

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "Agreement") is executed this 26th day of January 2018 in the City of Manila, Philippines, by and between:

The **PHILIPPINE COMPETITION COMMISSION** ("PCC"), a government agency duly created and organized under Republic Act No. 10667, with principal office at the 2nd Floor, DAP Building, San Miguel Avenue, Ortigas Center, Pasig City, Metro Manila, represented herein by its Chairperson, **Arsenio M. Balisacan, PhD**;

and

The **INSURANCE COMMISSION** ("IC") a government instrumentality duly created and organized under Republic Act No. 275 and authorized to supervise and regulate, (i) insurance business under Presidential Decree No. 1460, as amended by Republic Act No. 10607, (ii) pre-need business under Republic Act No. 9829, and (iii) Health Maintenance Organizations under Executive Order No. 192, series of 2015, with principal office at 1071 United Nations Avenue, Ermita, Manila, as represented herein by its Commissioner, **Dennis B. Funa**.

(PCC and IC are individually referred to in this Agreement as a "Party" and collectively, as the "Parties".)

RECITALS:

- (A) R.A. No. 10667, otherwise known as the Philippine Competition Act (the "PCA"), was enacted to enhance economic efficiency and promote free and fair competition in trade, industry and all commercial economic activities, prevent economic concentration that will unduly stifle competition, or lessen, manipulate, or constrict the discipline of free markets, and penalize all forms of anti-competitive agreements, abuse of dominant position and anti-competitive mergers and acquisitions with the objective of protecting consumer welfare and advancing domestic and international trade and economic development.
- (B) Pursuant to the PCA, the PCC was created as an independent quasi-judicial body tasked to implement and attain the objectives of the law.
- (C) The IC is mandated by law to regulate and supervise the insurance industry, pre-need industry and health maintenance organizations in accordance with the provisions of the Insurance Code, the Pre-Need Code of the Philippines and Executive Order No. 192, Series of 2015, respectively.
- (D) As a way of achieving the declared State policy under the PCA of effective implementation of the National Competition Policy by the Government of the Republic of the Philippines and all of its agencies as a whole, the Parties have agreed to work together towards a harmonized and efficient regulatory

approach concerning the insurance industry, pre-need industry, and health and maintenance organizations, consistent with their respective mandates of promoting and maintaining free and fair competition, as well as growth and financial stability of insurers and the protection of the insuring public.

NOW THEREFORE, the Parties hereby agree to do the following, subject to the terms and conditions herein stated:

ARTICLE I

MERGERS AND ACQUISITIONS

Section 1.1. *Notification and Review of Mergers and Acquisitions Involving Insurance Companies, Pre-Need Companies and Health Maintenance Organizations ("IC Regulated Entities")* – Proposed mergers and acquisitions between, among, or otherwise involving *IC Regulated Entities* shall be subject to the prior notification and review requirements under the PCA, *provided, that*, mergers or acquisitions of *IC Regulated Entities* under financial distress shall be subject to specific rules to be promulgated by the PCC. In promulgating the specific rules for the notification and review of *IC Regulated Entities* under financial distress, the PCC shall (i) consider the pertinent rules and regulations issued by the IC in defining *IC Regulated Entities* in financial distress; (ii) take into account the stability of the *IC Regulated Entities*; and (iii) exert best efforts in providing expedited notice and review periods.

Section 1.2. *Recommendation of Proposed Mergers and Acquisitions* – At its own initiative, the IC may issue a recommendation to the PCC that a proposed merger or acquisition between, among, or otherwise involving *IC Regulated Entities* be deemed not prohibited under the PCA. Such recommendation, however, shall not be binding on the PCC.

It is understood by the Parties herein that the lapse of the period for review of mergers and acquisitions involving compulsory notification in accordance with Section 17 of the PCA without any action or additional request for information from the PCC shall mean that the Parties may proceed to implement the proposed merger or acquisition. A favorable or no-objection ruling by the PCC of the proposed merger or acquisition shall not be construed as dispensing with the requirement of a favorable recommendation by the appropriate government agency under Section 79 of the Corporation Code of the Philippines.

Section 1.3. *Compliance* – The IC shall extend all reasonable assistance to the PCC in ensuring and monitoring the compliance of *IC Regulated Entities* with applicable notification and review requirements imposed under the PCA for proposed mergers and acquisitions. Such assistance to be provided by the IC may include, among others, the issuance of advisories and/or regulations instructing *IC Regulated Entities* to comply with applicable rules promulgated by the PCC.

ARTICLE II

COORDINATION AND COOPERATION

Section 2.1. *Duty to Notify* – Each Party shall promptly notify or advise the other of any potential or emerging competition concerns relating to *IC Regulated Entities* and other activities regulated by the IC. Such competition concerns shall be deemed

to include, but shall not be limited to, actual or potential anti-competitive conduct or agreements involving *IC Regulated Entities* that have been reported to or discovered by either Party in the course of the performance of their respective duties and functions.

Section 2.2. *Formulation and Amendment of Regulations* – Each Party undertakes to consult the other in the formulation of new issuances, regulations and amendments to existing regulations that, in its judgment, may impact the policy and regulatory framework governing *IC Regulated Entities* and other activities regulated by the IC.

Section 2.3. *Access to Information and Documents* – Each Party, upon the request of the other, shall promptly provide access to its regulatory issuances, bulletins, circulars, memoranda, correspondence, reports, and other information relevant to its regulatory function, as well as documents relative to agreements, conduct, mergers, acquisitions, and other transactions involving *IC Regulated Entities* which may be deemed covered under the PCA. Access to information and documents under this Section shall be subject to applicable rules on confidentiality and privilege under relevant laws, rules, and regulations.

Section 2.4. *Consultative Meetings* – The Parties may conduct consultative meetings regarding any matter of common concern particularly those involving competition-related matters and the stability of the insurance industry, pre-need industry and health maintenance organizations. Furthermore, the Parties undertake to keep the operation of this Agreement under review and, in light of experience, implement amendments to this Agreement for purposes of improving its operation and resolving any issue that may arise during its implementation.

ARTICLE III **NOTICE REQUIREMENTS**

Section 3.1. *Notices* – All notices, requests and other correspondences shall be addressed to the respective heads of the Parties for their appropriate action and shall be delivered through any of the following modes:

- a.) By personal delivery to the Parties' main offices;
- b.) By courier to be delivered to the Parties' main offices;
- c.) By electronic mail to the following addresses:

For PCC: [REDACTED] and [REDACTED]
For IC: [REDACTED]

All such notices, requests and other communications shall be deemed received on the date of receipt by the intended Party. If such notice, request, or other communication is given by electronic mail, it shall be deemed to have been received at the time of receipt as recorded in the intended Party's inbox.

ARTICLE IV **CONFIDENTIALITY**

Section 4.1. *Confidentiality* – Except as may otherwise be required by law, the Parties shall keep confidential and shall not, without the prior written consent of the

other, divulge to any third party any documents, records, data, or other information of a confidential or privileged nature arising from or in any way related to this Agreement, and furnished directly or indirectly by one Party to the other Party during the implementation of this Agreement.

For purposes of this Agreement, information of a confidential or privileged nature shall refer to information disclosed by one Party to the other which is labeled or designated as confidential or privileged by the disclosing Party, or is determined to be confidential or privileged pursuant to applicable rules on confidentiality and privilege under relevant laws, rules, and regulations.

Section 4.2. *Use of Information and Documents* – The Parties agree to limit the use of any and all information and documents obtained pursuant to this Agreement for lawful purposes and in pursuance of the objectives of this Agreement as well as the respective mandates of the Parties.

ARTICLE V **LEGAL EFFECT**

Section 5.1. *Effectivity* – This Agreement shall take effect from the date it is executed by all the Parties and shall remain in effect until terminated in accordance with Article V, Section 2 hereof.

Section 5.2. *Termination* – Either Party may terminate this Agreement, with or without cause, by serving a written notice of termination to the other Party. Said termination by either Party shall become effective immediately upon receipt of such written notice by the other Party.

Section 5.3. *Legal Effect* – For the avoidance of doubt, nothing in this Agreement limits the powers or constitutes a waiver of the statutory functions or powers of either Party.

ARTICLE VI **GENERAL PROVISIONS**

Section 6.1. *Limitation of Liability* – The Parties shall neither be held responsible nor liable for any loss or damage arising out of or by reason of claims, demands, suits, costs, losses and damages arising out of implementation of this Agreement, except when the loss or damage is caused by bad faith or by gross negligence amounting to bad faith committed by the respective officers or employees of the Parties in the performance of their respective official duties and responsibilities.

Section 6.2. *Dispute Settlement* – The Parties shall exert their best efforts to amicably settle any disputes arising out of or in connection with this Agreement. In case of failure to amicably settle such disputes, the Parties shall observe the applicable dispute resolution provisions of Executive Order No. 292, or the Revised Administrative Code of 1987.

Section 6.3. *Amendments* – Subsequent revisions, amendments, repeals, and supplements to this Agreement shall be made upon mutual written agreement by the Parties.

Section 6.4. Separability – If any one of the provisions contained herein shall be declared invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

Section 6.5. Counterparts – This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement shall be effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives on the date and place first above written.

**PHILIPPINE COMPETITION
COMMISSION**

By:



Chairman

INSURANCE COMMISSION

By:



Insurance Commissioner

Signed in the presence of:



Commissioner
Philippine Competition Commission



Deputy Insurance Commissioner
Management Support Services Group
Insurance Commission



Executive Director
Philippine Competition Commission



Deputy Insurance Commissioner
Legal Services Group
Insurance Commission



Officer-In-Charge
Technical Services Group
Insurance Commission



Deputy Insurance Commissioner
Financial Services Group
Insurance Commission