

MODEL CONTRACT BETWEEN

ADMINISTRACIÓN DE SEGUROS DE SALUD DE PUERTO RICO (ASES)

and

CONTRACTOR

for

**THE PROVISION OF PHARMACY BENEFIT MANAGER (PBM) AND
REBATE AGGREGATOR (RA) SERVICES FOR THE
GOVERNMENT HEALTH PLAN PROGRAM**

Note: For ease of reference, this Model Contract is drafted for use if Contractor provides both PBM and RA services under the GHP. If the RFP were awarded to two separate organizations to each perform PBM and RA services respectively, each agreement would incorporate only the terms within this Model Contract that were applicable to each service line.

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THIS CONTRACT, is made and entered into by and between the Puerto Rico Health Insurance Administration (Administración de Seguros de Salud de Puerto Rico, hereinafter referred to as “ASES” or “the Administration”), a public corporation of the Government of Puerto Rico (“the Government” or “Puerto Rico”) and [Contractor Name] (“the Contractor”), a contracted pharmacy benefit manager (“PBM”) and/or rebate aggregator (“RA”) duly organized and authorized to do business under the laws of Puerto Rico.

WHEREAS, pursuant to Title XIX of the Federal Social Security Act, codified as 42 USC 1396 et seq. (“the Social Security Act”), and Act No. 72 of September 7, 1993 of the Laws of Puerto Rico (“Act 72”), a comprehensive program of medical assistance for needy persons exists in Puerto Rico;

WHEREAS, ASES is responsible for health care policy, purchasing, planning, and regulation pursuant to Act 72, as amended, and other sources of law of Puerto Rico designated in Attachment 1 to this Contract, and pursuant to this statutory provision, ASES has established a managed care program under the medical assistance program, known as “the Government Health Plan”, “GHP”, “GHP Program”, or “Vital”;

WHEREAS, the Puerto Rico Health Department (“the Health Department”) is the single State agency designated to administer medical assistance in Puerto Rico under Title XIX of the Social Security Act of 1935, as amended, and is charged with ensuring the appropriate delivery of health care and pharmaceutical services under the Medicaid and the Children’s Health Insurance Program (“CHIP”) in Puerto Rico, and ASES manages these programs pursuant to a delegation of authority to ASES;

WHEREAS, GHP serves a mixed population including not only the Medicaid and CHIP populations, but also other eligible individuals as established in Act 72;

WHEREAS, ASES has engaged the services of managed care organizations (the “MCOs”), for the underwriting of physical and mental health services under GHP, subject to and in accordance of Act 72.

WHEREAS, ASES seeks to comply with Puerto Rico’s public policy objectives of creating an integrated system of physical and Behavioral Health services, including but not limited to access to prescription drugs;

WHEREAS, ASES issued a Request for Proposals (“the RFP”) for Contracted PBM and RA Services on [Date RFP Issued], which, in accordance with Article 59, are expressly incorporated as if completely restated herein;

WHEREAS, ASES has received from the Contractor a proposal in response to the RFP, “Contractor’s Proposal,” which, except as provided in Article 59, is expressly incorporated as if completely restated herein; and,

WHEREAS, ASES accepts the Contractor’s Proposal to provide the services contemplated under this Contract for ASES;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ASES and the Contractor (each individually a “Party” and collectively the “Parties”) hereby agree as follows:

ARTICLE 1 GENERAL PROVISIONS

1.1 General Provisions

- 1.1.1 The Contractor shall assist ASES by providing and delivering services through described tasks, obligations, and responsibilities included in this Contract.
- 1.1.2 The Contractor shall maintain the staff, organizational, and administrative capacity and capabilities necessary to carry out all the duties and responsibilities under this Contract.
- 1.1.3 The Contractor shall not make any changes to the following without explicit prior written approval from the Executive Director of ASES or his or her designee:
 - 1.1.3.1 Its business address, telephone number, facsimile number, and email address;
 - 1.1.3.2 Its corporate status or nature;
 - 1.1.3.3 Its business location;
 - 1.1.3.4 Its corporate structure;
 - 1.1.3.5 Its ownership, including but not limited to the new owner's legal name, business address, telephone number, facsimile number, and email address; and/or
 - 1.1.3.6 Its incorporation status.
- 1.1.4 The Contractor shall notify ASES within five (5) Business Days of a change in the following:
 - 1.1.4.1 Its solvency (as a result of a non-operational event);
 - 1.1.4.2 Its corporate officers, executive employees and key personnel for this Contract; or
 - 1.1.4.3 Its Federal employee identification number or Federal tax identification number.
- 1.1.5 Unless otherwise specified herein, all documentation, including policies and procedures that the Contractor is required to maintain, shall be given prior written approval from ASES. All documentation, including the Deliverables listed in Attachment 2 to this Contract, must be submitted to ASES in English.
- 1.1.6 Pursuant to Section 1902(a)(80) of the Social Security Act, the Contractor shall not be located outside of the United States.
- 1.1.7 All Administrative Functions of the Contractor must be located within the United States. Effective February 1, 2022, the following Administrative Functions must be located in Puerto Rico:

- 1.1.7.1 Key Administrative Functions, including but not limited to Contractor personnel responsible for the coordination or participation in the P&T Committee, the Pharmacy Financial Committee, or any other committee required under this Contract;
- 1.1.7.2 Marketing;
- 1.1.7.3 Management of Contractor's compliance plan and fraud, waste and abuse monitoring activities;
- 1.1.7.4 Pharmacy Call Center; and
- 1.1.7.5 Decision-making authority related to the Pharmacy Network, such as claim dispute resolution, credentialing activities, pharmacy contracting, administrative (but not clinical) reviews of Prior Authorization requests, approvals to dispense early prescription refills or replacement fills.

1.2 Background

- 1.2.1 The Government Health Plan ("GHP") program, also known as Vital, has the following objectives with respect to Contracted PBM and RA Services provided:
 - 1.2.1.1 Ensure appropriate and timely access to Covered Services, including Covered Pharmacy Services, for Enrollees across Puerto Rico, including facilitating and promoting access to prescription drugs.
 - 1.2.1.2 Require Contractor to provide Island-wide coverage and access to Covered Services in all geographic areas of Puerto Rico, including Vieques and Culebra. This may be achieved through sub-contractual relationships.
 - 1.2.1.3 Encourage Contractor to contract with local pharmacies to ensure access and to maintain and leverage existing Enrollee-pharmacy relationships.
 - 1.2.1.4 Require Contractor to propose and demonstrate cost-saving initiatives and programs, including the potential use of value-based payment models for Network Pharmacy reimbursement.
- 1.2.2 Should any part of the scope of work under this Contract relate to a state program that is no longer authorized by law (e.g., which has been vacated by a court of law, or for which CMS has withdrawn federal authority, or which is the subject of a legislative repeal), the Contractor must do no work on that part after the effective date of the loss of program authority. ASES must adjust payments for Contracted Services to remove costs that are specific to any program or activity that is no longer authorized by law. If the Contractor works on a program or activity no longer authorized by law after the date the legal authority for the work ends, the Contractor will not be paid for that work. If ASES paid the Contractor in advance to work on a no-longer-authorized program or activity and under the terms of this Contract the work was to be performed after the date the legal authority ended, the payment for that work should be returned to ASES. However, if the Contractor worked on a program or activity prior to the date legal authority ended for that program or activity, and ASES included

the cost of performing that work in its payments to Contractor, the Contractor may keep the payment for that work even if the payment was made after the date the program or activity lost legal authority.

1.3 Groups Eligible for Services under the GHP

1.3.1 The Contractor will be responsible for providing Covered Pharmacy Services to all persons determined eligible for and enrolled in the GHP. Contractor shall also be responsible for aggregating drug rebates based on utilization of Covered Pharmacy Services by such Enrollees. The groups eligible to be served under the GHP shall hereinafter be referred to collectively as “Eligible Persons,” while those Eligible Persons who have are actively enrolled in the GHP are “Enrollees.” The groups are subject to change and currently include:

1.3.1.1 **Medicaid and CHIP.** All Medicaid and CHIP eligibility categories covered in the Puerto Rico Medicaid and CHIP State Plans are eligible to enroll in the GHP and shall be referred to hereinafter as “Medicaid and CHIP Eligibles,” also known as the “Federal Population.”

1.3.1.2 **Other Groups (Non-Medicaid and CHIP Eligibles).** The following groups, which are eligible to receive services under the GHP without any federal financial participation, will be referred to hereinafter as “Other Eligible Persons.” Once enrolled in the GHP, the following groups shall be referred to as “Other Enrollees.”

1.3.1.2.1 The “State Population,” formerly known as the “Commonwealth Population,” is currently comprised of individuals, regardless of age, who meet State-eligibility standards established by the Puerto Rico Medicaid Program but do not qualify for Medicaid or CHIP.

1.3.1.2.2 Any other group of Other Eligible Persons may be added during the Contract Term as a result of a change in laws or regulations or as determined by ASES.

1.4 Geographic Scope of the Contract

1.4.1 The Contractor is responsible for the delivery of Covered Services under the GHP Island-wide, including Vieques and Culebra.

1.5 Delegation of Authority

1.5.1 Federal law and Puerto Rico law limit the capacity of ASES to delegate decisions to the Contractor. All decisions relating to public policy and to the administration of the Medicaid, CHIP, and the Puerto Rico government health assistance program included in the GHP rest with the Puerto Rico Medicaid Program and ASES.

1.6 Availability of Funds

1.6.1 This Contract is subject to the availability of funds on the part of ASES, which in turn is subject to the transfer of federal, Puerto Rico, and municipal funds to

ASES. If available funds are insufficient to meet its contractual obligations, ASES reserves the right to terminate this Contract, pursuant to Article 38.

1.7 Cooperation, Assistance and Compliance with Special Projects

- 1.7.1 The Contractor shall provide to ASES and any other agency of the Government all necessary cooperation, assistance, and compliance with requirements in the development and implementation of any special project of ASES and any other agency of the Government or the Federal Government. The Contractor acknowledges that this is a sine qua non of this Contract and that it will comply with ASES change requests related to such projects as these are implemented due to State or Federal mandate.

ARTICLE 2 DEFINITIONS

Whenever capitalized in this Contract, the following terms have the respective meaning set forth below, unless the context clearly requires otherwise.

AB Rated: Drugs that meet the necessary bioequivalence standards established by the FDA.

Abandoned Call: A call initiated to a Call Center that is ended by the caller before any conversation occurs or before a caller is permitted access to a caller-selected option.

Abuse: Provider practices that are inconsistent with sound fiscal, business, or medical practices, and that result in unnecessary costs to the GHP Program or in reimbursement for services that are not Medically Necessary or that fail to meet professionally recognized standards for the provision of health care. It also includes Enrollee practices that result in unnecessary costs to the GHP.

Academic Detailing: The process by which a health educator or authorized staff contacts a Provider and/or Network Pharmacy to provide an educational intervention on a specific topic. Academic Detailing provides complete and objective Information based on best available evidence and promotes formulary compliance.

Access: Adequate availability of Benefits to fulfill the needs of Enrollees.

Act 72: The law of Puerto Rico adopted on September 7, 1993, as subsequently amended, which created and empowered ASES to administer certain government health programs.

Actuarial Report: Actuarial reports the Contractor is required to submit in accordance with Article 21.3 of this Contract.

Administrative Law Hearing: The Appeal process administered by Puerto Rico and as required by federal law, available to Enrollees and Network Pharmacies after they exhaust the Contractor's Complaint Process.

Adverse Benefit Determination: The denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, or termination of a previously authorized service, requirements for medical necessity appropriateness, setting or effectiveness of a covered benefit; the denial, in whole or part, of payment for a service (including in circumstances in which an Enrollee is forced to pay for a service); the failure to provide services in a timely manner (within the timeframes established by this Contract or otherwise established by ASES); the failure of the Contractor to act within the timeframes provided in 42 CFR 438.408(b); or the denial of an Enrollee's request to dispute a financial liability, including cost-sharing, co-payments, premiums, deductibles, co-insurance, and other Enrollee financial liabilities. For a resident of a rural area, the denial of an Enrollee's request to

exercise his or her right, under 42 CFR 438.52(b)(2)(ii), to obtain services outside the network.

Affiliate: Any person, firm, corporation (including, without limitation, service corporation and professional corporation), partnership (including, without limitation, general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, business trust, association or other entity or organization that now or in the future directly or indirectly controls, is controlled by, or is under common control with the Contractor.

Agent: An entity that contracts with ASES to perform Administrative Functions, including but not limited to: fiscal Agent activities; outreach, eligibility, and systems and technical support.

Appeal: An Enrollee request for a review of an Adverse Benefit Determination. It is a formal petition by an Enrollee, an Enrollee's Authorized Representative, or the Enrollee's Provider, acting on behalf of the Enrollee with the Enrollee's written consent, to reconsider a decision in the case that the Enrollee or Provider does not agree with an Adverse Benefit Determination taken.

ASES: Administración de Seguros de Salud de Puerto Rico (the Puerto Rico Health Insurance Administration), the Government entity responsible for oversight and administration of the GHP Program, or its Agent.

ASES Data: All Data created from Information, documents, messages (verbal or electronic), reports, or meetings involving, arising out of or otherwise in connection with this Contract.

ASES Information: All proprietary Data and/or Information generated from any Data requested, received, created, provided, managed and stored by Contractor—in hard copy, digital image, or electronic format— from ASES and/or Enrollees (as defined in Article 2) necessary or arising out of this Contract, except for the Contractor's Proprietary Information.

Authorized Certifier: The Contractor's CEO, CFO, or an individual with delegated authority to sign for and who reports directly to the CEO and/or CFO.

Average Speed to Answer ("ASA"): The timeframe between a caller choosing the option to speak with a customer service agent and the agent attending the phone call.

Average Wholesale Price ("AWP"): The standardized cost of a drug. The AWP is determined through reference to a common source of price Information, such as MediSpan® or any equivalent or substitute method accepted by ASES. AWP is defined as the post-settlement unadjusted amounts as published in a common source of pricing Information.

Behavioral Health: The umbrella term for Mental Health conditions (including psychiatric illnesses and emotional disorders) and substance use disorders (involving addictive and chemical dependency disorders). The term also refers to preventing and treating co-occurring mental health conditions and substance use disorders ("SUDs").

Blocked Call: A call that cannot be connected immediately because no circuit is available at the time the call arrives or because the telephone system is programmed to block calls from entering the queue when the queue is backed up beyond a defined threshold.

Brand Drug: A drug marketed under a proprietary trademark or protected name. Brand Drugs may have a Generic equivalent on the market upon its patent expiration.

Breach: As defined in 45 CFR 164.402, the acquisition, Access, use, or disclosure of Protected Health Information in a manner not permitted under 45 CFR 164, subpart E which compromises the security or privacy of such Information.

Business Continuity and Disaster Recovery (“BC-DR”) Plan: A documented plan (process) to restore vital and critical Information/health care technology systems in the event of business interruption due to human, technical, or natural causes. The plan focuses mainly on technology systems, encompassing critical hardware, operating and application software, and tertiary elements required to support the operating environment. It must support the process requirement to restore vital business Data inside the defined business requirement, including an emergency mode operation plan as necessary. The BC-DR also provides for continuity of health care in the event of plan terminations.

Business Days: Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. Puerto Rico Holidays, as defined in the Law for Compliance with the Fiscal Plan, Act No. 26 of April 29, 2017, or any other law enacted during the duration of this Contract regarding this subject, or officially designated or notified in writing by ASES and/or Medicaid are excluded.

Calendar Days: All seven (7) days of the Week.

Calendar Year: The period from January 1 of any year through December 31 of the same year, inclusive.

Call Center: A telephone service facility equipped to handle a large number of inbound and outbound calls.

Centers for Medicare & Medicaid Services (“CMS”): The agency within the US Department of Health and Human Services with responsibility for the Medicare, Medicaid, and the Children’s Health Insurance Programs (“CHIP”).

Children’s Health Insurance Program (“CHIP”): Puerto Rico’s Children’s Health Insurance Program established pursuant to Title XXI of the Social Security Act.

CHIP Eligible: A child eligible to enroll in GHP because he or she is eligible for CHIP.

Claim: Whether submitted manually or electronically, a bill for services, a line item of services, or a bill detailing all services for one (1) Enrollee. A Pharmacy Claim shall include any transmission of Information submitted for payment by a Pharmacy to the Contractor, to be adjudicated by the Contractor, for drugs dispensed by such Pharmacy to an Enrollee.

Claims Processing: The process followed to receive, adjudicate and pay, reverse or reject one or more Claims, whether through their full payment, partial payment, denial of payment, or a combination thereof.

Clean Claim: A Claim received by the Contractor for adjudication, which can be processed without obtaining additional Information from a Provider, the Pharmacy, or from a Third Party. It includes a Claim with errors originating in the Contractor’s Claims system. It does not include a Claim for a prescription drug prescribed or dispensed by a Provider or filled by a Pharmacy who is under investigation for Fraud, Waste, or Abuse, or a Claim under review to determine Medical Necessity.

Contract: The written agreement between ASES and the Contractor; comprised of the Contract, any addenda, appendices, attachments, or amendments thereto, as it may be amended, supplemented or revised after the Effective Date of Contract.

Contract Term or Term: The duration of time that this Contract is in effect, as defined in Article 24 of this Contract.

Contracted Services: The PBM services, RA contracted services, and all other services to be rendered by the Contractor pursuant to this Contract. This Contractor shall use the term “Contracted PBM

Services” and “Contracted RA Services” when referring to each specific Contracted Service only.

Contractor: The Contractor that is a party of the Contract, which contracts with ASES under the GHP program for the provision of Contracted Services.

Coordination of Benefits (COB): Method of integrating benefits payable under more than one health insurance plan so that the Enrollee’s benefits from all sources or reimbursement do not exceed one hundred percent (100%) of allowable medical expenses or eliminate appropriate patient incentives to contain costs.

Co-Payment: A cost-sharing requirement which is a fixed monetary amount paid by the Enrollee to a Provider for certain Covered Services as specified by ASES. This term is used in this Contract to reflect the portion of Covered Pharmacy Services which an Enrollee is responsible for paying to a Pharmacy and which the Pharmacy is authorized to collect as part of its compensation for services rendered, in general, a fixed amount.

Corrective Action Plan: The detailed written plan required by ASES from the Contractor to correct or resolve a deficiency or event causing the assessment of a liquidated damages or sanctions against the Contractor.

Cost Avoid or Avoidance: A method of paying Claims in which the Pharmacy is not reimbursed until it has demonstrated that all available health insurance, and other sources of Third Party Liability, have been exhausted.

Covered Pharmacy Services: The prescription drug benefits portion of Covered Services to which Enrollees are entitled under the GHP, the payment or indemnification of which is covered under this Contract and all other PBM services required under this Contract, including Contracted Services.

Covered Services: Those Medically Necessary health care services provided to Enrollees by Providers, the payment or indemnification of which is covered by an MCO.

Credentialing: The Contractor’s determination as to the qualification of a specific Network Pharmacy to participate in Contractor’s Pharmacy Network.

Credible Allegation of Fraud: Any allegation of Fraud that has been verified by another State, the Government, or ASES, or otherwise has been preliminary investigated by the Contractor, as the case may be, and that has indicia of reliability that comes from any source.

Daily Basis: Each Business Day.

Data: A series of meaningful electrical signals that may be manipulated or assigned.

Data Set: Demographic, health, or other Informational elements suitable for specific use.

Deliverable: A document, manual, or report submitted to ASES by the Contractor to exhibit that the Contractor has fulfilled the requirements of this Contract.

Disenrollment: The termination of an individual’s Enrollment in the MCO.

Dispensing Fee: The charge for the professional services provided by a Pharmacy when dispensing a prescription drug to an Enrollee.

Drug Utilization Review (DUR): The program, described in 42 CFR Part 456, Subpart K, that provides Pharmacies with Information that can assist pharmacists in evaluating the medical appropriateness of

an Enrollee's drug therapy on the basis of an evaluation of the prescribing patterns or patient drug utilization, preventing potential drug problems before a prescription is dispensed. Electronic alerts (messages), that may include payment denials, are sent to the Pharmacy indicating the type of problem detected.

DUR Annual Report: The annual submission required from states, and as of April 2022, U.S. territories, as set forth in 42 CFR 456.712, On an annual basis, states are required to report on their practitioners' prescribing habits, cost savings generated from their Drug Utilization Review (DUR) programs and their program's operations, including adoption of new innovative DUR practices via the Medicaid Drug Utilization Review Annual Report Survey".

Dual Eligible Beneficiary: An Enrollee or Potential Enrollee eligible for both Medicaid and Medicare.

Effective Date of Contract: The Day the Contract is executed by both Parties.

Electronic Funds Transfer ("EFT"): Transfer of funds between accounts using electronic means such as a telephone or computer rather than paper-based payment methods such as cash or checks.

Eligible Person: A person eligible to enroll in GHP, by virtue of being Medicaid Eligible, CHIP Eligible, or an Other Eligible Person.

Emergency Medical Condition: As defined in 42 CFR 438.114, a medical or Behavioral Health condition, regardless of diagnosis or symptoms, manifesting itself in acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairments of bodily functions, serious dysfunction of any bodily organ or part, serious harm to self or other due to an alcohol or drug abuse emergency, serious injury to self or bodily harm to others, or the lack of adequate time for a pregnant women having contractions to safely reach a another hospital before delivery. The Contractor may not impose limits on what constitutes an Emergency Medical Condition based only, or exclusively, on diagnoses or symptoms.

Emergency Services: As defined in 42 CFR 438.114, any Physical or Behavioral Health Covered Services (as described in Section 7.5.9) furnished by a qualified Provider in an emergency room that are needed to evaluate or stabilize an Emergency Medical Condition or a Psychiatric Emergency that is found to exist using the prudent layperson standard.

Encounter: A distinct set of services provided to an Enrollee in a Telehealth, Telemedicine, Teledentistry, or face-to-face setting on the dates that the services were delivered and properly documented on the appropriate health record, regardless of whether the Provider is paid on a Fee-for-Service, capitated, salary, or alternative payment methodology basis. Encounters with more than one (1) Provider, and multiple Encounters with the same Provider, that take place on the same day in the same location will constitute a single Encounter, except when the Enrollee, after the first Encounter, suffers an illness or injury requiring an additional diagnosis or treatment.

Encounter Data: (i) All Data captured during the course of a single Encounter that specify the diagnoses, comorbidities, procedures (therapeutic, rehabilitative, maintenance, or palliative), pharmaceuticals, medical devices, and equipment associated with the Enrollee receiving services during the Encounter; (ii) The identification of the Enrollee receiving and the Provider(s) delivering the health care services during the single Encounter; and (iii) A unique (i.e., unduplicated) identifier for the single Encounter.

Enrollee: A person who is currently enrolled in the GHP, and who, by virtue of relevant Federal and

Puerto Rico laws and regulations, is an Eligible Person listed in Section 1.3.1 of this Contract.

Enrollment: The process by which an Eligible Person becomes an Enrollee of an MCO's Plan.

Federally Qualified Health Center ("FQHC"): An entity that provides outpatient health programs pursuant to Section 1905(l)(2)(B) of the Social Security Act.

First Databank: A drug reference database that provides descriptive drug Information, unique identifiers, and pricing data with clinical decision-support modules.

Fiscal Year: The period from July 1 of a Calendar Year through June 30 of the following Calendar Year.

Formulary of Medications Covered ("FMC"): A published subset of pharmaceutical products used for the treatment of physical and Behavioral Health conditions developed after clinical recommendations from the Pharmacy and Therapeutics (P&T) Committee.

Fraud: An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit or financial gain to him/herself or some other person. It includes any act that constitutes Fraud under applicable Federal or Puerto Rico law.

Generic Drugs: A drug that is no longer covered by patent protection and thus may be produced and/or distributed by many firms. Generic Drugs are FDA reviewed and must be bio-equivalent, which means that they must have the same active ingredients and be absorbed by the body the same way as the Brand Name Drugs. All Generic Drugs dispensed to Enrollees shall be bioequivalent as included in the Orange Book as AB Rated bioequivalent.

The Government Health Plan ("GHP"): The government health services program (also referred to as "Vital") offered by the Government and administered by ASES, which serves a mixed population of Medicaid Eligible, CHIP Eligible, and Other Eligible Persons, and emphasizes integrated delivery of physical and Behavioral Health services.

Health Care Provider ("Provider"): Any physician, hospital, facility, or other provider of health care items or services who is licensed or otherwise authorized to provide physical or Behavioral Health services in the jurisdiction in which they are furnished.

Health Information Technology for Economic and Clinical Health ("HITECH") Act: Public Law 111-5 (2009). When referenced in this Contract, it includes all related rules, regulations, and procedures.

Health Insurance Portability and Accountability Act ("HIPAA"): A law enacted in 1996 by the Congress of the United States. When the term HIPAA is referred to in this Contract it shall mean to include all related rules, regulations and procedures thereunder.

High Cost High Needs ("HCHN") Program: A set of contractual obligations specific to a cohort of Enrollees with specific conditions that require specialized care management and a dedicated team of Providers due to the cost or elevated needs associated with treatment of the condition.

Immediately: Within twenty-four (24) hours, unless otherwise provided in this Contract.

Implementation Date of the Contract: The date on which the Contractor shall commence providing Contracted Services under this Contract. The expected Implementation Date of this Contract is February 1, 2022.

Implementation Plan: The measures and procedures developed and implemented, or to be implemented by the Contractor to enable rendering of the Contracted Services under this Contract.

Incident: The attempted or successful unauthorized access, use, disclosure, modification, or destruction of Information or interference with system operations in an Information System.

Information: Data to which meaning is assigned, according to context and assumed conventions; meaningful fractal Data for decision support purposes.

Information System(s): A combination of computing and communications hardware and software that is used in: (a) the capture, storage, manipulation, movement, control, display, interchange and/or transmission of Information, i.e., structured Data (which may include digitized audio and video) and documents; and/or (b) the processing of such Information for the purposes of enabling and/or facilitating a business process or a related transaction.

Island-wide: All geographic areas that comprise the entirety of Puerto Rico, including Vieques and Culebra, for which the Contractor is responsible for the delivery of Contracted Services.

List of Excluded Individuals and Entities (“LEIE”): A database of individuals and entities excluded from federally-funded health care programs maintained by the Department of Health and Human Services Office of the Inspector General.

List of Medications by Exception (“LME”): List of medications that are not included in the FMC, but that have been evaluated and approved by ASES’s Pharmacy and Therapeutics (P&T) Committee to be covered only through an exception process if certain clinical criteria are met. Covered outpatient drugs that are not included on the LME may still be covered under an Exception Request unless statutorily excluded.

Managed Care Organization (“MCO”): An insurance company, health care organization, or any other approved health organization in Puerto Rico that meets the CMS definition of an MCO.

Maximum Allowable Cost (MAC) List: The highest cost to be paid for Generic Drugs and Brand Drugs with generic versions available to Pharmacies. The MAC List with associated drug prices is developed and updated from on a monthly basis by the Contractor. The MAC list to be implemented on the Implementation Date of the Contract will be consistent with the list provided by ASES to the Contractor during Implementation. The Contractor will provide a revised MAC list when updates are made.

Medicaid: The joint federal/state program of medical assistance established by Title XIX of the Social Security Act.

Medicaid Drug Rebate Program (“MDRP”): Program administered by CMS that requires drug Manufacturers to enter into, and have in effect, a national rebate agreement with the Secretary of the Department of Health and Human Services in exchange for Medicaid coverage of a pharmaceutical manufacturer’s drugs.

Medicaid Eligible Person: An individual eligible to receive services under Medicaid, who is eligible, on this basis, to enroll in GHP.

Medicaid Management Information System (“MMIS”): Computerized system used for the processing, collecting, analyzing, and reporting of Information needed to support Medicaid and CHIP functions. The MMIS consists of all required subsystems as specified in the State Medicaid Manual.

Medical Record: The complete, comprehensive record of an Enrollee including, but not limited to, x-rays, laboratory tests, results, examinations and notes, accessible at the site of the Enrollee’s Network Primary Care Physician, Provider, or Network Pharmacies, that documents all health care services received by the Enrollee, including inpatient, outpatient, ancillary, and emergency care, prepared in accordance with all applicable federal and Puerto Rico rules and regulations, and signed by the Provider

and or Network Pharmacy, as the case may be, rendering the services.

Medicare: The federal program of medical assistance for persons over age sixty-five (65) and certain disabled persons under Title XVIII of the Social Security Act.

Medicare Part B: The part of the Medicare program that covers physician, outpatient, home health, and preventive services.

Medicare Part D: The part of the Medicare program that covers prescription drugs.

MediSpan®: A drug reference database that provides drug descriptive Data and attributes, along with current and historical drug product price Information.

National Drug Code (“NDC”): Unique 11-digit, 3-segment number, and a universal product identifier for human drugs.

National Drug Rebate Agreement (“NDRA”): An agreement between a pharmaceutical manufacturer and HHS where the manufacturer agrees to provide Medicaid drug rebates in exchange for Medicaid coverage of most of the manufacturer’s drugs.

National Provider Identifier (“NPI”): The 10-digit unique-identifier numbering system for Providers created by the Centers for Medicare & Medicaid Services (CMS), through the National Plan and Provider Enumeration System.

NCPDP: The National Council for Prescription Drug Programs standard for pharmacy drug Claims Data files and Coordination of Benefits (“COB”).

Network Adequacy Standards: The Time and Distance Standards, or other requirements as may be specified by ASES, developed to measure the adequacy and appropriateness of the Contractor’s Pharmacy Network to meet the needs of the enrolled population.

Network Pharmacy: A Pharmacy under contract with the Contractor to provide Covered Pharmacy Services to Enrollees.

Network Provider: A Medicaid-enrolled Provider that has a Provider Contract with an MCO or Contractor under the GHP Program. The term Network Provider shall include Network Pharmacies.

Office of the Inspector General: The federal office within the Department of Health & Human Services tasked with protecting the integrity of federal health care programs as well as the health and welfare of program beneficiaries.

Orange Book: The publication of the FDA of approved of drug products with therapeutic equivalence evaluations which identify drug products approved by the FDA on the basis of safety and effectiveness.

Other Eligible Person: A person eligible to enroll in the GHP Program under Section 1.3.1.2 of this Contract who is not Medicaid or CHIP Eligible. This group is comprised of the State Population and certain public employees and pensioners.

Out-of-Network Pharmacy: A Pharmacy that does not have a contract with the Contractor under GHP.

Out-of-Network Provider: A Provider that does not have a contract with any of the MCOs or the Contractor under GHP.

Paid Claim: An occurrence of an authorized NCPDP formatted submission with a paid response in

Contractor's Claims processing system.

Patient's Bill of Rights Act: Act 194 of August 25, 2000, as amended, a law of the Government relating to patient rights and protection.

Patient Protection and Affordable Care Act ("PPACA"): Public Law 111-148 (2010) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152 (2010)).

Payment Hold: The situation when a Provider who owes funds to Puerto Rico, such Provider cannot be paid until the amounts owed to Puerto Rico are repaid or an acceptable repayment plan is in place, as determined by ASES.

Pharmacy: Any person, institution, corporation or any other business entity duly licensed by the Government under Act No. 247 of September 3, 2004, as amended, to dispense prescription drugs.

Pharmacy Call Center: A call center facility established by the Contractor to provide Information through a local toll-free telephone access to Pharmacies offering Covered Pharmacy Services to Enrollees.

Pharmacy Complaints and Appeal Process: The overall system that Contractor must have to address any complaints, grievances, and appeals of Network Pharmacies, as well as access to the Administrative Law Hearing process.

Pharmacy Contract: The written agreements to be entered into by the Contractor and Network Pharmacies forming part of the Pharmacy Network, as required under this Contract.

Pharmacy Financial Committee: Committee authorized by ASES to make formulary recommendations and include in the Formulary of Medications Covered (FMC) or List of Medication by Exception (LME) selections based on the drug review and recommendations of the P&T Committee to include or exclude prescription drugs.

Pharmacy Network: The Network Pharmacies contracted by the Contractor to provide Covered Pharmacy Services under the terms and conditions of this Contract to Enrollees.

Pharmacy and Therapeutics ("P&T") Committee: A multi-disciplinary, multi-specialty committee authorized by ASES consisting of independent health care professionals that provides advice regarding the efficacy and safety of prescription drugs.

Physician Administered Drug ("PAD"): An outpatient drug other than a vaccine that is typically administered by a health care provider in a physician's office or other outpatient clinical setting

Primary Medical Group ("PMG"): A grouping of associated Primary Care Physicians and other Providers for the delivery of services to GHP Enrollees using a coordinated care model. PMGs may be organized as Provider care organizations, or as another group of Providers who have contractually agreed to offer a coordinated care model to GHP Enrollees under the terms of this Contract.

Prior Authorization: Authorization granted by the Contractor to determine whether the service is Medically Necessary. In some instances, this process is a condition for receiving the Covered Pharmacy Service.

Protected Health Information ("PHI"): As defined in 45 CFR 160.103, individually identifiable health Information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium.

Provider Contract: Any written contract between the Contractor and a Provider that requires the Pharmacy to perform specific parts of the obligations for the provision of Covered Services under their respective contract. The execution of a Provider Contract makes the Provider a Network Provider. The term Provider Contract shall include Pharmacy Contracts.

Puerto Rico Health Department (“the Health Department”): The Single State Agency charged with administration of the Puerto Rico Medicaid Program, which (through the Puerto Rico Medicaid Program) is responsible for Medicaid and CHIP eligibility determinations.

Puerto Rico Medicaid Program: The subdivision of the Puerto Rico Health Department that conducts GHP eligibility determinations for Medicaid, CHIP, and the State Population.

Rebates: For any period, all discounts, rebates and other price concessions contracted for and received by ASES from a pharmaceutical manufacturer with respect to prescription drugs dispensed to Enrollees.

Referral: A request by a Provider for an Enrollee to be evaluated, treated or served by a different Provider.

Remedy: ASES’s means to enforce the terms of the Contract through liquidated damages and other sanctions.

Rural Area: Zip codes in which the population density is less than 1,000 individual per square mile.

Span of Control: Information Systems and telecommunications capabilities that the Contractor operates or for which it is otherwise legally responsible according to the terms and conditions of this Contract. The Contractor’s Span of Control also includes systems and telecommunications capabilities outsourced by the Contractor.

Specialty Drugs: A category of prescription drugs that may (i) treat specific, complex or chronic medical conditions or rare disease; (ii) require additional patient education, adherence or support; (iii) have high costs; (iv) have unique storage or shipment requirements; or (v) not be stocked at a majority of Pharmacies.

Subcontract: Any written contract between the Contractor and a Subcontractor to perform a specified part of the Contractor’s obligations under this Contract.

Subcontractor: Any organization or person, including the Contractor’s parent, subsidiary or Affiliate, who has a Subcontract with the Contractor to provide any function or service for the Contractor specifically related to securing or fulfilling the Contractor’s obligations to the Government under the terms of this Contract. Subcontractors do not include Providers unless the Provider is responsible for services other than providing Covered Services pursuant to a Provider Contract.

Suburban Area: Zip codes in which the population density is between 1,000 and 3,000 individuals per square mile.

System Unavailability: As measured within the Contractor’s Information Systems’ Span of Control, when a system user does not get the complete, correct full-screen response to an input command within three (3) minutes after depressing the “Enter” or any other function key.

Term or Contract Term: The duration of time that this Contract is in effect.

Termination Date of the Contract: The date designated by ASES as the date that Contracted Services shall end.

Third Party: Any person, institution, corporation, insurance company, public, private, or governmental entity who is or may be liable in contract, tort, or otherwise by law or equity to pay all or part of the medical cost of injury, disease, or disability of an Enrollee.

Third Party Liability (“TPL”): Legal responsibility of any Third Party to pay for health care services.

Time and Distance Standards: A standardized measure of mileage and travel time for Enrollees in Urban and non-Urban Areas to access Network Pharmacies as specified in Section 7.2.1.

Title XX Social Services Program: A social services block grant that is a capped entitlement program provided to counties and local social service programs, as enacted under Title XX of the Social Security Act.

Urban Area: Zip codes in which the population density is greater than 3,000 individuals per square mile. Urban Areas include San Juan, Carolina, Trujillo Alto, Caguas, Guaynabo, Bayamón, Toa Alta, Toa Baja, Vega Baja, Rio Grande, Humacao, Arecibo, Ponce, Aguadilla, Mayaguez. ASES will notify Contractor if this list of Urban Areas changes.

Utilization: The rate patterns of service usage or types of service occurring within a specified time.

Utilization Management (“UM”): A service performed by the Contractor or MCOs which seeks to ensure that Covered Services provided to Enrollees are in accordance with, and appropriate under, the standards and requirements established by the Contract, or a similar program developed, established, or administered by ASES.

Waste: Health care spending that can be eliminated without reducing quality of care.

Week: The traditional seven- (7-) day week, Sunday through Saturday.

Wholesale Acquisition Cost (WAC): The price paid by the Wholesaler for drugs purchased from the manufacturer, and/or supplier’s published Wholesaler price list for Puerto Rico, at the end of the covered quarterly period.

Wholesaler: Any licensed entity to which a pharmaceutical company or other distributor sells a drug, that does not re-label or re-package, and that sells such drug to a Pharmacy, hospital or other authorized retailer.

Withhold: A percentage of payments or set dollar amounts that ASES deducts from its payment to the Contractor as a penalty, or that a Contractor deducts from its payment to a Network Pharmacy, depending on specific predetermined factors.

ARTICLE 3 ACRONYMS

The acronyms included in this Contract stand for the following terms:

ACH	Automated Clearinghouse
AICPA	American Institute of Certified Public Accountants
ARRA	American Recovery and Reinvestment Act of 2009
ASA	Average Speed to Answer
ASES	Administración de Seguros de Salud or Puerto Rico Health Insurance Administration
ASSMCA	The Mental Health and Against Addiction Services Administration or Administración de Servicios de Salud Mental y Contra la Adicción
ASUME	Minor Children Support Administration
BC-DR	Business Continuity and Disaster Recovery
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
CHIP	Children's Health Insurance Program
CMS	Centers for Medicare & Medicaid Services
ECM	Electronic Claims Management
EDI	Electronic Data Interchange
EFT	Electronic Funds Transfer
EPLS	Excluded Parties List System
FAR	Federal Acquisition Regulation
FMC	Formulary of Medications Covered
FDA	Federal Food and Drug Administration
FQHC	Federally Qualified Health Center
FTP	File Transfer Protocol
GHP	Government Health Plan
HHS	US Department of Health & Human Services
HHS-OIG	US Department of Health & Human Services Office of the Inspector General
HIPAA	Health Insurance Portability and Accountability Act of 1996
HITECH	The Health Information Technology for Economic and Clinical Health Act of 2009, 42 USC 17391 et. Seq

HIPAA	Health Insurance Portability and Accountability Act of 1996
LEIE	List of Excluded Individuals and Entities
LME	List of Medications by Exception
MAC	Maximum Allowable Cost
MCO	Managed Care Organization
MDRP	Medicaid Drug Rebate Program
MMIS	Medicaid Management Information System
NDC	National Drug Code
NDRA	National Drug Rebate Agreement
NPI	National Provider Identifier
PAD	Physician Administered Drug
P&T	Pharmacy and Therapeutics
PBM	Pharmacy Benefit Manager
PHI	Protected Health Information
PMG	Primary Medical Group
PPACA	Patient Protection and Affordable Care Act
RA	Rebate Aggregator
RFP	Request for Proposals
SAS	Statements on Auditing Standards
SUDs	Substance Use Disorders
TPL	Third Party Liability
UM	Utilization Management
US or USA	United States of America
USC	United States Code
UM	Utilization Management

ARTICLE 4 ASES RESPONSIBILITIES

4.1 General Provision

- 4.1.1 ASES will be responsible for administering all aspects of GHP. ASES will administer the Contract, monitor Contractor's performance, and provide oversight of all aspects of the Contractor's operations.

4.2 Legal Compliance

- 4.2.1 ASES will comply with and will monitor the Contractor's compliance with all applicable Puerto Rico and federal laws and regulations, including but not limited to those listed in Attachment 1 to this Contract.

4.3 Eligibility and Enrollment

- 4.3.1 The Puerto Rico Medicaid Program has sole authority to determine eligibility for GHP, as provided in federal law and Puerto Rico's State Plan, with respect to the Medicaid and CHIP Eligibles; and, with respect to the Other Eligible Persons, as provided in Article VI, Section 5 of Act No. 72 and other Puerto Rico law and regulation.
- 4.3.2 The Puerto Rico Medicaid Program will determine eligibility for the eligibility categories.
- 4.3.3 ASES shall provide or shall cause MCOs to provide eligibility and Enrollment Information as needed for Contractor to provide Contracted Services.

4.4 Setup Information

- 4.4.1 In the event of a required change to the benefit design of Covered Pharmacy Services, ASES shall timely provide or shall cause MCOs to provide the necessary Information for the Contractor to implement the change.

4.5 Covered Services

- 4.5.1 Given the objective of GHP to promote an integrated approach to physical and Behavioral Health, and to improve access to quality primary and specialty care services, ASES shall utilize all mechanisms set forth in this Contract to ensure that the Contractor performs the services and tasks assigned to advance the GHP program goals.
- 4.5.2 ASES shall provide to the Contractor, on an ongoing basis, updated Information on the operational policies, procedures, and regulations of GHP that affect the scope of the Contracted Services.

4.6 Information Systems and Reporting

- 4.6.1 ASES reserves the right to modify, expand, or delete Data that Contractor is required to submit to ASES, or to issue new requirements, subject to consultation with Contractor and to cost negotiation, if necessary. Unless otherwise stipulated in the Contract or mutually agreed upon by the Parties, the Contractor shall have ninety (90) Calendar Days from the day on which ASES issues notice of a required modification, addition, or deletion, to comply with the modification, addition, or deletion.
- 4.6.2 ASES will make available a secure FTP server, accessible via the Internet, for receipt of electronic files and reports from the Contractor. The Contractor shall provide a similar system for ASES to transmit files and reports deliverable by ASES to the Contractor. When such systems are not operational, ASES and the Contractor shall agree mutually on alternate methods for the timely exchange of files.

4.7 Implementation Review

- 4.7.1 ASES, or its designated third party, shall conduct an implementation review of the Contractor's operations beginning three (3) months before the Implementation Date of the Contract and whenever the Contractor will provide or arrange for the provision of Covered Pharmacy Services to new eligibility groups. Such review will include, at a minimum, one (1) onsite review, at dates and times to be determined by ASES. These reviews may include, but are not limited to, desk and onsite reviews of documents provided by the Contractor, walkthrough(s) of the Contractor's facilities, Information System demonstrations, Claims payment testing or audit, and interviews with the Contractor's staff. ASES will conduct the implementation review to confirm that the Contractor is capable and prepared to perform all Administrative Functions and to provide high-quality services to GHP Enrollees.
- 4.7.2 The Contractor shall submit policies and procedures and other Deliverables specified by ASES in accordance with Attachment 2 of this Contract. The Contractor shall make any changes requested by ASES to policies and procedures or other Deliverables in the timeframes specified by ASES.
- 4.7.3 ASES's review, or its designated third party, will document the status of the Contractor's compliance with the program standards set forth in this Contract. A multidisciplinary team appointed by ASES will conduct the implementation review. The scope of the implementation review will include, but not be limited to, the review and/or verification of:
- 4.7.3.1 Implementation Plan, issue log documenting all implementation issues, actions, due dates and responsible parties;
 - 4.7.3.2 Staffing Plan, staff licensure and certification, and staff training;
 - 4.7.3.3 Financial management, including financial reporting and monitoring and financial solvency;
 - 4.7.3.4 Contractor litigation history, current litigation, audits and other government investigations both in Puerto Rico and in other jurisdictions;
 - 4.7.3.5 Information Systems management, including claims management, systems performance, interfacing capabilities, and security management functions and capabilities;
 - 4.7.3.6 The Pharmacy Provider Manual, Pharmacy Procedure and Billing Manual, System Process and Procedure Manuals, System User Manual, Standard Operating Procedure Manual for Rebates, and any other relevant manuals developed under this Contract; and
 - 4.7.3.7 All other matters that ASES may deem reasonable in order to determine the Contractor's compliance with the requirements of this Contract.
- 4.7.4 The implementation review may assess the Contractor's ability to meet any requirements set forth in this Contract and the documents referenced herein.

4.7.5 A Contractor's failure to pass the implementation review may result in immediate Contract termination. If the Contract is so terminated, ASES shall not make any payments to the Contractor and shall have no liability for any costs incurred by the Contractor.

4.7.6 ASES, or its designated third party, will provide the Contractor with a summary of findings from the implementation review, as well as areas requiring remedial action with the timeframes to correct the findings.

4.8 P&T Committee Responsibilities of ASES

4.8.1 The purpose, structure, composition, policies, and procedures of the P&T Committee are set forth and established by ASES in its sole discretion.

4.8.1.1 Powers and Responsibilities of ASES:

4.8.1.1.1 To appoint the chairperson of the P&T Committee, independent members and ad hoc members; and

4.8.1.1.2 To approve the structure, functions, and responsibilities of the P&T Committee thereby permitting its members to carry out the business of effective formulary management and cost containment.

4.8.1.2 ASES reserves the right to create, amend, and modify, at any time, the Policies and Procedures of the P&T Committee as attached in Attachment 3 hereto.

4.9 Quality Monitoring

4.9.1 ASES shall evaluate the delivery of the Contracted Services by the Contractor. Such quality monitoring shall include monitoring of all the Contractor's Quality Improvement programs described in this Contract.

4.9.1.1 ASES shall monitor the Contractor for its performance of Contracted PBM Services, including but not limited to:

4.9.1.1.1 The availability of Covered Pharmacy Services;

4.9.1.1.2 The adequacy of the Contractor's Pharmacy Network;

4.9.1.1.3 The Contractor's coordination with each MCO;

4.9.1.1.4 The Contractor's policies and procedures for selection, contracting and retention of Network Pharmacies;

4.9.1.1.5 The Contractor's compliance with Puerto Rico and federal privacy laws and regulations relative to confidentiality of Enrollee Information;

4.9.1.1.6 The Contractor's Pharmacy Complaints and Appeals Process;

- 4.9.1.1.7 The Contractor's oversight of all Subcontractor relationships and delegations;
 - 4.9.1.1.8 The Contractor's adoption of practice guidelines, including the dissemination of the guidelines to Providers, Network Pharmacies and, upon request, to Enrollees and Potential Enrollees, and Providers' and Network Pharmacies' application of the respective guidelines;
 - 4.9.1.1.9 The Contractor's quality assessment and performance improvement program; and
 - 4.9.1.1.10 The Contractor's Information Systems.
- 4.9.1.2 ASES shall, among others, monitor the Contractor for Contracted RA Services, including but not limited to:
- 4.9.1.2.1 The Contractor's adequacy of invoicing, processing, and reconciling of the MDRP Rebate, Supplemental Rebate and Other Enrollee Rebate, as applicable;
 - 4.9.1.2.2 The Contractor's system for manufacturer Rebate payment tracking and reconciliation;
 - 4.9.1.2.3 The Contractor's Rebate dispute resolution for Rebates related to unit and/or Utilization issues;
 - 4.9.1.2.4 The Contractor's Rebate dispute resolution for Supplemental Rebates, Other Enrollee Rebates and/or Value Based Purchasing arrangements, as applicable;
 - 4.9.1.2.5 The Contractor's method for ensuring 340B Claims received and paid from Pharmacies contracted as or by 340B covered entities are not submitted for Rebates; and
 - 4.9.1.2.6 The Contractor's handling of drug manufacturers' past-due Rebate payments and interest payments.

ARTICLE 5 MCO RESPONSIBILITIES

- 5.1** Each of the MCOs shall transfer to a zero balance bank account to be set up by the Contractor, sufficient funds to cover the total payment of Claims to Pharmacies that are required to be made by the Contractor under this Contract.
- 5.2** The Contractor must inform the MCOs in writing the amount of Claims to be paid, at least two (2) Business Days prior to the date when the actual payment will be made. The MCOs will automatically cause the transfer of the funds for the payment of the Claims to the Contractor's zero balance account upon presentation of payment instructions. The MCOs must provide adequate notice to Contractor and ASES as to the transfer of funds. The zero balance bank account shall be utilized by the Contractor exclusively for the purpose of paying Claims to Pharmacies.
- 5.3** As required in 42 CFR 447.511(c), MCOs are to provide Physician Administered Drug ("PAD") Encounter Data based on date of service to Contractor for DUR reporting and

Rebate processing and reporting within forty-five (45) Calendar Days after each quarterly Rebate period.

5.4 The MCOs will electronically submit on a daily basis a list of all MCO's Network Providers and a list of Enrollees to the PBM.

5.4.1 The notification will include all new Enrollees as of the Business Day before the notification is issued, and will be sent no later than the following Business Day after the Enrollment process has been completed (as signified by issuance of the Enrollee ID Card, either in person or by surface mail) or the Disenrollment process has been completed (as signified by the issuance of a Disenrollment notice). MCO shall also provide notice whenever an Enrollee previously enrolled with a different MCO selects another MCO as a new plan.

5.5 Consistent with the requirements of Section 1927(d)(5) of the Social Security Act, some or all prescription drugs may be subject to Prior Authorization. All clinical Prior Authorizations shall be managed by the MCO according to policies and procedures established by the ASES Pharmacy and Therapeutics ("P&T") Committee. Data regarding the approval or denial of clinical Prior Authorizations will be shared with the Contractor according to the timeframes established in the MCO contract with ASES.

5.6 The MCOs are responsible for Enrollee Appeals of Adverse Benefit Determinations related to prescription drugs as established in the MCO contract with ASES.

5.7 ASES will cause the MCOs to comply with the following responsibilities:

5.7.1 Provide written notification to ASES and to the Contractor regarding the procedure for prescribing drugs not included in the FMC or LME, as applicable;

5.7.2 Provide written notification to the ASES and to Contractor regarding Prior Authorization policies and procedures;

5.7.3 Provide written notification to ASES and to the Contractor regarding existing guidelines and protocols for Utilization Management;

5.7.4 Designate and maintain a representative to assist on the P&T Committee in developing the FMC and LME;

5.7.5 Accept the FMC and LME and to encourage and counsel their Network Providers to comply; and

5.7.6 Distribute among prescribing Network Providers the FMC and LME and any update thereof.

ARTICLE 6 CONTRACTED PBM SERVICES – GENERAL

6.1 General Provisions

6.1.1 PBM shall be responsible for implementing and offering to ASES and the MCOs a comprehensive Pharmacy Benefit Management Program including but not limited to the following programs and services:

- 6.1.1.1 Forming, credentialing and managing a Pharmacy Network that provides Access to Covered Pharmacy Services across Puerto Rico;
- 6.1.1.2 Maintaining a Pharmacy Call Center;
- 6.1.1.3 Adjudicating and processing accurately Pharmacy Claims and payment including handling Coordination of Benefits (“COB”) with other health insurance plans, including Medicare;
- 6.1.1.4 Developing, maintaining and updating the Maximum Allowable Cost (“MAC”) list for Pharmacy reimbursement for Generic Drugs and multi-source Brand Drugs, and if requested by ASES, coordinating with Puerto Rico’s Department of Consumer Affairs (“DACO”) to provide drug price Information for DACO’s drug price control list, as amended from time to time;
- 6.1.1.5 Providing a comprehensive Drug Utilization Review (“DUR”) program, including capabilities to identify potential opioid abuse and suspect prescribing and dispensing patterns, and to track drug utilization trends for specific prescription drugs identified by ASES for special monitoring;
- 6.1.1.6 Supporting ASES and the contracted MCOs with the HCHN Program and other care management programs;
- 6.1.1.7 Developing and implementing a compliance plan and Fraud, Waste and Abuse detection initiatives;
- 6.1.1.8 Assisting in the support and operation of formulary management through the P&T Committee and Pharmacy Financial Committee;
- 6.1.1.9 Managing the Academic Detailing program;
- 6.1.1.10 Maintaining an Information System, Information management processes and technical support to meet the GHP requirements;
- 6.1.1.11 Providing robust reporting and online reporting tool as described in this Contract;
- 6.1.1.12 Retaining and storing Data as required under this Contract;
- 6.1.1.13 Developing strategies to promote an active participation of the MCOs in the development of Enrollee and prescribing Provider educational activities;
- 6.1.1.14 Performing pharmacy audits; and
- 6.1.1.15 Providing an electronic platform to Pharmacies desiring to appeal MAC pricing in order to claim additional reimbursement for the difference between a Pharmacy’s drug acquisition cost and the amount eligible for reimbursement under the MAC list.

ARTICLE 7 PHARMACY NETWORK

7.1 General Provisions

- 7.1.1 The Contractor shall have an adequate Pharmacy Network of Network Pharmacies meeting all Contract requirements in order to: (i) to ensure timely access to Covered Pharmacy Services (including complying with all federal and Puerto Rico requirements concerning timeliness, amount, duration, and scope of services); and (ii) provide sufficient Network Pharmacies in the Pharmacy Network to satisfy the demand of Covered Pharmacy Services with adequate capacity and quality service delivery.
- 7.1.2 The Contractor shall ensure that its Pharmacy Network is adequate to assure Access to Covered Pharmacy Services, and that all Network Pharmacies are appropriately credentialed, maintain current licenses, and have appropriate locations to provide the Covered Pharmacy Services.
- 7.1.3 The Pharmacy Network shall not include a Pharmacy if the Pharmacy, or any person or entity that has an ownership or control interest in the Pharmacy, or is an Agent or managing employee of the Pharmacy, has been excluded from participation in Medicaid, Medicare, or CHIP by the Department of Health and Human Services, the DHHS Office of Inspector General, or who are on the OIG Excluded Parties List System ("EPLS") or on Puerto Rico's List of Excluded Providers.
- 7.1.3.1 Except for special arrangements that are approved in advance by ASES, the Contractor must only contract with and issue payment to Network Pharmacies that are enrolled with ASES as Medicaid Providers and are active Providers in the Contractor's Provider Network Management system.
- 7.1.3.2 The Contractor shall not pay a Provider for services provided when the Provider has been terminated or suspended by ASES or Medicare, Medicaid, or CHIP unless such a preapproved special arrangement exists.
- 7.1.4 The Contractor is responsible for checking the exclusions lists on a monthly basis and shall immediately terminate any Network Pharmacy found to be excluded. Upon such exclusion, the Contractor shall arrange for the Enrollee to be notified of the exclusion and to assist with any required prescription transfers to a non-excluded Network Pharmacy. The Contractor will also immediately notify ASES and the MCOs of any excluded Provider or Network Pharmacy that may appear on an MCO's Network Provider list.

7.2 Pharmacy Network Criteria

- 7.2.1 The Contractor shall form a Pharmacy Network meeting Network Adequacy requirements set forth in this Section no later than thirty (30) Calendar Days prior to the Implementation Date of the Contract, containing not less than the amount of Network Pharmacies indicated below:
- 7.2.1.1 The Contractor's Pharmacy Network shall include Network Pharmacies to ensure that Access for Enrollees residing in the municipalities comprising each region type as follows:

- 7.2.1.1.1 At least ninety percent (90%) of the Enrollees, on average, living in Urban Areas are within two (2) miles of a Network Pharmacy;
 - 7.2.1.1.2 At least ninety percent (90%) of the Enrollees, on average, living in Suburban Areas are within five (5) miles of a Network Pharmacy; and
 - 7.2.1.1.3 At least seventy percent (70%) of the Enrollees, on average, living in Rural Areas living within fifteen (15) miles of a Network Pharmacy.
 - 7.2.1.1.4 Exceptions shall be justified and documented by the Contractor and shall be subject to ASES's approval.
- 7.2.2 The provisions of this Section 7.2.2 shall not be construed to:
- 7.2.2.1 Require the Contractor to contract with Network Pharmacies beyond the number necessary to satisfy the obligations for Network Adequacy set forth in Section 7.2.1 or as otherwise required under this Contract; or
 - 7.2.2.2 Preclude the Contractor from establishing measures that are designed to maintain quality of services and control costs and are consistent with its responsibilities to Enrollees and to ASES.
- 7.2.3 If the Contractor declines to include a Pharmacy or group of Pharmacies that have requested inclusion in its Pharmacy Network, the Contractor shall give the affected Pharmacies written notice of the reason for its decision. The Contractor shall notify ASES of such a decision, and shall provide documentation of the denial of the Pharmacy's participation in the Pharmacy Network within twenty (20) Business Days of communicating the decision to the Pharmacy.
- 7.2.4 The Contractor shall cause the participation in the Pharmacy Network all Pharmacies located in or within FQHC, PHS300 or 340B eligible entities, in Centers of Diagnostic Treatment ("CDT"), and in the public hospitals owned by the Puerto Rico Government.
- 7.2.5 The Contractor shall submit upon implementation of the Contract and on an annual basis thereafter a copy of the approved and actual procedure for contracting with Network Pharmacies for auditing purposes. ASES agrees and acknowledges that the Information to be disclosed constitutes proprietary Information of the Contractor. Accordingly, ASES shall not duplicate, disclose or discuss any such Information with third parties without the prior written consent of the Contractor, subject to the terms of this Contract.
- 7.2.6 The Contractor shall submit to ASES a sample Pharmacy Contract or template used to contract with Network Pharmacies in its Pharmacy Network. Contractor shall also submit to ASES on a quarterly basis a complete list of all Network Pharmacies in its Pharmacy Network, containing such additional Information ASES may reasonably request from time to time.

7.3 Contractor Documentation of Network Adequacy

- 7.3.1 As of the Implementation Date of the Contract, and as a condition precedent for the Contract to take effect, the Contractor shall demonstrate to ASES's satisfaction that:
 - 7.3.1.1 The Pharmacy Network has sufficient Network Pharmacies in number, mix, and geographic distribution to meet the needs of the Enrollees, as indicated in Section 7.2.1 of this Contract.
- 7.3.2 The Contractor shall provide documentation of Network Adequacy as stated in this Section 7.3 upon implementation of this Contract and every six (6) months thereafter during the Term of this Contract.

7.4 Pharmacy Credentialing

- 7.4.1 The Contractor shall be responsible for Credentialing and re-Credentialing Network Pharmacies to ensure that all Network Pharmacies are qualified to provide services under this Contract.
- 7.4.2 At a minimum, each Network Pharmacy's file documenting the Contractor's Credentialing process shall include, as applicable, but shall not be limited to:
 - 7.4.2.1 A copy of the license issued by the Medical Pharmacy Examining Board of Puerto Rico;
 - 7.4.2.2 Biological Products License;
 - 7.4.2.3 A copy of the Puerto Rico license to dispense medications (ASSMCA);
 - 7.4.2.4 A copy of the federal license to dispense medications (DEA);
 - 7.4.2.5 Pharmacy registration certification;
 - 7.4.2.6 NCPDP evidence for pharmacy NABP and NPI number;
 - 7.4.2.7 Insurance liability insurance coverage, including for druggist liability;
 - 7.4.2.8 Certificate of incorporation, if applicable;
 - 7.4.2.9 Disclosure of the Information concerning the Network Pharmacy and fiscal Agents about participation and control including: name, address, participation percentage, familial relationships and others (as required by 42 CFR Part 455.104);
 - 7.4.2.10 Network Pharmacy's disclosure of the Information related to business transactions, in compliance with 42 CFR Part 455.105;
 - 7.4.2.11 Disclosure of the Information about criminal convictions of the Pharmacy or a person or entity with an ownership or control interest in the Network Pharmacy, or who is an Agent or managing employee of the Network Pharmacy, in compliance with 42 CFR Part 455.106; and

7.4.2.12 Evidence that the Network Pharmacy does not appear on the OIG Excluded Parties List System (“EPLS”) or other exclusion list, as set forth in Section 7.1.3.

7.4.3 The Contractor shall establish credentialing requirements for Network Pharmacies in full accordance with all applicable Puerto Rico and federal laws, statutes and regulations and CMS requirements. The Contractor warrants that it shall enforce its Network Pharmacy Credentialing requirements and monitor compliance of Network Pharmacies on an ongoing basis, including but not limited to re-Credentialing Network Pharmacies in full accordance with all applicable Puerto Rico and federal laws, statutes and regulations and CMS’s requirements.

7.4.4 The re-Credentialing process shall include, at a minimum, verification and/or updating of the above Section 7.4.2, as appropriate, to ensure continued adequacy of the Pharmacy Network.

7.4.5 If the Contractor determines, through the Credentialing or re-Credentialing process, or otherwise, that a Network Pharmacy could be excluded pursuant to 42 CFR 1001.1001 or if the Contractor determines that the Provider has failed to make full and accurate disclosures as required above, the Contractor shall deny the Network Pharmacy’s request to participate in the Pharmacy Network, or, for a current Pharmacy Network, terminate the Pharmacy Contract. The Contractor shall notify ASES of such a decision and shall provide documentation of the bar on the Pharmacy’s Network participation, within twenty (20) Business Days of communicating the decision to the Pharmacy. The Contractor shall screen its employees, Pharmacy Network, and other Subcontractors initially and on an ongoing monthly basis to determine whether any of them has been excluded from participation in Medicare, Medicaid, CHIP, or any other federal health care program (as defined in Section 1128B(f) of the Social Security Act). ASES or the Puerto Rico Medicaid Program shall, upon receiving notification from a plan that the plan has denied credentialing, notify the HHS OIG of the denial with twenty (20) Business Days of the date it receives the Information, in accordance with 42 CFR 1002.3.

7.5 Prohibited Actions

7.5.1 Any denial, unreasonable delay, or rationing of Medically Necessary services to Enrollees is expressly prohibited. The Contractor shall ensure compliance with this prohibition from Network Pharmacies or any other entity related to the provision of health care services to GHP Enrollees. Should the Contractor violate this provision, the Contractor will be subject to the provisions of Article VI, Section 6 of Act 72 and 42 CFR 438 Subpart I (Sanctions).

7.6 Required Provisions in Pharmacy Contracts

7.6.1 In general, the Contractor’s Pharmacy Contracts shall:

7.6.1.1 Include a section summarizing the Contractor’s obligations under this Contract.

- 7.6.1.2 Require that the Network Pharmacy cooperate and collaborate with the MCOs in serving Enrollees, and work to advance the integrated model of physical and Behavioral Health services;
- 7.6.1.3 Require that the Network Pharmacy comply with the applicable federal and Puerto Rico laws listed in this Contract, and with all CMS requirements;
- 7.6.1.4 Prohibit any unreasonable denial, delay, or rationing of Covered Pharmacy Services to Enrollees; and violation of this prohibition shall be subject to the provisions of Article VI, Section 6 of Act 72 and of 42 CFR Part 438, Subpart I (Sanctions).
- 7.6.1.5 Prohibit discrimination against an Enrollee on the basis of race, color, national origin, ancestry, religion, gender, marital status, sexual orientation, age, mental or physical disability;
- 7.6.1.6 Prohibit the Network Pharmacy from claiming for any non-allowed administrative expenses;
- 7.6.1.7 Prohibit the unauthorized sharing, transfer, selling or any other disposition whatsoever of ASES Data, as defined in this Contract;
- 7.6.1.8 Notify the Network Pharmacies that the terms of the Contract for services under GHP are subject to subsequent changes in legal requirements that are outside of the control of ASES;
- 7.6.1.9 Require the Network Pharmacy to comply with all reporting requirements contained in this Contract, and to report all instances of suspected Fraud, Waste or Abuse;
- 7.6.1.10 Require the Network Pharmacy to acknowledge that ASES Data belongs exclusively to ASES, and that the Network Pharmacy may not give Access to, assign, or sell such Data to third parties, without Prior Authorization from ASES. The Contractor shall include penalty clauses in its Network Pharmacy contracts to prohibit this practice, and require that the fines be paid to ASES; the foregoing notwithstanding, throughout the Contract Term, ASES Data may be shared to ensure compliance with the terms of certain Memoranda of Understanding between ASES and IQVIA Puerto Rico;
- 7.6.1.11 Prohibit the Network Pharmacy from seeking payment from the Enrollee for any Covered Pharmacy Services provided to the Enrollee within the terms of this Contract, and require the Network Pharmacy to look solely to the Contractor for compensation for services rendered to Enrollees;
- 7.6.1.12 Require the Network Pharmacy to cooperate with the Contractor's and MCO's quality improvement and Utilization Management activities;
- 7.6.1.13 Require Network Pharmacy to meet the timeframes for access to services pursuant to this Contract. In the event of a communications failure or systems interruption, the Network Pharmacy shall take all

necessary measures to ensure the Covered Pharmacy Services to Enrollees are rendered without interruption and on a timely basis;

- 7.6.1.14 Provide for continuity of services in the event that a Network Pharmacy's participation in the Contractor's Pharmacy Network terminates during the course of an Enrollee's treatment by that Network Pharmacy. The Contractor agrees to immediately notify the MCOs and ASES of a Pharmacy Contract cancellation;
- 7.6.1.15 Prohibit Network Pharmacies who do not have a Pharmacy license from dispensing medications, as required by the Puerto Rico Pharmacy Act;
- 7.6.1.16 Specify that the DHHS and its sub-agencies and ASES shall have the right to inspect, evaluate, and audit any pertinent books, financial records, documents, papers, and records of any Network Pharmacy involving financial transactions related to GHP;
- 7.6.1.17 Require that the Network Pharmacy attend promptly to requests for Prior Authorizations and Referrals, when Medically Necessary, in compliance with the timeframes set forth in this Contract and in 42 CFR 438.210 and the Puerto Rico Patient's Bill of Rights;
- 7.6.1.18 Specify rates of payment as provided in this Contract and require that Network Pharmacies accept such payment as payment in full for Covered Pharmacy Services provided to Enrollees, less any applicable Enrollee Co-Payments pursuant to this Contract;
- 7.6.1.19 Specify acceptable billing and coding requirements;
- 7.6.1.20 Require Network Pharmacies to collect Enrollee Co-Payments only as specified in this Contract. A Network Pharmacy shall, prior to rendering any Covered Pharmacy Services, advise Enrollees of their responsibility to cover applicable Co-Payment, if any, or any non-Covered Pharmacy services and collect and retain the Co-Payments. These amounts will be included and considered part of the Network Pharmacy's compensation for services rendered to Enrollees. The Contractor will ensure contracts with its Network Pharmacies will include that the retail pharmacy charges to the Enrollee are only the applicable Co-Payment according to the terms of the GHP.
- 7.6.1.21 Require Network Pharmacies to cooperate with requests by the Enrollees concerning Information relating to prescriptions or Co-Payment amounts.
- 7.6.1.22 Require that Network Pharmacies not employ or subcontract with individuals on the Puerto Rico or Federal Exclusions list, or with any entity that could be excluded from the Medicaid program under 42 CFR 1001.1001 (ownership or control in sanctioned entities) and 1001.1051 (entities owned or controlled by a sanctioned person);
- 7.6.1.23 Prohibit the Network Pharmacy from operating on a different schedule GHP Enrollees than for other patients, and from in any other way discriminating against GHP Enrollees;

- 7.6.1.24 Provide notice that the Contractor's negotiated rates with Network Pharmacies shall be adjusted in the event that ASES directs the Contractor to make such adjustments in order to reflect budgetary changes to the Medical Assistance program;
- 7.6.1.25 Impose fees or penalties if the Network Pharmacy breaches the Pharmacy Contract or violates federal or Puerto Rico laws or regulations;
- 7.6.1.26 Require that the Network Pharmacy make every effort to Cost Avoid Claims and identify and communicate to the Contractor available Third Party resources, as required in this Contract;
- 7.6.1.27 Provide that the Contractor shall not pay Claims for services covered under the Medicare Program, and that the Network Pharmacy may not bill both GHP and the Medicare Program for a single service to a Dual Eligible Beneficiary;
- 7.6.1.28 Require the Network Pharmacy to sign a release giving ASES access to the Network Pharmacy's Medicare billing data for GHP Enrollees who are Dual Eligible Beneficiaries, provided that such access is authorized by CMS compliant with all HIPAA requirements;
- 7.6.1.29 Require the Network Pharmacy to notify the Contractor Immediately if or whether the Network Pharmacy falls within the prohibition stated in this Contract or has been excluded from the Medicare, Medicaid, or Title XX Social Services Programs;
- 7.6.1.30 Include a penalty clause to require the return of public funds paid to a Network Pharmacy that falls within the prohibition stated in this Contract; and
- 7.6.1.31 Require that all Claims and any reports submitted by the Network Pharmacy to the Contractor include the Network Pharmacy's NPI.
- 7.6.1.32 Require the Network Pharmacy to maintain an appropriate record system for Covered Pharmacy Services and to retain records for ten (10) Calendar Years, after the Covered Pharmacy Services were rendered, unless a different period is required by law or agreed to in writing by ASES. The Contractor shall also require Network Pharmacies to cooperate with requests by ASES to prepare and provide, at no cost to ASES, or if applicable, the Enrollees, any records pertaining to Prescriptions or Co-Payment amounts.

7.7 Termination of Pharmacy Contracts

- 7.7.1 The Contractor shall comply with all Puerto Rico and federal laws regarding Network Pharmacy termination. Pharmacy Contracts shall:
 - 7.7.1.1 Contain provisions allowing immediate termination of the Pharmacy Contract by the Contractor "for cause". Cause for termination includes gross negligence in complying with the contractual considerations or obligations; insufficiency of funds of ASES or the Contractor, which

prevents them from continuing to pay for their obligations; and changes in federal law.

7.7.1.2 Specify that in addition to any other right to terminate the Pharmacy Contract, and notwithstanding any other provision of this Contract, ASES may demand Network Pharmacy termination Immediately, or the Contractor may Immediately terminate on its own, a Network Pharmacy's participation under the Pharmacy Contract if:

7.7.1.2.1 A Network Pharmacy fails to abide by the terms and conditions of the Pharmacy Contract, as determined by ASES, or, in the sole discretion of ASES, if the Network Pharmacy fails to come into compliance within fifteen (15) Calendar Days after a receipt of notice from the Contractor specifying such failure and requesting such Network Pharmacy to abide by the terms and conditions hereof; or

7.7.1.2.2 The Contractor or ASES learns that the Network Pharmacy:

7.7.1.2.2.1 Falls within the prohibition stated in Article 32.1 or 32.6, or has a criminal conviction as provided in Article 32;

7.7.1.2.2.2 Has been or could be excluded from participation in the Medicare, Medicaid, or CHIP Programs; or

7.7.1.2.2.3 Could be excluded from the Medicaid program under 42 CFR 1001.1001 (ownership or control in sanctioned entities) and 1001.1051 (entities owned or controlled by a sanctioned person).

7.7.1.3 Specify that any Network Pharmacy whose participation is terminated under the Pharmacy Contract for any reason shall utilize the applicable Pharmacy Complaints and Appeals Process outlined in the Pharmacy Contract. No additional or separate right of appeal to ASES or the Contractor is created as a result of the Contractor's act of terminating, or decision to terminate any Pharmacy Contract. Notwithstanding the termination of the Pharmacy Contract, a Contractor's Pharmacy Contract with all other Network Pharmacies shall remain in full force and effect.

7.7.2 The Contractor shall notify ASES at least forty-five (45) Calendar Days prior to the effective date of the suspension, termination, or withdrawal of a Network Pharmacy from participation in the Contractor's Pharmacy Network. If the termination was for cause, the Contractor shall provide to ASES the reasons for termination.

7.7.3 The Contractor shall, within fifteen (15) Calendar Days of issuance of a notice of termination to a Network Pharmacy, notify enrollees of the termination, and shall assist the Enrollee as needed in finding a new Network Pharmacy.

7.8 Out-of-Network Pharmacies

7.8.1 If the Contractor's Pharmacy Network is unable to provide Covered Pharmacy Services to an Enrollee, the Contractor may adequately and timely cover these

services by way of exception only using Pharmacies outside of its Pharmacy Network. Such special arrangements with Out-of-Network Pharmacy require ASES's prior written consent.

- 7.8.2 Except as provided with respect to Emergency Services or as provided under Section 7.8.1 above, if the Contractor offers the service through a Pharmacy in its Pharmacy Network but the Enrollee chooses to access the service from an Out-of-Network Pharmacy, the Contractor is not responsible for payment.
- 7.8.3 The Contractor must ensure that an Out-of-Network Pharmacy is paid at least at the average rate that the Contractor pays the same type of Network Pharmacy.
- 7.8.4 ASES shall ensure, in setting Co-Payments, that in the event that a Co-Payment is imposed on Enrollees for an Out-of-Network service permitted under Sections 7.8.1 or 7.8.2 above, the Co-Payment shall not exceed the Co-Payment that would apply if services were provided by a Network Pharmacy in the Pharmacy Network.

7.9 Hours of Service

- 7.9.1 The Contractor shall prohibit its Pharmacy Network from having different hours and schedules for GHP Enrollees than what is offered to commercial members.
- 7.9.2 The Contractor shall prohibit its Network Pharmacy from establishing specific days for the delivery of Referrals and requests for Prior Authorization for GHP Enrollees, and the Contractor shall monitor compliance with this rule.

7.10 Direct Relationship

- 7.10.1 The Contractor shall ensure that all Network Pharmacies in the Pharmacy Network have knowingly and willingly agreed to participate in the Contractor's Pharmacy Network.
- 7.10.2 ASES reserves the right to confirm and validate, through collection of Information, documentation from the Contractor and on-site visits to Network Pharmacies, the existence of a direct relationship between the Contractor and the Pharmacy Network.

7.11 Pharmacy Call Center

- 7.11.1 The Contractor shall operate a Pharmacy Call Center, which will be fully operational by the Implementation Date of Contract. The Pharmacy Call Center shall be located in Puerto Rico. The Pharmacy Call Center shall be adequately staffed to promptly respond to inquiries from Network Pharmacies about systems, Claims, administrative pharmacy edits, and any other inquiries related to the Covered Pharmacy Services under the GHP.
- 7.11.2 The Pharmacy Call Center shall be fully staffed between the hours of 7:00 am and 7:00 pm (Atlantic Time). Monday through Friday, excluding Puerto Rico holidays. The Contractor shall have an automated system available between the hours of 7:00 pm and 7:00 am (Atlantic Time) Monday through Friday and during all hours on weekends and holidays. This automated system must provide callers with operating instructions on what to do in case of an

emergency and shall include, at a minimum, a voice mailbox for callers to leave messages. The Contractor shall ensure that the voice mailbox has the required capacity to receive all messages. A Contractor's representative shall reply to one hundred percent (100%) of messages by the next Business Day. The designated staff shall include one (1) bilingual customer service unit (Spanish and English-speaking staff). Assigned personnel in this customer services unit must be fluent in Spanish.

- 7.11.3 The Pharmacy Call Center services will be offered by means of a toll-free access telephone number, facsimile and voicemail system. The Contractor shall be responsible for payment of all such telephone service charges.
- 7.11.4 The Contractor shall retrieve and respond to all messages received in the voice mailbox unit within twenty-four (24) hours after being received.
- 7.11.5 The Contractor shall provide an appropriate number of toll free lines, including telephone and facsimile and reasonable amount of customer service staff to maintain optimal performance guarantees for Average Speed to Answer, as required under this Contract. Abandon Rate will be in accordance with ASES standards as specified in Attachment 4 of this Contract.
- 7.11.6 The Contractor must be the first point of contact for Pharmacies and MCOs with questions, concerns and complaints and must implement and maintain a customer contact and problem resolution tracking system. The system must, at a minimum:
 - 7.11.6.1 Document and track contacts with Providers and MCOs;
 - 7.11.6.2 Identify issues and describe problem resolution; and
 - 7.11.6.3 Provide management reports and ad hoc reporting as requested by ASES.
- 7.11.7 The Contractor must review reports on usage of the Pharmacy Call Center, including but not limited to, number of inquiries, types of inquiries, and timeliness of responses and prepare an analysis of the issues. The analyses must be reviewed with ASES staff at regularly scheduled meetings.
- 7.11.8 The Pharmacy Call Center shall have efficient escalation process with a pharmacist onsite at all times, in order to be able to respond to escalated inquiries within one (1) hour or Immediately for emergencies.

7.12 Mail Order

- 7.12.1 The use of mail order pharmacies or the dispensing of prescription drugs by mail order is not permitted under GHP.

7.13 Network Pharmacy Communications

- 7.13.1 The Contractor shall create and maintain a Pharmacy Provider Manual that contains a compilation of all procedures to be used by Network Pharmacies and billing agents for all aspects related to the processing of Pharmacy Claims, Remittance advices, and explanation of benefits. The Pharmacy Provider Manual shall be reviewed and approved by ASES prior to distribution.

- 7.13.1.1 The Contractor shall update the Pharmacy Provider Manual regularly to ensure it reflects the most current polices, regulations, and system changes.
 - 7.13.1.2 The Contractor shall be responsible for distributing the Pharmacy Provider Manual by appropriate delivery methods as required by ASES.
 - 7.13.1.3 The Pharmacy Provider Manual shall be posted to a website maintained by the Contractor. The online manual shall include functionality to facilitate searches of the manual's content and be downloadable and formatted in a manner compatible with printing.
- 7.13.2 The Contractor shall develop and maintain a comprehensive, ASES-approved communication plan and strategies to ensure Pharmacies, Pharmacy billing agents, MCOs and other interested parties are kept informed about GHP Covered Pharmacy Services.
- 7.13.2.1 The Contractor shall develop and disseminate ASES-approved communications, including but not limited to, bulletins, Information requests, provider manual changes, website content, provider letters, news articles, system alerts, user guides, technical documents and educational/training sessions.

ARTICLE 8 CLAIMS PROCESSING AND PAYMENT

- 8.1** With respect to the processing of Claims, the Contractor shall provide the following services and perform the following functions:
- 8.1.1 Take the necessary steps to ensure the effective and smooth transition and execution of all Claims Processing functions.
 - 8.1.2 Process and adjudicate for payment all Claims in accordance with the prevailing NCPDP standards. The Contractor will be responsible for taking all necessary actions to correct any discrepancies, including but not limited to, collection efforts. The Contractor agrees to distribute to the MCOs a Claims rejection report, as required under this Contract.
 - 8.1.3 Charge or pay Network Pharmacies only for the dispensing to an Enrollee of a prescription covered by GHP. This payment shall include the Ingredient Cost, plus a Dispensing Fee less any deductible, Co-Payment or co-insurance paid by the Enrollee and less any amount paid or reimbursed, as the case may be, by another health plan under COB.
 - 8.1.4 Disburse payment of Claims to Network Pharmacies every two (2) Weeks exclusively from funds provided by either the MCOs or ASES, as the case may be, or within such other time period as may be agreed to by ASES and the Contractor, provided that such disbursement of payments of Claims will be made within twenty-one (21) days of their receipt by the Contractor. In no event shall the Contractor be liable to pay Claims other than with the funds provided by either the MCOs or ASES.
 - 8.1.5 Provide ASES with the adjudicated Claims Data and reports set forth in this Contract, in the media and format established in this Contract or in any other

form established by ASES, and provide the MCOs with the adjudicated Claims Data and the reports set forth in this Contract, as detailed in this Contract, in the media and format established in this Contract or in any other form mutually agreed to by the Parties.

- 8.1.6 The Contractor will adjudicate Claims submitted by Network Pharmacies based on the Pharmacy Contracts, including online edits for Prior Authorization regulation and other edits that may be necessary for the accurate payment of Claims and according to the Covered Pharmacy Services as determined by ASES. The Contractor's Claims Processing System will have the capacity to handle Coordination of Benefits ("COB") with another party which is or may be liable for payment and which provides the Contractor the necessary COB Information on a daily basis. The Contractor shall submit to ASES on the last Business Day of March, June, September, and December of each Year during the Term of this Contract a report in the format to be agreed upon by ASES and the Contractor containing the Information pertaining to all COB efforts and results.
- 8.1.7 The Contractor's Claims Processing System shall screen all Claims and apply all ASES approved and required Data validation procedures and edits. Consistency controls shall be in place to ensure that dates, types, and number of services are reasonable and comply with ASES policy and/or rules. Should ASES determine, in its sole discretion, that changes in the control measures are necessary, ASES may instruct the Contractor to modify the control measures. The Contractor shall perform any work necessary to effect a requested change in control measures at no additional cost to ASES.
- 8.1.8 The Contractor will classify drugs consistently based on Data provided by sources such as MediSpan® or First Databank, pharmaceutical manufacturers, and the FDA, or other sources disclosed to ASES. The Contractor's Claims Processing System shall permit ASES to override these values using its own policies and procedures.
- 8.1.9 The Contractor shall establish a Claims Processing System capable of adding, changing, or removing Claim adjudication processing rules or edits. At no additional cost to ASES, the Contractor shall add, change, or remove Claim adjudication rules in its system to accommodate changes that ASES determines, in its sole discretion, to be necessary or required.
- 8.1.10 ASES reserves the right to override any system edit whenever it deems appropriate and necessary.
- 8.1.11 Throughout the Term of this Contract, the Contractor shall be responsible for making recommendations to ASES regarding the need for the edits, associated criteria, and Call Center protocol development.
- 8.1.12 The Claims Processing System shall recognize all applicable Co-Payments and deduct that amount from the payment made to the Pharmacy.
- 8.1.13 For the purposes of this Contract, an adjudicated Claim shall not include a point-of-sale Transaction that was canceled by the sender or a Claim that was rejected before it could be fully adjudicated. ASES shall not pay the Contractor for reversed, voided or adjusted Claims.

- 8.1.14 The Contractor shall be responsible for the preparation of any applicable tax Information for service provider payments and the federal government (i.e., Form 1099).
- 8.1.15 The Contractor shall be able to support any and all changes to discount rates and standard pharmaceutical pricing methodologies and incorporate them into Pharmacy Claim Pricing policies at the sole discretion of ASES at no additional cost to ASES.
- 8.1.16 The Contractor shall develop, maintain, and distribute to Network Pharmacies a Pharmacy Procedure and Billing Manual. Manuals shall be posted on the Contractor's dedicated website and distributed to Network Pharmacies. The manuals shall provide instructions to Network Pharmacies regarding the process by which the Network Pharmacy receives payment, in order to diminish the potential for incorrect billing and the need for adjustments or recoupments. The content of the manuals shall be approved by ASES before distribution.

8.2 Electronic Transfer of Claims Processing and Other Data

8.2.1 Transmission of Enrollee Eligibility Information

- 8.2.1.1 ASES will cause the MCOs to, on a daily basis, electronically transfer to the Contractor in the format established by ASES, an updated file of the Enrollees in the GHP. The Contractor will update its Enrollees file for inquiry and Claims Processing purposes within the time parameters established by ASES. If the Contractor fails to update the file of Enrollees within the time parameters established by ASES, the Contractor will Immediately notify ASES and the MCOs in writing and the Contractor, with ASES prior written consent, shall establish an alternate procedure to ensure that Covered Pharmacy Services to Enrollees are not interrupted. If for any reason ASES and the MCOs are unable to provide to the Contractor the updated file of Enrollees enrolled in the GHP, on any given day, ASES and the MCOs will Immediately notify in writing to the Contractor and ASES and the MCOs shall establish an alternate procedure to provide such Information to the Contractor. The Contractor shall have the obligation of reviewing and validating on a monthly basis these files and shall Immediately notify ASES of any discrepancies or errors such file may contain.
- 8.2.1.2 The Contractor shall reimburse ASES for any covered drug dispensed to an ineligible Enrollee reported by any of the MCOs, if such notification is received by the Contractor at least two (2) full Business Days prior to the dispensing date of such prescription.

8.3 Network Pharmacy Payment Management

- 8.3.1 The Contractor shall administer an effective, accurate, and efficient Network Pharmacy payment management function that (a) adjudicates and settles Pharmacy Claims for Covered Pharmacy Services that are filed within the timeframes specified by this Article and in compliance with all applicable Puerto Rico and federal laws, rules, and regulations; (b) performs third-party administration functions for Network Pharmacies, as specified by this Article 8.

- 8.3.2 The Contractor shall maintain a Claims Management System that can accurately identify the date of receipt (the date the Contractor receives the Claim as indicated by the date-stamp), real-time-accurate history of actions taken on each Pharmacy Claim (i.e. paid, denied, suspended, appealed, etc.), and the date of payment (the date of the check or other form of payment).
- 8.3.2.1 The system must allow a pharmacy to initiate a reversal (void) of a submitted Claim. The Contractor shall not charge Pharmacies or switching companies a transaction or system access fee. Network Pharmacies are responsible for purchasing point-of-sale hardware, software and all telecommunications linkages. Point-of-sale functionality shall be required of all Pharmacies.
- 8.3.2.2 The Contractor shall apply a unique identification number to each Claim and any supporting documentation regardless of submission format. The identification number shall be used to recognize the Claim for research or audit purposes.
- 8.3.3 To the extent feasible, the Contractor shall implement an Automated Clearinghouse (“ACH”) mechanism that allows Network Pharmacies to request and receive Electronic Funds Transfer (“EFT”) of Claims payments. The Contractor shall encourage its Network Pharmacy, as an alternative to the filing of paper-based Claims, to submit and receive Claims Information through Electronic Data Interchange (“EDI”), i.e., electronic Claims. Electronic Claims must be processed in adherence to Information exchange and Data management requirements specified in Article 19 of this Contract. As part of this Electronic Claims Management (“ECM”) function, the Contractor shall also provide online and phone-based capabilities to obtain Claims Processing status Information.
- 8.3.3.1 If the Contractor does not make payments through an ACH system, the Contractor shall either provide a central address to which Network Pharmacies must submit Claims; or provide to each Network Pharmacy a complete list, including names, addresses, and phone numbers, of entities to which the Network Pharmacies must submit Claims.
- 8.3.4 The Contractor shall notify Network Pharmacies in writing of any changes in the process for filing Claims at least thirty (30) Calendar Days before the effective date of the change. If the Contractor is unable to provide at least thirty (30) Calendar Days of notice, it must give Network Pharmacies a thirty (30) Calendar Day extension on their Claims filing deadline to ensure Claims are routed to the correct processing center.
- 8.3.5 All Claims submitted for payment, in order to be processed, shall comply with the Clean Claim standards as established by Federal regulation (42 CFR 447.45) and with the standards described in Section 8.7.2.1 of this Contract.
- 8.3.6 The Contractor shall generate explanations of benefits and remittance advices in accordance with ASES standards for formatting, content, and timeliness.
- 8.3.7 The Contractor shall not pay any Claim submitted by a Network Pharmacy who is excluded or suspended from the Medicare, Medicaid, or CHIP programs for

Fraud, Abuse, or Waste or otherwise included on the Department of Health and Human Services Office of the Inspector General exclusions list, or employs someone on this list. The Contractor shall not pay any Claim submitted by a Network Pharmacy that is on Payment Hold under the authority of ASES.

8.4 Payment Schedule

8.4.1 At a minimum, the Contractor shall run one (1) Network Pharmacy payment cycle every two (2) Weeks, on the same day every two (2) Weeks, as determined by the Contractor. The Contractor shall develop a payment schedule to be submitted to ASES for review and approval within ten (10) Calendar Days prior to the Effective Date of Contract.

8.5 Required Claims Processing Reports

8.5.1 The Contractor shall submit to ASES a monthly report not later than the fifth (5th) Calendar Day after the last day of the month listing all paid, pending, and denied Claims during that month. The Contractor shall provide to ASES, on a monthly basis, records or financial Data related to Claims submitted but not paid by reason of accounting or by reason of Contractor decision to deny the Claim. The report shall be made available in an electronic format and shall detail all paid, pending, and denied Claims for all Providers.

8.5.2 The report shall list, by Pharmacy, Claims from the preceding month, and those that are pending payment and the reason for the payment delay or the reason for the Contractor's decision to deny the Claim.

8.5.3 In the event that Network Pharmacies associated with a PMG consent to the disbursement of payment directly to the PMG, the Contractor shall so specify in its report.

8.5.4 The Contractor shall provide to PMGs, on a monthly basis, and through an electronic or machine readable media format, a detailed report classified by Enrollee, by Network Pharmacy, by date of service and by real cost, of all payments made by the Contractor to the PMG. The Contractor shall make this report available to ASES.

8.6 Relationship with MCOs

8.6.1 The Contractor shall work with the MCOs to facilitate the processing of Pharmacy Claims submitted.

8.6.2 To facilitate Claims Processing, the MCOs shall deliver for payment to the Contractor, on a daily basis, the Enrollee Data required to make such payments.

8.7 Timely Payment of Claims

8.7.1 The Contractor shall comply with the timely processing of Claims standards contained in Section 1902(a)(37) of the Social Security Act, Section 5001(f)(2) of the American Recovery and Reinvestment Act of 2009 (ARRA) and Federal regulations at 42 CFR 447.6.

- 8.7.2 Network Pharmacy Contracts shall include the following provisions for timely payment of Clean Claims.
 - 8.7.2.1 A Clean Claim under 42 CFR 447.46(b), as defined in 42 CFR 447.45(b), is a Claim received by the Contractor for adjudication, which can be processed without obtaining additional Information from the Network Pharmacy of the service or from a third party. It includes a Claim with errors originating in the Contractor's Claims Processing System. It does not include a Claim from a Network Pharmacy who is under investigation for Fraud, Waste or Abuse, or a Claim under review for Medical Necessity.
 - 8.7.2.2 Network Pharmacy contracts shall provide that ninety-five percent (95%) of all Clean Claims must be paid by the Contractor not later than thirty (30) Calendar Days from the date of receipt of the Claim (including Claims billed by paper and electronically), and one hundred percent (100%) of all Clean Claims must be paid by the Contractor not later than fifty (50) Calendar Days from the date of receipt of the Claim.
 - 8.7.2.3 Any Clean Claim not paid within thirty (30) Calendar Days shall bear interest in favor of the Network Pharmacy on the total unpaid amount of such Claim, according to the prevailing legal interest rate fixed by the Puerto Rico Commissioner of Financial Institutions. Such interest shall be considered payable on the day following the terms of this Section, and interest shall be paid together with the Claim.
- 8.7.3 An Unclean Claim is any Claim that falls outside the definition of Clean Claim in Section 8.7.2.1. The Contractor shall include the following provisions in its Network Pharmacy Contracts for timely resolution of Unclean Claims:
 - 8.7.3.1 Ninety percent (90%) of Unclean Claims must be resolved and processed with payment by the Contractor, if applicable, not later than ninety (90) Calendar Days from the date of initial receipt of the Claim. This includes Claims billed on paper or electronically.
 - 8.7.3.2 Of the remaining ten percent (10%) of total Unclean Claims that may remain outstanding after ninety (90) Calendar Days.
 - 8.7.3.2.1 Nine percent (9%) of the Unclean Claims must be resolved and processed with payment by the Contractor, if applicable, not later than six (6) Calendar Months from the date of initial receipt (including Claims billed on paper and those billed electronically);
 - 8.7.3.2.2 One percent (1%) of the Unclean Claims must be resolved and processed with payment by the Contractor, if applicable, not later than one year (12 months) from the date of initial receipt of the Claim (including Claims billed on paper and those billed electronically).
- 8.7.4 The Contractor shall not establish any administrative procedures, such as administrative audits, authorization number, or other formalities under the

control of the Contractor, which could prevent the Network Pharmacy from submitting a Clean Claim.

- 8.7.5 The foregoing timely payment standards are more stringent than those required in the Federal regulations, at 42 CFR 447.45(d). The Contractor shall include the foregoing standards in each Pharmacy Contract and, per 42 CFR 447.46(c), ASES will submit proof of this alternative payment agreement to CMS.
- 8.7.6 The Contractor shall deliver to Network Pharmacies, within fifteen (15) Calendar Days of award of the Pharmacy Contract, Claims coding and processing guidelines for the applicable Pharmacy type, and the definition of a Clean Claim, as requested in this Article 8 to be applied.
- 8.7.7 The Contractor shall give Network Pharmacies ninety (90) Calendar Days' notice in advance of the effective date of any change in Claims coding and processing deadlines.

8.8 Contractor Denial of Claims and Resolution of Contractual and Claims Disputes

- 8.8.1 No later than the fifth (5th) Business Day after the receipt of a Network Pharmacy Claim that the Contractor has deemed not to meet the Clean Claim requirements, the Contractor shall suspend the Claim and request in writing (notification via email, the Contractor's website, or an interim remittance advice satisfies this requirement) all outstanding Information such that the Claim can be deemed clean. Upon receipt of all the requested Information from the Network Pharmacy, the Contractor shall complete processing of the Claim in accordance with the standards outlined in this Section.
- 8.8.2 Claims suspended for additional Information must be closed (paid or denied) such that compliance with the timely payment rules outlined in Section 8.7 is achieved.
- 8.8.3 The Contractor must process, and finalize, all appealed Claims to a paid or denied status within thirty (30) Calendar Days of receipt of the appealed Claim; for Claims for which the Contractor has requested further information, per Section 8.8.1, the Contractor shall pay or deny the Claim within thirty (30) Calendar Days of receipt of the requested Information.
- 8.8.4 The Contractor shall send Network Pharmacies written notice (notification via email, surface mail, the Contractor's website, or a remittance advice satisfies this requirement) for each Claim that is denied, including an explanation of the reason(s) for the denial, the date the Contractor received the Claim, and a reiteration of the outstanding Information required from the Network Pharmacy to adjudicate the Claim.
- 8.8.5 In situations in which the Contractor denies a Network Pharmacy's Claim for services, and the Network Pharmacy disputes the denial, as provided in this Contract, the Contractor shall not withhold payment pending final resolution of the dispute, but instead shall pay the Claim within thirty (30) Calendar Days of the Contractor's receipt of the Network Pharmacy's written Complaint and request for mediation. The Contractor shall seek recoupment of the Paid Claim

only in the event that the dispute is resolved, at the level of the mediation described in this Contract, in the Contractor's favor.

8.9 Network Pharmacy Dispute Resolution System

- 8.9.1 The Contractor shall establish and use a procedure to resolve billing, payment, and other administrative disputes between Network Pharmacies and the Contractor arising under Pharmacy Contracts including:
 - 8.9.1.1 A mediation system for resolution of Network Pharmacy disputes of denied Claims; and
 - 8.9.1.2 A Network Pharmacy Complaint resolution process implemented by the Contractor to address, among others, lost or incomplete Claims forms or electronic submissions; Contractor requests for additional explanation as to services or treatment rendered by a Network Pharmacy; and inappropriate or unapproved Referrals issued by Network Pharmacies.

8.10 Network Pharmacy Complaints Concerning Denied Claims

- 8.10.1 If there is no agreement between the Contractor and a Network Pharmacy on a Claim denied by the Contractor, a Third Party, external to the Contractor and the Network Pharmacy and chosen by mutual agreement, shall be appointed to adjudicate the denial, upon the Network Pharmacy's submission of a written Complaint and request for mediation. The Third Party shall render his or her decision no more than thirty (30) Calendar Days from the date of the Network Pharmacy's request for third-party mediation. If there is no agreement on the Third Party's selection, he or she shall be appointed by ASES, and, subject to the Appeal rights described in this section, the Parties will comply with the Third Party's decision. The party adversely affected shall pay for the Third Party's service fees. If both the Network Pharmacy and the Contractor have caused an error, the Third Party shall determine the percentage attributable to each party, and payment to the Third Party shall be in accordance with percentage of responsibility.
- 8.10.2 The party adversely affected by the mediator's decision may pursue an Administrative Law Hearing before ASES. The parties to the Administrative Law Hearing shall be the Contractor and the Network Pharmacy. ASES shall grant a Network Pharmacy or Contractor request for an Administrative Law Hearing, provided that the Network Pharmacy or Contractor, as the case may be, submits a written appeal, accompanied by supporting documentation, not more than thirty (30) Calendar Days following the Network Pharmacy's or Contractor's receipt of the mediator's written decision.

8.11 Other Disputes Arising Under the Pharmacy Contract

- 8.11.1 For any dispute between the Network Pharmacy and the Contractor arising under the Pharmacy Contract, other than a disputed denial of a Claim, the Contractor shall implement an internal dispute resolution system, which shall include the opportunity for an aggrieved Network Pharmacy to submit a timely written Complaint to the Contractor. The Contractor shall issue a written decision on the Network Pharmacy's Complaint within fifteen (15) Calendar

Days of receipt of the Network Pharmacy's written Complaint. A Contractor written decision that is in any way adverse to the Network Pharmacy shall include an explanation of the grounds for the decision and a notice of the Network Pharmacy's right to and procedures for an Administrative Law Hearing within ASES.

8.11.1.1 Network Pharmacies disputing the denial of payment for a submitted Claim, or the payment of an amount that is less than the amount for which the Claim was submitted, shall be afforded a term of fourteen (14) Calendar Days to submit a written complaint. Contractor shall issue a determination regarding such Claims within fourteen (14) Calendar Days.

8.11.1.2 If the Network Pharmacy is not satisfied with the decision on its Complaint within the Contractor's dispute resolution system, the Network Pharmacy may pursue an Administrative Law Hearing. The parties to the Administrative Law Hearing shall be the Contractor and the Network Pharmacy. ASES shall grant a Network Pharmacy request for an Administrative Law Hearing, provided that the Network Pharmacy submits a written appeal, accompanied by supporting documentation, not more than thirty (30) Calendar Days following the Network Pharmacy's receipt of the Contractor's written decision.

8.11.1.3 Judicial Review. A decision issued as a result of the Administrative Law Hearing provided for in this Section 8.11.1.3 shall be subject to review before the Court of Appeals of Puerto Rico.

8.12 Contractor Recovery from Network Pharmacies

8.12.1 When the Contractor determines after the fact that it has paid a Claim incorrectly or when the Contractor is entitled to seek recoupment after a mediation concerning a denied Claim has been resolved in the Contractor's favor, the Contractor may request applicable reimbursement from the Network Pharmacy through written notice, stating the basis for the request. The notice shall list the Claims and the amounts to be recovered.

8.12.2 The Network Pharmacy will have a period of ninety (90) Calendar Days to make the requested payment, to agree to the Contractor retention of said payment, or to dispute the recovery action following the process described in this Contract.

8.12.3 In the event the Contractor makes payment in excess or otherwise makes payments for ineligible Claims or Enrollees, the Contractor shall:

8.12.3.1 Take all steps necessary to recover the overpayments, including recoupment from Network Pharmacies or subsequent Claims payments.

8.12.3.2 Assume one hundred percent (100%) liability for erroneous payments, which result from policy or system errors attributable to the Contractor in whole or in part.

8.12.3.3 Refrain from initiating litigation to recover such overpayment unless notified in writing to ASES.

- 8.12.3.4 Provide ASES, and the MCOs with detailed reports, which itemize the amounts of any overpayments, the reason for the overpayment, a listing of payees with outstanding overpayment recoveries due, an accounting of (a) prior balances of recoveries due, (b) current month overpayments, (c) recoveries, (d) new balances, (e) percentage of overpayment dollars recovered, and (f) an aging of receivables report for thirty (30), sixty (60), ninety (90), one hundred twenty (120), one hundred eighty (180) and greater than one hundred eighty (181+) days.
- 8.12.3.5 Reimburse ASES for any covered drug dispensed to a former Enrollee reported by the MCOs as no longer a GHP Enrollee, if such notification is received by the Contractor at least two (2) full Business Days prior to the dispensing date of such prescriptions.

8.13 Network Pharmacy Payment

- 8.13.1 Payments to Network Pharmacy Owing Funds to the Government. Upon receipt of notice from ASES that ASES is owed funds by a Network Pharmacy, the Contractor shall reduce payment to the Network Pharmacy for all Claims submitted by that Network Pharmacy by one hundred percent (100%), or such other amount as ASES may elect, until such time as the amount owed to ASES is recovered. The Contractor shall promptly remit any such funds recovered to ASES in the manner specified by ASES. To that end, the Contractor's Pharmacy Contracts shall contain a provision giving notice of this obligation to the Network Pharmacy, such that the Network Pharmacy's execution of the Pharmacy Contract shall constitute agreement with the Contractor's obligation to ASES.
- 8.13.2 Payment Rates Subject to Change. The Contractor shall adjust its negotiated rates with Network Pharmacies to reflect budgetary changes, as directed by ASES, to the extent that such adjustments can be made within funds appropriated to ASES and available for payment to the Contractor. The Contractor's Pharmacy Contracts shall contain a provision giving notice of this obligation to the Network Pharmacy, such that the Network Pharmacy's execution of the Pharmacy Contract shall constitute agreement with the Contractor's obligation to ASES.
- 8.13.3 Payments for Services to Dual Eligible Beneficiaries. The Contractor shall include in its Pharmacy Contracts a notice that the Contractor shall not pay Claims for services covered under the Medicare Program. No Network Pharmacy may bill both the GHP and the Medicare Program for a single service to a Dual Eligible Beneficiary.
- 8.13.4 Payment for Pharmacy Services. The Contractor shall abide by and comply with following payment process hereby established:
 - 8.13.4.1 In covering Pharmacy services, the Contractor shall adhere to the Retail Pharmacy Reimbursement Levels established in this Contract.
 - 8.13.4.2 On a semi-monthly payment cycle to be set by the Contractor, the Contractor will provide the MCOs with the proposed Claims listing.

8.13.4.3 The MCOs shall submit funds for Claims payment to the Contractor's zero-balance account. The MCOs shall provide funds or wire transfers to a bank account established by the Contractor for the payment of the Claims, or otherwise submit payment, within two (2) Business Days of the date that the prescription was filled.

8.13.4.4 The Contractor, ASES, and each MCO shall cooperate to identify additional savings opportunities, including special purchasing opportunities, changes in network fees, etc.

8.13.5 The Contractor shall use appropriately licensed professionals to supervise all Prior Authorization decisions, and shall, in its policies and procedures, specify the type of personnel responsible for each type of Prior Authorization. Any decision to deny a Prior Authorization request or to authorize a service in an amount, duration, or scope that is less than requested shall be made by a health care professional who has appropriate clinical expertise in treating the Enrollee's condition.

8.14 Retail Pharmacy Reimbursement

8.14.1 The Contractor shall reimburse Network Pharmacies the amount that is the sum of (a) Ingredient Cost, plus (b) Dispensing Fee, as defined in Attachment 5. Generic Drugs that are Bioequivalent shall be reimbursed based on a MAC List, plus the Dispensing Fee.

8.14.2 The Contractor will maintain computerized control of ingredient pricing through the use of a single, Auditable industry resource, approved by ASES, such as MediSpan®, First Databank or other national compendia.

8.14.3 The payment to the Network Pharmacy is equal to the amount specified in Attachment 5, less any Co-Payment, when applicable.

8.15 Maximum Allowable Cost ("MAC") List

8.15.1 The Contractor shall be responsible for developing, maintaining and updating the MAC list for multi-source Brand Drugs and Generic Drugs.

8.15.2 The Contractor will review quarterly the entire MAC list and continually monitor the pharmaceutical market to identify opportunities to improve MAC pricing by:

8.15.2.1 Identifying products that become candidates for MAC prices. A MAC price shall be established for new generic products (i.e., blockbusters) within thirty (30) Calendar Days after market release.

8.15.2.2 Monitoring pricing of generic products to assure MAC list is updated with the most favorable prices.

8.15.2.2.1 The Contractor will process ad hoc updates as a result of the Pharmacy's cost of acquiring the drug, Wholesale Acquisition Cost, and any other pricing trends monitored by the Contractor or from Pharmacy inquiries.

8.15.2.2.2 The Contractor will accept Pharmacy inquiries through the Help Desk or via facsimile. All Provider inquiries will be

responded to within one (1) Business Day, and researched and resolved within five (5) Business Days of receipt.

- 8.15.2.2.3 If a MAC price update is a result of a Provider inquiry, the MAC price will be allowed to have a backdated effective date so Providers may reverse and resubmit Claims with the new MAC price applied.
- 8.15.3 The MAC price shall be established using Generic Code Number (GCN), Generic Sequence Number (GSN), or Generic Product Identifier (GPI). MAC price shall be applied to new NDCs in the marketplace on a Weekly basis.
- 8.15.4 The Contractor shall provide MAC price file upload quality assurance reports to ASES to confirm rates are loaded accurately into the Claims adjudication system.
- 8.15.5 The Contractor shall document the MAC program drug selection process and rate setting methodology for ASES review and approval. All subsequent changes to the MAC price setting methodology shall be reviewed and approved by ASES.

ARTICLE 9 PHARMACY AND THERAPEUTICS (P&T) COMMITTEE

9.1 General Provisions

- 9.1.1 The P&T Committee is a multidisciplinary, multispecialty group created by ASES, whose primary responsibility is to evaluate medications after FDA approval and make recommendations for inclusion or exclusion in the Formulary of Medications Covered (“FMC”) and the List of Medications by Exception (“LME”) including Prior Authorization criteria.
- 9.1.2 The Contractor’s responsibilities indicated in Article 9 shall be rendered by the Contractor throughout the Contract Term strictly in accordance with the current and all future updates of the Policies and Procedures of the P&T Committee document, attached hereto as Attachment 3.
 - 9.1.2.1 If requested by ASES, the Contractor shall provide P&T Committee support and services separately for the Medicaid/CHIP and Other Enrollee programs.

9.2 Contractor Responsibilities

- 9.2.1 The Contractor shall provide services and support to the P&T Committee as assigned by ASES and prescribed in the current and all future updates of the Policies and Procedures of the P&T Committee document, including but not limited to:
 - 9.2.1.1 As part of Contractor’s Contracted PBM Services:
 - 9.2.1.1.1 Responsible for all administrative support and coordination of the activities of the P&T Committee, including P&T meeting coordination and attending all P&T Committee meetings;

- 9.2.1.1.2 Responsible for preparing, providing, and presenting therapeutic class/drug clinical materials to support the topics to be evaluated by the P&T Committee;
- 9.2.1.2 Prepare and maintain, with copies to ASES, the minutes of the meetings held by the P&T Committee and audio recordings for ten (10) years from the date of issue;
- 9.2.1.3 Assist in the selection and appointment of independent, ad hoc and special committee members and support the credentialing process of Independent members every three (3) Calendar Years;
- 9.2.1.4 Administer and submit to ASES the Letters of Understanding, Confidentiality and Non-Disclosure Agreements, and maintain such copies of executed agreements for ten (10) years;
- 9.2.1.5 Update the processing and adjudication system according to the most recent ASES determination on P&T Committee recommendations. The Contractor will have a maximum of seven (7) Calendar Days to make the changes after receiving the instructions;
- 9.2.1.6 Coordinate activities and clinical presentations to the P&T Committee with pharmaceutical manufacturers as it pertains to supplemental rebates and or Value Based Purchasing options, if directed by ASES;
- 9.2.1.7 Monitor the market for adverse events, warnings, and contradictions related to existing medications included in the FMC and the LME, to update Prior Authorization and step therapy protocols, quantity limits and other related edits or changes; and
- 9.2.1.8 Assume reasonable costs and expenses of the P&T Committee, including stipends paid to independent and ad hoc members.
- 9.2.1.9 As part of Contractor's Contracted RA Services:
 - 9.2.1.9.1 Attend all P&T Committee meetings;
 - 9.2.1.9.2 Assist ASES by making pharmacoeconomic recommendations regarding FMC and LME medications and Prior Authorization, step therapy protocols, quantity limits and other cost containment related edits;
 - 9.2.1.9.3 Provide to the Contractor Pharmacy Utilization Data related to the products or therapeutic classes to be reviewed by the P&T Committee;
 - 9.2.1.9.3.1 The request for Utilization Data will be submitted by the Contractor at least eighteen (18) Business Days prior to the P&T Committee meeting, and the Contractor must provide the requested Information at least eight (8) Business Days prior to the meeting;
 - 9.2.1.9.4 Monitor the market for adverse events, warnings and contraindications related to existing medications included in

the FMC and LME and report findings to the P&T Committee;

- 9.2.1.9.5 Update and maintain the FMC and the LME documents (in Excel® format) based on ASES accepted recommendations and other P&T Committee recommendations, and submit them to ASES, the Contractor and MCOs on a quarterly basis, or whenever necessary;
- 9.2.1.9.6 Publish the FMC and LME on a webpage maintained by the Rebate Aggregator;
- 9.2.1.9.7 Add medications in the Claims adjudication system within five (5) business days of the P&T Committee decision; and
- 9.2.1.9.8 If directed by ASES, provide pharmacoeconomic recommendations that support Supplemental Rebate program or Value Based Purchasing arrangements.

ARTICLE 10 PHARMACY FINANCIAL COMMITTEE (PFC)

10.1 General Provisions

- 10.1.1 ASES's Pharmacy Financial Committee (PFC) is authorized by ASES and its Board of Directors to make formulary recommendations and include in the Formulary of Medications Covered (FMC) or List of Medication by Exception (LME) selections based on the drug review and recommendations of the P&T Committee to include or exclude drugs.
- 10.1.2 The primary purpose of the PFC is to recommend which drugs are to be included on the FMC and LME based on cost-effectiveness evaluation of drug therapies.
- 10.1.3 The PFC will also review the FMC and LME from time to time and evaluate additional recommendations on potential cost-saving pharmacy initiatives, including the evaluation of the utilization and Prior Authorization of high-cost specialty medications and orphan drugs and the exceptions process through which such drugs are approved, under the direction and approval of ASES.
- 10.1.4 If requested, the PFC will evaluate new treatment, including but not limited to new: technology, medical or surgical procedures, physical or behavioral therapies, drugs, Part B drugs and orphan drugs (collectively, "New Treatment"), that are Medically Necessary and are not expressly excluded from the GHP.
- 10.1.5 The Contractor's responsibilities shall be rendered throughout the Contract Term in strict accordance with the current and all future updates of ASES's Pharmacy Financial Committee Policies and Procedures document, attached hereto as Attachment 6.
- 10.1.6 If requested by ASES, the Contractor's shall provide PFC support and services separately for the Medicaid/CHIP and Other Enrollee programs.

10.1.7 The Contractor shall provide PFC support and services as assigned by ASES and prescribed in the current and all future updates of the Pharmacy Financial Committee Policies and Procedures document, including but not limited to:

10.1.7.1 As part of Contractor's Contracted RA Services:

10.1.7.2 Ensuring confidentiality of all drug manufacturer and/or Wholesaler financial and cost data and keeping separate this confidential financial Information for MDRP eligible and Other Enrollee populations;

10.1.7.3 Managing all administrative support and coordination of the activities of PFC with support and approval from the ASES's Pharmacy Department. These include, but are not limited to:

10.1.7.3.1 Present to the PFC all recommendations made by the P&T Committee that require further decisions by the PFC;

10.1.7.3.2 Include manufacturer Rebate opportunities in presentations to help in the decision process of selecting cost effective alternatives for inclusion on FMC and the LME;

10.1.7.3.3 Develop and disseminate the invitation and agenda for meetings;

10.1.7.3.4 Reserve meeting rooms and/or provide numbers for virtual meetings;

10.1.7.3.5 Keep the meeting attendance list and registry of the members' Letters of Understanding and Confidentiality Agreements;

10.1.7.3.6 Prepare, take and disseminate meeting minutes following every PFC meeting. The minutes of the meetings shall be sent to ASES and PFC members no later than eighteen (18) Business Days after the meeting date. The meeting minutes shall include a record of all votes taken at the meeting;

10.1.7.3.7 Follow-up on agreed upon action items and pending issues; and

10.1.7.3.8 Maintain copies of all the documentation listed above for ten (10) Years from the date of issue; and

10.1.7.4 As part of Contractor's Contracted PBM Services, providing the summary of the recommendations that were made by the P&T Committee meeting prior to the PFC meeting.

ARTICLE 11 FORMULARY MANAGEMENT

11.1 General Provisions

11.1.1 The Contractor shall distribute once a year the official edition of both the FMC and the LME and on an ongoing basis update letters (normative letters provided by ASES), to the Network Pharmacies.

- 11.1.2 The Contractor shall ensure the Claims system accurately applies all formulary Information and Pharmacy benefits coverage determined by ASES in the Claims system.
- 11.1.3 The Contractor shall monitor compliance by prescribing Providers and Pharmacies with ASES's FMC and LME, report that Information to ASES at least quarterly and provide suggestions for improving formulary compliance.

11.2 Prior Authorization

- 11.2.1 Consistent with the requirements of Section 1927(d)(5) of the Social Security Act, some or all prescription drugs may be subject to Prior Authorization, which shall be implemented and managed by the MCO or the Contractor.
- 11.2.2 All Prior Authorizations that require a clinical intervention shall be performed by the MCO. The Contractor must be able to accept historical and current Prior Authorization Information from the MCOs through an online portal and incorporate this Information into the Contractor's Claims system.
- 11.2.3 All Prior Authorizations that do not require a clinical intervention or other edits shall be the responsibility of the Contractor to process for accurate payment of Claims and according to the Covered Pharmacy Services determined by ASES.
 - 11.2.3.1 Contractor must supply ASES with a real-time, automated electronic Prior Authorization tool for Prior Authorization requests based on current and historical paid Pharmacy Claims, Enrollee eligibility, Provider eligibility, and reference medical Claims Data including but not limited to diagnosis codes and procedure codes.
 - 11.2.3.2 The Contractor must migrate, successfully, all existing automated Prior Authorizations into the Contractor's automated Prior Authorization application. The Contractor must import and honor for use in real-time Claims Processing all existing Prior Authorizations that have not expired regardless of whether they were manually or electronically approved.
- 11.2.4 The Contractor must maintain a current Prior Authorization Request Form for Network Pharmacies and prescribing Providers to access via web-download or fax-on-demand.
- 11.2.5 The Contractor must provide detailed monthly operational, clinical and financial reporting on all Prior Authorization activities including but not limited to: number of Prior Authorizations, Denial and Approval rates, number of automated vs. manual Prior Authorizations, cost savings, and return on investment. Reports shall be generated in a format approved by ASES and should be available by drug, drug class, Enrollee, Provider, and other parameters defined by ASES.

11.3 Therapeutic Substitution Overview

- 11.3.1 The Contractor and the Network Pharmacies in the Pharmacy Network are not allowed to initiate therapeutic substitution, without prior written approval of ASES.

ARTICLE 12 DRUG UTILIZATION REVIEW AND EVALUATION

12.1 General Provisions

- 12.1.1 The MCOs are responsible for a Drug Utilization Review (DUR) program that is consistent with federal law requirements. The Contractor shall provide many of the DUR functions and maintain effective clinical programs on behalf of ASES and the MCOs as directed by ASES. The Contractor shall provide a comprehensive DUR program that complies with Section 1927(g) of the Social Security Act. The DUR program assures that prescriptions: (1) are appropriate; (2) are Medically Necessary; and (3) are not likely to result in adverse medical results.
- 12.1.2 The DUR program shall include Prospective DUR, Retrospective DUR, Academic Detailing, and, upon request by ASES, reporting for the DUR Annual Report and any other DUR-related reporting approved by ASES.

12.2 DUR Program

- 12.2.1 The DUR program shall be developed and implemented as of the Implementation Date of the Contract.
- 12.2.2 The Contractor shall be responsible for conducting DUR services to provide the necessary Information to the P&T Committee for the evaluation of products and therapeutic classes of the FMC and LME. The P&T Committee shall function as the DUR Board and shall meet all federal law requirements related to the DUR Board.
- 12.2.3 The Contractor shall complete a DUR Annual Report, upon request and as directed by ASES. The Contractor shall meet all applicable deadlines for Deliverables related to the DUR Annual Report as established by ASES.
- 12.2.4 The Contractor shall furnish a fully automated system that meets all applicable federal managed care DUR requirements including those identified in the OBRA 1990 and OBRA 1993, Federal Drug Utilization Review regulations and the additional specifications in this section and be flexible enough to accommodate any future edit changes required by ASES.
- 12.2.5 Prior to implementation, the Contractor shall develop Prospective DUR edits to be used in the Claims adjudication system. The Contractor shall obtain ASES approval for those edits prior to implementing them in the Claims system. At least annually thereafter, the Contractor will review the disposition of Prospective DUR edits and review the pharmacist overrides to determine if they are appropriate and allowed. The Contractor will highlight new edits for ASES's review.
- 12.2.6 Claims that reject as a result of Prospective DUR processing shall include situation-specific messaging and error codes that enable the Pharmacy Provider to take appropriate actions.
- 12.2.7 The Contractor shall provide all necessary components of Retrospective DUR program consistent with the requirements contained in 42 CFR 456.709: including a periodic examination of Claims that involves pattern analysis, the use of predetermined standards of physician prescribing practices, drug use by

individual patients and, where appropriate, the dispensing practices of pharmacies.

- 12.2.8 The Contractor's Retrospective DUR system's intervention processes shall include, at a minimum, letter-based Information to providers and a system for tracking provider response to the interventions.
- 12.2.9 The Contractor shall prepare, for ASES's approval, Provider letters containing Information related to the operation of the Pharmacy program and Retrospective DUR-related findings.

12.3 Academic Detailing Program

- 12.3.1 The Contractor shall conduct an Academic Detailing Program customized to meet the needs of ASES's Pharmacy program under GHP through specialists strategically located to serve the Provider community of Puerto Rico. The main strategies of the Academic Detailing Program are to inform Providers about Enrollee prescription issues, Utilization Management issues, the FMC and LME, and other relevant ASES policies.
- 12.3.2 The Academic Detailing Program is divided into six elements:
 - 12.3.2.1 Identify Utilization gaps, issues and other areas of needed communication with prescribing Providers;
 - 12.3.2.2 Based on Claims Data, identify prescribing Providers that need to be contacted regarding the identified gaps;
 - 12.3.2.3 Coordinate visits with the prescribing Providers based on the agreed upon frequency of visits;
 - 12.3.2.4 Deliver the identified message and document such delivery;
 - 12.3.2.5 Use DUR to evaluate changes in prescribing patterns based on the Academic Detailing Program; and
 - 12.3.2.6 Develop Academic Detailing strategies in collaboration with the MCOs to meet the goals of the HCHN Program.
- 12.3.3 Education through the Academic Detailing Program shall be accomplished through the following methods:
 - 12.3.3.1 Group presentations;
 - 12.3.3.2 Letters and telephone calls to prescribing Providers; and
 - 12.3.3.3 Articles in local health related magazines and/or newspapers as feasible; and
- 12.3.4 The Contractor shall make available to ASES no later than forty-five (45) Calendar Days after the Implementation Date of the Contract, for ASES's approval, the Academic Detailing Program Plan that meets all of the requirements set forth in this Contract. In addition, the Contractor shall deliver to ASES no later than twenty-five (25) Calendar Days after the end of each

calendar quarter, a written report of all activities conducted by the Contractor during such calendar quarter pursuant to the Academic Detailing Program Plan and the provisions of this Contract.

ARTICLE 13 HCHN PROGRAM AND OTHER CARE MANAGEMENT

13.1 General Provisions

- 13.1.1 The HCHN Program is comprised of a set of Enrollee-centered steps to provide coordinated care to Enrollees with certain diseases.
- 13.1.2 The Contractor shall provide support, including development of strategies, to the MCOs' HCHN Programs or other programs specified by ASES to provide additional cost-containment efforts and mechanisms.
 - 13.1.2.1 The Contractor may recommend to ASES and the MCOs certain process improvements, in connection with the MCOs' HCHN Program and care management initiatives. Such obligations shall commence on the Implementation Date of the Contract.

ARTICLE 14 CONTRACTED RA SERVICES – MDRP PROGRAM

- 14.1** The Contractor shall provide comprehensive management of the Medicaid Drug Rebate Program ("MDRP") for all covered outpatient drugs in accordance with Section 1927(b)(1) of the Social Security Act and the terms of the Medicaid National Drug Rebate Agreement ("NDRA"). The Contractor shall provide MDRP Rebate support including but not limited to:
 - 14.1.1 Producing drug Rebate invoices for pharmaceutical manufacturers according to federal schedule requirements;
 - 14.1.2 Processing and submitting the CMS drug utilization and Information necessary for CMS-64 reporting;
 - 14.1.3 Providing reporting on Rebates on retail Pharmacy drugs and PADs to ASES and its designees on a quarterly basis;
 - 14.1.4 Reconciling and resolving drug Rebate disputes with pharmaceutical manufacturers;
 - 14.1.5 Ensuring quality control to validate accuracy of drug Rebate Data;
 - 14.1.6 Maintaining administrative, physical and technical safeguards to ensure security and confidentiality of all drug Rebate Information according to Puerto Rico and federal laws and industry standards;
 - 14.1.7 Updating and maintaining standard operating procedure manual(s) for Rebate program administration;
 - 14.1.8 Maintaining a Data repository system that interfaces with multiple Data sources;
 - 14.1.9 Maintaining a reporting database that can be accessed in real time by ASES to review and analyze Rebate Information and produce ad hoc reporting; and

- 14.1.10 Creating and maintaining a secure web portal for Data sharing with pharmaceutical manufacturers.
- 14.2** The Contractor shall process, invoice and report federal Rebates through the Contractor's Rebate administration system according to federal processing and schedule requirements. The process shall include, but not be limited to:
 - 14.2.1 Accepting files from ASES, CMS and other contracted partners for purposes of drug Rebate processing;
 - 14.2.2 Validating retail Pharmacy and PAD prescription drug Claim Data and identifying Data issues that may result in pharmaceutical manufacturer Rebate disputes;
 - 14.2.3 Summarizing Rebate-eligible Utilization Data based on date of service and according to multiple parameters and requirements as required by CMS or ASES;
 - 14.2.4 Performing Claim-level Rebate calculations, including unit conversions as necessary
 - 14.2.5 Preparing and sending invoices to pharmaceutical manufacturer within time limits required by CMS;
 - 14.2.6 Coordinating the Rebate accounting and payment procedures;
 - 14.2.7 Reconciling and resolving prior period adjustments and drug Rebate disputes, including follow-up and resolution of unpaid invoices according to the terms of the NDRA;
 - 14.2.8 Producing Rebate program reporting according to requirements in this Article 14;
 - 14.2.9 Updating and maintaining standard operating procedure manual(s) for Rebate administration.
- 14.3** The Contractor shall ensure all 340B Claims are excluded from Rebate processing and are reported separately according to ASES specifications.
- 14.4** The Contractor shall provide the ability to separate late payment interest payments in invoicing and Rebates received for reporting purposes.
- 14.5** ASES shall be copied on all past-due notifications to pharmaceutical manufacturers.
- 14.6** One hundred percent (100%) of all monies collected by ASES shall be remitted to ASES directly by the pharmaceutical manufacturers. Contractor agrees that all Rebates collected by ASES shall be collected for the sole benefit of ASES's share of costs, and that no other monies shall be collected by the Contractor based on ASES's program.
- 14.7** On Implementation Date of the Contract, Contractor shall assume all responsibilities for uncollected receivables for ASES's Rebate program.
- 14.8** The Contractor shall perform analysis and research necessary throughout the Contract Term to identify areas of improvement with the Rebate program administration, including

any approaches for invoicing, processing, and accounting of drug Rebates. The Contractor shall provide the suggested improvements to ASES for review and approval, as they are identified or defined.

14.9 The Contractor shall, when appropriate, refer potential Fraud, Waste, and Abuse issues to ASES.

14.10 Upon termination of this Contract for any reason, the Contractor shall, at no additional cost to ASES, transfer all existing pharmaceutical Rebate Data and Information to ASES's incoming RA to ensure that there is no gap in ASES receiving pharmaceutical Rebates. The Contractor shall also provide ASES with a final accounting of Rebates received through the Termination Date of this Contract and detailed Information regarding Rebates that will be payable following the Termination Date of the Contract.

ARTICLE 15 OTHER ENROLLEE REBATE INVOICING AND PROCESSING

15.1 The Contractor shall process, invoice and report Rebates for all populations not eligible to receive MDRP rebates (for example, Other Enrollees) according to ASES's processing and schedule requirements. The process shall include, but not be limited to:

15.1.1 Developing request for proposal ("RFP") of the Rebate program for all authorized therapeutic classes and conduct the RFP process, including evaluation and adjudicating the proposals, Rebate negotiations and contracts with the pharmaceutical manufacturers, supported by and under the instructions of ASES. The Contractor shall represent ASES in negotiating Rebate contracts with pharmaceutical manufacturers. Such Rebate agreements as executed by ASES shall be for the sole benefit of ASES and be subject to the terms and provisions of this Contract.

15.1.2 Accepting files from ASES and MCOs for purposes of drug Rebate processing;

15.1.3 Validating retail Pharmacy and PAD prescription drug Claim Data and identifying Data issues that may result in drug manufacturer rebate disputes;

15.1.4 Summarizing Rebate-eligible Utilization Data based on date of service and according to multiple parameters and requirements as required by ASES;

15.1.5 Performing Claim-level Rebate calculations, including unit conversions as necessary;

15.1.6 Preparing and sending quarterly invoices to pharmaceutical manufacturers within time limits required by ASES;

15.1.7 Coordinating the Rebate accounting and payment procedures;

15.1.8 Reconciling and resolving prior period adjustments and drug Rebate disputes, including follow-up and resolution of unpaid invoices;

15.1.9 Providing ASES with any original and/or copies of the pharmaceutical manufacturers' proposals and final negotiated agreements for ASES's execution thereof. These records shall also be submitted to ASES on a digital or electronic format.

- 15.1.10 Producing Rebate program reporting according to requirements in this Article 15;
- 15.1.11 Updating and maintaining standard operating procedure manual(s) for Rebate administration.
- 15.1.12 Contractor shall ensure all 340B Claims are excluded from Rebate processing and are reported separately according to ASES specifications.
- 15.1.13 Contractor shall provide the ability to separate interest in invoicing and Rebates received for reporting purposes.
- 15.1.14 ASES shall be copied on all past-due notifications to drug manufacturers.
- 15.1.15 One hundred percent (100%) of all monies collected by ASES shall be remitted to ASES directly by the drug manufacturers. The Contractor agrees that all Rebates collected by ASES shall be collected for the sole benefit of ASES's share of costs, and that no other monies shall be collected by the Contractor based on ASES's program.
- 15.1.16 The Contractor shall support all ASES' Accounting System requirements as directed by ASES.
- 15.1.17 At Implementation Date of the Contract, the Contractor shall assume all responsibilities for uncollected receivables for ASES's Rebate program.
- 15.1.18 The Contractor shall perform analysis and research necessary throughout the Contract Term to identify areas of improvement with the rebate program administration, including any approaches for invoicing, processing, and accounting of drug Rebates. The Contractor shall provide the suggested improvements to ASES for review and approval, as they are identified or defined.
- 15.1.19 The Contractor shall, when appropriate, refer potential Fraud, Waste, and Abuse issues to ASES.
- 15.1.20 The Contractor shall certify and provide assurances that all Rebate Information for the Other Enrollee Rebate program is regarded as confidential and proprietary and shall remain separate and independent of the MDRP Rebate program.
- 15.1.21 Upon termination of this Contract for any reason, the Contractor shall, at no additional cost to ASES, transfer all existing pharmaceutical Rebate Data and Information to ASES's incoming Contractor to ensure that there is no gap in ASES receiving pharmaceutical Rebates. The Contractor shall also provide ASES with a final accounting of Rebates received through the Termination Date of this Contract and detailed Information regarding rebates that will be payable following the Termination Date of the Contract.

ARTICLE 16 ADDITIONAL SERVICES – SUPPLEMENTAL REBATES, VBP AGREEMENTS

- 16.1** ASES reserves the right to exercise the option to join a Supplemental Rebate purchasing pool, implementing a supplemental Rebate and/or Value Based Purchasing (“VBP”)

Agreement program during the Contract Term. Upon written notice by ASES, Contractor shall assist ASES with the development, implementation and management of the optional service(s), including but not limited to:

- 16.1.1 Identifying the covered outpatient drugs or non-covered outpatient products that would qualify and benefit ASES for the supplemental rebate or Value Based Purchasing arrangements;
 - 16.1.2 Assisting ASES with the development, submission and approval of the required CMS State Plan Amendment;
 - 16.1.3 Implementing and managing the negotiation process with pharmaceutical manufacturers for the supplemental agreements and developing a competitive process thereby encouraging maximum participating among drug manufacturers. ASES shall review and approve all agreements before execution.
 - 16.1.4 Processing and invoicing pharmaceutical manufacturers according to CMS requirements and the supplemental agreement specifications;
 - 16.1.5 Establishing and operating a process for accurate reporting and monitoring of negotiated supplemental agreement payments and perform all supplemental dispute resolutions to maximize collections for ASES; and
 - 16.1.6 Providing ASES access to all supplemental agreement contracts and related documentation.
- 16.2** Contractor shall propose a plan for securing and maintaining the supplemental agreement contracts and related confidential Information in a format agreed to by ASES. ASES shall approve confidentiality agreements.
- 16.3** Contractor shall perform research and analysis throughout the Contract Term that consider a variety of potential supplemental strategies and shall compare and contrast for ASES the clinical and economic opportunities and ramifications of each strategy for the GHP program. Contractor shall present all offers from all manufacturers to ASES regardless of the significance of the offer.

ARTICLE 17 CMS REPORTING

- 17.1** Contractor shall generate CMS required reports as a condition of Puerto Rico's MDRP participation. This includes all of the following, but is not limited to:
- 17.1.1 Assist in the generating of the quarterly CMS 64 report for Puerto Rico within a mutually agreed timeline.
 - 17.1.2 Generate and upload the quarterly Drug Utilization Data to CMS's Drug Data Reporting for Medicaid (DDR), as well as adjustments and/or corrections to previously reported Drug Utilization Data within sixty (60) Calendar Days of the end of the Rebate period as required in Section 1927(b)(2)(A) of the Social Security Act, 42 CFR 447.511(b), and CMS guidance.
 - 17.1.2.1 The Contractor must exclude 340B Drug Utilization from 340B Providers from the quarterly Drug Utilization Data submission to CMS.

17.1.2.2 The Contractor must include MCO-provided, NDC-level PAD Utilization Data in the quarterly Drug Utilization Data submission to CMS.

17.1.2.3 The Contractor must take reasonable steps, prior to reporting the Drug Utilization Data, to review the Data for errors.

17.1.2.3.1 The Contractor shall collaborate with the Contractor and the MCOs to ensure system edits are in place to prevent Data outliers from being included in the Data submissions.

17.1.2.4 The Drug Utilization Data submitted to CMS must be the same Information submitted to the Drug Manufacturers for Rebates.

17.1.3 Address any errors or alerts on the CMS State Utilization Discrepancy Report within a mutually agreed timeline.

17.1.4 When CMS migrates from its current data submission platform, DDR, to its new platform, Medicaid Drug Rebate Program (MDRP) system, scheduled for 2021, the Contractor will update its processes accordingly and not charge ASES additional costs for the transition.

ARTICLE 18 FRAUD, WASTE, AND ABUSE

18.1 General Provisions

18.1.1 The Contractor shall have and implement a comprehensive internal administrative and management controls, policies, and procedures in place designed to prevent, detect, report, investigate, correct, and resolve potential or confirmed cases of Fraud, Waste, and Abuse in the administration and delivery of services detailed in this Contract.

18.2 Compliance Plan

18.2.1 The Contractor shall have a written Compliance Plan with stated program goals and objectives, program scope and methodology to evaluate performance against the requirements of this Contract. At a minimum, the Contractor's Compliance Plan shall:

18.2.1.1 Require the designation of a compliance officer and a compliance committee that are accountable to senior management. The compliance officer shall have express authority to provide unfiltered reports directly to the Contractor's most senior leader and governing body;

18.2.1.2 Describe standards of conduct that articulate the Contractor's commitment to comply with all applicable Puerto Rico and federal requirements and standards;

18.2.1.3 Maintain a system of dedicated staff with established and implemented procedures for routine internal monitoring and auditing of compliance risks, prompt response to compliance issues, investigations of potential compliance problems identified in the course of self-evaluation and audits, prompt and thorough correction

of identified compliance problems, and ongoing compliance with the requirements of this Contract;

- 18.2.1.4 Maintain designated staff responsible for administering the plan and clear goals, milestones or objectives, measurements, key dates for achieving identified outcomes, and an explanation of how the Contractor will determine the effectiveness of the Compliance Plan;
- 18.2.1.5 Ensure and describe effective training and education procedures for the compliance officer and the Contractor's employees;
- 18.2.1.6 Ensure that all of the Contractor's officers, directors, managers and employees know and understand the provisions of the Compliance Plan;
- 18.2.1.7 Ensure effective lines of communication between the compliance officer and the Contractor's employees to ensure employees understand and comply with the Contractor's Fraud, Waste, and Abuse program;
- 18.2.1.8 Ensure enforcement of standards of conduct through well-publicized disciplinary guidelines;
- 18.2.1.9 Ensure that no individual who reports internal or Provider misconduct, or a suspected case of Fraud, Waste, and Abuse is retaliated against. The Contractor's employee handbook shall include a specific discussion of its Fraud, Waste, and Abuse policies and procedures, the rights of whistleblowers, and the procedures for detecting and preventing Fraud, Waste, and Abuse; and
- 18.2.1.10 Establish and/or modify internal controls to ensure proper submission and payment of Claims.

18.3 Program Integrity Plan and Fraud, Waste and Abuse Investigations

- 18.3.1 The Contractor's Program Integrity Plan shall comply in all respects with the ASES Guidelines for the Development of Program Integrity Plan and this Contract and shall be updated at least annually. Upon review of the Contractor's Program Integrity Plan, ASES will promptly (within twenty [20] Business Days) notify the Contractor of any needed revisions or amendments in order for the Program Integrity Plan to comply with the Guidelines and with federal law. The Contractor, shall within twenty (20) Business Days of receipt of the ASES comments re-submit its Plan for ASES review and approval. The Program Integrity Plan shall at a minimum:
 - 18.3.1.1 Define Fraud, Waste, and Abuse;
 - 18.3.1.2 Specify methods to detect Fraud, Waste, and Abuse, or Credible Allegations of Fraud;
 - 18.3.1.3 Identify requirements to complete the preliminary investigation of Network Pharmacies and Enrollees;

- 18.3.1.4 Describe a process to perform investigations on each case of Credible Allegation of Fraud or any cases of suspected Fraud, Waste, or Abuse by Providers or Enrollees and promptly refer such cases to ASES or its designees;
- 18.3.1.5 Describe persons responsible for conducting these investigations;
- 18.3.1.6 Defines mechanisms to monitor frequency of Encounters and Covered Services rendered to Enrollees billed by Network Pharmacies;
- 18.3.1.7 Describe the specific controls in place for prevention and detection of potential or suspected Fraud, Waste, and Abuse, such as:
 - 18.3.1.7.1 A description of pre-payment review activities, including but not limited to a list of automated pre-payment Claims edits and Claim reviews, description of how the Contractor will manually review all Claims for Providers placed on prepayment review status as requested by ASES, and how the Contractor will identify Providers that should be placed on prepayment review and place them on prepayment review if approved by ASES;
 - 18.3.1.7.2 A list of automated post payment Claims edits;
 - 18.3.1.7.3 A list of Claims review algorithms;
 - 18.3.1.7.4 Frequency and type of desk Audits on post payment review of Claims;
 - 18.3.1.7.5 A list of reports of Provider profiling used to aid program and payment reviews;
 - 18.3.1.7.6 A list of surveillance and/or Utilization Management protocols used to safeguard against unnecessary or inappropriate use of Medicaid services;
 - 18.3.1.7.7 A description of how the Contractor will track and ensure that a minimum of 4% of retail Pharmacies are subject to a post-payment investigation;
 - 18.3.1.7.8 A description of how the Contractor will identify and correct Claims submission and billing activities that are potentially fraudulent including, but not limited to, double-billing and improper quantities;
 - 18.3.1.7.9 A description how the Contractor will use Utilization, service denial, Appeals, Provider Complaint and Provider dispute Data to detect potential Fraud, Waste, or Abuse;
 - 18.3.1.7.10 A description how the Contractor will identify and address over, under, or inappropriate Utilization of Covered Services, including but not limited to review of the Contractor's

Utilization Management criteria and processes, service denials, Appeals, and Utilization Data;

18.3.1.7.11 Work plans for conducting both announced and unannounced provider site visits for providers identified as high risk by the Contractor to ensure services are rendered and billed correctly.

18.3.1.7.12 A description of the Contractor's risk assessment tool and process for Pharmacy Claims review, including:

18.3.1.7.12.1 Processing one hundred percent (100%) of paid Pharmacy Claims through the Contractor's risk assessment tool on a quarterly basis;

18.3.1.7.12.2 The Information incorporated into the risk assessment review, including but not limited to current and historical Claims Data, reconsideration history, Claim review findings, historical overpayment amount, Fraud history, Fraud Referrals, and owner's/operator's history;

18.3.1.7.12.3 The areas reviewed during the risk assessment process, including, but not limited to the following: the total amount paid, number of Claims processed/paid, number or percentage of reversed Claims, high dollar Claims, denied Claims from non-Medicaid enrolled Providers, non FDA approved or identified NDCs, low reversal rates, Claims for Medicare Part D excluded products, Medicare Part D eligibility indicator, dosage form, route of administration code, generic Claims submitted, brand multi-source Claims submitted, controlled substances submitted, out of cycle reversals, package size errors, highest physician for Pharmacy, percentage of new vs. refill Claims, days' supply errors, outdated NDCs, average days' supply per Claim, number of Pharmacy originated overrides, number of unique prescriber NPI numbers, emergency overrides, unit dose NDCs, age violations, submissions other than drugs, claims with refills greater than three (3), and high dollar amount claims submitted at one time.

18.3.1.7.13 A risk-based assessment that includes the Contractor's evaluation of its Fraud, Waste, and Abuse processes and the risk for Fraud, Waste, and Abuse in the provision of services to enrollees; and

18.3.1.7.14 An outline of activities proposed by the Contractor for the next reporting year based on the results of the risk-based assessment, including the Contractor's top five (5) risk areas.

18.3.2 ASES will review all Fraud, Waste, and Abuse referrals to determine whether there is a Credible Allegation of Fraud or if the allegation evidences Waste or

Abuse. The Contractor shall inform ASES within twenty (20) Business Days of any initiated investigation of a suspected case of Fraud, Waste, or Abuse or any Credible Allegation of Fraud in accordance with the reporting elements specified in Section 18.3.1.4. The Contractor shall subsequently report preliminary results of such investigations activities to ASES and other appropriate Puerto Rico and federal entities. ASES will provide the Contractor with guidance during the pendency of the investigation and will refer the matter to the U.S. Department of Justice, if applicable, the Department of Justice of Puerto Rico.

- 18.3.3 The Contractor must not suspend, terminate or not renew a provider contract when the Contractor suspects Fraud, Waste, or Abuse until it receives permission from ASES to proceed.
- 18.3.4 The Contractor must attempt to recover any payment made to a terminated Pharmacy.
- 18.3.5 When ASES notifies the Contractor that a Pharmacy has been suspended, the Contractor must immediately suspend the Pharmacy, including any payments to the Pharmacy. The Contractor must continue to suspend the Pharmacy until it receives notice from ASES to lift the suspension. When ASES notifies the Contractor that a Pharmacy is no longer suspended, the Contractor must lift the suspension and begin to process Claims from the Pharmacy.
- 18.3.6 The Contractor and any Subcontractor must respond to all requests for additional Information by ASES or its designees promptly. The Contractor and all Subcontractors shall cooperate fully with federal and Commonwealth agencies in Fraud, Waste and Abuse investigations and subsequent legal actions. Such cooperation shall include providing, upon request, Information, access to records, and access to interview employees and consultants, including but not limited to those with expertise in the administration of the program and/or medical or pharmaceutical questions or in any matter related to an investigation.
- 18.3.7 In accordance with Section 6409 of the PPACA, the Contractor must have mechanisms in place to adhere to the requirements of the self-referral disclosure protocol, under which Providers of services and suppliers may self-disclose actual or potential violations of the physicians' self-referral statute (Section 1877 of the Social Security Act). The Contractor shall require Providers and suppliers to self-report and return overpayments by the later of: (i) the date which is sixty (60) Calendar Days after the date on which the overpayment was identified; or (ii) the date any corresponding cost report is due, if applicable. The Contractor shall ensure that disclosing parties provide a financial analysis that includes the total amount actually or potentially due and owing as a result of the disclosed violation, a description of the methodology used to determine the amount due and owing, the total amount of remuneration involved Pharmacies or pharmacists (or an immediate family member of such pharmacists) received as a result of an actual or potential violation, and a summary of audit activity and documents used in the Audit.

18.4 Pharmacy Auditing Program

- 18.4.1 The Pharmacy Auditing Program refers to a pharmacy monitoring procedure that includes in-Pharmacy reviews, online Audits, and desk Audits of Claims processing, subject to the scope and requirements set forth by ASES. The purpose of the Pharmacy Auditing Program is to verify the accuracy and appropriateness of Claims processing and to determine if the Network Pharmacies are in compliance with their contractual obligations.
- 18.4.2 The Contractor shall submit policies and procedures for the Pharmacy Auditing Program to ASES during the implementation review and upon material changes to such policies and procedures. ASES agrees and acknowledges that the Information to be disclosed constitutes proprietary Information of the Contractor, subject to the terms of this Contract.
- 18.4.3 If as a result of the auditing process the Contractor obtains Information of a Credible Allegation of Fraud, Waste or Abuse in the Utilization or provision of Covered Services by Network Pharmacies or Enrollees, such Information shall be promptly forwarded to ASES and the appropriate MCO.
- 18.4.4 The Contractor shall, in coordination with ASES, take measures to avoid repetition of any errors, abuses and wrongful Utilization and to recover, whenever possible, any unduly paid amounts. In providing its services hereunder, the Contractor shall implement all appropriate and required administrative practices, which must be approved by ASES.
- 18.4.5 The Contractor shall submit to ASES, on a quarterly basis, the Pharmacy Audit Report.

ARTICLE 19 INFORMATION MANAGEMENT AND SYSTEMS

19.1 General Provisions

- 19.1.1 Contractor shall have Information Management processes, Information System and technical support that enable it to meet the GHP requirements, ASES and federal reporting requirements, all other Contract requirements, and any other applicable Puerto Rico and federal laws, rules and regulations, including but not limited to, HIPAA and associated regulations 42 CFR Part 447, Subpart I and Terms of the Medicaid National Drug Rebate Agreement (“NDRA”).
- 19.1.2 Contractor’s Information System must possess capacity sufficient to handle the workload projected for the start of the program and will be scalable and flexible so it can be adapted or upgraded to more advanced levels of technology as needed, within negotiated timeframes, in response to Contract requirements, changes in enrollment and other program changes.
- 19.1.3 The Contractor’s Information System shall have the capability of adapting to any future changes necessary as a result of modifications to the service delivery system and its requirements, including Data collection, records and reporting to track services, Rebates, and expenditures across funding streams at no additional cost to ASES.
 - 19.1.3.1 The Information System shall be scalable and flexible so they can be adapted as needed, within negotiated timeframes, in response to

changes in Contract requirements, increases in Enrollment estimates, etc. Specifically, as it relates to the Contractor, the Information System architecture shall facilitate rapid application of the more common changes that can occur in the Contractor's operation, including but not limited to:

- 19.1.3.1.1 Changes in pricing methodology;
 - 19.1.3.1.2 Rate changes;
 - 19.1.3.1.3 Changes in Utilization Management criteria;
 - 19.1.3.1.4 Additions and deletions of Network Pharmacy and Provider;
 - 19.1.3.1.5 Additions and deletions of procedure, diagnosis and other service codes; and
 - 19.1.3.1.6 Updates to NCPDP standards
- 19.1.4 The Contractor shall provide ASES staff and their designees, including but not limited to MCOs and other entities, as allowed by law, individual access to the Contractor's Claims system, Prior Authorization system, decision support system and other Information Systems as necessary via online, real time connection at no additional cost. Contractor shall not impose limits on the number of licenses made available to ASES staff, designees, Puerto Rico and federal auditors, MCOs and other Puerto Rico entities.
- 19.1.5 ASES shall have access to the Rebate Data and Utilization Data (current and historical) reporting in an electronic format from the MDRP Contractor on a quarterly basis or whenever ASES may deem necessary.
- 19.1.6 ASES shall have real time access to Contractor's Rebate system to review and analyze Rebate and Drug Utilization Information and produce ad hoc reporting. The Contractor shall not impose limits on the number of licenses made available to ASES staff, designees, Puerto Rico and federal auditors, MCOs and other Puerto Rico entities.
- 19.1.7 ASES will make available an FTP server accessible via the Internet for receipt of electronic files and reports from the MCOs and Contractor. Contractor shall provide a similar compatible system to which ASES can transmit files and reports deliverable by ASES to MCOs and Contractor.
- 19.1.8 The Contractor shall participate in systems work groups organized by ASES. The systems work groups will meet on a designated schedule as agreed to by ASES, the Contractor, and the MCOs.
- 19.1.9 The Contractor shall provide a continuously available electronic mail communication link (e-mail system) with ASES. This system shall be:
- 19.1.9.1 Available from the workstations of the designated Contractor Authorized representative; and
 - 19.1.9.2 Capable of attaching and sending documents created using software products other than Contractor systems, including the ASES's

currently installed version of Microsoft Office and any subsequent upgrades as adopted.

- 19.1.10 ASES reserves the right to Audit the Contractor's compliance with policies and procedures, manuals and protocols related to its Information System in accordance with applicable Puerto Rico and federal laws, statutes and regulations, including requirements set forth by CMS.
- 19.1.11 Contractor must possess all necessary software licenses for the provision of all the services required by this RFP and agrees to keep them updated for the duration of the Contract. This is a material condition and failure to comply may be cause for the termination of the Contract and/or the imposition of sanctions and/or other penalties.
- 19.1.12 In case of a Third-Party allegation of infringement in the use of the software and technology used by the Contractor to provide the service objective of this RFP, the Contractor will Immediately take, at its sole expense, all necessary measures to avoid an interruption of, or adversely affecting, the execution of the contract activities.

19.2 Global System Architecture and Design Requirements

- 19.2.1 The Contractor shall comply with federal and Puerto Rico policies, standards, laws, rules, and regulations in the design, development and/or modification of the Information System it will employ to meet the requirements and in the management of Information contained in those systems. Additionally, the Contractor shall adhere to ASES and Puerto Rico-specific system and Data architecture standards and/or guidelines.
- 19.2.2 The Contractor's Information Systems shall meet federal and industry standards of architecture, including but not limited to the following requirements:
 - 19.2.2.1 Be SQL and ODBC compliant and/or employ a relational Data model in the architecture of its databases and relational database management system (RDBMS) to operate and maintain them;
 - 19.2.2.2 Adhere to Internet Engineering Task Force/Internet Engineering Standards Group standards for Data communications, including TCP and IP for Data transport;
 - 19.2.2.3 Conform to HIPAA standards for Data and document management;
 - 19.2.2.4 Contain controls to maintain Information integrity. These controls shall be in place at all appropriate points of processing. The controls shall be tested in periodic and spot audits following a methodology to be developed jointly by and mutually agreed upon by the Contractor and ASES; and
 - 19.2.2.5 Partner with ASES in the development of Transaction/event code set, Data exchange and reporting standards not specific to HIPAA or other federal efforts and will conform to such standards as stipulated in the plan to implement the standards.

- 19.2.3 Where web services are used in the engineering of applications, the Contractor's Systems shall conform to World Wide Web Consortium (W3C) standards such as XML, UDDI, WSDL and SOAP so as to facilitate integration of these Systems with ASES and other Puerto Rico systems that adhere to a service-oriented architecture.
- 19.2.4 Audit to be traced through the processing stages to the point where the Information is finally recorded. The Audit trails shall:
 - 19.2.4.1 Contain a unique log-on or terminal ID, the date, and time of any create/modify/delete action and, if applicable, the ID of the system job that effected the action;
 - 19.2.4.2 Have the date and identification stamp displayed on any on-line inquiry;
 - 19.2.4.3 Have the ability to trace Data from the final place of recording back to its source Data file and/or document shall also exist;
 - 19.2.4.4 Be supported by listings, Transaction reports, update reports, Transaction logs, or error logs;
 - 19.2.4.5 Facilitate Auditing of individual Claim records as well as batch Audits; and
 - 19.2.4.6 Be maintained for ten (10) Years in either live and/or archival systems. The duration of the retention period may be extended at the discretion of and as indicated to the Contractor by ASES as needed for ongoing audits or other purposes.
- 19.2.5 The Contractor shall house indexed images of documents used by Enrollees, Network Pharmacies, and Providers to transact with the Contractor in the appropriate database(s) and document management systems so as to maintain the logical relationships between certain documents and certain Data. The Contractor shall follow all applicable requirements for the management of Data in the management of documents.
- 19.2.6 The Contractor shall institute processes to ensure the validity and completeness of the Data it submits to ASES. At its discretion, ASES will conduct general Data validity and completeness audits using industry-accepted statistical sampling methods. Data elements that will be audited include but are not limited to: Enrollee ID, date of service, Network Pharmacy ID, Provider ID, category and subcategory (if applicable) of service, diagnosis codes, procedure codes, revenue codes, date of Claim processing, and date of Claim payment.
- 19.2.7 Where a System is herein required to, or otherwise supports, the applicable batch or on-line Transaction type, the system shall comply with HIPAA-standard transaction code sets.
- 19.2.8 The Contractor shall assure that all Contractor staff is trained in all HIPAA requirements, as applicable.
- 19.2.9 The layout and other applicable characteristics of the pages of Contractor websites shall be compliant with Federal Section 508 standards and Web

Content Accessibility Guidelines developed and published by the Web Accessibility Initiative.

19.3 System and Data Integration Requirements

- 19.3.1 The Contractor's systems shall be able to transmit, receive and process Data in HIPAA-compliant and NCPDP-compliant formats that are in use as of the Implementation Date of the Contract. This capability shall include the use, receipt and processing of electronic prescriptions.
- 19.3.2 The Contractor shall institute processes to ensure the validity and completeness of the Data, including reports, it submits to ASES. At its discretion, ASES will conduct general Data validity and completeness Audits using industry-accepted statistical sampling methods. Data elements that will be audited include, but are not limited to: enrollee ID, date of service, assigned Medicaid Provider ID, category and subcategory (if applicable) of service, diagnosis codes, procedure codes, revenue codes, date of Claim processing, and (if and when applicable) date of Claim payment. Control totals shall also be reviewed and verified.
- 19.3.3 The Contractor's applications shall be able to interface with ASES's systems for purposes of Data exchange and will conform to standards and specifications set by ASES. These standards and specifications are subject to change.
- 19.3.4 The Contractor's System(s) shall be able to transmit and receive Transaction Data to and from ASES's systems as required for the appropriate processing of Claims.
- 19.3.5 The Contractor will be required to perform any necessary changes to update interfaces to ASES's systems, including those required by the Medicaid Management Information System (MMIS) as well as the Eligibility and Enrollment processes. These interface changes may require changes in the Contractor's core systems.
- 19.3.6 Each month the Contractor shall generate Data files from its Claims Management System(s) and/or other sources. Such files must be submitted in standardized Accredited Standards Committee (ASC) X12N 837 and National Council for Prescription Drug Programs (NCPDP) formats, and the ASC X12N 835 format as appropriate. The files will contain settled Claims and Claim adjustments and Data from Network Pharmacies and Providers for the most recent month for which all such Transactions were completed. The Contractor shall provide these files electronically to ASES and/or its Agent at a frequency and level of detail to be specified by CMS and ASES based on program administration, oversight, and program integrity needs, and in adherence to the procedure, content standards and format indicated in this Contract. The Contractor shall make changes or corrections to any systems, processes or Data transmission formats as needed to comply with Encounter Data quality standards as originally defined or subsequently amended.
- 19.3.7 The Contractor's System(s) shall be capable of generating files in the prescribed formats for upload into ASES Systems used specifically for program integrity and compliance purposes.

- 19.3.8 The Contractor's System(s) shall possess mailing address standardization functionality in accordance with US Postal Service conventions.

19.4 System Access Management and Information Accessibility Requirements

- 19.4.1 The Contractor's System shall employ an access management function that restricts access to varying hierarchical levels of system functionality and Information. The Access Management function shall:
 - 19.4.1.1 Restrict access to Information on a "need-to-know" basis, e.g. users permitted inquiry privileges only will not be permitted to modify Information;
 - 19.4.1.2 Restrict access to specific system functions and Information based on an individual user profile, including inquiry only capabilities; global access to all functions will be restricted to specified staff jointly agreed to by ASES and the Contractor; and
 - 19.4.1.3 Restrict attempts to access system functions to three (3), with a system function that automatically prevents further access attempts and records these occurrences.
- 19.4.2 The Contractor shall make System Information available to duly Authorized representatives of ASES and other Puerto Rico and federal agencies to evaluate, through inspections or other means, the quality, appropriateness and timeliness of services performed.
- 19.4.3 The Contractor shall have procedures to provide for prompt transfer of System Information upon request to other Network Pharmacy or General Network or Out-of-Network Providers for the medical management of the Enrollee in adherence to HIPAA and other applicable requirements.
- 19.4.4 All Information, whether Data or documents, and reports that contain or make references to said Information, involving or arising out of this Contract, are owned by ASES. The Contractor is expressly prohibited from sharing or publishing ASES Information and reports without the prior written consent of ASES. In the event of a dispute regarding the sharing or publishing of Information and reports, ASES's decision on this matter shall be final and not subject to appeal.

19.5 Systems Availability and Performance Requirements

- 19.5.1 The Contractor shall ensure that critical systems, are available to the applicable System users twenty-four (24) hours a day, seven (7) Days a Week, except during periods of scheduled System unavailability agreed upon by ASES and the Contractor. Unavailability caused by events outside of a Contractor's Span of Control is outside of the scope of this requirement.
- 19.5.2 The Contractor shall ensure that at a minimum all non-critical system functions and Information is available to the applicable system users between the hours of 7:00 am and 7:00 pm (Atlantic Time) Monday through Friday.

- 19.5.3 The Contractor shall develop an automated method of monitoring critical Systems on at least a thirty (30) minute basis twenty-four (24) hours a Day, seven (7) Days per Week.
- 19.5.4 Upon discovery of any problem within its Span of Control that may jeopardize System availability and performance as defined in this section of the Contract, the Contractor shall notify the applicable ASES staff in person, via phone, and/or email. The Contractor shall deliver notification as soon as possible but no later than 7:00 pm (Atlantic Time) if the problem occurs during the Business Day and no later than 9:00 am (Atlantic Time) the following Business Day if the problem occurs after 7:00 pm (Atlantic Time).
- 19.5.5 Where the operational problem results in delays in report distribution or problems in online Access during the Business Day, the Contractor shall notify the applicable ASES staff within fifteen (15) minutes of discovery of the problem, in order for the applicable work activities to be rescheduled or be handled based on System Unavailability protocols.
- 19.5.6 The Contractor shall provide to appropriate ASES staff Information on System Unavailability events, as well as status updates on problem resolution. These updates shall be provided on an hourly basis and made available via email, telephone and, if applicable, the Contractor's website.
- 19.5.7 The following rules govern unscheduled System Unavailability.
- 19.5.7.1 **Electronic Claims Management (ECM) Functions.** Unscheduled System Unavailability of ECM functions caused by the failure of systems and technologies within the Contractor's Span of Control will be resolved, and the restoration of services implemented, within sixty (60) minutes of the official declaration of System Unavailability, if Unavailability occurs during normal business hours; or within sixty (60) minutes of the start of the next Business Day, if Unavailability occurs outside business hours.
- 19.5.7.2 **All Other Contractor System Functions.** Unscheduled System Unavailability of all other Contractor System functions caused by systems and telecommunications technologies within the Contractor's Span of Control shall be resolved, and the restoration of services implemented:
- 19.5.7.2.1 Within four (4) hours of the official declaration of Unscheduled System Unavailability, when Unavailability occurs during business hours; and
- 19.5.7.2.2 Within two (2) hours of the start of the next Business Day, when Unavailability occurs during non-business hours.
- 19.5.7.3 Cumulative System unavailability caused by systems and telecommunications technologies within the Contractor's Span of Control shall not exceed one (1) hour during any continuous five (5) Calendar Day period for functions that affect GHP Enrollees and services. For functions that do not affect GHP Enrollees, Cumulative System Unavailability caused by systems and telecommunications

technologies within the Contractor's Span of Control shall not exceed four (4) hours during any continuous five (5) Business Day periods.

19.5.7.4 The Contractor shall not be responsible for the availability and performance of systems and telecommunications technologies outside of the Contractor's Span of Control.

19.5.7.5 For any System outage that is not corrected within the required time limits, the Contractor shall provide full written documentation that includes a Corrective Action Plan, describing how the problem will be prevented from occurring again, within five (5) Business Days of the problem's occurrence.

19.5.8 Regardless of the architecture of its Systems, the Contractor shall develop and be continually ready to invoke a Business Continuity and Disaster Recovery ("BC-DR") plan that at a minimum addresses the following scenarios: (i) the central computer installation and resident software are destroyed or damaged; (ii) System interruption or failure resulting from network, operating hardware, software, or operational errors that compromises the integrity of Transactions that are active in a live system at the time of the outage; (iii) System interruption or failure resulting from network, operating hardware, software or operational errors that compromises the integrity of Data maintained in a live or archival system; and (iv) System interruption or failure resulting from network, operating hardware, software or operational errors that does not compromise the integrity of Transactions or Data maintained in a live or archival system but does prevent access to the System, i.e. causes unscheduled System Unavailability. This BC-DR plan must be prior approved by ASES.

19.5.9 The Contractor shall on an annual basis test its BC-DR plan through simulated disasters and lower level failures in order to demonstrate to ASES that it can restore System functions per the standards outlined elsewhere in this Section 19.5 of the Contract. The results of these tests shall be reported to ASES within thirty (30) Calendar Days of completion of said tests.

19.5.10 In the event that the Contractor fails to demonstrate in the tests of its BC-DR plan that it can restore system functions per the standards outlined in this Contract, the Contractor shall be required to submit to ASES a Corrective Action Plan that describes how the failure will be resolved. The Corrective Action Plan will be delivered within five (5) Business Days of the conclusion of the test.

19.6 System Testing and Change Management Requirements

19.6.1 The Contractor shall pass System testing at least fifteen (15) Calendar Days prior to Implementation Date of the Contract.

19.6.2 The Contractor shall absorb the cost of routine maintenance, inclusive of defect correction, System changes required to effect changes in Puerto Rico and federal statute and regulations, and production control activities, of all Systems within its Span of Control.

19.6.3 The Contractor shall respond to ASES reports of System problems not resulting in System Unavailability according to the following timeframes:

- 19.6.3.1 Within five (5) Calendar Days of receipt, the Contractor shall respond in writing to notices of System problems.
- 19.6.3.2 Within fifteen (15) Calendar Days, the correction will be made or a requirements analysis and specifications document will be due.
- 19.6.4 The Contractor shall correct the deficiency by an Effective Date to be determined by ASES.
- 19.6.5 The Contractor's Systems will have a system-inherent mechanism for recording any change to a software module or subsystem.
- 19.6.6 The Contractor shall put in place procedures and measures for safeguarding ASES from unauthorized modifications to the Contractor's Systems.
- 19.6.7 Unless otherwise agreed to in advance by ASES, scheduled System Unavailability to perform System maintenance, repair and/or upgrade activities to Contractor's CCE systems shall take place between 11 pm on a Saturday and 6 am on the following Sunday (Atlantic Time).
- 19.6.8 The Contractor shall work with ASES pertaining to any testing initiative as required by ASES.
- 19.6.9 The Contractor shall provide sufficient System Access to allow verification of System functionality, availability and performance by ASES during the times required by ASES prior to the Implementation Date of the Contract, and as subsequently required during the Contract Term.

19.7 17.7 System Security and Information Confidentiality and Privacy Requirements

- 19.7.1 The Contractor shall provide for the physical safeguarding of its Data processing facilities and the Systems and Information housed therein. The Contractor shall provide ASES with access to Data facilities upon ASES's request. The physical security provisions shall be in effect for the life of this Contract.
- 19.7.2 The Contractor shall restrict perimeter access to equipment sites, processing areas, and storage areas through a card key or other comparable system, as well as provide accountability control to record access attempts, including attempts of unauthorized Access.
- 19.7.3 The Contractor shall include physical security features designed to safeguard processor site(s) through required provision of fire retardant capabilities, as well as smoke and electrical alarms, monitored by security personnel.
- 19.7.4 The Contractor shall ensure that the operation of all of its Systems perform in accordance with Puerto Rico and federal regulations and guidelines related to security and confidentiality of the protected Information managed by the Contractor, and shall strictly comply with HIPAA Privacy and Security Rules, as amended, and with the Breach Notification Rules under the HITECH Act.
- 19.7.5 The Contractor will put in place procedures, measures and technical security to prohibit unauthorized access to the regions of the Data communications network inside of a Contractor's Span of Control.

- 19.7.6 The Contractor shall ensure compliance with:
 - 19.7.6.1 42 CFR Part 431 Subpart F (confidentiality of Information concerning applicants and Enrollees of public medical assistance programs);
 - 19.7.6.2 42 CFR Part 2 (confidentiality of alcohol and drug abuse records); and
 - 19.7.6.3 Special confidentiality provisions in Puerto Rico or federal law related to people with HIV/AIDS and mental illness.
- 19.7.7 The Contractor shall provide its Enrollees with its HIPAA Notice of Privacy Practices that conforms to all applicable federal and state laws. The Contractor shall provide ASES with a copy of this Notice.

19.8 Information Management Process and Information Systems Documentation Requirements

- 19.8.1 The Contractor shall ensure that written System Process and Procedure Manuals document and describe all manual and automated system procedures for its Information management processes and Information Systems. These manuals shall be provided to ASES Immediately upon request.
- 19.8.2 The System User Manuals shall contain Information about, and instructions for, using applicable System functions and accessing applicable system Data.
- 19.8.3 When a System change that would alter the conditions and services agreed upon in this Contract is subject to ASES sign off, the Contractor shall draft revisions to the appropriate manuals prior to ASES sign-off of the change.
- 19.8.4 Updates to the electronic version of these manuals shall occur in real time; updates to the printed version of these manuals shall occur within ten (10) Business Days of the update taking effect.

ASES reserves the right to Audit the Contractor's policies and procedures, manuals and protocols compliance related to its Information Systems.

19.9 Reporting Functionality Requirements

- 19.9.1 The Contractor's Systems shall have the capability of producing a wide variety of reports that support program management, policymaking, quality improvement, program evaluation, analysis of fund sources and uses, funding decisions and assessment of compliance with federal and Puerto Rico requirements.
- 19.9.2 The Contractor shall support a mechanism for obtaining service and expenditure reports by funding source, Provider, Provider type or other characteristic; and Enrollee, Enrollee group/category or other characteristic.
- 19.9.3 The Contractor shall extend Access to this mechanism to select ASES personnel in a secure manner to Access Data, including program and fiscal Information regarding Enrollees served, services rendered, etc. and the ability for said personnel to develop and/or retrieve reports. This requirement could be met by the provision of Access to a decision support system/Data

warehouse. The Contractor shall provide training in and documentation on the use of this mechanism.

- 19.9.4 Within five (5) Calendar Days upon ASES's request, the Contractor will deliver a copy of the then current ASES's System Information to ASES in a mutually acceptable form and format.

19.10 17.10 Disaster Recovery, Disaster Declaration, Data Content Delivery to ASES

- 19.10.1 The Contractor shall maintain a disaster recovery and business recovery plan in effect throughout the Term of the Contract. The disaster recovery plan shall be subject to ASES review upon reasonable notice to the Contractor. The Contractor shall maintain reasonable safeguards against the destruction, loss, intrusion and unauthorized alteration of printed materials and Data in its possession. At a minimum, the Contractor shall perform (i) incremental daily backups, (ii) Weekly full backups, and (iii) such additional backups as the Contractor may determine to be necessary to maintain such reasonable safeguards.
- 19.10.2 Both ASES and the Contractor recognize that a failure by the Contractor's Network may adversely impact ASES business and operations, as the responsible party for the GHP. Therefore, in the event that the Contractor's Network designed to deliver the services herein contemplated becomes unable, or is anticipated to become unable, to deliver such services on a timely basis, Contractor shall Immediately notify ASES by telephone, and shall work closely with ASES to fix the problem. In the event that Contractor fails to provide such required notice to ASES and such delay in the notification has a material and adverse effect upon ASES and/or Enrollees, ASES may terminate this Contract for cause as provided in Article 38 of this Contract.
- 19.10.3 Within five (5) Calendar Days upon ASES's request, the Contractor will deliver a copy of the then current ASES Data to ASES in a mutually acceptable form and format which is useable and readable and understandable by ASES.

ARTICLE 20 STAFFING AND KEY PERSONNEL

20.1 General Provisions

- 20.1.1 The Contractor shall have sufficient qualified, experienced, and knowledgeable staff and personnel to efficiently administer program requirements and provide all required direct and indirect services for the duration of the Contract.
- 20.1.2 The Contractor must receive ASES's approval of the Contractor's staffing and key personnel organizational chart prior to implementation. Any changes to the approved organizational chart shall be submitted and prior approved by ASES.
- 20.1.3 At a minimum, the Contractor must provide the key personnel required in Section 20.2.4.
- 20.1.4 All staff must be properly trained, demonstrate competency, and have the appropriate credentialing, if required.
- 20.1.5 The Contractor must employ a sufficient number of staff who are fluent in English and Spanish and who are culturally competent.

- 20.1.6 The Contractor shall, at a minimum, emphasize nondiscrimination in its personnel policies and procedures as it relates to hiring, promoting, operational policies, contracting processes and participation on advisory/planning boards or committees.
- 20.1.7 ASES reserves the right, at any time during this Contract, to refuse or reject, in its sole discretion and notwithstanding any prior approval, any of Contractor's staff, including key personnel, based on performance deficiencies and/or lack of knowledge, skills or demonstrated expertise necessary to perform contracted activities. ASES will document, in the written notice of rejection that it sends to the Contractor, the reason(s) for the rejection of Contractor's staff.

20.2 Staff Responsibilities and Requirements

20.2.1 Staffing Plan

20.2.1.1 The Contractor shall provide a final Staffing Plan for review and approval by ASES within sixty (60) Calendar Days of Implementation Date of the Contract. The Staffing Plan shall include, at a minimum, the following key personnel positions identified below and any necessary supervisory and support staff:

20.2.1.1.1 The work location, work schedule, and reporting structure for all key personnel and support staff.

20.2.1.1.2 Copies of resumes and job descriptions for all key personnel assigned to this Contract.

20.2.1.2 The Contractor shall provide ASES with a revised Staffing Plan within three (3) Business Days of any key personnel change.

20.2.2 Staff Licensing and Certification Requirements

20.2.2.1 The Contractor shall provide ASES with documentation verifying that all Staff requiring licensure or certification are licensed and/or certified to practice in his/her area of specialty. This documentation shall be supplied to ASES within sixty (60) Calendar Days of the Implementation Date of the Contract, and annually thereafter, as directed in writing by ASES.

20.2.2.2 The Contractor shall provide staff that are current and knowledgeable in their respective areas of expertise and are able to provide quality consultation and technical assistance services regarding all matters pertaining to Pharmacy benefits and/or drug Rebating.

20.2.3 Staff Training

20.2.3.1 The Contractor shall provide a Staff Training Plan to ASES for approval within sixty (60) Calendar Days of the Implementation Date of the Contract.

20.2.3.2 The Contractor shall prepare all staff training materials and submit them to ASES for review and approval prior to beginning staff training. The Contractor shall be responsible for providing training to all staff

prior to those individuals performing any PBM and/or Rebate services. All staff shall receive annual refresher training covering their job responsibilities. ASES reserves the right, at any time during the Term of this Contract, to require the Contractor to provide remedial training to specific staff members or groups of staff members, if their performance indicates such training is needed.

20.2.4 Key personnel

20.2.4.1 The Contractor must provide the following key personnel for this Contract, to perform, at a minimum, the duties established in this Contract. The Contractor shall provide, in writing to ASES, the names, positions, and contact information (telephone numbers and fax numbers, and email addresses) of the staff designated as Key personnel within sixty (60) Calendar Days of the Implementation Date of the Contract. If the Contract is awarded to multiple Contractors, each Contractor must provide these key personnel unless otherwise noted:

- 20.2.4.1.1 An Account Manager whose duties shall include, but are not limited to, having day-to-day authority to manage all Contract requirements and services, being the primary business contact during implementation and throughout ongoing operations and shall be responsible for delivery of all Deliverables required by in this Contract. This position shall be filled and active ninety (90) Calendar Days before the Implementation Date of the Contract.
- 20.2.4.1.2 An Implementation Manager who will provide assistance during the transition/pre-implementation and implementation process. This position shall be filled and active ninety (90) Calendar Days before the Implementation Date of the Contract.
- 20.2.4.1.3 A Clinical Pharmacist, who is licensed by Puerto Rico and whose duties shall support clinical Contract activities.
- 20.2.4.1.4 An Information Systems Coordinator responsible for oversight of all Data systems and coordination of Data sharing between ASES and other parties identified in this Contract.
- 20.2.4.1.5 A Program Data Research Analyst who shall be responsible to generate daily, weekly, monthly, quarterly and yearly reports required by the Contract and all ad hoc report requests made by ASES.
- 20.2.4.1.6 A Compliance Officer who is responsible for all Fraud and Abuse detection activities for the PBM programs.
- 20.2.4.1.7 A Pharmacy Call Center Manager who is responsible for oversight of the Pharmacy Call Center.

20.2.4.2 All permanent key personnel positions shall be hired and trained no less than sixty (60) Calendar Days before the Implementation Date of the Contract.

20.2.4.3 Transition Period: All key personnel need to be available on-site and ready to begin performing the scope of work sixty (60) Calendar Days before the Implementation Date of the Contract or earlier during the transition period, if necessary.

20.2.5 Contract Management

20.2.5.1 The Contractor must work with ASES and all stakeholders of the GHP to be good stewards of Government funds. Accordingly, the Contractor's Account Manager, unless otherwise specified by ASES, will be responsible for the following activities:

20.2.5.1.1 Status calls with ASES during implementation to discuss operational and technical issues;

20.2.5.1.2 Hold regular meetings with internal partners of ASES, the Medicaid Program, and other stakeholders as identified by ASES;

20.2.5.1.3 Act as a liaison between ASES, corresponding team leaders and supervisors, and other personnel of the Contractor;

20.2.5.1.4 Submit regular reports, as requested by ASES regarding services and activities under this Contract to keep ASES and key stakeholders informed about matters concerning the services provided;

20.2.5.1.5 Attend regular meetings with key personnel of ASES as requested;

20.2.5.1.6 Review compliance, and work with ASES to implement required improvements;

20.2.5.1.7 Arrange meetings, set agendas, and perform any necessary follow-up activities;

20.2.5.1.8 Gather, analyze, and report statistical Data, in a timely manner to ASES and other key stakeholders, as required; and

20.2.5.1.9 Conduct other related tasks as requested by ASES.

20.3 Substitution of Key Personnel

20.3.1 The Contractor must not substitute key personnel without prior written approval by ASES.

20.3.2 The Contractor must notify ASES of any desired substitution of key personnel, including the name, role, resume, and other Information requested by ASES for the recommended substitute.

- 20.3.3 Within ten (10) Calendar Days of the request, ASES will notify the Contractor if the recommended substitute is acceptable. If ASES does not accept the recommended substitute, the Contractor will have ten (10) Calendar Days to make another recommendation. At no time, however, may a key personnel role be vacant. It is the responsibility of the Contractor to keep the role filled until ASES approves a substitution.

ARTICLE 21 ASES REPORTING

21.1 General Provisions

- 21.1.1 The Contractor shall comply with all the reporting requirements established by ASES in this Article 21 and in Article 26. ASES may, at its discretion, require the Contractor to submit additional reports or any other Data, documentation or Information relating to the performance of the Contractor's obligations both on an ad hoc and recurring basis as required by ASES or CMS. If ASES requests any revisions to the reports already submitted, the Contractor shall make the changes and resubmit the reports, according to the time period and format specified by ASES.
- 21.1.2 All reports containing Information about a Network Pharmacy must include the Network Pharmacy's NPI, unless indicated otherwise by ASES.
- 21.1.3 The Contractor shall submit all reports to ASES, unless indicated otherwise in this Contract, according to the schedule in Attachment 7. Failure to report timely may result in intermediate sanctions, liquidated damages and/or fines in accordance with Article 37.
- 21.1.4 If a report due date falls on a weekend or a Puerto Rico holiday, receipt of the report the next Business Day is acceptable.
- 21.1.5 The Contractor shall submit all reports to ASES in the manner and format prescribed by ASES.
- 21.1.6 The Contractor shall transmit to and receive from ASES all transactions and code sets in the appropriate standard formats as specified under HIPAA and as directed by ASES.
- 21.1.7 ASES's requirements regarding reports, report content, and frequency of submission are subject to change at any time during the Term of the Contract. ASES shall notify the Contractor in writing, of changes to existing required report content, format or schedule at least fourteen (14) Calendar Days prior to implementing the reporting change. ASES shall notify the Contractor, in writing, of new reports at least forty-five (45) Calendar Days prior to implementing the new report. The Contractor shall be held harmless if ASES fails to meet this requirement for any changes for existing reports. However, the Contractor is not otherwise relieved of any responsibility for the submission of late, inaccurate or otherwise incomplete reports. The first submission of a report revised by ASES to include a change in Data requirements or definition will not be subject to penalty for accuracy.
- 21.1.8 The Contractor shall submit reports timely and in proper format. The submission of late, inaccurate, or otherwise incomplete reports constitutes

failure to report. "Timely submission" shall mean that the report was submitted on or before the date it was due. "Accuracy" shall mean the report was prepared according to the specific written guidance, including report template, provided by ASES to the Contractor. All elements must be met for each required report submission. Therefore, the report must be timely, accurate and contain an analysis. If any portion of the report element is not met, the report is deemed in "error" and the Contractor will be considered to not be in compliance with the Contract and will be subject to intermediate sanctions and or liquidated damages and/or fines in accordance with Article 37 of this Contract. The Contractor shall not be penalized if an error in a previously submitted report is identified by the Contractor and reported to ASES prior to ASES's identification of the error. Corrected reports in this type of situation will be submitted to ASES in a timeframe determined by ASES after consulting with the Contractor. Failure to comply with the agreed upon timeframes for correction and resubmission shall be subject to intermediate sanctions and or liquidated damages and/or fines in accordance with Article 37 of this Contract.

- 21.1.9 Each report must include an analysis, which shall include, at a minimum: (i) identification of any changes compared to previous reporting periods as well as trending over time; (ii) an explanation of said changes (positive or negative); (iii) an action plan or performance improvement activities addressing any negative changes; and (iv) any other additional Information pertinent to the reporting period. All quantitative reports shall include a summary table that presents Data over time including monthly, quarterly and/or year-to-date summaries as directed by ASES. ASES may assess intermediate sanctions, liquidated damages and/or fines in accordance with Article 37 of this Contract for failure to address any of these requirements. The above Data requirements may be represented in charts, graphs, tables and any other Data illustrations to demonstrate findings.
- 21.1.10 The Contractor shall review, as part of its continuous improvement activities, timeliness and accuracy of reports submitted to ASES to identify instances and patterns of non-compliance. The Contractor shall perform an analysis identifying any patterns or issues of non-compliance and shall implement quality improvement activities to improve overall performance and compliance.
- 21.1.11 Extensions to report submission dates will be considered by ASES after the Contractor has contacted the ASES designated point of contact via email at least twenty-four (24) hours in advance of the report due date. Extension for submission of reports should be under rare and unusual circumstances. If ASES grants an extension, and the report is submitted before the extended deadline, the report(s) will be considered timely and not subject to penalty for timeliness. Not requesting an extension within at least twenty-four (24) hours of the report due date is considered failure to report timely.
- 21.1.12 Anytime a report is rejected for any reason by ASES and ASES provides the reason for the rejection, the Contractor shall resubmit the report within ten (10) Business Days from notification of the rejection or as directed by ASES.
- 21.1.13 The Contractor shall submit all reports electronically to ASES's FTP site unless directed otherwise by ASES. ASES shall provide the Contractor with access to the FTP site. The email generated by the FTP upload will be used as the time stamp for the submission of the report(s).

- 21.1.14 ASES shall provide feedback, as necessary, to the Contractor regarding format and timeliness of reports within forty-five (45) Calendar Days from the due date of the report.
- 21.1.15 All reports in the reporting templates provided to the Contract require Contractor certification. The Authorized Certifier or an equivalent position as delegated by the Contractor and approved by ASES, shall review the accuracy of language, analysis, and Data in each report prior to submitting the report to ASES. The Authorized Certifier shall include a signed attestation each time the report is submitted. The attestation must include a certification, based on best knowledge, Information, and belief, as to the accuracy, completeness and truthfulness of the Data in the report. Reports will be deemed incomplete if an attestation is not included.
- 21.1.16 The Contractor Data transfers shall occur in standard format as prescribed by ASES and will be compliant with HIPAA and federal regulations. The Contractor shall submit in formats as prescribed by ASES so long as ASES's direction does not conflict with any federal law.

21.2 Minimum Reporting Requirements for Contractor

- 21.2.1 The Contractor shall produce and deliver to ASES and the MCOs the minimum reporting requirements set forth in Attachment 7, and according to the timeframes established therein.

21.3 Actuarial and Special Reporting

- 21.3.1 The Contractor shall be available and shall cooperate to provide any reliable Data or Information related to, or in connection with, this Contract to ASES's qualified consulting actuary on insurance matters, as its Agent. The consulting actuary assists and advises ASES on the GHP design, proposal review, and in any additional administrative need to confirm fee analysis. ASES staff or the consulting actuary may, from time to time, request the Contractor to provide additional Information. Contractor shall cooperate with, and act in good faith to work and provide assistance to the consulting actuary and shall respond to these requests promptly, as required by ASES, on a timely basis at no additional cost to ASES.

21.4 Fraud, Waste, and Abuse Reporting

- 21.4.1 On quarterly basis, the Contractor shall report all instances of suspected Network Pharmacy Fraud, Waste, or Abuse, or Enrollee Abuse of the Covered Pharmacy Services under this Contract, using a format and Data elements prescribed by ASES.
- 21.4.2 At a minimum, the Contractor shall include in each report, with respect to individual investigations of Fraud, Abuse, or Waste:
 - 21.4.2.1 Enrollee name and ID number;
 - 21.4.2.2 Network Pharmacy name and NPI;
 - 21.4.2.3 Source of complaint;

- 21.4.2.4 Type of Network Pharmacy;
- 21.4.2.5 Nature of complaint, including alleged persons or entities involved, category of services, factual explanation of the allegation, and dates of the conduct;
- 21.4.2.6 All communication between the Contractor and the Network Pharmacy about the Complaint;
- 21.4.2.7 Date of the Complaint;
- 21.4.2.8 Approximate dollars involved, or amount paid to the Network Pharmacy during the past three (3) years, whichever is greater;
- 21.4.2.9 Disciplinary measures imposed, including recoupment, if any;
- 21.4.2.10 Contact Information for a Contractor staff person with relevant knowledge of the matter;
- 21.4.2.11 Legal and administrative disposition of the case;
- 21.4.2.12 The Contractor shall also include in the report a summary (not specific to an individual case) of the following:
 - 21.4.2.12.1 Investigative activities, corrective actions, prevention efforts, and results; and
 - 21.4.2.12.2 Trending and analysis of Utilization Management and Network Pharmacy payment management.

ARTICLE 22 KEY SERVICE LEVEL METRICS

- 22.1** The Contractor shall meet all service/performance metrics set forth in Attachment 4. Such key service level metrics must be reported on a quarterly and annual basis, except as otherwise previously agreed between the Parties in writing.

ARTICLE 23 AUTHORIZATION, FINANCIAL PERFORMANCE AND INSURANCE

23.1 Authorization

- 23.1.1 The Contractor represents and warrants that it is duly organized and authorized to conduct business under the laws of the Commonwealth, and that it has been duly authorized to execute this Contract. To the extent any of the Contractor's subsidiaries also provide Contracted Services, the Contractor represents and warrants that they are duly organized and authorized to conduct business under the laws of the Commonwealth. Contractor shall not be owned nor controlled by, nor own or control a pharmaceutical manufacturer, pharmacy nor any MCO or Provider that contracts with the GHP, unless ASES in its sole discretion waives such independence and conflict of interest safeguards.

23.2 Payment and Performance Bond Guarantees

- 23.2.1 The Contractor must provide prior to signing the Contract and maintain throughout the term of the Contract a Performance Bond in the amount of thirty

percent (30%) of the maximum annual contract amount for itself and any Subcontractors, if any. The Performance Bond must be issued by an insurance company duly authorized to do business in Puerto Rico, duly certified by the Office of the Insurance Commissioner of Puerto Rico and approved by ASES.

23.2.1.1 At the conclusion of each Contract Year and no later than the last day of the first month of the following Contract Year, the Contractor must provide ASES evidence of the renewed Performance Bond in the corresponding maximum amount for said Contract Year. ASES shall not process any pending invoices for Administrative Fees if Contractor fails to maintain a Performance Bond.

23.2.2 If the maximum annual Contract amount for a given contract year is increased, prior to the signing of the corresponding amendment to the Contract, the Contractor must provide an amended Performance Bond to cover the increase in the new maximum annual Contract amount.

23.3 Insurance

23.3.1 The Contractor shall prior to the commencement of work, procure the insurance policies identified below at the Contractor's own cost and expense and shall furnish ASES with proof of coverage in the amounts indicated. It shall be the responsibility of the Contractor to require any Subcontractor to secure the same insurance coverage as prescribed herein for the Contractor, and to obtain a certificate evidencing that such insurance is in effect. In the event that any such insurance is proposed to be reduced, terminated or cancelled for any reason, the Contractor shall provide to ASES at least sixty (60) Calendar Days prior written notice. Prior to the reduction, expiration and/or cancellation of any insurance policy required hereunder, the Contractor shall secure replacement coverage upon the same terms and provisions as required in this Contract, to ensure no lapse in coverage, and shall furnish, at the request of ASES, a certificate of insurance indicating the required coverage. The provisions of this Section shall survive the expiration or termination of this Contract for any reason. In addition, the Contractor shall indemnify and hold harmless ASES and the Government from any liability arising out of the Contractor's or its Subcontractor's untimely failure in securing insurance coverage as prescribed herein:

23.3.2 Workers' Compensation Insurance: The Contractor shall have the required policy(ies) to insure the statutory limits established by the law of Puerto Rico, which must also be extended to employees and contractors who are not considered their own employer due to the degree of control exercised over them by the Contractor in terms of supervision, provision of materials and work conditions. The Contractor must also have Employer's Liability Insurance with the following limits:

23.3.2.1 Bodily injury by accident: five hundred thousand dollars (\$500,000) each accident;

23.3.2.2 Bodily injury by disease: five hundred thousand dollars (\$500,000) each employee and contractor who is not considered their own employer due to the degree of control exercised over them by the

Contractor in terms of supervision, provision of materials and work conditions; and

- 23.3.2.3 One million dollars (\$1,000,000) policy limits.
- 23.3.2.4 The Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Worker's Compensation Coverage.
- 23.3.3 The Contractor shall have commercial general liability policy(ies) as follows:
 - 23.3.3.1 Combined single limits Bodily Injury and Property Damage of one million dollars (\$1,000,000) per occurrence and in the aggregate including personal and advertising injury and contractual liability; and
 - 23.3.3.2 On an "occurrence" basis.
- 23.3.4 The Contractor shall have commercial auto liability insurance with limits of one million dollars (\$1,000,000) and the following forms: Non-Owned Autos and Hired Autos.
- 23.3.5 The Contractor shall have professional liability insurance with limits not less than [five million dollars (\$5,000,000)].
- 23.3.6 The Contractor shall have excess liability insurance respect to the commercial general liability policy described above, in an umbrella form and on an occurrence basis with limits of at least one million dollars (\$1,000,000) per occurrence and in the aggregate;
- 23.3.7 The Contractor shall have Cyber Security Liability Insurance with limits of at least five million dollars (\$5,000,000).
- 23.3.8 The Contractor shall have Electronic Data Processes Error and Omissions Insurance with limits of at least five million dollars (\$5,000,000) and a Miscellaneous Error & Omissions Insurance covering the Pharmacy Call Center and in person/on site choice counseling operation with limits of at least five million dollars (\$5,000,000);
- 23.3.9 The commercial general liability policies must have an endorsement naming the ASES and the Department of Health of Puerto Rico as additional insureds and a hold harmless agreement in favor of ASES and the Department of Health of Puerto Rico.
- 23.3.10 The excess liability, the commercial auto liability insurance policies must include the ASES and the Department of Health of Puerto Rico as an additional insured.
- 23.3.11 Policies cannot be cancelled or modified without providing sixty (60) Calendar Days prior written notice to ASES and the Department of Health, Office of Insurance and Risks ("Oficina de De Seguros y Riesgos"), P.O. Box 709184, San Juan, Puerto Rico 00936-8184.
- 23.3.12 Insurance companies affording coverage hereunder must be duly authorized to do business in Puerto Rico and duly certified by the Insurance Commissioner

of Puerto Rico, excluding those offering excess liability, and have an A.M. Best's rating of A-VII or better.

23.3.13 Contractor shall be responsible for any damages and injuries caused by the negligent handling or the abandonment of the responsibilities under this Contract and will thus exempt ASES and the Department of Health from any obligation or responsibility from such actions.

ARTICLE 24 CONTRACT TERM

24.1 Subject to and upon the terms and conditions herein, this Contract shall be in full force and effect on the Effective Date of Contract and shall terminate on [REDACTED]. The Contractor shall begin providing services identified in this Contract on February 1, 2022, which shall be deemed to be the Implementation Date of the Contract. The foregoing notwithstanding, ASES, subject to Article 38 reserves the right, prior written notice of ninety (90) Calendar Days, to amend or partially terminate the Contract at any time to implement a demonstrative plan to incorporate the new public health policies and/or strategies of the Government. Upon written notice of amendment or partial termination of this Contract pursuant to this Article 24, ASES will evaluate in good faith a renegotiation of Administrative Fees payable under this Contract.

24.2 The Contractor shall begin providing Contracted Services on the Implementation Date of the Contract at 12:01 a.m., Atlantic Time. Accordingly, invoices for these services may not be submitted prior to this Implementation Date of the Contract. The Contract shall expire at the close of the Contract Term unless earlier terminated under Article 38.

24.3 ASES is hereby granted the option to renew this Contract for an additional Term of up to one (1) Contract Year, which shall begin on [REDACTED] and end at midnight on [REDACTED]. The Terms of the renewal shall be negotiated, but any increase in Administrative Fees shall be subject to ASES's determination that the proposed new amount is appropriate. The option to renew the Contract shall be exercisable solely and exclusively by ASES.

ARTICLE 25 PAYMENT FOR SERVICES

25.1 General Provisions

25.1.1 The Contractor shall be paid for Contracted PBM Services in the amount of [\$REDACTED] per Paid Claim for all Contracted PBM Services provided under this Contract, while the Contractor shall be paid for Contracted RA Services in the amount of [\$REDACTED] per month for all Contracted RA Services provided under this Contract, (collectively, the "Administrative Fee"). The due date for the Administrative Fee to the Contractor shall be within fifteen (15) Business Days of invoice date.

25.1.2 The compensation set forth in Section 24.1.1 includes all direct and indirect costs for the provision of Contracted Services. Contractor agrees that this Total Ownership Cost Method is an essential condition of this Contract and that pricing includes not only the direct costs of the specific Deliverables required for the provision of the Contracted Services but also all indirect costs that would be logically attributed to the provision such Services. Compensation includes, but it is not limited to:

25.1.2.1 Personnel/resources costs and required equipment for the Pharmacy Call Center and other service locations;

- 25.1.2.2 All support or infrastructure activities such as recruiting, training of new personnel, individual training other than system-specific training;
- 25.1.2.3 Fees for the use of any online portals, applications or websites, including all the design and programming of systems specific to the requirements of ASES, any and all the required changes and updates necessary to make the system work and properly perform the Contracted Services, and costs of providing these systems on secure servers or integration for use on the internet;
- 25.1.2.4 Hardware costs and the cost of personnel related to updating and maintaining ASES Information and Data;
- 25.1.2.5 All charges and costs related to the maintenance of the equipment and infrastructure to be dedicated to the project and systems refresh required to keep them updated and running to perform and fulfill the Contracted Services, responsibilities and obligations; and
- 25.1.2.6 Operating costs, management and ongoing support, communications, as well as all instances of compliance and contract oversight.
- 25.1.3 Contractor assumes all risks, including but not limited to any fluctuation in the volume of claims or utilization of services throughout the Calendar Year.
- 25.1.4 Payment for services under this Contract will not commence before Implementation Date of the Contract.
- 25.1.5 Payments for the first month of program operations under this Contract will be made only upon a determination by ASES that the Contractor has complied with all of its obligations for the implementation of this Contract, including a finding by ASES that the Contractor has satisfied the implementation review, and the Contractor's submission of initial Deliverables as specified in Attachment 2 to this Contract.
- 25.1.6 In order to receive payments from ASES, the Contractor shall provide to ASES, and keep current, its tax identification number, billing address, and other contact information, as required by ASES.
- 25.1.7 The Contractor acknowledges that the Payments agreed to under the terms of this Contract constitute full payment for obligations under this Contract. ASES will have no responsibility for Payment beyond that amount unless the Contractor has obtained prior written approval, in the form of a Contract amendment, authorizing an increase in the total Payment. ASES shall have no responsibility to reimburse the Contractor for any additional costs Contractor may incur in connection with the satisfaction of all responsibilities under this Contract.
- 25.1.8 Pursuant to the terms of this Contract, should ASES assess liquidated damages or other Remedies for the Contractor's noncompliance or deficiency with the terms of this Contract, such amount may be withheld from the Administrative Fee for the following month, and for continuous consecutive months thereafter until such noncompliance or deficiency is corrected at ASES's satisfaction.

- 25.1.9 The Contractor shall maintain all the Utilization and financial Data related to this Contract duly segregated from its regular accounting system including, but not limited to, the general ledger.
- 25.1.10 The Contractor shall report all of the profit of its partially- or wholly-owned subsidiaries or Affiliates realized from services rendered in relation to this Contract (the "Affiliated Profit"), unless the Contractor demonstrates and ASES agrees that the Affiliated Profit did not result from preferential contractual Terms included in the Contractor's contracts or arrangements with its partially- or wholly-owned subsidiaries and Affiliates.
- 25.1.10.1 Preferential Contract Terms are those that result in a cost or expense that exceeds fair market value, or those that exceed other Terms for the provisioning of same or similar goods and services as would be agreed to by a reasonable person under the same or similar circumstances prevailing at the time the decision was made for the same or similar good or service. In determining whether preferential Contract Terms exist, consideration must be given to factors including "sound business practices," "arm's length bargaining" and "market prices for comparable goods and services for the geographical area." Contractual Terms shall also be deemed preferential if the Contractor's partially- or wholly-owned subsidiaries or Affiliates charge the Contractor a higher price for the same or similar goods or services than the lowest price charged by the Contractor's partially- or wholly-owned subsidiaries or Affiliates to any and all other clients.
- 25.1.10.2 The Contractor shall report to ASES's Office of Finance all related-party Transactions within thirty (30) Calendar Days and provide a copy of the contract for each Transaction detailing the amounts paid or to be paid, charged, or transferred and goods or services to be provided under the contract. A certification under penalty from criminal perjury from the Contractor's President, Vice-President, Chief Financial Officer, or Treasurer specifying what are the "at cost" and/or "fair market value" amounts of the contract, as applicable, shall be included with each submission.

25.2 Contractor's Objections to Payment

- 25.2.1 If the Contractor wishes to contest the amount of Payments made by ASES in accordance with the terms set forth in this Contract, the Contractor shall submit to ASES all relevant documentation supporting the Contractor's objection no later than thirty (30) Calendar Days after payment is made. Once this Term has ended, the Contractor forfeits its right to claim any additional amounts.
- 25.2.2 After the Contractor's submission of all relevant Information, the Contractor and ASES will meet to discuss the matter. If after discussing the matter and analyzing all relevant Data it is subsequently determined that an error in payment was made, the Contractor and ASES will develop a plan to Remedy the situation, which must include a timeframe for resolution agreed to by both parties, within a time period mutually agreed upon by both parties.

ARTICLE 26 FINANCIAL MANAGEMENT

26.1 General Provisions

- 26.1.1 The Contractor shall be responsible for the sound financial management of Puerto Rico and federal funds provided to the Contractor under the GHP program.
- 26.1.2 The Contractor shall notify ASES in writing of any loans or other special financial arrangements made between the Contractor and any Network Pharmacy or any other Provider. Any such loans shall strictly conform to the legal requirements of federal and Puerto Rico anti-Fraud and anti-kickback laws and regulations.
- 26.1.3 The Contractor shall provide ASES with copies of its Audited financial statements following Generally Accepted Accounting Principles (“GAAP”), at its own cost and expense, within ninety (90) Calendar Days following the end of each Contract Year during the Contract Term as specified in Article 24. The statements shall be provided in a format specified by ASES.
- 26.1.4 The Contractor shall provide to ASES unaudited financial statements for each quarter during the Contract Term, not later than thirty (30) Calendar Days after the close of each quarter in a format specified by ASES.
- 26.1.5 The Contractor shall provide to ASES a copy of the annual corporate report of its parent company at the close of the Calendar Year.
- 26.1.6 The Contractor shall maintain adequate procedures and controls to ensure that any payments pursuant to this Contract are properly made. In establishing and maintaining such procedures, the Contractor shall provide for separation of the functions of certification and disbursement.
- 26.1.7 The Contractor acknowledges, and shall incorporate in contracts with Subcontractors, that the GHP is a government-funded program. As such, the administrative costs that are deemed allowable shall be in accordance with cost principles permissible, and with federal and Puerto Rico applicable guidelines, including Office of Management and Budget Circulars, primarily recognizing that: (i) a cost shall be reasonable if it is of the type generally recognized as ordinary and necessary, and if in its nature and amount, and taking into consideration the purpose for which it was disbursed, it does not exceed that which would be incurred by a prudent person in the ordinary course of business under the circumstances prevailing at the time the decision was made to incur the cost; and (ii) a cost shall be reasonable if it is allocable to or related to the cost objective that compels cost association.
- 26.1.8 The Contractor shall maintain an accounting system for GHP separate from the rest of its commercial activities. This system will only include GHP Data.
- 26.1.9 The Contractor shall provide, throughout the Contract Term, any other necessary and related Information that is deemed necessary by ASES in order to evaluate the Contractor’s financial capacity and stability.

26.2 Third Party Liability and Cost Avoidance

- 26.2.1 General Provisions

- 26.2.1.1 The GHP shall be the payer of last resort for all Covered Services rendered on behalf of Medicaid and CHIP Enrollees in accordance with federal regulations at 42 CFR 433 Subpart D; ASES will enforce this rule with respect to all GHP Enrollees.
- 26.2.1.2 The Contractor shall exercise full assignment rights as applicable and shall be responsible for making every reasonable effort to determine the legal liability of Third Parties to pay for services rendered to Enrollees under this Contract and to cost avoid or recover any such liability from the Third Party. "Third Party," for purposes of this section, shall mean any person or entity that is or may be liable to pay for the care and services rendered to a GHP Enrollee. Examples of a Third Party include, but are not limited to, an Enrollee's health insurer, casualty insurer, a managed care organization, and Medicare.
- 26.2.1.3 The Contractor, and by extension its Providers and Subcontractors, hereby agree to utilize for Claims Cost Avoidance purposes, within thirty (30) Calendar Days of learning of such sources, other available public or private sources of payment for services rendered to Enrollees in the Contractor's plan. If Third Party Liability ("TPL") exists for part or all of the services provided directly by the Contractor to an Enrollee, the Contractor shall make reasonable efforts to recover from TPL sources the value of services rendered. If TPL exists for part or all of the services provided to an Enrollee by a Subcontractor or a Provider, and the Third Party will make payment within a reasonable time, the Contractor may pay the Subcontractor or Provider only the amount, if any, by which the Subcontractor's or Provider's allowable Claim exceeds the amount of TPL.
- 26.2.1.4 The Contractor shall deny payment on a Claim that has been denied by a Third Party payer when the reason for denial is the Provider's failure to follow prescribed procedures, including, but not limited to, failure to obtain Prior Authorization, failure to file Claims timely, etc.
- 26.2.1.5 The Contractor shall, within five (5) Business Days of issuing a denial of any Claim based on TPL, provide TPL Data to the Provider.
- 26.2.1.6 The Contractor shall treat funds recovered from Third Parties as offsets to Claims payments. The Contractor shall report all Cost Avoidance values to ASES in accordance with federal guidelines and as provided for in this section.
- 26.2.1.7 The Contractor shall post all Third Party payments or recoveries to Claim-level detail by Enrollee.
- 26.2.1.8 If the Contractor operates or administers a non-GHP program or other lines of business, the Contractor shall access the resources of those entities to assist ASES with the identification of Enrollees with access to other insurance or sources of payment.
- 26.2.1.9 The Contractor shall audit and review its Network Pharmacies' Claims, using monthly the reports submitted pursuant to Section 8.7 of this Contract or other pertinent Data, to ensure that Network

Pharmacies are not receiving duplicate payment for services billable to Third Parties. The Contractor shall report to ASES on a quarterly basis its findings regarding Claims, invoices, or duplicate or inappropriate payments. According to the timeframe specified in Attachment 12 to this Contract, the Contractor shall submit to ASES for its review and prior written approval a plan for such routine Audits.

- 26.2.1.10 The Contractor shall demonstrate, upon request, to ASES that reasonable effort has been made to seek, including through collaboration with Providers, to collect and report Third Party recoveries. ASES shall have the sole responsibility for determining whether or not reasonable efforts have been demonstrated. Said determination shall take into account reasonable industry standards and practices.
- 26.2.1.11 The Contractor shall comply with 42 CFR 433 Subpart D – Third Party Liability and 42 CFR 447.20 Provider Restrictions: State Plan Requirements, and work cooperatively with ASES to assure compliance with the requirements therein, as it relates to the Medicaid and CHIP populations served by the Contractor’s plan and its TPL and Cost Avoidance responsibilities.
- 26.2.2 **Legal Causes of Action for Damages.** ASES or its designee will have the sole and exclusive right to pursue and collect payments made by the Contractor when a legal cause of action for damages is instituted on behalf of a GHP Enrollee against a Third Party, or when ASES receives notices that legal counsel has been retained by or on behalf of any Enrollee.
- 26.2.3 The Contractor shall cooperate with ASES in all collection efforts, and shall also direct its Providers to cooperate with ASES in these efforts.
- 26.2.4 **Estate Recoveries.** ASES (or another agency of the Government) will have the sole and exclusive right to pursue and recover correctly paid benefits from the estate of a deceased Enrollee who was Medicaid Eligible in accordance with federal and Puerto Rico law. Such recoveries will be retained by ASES.
- 26.2.5 Subrogation
 - 26.2.5.1 Third Party resources shall include subrogation recoveries. The Contractor shall be required to seek subrogation amounts regardless of the amount believed to be available as required by Federal Medicaid guidelines and Puerto Rico law.
 - 26.2.5.2 The amount of any subrogation recoveries collected by the Contractor outside of the Claims Processing system shall be treated by the Contractor as offsets to expenses for the purposes of reporting.
 - 26.2.5.3 The Contractor shall conduct diagnosis and trauma code editing to identify potential subrogation Claims. This editing should, at minimum, identify Claims with a diagnosis of 900.00 through 999.99 (excluding 994.6) or Claims submitted with an accident trauma indicator of ‘Y.’
- 26.2.6 Cost Avoidance

- 26.2.6.1 When the Contractor is aware of health or casualty insurance coverage before paying for a Covered Service, the Contractor shall avoid payment by rejecting the Network Pharmacy's Claim at the time of adjudication and directing that the Claim be submitted first to the appropriate Third Party.
- 26.2.7 Sharing of TPL Information by ASES
 - 26.2.7.1 By the fifth (5th) Calendar Day after the close of the month during which ASES learns of such Information, ASES will provide the Contractor with a list of all known health insurance Information on Enrollees for the purpose of updating the Contractor's files.
 - 26.2.7.2 Additionally, by the fifteenth (15th) Calendar Day after the close of the calendar quarter, ASES will provide to the Contractor a copy of a report containing all of the health insurers licensed by Puerto Rico as of the close of the previous quarter, and any other related Information that is needed to file TPL Claims.
- 26.2.8 Sharing of TPL Information by the Contractor
 - 26.2.8.1 The Contractor shall submit a monthly report to ASES (following ASES file content, format and transmission specifications) by the fifth (5th) Calendar Day after the close of the month during which the Contractor learns that an Enrollee has new health insurance coverage, or casualty insurance coverage, or of any change in an Enrollee's health insurance coverage. The Contractor shall impose a corresponding requirement on its Providers to notify the Contractor of any newly discovered coverage.
 - 26.2.8.2 When the Contractor becomes aware that an Enrollee has retained counsel, who either may institute or has instituted a legal cause of action for damages against a Third Party, the Contractor shall notify ASES in writing, including the Enrollee's name and GHP Enrollee identification number, the date of the accident/incident, the nature of the injury, the name and address of the Enrollee's legal representative, copies of the pleadings, and any other documents related to the action in the Contractor's possession or control. This shall include, but not be limited to, the name of the Provider, the Enrollee's diagnosis, the Covered Service provided to the Enrollee, and the amount paid to the Provider for each service.
 - 26.2.8.3 The Contractor shall notify ASES within thirty (30) Calendar Days of the date it becomes aware of the death of one of its Medicaid Eligible Enrollees age fifty-five (55) or older, giving the Enrollee's full name, Social Security Number, and date of death. ASES will then determine whether it can recover correctly paid Medicaid benefits from the Enrollee's estate.
 - 26.2.8.4 The Contractor agrees to share with ASES instances of Enrollee non-cooperation with the Contractor's and with Network Providers' efforts to determine sources of Third Party Liability.

26.2.8.5 The Contractor agrees to cooperate with ASES in its oversight and monitoring reviews of all Third Party Liability activities.

26.3 Financial Reporting Requirements

26.3.1 The Contractor shall submit to ASES all of the reports as indicated in Article 21.

26.3.2 Failure to submit the reports within the established timeframes, or failure to submit complete, accurate reports, may result in the imposition of liquidated damages and/or fines as outlined in Article 37 of this Contract.

26.3.3 The Contractor, at its sole expense, shall submit by May 15 (or a later date if approved by ASES) of each year a Report on Controls Placed in Operation and Tests of Operating Effectiveness, meeting all standards and requirements of the SSAE 18 for the Contractor's operations performed for ASES under the GHP Contract.

26.3.3.1 The Audit shall be conducted by an independent auditing firm, with prior Audit experience using AICPA Statements on Auditing Standards. The auditor shall meet all AICPA standards for independence. The selection of, and contract with the independent auditor shall be subject to the prior written approval of ASES. ASES reserves the right to, at the Contractor's expense; designate other auditors or reviewers to examine the Contractor's operations and records for monitoring and/or stewardship purposes.

26.3.3.2 The Contractor will deliver to ASES, along with the Report on Controls Placed in Operation and Tests of Operating Effectiveness, the findings and recommendations of the independent audit firm encountered in the preparation of such a report. The Audit shall be conducted and the report shall be prepared in accordance with generally accepted auditing standards for such Audits as defined in the publications of the AICPA, entitled Statements on Auditing Standards (SAS). In particular, SSAE 18 is to be used.

26.3.3.3 The Contractor shall respond to the Audit findings and recommendations within thirty (30) Calendar Days of receipt of the final audit report. Also, the Contractor must submit a Corrective Action Plan to ASES which will be subject to ASES' prior review and written approval within twenty (20) Calendar Days of the notification of the Audit. The Contractor must implement the Corrective Action Plan, as a maximum, within fifteen (15) Calendar Days of its approval by ASES. The entity should request an extension by formal written request addressed to the Office of Compliance of ASES who will evaluate the request and provide the specific timeframe for the extension.

26.3.4 The Contractor shall submit to ASES a Disclosure of Information on Annual Business Transactions. This report shall include:

26.3.4.1 **Definition of A Party in Interest.** As defined in Section 1318(b) of the Public Health Service Act, a party in interest is:

- 26.3.4.1.1 (i) Any director, officer, partner, or employee responsible for management or administration of the Contractor; (ii) any person or legal entity that is directly or indirectly the beneficial owner of more than five percent (5%) of the equity of the Contractor; (iii) any person or legal entity that is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than five percent (5%) of the Contractor; or, (iv) in the case of a Contractor organized as a nonprofit corporation, an incorporator or enrollee of such corporation under applicable Puerto Rico corporation law; or
- 26.3.4.1.2 Any organization in which a person or a legal entity described in Section 26.3.4.1.1 is director, officer or partner; has directly or indirectly a beneficial interest of more than five percent (5%) of the equity of the Contractor; or has a mortgage, deed of trust, note, or other interest valuing more than five percent (5%) of the assets of the Contractor;
- 26.3.4.1.3 Any person directly or indirectly controlling, controlled by, or under common control with the Contractor; or
- 26.3.4.1.4 Any spouse, child, or parent of an individual described in Sections 26.3.4.1.1 to 26.3.4.1.3.

26.3.4.2 Types of Transactions Which Must Be Disclosed. Business Transactions which must be disclosed include:

- 26.3.4.2.1 Any sale, exchange or lease of any property between the Contractor and a party in interest;
 - 26.3.4.2.2 Any lending of money or other extension of credit between the Contractor and a party in interest; and
 - 26.3.4.2.3 Any furnishing for consideration of goods, services (including management services) or facilities between the Contractor and the party in interest. This does not include salaries paid to employees for services provided in the normal course of their employment.
- 26.3.4.3 The Information which must be disclosed in the Transactions listed in this Section 26.3.4.3 between the Contractor and a party of interest includes:
- 26.3.4.3.1 The name of the party in interest for each Transaction;
 - 26.3.4.3.2 A description of each Transaction and the quantity or units involved;
 - 26.3.4.3.3 The accrued dollar value of each Transaction during the Fiscal Year; and
 - 26.3.4.3.4 Justification of the reasonableness of each Transaction.

26.3.4.4 As per 42 CFR 455.105 the Contractor, within thirty-five (35) Calendar Days of the date of request by the HHS Secretary, ASES or the Puerto Rico Medicaid agency, and on an annual basis to ASES and the Puerto Rico Medicaid agency, shall report full and complete Information about:

26.3.4.4.1 The ownership of any Subcontractor with whom the Provider has had business Transactions totaling more than \$25,000 during the twelve- (12-) month period ending on the day of the request; and

26.3.4.4.2 Any significant business Transactions between the Provider and any wholly owned supplier, or between the Provider and any Subcontractor, during the five (5) year period ending on the date of the request.

26.3.4.5 Disclosures of Information on Annual Business Transactions or other reports of Transactions between the Contractor and parties in interest provided to ASES or other agencies must be made available to Enrollees upon reasonable request.

ARTICLE 27 PAYMENT OF TAXES

27.1 The Contractor certifies and guarantees that at the time of execution of this Contract:

27.1.1 It is an entity duly authorized to conduct business in Puerto Rico and has filed income tax returns for the previous five (5) years;

27.1.2 It complied with and paid unemployment insurance tax, disability insurance tax (Law 139), social security for drivers (“seguro social choferil”), if applicable;

27.1.3 It filed State Department reports for the five (5) previous years; and

27.1.4 It does not owe any kind of taxes to Puerto Rico.

27.2 The Contractor will forthwith pay all taxes lawfully imposed upon it with respect to this Contract or any product delivered in accordance herewith. ASES makes no representation whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity.

27.3 Notwithstanding the above, if, as a result of the enactment of any federal, state, local or municipal legal provision, administrative regulation, or government directive, the Contractor is burdened with a requirement to pay a fee, tax, imposition, levy, or duty with regards to any of the proceeds of this Contract, including but not limited to the imposition of any fees pertaining to the existence of any government contracts, or any sales and use tax (IVU, for its Spanish acronym), ASES will evaluate, in good faith, an adjustment to the Administrative Fee under this Contract, among other possible alternatives.

ARTICLE 28 RELATIONSHIP OF PARTIES

28.1 Neither party is an Agent, employee, or servant of the other. It is expressly agreed that the Contractor and any Subcontractors and Agents, officers, and employees of the Contractor or any Subcontractor in the performance of this Contract shall act as independent contractors and not as officers or employees of ASES. The parties

acknowledge, and agree, that the Contractor, its Agent, employees, and servants shall in no way hold themselves out as Agent, employees, or servants of ASES. It is further expressly agreed that this Contract shall not be construed as a partnership or joint venture between the Contractor or any Subcontractor and ASES.

ARTICLE 29 INSPECTION OF WORK

29.1 ASES, the Puerto Rico Medicaid Program, other agencies of the Government, the US Department of Health and Human Services, the General Accounting Office, the US Comptroller General, the Comptroller General of Puerto Rico, if applicable, or their Authorized representatives, shall have the right to enter into the premises of the Contractor or all Subcontractors, or such other places where duties under this Contract are being performed for ASES, to inspect, monitor or otherwise evaluate the services or any work performed pursuant to this Contract. All inspections and evaluations of work being performed shall be conducted with prior notice and during normal business hours. All inspections and evaluations shall be performed in such a manner that will not unduly delay work.

ARTICLE 30 GOVERNMENT PROPERTY

30.1 The Contractor agrees that any papers, materials, and other documents that are produced or that result, directly or indirectly, from, under or in connection with the Contractor's provision of the services under this Contract shall be the property of ASES upon creation of such documents, for whatever use that ASES deems appropriate, and the Contractor further agrees to prepare any and all documents, including the Deliverables listed in Attachment 2 to this Contract, or to take any additional actions that may be necessary in the future to effectuate this provision fully. In particular, if the work product or services include the taking of photographs or videotapes of individuals, the Contractor shall obtain the consent from such individuals authorizing the use by ASES of such photographs, videotapes, and names in conjunction with such use. The Contractor shall also obtain necessary releases from such individuals, releasing ASES from any and all Claims or demands arising from such use.

30.2 The Contractor shall be responsible for the proper custody and care of any ASES-owned property furnished for the Contractor's use in connection with the performance of this Contract. The Contractor will reimburse ASES for its loss or damage, normal wear and tear excepted, while such property is in the Contractor's custody or use.

ARTICLE 31 OWNERSHIP AND USE OF DATA AND SOFTWARE

31.1 Ownership and Use of Data

31.1.1 All Information created from Data, documents, messages (verbal or electronic), reports, or meetings involving or arising out of or in connection with this Contract is owned by ASES (the Information will be hereinafter referred to as "ASES Data and Information"). The Contractor shall make all Data and Information available to ASES, which will also provide the Data to CMS or other pertinent government agencies and authorities upon request. The Contractor 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.

31.1.2 ASES acknowledges that before executing this Contract and in contemplation of the same, the Contractor has 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 the Contractor. Nevertheless, in case of default by the Contractor, 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, at no cost to ASES, such properties for a period of one hundred twenty (120) Calendar Days to effect an orderly transition to any new Contractor or Service Provider. In any cases where the use of such systems from an operational perspective would also impact other lines of the Contractor's business or where licensing restrictions cannot be remedied, they shall operate such systems on behalf of ASES. Such operation by the Contractor 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 the Contractor's Data segment. If the Contractor fails to operate such systems on ASES' behalf in a timely manner per normal previous operating schedule, ASES may claim ownership of such systems and operate them for its own purposes.

31.1.3 The Contractor shall not deny access to ASES's Data under any case or circumstances, nor retain ASES's Data while controversies between ASES and the Contractor are resolved and finally adjudicated

31.2 Responsibility for Information Technology Investments

31.2.1 The parties understand and agree that the cost of any newly acquired or developed software programs or upgrades or enhancements to existing software programs, hardware, or other related Information technology equipment or infrastructure component, made in order to comply with the requirements of this Contract shall be borne in its entirety by the Contractor.

31.3 Transfer of Data upon Contract Termination

31.3.1 Contractor is required to share or transfer certain knowledge requested by ASES on a continuous basis with ASES personnel. At least thirty (30) days prior to the expiration of the Contract Term, or within the first ten (10) days of the date on which a notice of termination is issued by either party, the Contractor must have completed a transfer of knowledge that will guarantee an orderly continuity of services and labor. The final payment to Contractor will not be issued by ASES until such transfer of knowledge is completed. Such Information shall include, but is not limited to, source codes, program manuals and instructions, and any other materials required by ASES to ensure that ASES personnel knows and understands completed and uncompleted tasks prior to any transition, as well as the status and items pending to complete unfinished tasks.

ARTICLE 32 CRIMINAL BACKGROUND CHECKS

32.1 ASES is prohibited by law from entering into contracts with any person or entity that has been, or whose affiliated subsidiary companies, or any of its shareholders, partners,

officers, principals, managing employees, subsidiaries, parent companies, officers, directors, board members, or ruling bodies have been, under investigation for, accused of, convicted of, or sentenced to imprisonment, in Puerto Rico, the other USA jurisdictions, or any other jurisdiction, for any crime involving corruption, fraud, embezzlement, or unlawful appropriation of public funds, pursuant to Act No. 2 of 2018.

- 32.2** Before the Effective Date of this Contract, and in order for the Contract to take effect, the Contractor shall provide to ASES a certification that neither the Contractor nor the affiliated persons/entities listed in Section 32.1 falls under the prohibition stated in Section 30. In addition, the Contractor shall provide to ASES a certification as to whether, to the best of its knowledge after inquiry, any Network Provider, or any shareholder, partner, officer, principal, managing employee, subsidiary, parent company, officer, director, board member, or ruling body of a Network Provider, falls under the prohibition stated in Section 32.1.
- 32.3** ASES may terminate this Contract if ASES determines that the Contractor, or any of the natural persons listed in Section 32.1, falls within the prohibition stated in Section 32.1, or failed to provide an accurate certification as required in Section 32.1. In addition, the Contractor shall terminate a Pharmacy Contract if it determines that a Pharmacy, or any of the natural persons listed in Section 32.1, falls within the prohibition stated in Section 32.1 as applied to such Pharmacies.
- 32.4** During the Contract Term, the Contractor shall promptly (within twenty (20) Business Days of the date it receives the Information) report any significant fact or event related to the rule stated in this Article.
- 32.5** In cases in which none of the events listed in Section 32.1 has occurred, but statements or admissions of crimes have been made by or against the Contractor or one of its shareholders, partners, officers, principals, subsidiaries, or parent companies, ASES shall provide all pertinent Information about the matter, within twenty (20) Business Days from the date it receives the Information, to the Secretary of Justice of Puerto Rico, who will make the pertinent findings and recommendations concerning the Contract.
- 32.6** In addition, as provided in 42 CFR 455.106(c), ASES may refuse to enter into or renew an agreement with any entity if any person who has an ownership or control interest in the entity, or is an Agent or managing employee of the entity, has ever been convicted of a criminal offense related to the person's involvement in any program established under Medicare, Medicaid, or the Title XX Social Services programs. Before the Effective Date of this Contract, pursuant to 42 CFR 455.106(a), the Contractor shall disclose to ASES the identity of any person who has ever been convicted of a criminal offense related to the Medicare, Medicaid, or Title XX Social Services programs. The Contractor shall collect the same Information on criminal conviction for Network Pharmacies during the Credentialing process, as provided in Section 7.4 and shall, Immediately upon receipt of such Information relating to a Provider, disclose the Information to ASES. ASES will notify the HHS Inspector General of any disclosures related to criminal convictions within twenty (20) Business Days from the date that ASES receives the Information, as required by 42 CFR 455.106.

ARTICLE 33 SUBCONTRACTS

33.1 Use of Subcontractors

- 33.1.1 Neither this Contract, nor the services to be provided hereunder, may be assigned or subcontracted without the prior written approval of ASES, in its sole discretion. 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 be submitted in writing, and include the same documents and certifications required for government contracting that were required from the Contractor prior to the granting of this Contract. The delegation of services without the mentioned authorization will be sufficient cause to terminate this contract. Failure to comply with this clause will hold the Contractor responsible for any damages or losses that may be caused to ASES, whether directly or indirectly.
- 33.1.2 The Contractor shall assume sole responsibility for all functions performed by any Subcontractor, as well as any payments to a Subcontractor for services related to this Contract. In the event that a Subcontractor is incapable of performing the service contracted for by the Contractor, the Contractor shall (i) notify ASES Immediately and (ii) assume responsibility for providing the services that the Subcontractor is incapable of performing. The Contractor shall remain obligated to provide any services that the Subcontractor is incapable of performing.
- 33.1.3 If the Contractor becomes aware of a Subcontractor's failure to comply with this Contract, the Contractor shall correct the failure within five (5) Business Days of becoming aware of the failure and shall inform ASES of the same.
- 33.1.4 All Subcontracts between the Contractor and Subcontractor must be in writing, must comply with all applicable Medicaid laws and regulations, including sub-regulatory guidance and provisions set forth in this Contract, as applicable, and must specify the activities and responsibilities delegated to the Subcontractor containing terms and conditions consistent with the applicable requirements that pertain to the service or activity performed by the Subcontractor. The Subcontracts must also include provisions for revoking delegation or imposing other sanctions if the Subcontractor's performance is inadequate. The Contractor and the Subcontractor must also make reference to a business associate agreement between the parties.
- 33.1.5 All Subcontracts between the Contractor and Subcontractor must ensure that the Contractor evaluates the prospective Subcontractor's/Subcontractors' ability to perform the activities to be delegated; monitors the Subcontractor's/Subcontractors' performance on an ongoing basis and subjects it to formal review according to a periodic schedule established by ASES and consistent with industry standards or Puerto Rico laws and regulations; and identifies deficiencies or areas for improvement, ensuring that corrective action is taken as appropriate or required. The Contractor must provide to ASES, on behalf of the Subcontractor, any and all materials required under Puerto Rico law to enter into a contract with the Puerto Rican government.
- 33.1.6 The Contractor shall not engage nor contract with a person or entity that is debarred or suspended or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation (FAR) or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549, or a person or entity that is an Affiliate, as defined in FAR, of a such

a person or entity (see 42 CFR 438.610). Neither shall the Contractor engage nor contract for the provision of the services under this Contract with a person or entity that is, or whose affiliated subsidiary companies, or any of its shareholders, partners, officers, principals, managing employees, subsidiaries, parent companies, officers, directors, board members, ruling bodies have been convicted of, or sentenced to imprisonment, in Puerto Rico, the other US jurisdictions, or any other jurisdiction, for any crime involving corruption, fraud, embezzlement, or unlawful appropriation of public funds, pursuant to Act No. 2 of 2018, as amended

- 33.1.7 ASES shall have the right to review all financial or business transactions between the Contractor and Subcontractor at any time upon request. ASES, CMS, or Office of Inspector General may inspect, evaluate and audit the Subcontractor at any time if ASES, CMS or Office of Inspector General determines there is a reasonable possibility of fraud or similar risk. ASES shall also retain the right to review all criminal background checks for all employees of the Subcontractor, as referenced in Article 32, as well as any past exclusions from federal programs.
- 33.1.8 The Contractor shall provide ASES Immediate notice by certified mail, of any action or suit filed and of any claim made against the Contractor by the Subcontractor or against a Subcontractor that, in the opinion of the Contractor, may result in litigation related in any way to this Contract. The Contractor shall provide notification in writing as to how this action or suit may affect the overall provision of Contracted Services and the Contractor's plan to mitigate such effect.
- 33.1.9 The Contractor shall give ASES Immediate notice in writing by registered mail or certified mail of any action or suit filed by any Subcontractor and prompt notice of any claim made against the Contractor by any Subcontractor or vendor that, in the opinion of Contractor, may result in litigation related in any way to this Contract.
- 33.1.10 Any Subcontractor must provide ASES an attestation that it is free of any Conflicts of Interest.
- 33.1.11 ASES shall not be responsible for fulfillment of the Contractor's obligations to its Subcontractors.

33.2 Cost or Pricing by Subcontractors

- 33.2.1 The Contractor shall submit to ASES, and shall require any Subcontractors hereunder to submit to ASES, cost or pricing Data for any Subcontract to this Contract prior to award. The Contractor shall also certify that the Information submitted by the Subcontractor is, to the best of the Contractor's knowledge and belief, accurate, complete and current as of the date of agreement, or the date of the negotiated price of the Subcontract or amendment to the Contract. The Contractor shall insert the substance of this section in each Subcontract hereunder.
- 33.2.2 If ASES determines that any price, including profit or fee negotiated in connection with this Contract, or any cost reimbursable under this Contract was increased by any significant sum because of the inaccurate cost or pricing

Data, then such price and cost shall be reduced accordingly and this Contract and the Subcontract shall be modified in writing to reflect such reduction.

ARTICLE 34 CERTIFICATION

34.1 The Contractor shall provide to ASES within fifteen (15) Calendar Days of the Effective Date of this Contract, and thereafter by January 10 of each Calendar Year during the Contract Term, the certifications and other documents set forth below, according to the timeframe specified below. If any certification, document, acknowledgment, or other representation or assurance on the Contractor's part under this Article, or elsewhere in this Contract, is determined to be false or misleading, ASES shall have cause for termination of this Contract or to Withhold the amount of any existing debt owed to the Government of Puerto Rico in order to make a payment on behalf of the Contractor. In the event that the Contract is terminated based upon this Article, the Contractor shall reimburse ASES all sums of monies received under the Contract; provided, however, that the amount reimbursed shall not exceed the amount of outstanding debt, less any payments made by the Contractor in satisfaction of such debt.

34.2 The Contractor shall submit the following certifications:

- 34.2.1 Current Unique Certification of Professional Services Providers issued by the Puerto Rico General Services Administration (Administración de Servicios Generales" or "ASG" for its Spanish acronym).
- 34.2.2 Certification of current municipal license tax ("Patentes Municipales"), if applicable;
- 34.2.3 Certification issued by the Minor Children Support Administration ("ASUME", by its Spanish acronym) of no outstanding alimony or child support debts, if applicable;
- 34.2.4 A sworn statement certifying that the Contractor has no debt with the Government, or with any State agencies, corporations or instrumentalities that provide or are related to the provision of health services; or that such debt is subject to a payment plan with which the Contractor is in compliance, a work plan to reconcile amounts in controversy with which the Contractor is in compliance, or pending administrative review under applicable law or regulations; and
- 34.2.5 Certification from the Puerto Rico Administration of Medical Services ("ASEM", its Spanish acronym) certifying that there is no outstanding debt or, if a debt exists, that such debt is subject to a payment plan with which the Contractor is in compliance, a work plan to reconcile amounts in controversy with which the Contractor is in compliance, or pending administrative review under applicable law or regulations.

34.3 The Contractor shall, in addition, provide the following documents:

- 34.3.1 A list of all contracts the Contractor has with government agencies, public corporations or municipalities, including those contracts in the process of being executed;
- 34.3.2 A letter indicating if any of its directors serves as member of any governmental board of directors or commission;

A certificate of the Corporate Resolution, or appropriate resolution, authorizing the person signing this Contract to appear on behalf of the Contractor;and

34.3.3 A copy of the Insurance Coverage Certificate as required in Article 23.3.

34.4 If the Contractor fails to meet the obligations of Sections 34.2 and 34.3 within the required timeframe, ASES shall cease payment to the Contractor until the documents have been delivered to the ASES's satisfaction, or adequate evidence is provided to ASES that reasonable efforts have been made to obtain the documents.

ARTICLE 35 RECORDS REQUIREMENTS

35.1 General Provisions

35.1.1 The Contractor and its Subcontractor, if any, shall preserve and make available all of its records pertaining to the performance under this Contract for inspection or audit, as provided below, throughout the Contract Term, for a period of ten (10) years from the date of final payment under this Contract, and for such period, if any, as is required by applicable statute or by any other section of this Contract. If the Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for period of ten (10) years from the Termination Date of the Contract or of any resulting final settlement. The Contractor is responsible to preserve all records pertaining to its performance under this Contract, and to have them available and accessible in a timely manner, and in a reasonable format that assures their integrity. Records that relate to appeals, litigation, or the settlements of Claims arising out of the performance of this Contract, or costs and expenses of any such agreements as to which exception has been taken by the Contractor or any of its duly Authorized representatives, shall be retained by Contractor until such appeals, litigation, Claims or exceptions have been disposed of.

35.2 Records Retention and Audit Requirements

35.2.1 Since funds from the Puerto Rico Plans under Title XIX and Title XXI of the Social Security Act Medical Assistance Programs (Medicaid and CHIP) are used to finance this project in part, the Contractor shall agree to comply with the requirements and conditions of the Centers for Medicare & Medicaid Services (CMS), the US Comptroller General, the Comptroller of Puerto Rico and ASES, as to the maintenance of records related to this Contract.

35.2.2 Puerto Rico and federal standards for Audits of ASES Agents, contractors, and programs are applicable to this section and are incorporated by reference into this Contract as though fully set out herein.

35.2.3 Pursuant to the requirements of 42 CFR 434.6(a)(5) and 42 CFR 434.38, ASES, CMS, the Office of Inspector General, the Comptroller General, the Medicaid Fraud Control Unit, and their respective designees shall have the right at any time to inspect, evaluate, and Audit any pertinent records or documents of the Contractor and Subcontractor, and may inspect the premises, physical facilities, equipment, computers or other electronic systems where activities or work related to the GHP program is conducted. The right to audit exists for ten (10) years from the final date of the Contract Period or from the date of completion of any Audit, whichever is later. Any records requested hereunder

shall be produced Immediately for on-site review or sent to the requesting authority by mail within fourteen (14) Calendar Days following a request. All records shall be provided at the sole cost and expense of the Contractor. ASES shall have unlimited rights to use, disclose, and duplicate all Information and Data in any way relating to this Contract in accordance with applicable Puerto Rico and federal laws and regulations.

35.2.4 In certain circumstances, as follows, the authorities listed in Section 35.2.3 shall have the right to inspect and Audit records in a timeframe that exceeds the timeframe set forth in Section 35.1.1.

35.2.4.1 ASES determines that there is a special need to retain a particular record or group of records for a longer period and notifies the Contractor at least thirty (30) Calendar Days before the expiration of the timeframe set forth in Section 35.1.1.

35.2.4.2 There has been a contract termination, dispute, fraud, or similar fault by the Contractor, resulting in a final judgment or settlement against the Contractor, in which case the retention may be extended to three (3) years from the date of the final judgment or settlement.

35.2.4.3 ASES determines that there is a reasonable possibility of Fraud, and gives the Contractor notice, before the expiration of the timeframe set forth in Section 35.1.1, that it wishes to extend the time period for retention of records.

35.2.4.4 There has been, during the time period set forth in Section 35.1.1, an Audit initiated by CMS, the Comptroller of Puerto Rico, the US Comptroller General, and/or ASES, in which case the timeframe for retention of records shall extend until the conclusion of the Audit and publication of the final report.

35.2.5 All records retention requirements set forth in this Article or in any other Article shall be subject at all times and to the extent mandated by law and regulation, to the HIPAA regulations described elsewhere in this Contract.

35.2.6 The Contractor shall assist and cooperate with ASES in any and all matters and activities related to or arising out of any Audit or review, whether federal, private, or internal in nature, at no cost to ASES.

35.2.7 The parties also agree that the Contractor shall be solely responsible for any costs it incurs for any Audit related inquiries or matters. Moreover, the Contractor may not charge or collect any fees or compensation from ASES for any matter, activity, or inquiry related to, arising out of, or based on an Audit or review.

ARTICLE 36 CONFIDENTIALITY

36.1 General Confidentiality Requirements

36.1.1 The Contractor shall protect all Information, records, and Data collected in connection with the Contract from unauthorized disclosures. In addition, the Contractor shall agree to guard the confidentiality of Enrollee Information. Access to all individually identifiable Information relating to Medicaid Enrollees

that is obtained by the Contractor shall be limited by the Contractor to Subcontractors, consultants, advisors or agencies that require the Information in order to perform their duties in accordance with this Contract, and to such others as may be authorized by ASES in accordance with applicable law, including individuals seeking access to their own Protected Health Information, as defined by HIPAA (PHI).

- 36.1.2 The Contractor is responsible for understanding the degree to which Information obtained through the performance of this Contract is confidential under Puerto Rico and federal law, rules, and regulations.
- 36.1.3 Any other individual or entity shall be granted access to confidential Information only after complying with the requirements of Puerto Rico and federal law pertaining to such access and the Terms of this Contract. ASES shall have absolute authority to determine if and when any other individual or entity has properly obtained the right to have access to this confidential Information. The Contractor is permitted to de-identify PHI or create limited Data Sets, but such de-identification and use of de-identified Data and limited Data Sets must be in full compliance with 45 CFR 164.514. Nothing herein shall prohibit the disclosure of Information in summary, statistical, or other form that does not identify particular individuals if the Information is de-identified in accordance with applicable laws and regulations. The Contractor shall retain the right to use Information for its quality and Utilization Management and research purposes subject to the Data ownership and publicity requirements defined within the Contract. Notwithstanding the foregoing, Contractor may not use or disclose PHI for research unless such use or disclosure is in full compliance with applicable law, including HIPAA.
- 36.1.4 The Contractor, its employees, Agents, Subcontractors, consultants or advisors must treat all information that is obtained through Providers' performance of the services under this Contract, including, but not limited to, Information relating to Enrollees, Potential Enrollees, as confidential Information to the extent that confidential treatment is provided under Puerto Rico and federal law, rules, and regulations.
- 36.1.5 Any disclosure or transfer of confidential Information by the Contractor, including Information required by ASES, will be encrypted or otherwise secured in accordance with applicable law. If the Contractor receives a request for Information deemed confidential under this Contract, the Contractor will Immediately notify ASES of such request, and will make reasonable efforts to protect the Information from public disclosure.
- 36.1.6 In accordance with the timeframes outlined in Attachment 2 to this Contract, the Contractor shall develop and provide to ASES for review and approval written policies and procedures for the protection of all records and all other documents deemed confidential under this Contract including Medical Records/Enrollee Information and adolescent/sexually transmitted disease appointment records. All Enrollee Information, Medical Records, Data and Data elements collected, maintained, disclosed, transmitted, disposed or used in the administration of this Contract shall be protected by the Contractor from unauthorized disclosure per the HIPAA Privacy and Security standards codified at 45 CFR Part 160 and 45 CFR Part 164, Subparts A, C and E, and in accordance with Law 111 of September 7, 2005. The Contractor must provide

safeguards that restrict the use, access, management, transmittal, disposal or disclosure of PHI concerning Enrollees to purposes directly connected with the administration of this Contract and as permitted by the HIPAA Business Associate Agreement.

36.1.7 The Contractor must comply with HIPAA notification requirements, including those set forth in HITECH. The Contractor must notify ASES's Privacy Officer and Director of Compliance by secure email of all Breaches or suspected Breaches of unspecified PHI, as defined by HITECH and Law 111 of September 7, 2005, without unreasonable delay and in no event later than twenty-four (24) hours, if so directed by ASES or required by law, must also notify individuals and the federal Department of Health and Human Services and provide any other notices required by law. If, in ASES's determination, the Contractor has not provided notice in the manner or format prescribed by HITECH, then ASES may require the Contractor to provide such notice or be subject to sanctions for non-compliance.

36.1.8 Assurance of Confidentiality

36.1.8.1 The Contractor shall take reasonable steps to ensure the physical security of Data under its control, including, but not limited to: fire protection; protection against smoke and water damage; alarm systems; locked files, guards, or other devices reasonably expected to prevent loss or unauthorized removal of manually held Data; passwords, access logs, badges, or other methods reasonably expected to prevent loss or unauthorized access to electronically or mechanically held Data; limited terminal access; limited access to input documents and output documents; and design provisions to limit use of Enrollee names.

36.1.8.2 The Contractor shall inform and provide quarterly trainings to each of its employees having any involvement with personal Data or other confidential Information, whether with regard to design, development, operation, or maintenance, of the Puerto Rico and federal law relating to confidentiality. The Contractor shall also set forth training requirements for its agents, Subcontractors, consultants, advisors and Providers.

36.1.9 Return of Confidential Data

36.1.9.1 The Contractor shall return all Personal Health Information Data furnished or obtained pursuant to this Contract promptly at the request of ASES in whatever form it is maintained by the Contractor and Subcontractor, if any. Upon the termination or completion of the Contract, the Contractor and Subcontractor, if any, may not use any such Data or any material derived from the Data for any purpose not permitted by Puerto Rico or federal law or regulation. Where so instructed by ASES, the Contractor shall destroy such Data or material if permitted and required by Puerto Rico or federal law or regulation in the presence of ASES personnel. ASES Data and Information must be destroyed or returned to ASES in accordance with ASES' instructions. It is understood and accepted by the Contractor and its Subcontractor(s), if any, that ASES will have

unrestricted access to all technological equipment used by Contractor to provide services under this contract for auditing purposes and/or in order to certify that all ASES Data has been properly eliminated from said equipment.

36.1.10 Publicizing Safeguarding Requirements

36.1.10.1 The Contractor shall comply with 42 CFR 431.304. The Contractor agrees to publicize provisions governing the confidential nature of information about Enrollees, including the legal sanctions imposed for improper disclosure and use. The Contractor must include these provisions in the Enrollee handbook and provide copies of these provisions to Enrollees and to other persons and agencies to which information is disclosed.

36.1.10.2 In addition to the requirements expressly stated in this Article, the Contractor must comply with any policy, rule, or reasonable requirement of ASES that relates to the safeguarding or disclosure of Information relating to Enrollees, the Contractor's operations, or the Contractor's performance of this Contract.

36.1.10.3 In the event of the expiration of this Contract or termination thereof for any reason, all confidential Information disclosed to and all copies thereof made by the Contractor must be returned to ASES or, at ASES's exclusive option and prior written approval, permanently erased or destroyed in accordance with ASES' specific instructions. The Contractor must provide ASES certificates evidencing such permanent deletion and destruction. Notwithstanding, ASES retains the right to fully examine all equipment used by Contractor or Subcontractor, if any, to provide services under this Contract for auditing purposes and/or to corroborate the permanent deletion and destruction of ASES Data. Accordingly, the Contractor accepts to provide ASES unrestricted access without any recourse to allegations of Third Party confidentiality.

36.1.10.4 Pharmacy Contracts and any other of Contractor's relevant agreements shall explicitly state expectations about the confidentiality of ASES's confidential Information and Enrollee records.

36.1.10.5 The Contractor shall afford Enrollees and/or their Authorized representatives the opportunity to approve or deny the release of identifiable personal Information by the Contractor to a person or entity outside of the Contractor, except to duly authorized Subcontractors, Providers or review organizations, or when such release is required by law, regulation, or quality standards or as otherwise permitted in the HIPAA Business Associate Agreement.

36.1.10.6 This Article 36 does not restrict the Contractor from making any disclosure pursuant to any applicable law, or under any court or government agency, provided that the Contractor, prior to the disclosure, Immediately provides notice to ASES of such order.

36.2 Disclosure of ASES's Confidential Information

- 36.2.1 The Contractor shall Immediately report to ASES any and all suspected and actual unauthorized disclosures (Breaches) or uses of confidential Information of which it or its Subcontractors, consultants, or Agents are aware or have knowledge of. The Contractor acknowledges that any publication or disclosure of confidential Information to unauthorized persons may cause immediate and irreparable harm to ASES and may constitute a violation of Puerto Rico or federal statutes. If the Contractor, its Subcontractors, consultants, or Agents should publish or disclose confidential information to others without authorization, ASES will Immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity. ASES will have the right to recover from the Contractor all damages and liabilities caused by or arising from the Contractor's, its Subcontractors', Network Pharmacies', representatives', consultants', or agents' failure to protect confidential Information. The Contractor will defend with counsel approved by ASES, indemnify and hold harmless ASES from all damages, costs, liabilities, and expenses caused by or arising from the Contractor's, or its Subcontractors', Providers', representatives', consultants' or Agents' failure to protect confidential Information. ASES will not unreasonably Withhold approval of counsel selected by the Contractor.
- 36.2.2 The Contractor shall remove any person from performance of services hereunder upon notice that ASES reasonably believes that such person has failed to comply with the confidentiality obligations of this Contract. The Contractor shall replace such removed personnel in accordance with the staffing requirements of this Contract.
- 36.2.3 ASES, the Government, federal officials as authorized by federal law or regulations, or the Authorized representatives of these parties shall have access to all confidential Information in accordance with the requirements of Puerto Rico and federal laws and regulations.
- 36.2.4 The confidentiality provisions contained in this Contract survive the termination of this Contract and shall bind the Contractor, and its PMGs and Network Providers, so long as they maintain any PHI relating to Enrollees.

36.3 HIPAA Compliance

- 36.3.1 The Contractor shall assist ASES in its efforts to comply with HIPAA and its amendments, rules, procedures, and regulations. To that end, the Contractor shall cooperate with and abide by any Data privacy, security or other requirements mandated by HIPAA or any other applicable laws. The Contractor acknowledges that HIPAA requires the Contractor and ASES to sign documents for compliance purposes, including but not limited to a business associate agreement. The parties agree to the Terms of the HIPAA Business Associate Agreement included as Attachment 8 to this Contract, which is incorporated by reference. The Contractor shall cooperate with ASES on these matters and sign whatever documents may be required for HIPAA compliance and abide by their Terms and conditions. This Contract, including the HIPAA Business Associate Agreement, shall be construed in a manner that allows ASES to comply with applicable law. The Contractor shall be responsible for ensuring that individuals have the right to access and amendment of PHI and accounting of disclosures, with respect to PHI created, received, maintained or

transmitted by Contractor. The Contractor shall ensure that Enrollees receive a Notice of Privacy Practices as required by HIPAA.

36.4 Data Breach

- 36.4.1 The Contractor shall Immediately report to ASES, as required in Section 13402 of the HITECH Act, of any actual or suspected event where ASES's Data could be exposed in a non-authorized or illegal circumstance, and/or when any Data Breach occurs. The Contractor must take all reasonable steps to mitigate the Breach, notify actual or potentially impacted Enrollees, and provide appropriate notice to the applicable state and federal regulatory agencies as required by law.
- 36.4.2 The Contractor agrees that without unreasonable delay, but no later than twenty-four (24) hours after it suspects or has determined that a Data Breach occurred, the Contractor shall notify ASES of such Breach. The notification shall include sufficient Information for ASES to understand the nature of the Breach. For instance, such notification must include, at a minimum, and to the extent available at the time of the notification, the following Information:
 - 36.4.2.1 One or two sentence description of the event;
 - 36.4.2.2 Description of the roles of the people involved in the Breach (e.g., employees, participant users, Service Providers, unauthorized persons, etc.)
 - 36.4.2.3 The type of Data/Information as well as PHI that was Breached;
 - 36.4.2.4 Enrollees likely impacted by the Breach;
 - 36.4.2.5 Number of individuals or records impacted/estimated to be impacted by the Breach;
 - 36.4.2.6 Actions taken by the Contractor to mitigate the Breach;
 - 36.4.2.7 Current status of the Breach (under investigation or resolved);
 - 36.4.2.8 Corrective action taken and steps planned to be taken to prevent a similar Breach.
- 36.4.3 The Contractor shall have a duty to supplement the Information contained in the notification as it becomes available and to cooperate with ASES.

ARTICLE 37 ENFORCEMENT – LIQUIDATED DAMAGES AND OTHER REMEDIES

37.1 General Provisions

- 37.1.1 ASES may impose intermediate sanctions, liquidated damages, and/or fines pursuant to Puerto Rico Act No. 72-1993 and ASES Regulation No. 8446 (as indicated in Article 37 of this Contract).
- 37.1.2 In the event the Contractor is in default as to any applicable term, condition, or requirement of this Contract, and in accordance with any applicable provision of 42 CFR 438 Subpart I and Section 1932(d) of the Social Security Act, at any

time following the Effective Date of this Contract, the Contractor agrees that, in addition to the terms of Section 37.1.1 of this Contract, ASES may assess liquidated damages against the Contractor for any such default, in accordance with this Article 37. The parties further acknowledge and agree that the specified liquidated damages are reasonable and the result of a good faith effort by the parties to estimate the anticipated or actual harm caused by the Contractor's breach and are in lieu of any other financial remedies to which ASES may otherwise have been entitled. The assessment or non-assessment of liquidated damages under the Contract cannot and will not limit the power or authority of ASES to impose fines, civil money penalties, sanctions, or otherwise under Puerto Rico or federal laws or regulations, including but not limited to Puerto Rico Act No. 72-1993 and ASES Regulation No. 8446.

- 37.1.3 Notwithstanding any sanction, including liquidated damages, imposed upon the Contractor, other than Contract termination, the Contractor shall continue to perform all obligations under this Contract.
- 37.1.4 The Contractor's breach or failure to comply with the terms and conditions of this Contract for which liquidated damages may be assessed under this Article 37 shall be divided into four (4) categories of events. ASES retains the discretion to impose liquidated damages or other sanctions for Contractor's non-compliance with an obligation of the Contractor under this Contract or Puerto Rico Law that is not specified under the categories in Sections 37.2, 37.3, 37.4 or 37.5.

37.2 Category 1

- 37.2.1 Liquidated damages in accordance with any applicable provision of this Contract of up to one hundred thousand dollars (\$100,000) per violation, Incident or occurrence may be imposed for Category 1 events. The following constitute Category 1 events:
 - 37.2.1.1 Material non-compliance with an ASES or CMS directive, determination or notice to cease and desist not otherwise described in this Article 37, provided that the Contractor has received prior written notice with respect to such specific material non-compliance, and afforded an opportunity to cure within a reasonable period to be determined by ASES in its sole discretion.

37.3 Category 2

- 37.3.1 Liquidated damages in accordance with any applicable provision of this Contract of up to twenty-five thousand dollars (\$25,000) per violation, incident, or occurrence may be imposed for Category 2 events. The following constitute Category 2 events:
 - 37.3.1.1 Subject to ASES compliance with its obligations under Article 22 of this Contract, repeated noncompliance by the Contractor with any material obligation that adversely affects the services that the Contractor is required to provide under this Contract;
 - 37.3.1.2 Failure of the Contractor to assume its duties and obligations in accordance with the transition timeframes specified in this Contract;

- 37.3.1.3 Failure of the Contractor to terminate a Provider that imposes Co-Payments or other cost-sharing on Enrollees that are in excess of the fees permitted by ASES. ASES will deduct the amount of the overcharge and return it to the affected Enrollees);
- 37.3.1.4 Failure of the Contractor to address Provider disputes, within the timeframes specified in this Contract;
- 37.3.1.5 Failure of the Contractor to comply with the confidentiality provisions in accordance with 45 CFR 160 and 164; and
- 37.3.1.6 Failure of the Contractor to comply with a Subcontracting requirement in the Contract.

37.4 Category 3

- 37.4.1 Liquidated damages in accordance with any applicable provision this Contract of five thousand dollars (\$5,000) per day may be imposed for Category 3 events. The following constitute Category 3 events:
 - 37.4.1.1 Failure to submit required reports in the timeframes prescribed in Article 21;
 - 37.4.1.2 Submission of incorrect or deficient Deliverables or reports in accordance with Article 21 of this Contract;
 - 37.4.1.3 Failure to comply with the Claims Processing standards as follows:
 - 37.4.1.3.1 Failure to process and finalize to a paid or denied status ninety-five percent (95%) of all Clean Claims within thirty (30) Calendar Days of receipt;
 - 37.4.1.3.2 Failure to process and finalize to a paid or denied status one hundred percent (100%) of all Clean Claims within fifty (50) Calendar Days of receipt; and
 - 37.4.1.3.3 Failure to process Unclean Claims as specified in Section 8.7.3 of this Contract;
 - 37.4.1.4 Failure to pay Providers interest at the rate identified in and otherwise in accordance with Section 8.7.2.3 of this Contract when a Clean Claim is not adjudicated within the Claims Processing deadlines;
 - 37.4.1.5 Failure to provide the Actuarial Report Information required in Section 21.3 of this Contract;
 - 37.4.1.6 Failure to seek, collect and/or report TPL Information as provided in Section 26.2.8 of this Contract; and
 - 37.4.1.7 Failure of Contractor to issue written notice to Enrollees upon Network Pharmacy's termination of a Network Pharmacy as described in Section 7.7.3 of this Contract.

37.5 Category 4

37.5.1 Liquidated damages as specified below may be imposed for Category 4 events. The following constitute Category 4 events:

37.5.1.1 Failure to implement the BC-DR plan as follows:

37.5.1.1.1 Implementation of the BC-DR plan exceeds the proposed time by two (2) or less Calendar Days: five thousand dollars (\$5,000) per day up to Day Two (2);

37.5.1.1.2 Implementation of the BC-DR plan exceeds the proposed time by more than two (2) and up to five (5) Calendar Days: ten thousand dollars (\$10,000) per each day beginning with Day Three (3) and up to Day Five (5);

37.5.1.1.3 Implementation of the BC-DR plan exceeds the proposed time by more than five (5) and up to ten (10) Calendar Days, twenty-five thousand dollars (\$25,000) per Day beginning with Day Six (6) and up to Day Ten (10);

37.5.1.1.4 Implementation of the BC-DR plan exceeds the proposed time by more than ten (10) Calendar Days: fifty thousand dollars (\$50,000) per each day beginning with Day Eleven (11).

37.5.1.2 Unscheduled System Unavailability in violation of Article 19, in ASES's discretion, two hundred fifty dollars (\$250) for each thirty (30) minute period or portions thereof;

37.5.1.3 Failure to make available to ASES or its Agent, valid extracts of Claims Data Information for a specific month within fifteen (15) Calendar Days of the close of the month: five hundred dollars (\$500) per Day. After thirty (30) Calendar Days of the close of the month: two thousand dollars (\$2,000) per Calendar Day;

37.5.1.4 Failure to correct a System problem not resulting in System Unavailability within the allowed timeframe, where failure to complete was not due to the action or inaction on the part of ASES as documented in writing by the Contractor:

37.5.1.4.1 One (1) to fifteen (15) Calendar Days late: two hundred and fifty dollars (\$250) per Calendar Day for Day One (1) through Day Fifteen (15);

37.5.1.4.2 Sixteen (16) to thirty (30) Calendar Days late: five hundred dollars (\$500) per Calendar Day for Days Sixteen (16) through Thirty (30); and

37.5.1.4.3 More than thirty (30) Calendar Days late: one thousand dollars (\$1,000) per Calendar Day for Day Thirty-one (31) and beyond; and

37.5.1.5 Failure to meet the Pharmacy Call Center performance standards:

- 37.5.1.5.1 One thousand dollars (\$1,000) for each percentage point that is below the target answer rate of eighty percent (80%) in thirty (30) seconds;
- 37.5.1.5.2 One thousand dollars (\$1,000) for each percentage point that is above the target of a three percent (3%) Blocked Call rate; and
- 37.5.1.5.3 One thousand dollars (\$1,000) for each percentage point that is above the target of a five percent (5%) Abandoned Call Rate.

37.6 Other Remedies

- 37.6.1 Subject to Article 38 of this Contract, in lieu of imposing a Remedy allowed under this Article 37, ASES may elect to terminate this Contract, without any liability whatsoever (but subject to making any payments due, if any, under this Contract through any such date of termination), if the terms of a Corrective Action Plan implemented pursuant to this Article 37 to address a failure specified in Category 1 or Category 2 of this Article 37 are not implemented to ASES's satisfaction or if such failure continues or is not corrected, to ASES's sole satisfaction.
- 37.6.2 In the event of non-compliance by the Contractor with Article 20 of this Contract, ASES shall have the right to Withhold, with respect to Article 20, a sum not to exceed ten percent (10%) of the Administrative Fee paid for the following month and for continuous consecutive months thereafter until such noncompliance is cured and corrected to ASES' satisfaction in lieu of imposing any liquidated damages, penalties or sanctions against the Contractor hereunder. ASES shall release the Withhold of the Administrative Fee to the Contractor within two (2) Business Days after the corresponding event of noncompliance is cured to ASES's sole satisfaction.

37.7 Notice of Administrative Inquiry regarding Liquidated Damages and/or Other Article 37 Remedies

- 37.7.1 **Administrative Inquiry.** ASES may issue the Contractor a notice of imposition of liquidated damages and/or other Article 37 remedies in lieu of a notice of administrative inquiry regarding liquidated damages and/or other Article 37 remedies if ASES determines, in its sole discretion, that the Contractor's non-compliance will not be cured with a Corrective Action Plan. In all other cases, ASES shall issue a notice of administrative inquiry informing the Contractor about ASES's compliance, monitoring, and auditing activities regarding potential non-compliance as described in this Article 37. This notice of administrative inquiry shall include the following:
 - 37.7.1.1 A brief description of the facts;
 - 37.7.1.2 Citations to Puerto Rico and federal laws and regulations, or Contract provision(s) the Contractor has breached;
 - 37.7.1.3 The Contractor's non-compliance with Puerto Rico and federal laws and regulations or Contract provisions;

- 37.7.1.4 The Contractor's breach of applicable Contract provisions and event categories that could result in remedies or liquidated damages pursuant to this Article 37;
- 37.7.1.5 ASES's authority to determine and seek liquidated damages or other remedies against the Contractor under this Article 37;
- 37.7.1.6 The amount of potential, or Contractor's exposure to liquidated damages, or other Article 37 remedies, when they will be imposed and how they were computed; and
- 37.7.1.7 If applicable, a statement requiring the Contractor to submit a Corrective Action Plan within fifteen (15) Calendar Days of receipt of the notice of administrative inquiry under this Article 37.
- 37.7.2 The Contractor shall submit a Corrective Action Plan within fifteen (15) Calendar Days of receipt of the notice of administrative inquiry issued pursuant to this Article 37.
- 37.7.3 A notice of administrative inquiry shall not constitute ASES's final or partial determination of liquidated damages. Thus, any administrative inquiries made are not subject to administrative review under Section 37.7.6 and would be construed to be premature rendering any administrative examiner without jurisdiction to review the matter.
- 37.7.4 If the Contractor fails to comply with any material provision under a Corrective Action Plan submitted to ASES pursuant to Section 37.7.2 above, ASES may impose:
 - 37.7.4.1 A daily amount of five thousand dollars (\$5,000) in liquidated damages, up to a maximum total amount of one hundred thousand dollars (\$100,000), for the Contractor's failure to comply with any material provision part or condition of the Corrective Action Plan; and/or
 - 37.7.4.2 The applicable Article 37 Remedy for any or all behavior that resulted in the submission of Corrective Action Plan pursuant to Section 37.7.2 above.
- 37.7.5 Notice of Imposition of Liquidated Damages and/or Other Remedies
 - 37.7.5.1 Prior to the imposition of liquidated damages and/or any other remedies under this Article 37, ASES will issue a notification, delivered thorough US Postal Service Certified Mail, to the Contractor that includes the following:
 - 37.7.5.1.1 A brief description of the facts;
 - 37.7.5.1.2 Citations to Puerto Rico and federal laws and regulations, or Contract provision(s) the Contractor has breached;
 - 37.7.5.1.3 ASES's determination to assess and impose liquidated damages and/or any other Article 37 Remedy;

37.7.5.1.4 Liquidated damages and/or any other Article 37 Remedy imposed and their Effective Date;

37.7.5.1.5 Methodology for the liquidated damages and/or any other Article 37 Remedy calculation; and

37.7.5.1.6 A statement that the Contractor has a right to object and request an administrative review of the imposition of liquidated damages and other Article 37 Remedies pursuant to the procedures in ASES Regulation 8446 and Puerto Rico Act No. 38-2017, as amended.

37.7.5.2 The Contractor shall submit a Corrective Action Plan to ASES within thirty (30) Calendar Days of receipt of a notice of liquidated damages or other remedies pursuant to this Article 37.

37.7.6 **Administrative Review.** The Contractor has the right to object and seek administrative review of the imposition of liquidated damages and/or any other Remedy under this Article 37.7, pursuant to the procedures in ASES Regulation No. 8446.

37.7.6.1 As part of the administrative review, the parties shall cooperate with the examining officer, and follow all applicable procedures for the administrative review.

37.7.6.2 Once the sanction becomes final ASES shall deduct the amount of the sanction from the Administrative Fee or the Retention Fund.

37.8 Judicial Review

37.8.1 The Contractor has the right to seek reconsideration and judicial review of ASES's determination pursuant to the procedures in ASES Regulation No. 8446 and Puerto Rico Act No. 389-2017, as amended.

ARTICLE 38 TERMINATION OF CONTRACT

38.1 General Procedures

38.1.1 In addition to any other non-financial Remedy set forth in this Contract or available by law, or in lieu of any financial Remedy contained in Article 37 of this Contract or available by law, and subject to compliance with the termination procedures set forth in Section 38.8 below, ASES may terminate this Contract for any or all of the following reasons:

38.1.1.1 Default by the Contractor, upon thirty (30) Calendar Days' notice, unless ASES, in its reasonable discretion, determines that the Contractor has cured the default to ASES's satisfaction within the notice period;

38.1.1.2 Immediately, in the event of insolvency or declaration of bankruptcy by the Contractor;

38.1.1.3 Immediately, when sufficient appropriated funds no longer exist for the payment of ASES's obligation under this Contract; or

- 38.1.1.4 In the event that the Contractor or any of its shareholders, director, officers, or employees fall under the prohibition stated in Section 32.1 or 32.6 of this Contract.
- 38.1.2 A decision by ASES not to renew this Contract, per Article 24.3, shall not constitute a Termination of the Contract.
- 38.1.3 The Contractor shall have a limited right of termination of this Contract only in the events described in Section 38.10 of this Contract.
- 38.1.4 Each Party shall have the opportunity to cure any default alleged in a termination notice sent pursuant to this Article 38 upon receiving a written termination notice the other party. With respect to termination by ASES, the Contractor shall have the right to submit to ASES a written Corrective Action Plan containing terms and conditions acceptable to ASES in its sole discretion to cure such default or an explanation of non-default in the thirty (30) Calendar Day period from the date of receipt of ASES' written termination notice and such plan or explanation of non-default is accepted by ASES, in ASES' sole discretion, which acceptance shall not be unreasonably withheld, conditioned or delayed.
- 38.1.5 Notwithstanding the termination of this Contract pursuant to this Article 38 for any reason, the Contractor shall remain obligated to provide Administrative Functions, including but not limited to the payment of Claims for Covered Services provided to Enrollees prior to the Termination Date and as specified in the Patient's Bill of Rights Act through the Runoff Period.
- 38.1.6 Continuing Obligations of ASES. Notwithstanding the termination of this Contract for pursuant to this Article 38 for any reason, ASES shall remain obligated to pay to the Contractor the Administrative Fee through the Termination Date (inclusive of the Transition Period).
- 38.1.7 Termination Procedures to be Strictly Followed. No termination of this Contract shall be effective unless the termination procedures under Article 38 of this Contract have been strictly followed or waived by the parties.

38.2 Termination by Default

- 38.2.1 In the event ASES determines that the Contractor has defaulted by failing to carry out the terms or conditions of this Contract or by failing to meet the applicable requirements in sections 1932 and 1903(m) of the Social Security Act, or in the event that ASES determines that the Contractor falls within the prohibitions stated in Sections 32.1 or 32.6, ASES may terminate the Contract and place Enrollees with a different Contractor or provide GHP benefits through another state plan authority, in addition to or in lieu of any other remedies set out in this Contract or available by law.
- 38.2.2 Before terminating this Contract, ASES will:
- 38.2.2.1 Provide written notice of the intent to terminate at least thirty (30) Calendar Days prior to the Termination Date, stating the reason for the termination and the time and place of a hearing, to take place at least fifteen (15) Calendar Days after the date of mailing of the notice

of intent to terminate, to give the Contractor an opportunity to appeal the determination or cure the default;

38.2.2.2 Provide written notice of the decision affirming or reversing the proposed termination of the Contract, and for an affirming decision, the Effective Date of the termination; and

38.2.2.3 For an affirming decision, give Enrollees of the Contractor notice of the termination and information consistent with 42 CFR 438.10 on their options for receiving services following the Termination Date of the Contract.

38.3 Termination for Convenience

38.3.1 ASES may terminate this Contract for convenience and without cause upon thirty (30) Calendar Days written notice. Termination for convenience shall not be a breach of the Contract by ASES. The Contractor shall be entitled to receive and shall be limited to just and equitable compensation for any satisfactory authorized work performed as of the Termination Date of the Contract.

38.4 Termination for Insolvency or Bankruptcy

38.4.1 The Contractor's insolvency, or the Contractor's filing of a petition in bankruptcy, shall constitute grounds for termination for cause. In the event of the filing of a petition in bankruptcy, the Contractor shall immediately advise ASES. If ASES reasonably determines that the Contractor's financial condition is not sufficient to allow the Contractor to provide the services as described herein in the manner required by ASES, ASES may terminate this Contract in whole or in part, Immediately or in stages.

38.4.2 In the event that this Contract is terminated because of the Contractor's insolvency, the Contractor shall guarantee that Enrollees shall not be liable for:

38.4.2.1 The Contractor's debts;

38.4.2.2 The Covered Services provided to the Enrollee, for which ASES does not pay the Contractor or its Providers Network;

38.4.2.3 The Covered Services provided to the Enrollee, for which ASES or the Contractor does not pay a Provider who furnishes the services under a contractual, Referral, or other arrangement; or

38.4.2.4 Payment for Covered Services furnished under a contractual, Referral, or other arrangement, to the extent that those payments are in excess of the amount that the Enrollee would owe if the Contractor provided the services directly.

38.4.3 The Contractor shall cover continuation of services to Enrollees for the duration of the period for which payment has been made by ASES, as well as for inpatient admissions up to discharge.

38.5 Termination for Insufficient Funding

- 38.5.1 In the event that federal and/or Puerto Rico funds to finance this Contract become unavailable or insufficient, ASES may terminate the Contract in writing, unless both parties agree, through a written amendment, to a modification of the obligations under this Contract.
- 38.5.2 The Termination Date of the Contract when the Contract is terminated due to insufficient funding shall be ninety (90) Calendar Days after ASES delivers written notice to the Contractor, unless available funds are insufficient to continue payments in full during the ninety (90) Calendar Day period, in which case ASES shall give the Contractor written notice of an earlier date at which the Contract shall terminate.
- 38.5.3 Upon termination, the Contractor shall comply with the phase-out obligations established in Article 39 of this Contract.
- 38.5.4 In the event of termination for insufficient funding, the Contractor shall be entitled to receive, and shall be limited to, just and equitable compensation for any satisfactory authorized work performed as of the Termination Date of the Contract.
- 38.5.5 Availability of funds shall be determined solely by ASES.

38.6 Termination under Section 38.3

- 38.6.1 If any of the events specified in Section 32.3 of this Contract occur, ASES may terminate this Contract as required under Act 2 of 2018.
- 38.6.2 Upon Termination, the Contractor shall comply with the phase-out obligations established in Article 39 of this Contract.

38.7 ASES may terminate this Contract for any other just reason upon thirty (30) Calendar Days written notice.

38.8 Termination Procedures

- 38.8.1 ASES will issue a written notice of termination to the Contractor by certified mail, return receipt requested, or in person with evidence of delivery. The notice of termination shall cite the provision of this Contract giving the right to terminate, the circumstances giving rise to termination, and the Termination Date of the Contract. Termination shall be effective at 11:59 pm (Atlantic Time) on the Termination Date of the Contract.
- 38.8.2 Upon receipt of notice of termination or on the date specified in the notice of termination and as directed by ASES, the Contractor shall:
 - 38.8.2.1 Stop work under the Contract on the date and to the extent specified in the notice of termination;
 - 38.8.2.2 Place no further orders or Subcontract for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract prior to termination that is already in process;

- 38.8.2.3 Terminate all orders and Subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
- 38.8.2.4 Assign to ASES, in the manner and to the extent directed by ASES, all of the right, title, and interest of Contractor under the orders or Subcontracts so terminated, in which case ASES will have the right, at its discretion, to settle or pay any or all Claims arising out of the termination of such orders and Subcontracts;
- 38.8.2.5 With the prior written approval of ASES, settle all outstanding liabilities and all Claims arising out of such termination or orders and Subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Contract;
- 38.8.2.6 Complete the performance of such part of the work that was not terminated by the notice of termination;
- 38.8.2.7 Take such action as may be necessary, or as ASES may direct, for the protection and preservation of any and all property or Information related to the Contract that is in the possession of the Contractor and in which ASES has or may acquire an interest;
- 38.8.2.8 Promptly make available to ASES, or to another MCO acting on behalf of ASES, any and all records, whether medical or financial, related to the Contractor's activities undertaken pursuant to this Contract. Such records shall be provided at no expense to ASES;
- 38.8.2.9 Promptly supply all Information necessary to ASES, or another ASES plan acting on behalf of ASES, for reimbursement of any outstanding Claims at the time of termination; and
- 38.8.2.10 Submit a termination/transition plan to ASES for review and prior written approval that includes commitments to carry out at minimum the following obligations:
 - 38.8.2.10.1 Provide Enrollees continuation of all the Covered Services and Benefits during a defined transition period, such transition period to be determined by ASES;
 - 38.8.2.10.2 Comply with all duties and/or obligations incurred prior to the actual Termination Date of the Contract, including but not limited to, the Grievance and Appeal process;
 - 38.8.2.10.3 Maintain Claims Processing functions as necessary for ten (10) consecutive months from the Termination Date of the Contract in order to complete adjudication of all Claims;
 - 38.8.2.10.4 Transfer of all Rebate Data and files to ASES or its designee.
 - 38.8.2.10.5 Create a task force to reconcile and certify any pending and outstanding balances in connection with services rendered by the Contractor under the Contract and previous contracts between ASES and the Contractor.

- 38.8.2.10.6 File all reports concerning the Contractor's operations during the term of the Contract in the manner described in this Contract;
 - 38.8.2.10.7 Assist ASES in making all necessary notices to Network Pharmacies at least thirty (30) Calendar Days prior to the Effective Date of change and as may be required under the Contract, or otherwise required under applicable law, regarding notices to Enrollees;
 - 38.8.2.10.8 Ensure the efficient and orderly transition of Enrollees from coverage under this Contract to coverage under any new arrangement developed or agreed to by ASES, including cooperation with another contractor, as provided in Article 39;
 - 38.8.2.10.9 Ensure the proper identification of the Enrollees requiring the authorization for prescription medications to avoid any interruptions in services by providing such Data to ASES as contemplated in the transition plan;
 - 38.8.2.10.10 Submit to ASES all scripts used at Call Centers to communicate with Network Pharmacies during the transition period;
 - 38.8.2.10.11 Maintain the financial requirements and insurance set forth in this Contract until ASES provides the Contractor written notice that all continuing obligations of this Contract have been fulfilled;
 - 38.8.2.10.12 Submit reports to ASES as directed but no less frequently than every thirty (30) Calendar Days, detailing the Contractor's progress in completing its continuing obligations under this Contract, until completion; and
 - 38.8.2.10.13 Meet with ASES personnel, as requested, to ensure satisfactory completion of all obligations under the termination plan.
- 38.8.3 This termination plan shall be subject to review and approval by CMS.
- 38.8.4 Upon completion of these continuing obligations, the Contractor shall submit a final report to ASES describing how the Contractor has completed its continuing obligations. ASES will advise, within twenty (20) Calendar Days of receipt of this report, if all of the Contractor's obligations are discharged. If ASES finds that the final report does not evidence that the Contractor has fulfilled its continuing obligations, then ASES will require the Contractor to submit a revised final report to ASES for approval, and take any other action necessary to discharge all of its duties under this Contract, as directed by ASES.
- 38.8.5 Except as provided in this Article 38, a notification that ASES intends to terminate this Contract shall not release the Contractor from its obligations to pay for Covered Services rendered or otherwise to perform under this Contract.

38.9 Termination Claims

- 38.9.1 After receipt of a notice of termination, the Contractor shall submit to ASES any termination Claim in the form, and with the certification prescribed by, ASES. Such Claim shall be submitted promptly but in no event later than ten (10) months from the Termination Date of the Contract. Upon failure of the Contractor to submit its termination Claim within the time allowed, ASES may determine, on the basis of Information available, the amount, if any, due to the Contractor by reason of the termination and shall thereupon cause to be paid to the Contractor the amount so determined.
- 38.9.2 Upon receipt of notice of termination, the Contractor shall have no entitlement to receive any amount for lost revenues or anticipated profits or for expenditures associated with this Contract or any other contract. Upon termination the Contractor shall be paid in accordance with the following:
- 38.9.2.1 At the Contract price(s) for services delivered to and accepted by ASES; and/or
- 38.9.2.2 At a price mutually agreed upon by the Contractor and ASES for partially completed services.
- 38.9.3 In the event the Contractor and ASES fail to agree in whole or in part as to the amounts with respect to costs to be paid to the Contractor in connection with the total or partial termination of work pursuant to this Article, ASES will determine, on the basis of Information available, the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

38.10 Limited Right of Termination by the Contractor

- 38.10.1 Subject to compliance with the termination procedures set forth in Section 38.8, the Contractor may terminate this Contract under the following circumstances:
- 38.10.1.1 **Termination Due to ASES's Financial Breach.** Upon fifteen (15) Calendar Days written notice, in the event ASES defaults in making payment of three (3) consecutive monthly Payments and fails to cure such breach within the notice period. For purposes of this section, a default in making payment does not include instances where ASES has made any Withhold payments pursuant to the terms of this Contract, provided that ASES has given the Contractor advance written notice of any such Withhold.
- 38.10.2 **Termination Due to Insufficient Funding.** Immediately, upon receipt from ASES of a written notice pursuant to Section 38.5 that appropriated federal and/or Puerto Rico funds become unavailable or that such funds will be insufficient for the payment of ASES's obligation under this Contract when due, unless both parties agree, through a written amendment, to a modification of the obligations under this Contract.
- 38.10.3 If forty-five (45) Calendar Days before the last day of each Fiscal Year covered under the Contract, the Contractor and ASES have not (as provided in Section 25) agreed to Administrative Fee for the succeeding Contract Year, the Contractor may exercise an option to terminate the Contract by giving ASES

written notice of the Contractor's intent not to continue to provide services under the Contract no later than forty-five (45) Calendar Days prior to the termination of the corresponding Contract Year. Once the Contractor has given ASES such written notice, the Contractor shall fully discharge the termination phase-out obligations listed in Section 36.8. At any time before the end of the Contract Year, the Contractor may rescind its notice of termination, if the parties reach an agreement on fees for the following Contract Year.

ARTICLE 39 PHASE-OUT AND COOPERATION WITH OTHER CONTRACTORS

- 39.1** If in the best interest of Enrollees of GHP, ASES develops and implements new projects that impact the scope of services, the Contractor shall assist in the transition process, after receiving at least ninety (90) Calendar Days written notice from ASES of such change, and pursuant to written amendment of the Contract, if required. Payments shall be adjusted accordingly.
- 39.2** In the event that ASES has entered into, or enters into, agreements with other contractors for additional work related to the obligations rendered hereunder, the Contractor agrees to cooperate fully with such other contractors. The Contractor shall not commit any act or omission that will interfere with the performance of work by any other contractor, or actions taken by ASES to facilitate the work.
- 39.3** If ASES chooses not to renew this Contract, pursuant to Article 24.3, the Contractor agrees that it will not engage in any behavior or inaction that prevents or hinders the work of another contractor or ASES, as the case may be. Upon receiving ASES's notice that it does not intend to renew the Contract, the Contractor agrees to submit a written termination/transition plan to ASES within thirty (30) Calendar Days of receiving the notice. The turn-over plan shall include all the elements listed in Section 38.8.2.10. The Parties agree that the Contractor has not successfully met this obligation until ASES accepts its turn-over plan and/or transition plan, required under this Article 39.

ARTICLE 40 COMPLIANCE WITH ALL LAWS

40.1 Nondiscrimination

- 40.1.1 The Contractor shall comply with applicable federal and Puerto Rico laws, rules, and regulations, and the Puerto Rico policy relative to nondiscrimination in employment practices because of political affiliation, religion, race, color, sex, physical handicap, age, or national origin. Applicable federal nondiscrimination law includes, but is not limited to, Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972, as amended; the Age Discrimination Act of 1975, as amended; Equal Employment Opportunity and its implementing regulations (45 CFR 74 Appendix A (1), Executive Order 11246 and 11375); the Rehabilitation Act of 1973; and the Americans with Disabilities Act of 1993 and its implementing regulations (including but not limited to 28 CFR § 35.100 et seq.). Nondiscrimination in employment practices is applicable to employees for employment, promotions, dismissal and other elements affecting employment.
- 40.1.2 The Contractor shall comply with all provisions of the Puerto Rico Patient's Bill of Rights and the implementing regulation, which prohibits discrimination against any patient.

40.2 Compliance with All Laws in the Delivery of Service

- 40.2.1 The Contractor agrees that all work done under this Contract will comply fully with and abide by all applicable federal and Puerto Rico laws, rules, regulations, statutes, policies, or procedures that may govern the Contract, including but not limited to those listed in Attachment 1 to this Contract.
- 40.2.2 All applicable Puerto Rico and federal laws, rules, and regulations, consent decrees, court orders, policy letters and normative letters, and policies and procedures, including but not limited to those described in Attachment 1 to this Contract, are hereby incorporated by reference into this Contract. Any change in those applicable laws and requirements, including any new law, regulations, policy guidance, or normative letter, shall be automatically incorporated into this Contract by reference as soon as it becomes effective.
- 40.2.3 At the request of either party, ASES will evaluate any enacted federal, state or local legislative or regulatory changes with applicability to the GHP program that materially impact the Payment. If after a process of actuarial evaluation, using credible Data, ASES determines that the enacted legislative and/or regulatory changes materially impact the Payment, ASES will adjust the rates to reflect the above-referenced changes after the adjusted rates are approved by CMS. Any revisions to the Payments under this Section would be applicable from February 1, 2022 to [], or from the Effective Date of any new law or regulation, whichever is later.
- 40.2.4 To the extent that applicable laws, rules, regulations, statutes, policies, or procedures require the Contractor to take action or inaction, any costs, expenses, or fees associated with that action or inaction shall be borne and paid by the Contractor solely. Such compliance-associated costs include, but are not limited to, attorneys' fees, accounting fees, research costs, or consultant costs, where these costs are related to, arise from, or are caused by compliance with any and all laws. In the event of a disagreement on this matter, ASES's determination on this matter shall be conclusive and not subject to appeal.
- 40.2.5 The Contractor shall include notice of grantor agency requirements and regulations pertaining to reporting and patient rights under any contracts involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in Data.
- 40.2.6 The Contractor certifies and warrants to ASES that at the time of execution of this Contract: (i) it is a corporation or entity duly authorized to conduct business in Puerto Rico, and has filed all the required income tax returns for the preceding five (5) years; and (ii) it filed its report due with the Office of the Commissioner of Insurance during the five (5) years preceding the Execution Date of this Contract.

ARTICLE 41 CONFLICT OF INTEREST AND CONTRACTOR INDEPENDENCE

- 41.1** The duty to provide Information about conflicts of interests extends throughout the Contract Term.

- 41.2** The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any material manner or degree with or have a material adverse effect on the performance of Contracted Services hereunder. The Contractor further covenants that in the performance of the Contract no person having any such interest shall be employed. The Contractor shall submit a conflict of interest form, attesting to these same facts, by January 10 of each Calendar Year; and at any time, within fifteen (15) Calendar Days of request by ASES.
- 41.3** It shall be the responsibility of the Contractor to maintain independence and to establish necessary policies and procedures to assist the Contractor in determining if the actual individuals performing work under this Contract have any impairment to their independence.
- 41.4** The Contractor further agrees to take all necessary actions to eliminate threats to impartiality and independence, including but not limited to reassigning, removing, or terminating Providers or Subcontractors.

ARTICLE 42 CHOICE OF LAW OR VENUE

- 42.1** This Contract shall be governed in all respects by the laws of Puerto Rico. Any lawsuit or other action brought against ASES or the Government based upon or arising from this Contract shall be brought in a court of competent jurisdiction in Puerto Rico. Nothing in this Section shall be construed as a restriction on the ability of the Contractor to discuss matters relating to this Contract in ASES's administrative forum.

ARTICLE 43 ATTORNEY'S FEES

- 43.1** In the event that either party deems it necessary to take legal action to enforce any provision of this Contract, and in the event ASES prevails, the Contractor agrees to pay all expenses of such an action including reasonable attorney's fees and costs at all stages of litigation as awarded by the court, a lawful tribunal, a hearing officer, or an administrative law judge. The term legal action shall be deemed to include administrative proceedings of all kinds, as well as all actions regarding the law or equity.

ARTICLE 44 SURVIVABILITY

- 44.1** The terms, provisions, representations, and warranties contained in this Contract shall survive the delivery or provision of all services hereunder.

ARTICLE 45 PROHIBITED AFFILIATIONS WITH INDIVIDUALS DEBARRED & SUSPENDED

- 45.1** The Contractor certifies that it is not presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any federal or Puerto Rico agency. In addition, the Contractor certifies that it does not employ or Subcontract with any person or entity that could be excluded from participation in the Medicaid Program under 42 CFR 1001.1001 (exclusion of entities owned or controlled by a sanctioned person) or 1001.1051 (exclusion of individuals with ownership or control interest in sanctioned entities), and that Contractor screens for such exclusions on a monthly basis. Any violation of this Article shall be grounds for termination of the Contract.

ARTICLE 46 WAIVER

- 46.1** No covenant, condition, duty, obligation, or undertaking contained in or made a part of the Contract shall be waived except by the written agreement of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, conditions, duties, obligations, and undertakings to be kept, performed, or discharged by the party to which the same may apply. Notwithstanding any such forbearance or indulgence, the other party shall have the right to invoke any Remedy available under law or equity until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings.
- 46.2** The waiver by ASES of any breach of any provision contained in this Contract shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other provision contained in this Contract and shall not establish a course of performance between the parties contradictory to the terms hereof. No term or condition of the Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties thereto.

ARTICLE 47 FORCE MAJEURE

- 47.1** Neither party of this Contract shall be held responsible for delays or failures in performance resulting from acts beyond the control of each party. Such acts shall include, but not be limited to, acts of God, strikes, riots, lockouts, acts of war, epidemics, fire, earthquakes, or other disasters.

ARTICLE 48 BINDING

- 48.1** This Contract and all of its terms, conditions, requirements, and amendments shall be binding on ASES and the Contractor and for their respective successors and permitted assigns.

ARTICLE 49 TIME IS OF THE ESSENCE

- 49.1** Time is of the essence in this Contract. Any reference to "days" shall be deemed Calendar Days unless otherwise specifically stated.

ARTICLE 50 AUTHORITY

- 50.1** ASES has full power and authority to enter into this Contract as does the person acting on behalf of and signing for the Contractor. Additionally, the person signing on behalf of the Contractor has been properly authorized and empowered to enter into this Contract on behalf of the Contractor and to bind the Contractor to the terms of this Contract. Each party further acknowledges that it has had the opportunity to consult with and/or retain legal counsel of its choice and read this Contract. Each party acknowledges that it understands this Contract and agrees to be bound by it.

ARTICLE 51 ETHICS IN PUBLIC CONTRACTING

- 51.1** The Contractor understands, states, and certifies that it made its Proposal without collusion or Fraud and that it did not offer or receive any kickbacks or other inducements from any other Contractor, supplier, manufacturer, or Subcontractor in connection with its Proposal.

51.2 The Contractor understands, states, and certifies that it will comply with the requirements of the Code of Ethics for Contractors, Suppliers and Applicants of Economic Incentives of the Government of Puerto Rico, as described in Title III of Act 2 of January 4, 2018, known as the "Anticorruption Code for the New Puerto Rico."

ARTICLE 52 CONTRACT LANGUAGE INTERPRETATION

52.1 The Contractor and ASES agree that in the event of a disagreement regarding, arising out of, or related to, Contract language interpretation, ASES's interpretation of the Contract language in dispute shall control and govern.

ARTICLE 53 ARTICLE AND SECTION TITLES NOT CONTROLLING

53.1 The Article and Section titles used in this Contract are for reference purposes only and shall not be deemed to be a part of this Contract.

ARTICLE 54 LIMITATION OF LIABILITY/EXCEPTIONS

54.1 Nothing in this Contract shall limit the Contractor's indemnification liability or civil liability arising from, based on, or related to Claims brought by ASES or any third party or any Claims brought against ASES or the Government by a third party or the Contractor.

ARTICLE 55 OWNERSHIP AND FINANCIAL DISCLOSURE

55.1 As per 42 CFR 455.104, disclosure by the Contractor will include the following Information on ownership and control provided to ASES in accordance with the timeframes in 42 CFR 455.104(c)(2):

55.1.1 The name and address of any person (individual or corporation) with an ownership or control interest in the disclosing entity, fiscal Agent, or Contractor. The address for corporate entities must include as applicable primary business address, every business location, and P.O. Box address;

55.1.2 Date of birth and Social Security Number (in the case of an individual);

55.1.3 Other tax identification number (in the case of a corporation) with an ownership or control interest in the disclosing entity (or fiscal Agent or managed care entity) or in any Subcontractor in which the disclosing entity (or fiscal Agent or managed care entity) has a five percent (5%) or more interest.

55.1.4 Whether the person (individual or corporation) with an ownership or control interest in the Contractor is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any Subcontractor in which the disclosing entity (or fiscal Agent or managed care entity) has a five percent (5%) or more interest is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling.

55.1.5 The name of any other disclosing entity (or fiscal Agent or MCO) in which an owner of the disclosing entity (or fiscal Agent or managed care entity) has an ownership or control interest.

55.1.6 The name, address, date of birth, and Social Security Number of any managing employee of the disclosing entity (or fiscal Agent or managed care entity).

ARTICLE 56 AMENDMENT IN WRITING

56.1 No amendment, waiver, termination, or discharge of this Contract, or any of the terms or provisions hereof, shall be binding upon either party unless confirmed in writing by ASES and any other appropriate governmental agency. Additionally, CMS approval shall be required before any such amendment is effective. Any agreement of the parties to amend, modify, eliminate, or otherwise change any part of this Contract shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be in full force and effect as set out herein.

56.2 ASES reserves the authority to seek an amendment to this Contract at any time if such an amendment is necessary in order for the terms of this Contract to comply with federal law, the laws of Puerto Rico or the Government of Puerto Rico Fiscal Plan as certified by the Financial Oversight and Management Board for Puerto Rico pursuant to the Puerto Rico Oversight, Management and Economic Stability Act of 2016. The Contractor shall consent to any such amendment.

ARTICLE 57 CONTRACT ASSIGNMENT

57.1 The Contractor shall not assign this Contract, in whole or in part, without the prior written consent of ASES, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.

ARTICLE 58 SEVERABILITY

58.1 If any article, section, paragraph, term, condition, provision, or other part of this Contract (including items incorporated by reference) is judged, held, declared, or found to be voidable, illegal, unenforceable, invalid or void, then both ASES and the Contractor shall be relieved of all obligations arising under such provision. However, if the remainder of the Contract is capable of being performed, it shall not be affected by such declaration or finding, and those duties and tasks shall be fully performed. To this end, the provisions of the Contract are declared to be severable.

ARTICLE 59 ENTIRE AGREEMENT

59.1 This Contract constitutes the entire agreement between the parties with respect to the subject matter herein and supersedes all prior negotiations, representations, or contracts. No written or oral agreements, representatives, statements, negotiations, understandings, or discussions that are not set out, referenced, or specifically incorporated in this Contract shall in any way be binding or of effect between the parties.

59.2 The terms of the Request for Proposals and of the Contractor's Proposal are incorporated by reference, except as otherwise provided in this Contract. However, in the event of a conflict between the terms of this Contract and the terms of the Request for Proposals or the terms of the Contractor's Proposal, the terms of this Contract shall prevail.

59.3 All applicable laws are incorporated by reference into this Contract, as provided in Article 40.

59.4 Subject to Section 56, the Contractor acknowledges that it may be necessary or convenient during the Contract Term to clarify or supplement certain terms and conditions of this Contract so that it conforms to the terms of the Request for Proposals or otherwise in order to incorporate CMS requirements. In any of these events, the Contractor agrees that ASES shall have the right to issue from time to time normative letters which shall be then incorporated into the Contract. Such normative letters are advisory in nature, and shall not, absent an amendment to the Contract, effect a change in the Contractor's substantive obligations under this Contract.

ARTICLE 60 INDEMNIFICATION

60.1 The Contractor hereby releases and agrees to indemnify and hold ASES, the Government, and its departments, agencies, and instrumentalities harmless from and against any and all claims, demands, liabilities, losses, costs or expenses, and attorneys' fees, caused by, growing out of, or arising from this Contract, due to any act or omission on the part of the Contractor, its Agents, employees, customers, invitees, licensees, or others working at the direction of the Contractor or on its behalf, or due to any breach of this Contract by the Contractor, or due to the application or violation of any pertinent federal, Puerto Rico or local law, rule or regulation. This indemnification extends to the successors and assigns of the Contractor and survives the termination of the Contract and the dissolution or, to the extent allowed by the law, the bankruptcy of the Contractor.

ARTICLE 61 NOTICES

61.1 All notices, consents, approvals, and requests required or permitted shall be given in writing and shall be effective for all purposes if hand delivered or sent by (i) personal delivery, (ii) expedited prepaid delivery service, either commercial or US Postal Service, with proof of attempted delivery, (iii) telecopies, or (iv) email. All communications under this section shall be addressed as follows:

Mailing Address:

Administración de Seguros de Salud
P.O. Box 195661
San Juan, PR 00919-5661

Physical Address:

Administración de Seguros de Salud
Urb. Caribe 1549
Ave. Ponce de León, Sec. El Cinco
San Juan, PR 00926-2706

Attention: Executive Director

Mailing Address:

Physical Address:

Attention: President

61.2 All notices, elections, requests, and demands under this Contract shall be effective and deemed received upon the earliest of (i) the actual receipt of the item by personal delivery or otherwise, (ii) two (2) Business Days after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the US mail as required above or (iv) on the day sent if sent by facsimile with voice confirmation on or before 4:00 pm (Atlantic Time) on any Business Day or on the next Business Day if so delivered after 4:00 pm (Atlantic Time) or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver

because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

ARTICLE 62 OFFICE OF THE COMPTROLLER

- 62.1** ASES will file this Contract in the Office of the Comptroller of Puerto Rico within fifteen (15) Calendar Days from the Effective Date of the Contract.

ARTICLE 63 OTHER MANDATORY GOVERNMENT CLAUSES

- 63.1** The present contract constitutes an inherent and mandatory component of the Government Health Plan, for which reason it is exempted from Act No. 66 of 2014 and Act No. 3 of 2017, as amended, and corresponding government memorandums.
- 63.2** Parties recognize and acknowledge that the contracted services can be rendered to any entity of the Executive Branch, with which ASES execute an interagency agreement or by direct disposition of the Governor's Chief of Staff (Secretario de la Gobernación). These services shall be rendered under the same terms and conditions specified on the present Contract, as for work hours and compensation. Although this contract is exempted from this requirement, it is included for purposes of uniformity.
- 63.3** 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.
- 63.4** The Governor's Chief of Staff shall have the power to cancel this Agreement at any moment. Although this contract is exempted from this requirement, it is included for purposes of uniformity.

According to the dispositions specified in Section VI of the Memorandum Number 001-2021, the Governor's 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.

- 63.5** Contract Review Policy of the Financial Oversight and Management Board 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 Oversight and Management Board for Puerto Rico and in force as of November 6, 2017 and as amended on October 30, 2020, signed by the Contractor's Executive Director (or other official with a position or authority equivalent to issue such certifications). A signed copy of the Contractor Certification Requirement is included as an annex to this Contract. (Attachment 9 to this Contract). The Contractor represents and warrants that the information included in the Contractor Certification Requirement is complete, accurate and correct, and that any misrepresentation, inaccuracy or falseness in such Certification will render the contract null and void and the Contractor will have the obligation to reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under this Contract.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties state and affirm that they are duly authorized to bind the respected entities designated below as of the day and year indicated.

ADMINISTRACIÓN DE SEGUROS DE SALUD DE PUERTO RICO (ASES)
Employer Identification Number: 66-0500678

Executive Director

Date

NAME OF CONTRACTOR
Employer Identification Number:

President

Date