



**JOINT VENTURE
AGREEMENT**

**JOINT VENTURE AGREEMENT
FOR THE BATAAN HEALTHCARE SMARTCARD PROJECT
(BHSP)**

KNOW ALL MEN BY THESE PRESENTS:

This **JOINT VENTURE AGREEMENT For THE BATAAN HEALTHCARE SMARTCARD PROJECT** (the "Agreement") is entered into this 12th day of March, 2020 at Balanga City, Bataan, by and between:

The **PROVINCIAL GOVERNMENT OF BATAAN**, a local government unit duly organized and existing by virtue of the laws of Republic of the Philippines, herein represented by its Governor, **Hon. ALBERT S. GARCIA**, duly authorized by the Sangguniang Panlalawigan through SP Resolution No. 036, Series of 2020, hereinafter referred to as "PGB",

- and -

EUREKARE CORPORATION, a corporation duly registered under the laws of the Republic of the Philippines, and with principal address at [REDACTED]

represented herein by its Chief Executive Officer, **YI-SU LIN**, as duly authorized by its Board through Board Resolution No. 2020-01, and hereinafter referred to as "Eurekare".

WITNESSETH:

WHEREAS, Eurekare is a Healthcare Smartcard IT Platform Service Provider, which developed the Eurekare Healthcare Smartcard System ("e-CARE" or "Facility") – an established System Platform, Applications and Services for business clients in both public and private sectors;

WHEREAS, one of the priority programs of the PGB is to improve its health system for the benefit of all its constituents which shall provide quality services in a timely, safe, and effective manner by establishing a computerized and integrated health database of its constituents for data analysis and for better health programs that will address their needs;

WHEREAS, PGB understands that in order to have an informed decision in policy-making and overall management of the health care system in the province, it is essential to establish a computerized and integrated health database system of all its constituents about maternal mortality, AIDS epidemic, tuberculosis, malaria and neglected tropical diseases, as well as premature mortality due to non-communicable diseases (NCDs), and other similar data;

WHEREAS, the Bataan Healthcare Smartcard Project of Eurekare will enhance the health database system and services provided by PGB;

WHEREAS, Eurekare submitted its Unsolicited Proposal to the PGB through its PPP and Investment Center on February 21, 2018 for the Bataan Healthcare Smartcard Project in accordance with the Provincial Ordinance No. 02, Series of 2013 which is known as the "Integrated Public-Private Partnership ("PPP") Code of the Provincial Government of Bataan;

WHEREAS, the PGB, upon the recommendation of its PPP Selection Committee through PPP-SC Resolution No. 1 dated April 16, 2018, accepted the unsolicited proposal of Eurekare on April 17, 2018 which effectively grants the latter the Original Proponent Status on the Bataan Healthcare Smartcard Project;

WHEREAS, the unsolicited proposal of Eurekare has undergone detailed negotiation as provided for by Provincial Ordinance No. 02, Series of 2013;

WHEREAS, the negotiated terms and conditions of the Bataan Healthcare Smartcard Project was subjected to Competitive Challenge as provided for under Provincial Ordinance No. 02, Series of 2013 when an Invitation to Submit Comparative Proposals was caused to be published by PGB on September 9, 2019 in Manila Standard, a newspaper with national circulation.

WHEREAS, the Sangguniang Panlalawigan of Bataan issued Resolution No. 036 dated January 20, 2020 which approved and ratified the recommendation of the PPP Selection Committee awarding the Project to Eurekare, the original project proponent.

WHEREAS, the Notice of Award dated February 5, 2020 was issued by PGB in favor of Eurekare.

NOW, THEREFORE, for and in consideration of the above premises and the mutual obligations, commitments and undertakings assumed and accepted hereunder, the PARTIES agree as follows:

ARTICLE 1. DEFINITION OF TERMS

- 1.01. "Agreement" – refers to this Agreement including its relevant Annexes executed along with this agreement, and such amendments as may be executed thereafter, in accordance with this Agreement.
- 1.02. "Bataan Healthcare Smart ID Card (BHS ID)" – is an identification plastic card with an embedded microprocessor chip which contains secured data, such as, but not limited to member identification, photo, medical history and other data that is compliant to ISO 10373.
- 1.03. "e-CARE Healthcare System and Platform (e-CARE)" – Applications and Secured Transaction Platform designed and developed by Eurekare specifically for the Integration of Healthcare Services into a complete e-Healthcare Solution.
- 1.04. "Bataan Healthcare Card Management System (CMS)" – provides tools to manage cards and their associated credentials, applications and data throughout their lifecycle.

- 1.05. "Contract Documents" – shall be the documents referred to in Article 4 of this Agreement.
- 1.06. "Card Design and Technical Specifications" – shall be the Smartcard design, prepared by Eureka and approved by PGB as provided in Annex A of this Agreement.
- 1.07. "Dispute" – means any difference or disagreement of any kind whatsoever arising between the Parties in connection with, arising out of, or relating to the interpretation, implementation, breach, termination or validity of this Agreement.
- 1.08. "Force Majeure" – as defined in Section 10.1 of this Agreement.
- 1.09. "Project" – The Bataan Healthcare Smartcard System (BHS) to be developed, customized and maintained using the Eureka e-CARE System under this Agreement.

ARTICLE 2. FORMATION OF THE JOINT VENTURE CORPORATION

- 2.01. For purposes of implementing the Project, the Parties agree to incorporate a Joint Venture Company ("JVC" for brevity). Eureka jointly with PGB, shall be responsible for the legal requirements necessary for the incorporation of the JVC.
- 2.02. The name of the JVC shall be agreed upon by the parties subject to availability as corporate name and approval of the Securities and Exchange Commission (SEC).
- 2.03. The initial primary objective of the JVC shall be to carry on the business of Development, Operation, Maintenance and Services of the Project. The business shall be conducted in the best interest of the JVC on sound commercial profit making principles.
- 2.04. The JVC shall be capitalized in the amount of SIX MILLION PESOS (PhP 6,000,000.00) divided into SIXTY THOUSAND (60,000) COMMON SHARES with a par value of ONE HUNDRED PESOS (PhP100.00) per share. The parties shall participate in the JVC in accordance with the following shareholding ratios:

Eureka and its assigns	61%
PGB and its assigns	39%
Total	<u>100%</u>

The parties agree that the JV Partners shall be entitled to receive Dividends each year from the net profits that would constitute portion of the unrestricted Retained Earnings of the JVC shall be distributed in accordance with the above shareholdings as per JV Board of Directors decision.

- 2.05. The management of the JVC shall be vested in the Board of Directors. The Board of Directors shall consist of FIVE (5) Directors. It is hereby expressly agreed and covenanted by the parties herein that the Directors shall be nominated in the following proportion:

No. of Directors in JVC

EUREKARE	Three (3)
PGB	<u>Two (2)</u>
Total	<u>Five (5)</u>

The parties hereby agree to cast their respective votes as shareholders of the JVC so as to elect the persons so nominated and reflect the proportional representation of the parties herein in the Board of Directors as set forth above.

- 2.06 The Parties agree that Eureka shall contribute the necessary amount of funding to cover the initial capital and operating expenditures of the Project; while the PGB shall contribute non-cash investments in the form of free rent of office space with an area of One Hundred Twenty square meters (120 sq.m.) at the 2nd Floor of The Bunker for the first three (3) years of operation of the JVC, IT network, and database for the JVC. It is mutually covenanted by the Parties that the JVC shall pay the corresponding rental fees of the office space it is occupying starting on the fourth year of its operation and every year thereafter, subject to the terms and conditions set forth in the lease contract.
- 2.07 The Parties hereto acknowledge that the 39% stake of the PGB in the JVC is composed of the free rent of office space with an area of One Hundred Twenty square meters (120 sq.m.) at the 2nd Floor of The Bunker for the first three (3) years of operation of the JVC, IT network, and database for the JVC. Should there be no available office space at the 2nd Floor of The Bunker, the Parties agree to a re-computation of the share of the PGB based on the prevailing rental rate of the office space available for the JVC's lease. The Parties further agree to make the necessary adjustment in the breakdown of the Project Investment relating to the office space to reflect the rental rate of the actual office space being occupied by the JVC.
- 2.08 Right of First Refusal
- a) If a Shareholder desires to transfer (the "Selling Shareholder") all or any portion of its shares to any person or entity, including to an existing Shareholder, the Selling Shareholder may do so only in strict compliance with this Section 2.08 granting to the other Shareholders the right of first refusal to purchase said shares (the "Right of First Refusal").
 - b) The Selling Shareholder shall give written notice to all of the Shareholders of its intention to Transfer (the "Transfer Notice") specifying the number of shares the Selling Shareholder wishes to Transfer and the price per share at which the Selling Shareholder is willing to sell. The offer contained in the Transfer Notice will remain outstanding for a period of sixty (60) Business Days from the date on which the non-selling Shareholders receive the Transfer Notice (the "Notice Period"). The Transfer Notice shall include the names and addresses of not more than four (4) persons which may be corporations and which may be existing Shareholders (hereinafter called the "List of Names") to whom the Selling Shareholder proposes to offer to sell its shares on terms not more favorable than offered to the other Shareholders in the Transfer Notice.

- c) The Transfer Notice shall constitute an irrevocable offer by the Selling Shareholder to sell to the non-selling Shareholders at the price stated therein all, but not less than all, of the shares being sold for which the non-selling Shareholders have timely delivered an acceptance.
- d) The non-selling Shareholders will have the Right of First Refusal to accept or reject the Selling Shareholder's offer of shares by delivering to the Selling Shareholder on or before the last day of the Notice Period an acceptance in writing signed by each of the non-selling Shareholders who desires to purchase its proportionate share of the shares to be sold. The non-selling Shareholders who express an acceptance of the Selling Shareholders' offer to sell the shares shall pay the purchase price for the shares within a period of 10 Business Days from the day the written acceptance is received by the Selling Shareholder. The Parties shall ensure that the exercise of the Right of First Refusal of the non-selling Shareholders shall not cause the JVC to become a non-Philippine National, and if it does, the non-selling Shareholders shall be entitled to assign, transfer and convey their Right of First Refusal to a Philippine National. In such an event, the Selling Shareholder shall accept payment by the Philippine National and sell, transfer and convey the shares thereto.
- e) The non-selling Shareholders shall purchase the shares being sold by the Selling Shareholder on a pro rata basis, based on the number of shares held, unless a non-selling Shareholder has indicated that it will not purchase its pro rata portion of the Selling Shareholder's shares at which time the pro rata portion of that non-selling Shareholder shall again be available for a pro rata purchase by the other Shareholders within ten (10) Business Days from the non-acceptance by the non-selling Shareholder.
- f) If none of the non-selling Shareholders accept the offer of the Selling Shareholder to sell all, but not less than all, of the shares then the non-selling Shareholders shall promptly provide to the Selling Shareholder prior to the conclusion of the Notice Period, written approval of the person(s) named in the List of Names to whom the Selling Shareholder may sell all, but not less than all, of the Selling Shareholder's shares. The Selling Shareholder shall, for a period of 120 Business Days from the date of the Transfer Notice, be free to sell to one or more of such person(s), all but not less than all, of the shares at a price not less than the previously offered price, provided, that the approved person(s) whom acquire the shares shall execute and deliver a copy of this Agreement, and is an entity qualified to hold and own the shares. Such written approval will not be unreasonably withheld by the non-selling Shareholders.
- g) The Parties hereto acknowledge and agree that, notwithstanding the provisions of this Section 2.08, a Selling Shareholder shall be prohibited from selling its shares to a person or entity in the event:
- i. The person or entity has been found to be guilty of committing a crime under the penal laws of the Philippines or of any foreign country;

- ii. The person or entity has been adjudged by a Court of law having jurisdiction over such person or entity to be responsible for improper business activity based upon a finding of dishonesty or unconscionable practices; or
 - iii. The sale would prevent the continuation of any of the Permits/Agreements or of any license, permit, approval or permission necessary to continue operations of the JVC under this Agreement; or
 - iv. The sale will result in the JVC no longer maintaining its status as a Philippine National.
- h) If any law, regulation or policy of general application requires the prior approval of any government agency to permit an acquisition by any Party to whom an Ownership Interest is being offered pursuant to this Section, the 60 day period referred to shall be extended by such additional number of Business Days as may be reasonable in the circumstances, provided that the person intending to acquire the interest diligently pursues all reasonable measures to obtain such approval or authorization.
- i) The Right of First Refusal shall not apply as a result of any conveyance resulting from the application of remedial provisions of any pledge or encumbrance permitted in this Agreement by the pledgee or encumbrance.

ARTICLE 3. THE PROJECT (BHSP)

- 3.01. **Project Design.** The Project shall involve the financing, design, development, operation and maintenance of the Bataan Healthcare Smartcard System (BHS). The BHS shall provide secured Healthcare Cards (BHS ID) to the constituents of the Province of Bataan that will streamline and simplify healthcare services and assistances. The BHS ID will enable access to encrypted patient and Medical information. The Project shall involve the installation of secured Smartcard readers that are connected to online database servers with health care facilities or hospitals of PGB.
- 3.02. **Proof of Concept.** As proof of concept of the BHS, Eureka shall, upon award of the Project, issue One Thousand (1,000) Healthcare Cards (BHS ID) to Bataan's indigent beneficiaries free of charge and give PGB free use of the BHS Platform and free set up of Point of Care terminals in selected Government Healthcare Hospitals/Providers.
- 3.03. **Project Cost.** The estimated total project cost is FIFTEEN MILLION FOUR HUNDRED AND SIXTY-THREE THOUSAND SIX HUNDRED AND SIXTY-SEVEN PESOS (Php15,463,667.00), which shall be sourced from the capitalization of the parties as herein stipulated and from the revenues of the JVC, broken down as follows:

PROJECT INVESTMENT	
Total	15,463,667

- 3.04. **Project Scope.** The Project encompasses the development of secured Provincial Healthcare Smartcard for constituents of the Province of Bataan; and the development and use of the Healthcare Smartcard System to enable PGB to have a more accurate management and tamper-proof monitoring of the medical services it provided to its constituents; and medical bills and other medical data for detailed analysis and assessment of the wellness of the constituents of the Province of Bataan.
- 3.05. **Project Term.** The Project is for a period of **TEN (10) YEARS** to commence on the date of the Issuance of the Notice to Proceed, subject to renewal and/or extension on terms and conditions to be mutually agreed upon by the parties.
- 3.06. **Project Technical Specifications and System Features.** Eureka and JVC shall comply with the deliverables of the Bataan Healthcare System (BHS) as stated in Annex B of Project Technical Proposal, specifically:
- a) Issuance of the Secure Healthcare Combi Smartcard (BHS ID) for the constituents of PGB using Card Management System (CMS);
 - b) Healthcare Smartcard System and Application Modules (BHS);
 - c) SAM Equipped Healthcare Smartcard Readers (e-Point of Care); and
 - d) Back office web-based service system for Member and Transaction Databases.

ARTICLE 4. SCOPE OF WORK AND FINANCIAL TERMS

- 4.01. Eureka shall undertake the financing, and management of the Project to utilize new smartcard technology by providing the usage of Healthcare Smartcard System and Applications, personalization of the system and issuance of the Healthcare Smartcards to the constituents of PGB.
- 4.02. Eureka undertakes to comply with Implementation Milestones as stated in Annex D of the Technical Proposal, to wit:
- a) Integration of the Bataan Database and the Bataan Healthcare Smartcard System (BHS) within 60 days from date of receipt of Notice To Proceed.

- b) Deployment of Smartcard e-POC system into the selected Hospitals/Health Providers within 90 days from date of receipt of Notice To Proceed.
- c) Issuance of personalized Healthcare Smartcards ID for 100% of the beneficiaries identified by PGB.

4.03. FEES: The JVC is hereby authorized to collect from the government and the public the approved cost of the BPH ID and the annual usage fee of the e-Care System Platform as approved in the JVC Financial Plan of the Proposal attached hereto as Annex C.

From the collected annual usage fees cited above, the JVC shall pay EUREKARE the amount of Php20.00 Annual Usage Fee per User of the e-CARE System/Platform for and in consideration of the use of the Eureka e-CARE System Platform, Applications, Cloud Services, Cyber Security, Card Management System and related accessories/peripherals.

4.04. The fees under Section 4.03 hereof will be subject to review and adjustment in effect beginning of the following calendar year taking into consideration the foreign exchange rate fluctuation and local inflation based on the following escalation formula:

$$PA = P_c [Capex((Capex_{FX1}/FX_0) + (Capex_{LX1}/X_0)) + Opex((Opex_{FX1}/FX_0) + (Opex_{LX1}/X_0))]$$

Where:

- PA = adjusted user's fee
- P_c = current user's fee
- Capex = proportion of the annual cost allocated to capital expenditures
- Capex_I = proportion of the annual capital expenditure allocated to imported items
- Capex_L = proportion of the capital expenditure allocated to locally-sourced items
- Opex = proportion of the annual cost allocated to operating expenses
- Opex_I = proportion of the operating expenses allocated to imported items
- Opex_L = proportion of the operating expenses allocated to locally-sourced items
- FX₁ = the USD/Php at the time of the review
- FX₀ = the USD/Php at the time of the last fee adjustment
- X₁ = the consumer price index at the time of the review
- X₀ = the consumer price index at the time of the last fee adjustment

The proportion of the capital expenditures vis-à-vis the operating expenses, as well as their imported and local components, shall be based on the project proponent's latest audited financial statements.

The foreign exchange rate shall be based on the BSP reference rate.

The Consumer Price Index shall be based on the figures published by the Philippine Statistics Authority (PSA).

In addition to the adjustment pursuant to these provisions, the price per type of service rendered by JVC shall be adjusted in the event of any supervening change in the value or purchasing power of the Philippine Currency due to extraordinary inflation or deflation. A change in the value or purchasing power of the Philippine Peso due to inflation or deflation shall be considered to exist, for purposes of this provision, should there be an increase or decrease of 10% from the value of the Philippine Peso at the time of execution of this Agreement as reflected in the Consumer Price Index (CPI) as Published by the PSA.

ARTICLE 5. CONTRACT DOCUMENTS

5.01. The following documents to be collectively referred to as the "Contract Documents" form an integral part of, and are hereby incorporated into this Agreement:

- a) ANNEX A: Smartcard Design prepared and Approved by the PGB
- b) ANNEX B: Proponent's Technical Proposal
- c) ANNEX C: Proponent's Financial Proposal
- d) ANNEX D: Project Implementation Plan

5.02. To the extent, if any, that there should be any irreconcilable conduct or discrepancy between the provisions of the Agreement and the Contract Documents, the provisions of this Agreement shall have precedence and shall govern.

ARTICLE 6. UNDERTAKINGS OF THE PARTIES

6.01. PGB shall have the following responsibilities:

- a) For the purpose of establishing a comprehensive health database system in the Province of Bataan, the PGB shall promote and encourage, through appropriate resolutions and ordinances passed by the Sangguniang Panlalawigan, the following:
 - 1. The coverage and registration with the Bataan Healthcare Smartcard Project of all employees of the Provincial Government of Bataan and their dependents;
 - 2. The coverage and registration with the Bataan Healthcare Smartcard Project of all Senior Citizens residing in Bataan as well as all qualified Indigent residents of the Province.
- b) The PGB shall likewise promote and encourage, through appropriate pronouncements by the Sangguniang Panlalawigan and in consultation and coordination with the concerned entity, the following:

1. The coverage and registration with the Bataan Healthcare Smartcard Project of employees of the city and all municipal government units in the Province as well as their dependents;
2. The coverage and registration with the Bataan Healthcare Smartcard Project of all employees and dependents of all private business establishments located in Bataan;
3. The coverage and registration with the Bataan Healthcare Smartcard Project of all employees and dependents of all national government agencies holding office within the province of Bataan;
4. The coverage and registration with the Bataan Healthcare Smartcard Project of all students, employees and dependents of all Local Colleges and State Universities within the Province of Bataan; and
5. The coverage and registration with the Bataan Healthcare Smartcard Project of all other individuals who may be deemed qualified under this Project.

The PGB, shall, as far as practicable, sponsor the membership and enrollment of all employees of the PGB and their dependents with the Bataan Healthcare Smartcard Project within a period of three (3) months from the signing of this Agreement. In addition, the PGB, shall also, as far as practicable, sponsor the membership and enrollment of Senior Citizens residing in Bataan as well as qualified Indigent residents of the Province with the Bataan Healthcare Smartcard Project within a period of nine (9) months from the signing of this Agreement.

The PGB undertakes to exert best efforts to promote this Project and encourage enrollment of all other prospective members identified in Article 6.01.b.

- c) It shall assist Eureka and/or the JVC in obtaining any and all government licenses, permits and/or other authorizations, approvals, and/or consents which may be required and or necessary to enable Eureka and/or the JVC to perform its obligations under this Agreement; and for financing the Project including without limitation any authorization, approval, license, permit, and or consent from the Bangko Sentral ng Pilipinas and or the Department of Finance.
- d) It shall assist Eureka and/or the JVC in availing of any incentives or privileges or the like provided under any laws of the Philippines, including but without limitation to the Omnibus Investments Code of the Philippines.
- e) It shall extend to Eureka and/or the JVC such assistance as may be necessary and indispensable for the early and expeditious completion of the Bataan Provincial Healthcare System.
- f) It shall approve without unreasonable delay the Engineering Design and Technical Specification of the Project.

- g) To assist Eureka and/or the JVC in the marketing and promoting the BHS with other government agencies and/or local government units.
- h) PGB shall exert best efforts to secure accreditation from PHILHEALTH for the JVC activities, including Systems Integration, and compliance to the new Universal Health Care Law.

6.02. Eureka shall have the following responsibilities under this Agreement:

- a) It shall be responsible for the financing, developing and customization of the BHS. Eureka shall see to it that the System shall be in compliance with the technical and operating specifications stated in the Technical Proposal attached hereto as Annex B.
- b) It shall complete the System within the timeframe stated in the Technical Proposal and Implementation Plan attached hereto as Annex D from receipt of the Notice to Proceed, except in cases of valid extension/suspension of contract time granted and/or additional/extra work ordered to be done by PGB outside of the requirements of the original plans and specification therefore.
- c) It shall, at all times during the development and testing of the System, comply with, and secure at its own cost all legal requirements, permits, consents and approvals.
- d) It shall not make or suffer any alteration or changes in plans and specifications during the development or alteration/changes in the completed Application/System during the operation period without the written consent of the PGB.

6.03. The JVC shall have the following responsibilities:

- a) JVC upon acceptance of the BHS System from Eureka, shall take major diligence in the operation and maintenance of the said system.
- b) JVC shall be primarily responsible for the marketing expansion plans to expand the services to other cities and provinces with written consent from Eureka.
- c) JVC shall ensure that the technical and financial requirements of the BHS are amply provided.
- d) JVC upon approval of its Board may enter into additional supply and service contracts with qualified companies for its operational requirements, however, Eureka shall exercise the Right of First Refusal.

ARTICLE 7. WARRANTIES OF EUREKARE

7.01. **Corporate Existence.** Eureka warrants that it is a corporation duly organized and validly existing under the laws of the Republic of the Philippines. It has all the requisite power, authority and legal right to execute and deliver this Agreement

and to perform its obligations thereunder, and has taken all appropriate and necessary corporate and legal action and obtained all necessary permits and approvals for the execution, delivery and performance of this Agreement and all other instruments, or documents contemplated hereunder.

- 7.02. **Authorized Signatory.** Eureka's signatory to this Agreement has full legal capacity and has been duly authorized by its Board of Directors to sign, execute and deliver this Agreement for and on behalf of Eureka.
- 7.03. **Validity and Enforceability.** This Agreement constitutes the legal, valid and binding obligation of Eureka, enforceable against Eureka in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.
- 7.04. **Due Execution.** The execution, delivery and performance of this Agreement and the other documents herein referred to do not violate any provision of law, rule, regulation, order or decree of any court, tribunal, or government authority, bureau or agency, or of the charter, by-laws or corporate rules of Eureka, any corporation, or any contract or other undertaking to which Eureka is a party.
- 7.05. **Know-How.** Eureka warrants that it has the know-how, resources, trained personnel and staff, technical, marketing and financial capabilities, as well as management expertise, to fulfill its duties and responsibilities hereunder, and implement the financing, design, development, provisioning, and maintaining of the Project.
- 7.06. **No Adverse Litigation.** There is no adverse litigation, arbitration, investigation or proceeding pending, or to its best knowledge threatened, against or affecting such party that could reasonably be expected to materially adversely affect its ability to fulfill its obligations under this Agreement or that may affect the legality, validity, or enforceability of this Agreement.
- 7.07. **Corruption.** Eureka warrants that neither it, nor its representatives or agents, have offered any government officer or employee, national or local, any consideration or commission for its award of the Agreement of this Project nor has it exercised any corrupt, undue or unlawful influence, directly or indirectly through relatives within the third degree of consanguinity or affinity in securing this Agreement.

ARTICLE 8. WARRANTIES OF PGB

- 8.01. **Corporate Existence.** PGB warrants that it is a duly organized and validly existing political subdivision and local government of the Republic of the Philippines and has all requisite power, authority and legal right to execute and deliver this Agreement, and to perform its obligations hereunder.
- 8.02. **Due Execution.** PGB has taken all appropriate legal and/or other action which may be required or appropriate to authorize the execution, delivery and

performance of this Agreement and any and all other agreements, instruments or documents contemplated hereunder.

8.03. **Validity and Enforceability.** This Agreement constitutes the legal, valid and binding obligation of PGB, enforceable against PGB in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.

8.04. **No Immunity.** PGB further warrants that it is subject to the civil and commercial law in respect to its responsibilities under this Agreement and that it is not immune from suit, judgment or execution or any legal process in connection with said responsibilities. But nothing herein shall be considered as waiving the immunity of the State with regard to the assets and interests of the Republic of the Philippines.

ARTICLE 9. FORCE MAJEURE

9.01. **Definition of Force Majeure Event.** A force majeure event means any event, condition, or circumstance and the effects thereof not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that:

- a) such event, condition, or circumstance is not the direct or indirect result of the breach by such Party of any of its obligations under this Agreement or the fault or negligence of such Party, its affiliates, or any person under the Party's or its affiliates' reasonable control;
- b) despite the existence of reasonable diligence, such event, condition, or circumstance cannot be prevented, avoided, or removed by such Party; and
- c) such event, condition, or circumstance has a material adverse effect on the ability of such Party to perform all or a material portion of any of its obligations under this Agreement, and such Party has taken all reasonable precautions, due care, and alternative measures in order to avoid or mitigate the effects of such event on such Party's ability to perform its obligations under this Agreement.

9.02. **Exceptions.** Force majeure shall not include infrastructure or equipment failure due to ordinary wear and tear, or defects in design, inappropriateness or weakness in materials or supplies, unavailability of financing, or any other instance that a party can reasonably expected to effectively guard against or control.

9.03. **Responsibilities of the Parties during Force Majeure Event.** A party invoking Force Majeure shall:

- a) Notify the other party in writing by any means of communication as soon as reasonably possible of the date of commencement of such Force Majeure Event, the nature and expected duration thereof, and the actions to be taken to prevent or reduce the effects of such event. The notice shall be sent by such Party not later than 30 calendar days after the date on which such Party first gains knowledge of such Force Majeure Event. If it fails to deliver such notice

in accordance with this provision, such Party shall not be entitled to invoke the benefits of this Section;

- b) Continue performance of its obligations that are not affected by the occurrence of the Force Majeure; and
- c) Resume performance of affected obligations after the Force Majeure or after the effects of Force Majeure no longer exists, whichever is earlier, and shall formally notify the other party of such resumption.

9.04. **Mitigation.** Each Party shall exert all reasonable efforts in accordance with Prudent Utility Practice or other applicable standard to prevent or mitigate the consequences of the Force Majeure Event on the performance of its Obligations under this Agreement. The Parties shall consult with each other in good faith and shall use all reasonable endeavors to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued implementation of the Project. The Parties shall exert all reasonable efforts to resume the performance of their obligations as soon as practicable following the declaration of a Force Majeure Event.

9.05. **Effect of Force Majeure Events.** The affected Party shall be excused from performance and shall not be in default of any obligation under this Agreement for as long as its failure to perform such obligation is due to Force Majeure Event, provided that:

- a) The affected Party makes continuous diligent effort to prevent or mitigate the effects of the Force Majeure Event;
- b) The Party claiming a Force Majeure Event shall not be entitled to suspend performance or be excused for delayed performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure Event or the delay occasioned thereby; and
- c) Neither Party shall be relieved of or excused from its obligations under this Agreement solely because there may be increased costs or other adverse economic consequences incurred through the performance of such obligations.

ARTICLE 10. DEFAULT

10.01. **Eurekare's Default.** The occurrence of any of the following shall constitute an event of default for Eurekare:

- a) Failure to perform any of its obligations under this Agreement for a cause not attributable to force majeure, and such failure persists for more than thirty (30) days;
- b) Failure without justification to resume performance within thirty (30) days after the force majeure that has prevented Eurekare from performing any other obligation hereunder has substantially ceased;

- c) Deliberate material misrepresentation of any fact contained in its periodic reports to PGB;
- d) Filing of a voluntary or involuntary case or other proceeding by or against Eureka seeking insolvency, bankruptcy, liquidation, reorganization, dissolution, winding up;
- e) A pattern of continuing or repeated non-compliance, willful violation, or non-performance of other terms and conditions hereof including any material breach thereto, and Eureka fails to remedy the same within thirty (30) calendar days from notice thereof; and
- f) Assignment or transfer without the prior approval of PGB.

10.02. **PGB's Default.** The occurrence of any of the following events shall constitute PGB's Default:

- a) PGB terminates, or cancels this Agreement without valid or justifiable cause;
- b) Any representation or warranty made by the PGB and relied upon by Eureka to its detriment turning out to be false in any material respect; and
- c) Failure or refusal to perform any material covenant, agreement or obligation under this Agreement within thirty (30) days after receipt by the PGB of a notice of default specifying the same, provided however, that such period shall not be extended if the failure or refusal is remediable but cannot reasonably be completed within thirty (30) days and the PGB begins to diligently remedy such failure.

ARTICLE 11. ASSIGNMENT, TRANSFER & OTHER CONVEYANCES

11.01. **Assignment.** Both Parties may not, assign its rights, interest, benefits and obligations under this Agreement to any Third party without unanimous approval of both parties.

11.02. **Assignment Void.** Any assignment or transfer without unanimous prior approval from both parties shall be void and ineffectual.

ARTICLE 12. DISPUTE RESOLUTION

12.01. **Mutual Discussions.** In case of any dispute or controversy of any kind whatsoever between the Parties arising out this Agreement, said Parties shall first endeavor to resolve within thirty (30) days such dispute by mutual discussion and amicable means between both Parties.

12.02. **Arbitration.** Should the dispute not be settled amicably by mutual discussion within thirty (30) days from the initial meeting of both Parties, any dispute, controversy or claim arising out of or relating this Agreement, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with

the PDRCI Arbitration Rules in force at the time of the commencement of the arbitration.

The place of arbitration shall be the Philippines and the panel of arbitrators shall be composed of three members.

While the dispute is being arbitrated, the performance by the Parties of their respective obligations shall not be suspended, unless otherwise declared by the arbitral tribunal or otherwise agreed by the Parties or unless the obligation to be performed is the very issue of the arbitration.

- 12.03. **Expert Panel and Arbitral Award.** All expert panel and arbitral awards shall be in writing and shall state the reasons upon which they are based. The decision of the arbitral tribunal shall be final, binding and unappealable.

ARTICLE 13. CONTRACT TERMINATION

- 13.01. **Right Not To Execute.** The parties shall have the right not to execute the Agreement without resorting to legal proceedings in case of any substantial breach of conditions or obligations and responsibilities. A pattern of continuing or repeated non-performance, willful violation or non-compliance of the terms and conditions hereof will be deemed a fundamental breach of this Agreement.

- 13.02. **Termination Procedure.** In case a Party commits an act constituting an event of default, the non-defaulting Party may terminate this Agreement by serving a written notice to the defaulting Party specifying the ground for termination and giving the defaulting Party a period of thirty (30) days within which to rectify the default to the satisfaction of the non-defaulting Party. If the default is not remedied within this period to the satisfaction of the non-defaulting Party, then the latter will serve upon the former a written notice of termination indicating the effective date of termination.

- 13.03. **PGB's Remedies.** Upon the occurrence of Eurekare's Default, PGB may by Notice of Default, take one or more of the following actions:

- a) Terminate the Agreement and enter into a franchise agreement with another Party for this Project;
- b) Take over the Project and request Eurekare to assign all its right, title and interests to the Project and under the Agreement to PGB;
- c) Forfeiture of Eurekare's Performance Bond; or
- d) Allow Eurekare's lenders/creditors to take over and proceed with the completion of the Project under the same terms and conditions of this Agreement.

Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise and the exercise or beginning of the exercise

by PGB of any one or more of any of such rights or remedies shall not preclude the simultaneous or subsequent exercise by PGB of any or all other such rights or remedies.

13.04. **Eurekare's Remedies.** Upon the occurrence of a PGB Default, Eurekare may by Notice of Default, take one or more of the following actions:

- a) Terminate this Agreement and any other Agreement executed between the Parties in relation to the Project; or
- b) Any and all remedies and compensation available by law or in equity or by statute or otherwise.

Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise and the exercise or beginning of the exercise by Eurekare of any one or more of any such rights or remedies shall not preclude the simultaneous or subsequent exercise by Eurekare of any or all other such rights or remedies.

13.05. **Survival of Termination Obligations.** For the avoidance of doubt, the respective obligations of the Parties in respect of the termination of this Agreement as set forth in this Article 13 shall survive and continue to be enforceable beyond the termination hereof.

ARTICLE 14. GENERAL PROVISIONS

14.01. During the period covered by this Agreement, the JVC shall be free to enter into, explore and engage in other business transactions, arrangements, agreements, ventures, or activities with other persons or entities within the Philippines or elsewhere utilizing the BHS, provided the JVC shall secure the prior written no objection statement from both Parties which shall not unreasonably withhold such; provided, further that the JVC shall undertake to maintain and perform its obligations covered by this Agreement under the same quality standards it warrants in accordance with this those other Agreement.

14.02. **Effectivity.** This Agreement shall come into force and become effective upon and as of the date of the approval hereof by the authorized signatories of PGB and Eurekare.

14.03. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated herein. All prior discussions, understandings or arrangements between them prior to effective date, whether express or implied, concerning the Project are superseded by this Agreement.

14.04. **Waiver.** No provision in this Agreement shall be considered waived by either Party unless such waiver is in writing and communicated to the other Party. The failure of any Party to insist on the strict performance of the obligation of the other shall not be considered a waiver of its right to do so.

14.05. **Confidentiality.** Each Party shall hold in strict confidence from any other person all documents and information concerning any other Party furnished to it or its advisors, consultants, contractors, or agents by the other party in connection with this Agreement or the transactions contemplated hereby. Notwithstanding the foregoing, the confidentiality requirement shall not apply to such documents or information that were previously known by the Party receiving such documents or information, in the public domain and required by law to be disclosed to any person who is authorized by law to receive the same.

14.06. **Further Assurances.** The Parties will do, execute, and deliver, or will cause to be done, executed, and delivered, all such further acts and such other things as each Party may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and covenants of this Agreement.

The Parties further assure that they shall perform their obligations in a highly professional and diligent manner, with due efficiency and economy and timely execution of works and other obligations, in all respects with that degree of skill, diligence, prudence and foresight required from them, and with due attention to the need for fairness, openness and good faith and their dealings.

14.07. **Severability.** The validity of the remaining articles, clauses, provisions, terms and parts of this Agreement shall not be affected by a court, administrative body, or other proceeding of competent jurisdiction deciding that an article, section, provision, term, or part of this Agreement is illegal, unenforceable, in conflict with any law, or contrary to public policy.

14.08. **Language.** English is the governing language of this Agreement, which shall be interpreted in accordance with English usage. All documents, notices, waivers, and all other communications written or otherwise between the Parties in connection with this Agreement shall be in the English language.

14.09. **Notice.** All notices or communications shall be made in writing. Said notice shall be considered given if delivered by registered mail with return card, or through an internationally or nationally recognized courier service with delivery receipt requested, or by hand delivery. If the notice or communication is faxed, it shall be confirmed in writing. The notice or communication shall be effective upon receipt.

A Party may change its address by giving the other Party written notice of such change, provided that any such change shall not be effective until notice of such change has been received by the other Party.

14.10. **Amendment.** This Agreement may be amended or modified only in writing and signed by the Parties, provided that prior to signing, said proposed amendments shall be approved by the Board of Eureka and the Sangguniang Panlalawigan of PGB.

IN WITNESS WHEREOF, the Parties, acting through their respective duly authorized representatives, have caused this Agreement to be signed under their respective names on the date and at the place first above written.

THE GOVERNMENT OF BATAAN

EUREKARE CORPORATION



By: ~~Governor~~ Albert S. Garcia

By: Yi-Su Lin

Signed in the presence of:



ACKNOWLEDGMENT

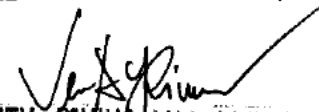
Republic of the Philippines)
_____) S.S.
BALANGA CITY, BATAAN

MAR 12 2020 BEFORE ME, a notary public for and in the Province of Bataan this personally appeared:

NAME	VALID ID & NO.	DATE/ PLACE ISSUED	VALID UNTIL
ALBERT S. GARCIA	[REDACTED]		

who was identified by me through competent evidence of identity to be the same person described in the foregoing instrument, who acknowledged before me that his respective signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he has executed the instrument as his free and voluntary act and deed.

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


ATTY. JEMINA ANGELIEZ C. RETANO
NOTARY PUBLIC FOR AND IN THE PROVINCE OF BATAAN
Notarial Commission No. 38440
NOTARY PUBLIC (Exp. 31, 2023)
P.O. Box 73015
FTR No. 2932251 / 01-07-2020 / Balanga City, Bataan
ISP No. 185933 / 01-03-2020 / Bataan
MCLE - Admitted 2019
2/F Citwalk Bldg. corner J.P. Rizal St.,
Poblacion, Balanga City, Bataan

Doc. No. : 229
Page No. : 47
Book No. : IV
Series of 2020.

ACKNOWLEDGMENT

Republic of the Philippines)
QUEZON CITY) S.S.


BEFORE ME, a notary public for and in QUEZON CITY this MAR 13 2020
personally appeared:

NAME	VALID ID & NO.	DATE/ PLACE ISSUED	VALID UNTIL
YI-SU LIN			

who was identified by me through competent evidence of identity to be the same person described in the foregoing instrument, who acknowledged before me that his respective signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he has executed the instrument as his free and voluntary act and deed.

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

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Book No. ; 40
Series of 2020.


ATTY. CONCEPCION P. VILLAREÑA
Notary Public for Quezon City
Until December 31, 2021
NOTARY PUBLIC
PTR No. 9296041 – 1-2-2020/ QC
IBP No. 093586 – 10-22-2019/ QC
Roll No. 30457 – 05-09-80
MCLE VI – 0030379
Adm. Matter No. NP-001(2020-2021)
TIN No. 131-942-754

ANNEX A

**SMART DESIGN PREPARED
AND APPROVED BY THE
PROVINCIAL GOVERNMENT
OF BATAAN**

ANNEX B

PROPONENT'S TECHNICAL PROPOSAL

ANNEX C

PROPONENT'S FINANCIAL PROPOSAL

ANNEX D

**PROJECT
IMPLEMENTATION
PLAN**

J IMPLEMENTATION SCHEDULE:

- 1. Upon Issuance of UNSOLICITED JOINT VENTURE PROPOSAL by PPP Board of the ORIGINAL PROPONENT STATUS under the BOT Law (R.A. 7718) to EUREKARE Corporation, a Pilot BPHS System shall be installed at the Provincial Capital and Government Hospital that will enroll 1,000 selected Citizens and simulates the operation of the actual BPHS in Provincial Capital, as proof of concept. (90 Days)**
- 2. Personalization of Healthcare Smartcards for all Provincial Citizens within 2 years from date of Contract approval.**
- 3. Data Structure Mapping and System Integration of BPHS and Eureka Healthcare Smartcard Information Exchange System. (60 days)**
- 4. Deployment of Eureka Smartcard ePOS system into the selected Hospitals/Health Providers.**