

Annex A: Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT

**KNOW ALL MEN BY THESE PRESENTS:**

This Agreement entered into by and between:

The **PHILIPPINE HEALTH INSURANCE CORPORATION**, a Government Owned and Controlled Corporation duly organized and existing by virtue of Republic Act No. 7875 otherwise known as the National Health Insurance Act of 1995 *as amended by RA 9241 and RA 10606*, with principal office address at No. 709 Citystate Center Bldg., Shaw Blvd., Pasig City, duly represented herein by its \_\_\_\_\_ and hereinafter referred to as the "**Disclosing Party**";

-and-

\_\_\_\_\_ with principal office address at \_\_\_\_\_ duly represented herein by its \_\_\_\_\_ and hereinafter referred to as the "**Receiving Party**".

- WITNESSETH -

The Receiving Party desires to participate in the study/research/discussions regarding **online collection and remittance services**, hereinafter known as the "**Transaction**." In the course of conducting the transaction, Disclosing Party may share certain proprietary and confidential information with the Receiving Party. Therefore, in consideration of the mutual promises and covenants contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. Definition of Confidential Information**

- a) For purposes of this Agreement, "**Confidential Information**" means any data or information so defined under the Data Privacy Act of 2012 and its IRR that is proprietary to the Disclosing Party and not generally known to the public, whether in tangible and intangible form, whenever and however disclosed, including, but not limited to:
  - (1) any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of such party, its affiliates, subsidiaries and affiliated and/or contracting agencies/ organizations/ LGUs/ companies;
  - (2) plans for products or services, and membership/healthcare provider/supplier/contractor/accredited agents lists;

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- (3) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method;
  - (4) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; and
  - (5) any other information that should reasonably be recognized as proprietary or confidential information of the Disclosing Party and/or of its affiliated/accredited/contracting entities. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that Disclosing Party regards all of its Confidential Information as trade secrets.
- b) As defined in PhilHealth Office Order No. 0050, s-2011 regarding the PhilHealth Policy on Confidentiality and Security of Protected Health Information, Confidential Information shall include, but not limited to, protected health information, personal financial information, patient records, or information gained from committee meetings, hospitals or facility visits during accreditation and investigation, inquiries from members, patients or other PhilHealth employees.
- c) Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which:
- (1) was known by the Receiving Party prior to receiving the Confidential Information from the Disclosing Party;
  - (2) becomes rightfully known to the Receiving Party from a Third-Party source not known by the Receiving Party to be under an obligation to Disclosing Party to maintain confidentiality;
  - (3) is or becomes publicly available through no fault or failure to act by the Receiving Party in breach of the Agreement;
  - (4) is required to be disclosed in a judicial or administrative proceeding, or otherwise requested or required to be disclosed by law or regulation, although the requirements of paragraph 4 hereof shall apply prior to any disclosure being made; and
  - (5) or has been independently developed by employees, consultants or agents of the Receiving Party without violation of the terms of this Agreement or reference or access to any Confidential Information.

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**2. Disclosure of Confidential Information**

From time to time, the Disclosing Party may disclose Confidential Information to the Receiving Party. The Receiving Party will:

- (a) limit disclosure of any Confidential Information to its directors, officers, employees, agents or representatives (collectively "Representatives") who have a need to know such Confidential Information in connection with the current or contemplated

transaction/relationship between the parties to which this Agreement relates, and only for that purpose;

- (b) advise its Representatives of the proprietary nature of the Confidential Information and the obligations set forth in this Agreement and require such Representatives to keep the Confidential Information confidential;
- (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care, used by it in safeguarding its own confidential information;
- (d) not disclose any Confidential Information received by it to any third parties without the Disclosing Party's consent or as otherwise provided for herein.

Each party shall be responsible for any breach of this Agreement by any of their respective Representatives.

**3. Use of Confidential Information**

The Receiving Party agrees to use the Confidential Information solely in connection with the current or contemplated business relationship between the parties and not for any purpose other than as authorized by this Agreement. No other right or license, whether expressed or implied is granted to the Receiving Party. Title to the Confidential Information will remain solely in the Disclosing Party. All use of Confidential Information by the Receiving Party shall be for the benefit of the Disclosing Party. Any modifications and improvements thereof by the Receiving Party shall be the sole property of the Disclosing Party.

**4. Compelled Disclosure of Confidential Information**

Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any judicial or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided in the case of a broad regulatory request with respect to the Receiving Party's business (not targeted at Disclosing Party), the Receiving Party may promptly comply with such request provided the Receiving Party give (if permitted by such regulator) the Disclosing Party prompt notice of such disclosure.

The Receiving Party agrees that it shall not oppose and shall cooperate with efforts, to the extent reasonably practicable, by the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order and the Receiving Party is legally requested or required to disclose such Confidential Information, the Receiving Party may do so without liability.

**5. Term**

This agreement shall take effect on the date of signing and shall subsist despite termination of the principal contract covered by this agreement.

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6. Remedies

Both parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the damages caused by unauthorized dissemination of the Confidential Information would be impossible to calculate.

Therefore, both parties agree that the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder whether at law or in equity including damages. Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

7. Return of Confidential Information

Receiving Party shall immediately return all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes" and all copies of any of the foregoing including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information in whatever form of storage or retrieval, upon the:

- (a) completion or termination of the dealings between the parties contemplated hereunder;
- (b) the termination of this Agreement; or
- (c) at such time as the Disclosing Party may so request; provided however that the Receiving Party may retain such documents as is necessary to enable it to comply with its document retention policies. Alternatively, the Receiving Party, with the written consent of the Disclosing Party may (or in case of Notes, at the Receiving Party's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Receiving Party supervising the destruction.

8. Safekeeping of Confidential Information

Receiving Party shall use the same care to avoid disclosure or unauthorized use of the Confidential Information as it uses to protect its own confidential information, but in no event less than reasonable care. It is agreed that:

- (a) All confidential information shall be retained by the Receiving Party in a secure place with access limited only to the Receiving Party's employees or agents who need to know such information for purposes of this Agreement, and
- (b) Confidential Information will be disclosed only to each party's respective employees who are involved in the Potential Transaction and to third party consultants or advisers who have been engaged for the purpose of discussing the Potential Transaction, which the Disclosing Party has prior notice of such engagement, provided that in the event of such disclosure to any third person or entity not employees or retained by the

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Receiving Party, the Receiving Party shall nonetheless remain liable for any unauthorized disclosure by such person or entity.

It is further agreed that the Receiving Party shall ensure that all of the employees and consultants (including employees and consultants of its parent, subsidiaries and affiliates) having access to Confidential Information adhere to the terms and conditions of this Agreement as if they were parties hereto.

**9. No Gift Policy**

The contracting parties undertake to comply with the Office Order No. 0018-2015 entitled "Reiteration of Philhealth No Gift Policy (Revision 1)" which is deemed incorporated into this Contract. No Philhealth personnel shall solicit, demand or accept, directly or indirectly, any gift from any person, group, association, or juridical entity, whether from the public or private sector, at anytime, on or off the work premises where such gift is given in the course of official duties or in connection with any transaction which may affect the functions of their office or influence the actions of directors or employees, or create the appearance of a conflict of interest.

**10. Notice of Breach**

Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives, or any other breach of this Agreement by Receiving Party or its Representatives, and will cooperate with efforts by the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

**11. No Publicity**

Neither Party hereto shall in anyway or in any form disclose, publicize, or advertise in any manner the discussions that gave rise to this Agreement nor the discussions or negotiations covered by this agreement without prior written consent of the other Party.

**12. No Binding Agreement for Transaction**

Neither party will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement, except for the matters specifically agreed to herein. The parties further acknowledge and agree that they each reserve the right in their sole and absolute discretion, to reject any and all proposals and to terminate discussions and negotiations with respect to a Transaction at any time. This Agreement does not create a joint venture or partnership between the parties. If a Transaction goes forward, the non-disclosure provisions of any applicable transaction documents entered into between the parties (or their respective affiliates) for the Transaction shall supersede this Agreement. In the event such provision is not provided for in said transaction documents, this Agreement shall control.

**NO WARRANTIES ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT WHATSOEVER.**

The parties acknowledge that although they shall each endeavor to include in the Confidential Information all information that they each believe relevant for the purpose of the evaluation of a Transaction, the parties understand that no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by either party as the Disclosing Party. Further, neither party is under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose. Neither Party

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shall have any liability to the other party or to other party's Representatives resulting from any use of the Confidential Information except with respect to disclosure of such Confidential Information in violation of this Agreement and the Data Privacy Act.

**13. Miscellaneous Provisions**

- (a) This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.
- (b) Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.
- (c) Although the restriction contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.
- (d) All obligations contained in this Agreement shall extend to and *are* binding upon the parties *herein*, their respective successors, assigns and designees.

**14. Notices**

Any notice or communication required or permitted to be given by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by registered mail, postage prepaid, or recognized reputable private courier, in each case, to the address of the other party first indicated above (or such other address as may be furnished by a party in accordance with this paragraph).

All such notices or communications shall be deemed to have been given and received as follows:

- (a) In case of personal delivery or delivery by a recognized reputable private courier, on the date of receipt by Receiving Party of such delivery.
- (b) In case of registered mail, on the day of mailing.

**15. Venue**

In case of lawsuit arising from breach of this contract, the complaint or petition shall be filed with the proper court of Pasig City only.

**16. Governing Law**

The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of the Philippines applicable to contracts made and to be wholly performed within the said jurisdiction, without giving effect to any conflict of laws provisions thereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Mutual Non-Disclosure Agreement to be executed this \_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_.

PHILIPPINE HEALTH INSURANCE CORPORATION

By:

By:

\_\_\_\_\_

\_\_\_\_\_

SIGNED IN THE PRESENCE OF:

\_\_\_\_\_

\_\_\_\_\_

REPUBLIC OF THE PHILIPPINES)

) s.s

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, personally appeared the following:

<u>Name</u>	<u>Government Issued ID</u>	<u>Date and Place Issued</u>
_____	_____	_____
_____	_____	_____

known to be the same persons who executed the foregoing Non-Disclosure Agreement consisting of \_\_\_ pages including this page where this acknowledgement is written and they acknowledged before me that the same is their free and voluntary act and deed as well as those of the corporations they herein represent.

WITNESS MY HAND AND SEAL on the date and in the place above mentioned.

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Book No. \_\_\_\_\_  
Series of 2021. \_\_\_\_\_

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