

APPENDIX H

**GOVERNMENT OF PUERTO RICO
PUERTO RICO HEALTH INSURANCE ADMINISTRATION (ASES)
SAN JUAN, PUERTO RICO**

PROFESSIONAL SERVICE AGREEMENT

This Agreement for Professional Services (this “Agreement”) is made and entered into by and between the Puerto Rico Health Insurance Administration, a public corporation of the Government of Puerto Rico created by Act Number 72 of September 7, 1993, as amended, (hereinafter referred to as “**ASES**” by its Spanish acronym), represented by its Executive Director, Mr. Jorge E. Galva, JD, MHA, of legal age, married and resident of Vega Alta, Puerto Rico; and ____**[OFFEROR]**____, a corporation organized and existing under the laws of _____, and authorized to do business under the laws of the Government of Puerto Rico (hereinafter referred to as “**SECOND PARTY**” or “_____”), represented by its presented by _____, authorized to appear on behalf of the corporation, by a Certificate of the Professional Services Providers Registry (RUP, by its Spanish acronym), number _____ emitted by de Puerto Rico’s General Services Administration (ASG by its Spanish acronym).

WHEREAS, ASES, by virtue of the powers conferred to it under Act 72 of September 7, 1993, as amended, has the authority to engage professional, technical and consulting services that are necessary and convenient to effect the activities, programs and operations of **ASES**.

THEREFORE, ASES and **SECOND PARTY** (collectively referred to as **THE PARTIES**) enter into this Agreement under the following:

TERMS AND CONDITIONS

1. **ASES** agrees to engage with _____ to render professional services in Actuarial services.
2. The services to be provided by _____ may encompass the following subjects and objectives, as included in the proposal incorporated as part of this Agreement:
 - A. Rate Setting: Develop and support rate setting methodologies for **ASES**’s existing managed care programs, with the possibility that additional programs or populations may be added. Support for the rate setting methodologies shall include a written report of the methodology (narrative) used for MCO. The methodologies must be acceptable to CMS and the Agency. Rates are to be changed each state fiscal year, and as may be required due to changes in coverage.
 - i. Contractor shall develop and submit draft rates and methodologies to **ASES** 120 calendar days prior to the date the rates are to become effective. CMS has final approval of all rates and methodologies.

- ii. Contractor shall submit additional rate settings, actuarial opinions, and impacts to ASES for approval within sixty (60) calendar days of request.
- B. Managed Care Program (Plan Vital)
 - i. PMPM Rates: Contractor will be an essential asset in the development in accordance with actuarially sound principles and practices as specified in 42 CFR 438.4, of the fixed monthly amount, that ASES will pay to the GHP contracted MCOs for each Enrollee, to ensure that Benefits under GHP are provided.
- C. Risk Adjustment: Contractor duties include, but are not necessarily limited to the following:
 - i. Risk Scoring Methodology. Develop and provide detailed documentation on risk scoring methodology to the Agency that will be applied to rebalance Capitation Rates.
 - ii. Risk Score Calculations. Calculate individual risk scores, adjustments, and rebalancing factors.
 - iii. Risk Adjustment Reconciliations and Capitation Adjustments. Reconcile total capitation amounts paid to the health plans with the rebalanced results after risk adjustment has been applied.
 - iv. Performance Measures: Contractor shall provide to the Agency the risk score adjustments and rebalancing at the time the draft capitation rates are submitted to ASES.
- D. Medical Loss Ratio (MLR): Contractor must be able to perform the actuarial analysis on any of the following formats: population specific basis, contract-specific bases or aggregated cross multiple contracts, as the regulation allows Puerto Rico to use any of the mentioned.
- E. Diagnosis Related Groups (DRGs) in hospital billing practices:
 - i. Contractor must have the capacity to calculate the DRG-based payment system using the GHP historical data on this area. Payments for inpatient hospital services in the GHP have been based on per diem rates and sub-capitation payments, with accurate and complete reporting of diagnosis and procedure codes not being a requirement for hospitals to be paid appropriately.
- F. CMS reports: SECOND PARTY must ensure that the methodologies developed and rates calculated under all tasks meet all federal and State requirements, including CMS guidance for actuarial soundness in accordance with 42 CFR 438.4.
- G. Medicare Advantage (Platino Contract), Act No. 95, GHP: ASES must evaluate and provide an actuarial certification to CMS for its Platino members. The historical experience must be evaluated and projected to the rates developed must be actuarially sound and submitted to CMS.
- H. Under the Act No. 95 Contract, ASES extends the GHP coverage for those government employees who are not eligible under Medicaid. Offeror must be able to develop actuarial reports for the rates under this contract.

- I. Pharmacy Benefit Manager (PBM) and Pharmacy Benefit Administrator (PBA) Contracts: the SECOND PARTY must provide actuarial analysis regarding pharmacy data for the PBM and PBA actual contracts.
 - J. Other Actuarial Analysis:
 - i. SECOND PARTY must have the capacity to analyze and design a fee schedule for the GHP. Under the GHP ASES does not have its own fee schedule, ASES will like to explore the idea of having ownership of a fee schedule using as an example the Medicare fee schedule.
 - ii. THE SECOND PARTY must have the capacity to work as an auditor for the financial data that MCOs submit to ASES and because the MCOs contracts for the GHP allows for possible audits for those data and information.
 - iii. THE SECOND PARTY shall provide technical assistance and actuarial support as defined and approved in advance by the Agency for any services not associated with the current scope of work. This includes assisting the Agency with program changes, new waiver development, and exploring options and strategies to include requirements and oversight of the Surplus and/or Reinsurance requirement in contract form the actuarial perspective.
 - K. Performance Measures: Contractor shall provide all technical assistance and actuarial support within the timeline agreed to between the Agency and the Contractor.
 - L. Meetings: Participate in and contribute to all ASES meetings related to the Contract. The meetings will include reviewing Contract status, planning for future action, and other aspects as necessary.
 - M. Any other related services that ASES may require, through its Executive Director or delegated personnel.
3. This Agreement will be in effect from the date of its full execution until **June 30, 2023**, at the discretion of ASES, the Contract may be extended for up to one (1) additional year, beyond the initial one and a half (1.5) year Contract period. Notwithstanding any provision to the contrary in this Agreement, either party shall have the right to terminate this Agreement by providing the other party with thirty (30) days' prior notice by registered mail, return receipt requested, or overnight express mail.

The rights, duties and responsibilities of **ASES** and _____ shall continue in full force and effect during the applicable notice period. **ASES**, however, shall be obligated to pay all fees and expenses incurred up to the effective date of termination, in accordance with the terms of this Agreement.

4. _____ represents that it has full knowledge of any applicable federal or local law impacting the GHIP sponsored by the Commonwealth of Puerto Rico and the advice and services to be provided will consider such laws and regulations, including,

but not limited to, the Balanced Budget Act of 1997, as amended; Social Security Act, as amended; the Medicaid Managed Care Regulations, as amended and Puerto Rico State Plan.

5. **The ASES will pay _____ per hour of service at the following rates:**

A 5% reduction will be given on professional fees on invoices paid within thirty (30) days of receipt.

_____ may be entitled to receive payment for out of pocket expenses, including travel and lodging, subject to previous presentation of documentation (i.e. receipts) and provided they do not exceed the maximum amount to be paid during the term of this Contract, and that the SECOND PARTY complies with Regulation No. 7635 of the ASES, including, but not limited to the following:

- Airplane tickets (coach fares).
- For meals, a maximum amount of sixty dollars (\$60.00) daily, by person (this amount includes breakfast, lunch and dinner).
- Lodging expenses (room, telephone and internet) shall be paid according to ASES's and governmental policies.
- Alcoholic beverages and entertainment expenses are not covered expenses under this Agreement.

6. ASES shall compensate _____ up to _____ **dollars (\$_____.00)**, for services rendered only, except that this amount may be increased subject to written approval by either the Executive Director or Sub – Director. Reasonable travel expenses incurred in the delivery of the services of this Agreement are included on this amount, subject to previous presentation of documentation (i.e. receipts) and provided that SECOND PARTY complies with Regulation No. 7635 of the ASES, with the previous authorization of ASES. The SECOND PARTY is responsible for tracking the available balance under this Agreement.

7. Payments made by **ASES** under the terms of this Agreement shall be paid from the budget item account corresponding to number **6320-129-012**.

8. Invoices will be submitted to ASES on a monthly basis, always within the first five (5) days following the period involved. Invoices should be submitted at **SECOND PARTY'** hourly rate according to the work done and tasks (deliverables) conducted during the invoiced period. Each invoice will include itemized details of the services rendered on an hourly basis. If the invoice is not submitted within the first five (5) days of the month following the period involved, payment may be issued within the following month. Each invoice must be duly certified by an authorized representative of _____. Each invoice shall include an itemized detail of the services rendered, must be certified as just and correct, and should certify that payment

thereof has not been received. The invoice should detail the available balance of the Agreement's budget when submitting the invoice as well as the available balance of the Agreement at the time the invoice is delivered. _____ is solely responsible of assigning the necessary resources for the delegated cases and matters.

Invoices shall identify and detail services rendered to federal projects, if applicable, specifying the tasks performed per federal program and total invoiced.

Example: Invoice Federal Project – MMIS

Example: Invoice Federal Project – HIT IMPLEMENTATION

Example: Regular Invoice ASES

Total invoiced (sum of all)

ASES may not honor invoices submitted after ninety (90) days of the invoiced services having been rendered. _____ accepts and agrees to this requirement and understands that if it does not comply with this requirement it waives its right to payment for services rendered.

Invoices must include a written certification stating that no officer or employee of ASES or the Department of Health, its subsidiaries or affiliates, if any, will derive or obtain any benefit or profit of any kind from this Agreement, with the acknowledgement that invoices which do not include this certification will not be paid. This certification must read as follows:

"We certify under penalty of nullity that no public employee of the Puerto Rico Health Insurance Administration will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the delivery of goods or for services provided is the agreed-upon price that has been negotiated with an authorized representative of ASES. The total amount shown on this invoice is true and correct. The services have been rendered, and no payment has been received."

ASES shall verify the invoices within twenty (20) working days of the date of the invoice and, if they are in compliance with the requirements set forth in this Agreement, will proceed with payment to _____ within thirty (30) days of said approval. ASES will promptly notify _____ of any questions regarding invoices so that _____ can receive timely payment. ASES will administer the payment by means of an electronic transfer pursuant to Exhibit B of this Contract. In the event any invoice goes unpaid for more than sixty (60) days,

_____ reserves the right to suspend its performance of the services contracted for hereunder.

9. All invoices shall be signed and mailed or physically delivered to the attention of:

POSTAL ADDRESS

Jorge E. Galva, JD, MHA
Executive Director
Administración de Seguros de Salud
P.O. Box 195661
San Juan, PR 00919-5661

PHYSICAL ADDRESS

Jorge E. Galva, JD, MHA
Executive Director
Administración de Seguros de Salud
1549 Calle Alda
Urb. Caribe
San Juan, PR 00926-2712

10. If _____ does not comply with the above requirements in the submission of the invoices, it will waive its right to payment for services rendered.

11. ASES will review the invoice and will make proper payment, subject to any audits or requests for additional information that ASES may need to do, at its sole discretion, to substantiate expenses incurred. The ASES reserves the right to review all invoices and perform all necessary audits solely to substantiate expenses incurred.

12. Each of the exhibits (interchangeable appendix) attached hereto is expressly incorporated herein and made a part of this Contract, and all references to this Contract shall include the exhibits hereto. In the event of any inconsistency between this Contract and the exhibits attached hereto, this Contract shall govern.

13. **ASES**, its designees or the Controller's Office, shall have the right during the term of this Agreement or up to five (5) years after the term, to review and audit _____'s records relating to _____'s services under this Agreement.

14. _____ will not receive any payment for services rendered under this Agreement until the Agreement has been registered at the Office of the Comptroller of the Government of Puerto Rico, as required by Act Number 18 of October 30, 1975, as amended.

15. Neither this Agreement, nor the services to be provided hereunder, may be assigned or subcontracted without the written approval of **ASES**. The request to contract a third party must specify the matters in which he/she will intervene and must be submitted in writing. This request must: (1) be submitted in writing, (2) identify the Subcontractor, (3) specify the tasks in which the Subcontractor will intervene, and (4) disclose the remuneration that the Subcontractor will receive for the work carried out, and the profit margin, if any, that _____ will have in relation to the

subcontractor's paid fees. If the Subcontractor is to dedicate 25% or more of its time to the tasks assigned in the contract between **ASES** and _____, the Subcontractor must submit all the documents and certifications required from _____ for the government contracting. See Circular Letter No. 1300-16-16 of the Puerto Rico Treasury Department.

_____ will be responsible for providing these documents and certifications from the Subcontractor to **ASES** when requesting authorization from **ASES** for the subcontract. The delegation of services without the mentioned authorization will be sufficient cause to terminate this contract. Failure to comply with this clause will hold you responsible for any damages or losses that may be caused to **ASES**, whether directly or indirectly. In any subcontract executed by _____, said PARTY shall ensure that the Subcontractor understands, acknowledges and agrees to comply with the terms and conditions set forth in this Contract, whenever applicable, that includes but is not limited to, intellectual property, data and information, knowledge transfer requirements; **ASES's** right of inspection and audit; the government agencies' right to inspection and audit; confidentiality and privacy policies, among others.

16. _____ acknowledges the proprietary and confidential nature of all internal, non-public, information systems, financial, and business information relating to the **ASES**, the Government of the Commonwealth of Puerto Rico, its agencies, corporations, and municipalities and their personnel. _____ and its employees shall keep in confidence all such information and shall not make public or disclose any of said materials, except as necessary to perform its services, without the previous written consent of **ASES**. _____ will ensure that any authorized subcontractor or expert is subject to this confidentiality obligation. The restriction on confidentiality shall not apply to information that _____ must disclose by law or legal process, (ii) is either already in the public domain or enters the public domain through no fault of _____, (iii) is available to _____ from a third party who, to _____'s knowledge, is not under any non-disclosure obligation to **ASES**, or (iv) is independently developed by or for _____ without reference to any confidential information of **ASES**.

17. _____ shall furnish **ASES** with reports, analysis or other such materials as **ASES** may reasonably request, which, to the extent prepared by _____ specifically and exclusively for **ASES** shall at all time be the property of **ASES**, subject to _____'S reservation of rights in and to the _____ Tools and the prohibitions on distribution of

_____ work product to third parties in this Agreement. The Parties will sign a mutually agreed Business Associate Agreement.

18. Subject to _____'S reservation of rights in and to the and to the _____ Tools and the prohibitions on distribution of _____ work product to third parties in this Agreement, all Information created from data, documents, messages (verbal or electronic), reports, or meetings involving or arising out of or in connection with this Agreement is property of **ASES** (hereinafter referred to as "**ASES Data and Information**"). Hence, all the documents related to the Agreement will be subject to evaluation and audits, and shall be made available, within a reasonable period of time and without modifications, for evaluation by **ASES's** personnel or their authorized representatives. Additionally, **ASES** will have the right to copy all the documents requested, at no cost.

In the same way, all documents related and produced as a result of this Agreement, including but not limited to: policies, procedures, analysis, protocols, and communications, must be made available and filed with **ASES's** representatives, without changes to their original format (no PDF), whenever requested. In the event that **ASES** request copies of these, the Contractor shall deliver them without alterations and/or omissions. _____ shall not refuse, and if so, it will constitute an obstruction to the efforts of **ASES's** auditors and a breach of Contract subject to penalties and sanctions.

19. No deliverable, report, data, procedure or system created by _____ for **ASES** that is necessary to fulfilling _____'s responsibilities under the Agreement, as determined by **ASES**, shall be considered proprietary of _____.

20. _____ shall make all data and information available to **ASES** or its authorized representatives, which will also provide the data to CMS or other pertinent government agencies and authorities upon request. _____ is expressly prohibited from sharing, distributing, disseminating, or publishing **ASES'** data and information without the express prior written consent of **ASES**. In the event of a dispute regarding what is or is not **ASES'** data and information, **ASES's** decision on this matter shall be final and not subject to appeal.

21. _____ is required to perform transfers of knowledge on a continuous basis with **ASES** personnel. _____ *will be responsible of delivering reports regarding current work and completed work to the area that administers this agreement, each six (6), nine (9) months since the signature of the agreement and on or before the date the of the last payment made under this contract, or within the first ten (10) days from the date of termination, whichever first* from

the date of termination, _____ must have completed a transfer of knowledge that will guarantee an orderly continuity of services and labor, including source codes for programs, manuals, instructions and any other materials required to provide continuity and ensure that **ASES** personnel knows and understands completed and uncompleted tasks, as well as the status and items pending to complete unfinished tasks. _____ acknowledges and agrees that **ASES** will not paid the final invoice until _____ completes the said transfer of knowledge in writing and in any other format as may be requested by **ASES**.

22. _____ shall submit in writing any user manuals, operating manuals, maintenance manuals and/or training manuals for software or other information system programs developed for **ASES**.

23. To the extent applicable to this Agreement, this Section describes the intellectual property ownership requirements that _____ shall meet:

ASES shall have all ownership rights, not superseded by other licensing restrictions, in all materials, programs, procedures, etc., designed, purchased, or developed by _____ and funded by **ASES**.

_____ shall use Agreement funds to develop all necessary materials, programs, products, procedures, etc., and data and software to fulfill its obligations under the Agreement. The **ASES** funding used in the development of these materials, programs, procedures, etc. shall be documented by _____. **ASES** shall have all ownership rights in data and software, or modifications thereof and associated documentation and procedures designed and developed to produce any systems, programs report and documentation and all other work products or documents created under the Contract. **ASES** shall have these ownership rights, regardless of whether the work product was developed by _____ or any Subcontractor for work product created in the performance of this Contract. **ASES** reserves, on behalf of itself, the U.S. Department of Health and Human Services and its contractors, a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use such software, modifications, documentation and procedures. Such data and software includes, but is not limited to, the following:

- a. All computer software and programs, which have been designed or developed for **ASES**, or acquired by _____ on behalf of **ASES**, which are used in performance of the Agreement.
- b. All internal system software and programs developed by _____ or subcontractor, including all source codes, which result from the performance of the Agreement; excluding commercial software packages purchased under the Contractor's own license.
- c. All necessary data files.
- d. User and operation manuals and other documentation.
- e. System and program documentation in the form specified by **ASES**.

- f. Training materials developed for **ASES's** staff, agents or designated representatives in the operation and maintenance of this software.

24. To the extent applicable, **ASES** acknowledges that before executing this Agreement and contemplating the same, _____ may have developed and designed certain programs and systems such as standard operating procedures, programs, business plans, policies and procedures, which **ASES** acknowledges are the exclusive property of _____, as long as those programs or systems have not been developed or designed for **ASES**. Nevertheless, in case of for cause termination, **ASES** is hereby authorized to use to the extent allowable by any applicable commercial software and hardware licensing that exists at that moment or with which agreement can be reached at that moment with the vendor to modify such licensing to permit its use by **ASES**. This shall be at no cost to **ASES** and such properties for a period of one hundred and twenty (120) Calendar Days to effect an orderly transition to any new _____ or service provider. In any cases where the use of such systems from an operational perspective would also influence other lines of _____'s business or where licensing restrictions cannot be remedied, _____ shall operate such systems on behalf of **ASES**. Such operation by _____ on behalf of **ASES** can occur at **ASES'** discretion under the full supervision of their employees or appointed third party personnel. Under such a scenario, **ASES'** access to Data will be restricted through the most efficient means possible to _____'s Data segment.

25. _____ shall not deny access to **ASES's** Data under any case or circumstances, nor retain **ASES's** Data while controversies between **ASES** and _____ are resolved and finally adjudicated.

26. _____ acknowledges the Health Insurance Portability and Accountability Act of 1996 (better known as HIPAA), and that its privacy and security rules requires any entity covered by said legislation to train its workforce in their provisions on privacy, confidentiality and security of protected information, as defined in the Act and its regulations. The Act requires the covered entity to set policies and procedures relating to privacy, confidentiality, creation, management, transmission, and access of protected information, and to train its workforce in such policies and procedures. _____ acknowledges that it is subject to compliance with the policies and procedures of HIPAA and **ASES's** procedures established for compliance with HIPAA and its regulations. Hence, _____ must comply with all terms and policies of the HIPAA and must follow all standards for the handling of protected information. _____ should ask all employees, subcontractors or agents to abide by the restrictions and

conditions that apply to them in the management of protected information. _____ certifies that it meets the standards set out on HIPAA and its regulations, as well as on any other state law that protects the privacy, confidentiality and security of information. **ASES** reserves the right to cancel this contract if _____ does not comply with this section of the Agreement, the HIPAA, its regulations, and any state law or regulation regarding privacy, confidentiality and security of information.

The parties agree to sign a Business Associate Agreement.

27. _____ should report immediately to **ASES** any unauthorized use or disclosure, or suspected unauthorized use or disclosure, of any protected information immediately as _____ becomes aware of the event. The report shall be made in writing and delivered to the Executive Director of **ASES**, including the following:

- One or two sentence description of the event;
- Description of the roles of the people involved in the event (e.g., employees, participant users, service Providers, unauthorized persons, etc.)
- The type of Data / Information as well as Personal Health Information that was breached;
- Enrollees likely impacted by the event;
- Number of individuals or records impacted/estimated to be impacted by the event;
- Actions taken by _____ to mitigate the event;
- Current status of the event (under investigation or resolved);
- Corrective action taken and steps planned to be taken to prevent a similar event.

_____ shall have a duty to supplement the information contained in the notification as it becomes available and to cooperate with **ASES**. The notification required by this Section shall not include any PHI.

28. _____ agrees to indemnify and hold harmless **ASES** and/or the Government of Puerto Rico from all claims, suits, actions, liabilities, and reasonable attorney and defense costs, resulting from _____'s negligent or willful misconduct in the execution of this Agreement.

29. _____ acknowledges that in executing its professional services pursuant to this Agreement it has the obligation to exhibit complete loyalty toward **ASES**, including having no adverse interests with private or government entities or persons. Adverse interests include representing or servicing clients who have or may have interests that are contrary to **ASES**. This duty includes the continued obligation to disclose to **ASES** all circumstances of its relations with clients and third persons, and any interest that could influence _____, while this Agreement is in

effect.

_____ represents conflicting interests when, on behalf of one client it must support that which is its duty to oppose to comply with its obligations with another client. _____ also represents conflicting interests when its conduct is described as such in the standards of ethics applicable to its profession, or in Puerto Rico's laws and regulations.

The conduct herein described by one of _____'s directors, officers or employees shall constitute a violation of this prohibition. _____ shall avoid even the appearance of the existence of a conflict of interest.

_____ acknowledges the power of the Executive Director or its representative to oversee the enforcement of the prohibitions herein established.

30. Termination:

- A. This Agreement may be terminated by **ASES** for any reason and at any time upon thirty (30) days or less, depending of the contracted services, written notice to _____.
- B. Furthermore, _____'s failure to comply with its duties and responsibilities and to perform the services set forth herein, or its negligence or unlawful behavior in the execution of the Agreement, shall constitute a breach of the Agreement by _____ that entitles **ASES** to terminate this Agreement immediately without prior notice. **ASES** may also terminate this Agreement immediately without prior notice if probable cause for arrest is found or a judgment for conviction is entered against _____ or any of its officers, employees, or subcontractors authorized by **ASES** under this Agreement, for any crime against the treasury, public faith, or for crimes involving public funds or property, either of state or federal origin; or if an extraordinary fiscal situation arises that justifies an immediate budget cut.
- C. It is expressly agreed that _____ will conclude any pending work at the time of cancellation of the contract, as required by **ASES**. **ASES** will not be obliged to pay additional compensation to the agreed under this contract. _____ will not be entitled to any additional compensation except the already billed until that date. _____ expressly acknowledges that in the eventuality of not existing or allocating funds for the payment of the contracted services, the contract will be terminated with no other right than to collect what has already been worked.
- D. It is noted that if _____ is part of the Registry of Convicted Persons for Corruption and Related Offenses "Registro de Personas convictas por Corrupción y Delitos Relacionados", this Contract will be null and the funds paid

will have to be returned to **ASES**.

- E. In accordance with Guide #16 of Circular Letter No. 93-11 of October 25, 2011, issued by the Office of Management and Budget of the Government of Puerto Rico, all contracts that are: (a) awarded in an electoral year; (b) paid with resources of funds allocated by the Legislature; and (c) have a contract term extending beyond December 31, 2020, may be rescinded at any time after December 31, 2020 by the new officials appointed during the new four-year administration period.

31. Conflict of Interest:

- A. _____ certifies that neither it, nor any of its employees or officers, has an interest in this agreement that may interfere with their official duties as employees of any agency, instrumentality, public corporation or municipality of the Government of Puerto Rico.
- B. _____ certifies that at the time of the execution of this Agreement, it does not have nor does it represent anyone who has interests that are in conflict with those of the Government of Puerto Rico, or any of its agencies or municipalities, or **ASES**. If such conflicting interests arise after the execution of this Agreement, _____ shall notify **ASES** immediately.
- C. _____ certifies that it does not have other contracts with government agencies, public corporations, or municipalities. _____ will disclose by written communication to **ASES** with which government agencies, public corporations or municipalities it enters into contract with.

32. Subcontractors:

- A. **ASES** and _____ agree that _____ status hereunder, and the status of any agents, employees and subcontractors or experts engaged by _____ shall be that of an independent contractor only and not that of an employee or agent or **ASES**. _____ recognizes that it shall not be entitled to employment benefits such as vacations, sick leave, retirement benefits and others because of its condition as an independent contractor. _____ shall not have any power or right to enter into agreements on behalf of **ASES**.

33. Certifications:

- A. **By virtue of Act 73-2019 from the Puerto Rico General Services Administration (ASG by its Spanish acronym)** _____ certifies the submission of the *CERTIFICACIÓN ÚNICA DEL REGISTRO DE PROVEEDORES DE SERVICIOS PROFESIONALES (RUP)* emitted by ASG. It is expressly acknowledged that this certification is an essential condition of this

Agreement. With the RUP certification _____:

- i. Certifies and guarantees that as of the date of execution of this Agreement and to the best of its knowledge, it has not been convicted and none of its shareholders, employees, officers, or agents have been convicted, have probable cause, and that it has no knowledge that any of the foregoing is subject of any investigation, in connection with a civil or criminal procedure in state or federal court for criminal charges related to the public treasury, the public trust, a public function, or a fault that involves public funds or property including _____ its subsidiaries and/or a parent company. If the previously submitted certification to ASG is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for **ASES** to terminate this Agreement immediately, without prior notice. If the status of _____ with regards to the charges previously mentioned should change at any time during the term of the Agreement, it shall notify **ASES** promptly. The failure to comply with this responsibility constitutes a violation of this Section and shall result in the remedies mentioned previously.
- ii. Certifies that at the time of execution of this Agreement it is not engaged in or is a party to any lawsuit against the Government of Puerto Rico, or any of its instrumentalities, agencies or municipalities.
- iii. Certifies that as of the date of execution of this Agreement and during the past five (5) years, it has not been required to file Puerto Rico tax returns, and Social Security tax returns with the U.S. Government as required by applicable law. _____ has submitted a Negative Certification of Debt from the Treasury Department of the Government of Puerto Rico.
 1. It is expressly acknowledged that this is an essential condition of this Agreement, and if this certification is incorrect, **ASES** shall terminate this Agreement immediately and _____ will have to reimburse **ASES**.
 2. By the end of this Agreement, _____ will present an updated Certification of Debt. _____ acknowledges that the last payment owed under this Agreement will be disbursed if such Certification of Debt is negative and no money is owed to the Treasury Department of the Government of Puerto Rico. If by the end of this Agreement there is an outstanding balance owed that cannot be cleared by the Treasury Department, _____ agrees to cancel the amount through retention from last payment.

3. For purposes of this Agreement, tax debt shall mean any debt that _____ or any of its officials or other parties which **ASES** authorizes _____ to subcontract, may have with the Government of Puerto Rico for income taxes, excise taxes, real or chattel property taxes, including any special taxes levied, license rights, tax withholdings for payment of salaries and professional services, taxes for payment of interests, dividends and income to individuals, corporations and non-resident partnerships, for payment of interests, dividends, and other earnings shares to residents, and social security for chauffeurs.
- iv. Has provided ASG with a certificate of existence issued by the Department of State of the Government of Puerto Rico and a corporate resolution where _____ expressly authorizes the undersigned to execute this Agreement on behalf of the corporation, if applicable. It is expressly acknowledged that these are essential conditions of this Agreement, and if these certifications previously submitted to ASG are incorrect, **ASES** shall terminate this Agreement immediately and _____ will have to reimburse **ASES**.
- v. That as of the execution of this Agreement, it is current on payment of workers' compensation premiums in accordance with applicable law. _____ has provided ASG with a negative certification of debt from the Workers Compensation Corporation of the Government of Puerto Rico, if applicable. It is expressly acknowledged that this is an essential condition of this Agreement, and if the certification previously submitted to ASG is incorrect, **ASES** shall terminate this Agreement immediately and _____ will have to reimburse **ASES**.
- vi. Agrees to pay all unemployment insurance premiums due in accordance with applicable law. _____ represents that as of the date of execution of this Agreement, it is current on payment of unemployment insurance premiums due in accordance with applicable law and has submitted to **ASES** a negative certification of debt from the Department of Labor and Human Service of the Government of Puerto Rico. It is expressly acknowledged that this is an essential condition of this Agreement, and if the certification previously submitted to ASG is incorrect, **ASES** shall terminate this Agreement immediately and _____ will have to reimburse **ASES**.
- vii. Warrants that at the time of execution of this Agreement it has no obligation to retain child support payments. _____ has

provided ASES with a certificate of no debt from the "*Administración de Sustento de Menores*" ("*ASUME*"). It is expressly acknowledged that this is an essential condition of this Agreement, and if the certification previously submitted to ASG is incorrect, **ASES** shall terminate this Agreement immediately and _____ will have to reimburse ASES.

viii. Represents that as of the date of execution of this Agreement, it is current on payment of property taxes in accordance with applicable law. _____ has provided **ASES** with a negative certification of debt from the "Centro de Ingresos y Recaudación Municipales" of the Government of Puerto Rico. It is expressly acknowledged that this is an essential condition of this Agreement, and if this certification previously submitted to ASG is incorrect, **ASES** shall terminate this Agreement immediately and _____ will have to reimburse **ASES**.

ix. Has provided, as a condition for the execution of this Agreement, the following certifications to ASG:

1. Certification of having filed income tax returns in the past five (5) years from the Treasury Department of Puerto Rico (Model SC-6088)
2. Certification from Puerto Rico's Treasury Department attesting that there is no outstanding debt or, if a debt exists, that it is subject to payment plan (or pending administrative review under applicable law or regulations) (Model SC-6096)
3. Certification from Puerto Rico's Center for the Collection of Municipal Revenues ("*CRIM*" for its Spanish acronym) certifying that there is no outstanding debt in the past five (5) years or, if a debt exists, that it is subject to payment plan (or pending administrative review under applicable law or regulations).
4. Certification from Puerto Rico's Department of Labor and Human Resources of compliance with unemployment insurance, temporary disability insurance and/or chauffeur's social security, if applicable.
5. Certification of incorporation from the State Department of Puerto Rico.
6. Certificate of Good Standing
7. Certifications of no outstanding alimony or child support debts, if applicable.
8. Merchant Registry Certification (Model SC 2918)
9. Certification of Sales Tax Return File (IVU for its Spanish

acronym) (model SC 2927) and if apply, certification of No Debt of Sales Tax Return.

- x. It is expressly recognized that the foregoing are material conditions of this Agreement. In the event the above certifications and acknowledgments contained in this clause are not correct, in whole or in part, it shall be sufficient cause for ASES to terminate the Agreement and _____ shall reimburse ASES any sum of monies received under the same.

34. Both **PARTIES** hereby declare that, to the best of their knowledge, no public officer or employee of the Government of Puerto Rico, its agencies, instrumentalities, public corporations or municipalities or employee of the legislative or judicial branches of the government has any direct or indirect interest in the present Agreement that is not duly recognized by law; that no person requested or accepted gifts, gratuities, favors, services, donations, loans or anything else in return for this Agreement; that no person requested or accepted any goods from _____ as payment for performing the duties and responsibilities of their jobs with **ASES**; and that _____ has no family relationship, within the fourth degree of consanguinity or second degree of affinity, with any official or employee of **ASES** with the power to influence and participate in public policy decisions of **ASES**.

35. _____ is an independent contractor and as such shall be responsible of the payment of its income taxes and its individual and employers' withholdings under the applicable tax laws of Puerto Rico or the US Internal Revenue Code. _____ is not entitled to fringe benefits, such as retirement or disability. **ASES** will neither retain, nor discount, any amounts from payments made to _____ for income tax purposes or for Social Security, except those applicable in accordance with the Puerto Rico Internal Revenue Code and its regulations.

36. _____ will offer professional and consulting services to **ASES**. Therefore, **ASES** will be responsible for the withholding of one point five (1.5) percent of the amounts paid under this Contract and shall forward such withholding to the Treasury Department of the Government of Puerto Rico pursuant to Public Law Number 48- 2013.

- A. The Code of Internal Revenue establishes that **ASES** will withhold ten (10) percent from the professional services payment rendered under this Agreement, if it is a foreign corporation under the law of any state, twenty (20) percent of the payment will be withhold and if it is a foreign corporation

under the law of other country, it will be withhold twenty-nine (29), percent unless _____ presents to **ASES** a retention waiver from the Treasury Department of the Government of Puerto Rico. The items to defray the subsistence allowance, accommodation or other similar expenses will not be subject to withholding.

37. _____ warrants and agrees that in the provision of services under this Agreement it will not to discriminate on the basis of race, color, gender, origin or social status, age, political or religious beliefs or any other discriminating cause. _____ also acknowledges that under the provisions of Act No. 46 of March 4, 2002 it cannot discriminate against a person for his or her sexual orientation, gender, gender identity, ethnicity, marital status, birth, or for the person's physical or mental impairment.
38. _____ also certifies and warrants that at the moment the execution of this Agreement is in complete compliance with Public Law Number 168 of 2000, as amended, also known as "Ley de Mejoras al Sustento de Personas de Edad Avanzada de Puerto Rico."
39. _____ agrees that in connection with the services provided hereunder, it will comply with all the applicable employment laws and regulations.
40. Documents presented by THE SECOND PART that will become part of the Contract:
- A. Certification issued by the ASG as part of the active registry on the *Registro Único de Proveedores de Servicios Profesionales (RUP)*.
 - B. Contractor Certification Requirement indicating if any subcontractor will be needed in connection with this Agreement.
 - C. HIPAA training evidence, if applies.
 - D. Conflict of Interest Certification by virtue of the PR Government Ethics La.
 - E. Evidence of active registry on the System for Award Management (SAM).
41. _____ certifies that it has received a copy of and agrees to comply with Act No. 84 of June 18, 2002, as amended, which establishes the Code of Ethics for contractors, suppliers and applicants for economic incentives of the Executive Agencies of the Government of Puerto Rico and the Government Ethics Law, Act No. 12, enacted on July 24, 1985, as amended.
42. No amendment of this Agreement shall be valid unless in writing and signed by both parties.

43. Unless otherwise provided in this Agreement, any notice to the parties required or permitted hereunder will be deemed to have been duly given as of the date of receipt if in writing and delivered personally, mailed by certified mail, return receipt requested, or sent by overnight delivery by the U.S. Postal Service or other independent carrier, to the following:

[Contractor's Name]

Attn: _____

ADDRESS

Puerto Rico Health Insurance Administration (ASES)

PO Box 195661

San Juan, PR 00919-5661

Either party may change its address for notice by giving the other party prior written notice of the new address in conformity with the foregoing provisions of this Section and the date upon which such new address will become effective.

44. _____ acknowledges that it cannot continue to provide services under this Agreement after its expiration date or when such services entail payment of an amount that exceeds the total allowed for this Agreement. No services will be paid in violation of this clause, and any request and acceptance of services in violation of this provision will be made without any legal authority and will not bind **ASES**.

45. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other oral or written representations, understandings or agreements relating to the subject matter hereof. Neither party shall be bound by the provisions of any pre-printed or other written terms and conditions subsequent to the date of this Agreement relating to the subject matter hereof unless such additional terms and conditions are made effective pursuant to the Amendments subsection of this section.

46. If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then such provision shall be invalid, but each other provision hereof not so affected shall be enforced fully as permitted by applicable law.

47. This Agreement shall be governed by and construed in accordance with the laws of the Government of Puerto Rico. The courts and authorities of the Government of Puerto Rico shall have jurisdiction over all controversies that may arise with respect to this Agreement. The parties hereby waive any other venue to which they might be entitled by virtue of domicile or otherwise. Should either party initiate or bring suit or action before any other court, it is agreed that upon application, any such suit or action shall be dismissed, without prejudice, and may be filed in accordance with this

provision. The party bringing the suit or action before a court not agreed to herein shall pay to the other party all the costs of seeking dismissal including reasonable attorney's fees.

48. **ASES** certifies that the present contract has the appropriate governmental authorizations necessary for its execution and according to provisions in the Act Number 66 of June 17 2014, known as the "Fiscal and Operational Sustainability Act of the Government of the Commonwealth of Puerto Rico".

Nevertheless, **ASES** is not exempted from registering this transaction in the Government of Puerto Rico Office of Management and Budget (OGP by its Spanish acronym) Electronic Platform.

49. **Circular Letter 001-2021 from the Office of Management and Budget of January 11, 2021.**

A. Interagency services:

- i. Both contracting PARTIES acknowledge and agree that the contracted services may be provided to any entity of the Executive Branch with which the contracting entity makes an interagency agreement or by direct order of the Office of Government Chief of Staff (Oficina del Secretario de la Gbernación). These services will be performed under the same terms and conditions regarding hours of work and compensation set forth in this Agreement. For the purposes of this clause, the term Executive Branch entity includes all agencies of the Government of Puerto Rico, as well as public instrumentalities and corporations.
- ii. For purposes of this Section, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as instrumentalities and public corporations, and the Office of the Governor.

B. Termination:

- i. The Government Chief of Staff shall have the power to terminate this Agreement at any time.
- ii. In case this Agreement is exempted from authorization from the Government Chief of Staff according to the dispositions specified in Circular Letter 001-2021, the Government Chief of Staff shall have discretion to take any necessary steps in those situations when a breach or potential breach with the public policy established by the Governor is observed.

C. Financial Oversight and Management Board Contract Review Policy for Puerto Rico: The Parties acknowledge that the CONTRACTOR

[_____] has submitted the certification entitled "Contractor Certification Requirement" required in accordance with the Contract Review Policy of the Financial Management and Oversight Board for Puerto Rico, effective November 6, 2017 and as amended on October 30, 2020 , signed by the Executive Director of the Contractor (or another officer with an equivalent position or authority to issue such certifications). A signed copy of the "Contractor Certification Requirement" is included as an annex to this agreement.

IN WITNESS WHEREOF, the parties hereto sign this Agreement, in San Juan, Puerto Rico this ____ day of _____, 2021.

**PUERTO RICO HEALTH
INSURANCE ADMINISTRATION**

[CONTRACTOR'S NAME]

Jorge E. Galva, JD, MHA
Executive Director
EIN: 66-0500678

Principal
EIN: _____

Budget item account: _____