



16.1.4.3.3 The Contractor has taken actions that have caused substantial risk to Enrollees' health;

16.1.4.3.4 ASES determines that temporary management is necessary or convenient to ensure the health of the Contractor's Enrollees; or

16.1.4.3.5 ASES determines that such Enrollment termination is necessary or appropriate to remedy Category 1 through 3 violations.

16.1.4.4 **Enrollment Suspension** – ASES may suspend all new Enrollments, including default Enrollment, after the effective date of the intermediate sanction and until the intermediate sanction is no longer in effect.

16.1.4.5 **Payment Suspension** – ASES may suspend payment of the PMPM Payment for Enrollees enrolled after the effective date of the intermediate sanction and until CMS or ASES is satisfied that the reason for imposition of the intermediate sanction no longer exists and is not likely to re-occur or upon the Termination Date of the Contract.

16.1.4.6 **Mandatory Imposition of Certain Intermediate Sanctions** – ASES shall impose the temporary management and Enrollment suspension intermediate sanctions described in Sections 16.1.4.2 and 16.1.4.3 above, if ASES finds that the Contractor has repeatedly failed to meet substantive requirements in Sections 1903(m) or 1932 of the Social Security Act, as amended, found at 42 U.S.C. §§ 1396b (m) and 1396u-2.

16.1.4.7 Subject to Article 30 of this Contract, in lieu of imposing a sanction allowed under this Article 16, ASES may terminate this Contract, and place Enrollees with a different Contractor or provide Medicare Platino benefits through another state plan authority, without any liability whatsoever (but subject to making any payments due under this Contract through any such date of termination), if the terms of a Corrective Action Plan implemented pursuant to this Article 16 to address a failure specified in Category 1 or Category 2 of this Article 16 are not implemented to ASES's approval or if such failure continues or is not corrected, to ASES's satisfaction.

## 16.2 Notice of Administrative Inquiry

16.2.1 ASES may issue the Contractor a notice of imposition of sanctions in lieu of a notice of administrative inquiry 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 Contractor about ASES's compliance, monitoring, and auditing activities regarding potential non-compliance as described in this Article 16. This notice of administrative inquiry shall include the following:

- 16.2.1.1 A brief description of the facts;
- 16.2.1.2 Citations to Puerto Rico and Federal laws and regulations, or Contract provisions that the Contractor has breached;
- 16.2.1.3 The Contractor's non-compliance with Puerto Rico and Federal laws and regulations or Contract provisions as referenced in the Contract;
- 16.2.1.4 The Contractor's breach of applicable intermediate sanction Contract provisions;
- 16.2.1.5 ASES's authority to determine and impose intermediate sanctions under this Article 16;
- 16.2.1.6 The amount of potential, or Contractor's exposure to intermediate sanctions, when they will be imposed and how they were computed; and
- 16.2.1.7 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 16.

16.2.2 The Contractor shall submit a Corrective Action Plan within fifteen (15) Calendar Days of receipt of the notice of administrative inquiry. However, the submission of a Corrective Action Plan shall not limit ASES's power and authority to impose intermediate sanctions, fines, liquidated damages, or any other remedy allowed under this Contract or under Federal or Puerto Rico laws and regulations.

16.2.3 A notice of administrative inquiry shall not be deemed to constitute and is not ASES's final or partial determination of intermediate sanctions. Thus, any administrative inquiries issued by ASES are not subject to administrative review under Section 16.4, and would be considered premature rendering any administrative examiner without jurisdiction to review the matter.

16.2.4 If the Contractor fails to comply with any material provision under a Corrective Action Plan submitted to ASES pursuant to Section 16.2.2 above, ASES may impose:

- 16.2.4.1 A daily \$5,000 civil money penalty, up to a maximum total of \$100,000, for Contractor's ongoing failure to comply with any material provision of the Corrective Action Plan; or



16.2.4.2 The applicable intermediate sanction for any or all behavior that resulted in the Contractor's submission of the Corrective Action Plan pursuant to Section 16.2.2 above.

Notice of Imposition of Intermediate Sanctions

16.3.1 Prior to the imposition of intermediate sanctions, ASES will issue a notification, delivered thorough US Postal Service Certified Mail, to the Contractor that includes the following:

16.3.1.1 A brief description of the facts;

16.3.1.2 Citations to Puerto Rico and Federal laws and regulations, or Contract provision(s) that the Contractor has breached;

16.3.1.3 ASES's determination to impose intermediate sanctions;

16.3.1.4 Intermediate sanctions imposed and their effective date;

16.3.1.5 Methodology for the civil money penalty calculation or determination of the intermediate sanctions; and

16.3.1.6 A statement that the Contractor has a right to object and request an administrative review of the imposition of intermediate sanctions pursuant to the procedures in ASES Regulation 8446.

16.3.2 ASES shall notify CMS in writing of the imposition of intermediate sanctions within thirty (30) Calendar Days of imposing sanctions and concurrently provide the Contractor with a copy of such notice

16.4 **Administrative Review.** Contractor has the right to object and seek administrative review of the imposition of intermediate sanctions, including but not limited to civil money penalties, by ASES, pursuant to the procedures in ASES Regulation No. 8446.

16.4.1 The Contractor has the right within fifteen (15) Calendar Days following receipt of the notice of imposition of intermediate sanctions to seek administrative review in writing of ASES's determination and any such immediate sanctions, pursuant to Act 72 or under any other applicable law or regulation. This time period can be extended for an additional fifteen (15) Calendar Days if the Contractor submits a written request that includes a credible explanation of why it needs additional time, the request is received by ASES before the end of the initial period, and ASES has determined that the Contractor's conduct does not pose a threat to an Enrollee's health or safety.

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



16.4.3 Upon completion of the administrative review, the examining officer may recommend to:

16.4.3.1 Confirm the intermediate sanctions;

16.4.3.2 Modify or amend the intermediate sanctions pursuant to applicable law or regulation; or

16.4.3.3 Eliminate the imposed intermediate sanctions.

16.4.4 Once the sanction becomes final ASES shall deduct the amount of the sanction from payments owed to the Contractor.

16.4.5 In addition to the actions described under Section 16.4.3, the examining officer may recommend the delivery and implementation of a Corrective Action Plan with respect to the Contractor's failure to comply with the terms of this Contract as set forth in ASES' notice of intermediate sanctions.

16.4.6 ASES shall notify CMS in writing of any modification in the imposition of intermediate sanctions through the administrative review process within thirty (30) Calendar Days of receipt of the examining officer's determination, and concurrently provide the Contractor with a copy of such notice.

16.5 **Judicial Review** - To the extent administrative review is sought by the Contractor pursuant to Section 16.4, the Contractor has the right to seek judicial review of ASES's Actions by the Puerto Rico Court of Appeals, San Juan Panel, within thirty (30) Calendar Days of the notice of final determination issued by ASES.

16.6 **Federal Sanctions** - Payments provided for under this Contract will be denied for new Enrollees when, and for so long as, payment for those Enrollees is denied by CMS in accordance with the requirements in 42 C.F.R. 438.730.

## ARTICLE 17 ENFORCEMENT - LIQUIDATED DAMAGES AND OTHER REMEDIES

### 17.1 General Provisions

17.1.1 ASES may impose intermediate sanctions, liquidated damages, and/or fines pursuant to Puerto Rico Act No. 72-1993 and ASES Regulation No. 8446.

17.1.2 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 438.700 and Section 4707 of the Balanced Budget Act of 1997, at any time following the Effective Date of this Contract, the Contractor agrees that, in addition to the terms of Section 30.1.1 of this Contract, ASES may assess liquidated damages against the Contractor for any such default, in accordance with this Article 17. ASES may not impose liquidated damages with respect to a specific event of default of Contractor for which intermediate sanctions, including but not limited to civil monetary



penalties, sought to be imposed or are imposed against the Contractor under Article 16. 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 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 other remedies under Article 17 of this Contract or otherwise under by The Government of Puerto Rico or Federal laws or regulations, including fines pursuant to Puerto Rico Act No. 134 of 2013.

17.1.3 Notwithstanding any sanction, including liquidated damages, imposed upon the Contractor, other than Contract termination, the Contractor shall continue to provide all Covered Services and other Benefits under this Contract.

17.1.4 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 17 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 17.2, 17.3, 17.4 or 17.5.

**17.2 Category 1**

17.2.1 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:

17.2.1.1 Material non-compliance with an ASES or CMS directive, determination or notice to cease and desist not otherwise described in Article 16 or other provision of this Article 17, 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.

**17.3 Category 2**

17.3.1 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:



- 17.3.1.1 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 Article 5 of this Contract;
- 17.3.1.2 Failure of the Contractor to assume its duties and obligations under this Contract in accordance with the transition timeframes specified herein;
- 17.3.1.3 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);
- 17.3.1.4 Failure of the Contractor to address Enrollees' Complaints, Appeals, and Grievances, and Provider disputes, within the timeframes specified in this Contract;
- 17.3.1.5 Failure of the Contractor to comply with the confidentiality provisions in accordance with 45 CFR 160 and 164; and
- 17.3.1.6 Failure of the Contractor to comply with a subcontracting requirement in the Contract.

#### 17.4 Category 3

- 17.4.1 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:
  - 17.4.1.1 Failure to submit required reports in the timeframes prescribed in Article 15;
  - 17.4.1.2 Submission of incorrect or deficient Deliverables as set forth in Appendix L to this Contract or reports in accordance with Article 15 of this Contract;
  - 17.4.1.3 Failure to comply with the Claims processing standards as follows:
    - 17.4.1.3.1 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;



17.4.1.3.2 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

17.4.1.3.3 Failure to process Unclean Claims as specified in Section 13.10.3 of this Contract;

17.4.1.4 Failure to pay Providers interest at the rate identified in and otherwise in accordance with Section 13.10.2.3 of this Contract when a Clean Claim is not adjudicated within the Claims processing deadlines;

17.4.1.5

17.4.1.6 Failure to seek, collect and/or report Third Party Liability information as provided in Section 20.2 of this Contract; and

17.4.1.7 Failure of Contractor to issue written notice to Enrollees upon Provider's termination of a Provider as described in Section 73 of this Contract.

#### 17.5 Category 4

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

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

17.5.1.1.1 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 2;

17.5.1.1.2 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 3 and up to day 5;

17.5.1.1.3 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 6 and up to day 10;

17.5.1.1.4 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 11;



- 17.5.1.2      Unscheduled System Unavailability in violation of Article 14, in ASES's discretion, two hundred fifty dollars (\$250) for each thirty (30) minute period or portions thereof;
- 17.5.1.3      Failure to make available to ASES or its Agent, valid extracts of Encounter 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;
- 17.5.1.4      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:
  - 17.5.1.4.1    One (1) to fifteen (15) Calendar Days late: two hundred and fifty dollars (\$250) per Calendar Day for days 1 through 15;
  - 17.5.1.4.2    Sixteen (16) to thirty (30) Calendar Days late: five hundred dollars (\$500) per Calendar Day for days 16 through 30; and
  - 17.5.1.4.3    More than thirty (30) Calendar Days late: one thousand dollars (\$1,000) per Calendar Day for days 31 and beyond; and

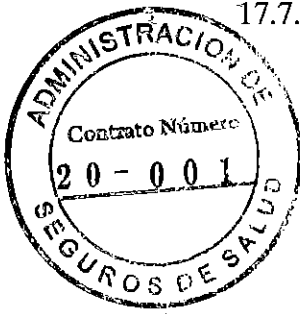
**17.6 Other Remedies**

17.6.1      Subject to Article 30 of this Contract, in lieu of imposing a Remedy allowed under this Article 17, 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 17 to address a failure specified in Category 1 or Category 2 of this Article 17 are not implemented to ASES's satisfaction or if such failure continues or is not corrected, to ASES's sole satisfaction.

17.6.2      In the event of non-compliance by the Contractor with Article 15 of this Contract, ASES shall have the right to Withhold, with respect to Article 15, a sum not to exceed ten percent (10%) of the Per Member Per Month Payment 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 PMPM Payment to the Contractor within two (2) Business Days after the corresponding event of noncompliance is cured to ASES's sole satisfaction.



**17.7 Notice of Administrative Inquiry regarding Liquidated Damages and/or Other Article 17 Remedies**



17.7.1 Administrative Inquiry. ASES may issue the Contractor a notice of imposition of liquidated damages and/or other Article 17 remedies in lieu of a notice of administrative inquiry regarding liquidated damages and/or other Article 17 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 17. This notice of administrative inquiry shall include the following:

- 17.7.1.1 A brief description of the facts;
- 17.7.1.2 Citations to Puerto Rico and Federal laws and regulations, or Contract provision(s) the Contractor has breached;
- 17.7.1.3 The Contractor's non-compliance with Puerto Rico and Federal laws and regulations or Contract provisions;
- 17.7.1.4 The Contractor's breach of applicable Contract provisions and event categories that could result in remedies or liquidated damages pursuant to this Article 17;
- 17.7.1.5 ASES's authority to determine and seek liquidated damages or other remedies against the Contractor under this Article 17;
- 17.7.1.6 The amount of potential, or Contractor's exposure to liquidated damages, or other Article 17 remedies, and how they were computed; and
- 17.7.1.7 A statement describing the Contractor's right to submit a Corrective Action Plan within fifteen (15) Calendar Days of receipt of the notice of administrative inquiry under this Article 17.

17.7.2 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 17.

17.7.3 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 17.8.3 and would be construed to be premature rendering any administrative examiner without jurisdiction to review the matter.

A handwritten signature in black ink, appearing to be 'J. J. ...'.

A handwritten signature in black ink, appearing to be 'J. J. ...'.



17.7.4 If the Contractor fails to comply with any material provision under a Corrective Action Plan submitted to ASES pursuant to Section 17.7.2 above, ASES may impose:

17.7.4.1 A daily amount of \$5,000 in liquidated damages, up to a maximum total amount of \$100,000, for the Contractor's failure to comply with any material provision part or condition of the Corrective Action Plan; and/or

17.7.4.2 The applicable Article 17 Remedy for any or all behavior that resulted in the submission of Corrective Action Plan pursuant to Section 17.7.2 above.

17.8 Notice of Imposition of Liquidated Damages and/or Other Remedies

17.8.1 Prior to the imposition of liquidated damages and/or any other remedies under this Article 17, ASES will issue a notification, delivered thorough US Postal Service Certified Mail, to the Contractor that includes the following:

17.8.1.1 A brief description of the facts;

17.8.1.2 Citations to Puerto Rico and Federal laws and regulations, or Contract provision(s) the Contractor has breached;

17.8.1.3 ASES's determination to assess and impose liquidated damages and/or any other Article 17 Remedy;

17.8.1.4 Liquidated damages and/or any other Article 17 Remedy imposed and their effective date;

17.8.1.5 Methodology for the liquidated damages and/or any other Article 17 Remedy calculation; and

17.8.1.6 A statement that the Contractor has a right to object and request an administrative review of the imposition of liquidated damages and other Article 17 remedies pursuant to the procedures in ASES Regulation 8446 and Puerto Rico Act No. 38-2017, as amended.

17.8.2 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 17.

17.8.3 **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 17, pursuant to the procedures in ASES Regulation No. 8446.



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

17.8.3.2 Once the sanction becomes final ASES shall deduct the amount of the sanction from the PMPM Payment or the Retention Fund.

17.9 **Judicial Review.** 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 18 CONTRACT TERM

18.1 Subject to and upon the terms and conditions herein, this Contract shall be in full force and effect on January 1, 2020 and shall terminate on December 31, 2020. The foregoing notwithstanding, ASES, subject to Article 30 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 of Puerto Rico in any Service Region or portion thereof.

18.2 The Contract shall expire at the close of the Contract Term unless earlier terminated under Article 30 or extended by written amendment with the agreement of the Parties. This Contract shall not be automatically renewed.

To the extent that, due to the number of products offered by the Contractor, this Contract is projected to surpass the monetary minimum established by the Financial Oversight and Management Board (FOMB) to require FOMB approval, it must be approved by the FOMB to be effective. In the event the FOMB does not approve this Contract prior to September 30, 2019, or denies approval, it shall be considered immediately terminated on September 30, 2019.

## ARTICLE 19 PAYMENT FOR SERVICES

### 19.1 General Provisions

19.1.1 Compensation to the Contractor shall consist of a monthly, PMPM Payment which will be equal to the number of Enrollees as of the last day of the month preceding the month in which payment is made, multiplied by the negotiated PMPM Payment agreed to between the Contractor and ASES for each Service Region covered by the Contract. The applicable rate for compensation is specified in Appendix B and shall be effective for the entire Contract Term. The Contractor shall not, at any time, increase the rate agreed in the Contract, nor reduce the Covered Services or other benefits agreed to.

19.1.1.1 PMPM Payment to Contractor will be disbursed from the Finance Department Control Account Number 233-5225.



19.1.1.2 PMPM Payments to Contractor will be conducted through an Automated Clearinghouse System (ACH). Prior to the execution of this Contract, the Contractor must have duly signed the proper ACH transfer authorization form.

19.1.1.3 The PMPM Payment made based upon the number of Enrollees as of the last day of the preceding month will be reconciled to the actual number of Enrollees for that month when that information is available and appropriate PMPM Payment adjustments will be made.

19.1.2 If CMS denies payment on the basis of Section 1903(m)(5)(B)(ii) of the Social Security Act, or such other applicable federal statute or regulation, ASES will deny PMPM Payment to the Contractor for Enrollees enrolled after the date that CMS has notified the Contractor of their denial and until CMS is satisfied that the basis for such determination has been corrected and is not likely to recur.

19.1.3 ASES will have the discretion to recoup payments made to the Contractor for ineligible Enrollees, including, but not limited to, the following:

19.1.3.1 Enrollees incorrectly enrolled with more than one Contractor;

19.1.3.2 Enrollees who die prior to the Enrollment month for which the payment was made;

19.1.3.3 Enrollees whom ASES later determines were not eligible for Medicaid during the Enrollment month for which payment was made;

19.1.3.4 Enrollees whom were not domiciled in Puerto Rico at the time the service was rendered for which payment was made; or

19.1.3.5 Enrollees whom were incarcerated during the Enrollment month for which payment was made.

19.1.4 Any such payments due to ASES from the Contractor will be offset from future payments to the Contractor.

19.1.5 The Contractor shall have the right to recoup from Providers or other persons to whom the Contractor has made payment for any payments made for which ASES has recouped the PMPM Payment.

19.1.6 The PMPM Payment for Enrollees not enrolled for the full month shall be determined on a pro rata basis by dividing the monthly Capitation amount by the number of days in the month and multiplying the result by the number of days including and following the Effective Date of Enrollment or the number of days prior to and including the Effective Date of Disenrollment, as applicable. The Contractor is entitled to a PMPM Payment for each Enrollee as of the Effective Date of Enrollment, including the period referred to in Section 3.2.3. The Contractor is entitled to a PMPM Payment for each Enrollee



up to the Effective Date of Disenrollment, including the period referred to in Section 3.3.

19.1.7 The Contractor acknowledges that the capitated payments agreed to under the terms of this Contract in addition to any applicable cost-sharing as provided in Appendix C-6 to this Contract constitute full and complete payment for Covered Services and Benefits under the Medicare Platino Program. ASES will have no responsibility for payment for Covered Services and Benefits 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. The Contractor further agrees that such capitated payments may be made only by ASES and retained by Contractor for Dual-Eligible Enrollees.

19.1.8 The Contractor and any Network or Out-of-Network Provider shall be prohibited from holding any Enrollee liable for the payment of any fees that are the legal obligation of Contractor. Balance billing is expressly prohibited. Any cost sharing imposed on Enrollees shall be in accordance with 42 CFR 447.50 through 42 CFR 447.60.

19.1.9 To comply with 42 CFR 438.608(d), the Contractor shall report and return to ASES an Overpayment within sixty (60) calendar days after the date on which the Overpayment was Identified.

## ARTICLE 20 FINANCIAL MANAGEMENT

### 20.1 General Provisions

20.1.1 The Contractor shall be responsible for the sound financial management of Puerto Rico and Federal funds provided to the Contractor under the Medicare Platino Program.

20.1.2 The Contractor shall notify ASES in writing of any loans or other special financial arrangements made between the Contractor and any Provider. Any such loans shall strictly conform to the legal requirements of Federal and Puerto Rico anti-Fraud and anti-kickback laws and regulations.

20.1.3 The Contractor shall provide ASES with copies of its audited financial statements following Generally Accepted Accounting Principles ("GAAP") in the US, at its own cost and expenses, for the duration of the Contract, and as of the end of each fiscal year during the Contract Term, regarding the financial operations related to the Medicare Platino Program. The statements shall provide (1) a separate accounting of activities relating to each Service Area, and (2) a consolidated section accounting for all Medicare Platino Program activities. These reports shall be submitted to ASES no later than ninety (90) Calendar Days after the close of the fiscal year of ASES.

20.1.4 The Contractor shall provide to ASES a copy of its Annual Report required to be filed with the Puerto Rico Office of the Insurance Commissioner (OIC



Report), as applicable, in the format agreed upon by the National Association of Insurance Commissioners (NAIC), for the year ended on December 31, 2019, and subsequently thereafter, during the Contract Term, not later than March 31 of each year. The Contractor shall submit to ASES a reconciliation of the OIC Report with its annual audited financial statements filed pursuant to Section 20.1.3.

20.1.5 The Contractor shall provide to ASES unaudited financial statements for each quarter during the Contract Term, not later thirty (30) Calendar Days after the close of each quarter. The Contractor shall submit (1) a separate accounting of activities relating to each Service Area, and (2) a consolidated section accounting for all Medicare Platino Plan activities.

20.1.6 The Contractor shall provide to ASES a copy of the annual corporate report of its parent company at the close of the calendar year.

20.1.7 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.

20.1.8 The Contractor acknowledges, and shall incorporate in contracts with Subcontractors, that the Medicare Platino Program 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: (1) 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 (2) a cost shall be reasonable if it is allocable to or related to the cost objective that compels cost association..

20.1.9 The Contractor shall maintain an accounting system for Medicare Platino separate from the rest of its commercial activities. This system will only include ASES Data. The Data will be segregated by Service Area.

20.1.10 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.

## 20.2 Third Party Liability and Cost Avoidance

### 20.2.1 General Provisions

20.2.1.1 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 an Enrollee. Examples of a Third Party include, but are not limited to, an Enrollee's health insurer, casualty insurer, a managed care organization, and original Medicare.

20.2.1.2 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 Medicare Platino 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.

20.2.1.3 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.

20.2.1.4 The Contractor shall, within five (5) Business Days of issuing a denial of any Claim based on TPL, provide TPL Data to the Provider.

20.2.1.5 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.

20.2.1.6 The Contractor shall post all Third-Party payments or recoveries to Claim-level detail by Enrollee.

20.2.1.7 If the Contractor operates or administers a non-Medicare Platino 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.

20.2.1.8 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.

20.2.1.9 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 Third Party Liability and Cost Avoidance responsibilities.

20.2.2 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 an Enrollee against a Third Party, or when ASES receives notices that legal counsel has been retained by or on behalf of any Enrollee. The Contractor shall cooperate with ASES in all collection efforts and shall also direct its Providers to cooperate with ASES in these efforts.

20.2.3 Estate Recoveries. ASES (or another agency of the Government of Puerto Rico) will have the sole and exclusive right to pursue and recover correctly paid benefits from the estate of a deceased Enrollee in accordance with Federal and Puerto Rico law. Such recoveries will be retained by ASES.

20.2.4 Subrogation

20.2.4.1 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 Medicare or Medicaid guidelines and Puerto Rico law.

20.2.4.2 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 medical expenses for the purposes of reporting.

20.2.4.3 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.’

20.2.5 Cost Avoidance

20.2.5.1 When the Contractor is aware of health or casualty insurance coverage before paying for a Covered Service, the Contractor shall





avoid payment by promptly (within fifteen (15) Business Days of receipt) rejecting the Provider's Claim and directing that the Claim be submitted first to the appropriate Third Party.

20.2.5.2 Exceptions to the Cost Avoidance Rule. In the following situations, the Contractor shall first pay its Providers and then coordinate with the liable Third Party, unless prior approval to take other action is obtained from ASES:

20.2.5.2.1 The coverage is derived from a parent whose obligation to pay support is being enforced by a government agency.

20.2.5.2.2 The Claim is for maternal and prenatal services to a pregnant woman or for EPSDT services that are covered by the Medicaid program.

20.2.5.2.3 The Claim is for labor, delivery, and post-partum care and does not involve hospital costs associated with an inpatient stay.

20.2.5.2.4 The Claim is for a child who is in the custody of ADFAN.

20.2.5.2.5 The Claim involves coverage or services mentioned in this Section in combination with another service.

20.2.5.3 If the Contractor knows that the Third Party will neither pay for nor provide the Covered Service, and the service is Medically Necessary, the Contractor shall neither deny payment for the service nor require a written denial from the Third Party.

20.2.5.4 If the Contractor does not know whether a particular service is covered by the Third Party, and the service is Medically Necessary, the Contractor shall promptly (within ten (10) Business Days of receipt of the Claim) contact the Third Party and determine whether or not such service is covered rather than requiring the Enrollee to do so. Further, the Contractor shall require the Provider to bill the Third Party if coverage is available.

### 20.3 Medicaid as Secondary Payer to Medicare

20.3.1 If a Covered Service is covered in whole or part by both Medicare and Medicaid, assuming no other Third Parties liable for payment exist, the Contractor shall determine liability as a secondary payer as follows:

20.3.1.1 If the total amount of Medicare's established liability for the services (Medicare paid amount) is equal to or greater than the negotiated contract rate between the Contractor and the Provider for the services, minus any Medicaid cost-sharing requirements, then the

Provider is not entitled to, and the Contractor shall not pay, any additional amounts for the services.



20.3.1.2 If the total amount of Medicare's established liability (Medicare paid amount) is less than the negotiated contract rate between the Contractor and the Provider for the services, minus any Medicaid cost-sharing requirements, the Provider is entitled to, and the Contractor shall pay, the lesser of:

20.3.1.2.1 The Medicaid cost-sharing (Deductibles and coinsurance) payment amount for which the Dual Eligible Beneficiary is responsible under Medicare, and

20.3.1.2.2 An amount which represents the difference between (1) the negotiated contract rate between the Contractor and the Provider for the service minus any Medicaid cost-sharing requirements, and (2) the established Medicare liability for the services.

#### 20.3.2 Protections for Medicare Platino Enrollees

20.3.2.1 Unless otherwise permitted by Federal or Puerto Rico law, Covered Services may not be denied to an Enrollee because of a Third Party's potential liability to pay for the services, and the Contractor shall ensure that its Cost Avoidance efforts do not prevent Enrollees from receiving Medically Necessary Services.

#### 20.4 Physician Incentive Plans

20.4.1 If Contractor elects to operate a Physician Incentive Plan, Contractor agrees that no specific payment will be made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services furnished to an Enrollee. Contractor agrees to submit to ASES annual reports containing the information on its physician incentive plan in accordance with 42 CFR § 438.6(h). The contents of such reports shall comply with the requirements of 42 CFR § 422.208 and 210 and be in a format to be provided by ASES.

20.4.2 The Contractor must ensure that any agreements for contracted services covered by this Agreement, such as agreements between the Contractor and other entities or between the Contractor's subcontracted entities and their Contractors, at all levels including the physician level, included language requiring that the physician incentive plan information be provided by the Subcontractor in an accurate and timely manner to the Contractor, in the format requested by ASES.

20.4.3 In the event that the incentive arrangements place the physician or physician group at risk for services beyond those provided directly by the physician or physician group for an amount beyond the risk threshold of 25% of potential



payments for covered services (substantial financial risk), the Contractor must comply with all additional requirements listed in regulation, such as: conduct enrollee/disenrollee satisfaction surveys; disclose the requirements for the physician incentive plans to its beneficiaries upon request; and ensure that all physicians and physician groups at substantial financial risk have adequate stop loss protection. Any of these additional requirements that are passed on to the sub-Contractors must be clearly stated in their Agreement.

20.5 Medical Loss Ratio

20.5.1 The Contractor shall report a Medical Loss Ratio and related data as required under 42 CFR 438.8(k) for each rating period. Such reporting shall be provided to ASES no later December 31 of the following year.

20.5.2 The Contractor shall calculate its Medical Loss Ratio and related data based on the methodology set forth in 42 CFR 438.89 and any other instructions issued by CMS or ASES. The Contractor is expected to achieve a target medical loss ratio standard, as calculated under 42 CFR 438.8, of at least eighty-five percent (85%) for the contract year.

**ARTICLE 21 RELATIONSHIP OF PARTIES**

21.1 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 22 INSPECTION OF WORK**

22.1 ASES, the Puerto Rico Medicaid Program, other agencies of the Government of Puerto Rico, the Secretary, the US Department of Health and Human Services, the General Accounting Office, the US Comptroller General, the Comptroller General of the Government 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 23 GOVERNMENT PROPERTY**

23.1 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 Appendix L 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.

23.2 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 24 OWNERSHIP AND USE OF DATA AND SOFTWARE

### 24.1 Ownership and Use of Data

24.1.1 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.

24.1.2 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 and 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, the Contractor shall operate such systems on behalf of ASES. Such operation by the Contractor on behalf of ASES can occur at ASES' discretion



A handwritten signature or set of initials, possibly "JL", written in black ink.

A handwritten signature or set of initials, possibly "M", written in black ink.

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.

24.1.3 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.

24.1.4 ASES reserves the right to modify, expand, or delete the requirements contained in Article 24 with respect to the 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. Any payment made by ASES that is based on data submitted by the Contractor is contingent upon the Contractor's compliance with the Certification requirements contained in 42 CFR 438.606.



24.2 Responsibility for Information Technology Investments. 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.

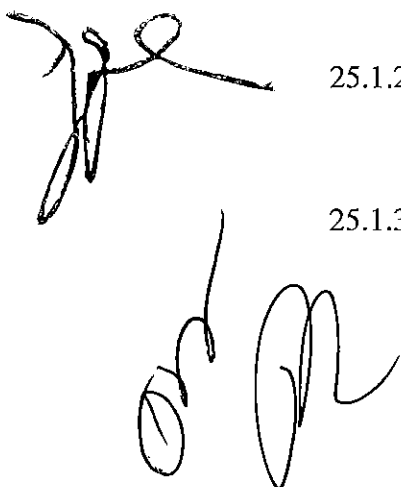
## ARTICLE 25 SUBCONTRACTS

### 25.1 Use of Subcontractors

25.1.1 In carrying out the terms of this Contract, the Contractor may enter into written Subcontract(s) with other entities for the provision of administrative services or a combination of Covered Services and administrative services, under terms and conditions acceptable to CMS or ASES as the applicable governing agency.

25.1.2 The Contractor shall assume sole responsibility for all functions performed by a Subcontractor(s), as well as any payments to a Subcontractor(s) for services related to this Contract.

25.1.3 All contracts between the Contractor and Subcontractors must be in writing and must specify the activities and responsibilities delegated to the Subcontractor containing terms and conditions consistent with this Contract. The contracts must also include provisions for revoking delegation or imposing other sanctions if the Subcontractor's performance is inadequate. The Contractor and



the Subcontractors must also make reference to a business associates agreement between the Parties.



25.1.4 All Subcontracts entered into by the Contractor must comply with the applicable 42 CFR 438 requirements that pertain to the service or activity performed by the Subcontractor.

25.1.5 The Contractor also agrees to comply with all other applicable requirements and standards set forth at 42 CFR 422.505(i) as well as other applicable federal laws and regulations governing the Contractor's relationships with Medicare Advantage Subcontractors and all other first-tier, downstream and related entities as defined in 42 CFR 422.2.

### **ARTICLE 26 REQUIREMENT OF INSURANCE LICENSE AND CERTIFICATE OF SOLVENCY**

26.1 In order for this Contract to take effect, the Contractor must be licensed to underwrite health insurance by the Puerto Rico Insurance Commissioner. The Contractor must submit a copy of its Insurance License and Certificate of Solvency, both issued by the Office of the Puerto Rico Insurance Commissioner.

26.2 The Contractor shall renew the license as required and shall submit evidence of the renewal to ASES within thirty (30) Calendar Days of the expiration date of the license.

### **ARTICLE 27 CERTIFICATIONS**

27.1 The Contractor shall provide to ASES within fifteen (15) Calendar Days of the Effective Date of this Contract 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. 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.

27.2 The Contractor shall submit the following certifications:

27.2.1 Certification issued by the Treasury Department of Puerto Rico (Model SC-2888) with evidence that that the Contractor has filed income tax returns in the past five (5) years or has non-profit status;

27.2.2 Certification from the Treasury Department of Puerto Rico that Contractor has no outstanding debt with the Department or, if such a debt exists, it is subject to a payment plan or pending administrative review under applicable law or regulation (Model SC-3537);



- 27.2.3 Certification from the Center for the Collection of Municipal Revenues certifying that there is no outstanding debt or, if a debt exists, that such debt is subject to payment plan or pending administrative review under applicable law or regulations;
  - 27.2.4 Certification from the Department of Labor and Human Resources certifying compliance with unemployment insurance, temporary disability insurance and/or chauffeur's social security, if applicable;
  - 27.2.5 Evidence of Incorporation and of Good Standing issued by the Department of State of Puerto Rico;
  - 27.2.6 Certification of current municipal license tax ("Patentes Municipales"), if applicable;
  - 27.2.7 Certification issued by the Minor Children Support Administration ("ASUME", by its Spanish acronym) of no outstanding alimony or child support debts, if applicable;
  - 27.2.8 A sworn statement certifying that it has no debt with the government of the Government of Puerto Rico, or with any state agencies, corporations or instrumentalities that provide or are related to the provision of health services; and
  - 27.2.9 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 or pending administrative review under applicable law or regulations.
- 27.3 If the Contractor fails to meet the obligations of this Section 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 28 RECORDS REQUIREMENTS

### 28.1 General Provisions

- 28.1.1 The Contractor and its Subcontractors, 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. These records include, but are not limited to, enrollee grievance and appeal records in 42 CFR 438.416, base data in 42 CFR 438.5(c), medical loss ratio reports in 42 CFR 438.8(k), and the data, information, and documentation specified in 42 CFR 438.604, 438.606, 438.608, and 438.610. 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.

## 28.2 Records Retention and Audit Requirements

28.2.1 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 and Medicaid Services (CMS), the USA Comptroller General, the Comptroller of Puerto Rico and ASES, as to the maintenance of records related to this Contract.

28.2.2 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.

28.2.3 Pursuant to the requirements of 42 CFR 434.6(a)(5) and 42 CFR 434.38, ASES, the Secretary, DHHS, CMS, the Office of the Inspector General, the Comptroller General, 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 may inspect the premises, physical facilities, and equipment where activities or work related to the Medicare Platino 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.

28.2.4 In certain circumstances, as follows, the authorities listed in Section 28.2.3 shall have the right to inspect and audit records in a timeframe that exceeds the timeframe set forth in Section 28.1.1.

28.2.4.1 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 28.1.1.





28.2.4.2 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.

28.2.4.3 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 28.1.1, that it wishes to extend the time period for retention of records.

28.2.4.4 There has been, during the time period set forth in Section 28.1.1, 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.

28.2.5 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.

### 28.3 Medical Record Requests

28.3.1 The Contractor shall ensure that a copy of each Enrollee's Medical Record is made available, without charge, upon the written request of the Enrollee or Authorized Representative within fourteen (14) Calendar Days of the receipt of the written request.

28.3.2 The Contractor shall ensure that Medical Records are furnished at no cost to a Provider, upon the Enrollee's request, no later than fourteen (14) Calendar Days following the written request.

## ARTICLE 29 CONFIDENTIALITY

### 29.1 General Confidentiality Requirements

29.1.1 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.

29.1.2 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.



29.1.3 Any other party shall be granted access to confidential Information only after complying with the requirements of Puerto Rico and Federal law pertaining to such access. ASES shall have absolute authority to determine if and when any other party has properly obtained the right to have access to this confidential information. Nothing herein shall prohibit the disclosure of information in summary, statistical, or other form that does not identify particular individuals. 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.

29.1.4 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.

29.1.5 Any disclosure or transfer of confidential information by the Contractor, including information required by ASES, will be 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.

29.1.6 In accordance with the timeframes outlined in Appendix L to the 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, 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. The Contractor must provide safeguards that restrict the use or disclosure of protected health information (PHI) concerning Enrollees to purposes directly connected with the administration of this Contract.

29.1.7 The Contractor must comply with HIPAA notification requirements, including those set forth in HITECH. The Contractor must notify ASES of all Breaches or potential Breaches of unspecified PHI, as defined by HITECH, without unreasonable delay and in no event later than thirty (30) Calendar Days after discovery of the Breach or potential Breach. 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.

29.1.8 Assurance of Confidentiality



29.1.8.1 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.

29.1.8.2 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.

29.1.9 Return of Confidential Data

29.1.9.1 The Contractor shall return all Personal Health Information Data furnished pursuant to this Contract promptly at the request of ASES in whatever form it is maintained by the Contractor. Upon the termination or completion of the Contract, the Contractor 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 and where so instructed by ASES shall destroy such Data or material if permitted and required by Puerto Rico or Federal law or regulation.

29.1.10 Publicizing Safeguarding Requirements

29.1.10.1 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.

29.1.10.2 In addition to the requirements expressly stated in this Article 29, 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.

29.1.10.3 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 option, erased or destroyed. The Contractor must provide ASES certificates evidencing such destruction.

29.1.10.4 The Contractor's contracts with practitioners and other Providers shall explicitly state expectations about the confidentiality of ASES's confidential information and Enrollee records.

29.1.10.5 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.

29.1.10.6 This Article 29 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 provides immediate notice to ASES of such order.

#### 29.1.11 Disclosure of ASES's Confidential Information

29.1.11.1 The Contractor shall Immediately report to ASES any and all unauthorized disclosures or uses of confidential information of which it or its Subcontractors, consultants, or Agents is aware or has knowledge. The Contractor acknowledges that any publication or disclosure of confidential information to others 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 Providers', 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.

29.1.12 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.



29.1.13 ASES, the Government of Puerto Rico, 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.

29.1.14 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 "protected health information" relating to Enrollees, as such term is defined by 45 CFR Parts 160 and 164.

## 29.2 HIPAA Compliance

29.2.1 The Contractor shall assist ASES in its efforts to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its amendments, rules, procedures, and regulations. To that end, the Contractor shall cooperate with and abide by any 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. A standard business associate agreement is included as Appendix G to this Contract. 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.

## 29.3 Data Breach

29.3.1 The Contractor shall report to ASES, as required in § 13402 of the HITECH Act, of any 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.

29.3.2 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, to the extent available at the time of the notification, the following information:

29.3.2.1 One or two sentence description of the event;

29.3.2.2 Description of the roles of the people involved in the Breach (e.g., employees, participant users, service Providers, unauthorized persons, etc.)

29.3.2.3 The type of Data / Information as well as Personal Health Information that was breached;

29.3.2.4 Enrollees likely impacted by the Breach;



- 29.3.2.5 Number of individuals or records impacted/estimated to be impacted by the Breach;
- 29.3.2.6 Actions taken by the Contractor to mitigate the Breach;
- 29.3.2.7 Current status of the Breach (under investigation or resolved);
- 29.3.2.8 Corrective action taken and steps planned to be taken to prevent a similar Breach.

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

### ARTICLE 30 TERMINATION OF CONTRACT

#### 30.1 General Procedures

30.1.1 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 Articles 16 and 17 of this Contract or available by law, and subject to compliance with the termination procedures set forth in Section 30.8 below, ASES may terminate this Contract for any or all of the following reasons:

- 30.1.1.1 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. Default includes any action that threatens the health, safety and welfare of the Contractor's Enrollees or that constitutes an unacceptable practice that adversely affects the fiscal integrity of the Medicare Platino Program;
- 30.1.1.2 Immediately, in the event of insolvency or declaration of bankruptcy by the Contractor;
- 30.1.1.3 Immediately, if Contractor has its Certificate of Authority suspended, limited, non-renewed or revoked by the Insurance Commissioner;
- 30.1.1.4 Immediately, when sufficient appropriated funds no longer exist for the payment of ASES's obligation under this Contract;
- 30.1.1.5 In the event that the Contractor or any of its shareholders, director, officers, or employees fall under the prohibition stated in Section 10.4.1.1 or 10.4.1.2 of this Contract; or



30.1.1.6 In the event that the Contractor fails to renew its contract with CMS pursuant to Sections 1851 to 1859 of the Social Security Act to offer the Medicare Advantage plan to Enrollees residing in the Service Area specified in Appendix A. In such instances, the Contractor shall notify ASES of the termination or failure to renew its contract with CMS Immediately upon knowledge of the impending termination or failure to renew.

30.1.2 The Contractor shall have a limited right of termination of this Contract only in the events described in Section 30.10 of this Contract.

30.1.3 Each Party shall have the opportunity to cure any default alleged in a termination notice sent pursuant to this Article 30, 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.

30.1.4 Notwithstanding the termination of this Contract pursuant to this Article 30 for any reason, the Contractor shall remain obligated to provide the Administrative Functions as described in Article 31, 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.

30.1.5 Continuing Obligations of ASES. Notwithstanding the termination of this Contract for pursuant to this Article 30 for any reason, ASES shall remain obligated to pay to the Contractor the PMPM through the Termination Date (inclusive of the Transition Period).

30.1.6 Termination Procedures to be Strictly Followed. No termination of this Contract shall be effective unless the termination procedures under Section 30 of this Contract have been strictly followed or waived by the Parties.

30.2 Termination by Default

30.2.1 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 Section 10.4.1.1 or 10.4.1.2, ASES may terminate the Contract in addition to or in lieu of any other remedies set out in this Contract or available by law.

30.2.2 Before terminating this Contract, ASES will:



30.2.2.1 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;

30.2.2.2 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

30.2.2.3 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.

30.3 Termination for Convenience

30.3.1 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.

30.4 Termination for Insolvency or Bankruptcy

30.4.1 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. The Contractor's financial condition shall be presumed not sufficient to allow the Contractor to provide the services described herein, in the manner required by ASES if the Contractor cannot demonstrate to ASES's satisfaction that the Contractor has risk reserves and a minimum net worth sufficient to meet the statutory standards for licensed health care plans, as required under this Contract. The Contractor shall cover continuation of services to Enrollees for the duration of period for which payment has been made, as well as for inpatient admissions up to discharge.

30.4.2 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:

30.4.2.1 The Contractor's debts;





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

30.4.2.3 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

30.4.2.4 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.

30.4.3 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.

### 30.5 Termination for Insufficient Funding

30.5.1 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.

30.5.2 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.

30.5.3 Upon termination, the Contractor shall comply with the phase-out obligations established in Article 31 of this Contract.

30.5.4 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.

30.5.5 Availability of funds shall be determined solely by ASES.

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

### 30.7 Termination Procedures

30.7.1 Upon termination of this Contract, the Contractor shall:



30.7.1.1 Stop work under the Contract on the date and to the extent specified in the notice of termination;

30.7.1.2 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 as is not terminated;

30.7.1.3 Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;

30.7.1.4 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;

30.7.1.5 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;

30.7.1.6 Complete the performance of such part of the work that was not terminated by the notice of termination;

30.7.1.7 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;

30.7.1.8 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;

30.7.1.9 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

30.7.1.10 Submit a termination/transition plan to ASES for review and prior written approval that includes commitments to carry out at minimum the following obligations:

30.7.1.10.1 Provide Enrollees continuation of all the Covered Services and Benefits during a defined transition period, such transition period to be determined by ASES;



30.7.1.10.2 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 as described in Article 11;

30.7.1.10.3 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;

30.7.1.10.4 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.

30.7.1.10.5 File all reports concerning the Contractor's operations during the term of the Contract in the manner described in this Contract;

30.7.1.10.6 Assist ASES in making all necessary notices to Enrollees and Providers 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;

30.7.1.10.7 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 31;

30.7.1.10.8 Ensure the proper identification of the Enrollees requiring the authorization for either prescription medications or DME to avoid any interruptions in services by providing such Data to ASES as contemplated in the transition plan;

30.7.1.10.9 Submit to ASES all scripts used at Call Centers to communicate with Enrollees during the transition period;

30.7.1.10.10 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;

30.7.1.10.11 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



30.7.1.10.12 Meet with ASES personnel, as requested, to ensure satisfactory completion of all obligations under the Termination Plan.

30.7.2 This Termination Plan shall be subject to review and approval by CMS.

30.7.3 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.

30.7.4 Except as provided in this Article 30 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.

### 30.8 Termination Claims

30.8.1 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.

30.8.2 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:

30.8.2.1 At the Contract price(s) for services delivered to and accepted by ASES; and/or

30.8.2.2 At a price mutually agreed upon by the Contractor and ASES for partially completed services.

30.8.3 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.

30.9 Limited Right of Termination by the Contractor

30.9.1 Subject to compliance with the termination procedures set forth in Section 30.8, the Contractor may terminate this Contract under the following circumstances:



30.9.1.1 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 PMPM 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.

30.9.1.2 Termination Due to Insufficient Funding. Immediately, upon receipt from ASES of a written notice pursuant to Section 30.5 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.

**ARTICLE 31 PHASE-OUT AND COOPERATION WITH OTHER CONTRACTORS**

31.1 If, in the best interest of Enrollees of the Medicare Platino Program, ASES terminates any Medicare Platino Program contract, the Contractor shall, upon the request of ASES, assume responsibility for the geographic areas (municipalities or Service Regions) previously managed by any MCO or other contractor whose contractual arrangement with ASES was terminated, in accordance with the contracted PMPM Payment, pursuant to the written amendment of the Contract, if required.

31.2 If in the best interest of Enrollees, 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. PMPM Payments shall be adjusted accordingly.

31.3 In the event that ASES has entered into, or enters into, agreements with other contractors for additional work related to the Benefits 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.

## ARTICLE 32 COMPLIANCE WITH ALL LAWS

### 32.1 Nondiscrimination



32.1.1 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.

32.1.2 The Contractor shall comply with all provisions of the Puerto Rico Patient's Bill of Rights and its implementing regulation, which prohibit discrimination against any patient.

### 32.2 Compliance with All Laws in the Delivery of Service

32.2.1 The Contractor agrees that all work done as part of 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 Appendix J to this Contract.

32.2.2 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 Appendix J 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.

32.2.3 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.

A handwritten signature in black ink, appearing to be a stylized name.

A handwritten signature in black ink, appearing to be a stylized name.



32.2.4 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.

32.2.5 The Contractor certifies and warrants to ASES that at the time of execution of this Contract: (i) it is a corporation duly authorized to conduct business in Puerto Rico, and has filed all the required income tax returns for the preceding five 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 33 CONFLICT OF INTEREST AND CONTRACTOR INDEPENDENCE**

33.1 The duty to provide information about interests and conflicting relations is continuous and extends throughout the Contract Term.

33.2 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 its 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 after the Effective Date of the Contract; and at any time, within fifteen (15) Calendar Days of request by ASES.

33.3 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.

33.4 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 34 CHOICE OF LAW OR VENUE**

34.1 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 of Puerto Rico based upon or arising from this Contract shall be brought in a court of competent jurisdiction in Puerto Rico.

### **ARTICLE 35 ATTORNEY'S FEES**

35.1 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 36 SURVIVABILITY**

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

#### **ARTICLE 37 PROHIBITED AFFILIATIONS WITH INDIVIDUALS DEBARRED AND SUSPENDED**

37.1 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). Any violation of this Article shall be grounds for termination of the Contract.

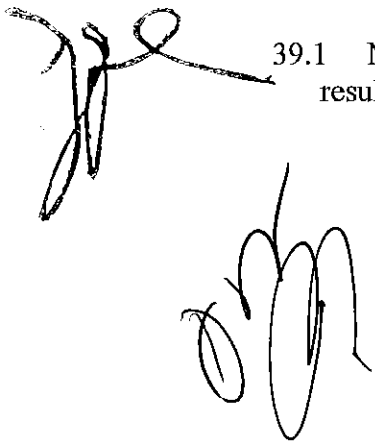
#### **ARTICLE 38 WAIVER**

38.1 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.

38.2 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 39 FORCE MAJEURE**

39.1 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 40 BINDING**

40.1 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 41 TIME IS OF THE ESSENCE**

41.1 Time is of the essence in this Contract. Any reference to “days” shall be deemed Calendar Days unless otherwise specifically stated.

**ARTICLE 42 AUTHORITY**

42.1 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 43 ETHICS IN PUBLIC CONTRACTING**

43.1 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.

**ARTICLE 44 CONTRACT LANGUAGE INTERPRETATION**

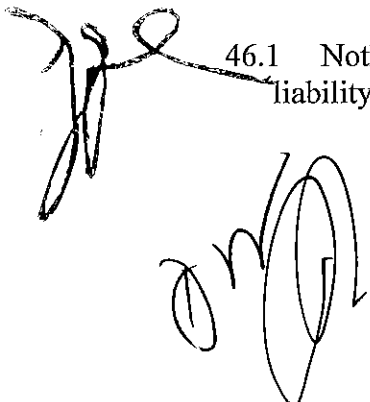
44.1 The Contractor and ASES agree that in the event of a disagreement regarding, arising out of, or related to, Contract language interpretation, ASES’s interpretation of the Contract language in dispute shall control and govern.

**ARTICLE 45 ARTICLE AND SECTION TITLES NOT CONTROLLING**

45.1 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.

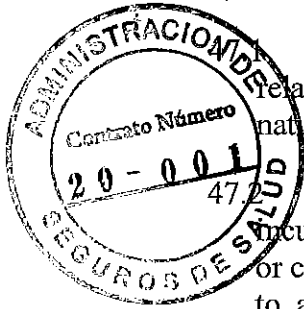
**ARTICLE 46 LIMITATION OF LIABILITY/EXCEPTIONS**

46.1 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 of Puerto Rico by a Third Party or the Contractor.

#### ARTICLE 47 COOPERATION WITH AUDITS



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.

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.

47.3 ASES reserves the right to audit the Contractor and/or its Subcontractors at any time during the term of the Contract. The Contractor and/or its Subcontractors shall be solely responsible for the cost of such audits.

#### ARTICLE 48 OWNERSHIP AND FINANCIAL DISCLOSURE

48.1 The Contractor and Subcontractors shall disclose financial statements for each person or corporation with an ownership or control interest of five percent (5%) or more of its entity. For the purposes of this Section, a person or corporation with an ownership or control interest shall mean a person or corporation:

48.1.1 That owns directly or indirectly five percent (5%) or more of the Contractor's/Subcontractor's capital or stock or received five percent (5%) or more of its profits;

48.1.2 That has an interest in any mortgage, deed of trust, note, or other obligation secured in whole or in part by the Contractor/Subcontractor or by its property or assets, and that interest is equal to or exceeds five percent (5%) of the total property and assets of the Contractor/Subcontractor; and

48.1.3 That is an officer or director of the Contractor/Subcontractor (if it is organized as a corporation) or is a partner in the Contractor's/Subcontractor's organization (if it is organized as a partnership).

48.2 As per 42 CFR 455.104, disclosure by the Contractor will include the following information on ownership and control:

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

48.2.2 Date of birth and Social Security Number (in the case of an individual).



48.2.3 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.

48.2.4 Whether the person (individual or corporation) with an ownership or control interest in the disclosing entity (or fiscal agent or managed care entity) 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.

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

48.2.6 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).

48.2.7 Disclosures from providers or disclosing entities. Providers or disclosing entities shall comply with the information disclosure required by Section 48.2. Disclosure from any provider or disclosing entity is due at any of the following times:

48.2.7.1 Upon the provider or disclosing entity submitting the provider application.

48.2.7.2 Upon the provider or disclosing entity executing the provider agreement.

48.2.7.3 Upon request of the Medicaid agency during the re-validation of enrollment process under 42 CFR 455.414.

48.2.7.4 Within 35 days after any change in ownership of the disclosing entity.

48.2.8 Disclosures from fiscal agents. Fiscal agents shall comply with the information disclosure required by Section 48.2. Disclosures from fiscal agents are due at any of the following times:

48.2.8.1 Upon the fiscal agent submitting the proposal in accordance with the Government of Puerto Rico's procurement process.

48.2.8.2 Upon the fiscal agent executing the contract with the Government of Puerto Rico.



48.2.8.3 Upon renewal or extension of the contract.

48.2.8.4 Within thirty-five (35) Calendar Days after any change in ownership of the fiscal agent.

48.2.9 Disclosures from managed care entities. Managed care entities shall comply with the information disclosure required by Section 48.2. Disclosures from managed care entities (MCOs, PIHPs, PAHPs, and HIOs), are due at any of the following times:

48.2.9.1 Upon the managed care entity submitting the proposal in accordance with the Government of Puerto Rico's procurement process.

48.2.9.2 Upon the managed care entity executing the contract with the Government of Puerto Rico.

48.2.10 Within thirty-five (35) Calendar Days after any change in ownership of the managed care entity.

#### **ARTICLE 49 AMENDMENT IN WRITING**

49.1 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.

49.2 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.

49.3 ASES also reserves the right to amend or partially terminate the Contract at any time if such amendment or partial termination is necessary to implement a demonstrative plan to incorporate the new public health policies and/or strategies of the Government of the Government of Puerto Rico.

#### **ARTICLE 50 CONTRACT ASSIGNMENT**

50.1 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.

50.2 The Contractor agrees that, in the event an assignment of any part of this Contract is approved by ASES, that Contractor shall remain legally responsible to ASES for carrying out all activities under this Contract and that no Subcontract shall limit or terminate Contractor's responsibility.

#### **ARTICLE 51 SEVERABILITY**

51.1 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 52 ENTIRE AGREEMENT**

52.1 This Contract, including those attachments, schedules, appendices, exhibits and addenda that have been specifically incorporated herein, as well as written plans submitted by Contractor and approved by ASES, 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.

#### **ARTICLE 53 INDEMNIFICATION**

53.1 The Contractor hereby releases and agrees to indemnify and hold ASES, the Government of Puerto Rico, 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 54 NOTICES**

54.1 All notices, consents, approvals, and requests for payment 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) electronic mail.

54.1.1 If to ASES at:

Mailing Address:

Physical Address:

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

Administración de Seguros de Salud  
Urb. Caribe  
1549 Calle Alda  
San Juan, PR 00926-2712

Attention: Executive Director

54.1.2 If to Contractor at:

Mailing Address:

Physical Address:

Triple-S Advantage, Inc.  
PO Box 11320  
San Juan, PR 00922

Triple-S Advantage, Inc.  
PO Box 11320  
San Juan, PR 00922

54.1.3 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 p.m. Atlantic Time on any Business Day or on the next Business Day if so delivered after 4:00 p.m. 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 55 OFFICE OF THE COMPTROLLER**

55.1 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 56 CONTRACT APPLICABILITY**

56.1 Due to the nature of the Medicare Platino Program as supplemental Medicaid Wraparound coverage, the provisions contained herein in this Contract shall apply only for the benefits included in the Wraparound Table, Appendix C(2), as approved by CMS, to the extent that CMS has primary jurisdiction over the regulation of Medicare Advantage products.

*(Signatures on following page)*



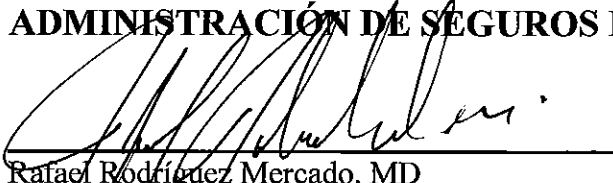
A handwritten signature consisting of a stylized, cursive script.

A handwritten signature consisting of a stylized, cursive script.

**SIGNATURE PAGE**

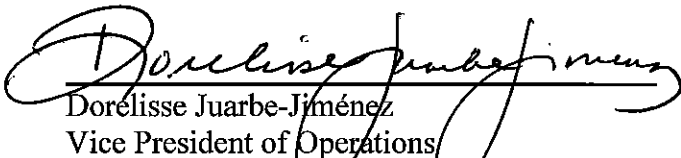
**IN WITNESS WHEREOF**, the Parties state and affirm that they are duly authorized to bind the respected entities designated below as of the day and year indicated.

**ADMINISTRACIÓN DE SEGUROS DE SALUD DE PUERTO RICO (ASES)**

  
Rafael Rodríguez Mercado, MD  
President  
Board of Directors  
EIN: 66-0500678

July 1, 2019  
Date

**TRIPLE-S ADVANTAGE, INC.**

  
Dorelisse Juarbe-Jiménez  
Vice President of Operations  
EIN: 66-0593034

July 1, 2019  
Date

*Account No. 237-5327-5331*







## MEDICARE PLATINO CONTRACT

Appendix	Appendix #
Service Area	A (1) (20)
Premium Payment	B (1) (20)
Medicare Advantage Product Plan Benefit Package (PBP)	C (1) (20)
Medicaid Wraparound	C (2) (20)
Services Provided by the Department of Health	C (3) (20)
BID Summary of Benefits (SB)	C (4) (20)
Coordinated Care Model Norms 2020 Certification	C (5) (20)
Co-Payments Certifications	C (6) (20)
Benefits Not-Covered by Wrap Around Supplementary Benefits Part C	C (7) (20)
Certification Added Value Services	C (8) (20)
Actuarial Certification	D (20)
CMS Contract 2020	E (20)
Guidelines for the Processing of Medicare Platino Enrollments and Disenrollments	F (20)
Business Associate Agreement	G (20)
Guidelines for the Development of Program Integrity Plan	G-1 (20)
Sworn Statements	H (20)
Financial Certification	I (20)
Relevant Puerto Rico and Federal Laws and Regulations	J (20)
Information Data Processes and Data Exchange Layout	K (20)
Deliverables	L (20)
Strategic Plan for Health Information Organization (HIO)	M (20)
HIV Drugs Certification	N (20)
Certification Consent for Sterilization	O (20)
ASEM Certification	P (20)
Guidelines for Marketing Activities	Q (20)
Medicare Part D Appeal Process	R (20)

