

**SERVICE CONTRACT**

This Service Contract (the "Contract") is entered into and executed by and between:

**PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR)**, a government-owned and -controlled corporation, created and existing by virtue of Presidential Decree No. 1869, as amended, with office address at **PAGCOR** Corporate Office, Hyatt Hotel and Casino Manila, 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 -

**BOONLINK PHILIPPINES, INC.**, a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at 37 Oliva St., Valle Verde 4, Pasig City represented in this act by its Managing Director, **MA. ANTONINA LIBERTY T. ROSARIO**, hereinafter referred to as the "**CONTRACTOR**".

Collectively referred to as the "**PARTIES**"

**RECITALS:**

**WHEREAS**, **PAGCOR** has a requirement for an annual maintenance plan subscription with Alchemy Software Solutions (the "Services") under ITB No.: 10-08-2012;

**WHEREAS**, the **CONTRACTOR** is the sole distributor of the Open Text Document Server Alchemy Edition in the Philippines and the only one who can render the Services contemplated herein;

**WHEREAS**, considering that all the requisites were met, **PAGCOR**, pursuant to the Bids and Awards Committee Recommendation dated October 1, 2012, approved by its President and Chief Operating Officer, acting for and in behalf of the Head of the Procuring Entity, on October 5, 2012, resolved to directly contract with the **CONTRACTOR** in order to secure its Services pursuant to Section 50 of the Revised Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 9184;

**WHEREAS**, the **CONTRACTOR** has submitted a responsive proposal to undertake the said Services;

**WHEREAS**, **PAGCOR** has accepted the proposal of the **CONTRACTOR**, subject to the terms and conditions hereunder stipulated;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements hereunder specified by these presents, **PAGCOR** and the **CONTRACTOR** hereby enter into a contract under the following terms, conditions and stipulations:

**ARTICLE I**  
**SCOPE OF UNDERTAKING**

The **CONTRACTOR** undertakes to provide the Services, in accordance with the following technical specifications:

TECHNICAL DESCRIPTION
Annual maintenance plan subscription for Alchemy Software Solutions
TECHNICAL SPECIFICATIONS/SCOPE OF WORK
1. Inform PAGCOR of new upgrades, new releases and patches and send appropriate links for downloading by PAGCOR. However, in cases where PAGCOR is unable to do proper installation, CONTRACTOR shall do on-site installation;
2. Inform PAGCOR of the presence of Online Video Training Materials and send the appropriate links. CONTRACTOR shall on-site training, if required by PAGCOR;
3. Local technical support by phone, e-mail, fax or File Transfer Protocol (FTP);
4. Response time shall be next business day from the receipt of call if incident cannot be resolved by phone;
5. Reinstallation of Supported Software in case it failed to comply with the documentation furnished by the CONTRACTOR to PAGCOR; and
6. Problem resolution shall comply with the Problem Resolution Procedure set forth by PAGCOR.

**ARTICLE II**  
**CONTRACT AMOUNT**

The contract amount shall be in the total amount of **TWO HUNDRED EIGHTY THOUSAND SEVEN HUNDRED FIFTY FIVE and 69/100 (PhP 280,755.69)**, VAT-Exclusive, Zero-Rated transaction.

Both parties agree that the total price stated herein already includes all applicable taxes, fees and charges required by the Government. The **CONTRACTOR** holds **PAGCOR** free from liability for any or all taxes, fees and charges required by the Government arising out of this transaction.

The prices herein agreed shall not be subject to any increase or upward adjustment for any reason or cause whatsoever for the duration of the Contract.

**ARTICLE III**  
**SCHEDULE OF PAYMENT**

**PAGCOR** shall pay the **CONTRACTOR** the contract amount stated in Article II within thirty (30) calendar days after the contract term as provided for under Article IV and from receipt of the sales invoice from the **CONTRACTOR** provided that the Services rendered by the **CONTRACTOR**, as specified under this Service Contract, are accepted by **PAGCOR**, as indicated in its Certificate of Acceptance.

**ARTICLE IV**  
**CONTRACT TERM**

This Contract shall be in force for a period of one (1) year and shall commence on the effectivity date provided in the Notice to Proceed. Within this period, **PAGCOR** may terminate this Contract with or without cause, without need for judicial intervention, upon thirty (30) days written notice to the **CONTRACTOR**.

**ARTICLE V**  
**WARRANTY AND RESPONSIBILITIES**

The **CONTRACTOR** hereby warrants that:

1. It is an entity duly organized, validly existing and in good standing under the laws of the Republic of the Philippines, and it has the requisite power and authority to enter into and perform its obligations under this Contract
2. There are no actions, suits or proceedings pending or, to the best of its knowledge, threatened, which may have a material adverse effect on its ability to fulfill its obligations under this Contract or on its operations, business, properties, assets or business condition.
3. That the Services to be rendered herein shall be as described under Article I of this Contract. The **CONTRACTOR** warrants that it has secured all the necessary government licenses and permits to allow it to render the Services agreed upon and that it is free from any liability or adverse claims, of every nature and description that would prevent or hinder it from rendering the said Service.
4. The **CONTRACTOR** hereby represents and warrants that it has sufficiently experienced and competent personnel able to perform the Services under this Contract. It is understood that the **CONTRACTOR** shall exercise complete and unequivocal control and supervision over its staff in the performance of their respective functions and duties;
5. The **CONTRACTOR** shall exercise such care over the Stored Material as a reasonable careful man would exercise under like circumstances, and fulfill any specific storage condition which **PAGCOR** may reasonably require under the circumstances.
6. The **CONTRACTOR** will defend, protect, indemnify, and hold **PAGCOR** harmless from any and all adverse claims that may be made by any party in connection with the rendition of the Services in Article I herein.

**ARTICLE VI**  
**CLAIMS AND DISPUTES**

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

If the parties fail to settle their differences or disputes, the **PARTIES** waiving for the purpose any other venue, hereby agree that the courts of the City of Manila shall be the exclusive venue of any or 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 Contract in its entirety or in part and in cases arising after or by reason of the declaration of nullity of this Contract in its entirety or in part

In the event that a dispute arises with respect to this Contract, the party prevailing in such dispute shall be entitled to recover all expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred in ascertaining such party's rights or in preparing to enforce, or in enforcing, such party's rights under this Contract, whether or not it was necessary for such party to institute suit.

#### **ARTICLE VII** **DAMAGES FOR DELAY**

The **CONTRACTOR** shall complete the implementation of the Services within the time prescribed in this Service Contract. Should **CONTRACTOR** incur delay in its performance, **CONTRACTOR** shall pay a penalty of one-tenth of one percent (1/10 of 1%) of the total cost of the undelivered Service for each day of delay, including Sundays and Holidays, beyond the specific period. The maximum deduction shall be ten percent (10%) of the amount of the Contract. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the Contract, **PAGCOR** shall have the option to rescind the Contract, without prejudice to other courses of action and remedies open to it.

In case the **CONTRACTOR** still fails to deliver the item after the lapse of 30 days from the supposed date of implementation as provided for in Article III, **PAGCOR** shall likewise have the option to terminate the Contract, without prejudice to other courses of action and remedies open to it.

#### **ARTICLE VIII** **FORCE MAJEURE**

The **CONTRACTOR** is responsible for the implementation of the Services provided in Article I hereof. In the event that such project cannot be completed within the prescribed period because of fortuitous events and/or force majeure, as defined by prevailing laws and such other causes not attributable to the **CONTRACTOR**, **PAGCOR** shall have no cause for action against the **CONTRACTOR** and shall only pay the value of the Services already delivered and accepted.

Without limiting the applicability of prevailing laws, an event shall not be considered fortuitous event unless it presents all of the following characteristics:

- a. The event must be independent of the **CONTRACTOR's** or its employee's will;
- b. The event could not be foreseen, or if it could be foreseen, it must have been impossible to avoid;
- c. The event must be of such character as to render it impossible for the **CONTRACTOR** to comply with its obligation in a normal manner. Mere difficulty in the performance shall not excuse the **CONTRACTOR**; and

- d. The **CONTRACTOR** or its employees must be free from any participation in the aggravation of the injury to **PAGCOR**.


#### **ARTICLE IX** **DEFAULTS**

In the event that any of the **PARTIES** fail to comply in good faith with their undertakings, as set forth in this Contract, within the periods provided herein, the non-defaulting party shall be released from its obligations under this Contract, without prejudice to the rights of restitution, recovery and damages.

In the event of breach by either party, the **PARTIES** agree to amicably settle the same under the provisions of Article VI hereof prior to judicial action.

In the event settlement cannot be made, the **PARTIES** shall abide by the provisions of law with respect to default.

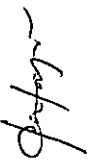
#### **ARTICLE X** **INDEMNIFICATION**

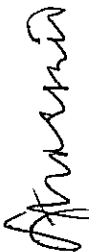
 The **CONTRACTOR** shall indemnify and shall hold **PAGCOR**, its guests, corporate affiliates and any employee or agent thereof (each of the foregoing, being hereinafter referred to individually as the "Indemnified Party") free and harmless against any and all liability to third parties (other than liability solely the fault of the indemnified party) arising from the negligence of the **CONTRACTOR** or its agents including (but not limited to) the violation of any third party's trade secret, proprietary information, trademark, copyright or patent rights in connection with the use of **PAGCOR** of the **CONTRACTOR**'s services.

The indemnification is limited to the services delivered to **PAGCOR** by the **CONTRACTOR** and does not cover third party claims not authorized by the **CONTRACTOR**.



#### **ARTICLE XI** **CONFIDENTIALITY**

 Pursuant to this Contract, the **CONTRACTOR** (its officers, employees, agents, and other persons acting on its behalf) acknowledges that **PAGCOR** (its officers, employees, agents, and any other person working on its behalf) may be disclosing confidential information such as but not limited to: business plans, developments plans, lists, reports, financial information, design documents, specifications, notes, computer disks, hard disks, tapes, written or electronic compilations or data storage devices and/or other non-public information proprietary and confidential to **PAGCOR** (the "Confidential Information"), together with any notes, analyses, compilations, studies, or other documents that are based upon, contain, or otherwise reflect such Confidential Information. The **PARTIES** agree as follows with respect to treatment of the above-mentioned Confidential Information:

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1. The **CONTRACTOR** shall require its officers, employees, agents and other persons acting on its behalf to comply with the terms of this Confidentiality

Clause and shall be solidarily liable to **PAGCOR** for any unauthorized disclosure made by its officers, employees, agents and other persons acting on its behalf.

2. The disclosed Confidential Information shall be used by the Independent **CONTRACTOR** (its officers, employees, agents, and any other persons working on its behalf) solely for the purpose of performing the Services specified in this Contract and not for any other purpose. The **CONTRACTOR** (its officers, employees, agents, and any other persons acting on its behalf) will not disclose the Confidential Information, in whole or in part, for any other purpose.
3. Copies or reproductions of the disclosed Confidential Information shall be made only to the extent and purpose of performing **CONTRACTOR's** Services under this Contract. Access to disclosed Confidential Information shall be limited by the **CONTRACTOR** to only those officers, employees, agents, and other persons acting on its behalf necessary to the performance of the Services in this Contract.
4. In the event that the **CONTRACTOR** (its officers, employees, agents, and any other persons acting on its behalf) is required by law to disclose any information pursuant to this Contract, **CONTRACTOR** will provide **PAGCOR** with prompt prior written notice of such requirement so that **PAGCOR** may seek an appropriate protective order/ measure. In the event that **PAGCOR** fails to secure the appropriate order/ measure, **CONTRACTOR** may disclose only such portion of the Confidential Information it is so legally compelled.
5. All confidential Information disclosed by **PAGCOR** to the **CONTRACTOR** (its officers, employees, agents, and any other persons acting on its behalf) shall remain **PAGCOR's** property.
6. Upon termination of this Contract, the **CONTRACTOR** shall re-deliver all tangible Confidential Information furnished by **PAGCOR**. The **CONTRACTOR** will also destroy all written material, memoranda, notes, and other writings or recordings whatsoever prepared by it based upon, containing, or otherwise reflecting any Confidential Information, upon the direction of **PAGCOR**.
7. Any Confidential Information that is not returned or destroyed, including any oral Confidential Information, shall remain subject to the confidentiality obligations herein notwithstanding, the termination of this Contract until such Confidential Information is re-delivered to **PAGCOR** or destroyed by the **CONTRACTOR**. Any oral Confidential Information shall not be repeated to any third party by the **CONTRACTOR** (its officers, employees, agents, and any other persons acting on its behalf) even after the termination of the Contract.
8. **PAGCOR** (its officers, employees, agents, and any other persons acting on its behalf) shall not be liable to the **CONTRACTOR** (its officers, employees, agents, and any other persons acting on its behalf) for any damage or injury resulting from the latter's use of the disclosed Confidential Information.
9. The **CONTRACTOR** acknowledges and agrees that money damages would not be a sufficient remedy for any breach of this Confidentiality Clause and that **PAGCOR** shall be entitled to specific performance including injunctive relief, as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Confidentiality Clause but shall be in addition to all other remedies available to **PAGCOR** in law or equity. The **CONTRACTOR** agrees to reimburse **PAGCOR** for costs and expenses (including without

limitations attorney's fees) incurred by **PAGCOR** in connection with the enforcement of this Confidentiality Clause.

10. The obligations stated in this Confidentiality Clause shall also apply to Confidentiality Information negligently, unintentionally or inadvertently disclosed by **PAGCOR** (its officers, employees, agents, and any other persons acting on its behalf) and to disclosures made by a **PAGCOR** officer, employee, agent, and other persons ordinarily acting on its behalf, in breach of his/her obligation or duty to **PAGCOR**.

## **ARTICLE XII** **TAXES AND LICENSES**

All amounts, claims, and expenses pertaining to licenses, permits, registrations or renewals thereof, required by the appropriate government entities for the services performed under Contract shall be for the exclusive account of **CONTRACTOR**.


The **CONTRACTOR** shall regularly present, within the duration of the Contract, a tax clearance from the Bureau of Internal Revenue (BIR) as well as a copy of its income and business tax returns duly stamped and received by the BIR and duly validated with the tax payments made thereon.

The **CONTRACTOR** shall pay taxes in full and on time, failure to do so will entitle **PAGCOR** to suspend payment for services rendered by the **CONTRACTOR**.



## **ARTICLE XIII** **NO EMPLOYER-EMPLOYEE RELATIONSHIP**

There shall be no employer-employee relationship between **PAGCOR** and the employees of the **CONTRACTOR**. The **CONTRACTOR** shall have the entire charge, control and supervision of the performance of the Services herein agreed upon. Any damage, accident, injury, or sickness of any kind, or death that may occur to any employee of the **CONTRACTOR** during the time and consequent to the performance of the work under this Contract shall likewise be the **CONTRACTOR's** responsibility.




The **CONTRACTOR** further binds itself to hold **PAGCOR** free and harmless from any claim on account of the aforementioned injury or damage.



## **ARTICLE XIV** **PERFORMANCE SECURITY**

To guarantee the faithful performance of the **CONTRACTOR** of all of its obligations under this Contract, **PAGCOR** shall deduct from the service fee of the **CONTRACTOR** the amount of **FOURTEEN THOUSAND THIRTY SEVEN and 78/100 PESOS (PhP 14,037.78)**<sup>1</sup> as Performance Security.

The Performance Security shall be retained by **PAGCOR**, without interest, during the pendency of this Contract and any extension thereof. The Performance Security shall only be released after the termination of this Contract and/or the issuance by



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<sup>1</sup> The total amount of the Performance Security shall be equal to five percent (5%) of the total amount of the service fee.

**PAGCOR** of the final Certificate of Acceptance and after deducting any and all claims that **PAGCOR** may have against the **CONTRACTOR**.

The **CONTRACTOR** shall cause the extension of the validity of the Performance Security to cover approved contract time extensions.

**PAGCOR** shall deduct from the service fee of the **CONTRACTOR** a proportionate amount as additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the Service Contract.

**ARTICLE XV**  
**MISCELLANEOUS PROVISIONS**

In the event that facts and circumstances arise or are discovered which render this Contract disadvantageous to the Government, the **PARTIES** hereto agree to immediately to re-negotiate its terms and conditions, or at the option of **PAGCOR**, terminate the same.

No terms or conditions of this Contract shall be waived and no breach or default excused unless such waiver or excuse shall be in writing and signed by the party affected.

This Contract, and the interests therein, may not be assigned or sub-contracted to another without prior consent of the other party.

Any and all notices to be given pursuant to, or under this Contract, shall be sent to the party to whom the notice is addressed at the address of the party indicated in this Contract.

If any provision hereof is prohibited or made unenforceable under any applicable law or by a competent court or authority, the same shall not affect any other provision of this Contract, which are otherwise valid and enforceable.

The **PARTIES** agree to abide by these terms and conditions in good faith.

The relationship between the **PARTIES** shall be limited to the performance of the terms and conditions of the Contract. Nothing in this Contract shall be construed to create a general partnership between the **PARTIES**, or to authorize any party to bind the other except as set forth in this Contract, or to borrow money on behalf of another party, or to use the credit of any party for any purpose other than what has been set forth herein.

Any right or remedy conferred by this Contract upon the **PARTIES** shall not be exclusive of any other right or remedy of each party, whether under this Contract or provided or permitted at law or in equity, but each right or remedy shall be cumulative of every other right or remedy available to it.

This Contract 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 of the **PARTIES**. No supplement, variation or amendment of this Contract shall be binding unless executed in writing by the **PARTIES**.



This Contract may be executed in any number of counterparts, each of which when so executed and delivered shall be considered as an original and all together shall constitute one agreement.

**IN WITNESS WHEREOF**, the **PARTIES** hereto have signed these presents on this \_\_\_\_ day of \_\_\_\_\_, 2013 at the City of Manila, Philippines.

**PHILIPPINE AMUSEMENT AND  
GAMING CORPORATION**  
TIN: 033-000-887-972


**BOOKLINK PHILIPPINES, INC.,**  
TIN: 006-952-116

Represented by:



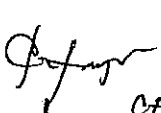
**JORGE V. SARMIENTO**  
President and Chief Operating Officer  
TIN: 122-841-833 *MAN*

Represented by:



**MA. ANTONINA LIBERTY T. ROSARIO**  
Managing Director  
TIN: 119-189-885

Signed in the presence of:

  
NORBERTO L. OBIAS  
BESSILDA K. CATAYINA

**ACKNOWLEDGMENT**

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

**BEFORE ME**, a Notary Public for and in the City of CITY OF MANILA, on this MAR 26 2013 day of \_\_\_\_\_, 2013, personally appeared:

**NAME**

**GOVERNMENT ID NO.**

**JORGE V. SARMIENTO**

**PASSPORT NO. EB1763201**

Issue Date: January 20, 2011

Place of Issue: DFA-Manila

Validity Period: January 19, 2016

known to me to be the same person who executed the foregoing Service Contract consisting of ten (10) pages, and who acknowledged to me that the same is his own free and voluntary act and deed as well as the free and voluntary act and deed of the entity he represents, he being duly authorized for this purpose.

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

Doc. No.: 501  
Page No.: 102  
Book No.: I  
Series of 2013.

**ATTY. REAGAN S. DE VERA**  
NOTARY PUBLIC  
6TH FLR. HYATT HOTEL & CASINO  
M.H. DEL PILAR ST., MALATE, MANILA  
APPT. NO. 2013-026, UNTIL DEC. 31, 2014  
ROLL NO. 59296, IBP LIFETIME NO. 010601  
PANGASINAN CHAPTER  
PTR NO. 1404913/01-08-13/MANILA

**ACKNOWLEDGMENT**

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

1 MAR 14 2013 BEFORE ME, a Notary Public for and in the City of MANILA, on this  
14 MAR 14 2013, 2013, personally appeared:

<u>NAME</u>	<u>GOVERNMENT ID NO.</u>
MA. ANTONINA LIBERTY T. ROSARIO	TIN: 119-189-885

known to me to be the same person who executed the foregoing Service Contract consisting of ten (10) pages, and who acknowledged to me that the same is her own free and voluntary act and deed as well as the free and voluntary act and deed of the entity she represents, she being duly authorized for such purpose.

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

Doc. No. 783  
Page No. 28  
Book No. 713  
Series of 2013.

*[Signature]*  
ATTY. DELFIN R. AGCAYEL JR.  
NOTARY PUBLIC  
UNTIL DECEMBER 31, 2013  
PTR NO. 02103-2-1-0016-ILA.  
IBP NO. 0000110-ILA.  
ROLL NO. 1406 / TR-14-519-066  
MCLE III- 0013521  
Com. No. 2013 - 023