

**Annex A: Non-Disclosure Agreement  
(NDA)**

**NON-DISCLOSURE AGREEMENT**

**KNOW ALL MEN BY THESE PRESENTS:**

This Agreement entered into by and between:

**PHILIPPINE HEALTH INSURANCE CORPORATION**, a Government-Owned and Controlled Corporation (GOCC) organized and existing by virtue of R.A. 7875, otherwise known as the National Health Insurance Act of 1995, as amended by Republic Act 9241, Republic Act 10606 and Republic Act 11223, to administer the National Health Insurance Program, duly represented by \_\_\_\_\_, with principal office at \_\_\_\_\_, hereafter referred to as the **“Disclosing Party”**;

-and-

\_\_\_\_\_, with office address at \_\_\_\_\_, duly represented herein by \_\_\_\_\_, and herein after referred to as the **“Receiving Party”**;

**-WITNESSETH-**

The Receiving Party desires to participate in the study/research/discussions regarding \_\_\_\_\_, 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 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;
  - (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 the Disclosing Party regards all of its Confidential Information as trade secrets.
- (b) As defined in PhilHealth Circular No. 029-2015 regarding PhilHealth's Commitment to Ensure the Security of Members' and their Dependents' Personal Informal, 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; member and their dependents' personal and financial information including photographs and biometric identifies, such as retinas or iris scans, fingerprints, voiceprints, or scan of hand for face geometry; privileged health information, such as patient records, medical diagnoses, medical procedures, etc; and personal information of accredited health care professionals and providers, except those relating to the delivery of services or practice of profession, such as provider or clinic addresses, accreditation status, or duration of accreditation.
- (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 known by the Receiving Party to be under no 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.

## **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 similarly strictly 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 proprietary/confidential information; and

- (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 its/his Agents and/or 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 through a prior written consent of an authorized representative of the Disclosing Party. No other right or license is granted to the Receiving Party hereunder. Title to the Confidential Information shall remain solely in the Disclosing Party. All use of Confidential Information by the receiving party shall be for the benefit of the Disclosing Party and 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, to the extent practicable, 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 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 disclosure may be made without liability.

### **5. Term**

This Agreement shall remain in effect for a \_\_\_\_\_ term (subject to a \_\_\_\_\_ extension if the parties are still discussing and considering the Transaction at the end of the June 2017). Notwithstanding the foregoing, the parties' duty to hold in confidence Confidential Information disclosed during the term of this Agreement shall remain in full force and effect indefinitely.

### **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 hereby 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. 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 attorneys' fees and expenses.

## **7. Return of Confidential Information**

Receiving Party shall immediately return and redeliver to the other party all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information derived therefrom 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, 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. 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 and/or third persons, 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.

## **9. No Binding Agreement for Transaction**

The parties agree that 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 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 hereto 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.

## 10. Miscellaneous Provisions

- (a) This Agreement constitutes the entire understanding between the parties and supersedes any and all prior 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 it 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) This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.
- (e) The receipt of Confidential Information pursuant to this Agreement will not prevent or in any way limit either party from:
  - (1) developing, making or marketing products or services that are or may be competitive with the products or services of the other; or
  - (2) providing products or services to others who compete with the other.
- (f) Paragraph headings use in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

**11. 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 overnight delivery services, 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
  - (a) In case of personal delivery or electronic mail, on the date of such delivery
  - (b) In case of delivery thru a nationally recognized overnight carrier, on the third business day following dispatch, and
  - (c) In case of mailing, on the seventh business day following such mailing.

**12. 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. **Any dispute shall be referred to and finally resolved before a competent court of Makati City or Pasig City for resolution, at the discretion of the suing party to the exclusion of all other courts.**

**IN WITNESS WHEREOF**, the parties hereto have caused this Non-Disclosure Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_. (This should really be left blank and can be hand written or stamped on the day the agreement is signed)

By:

By:

\_\_\_\_\_  
 Signature over printed name  
 Designation  
 Philippine Health Insurance Corporation

\_\_\_\_\_

**SIGNED IN THE PRESENCE OF:**

**ACKNOWLEDGEMENT**

REPUBLIC OF THE PHILIPPINES)

) s.s.

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

Name	Government Issued ID	Date and place Issued
_____	_____	_____
_____	_____	_____

Known to be the same persons who executed the foregoing Non-Disclosure Agreement consisting of six (6) pages including this page where this acknowledgement is written and they acknowledged to me that the same is their free and voluntary act and deed, as well as, that of the corporations herein represented. **WITNESS MY HAND AND SEAL** on the date and in the place above mentioned

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 20 \_\_\_\_.