI PAYMENTS

- 6.1 The University shall, upon a written request of the CONTRACTOR which shall be submitted as a contract document, make an advance payment to the CONTRACTOR in an amount not to exceed twelve percent (12%) of the total contract price, to be made in lump sum, or at the most, two (2) installments according to a schedule specified in the instructions to Bidders and other relevant Tender Documents.
- 6.2 The advance payment shall be repaid by the CONTRACTOR by deducting a percentage equal to that used for the advance payment from the periodic progress payments to be made to the Contractor.
- 6.3 The advance payment shall be made only upon the submission to and acceptance by the UNIVERSITY of an irrevocable standby letter of credit of equivalent value from a commercial bank or a guarantee payment bond, callable on demand, issued by a surety or insurance company duly licensed by the Office of the Insurance Commissioner and confirmed by the implementing agency.
- 6.4 The UNIVERSITY shall pay the CONTRACTOR progress payments based on billings for actual works accomplished as certified by the Physical Plan Office of the University. In no case shall progress billings be made more than once every thirty (30) calendar days. Material or equipment delivered on the site but not completely put in place or used in the PROJECT shall not be included for payment.
- 6.5 All progress payments shall be subject to a retention fee of ten percent (10%). Such retention shall be based on the amount due to the CONTRACTOR prior to deductions and works, as determined by the UNIVERSITY, is completed. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made, otherwise, the 10% retention shall be imposed. The CONTRACTOR may, however, request for its release/substitution prior to Final Acceptance subject to the guidelines set forth in R.A. No. 9184 and its implementing Rules and Regulations.
- 6.6 In addition to the 10% retention mentioned above, the UNIVERSITY reserves the right to deduct from the progress billing of the CONTRACTOR such amount as may be necessary to cover third party liabilities, as well as uncorrected discovered defects in the project in the event that the costs of such liabilities as well as uncorrected discovered defects in the project exceed the 10% already retained by the UNIVERSITY.

- 6.7 The UNIVERSITY shall issue a Certificate of Final Acceptance to the CONTRACTOR upon satisfactory completion of the PROJECT. Before such Certificate is issued, the CONTRACTOR shall submit a sworn statement certifying that all taxes due from it, and all obligations for material used and labor employed in connection with the PROJECT have been duly paid. Final payment shall be made within the reasonable period upon the Final Acceptance by the UNIVERSITY.
- 6.8 No payment made by the UNIVERSITY shall be construed as a waiver of any claim of defects in the work materials, or breach of obligations under the Agreement. Acceptance by the CONTRACTOR of final payment shall be deemed a waiver of all its claims, except those that might have been previously made in writing which remain unsettled at the time of Final Acceptance.

**ARTICLE VII
WARRANTIES AND RESPONSIBILITIES OF THE CONTRACTOR**

- 7.1. The CONTRACTOR shall secure all pertinent permits required by any government office or agency in connection with the PROJECT.
- 7.2. The CONTRACTOR shall comply with all laws, rules and regulations promulgated by the government of the Republic of the Philippines, including those on labor, environment, safety and sanitation, those regulating the construction industry and other pertinent laws. The CONTRACTOR shall be solely liable for any violation of the same.
- 7.3. Should the CONTRACTOR find that any portion of this Agreement or part of the Contract Documents are contrary to any law, rule or regulation, the CONTRACTOR shall immediately notify the UNIVERSITY in writing and comply with the instructions to be given by the UNIVERSITY.
- 7.4. The CONTRACTOR shall take all precautionary measures to ensure that the safety and convenience of the workers and the general public, and to take all appropriate steps to prevent damage or injury to persons or property in or about or adjacent to the premises where the work is being performed.
- 7.5. The CONTRACTOR warrants and guarantees that all materials to be used for the PROJECT are new, free from hidden defects, fully complies in every respect with the specifications, approved samples, other requirements of the Contract Documents. The CONTRACTOR shall make no substitution of materials required to be furnished by it unless prior written approval is obtained from the UNIVERSITY. The CONTRACTOR hereby holds the UNIVERSITY free and harmless from any liability arising out of claims or liens on materials supplied. In case of any substitution with interior materials without the prior written consent of the UNIVERSITY and the same cannot be removed and replaced, the CONTRACTOR shall credit the UNIVERSITY an amount equivalent to the difference in cost plus one hundred percent (100%) of the credit amount as liquidated damages.
- 7.6. The CONTRACTOR warrants and guarantees that the works done under this Agreement, including those performed by sub-contractors, if any, shall be free from any defect, shrinkage, or other default due to defective or improper materials, planning or workmanship. If any such defect, shrinkage, or fault whether pertaining to that portion of the work performed

by the CONTRACTOR or to a portion performed by any sub-contractor arises, the CONTRACTOR shall, at its own expense, promptly repair, correct, or make good such defect, or shrinkage, or fault to the satisfaction of the UNIVERSITY. In case of deviations, defects, shrinkages, faults or deficiencies in the work are not remedied to the satisfaction of the UNIVERSITY within a reasonable time, the UNIVERSITY shall, without prejudice to any other right or remedy, cause the repair or correction to be made for the sole account of the CONTRACTOR. The CONTRACTOR shall be responsible for any loss, injury, or damage arising or resulting from any such deviation or defect, shrinkage or fault. Violations of the warranties under this section shall entitle the UNIVERSITY to pre-terminate this Agreement by mere written notice to the CONTRACTOR effective upon receipt thereof.

- 7.7. The CONTRACTOR shall leave the work in good order upon completion.
- 7.8. The CONTRACTOR shall be responsible for the storage and safekeeping of all UNIVERSITY-supplied materials, if any, fully turned over to its custody by the UNIVERSITY.
- 7.9. The CONTRACTOR assumes full responsibility for the acts, omissions, or negligence of its employees, workers, agents, and those of its sub-contractors and their employees, as well as for all other persons doing work under this Agreement.
- 7.10. The CONTRACTOR shall hold the UNIVERSITY free and harmless from and binds and obligates itself to indemnify the UNIVERSITY for liabilities, losses, damages, injuries, including deaths, claims, demands, suits, proceedings, judgments, awards, fines, penalties, and all expenses of whatever kind and nature arising from and by reason of this Agreement, due to its negligence, act, omission, delay, conduct, breach of trust or non-observance or violation of this Agreement, or those of its employees, agents, representatives, or sub-contractors.

ARTICLE VIII GUARANTEE BOND

- 8.1 The CONTRACTOR shall furnish the UNIVERSITY with a Guarantee Bond in an amount equal to ten percent (10%) of the Contract Price, effective for a period of one (1) year reckoned from the date of Final Acceptance. Said Guarantee Bond is to answer for any loss, damage, injury, or expense which the UNIVERSITY may incur to make good defects in workmanship or materials that may become evident within one (1) year from the date of Final Acceptance.

ARTICLE IX INSURANCE

- 9.1 If the UNIVERSITY so requires, the CONTRACTOR shall submit an insurance contract to protect the UNIVERSITY against all claims of damages for personal injury or death, and claims for damages of the