

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement entered into and executed by and between:

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), a government-owned and controlled corporation with office address at *PAGCOR Corporate Office, Hyatt Hotel and Casino Manila, 1588 M.H. Del Pilar corner Pedro Gil Streets, Malate, Manila*, represented in this act by its President and Chief Operating Officer, **JORGE V. SARMIENTO**, hereinafter referred to as "**PAGCOR**";

- and -

PITC PHARMA, INC. (PPI), a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at *2/F National Development Company (NDC) Building, 116 Tordesillas St., Salcedo Village, Makati City*, represented in this act by its President and Chief Executive Officer, **ROLANDO BAUTISTA**, hereinafter referred to as the "**PPI**".

WHEREAS, PAGCOR has a requirement for the supply and delivery of various Medicines for CRSD under ITB No. 01-05-2012;

WHEREAS, **PPI**, is mandated by Executive Order No. 442 to be the lead coordinating agency responsible for ensuring that quality medicines are made available, affordable and accessible to the greater masses of Filipinos;

WHEREAS, the supply and delivery of PAGCOR's requirements for various medicines may be undertaken through an Agency-to-Agency Negotiated Procurement in accordance with RA 9184 and its Implementing Rules and Regulations (IRR), particularly, Appendix 6: Implementing Guidelines on Agency-to-Agency Agreement;

NOW THEREFORE, PAGCOR and **PPI** agree to enter into this MOA for the Supply and Delivery of various medicines by PPI to PAGCOR pursuant to the following terms and conditions:

1. **PPI**, in accordance with RA 9184 and its IRR, particularly Appendix 6: Implementing Guidelines on Agency-to-Agency Agreement, and within a period of sixty (60) calendar days from the effectivity date stated in the Notice to Proceed (NTP), shall supply PAGCOR with the various medicines and specified by PAGCOR in its Purchase Order No. _____, a copy of which shall be attached as Annex "A"

PPI shall complete the delivery of the various medicines within the time prescribed. Should **PPI** incur delay in its performance, it shall pay a penalty of one-tenth of one percent (1/10 of 1%) of the total cost of the undelivered item for each day of delay. The maximum deduction shall be ten percent (10%) of the amount of the MOA. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the MOA, PAGCOR shall have the option to rescind the MOA, without prejudice to other courses of action and remedies open to it.

In case **PPI** still fails to deliver the medicines required by PAGCOR after the lapse of thirty (30) days from the supposed date of delivery, in addition to the forfeiture of the bonds and the penalties agreed upon, PAGCOR shall have the option to terminate the MOA.

2. **PPI** shall deliver the various medicines required and specified by PAGCOR at CCSD Stock Room, PAGCOR Paranaque together with the following:
 - a. BFAD Certificate of Product Registration;
 - b. Batch Certificate (for antibiotic);
 - c. Certificate of Analysis from Manufacturing Company;
 - d. Drug Literature; and
 - e. Certificate of Good Manufacturing Practice (CGMP)
3. **PPI** shall be required to deliver medicines with a shelf life of at least 18 months.
4. **PPI** shall not increase the unit costs of the medicines for the duration of this memorandum of agreement
5. In order to assure that manufacturing defects shall be corrected, a warranty for a minimum of period of three (3) months from the date of delivery and acceptance of the various medicines supplied and delivered by **PPI** shall be required from **PPI**.

The obligation for the warranty shall be covered by either retention money or a special bank guarantee equivalent to ten percent (10%) of the total contract price.

The said amount shall be released after the lapse of the warranty period provided, however that the medicines supplied and delivered by PPI are free patent and latent defects and all conditions imposed under the MOA have been fully met.

6. **PPI** shall deliver to PAGCOR the various medicines required and specified by PAGCOR in the total amount of _____ **PESOS (Php _____)**.

The price stated herein already includes all applicable taxes, fees and charges required by the Government. **PPI** hereby holds PAGCOR free from any liability for any and all taxes arising out of this MOA.

The price herein agreed shall not be subject to any increase or upward adjustment for any reason or cause whatsoever for the duration of this MOA

7. From the above amount, PAGCOR shall offset the amount of **FOUR HUNDRED THIRTY NINE THOUSAND SEVENTEEN AND 24/100 PESOS (Php 439,017.24)** on account of the medicines under "Annex B" returned by PAGCOR to **PPI** due to near expiry and being slow-moving items from Serbisyo Muna Centers in Malabon and Valenzuela last 2007.
8. On account of the offsetting, PAGCOR shall pay **PPI** the amount of **Php _____ (Php _____ - 439,017.24)**; pursuant to the following schedule:
 - a. Ninety percent (90%) of the total amount due subject to PAGCOR's acceptance in writing

- b. Ten percent (10%) Retention of the total amount to be paid after three (3) months from the formal acceptance, if and when no latent defects are noted.

- or -

100% of the total amount delivered to be paid after performance of the MOA, provided that the medicines supplied are free from patent and latent defects and all conditions imposed under the MOA have been fully met; subject to PAGCOR's acceptance in writing and upon submission of a Special Bank Guarantee at least 10% of the total amount valid for three months.

- 9. To guarantee the faithful performance of the winning bidder under contract, it shall post a Performance Security prior to the signing of the contract, in accordance with any of the following schedule:

Form of Security	Minimum Amount in Percentage of Total Contract Price
Cash, cashier's/manager's check, bank draft/guarantee confirmed by a Universal or Commercial Bank.	Five Percent (5%) Php _____
Irrevocable letter of credit issued by a Universal or Commercial Bank	
Surety Bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission.	Thirty Percent (30 %) Php _____

The Performance Security shall guarantee the full and complete the supply and delivery by **PPI** of the various medicines required and specified by PAGCOR and the full compliance of its warranty under paragraphs 4 and 7.

The Performance Security shall remain valid until issuance of the final Certificate of Acceptance. The same may be released only after the issuance of the Certificate of Acceptance of the item, provided that there are no claims filed against the contract awardee or the surety company.

- 10. **PPI** likewise hereby warrants and represents that:

- a. It has good title to the various medicines that it will supply and delivery to PAGCOR, full authority to sell and transfer the said medicines and that same are sold free and clear of all liens, encumbrances, liabilities and adverse claims, for every nature and description.
- b. **PPI** will fully defend, protect, indemnify, and hold PAGCOR harmless from any and all adverse claims that may be made by any party for the possession and/or the use of the various medicines that it will supply and deliver to PAGCOR.
- c. Defective medicines shall be replaced by **PPI** within fifteen (15) days upon receipt of notice of defect. Failure of **PPI** to replace the same within the same period shall make the **PPI** liable for a penalty of one-tenth of one percent (1/10 of 1%) of the total cost of the defective medicines for each day of delay.

- d. In cases wherein an additional expense is incurred due to delivery of defective, sub standard or non-compliant medicines, the cost for replacing such medicines shall be for the account of **PPI**.
- e. **PPI** shall pay taxes in full and on time, failure to do so will entitle PAGCOR to suspend payment for the medicines delivered by **PPI**.

11. All claims and disputes relating to or arising out of this Agreement shall as much as possible, be settled amicably by the parties before resorting to any judicial action.

If the parties fail to amicably settle their claims, differences or disputes, the parties, waiving for this purpose any other venue, hereby agree that the courts of the City of Manila shall be the exclusive venue of any and all actions or suits between the parties, to the exclusion of all other courts and venues. This exclusive venue provision shall apply even in cases for declaration of nullity of this MOA in its entirety or in part and in cases arising after or by reason of the declaration of nullity of this MOA in its entirety or in part.

12. In the event that the facts and circumstances arise or discovered which rendered this agreement disadvantageous to the Government, the parties hereto agree immediately to re-negotiate its terms and conditions, or at the option of PAGCOR terminate the same.

13. This MOA, or any interest in it, may NOT be assigned without the prior written consent of the other party.

This MOA constitutes the entire agreement between the parties pertaining to the subject matter contained in it, and supersedes all prior and contemporaneous agreements, representations, warranties and understandings between the parties. No supplement, variation or amendment of this MOA shall be binding UNLESS executed in writing by all parties hereto. No waiver of any of the provisions of this agreement shall be deemed, or shall constitute, a waiver of any other provision, whether similar or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding UNLESS in writing and signed by the party making the waiver.

IN WITNESS WHEREOF, the parties hereto have signed these presents on this ____ day of _____, 2012 at the City of Manila, Philippines.

PHILIPPINE AMUSEMENT AND GAMING CORPORATION

TIN: 033-000-887-972

Represented by:

JORGE V. SARMIENTO
President and Chief Operating Officer
TIN No. 122-841-833

PITC PHARMA, INC.

TIN: 000-598-366-000

Represented by:

ROLANDO BAUTISTA
President and Chief Executive Officer
TIN No.: 151-150-094

Signed in the presence of:

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) S.S.

BEFORE ME, a Notary Public for and in the City of Manila, on this _____, 2012, personally appeared the following with his respective Government ID Number, to wit:

ROLANDO BAUTISTA

known to me to be the same person who executed the foregoing instrument and who acknowledged to me that the same is their own free will and voluntary act and deed as well as the voluntary act and deed of the entities they respectively represent.

This instrument consisting of five (5) pages signed by the parties and their instrumental witnesses in all pages refers to a Memorandum of Agreement for the supply and delivery of various medicines for donation of CRSD.

WITNESS MY HAND AND NOTARIAL SEAL on the date and place first above written.

Doc. No. _____
Page No. _____
Book No. _____
Series of 2012.

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) S.S.

BEFORE ME, a Notary Public for and in the City of Manila, on this _____, 2012, personally appeared the following with his respective Government ID Number, to wit:

JORGE V. SARMIENTO License No. XO1-82-011519

known to me to be the same person who executed the foregoing instrument and who acknowledged to me that the same is their own free will and voluntary act and deed as well as the voluntary act and deed of the entities they respectively represent.

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