

**MODEL CONTRACT BETWEEN**

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

**and**

**[ ENROLLMENT COUNSELOR ]**

**for**

**PROVISION OF ENROLLMENT COUNSELOR SERVICES UNDER THE  
GOVERNMENT HEALTH PLAN PROGRAM**

**Contract No.: 2020-0000**

**TABLE OF CONTENTS**

**ARTICLE 1 GENERAL PROVISIONS ..... 6**

**ARTICLE 2 DEFINITIONS ..... 10**

**ARTICLE 3 ASES RESPSONSIBILITIES AND RIGHTS ..... 15**

**ARTICLE 4 ENROLLMENT COUNSELOR FUNCTIONS ..... 18**

**ARTICLE 5 ELIGIBILITY AND CHANGE OF MCO, PMG, OR PCP ..... 31**

**ARTICLE 6 INFORMATION REQUIREMENTS ..... 34**

**ARTICLE 7 ADMINISTRATION AND MANAGEMENT ..... 38**

**ARTICLE 8 INFORMATION MANAGEMENT AND SYSTEMS ..... 39**

**ARTICLE 9 REPORTING ..... 43**

**ARTICLE 10 ENFORCEMENT: LIQUIDATED DAMAGES, REMEDIES AND  
GUARANTEES ..... 48**

**ARTICLE 11 IMPLEMENTATION AND CONTRACT TERM ..... 48**

**ARTICLE 12 PAYMENT FOR SERVICES ..... 49**

**ARTICLE 13 FINANCIAL MANAGEMENT ..... 51**

**ARTICLE 14 RELATIONSHIP OF PARTIES ..... 52**

**ARTICLE 15 INSPECTION OF WORK ..... 52**

**ARTICLE 16 GOVERNMENT PROPERTY ..... 52**

**ARTICLE 17 OWNERSHIP AND USE OF DATA AND SOFTWARE ..... 53**

**ARTICLE 18 CRIMINAL BACKGROUND CHECKS ..... 56**

**ARTICLE 19 SUBCONTRACTS ..... 57**

**ARTICLE 20 CERTIFICATIONS ..... 59**

**ARTICLE 21 RECORDS REQUIREMENTS ..... 62**

**ARTICLE 22 CONFIDENTIALITY ..... 63**

**ARTICLE 23 TERMINATION OF CONTRACT ..... 68**

<b>ARTICLE 24</b>	<b>INSURANCE .....</b>	<b>72</b>
<b>ARTICLE 25</b>	<b>COMPLIANCE WITH ALL LAWS .....</b>	<b>73</b>
<b>ARTICLE 26</b>	<b>CONFLICT OF INTEREST AND CONTRACTOR INDEPENDENCE</b>	<b>75</b>
<b>ARTICLE 27</b>	<b>CHOICE OF LAW OR VENUE .....</b>	<b>76</b>
<b>ARTICLE 28</b>	<b>ATTORNEY’S FEES .....</b>	<b>77</b>
<b>ARTICLE 29</b>	<b>SURVIVABILITY .....</b>	<b>77</b>
<b>ARTICLE 30</b>	<b>PROHIBITED AFFILIATIONS WITH INDIVIDUALS DEBARRED OR SUSPENDED .....</b>	<b>77</b>
<b>ARTICLE 31</b>	<b>WAIVER .....</b>	<b>77</b>
<b>ARTICLE 32</b>	<b>FORCE MAJEURE .....</b>	<b>78</b>
<b>ARTICLE 33</b>	<b>BINDING .....</b>	<b>78</b>
<b>ARTICLE 34</b>	<b>TIME IS OF THE ESSENCE .....</b>	<b>78</b>
<b>ARTICLE 35</b>	<b>AUTHORITY .....</b>	<b>78</b>
<b>ARTICLE 36</b>	<b>ETHICS IN PUBLIC CONTRACTING .....</b>	<b>79</b>
<b>ARTICLE 37</b>	<b>CONTRACT LANGUAGE INTERPRETATION .....</b>	<b>79</b>
<b>ARTICLE 38</b>	<b>ARTICLE AND SECTION TITLES NOT CONTROLLING .....</b>	<b>79</b>
<b>ARTICLE 39</b>	<b>LIMITATION OF LIABILITY/EXCEPTIONS .....</b>	<b>79</b>
<b>ARTICLE 40</b>	<b>COOPERATION WITH AUDITS .....</b>	<b>80</b>
<b>ARTICLE 41</b>	<b>AMENDMENT IN WRITING .....</b>	<b>80</b>
<b>ARTICLE 42</b>	<b>CONTRACT ASSIGNMENT .....</b>	<b>81</b>
<b>ARTICLE 43</b>	<b>SEVERABILITY .....</b>	<b>81</b>
<b>ARTICLE 44</b>	<b>ENTIRE AGREEMENT AND ORDER OF PRECEDENCE.....</b>	<b>81</b>
<b>ARTICLE 45</b>	<b>INDEMNIFICATION .....</b>	<b>82</b>
<b>ARTICLE 46</b>	<b>NOTICES .....</b>	<b>82</b>
<b>ARTICLE 47</b>	<b>OTHER MANDATORY GOVERNMENT CLAUSES.....</b>	<b>83</b>
<b>ARTICLE 48</b>	<b>PERFORMANCE BOND .....</b>	<b>84</b>

**ATTACHMENT 1: FEE SCHEDULE (Place holder)**

**ATTACHMENT 2: ELECTRONIC FUNDS TRANSFER FORM (Place holder)**

**ATTACHMENT 3: BUSINESS ASSOCIATE AGREEMENT (Place holder)**

**ATTACHMENT 4: ROUTINE CHANGE ORDERS (Place holder)**

**ATTACHMENT 5: TECHNICAL SPECIFICATIONS (Place holder)**

**ATTACHMENT 6: BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN (Place holder)**

**DRAFT**

**THIS CONTRACT** for professional services, is made and entered into by and between the Puerto Rico Health Insurance Administration (Administración de Seguros de Salud de Puerto Rico, hereinafter referred to as “ASES” or “the Administration”), a public corporation of the Government of Puerto Rico (“the Government” or “Puerto Rico”), represented by its Executive Director, \_\_\_\_\_, of legal age, \_\_\_\_\_ and resident of \_\_\_\_\_, Puerto Rico and [ **Enrollment Counselor** ], an entity meeting all requirements of an Enrollment Counselor and organized and authorized to do business under the laws of the Government of Puerto Rico, (hereinafter referred to as “Contractor”), represented by its \_\_\_\_\_.

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

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

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

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

**WHEREAS**, ASES seeks to comply with Puerto Rico’s public policy objectives of creating GHP, an integrated system of physical and behavioral health services, with an emphasis on preventative services and access to quality care;

**WHEREAS**, ASES will contract with a qualified entity to provide certain essential choice counseling, educational and enrollment functions for GHP Enrollees on an ongoing basis, including as Enrollees are eligible, and at least annually during Open Enrollment thereafter;

**WHEREAS**, on March 18, 2019, ASES issued an Enrollment Counselor Government Health Plan Request for Proposal (the “RFP”) to solicit bids from qualified entities interested in performing the functions of an Enrollment Counselor as required under Federal regulations. This RFP, except as provided in Article 44 of this Contract, is expressly incorporated as if completely restated herein, however in the event of conflict between the RFP and this Contract, the Contract shall prevail;

**WHEREAS**, ASES has received from the Contractor information in response to the aforementioned RFP, and ASES, in reliance on the information provided, accepted the Contractor’s proposal and supporting documentation to provide the Enrollment Counselor services contemplated under this Contract for ASES and awarded this Contract accordingly on \_\_\_\_\_;

**WHEREAS**, Contractor’s proposal, which includes all additional information obtained during the RFP process (“the Proposal”), except as provided in Article 44 of this Contract, is expressly incorporated as if completely restated herein, however in the event of conflict between the Proposal and this Contract, the Contract shall prevail;

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

**ARTICLE 1 GENERAL PROVISIONS**

**1.1 General Provisions**

1.1.1 The Contractor shall provide and deliver services for the GHP Program through described tasks, obligations, and responsibilities included in this Contract.

1.1.2 Specifically, the Contractor will provide to ASES the following professional services and deliverables:

1.1.2.1 Call Center services;

1.1.2.2 Choice Counseling in person and over the phone;

1.1.2.3 A web-based application or platform to support online Choice Counseling and all other requested Enrollment Counselor activities, including but not limited to the collection of Enrollee selections of MCO, PCP and PMG, and corresponding reporting functions under this Contract (the “Web-Based Application”). This Web-Based Application may be linked to the ASES and MCO websites, as well as listed in the Enrollee Handbook and general outreach materials issued by ASES for the GHP Program;

1.1.2.4 An online provider search functionality available to the general public (the “Provider Search Portal”). This Provider Search Portal shall be accessible to Enrollees and will be linked on the ASES and MCO websites, as well as listed in the Enrollee Handbook and general outreach materials issued by ASES for the GHP Program. The Provider Search Portal must also be integrated into the Web Based Application to allow Enrollees the ability to select PCPs or PMGs;

1.1.2.5 Other tasks associated with the functions of an Enrollment Counselor, performance of Contract requirements and fulfillment of Contract deliverables.

- 1.1.3 The Contractor shall maintain the staff, organizational, and administrative capacity and capabilities necessary to carry out all the duties and responsibilities under this Contract.
- 1.1.4 The Contractor shall notify ASES within five (5) Business Days of a change in the following:
- 1.1.4.1 Its business address, telephone number, facsimile number, or e-mail address;
  - 1.1.4.2 Its corporate status or nature;
  - 1.1.4.3 Its business location;
  - 1.1.4.4 Its corporate structure;
  - 1.1.4.5 Its ownership information, including but not limited to the new owner's legal name, business address, telephone number, facsimile number, and e-mail address;
  - 1.1.4.6 Its incorporation status;
  - 1.1.4.7 Its solvency (as a result of a non-operational event);
  - 1.1.4.8 Its corporate officers or executive employees directly related with the Contract; or
  - 1.1.4.9 Its Federal employee identification number or Federal tax identification number.
  - 1.1.4.10 All of the above information from any subcontractor under this Contract, if applicable.
- 1.1.5 Unless otherwise specified herein, all documentation, including policies and procedures that the Contractor and its subcontractor, if applicable, is required to maintain, shall be subject to prior written approval from ASES. All documentation, including any specified deliverables, must be submitted to ASES in English.
- 1.1.6 Unless otherwise specified, the Contractor shall provide any required notice under this Contract to ASES and/or the Puerto Rico Medicaid Program Immediately.
- 1.1.7 All staff providing direct services to Potential Enrollees or Enrollees must be located in Puerto Rico.

## 1.2 Background

- 1.2.1 To support Potential Enrollees and Enrollees in choosing MCOs and understanding the managed care delivery system under the GHP Program, ASES shall contract with an entity meeting the requirements of an Enrollment Counselor to provide

Choice Counseling and other Enrollment Activities, as assigned by ASES. The Contractor shall meet the following requirements:

1.2.1.1 In accordance with 42 CFR 438.810, the Contractor and any Subcontractor must be independent of any MCO or health care provider in Puerto Rico. The Contractor and any Subcontractor shall not be an MCO or a health care provider in Puerto Rico, shall not be owned or controlled by an MCO or a health care provider in

Puerto Rico, and shall not own or control an MCO or health care provider in Puerto Rico.

1.2.1.2 In accordance with 42 CFR 438.810, the Contractor and any Subcontractor shall be free from conflict of interest. The Contractor and any Subcontractor shall ensure that no person who is an owner, employee, consultant, or has a contract with the Contractor or Subcontractor:

1.2.1.2.1 Has any direct or indirect financial interest with any MCO (including any on-going contract or agreement with an MCO), entity, or health care provider that furnishes health care services in Puerto Rico, or

1.2.1.2.2 Has been excluded from participation under Title XVII (Medicare) or XIX (Medicaid) of the Social Security Act, debarred by any federal or state agency, or is currently or has been subject to civil money penalties under the Social Security Act.

1.2.2 As an Enrollment Counselor, the Contractor shall perform the following minimum requirements as further described in Article 4.

1.2.2.1 Provide in-person, phone, and online Choice Counseling for all Potential Enrollees and Enrollees who select their MCO or MCO and PCP during any Annual or New Enrollment Open Enrollment Period.

1.2.2.2 Assist ASES in enrollment activities, which may include collecting and processing MCO or MCO and PCP selections, and taking selections by phone, in person or through electronic methods of communication.

1.2.2.3 Support New Enrollees during the applicable Open Enrollment Period with selection and/or change of MCO or MCO, PCP and PMG.

### 1.3 Groups Eligible for Services

1.3.1 The Contractor will be responsible for providing Choice Counseling and Enrollment Activities to all persons determined eligible for GHP. The groups to be

served by the Contractor shall hereinafter be referred to collectively as “Potential Enrollees and Enrollees.” The groups are subject to change and currently include:

- 1.3.1.1 *Medicaid and CHIP.* All Medicaid and CHIP eligibility categories covered by the Puerto Rico Medicaid and CHIP programs are eligible to enroll in the GHP and shall be referred to hereinafter as “Medicaid and CHIP Eligibles,” also known as the “Federal population.”
- 1.3.1.2 The “State Population,” formerly known as the “Commonwealth Population,” is currently comprised of individuals, regardless of age, who meet State eligibility standards established by the Puerto Rico Medicaid Program but do not qualify for Medicaid or CHIP.
- 1.3.1.3 Any other group that may be added during the Contract Term as a result of a change in laws or regulations.
- 1.3.1.4 *Other Groups (Non-Medicaid and CHIP Eligibles).* Other groups which receive services consistent with all other groups under this Contract under the GHP Program without any Federal financial participation, such as government pensioners or employees.

#### **1.4 Geographic Scope of the Contract**

- 1.4.1 The Contractor is responsible for the delivery of Choice Counseling, and Enrollment Activities Island-wide.

#### **1.5 Delegation of Authority**

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

#### **1.6 Availability of Funds**

- 1.6.1 This Contract is subject to the availability of funds on the part of ASES, which in turn is subject to the transfer of Federal, Puerto Rico, and municipal funds to ASES. If available funds are insufficient to meet its contractual obligations, ASES reserves the right to terminate this Contract, pursuant to Article 23.

#### **1.7 Cooperation, Assistance and Compliance with Special Projects**

- 1.7.1 The Contractor shall provide to ASES and any other agency of the Government all necessary cooperation, assistance, and compliance with requirements in the development and implementation of any special project of ASES and any other

agency of the Government of Puerto Rico or the Federal Government. The Contractor acknowledges that this is a *sine qua non* condition of this Contract and that it will comply with ASES change requests related to such projects as these are implemented due to State or Federal mandate.

## **ARTICLE 2 DEFINITIONS**

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

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

**Answer Rate:** A measure of the percentage of callers to the Call Center who reach a Call Center choice counselor, in comparison to the number of calls received by the Call Center.

**Application Fee:** - Includes all charges and costs related to changes to the development of the Web-Based Application and Provider Search Portal developed by the Contractor that are required and directed by ASES after implementation. (Only billed to and paid by ASES if changes are requested by ASES. Credited back to ASES if Web-based application and Provider Search Portal is purchased)

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

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

**After Hours:** Hours of operation outside of normal Business Hours.

**Annual Open Enrollment Period:** Is the period of time from November 1 to December 15 in any given natural year where active enrollees have one (1) opportunity to select a different MCO, without cause.

**Authorized Representative:** A person given written authorization by an Enrollee to make healthrelated decisions on behalf of an Enrollee, including, but not limited to, selection of an MCO and/or PCP and PMG, in accordance with applicable Puerto Rico law.

**Auto-Assignment:** The assignment of an Enrollee to a PMG and a PCP, normally at the time the person is Auto-Enrolled in the GHP Program.

**Auto-Enrollment:** The Enrollment of a Potential Enrollee in an MCO by ASES without any action by the Potential Enrollee.

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

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

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

**Business Hours:** 8:00 a.m. to 6:00 p.m. local Puerto Rico time on Business Days.

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

**Call Center:** A telephone service facility equipped to handle a large number of inbound and outbound calls and perform all the functions described in this Contract via telephone.

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

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

**Choice Counseling:** The unbiased provision of information and services designed to assist Potential Enrollees and Enrollees in making enrollment decisions; including answering questions and identifying factors to consider when choosing among MCOs. This does not include, and in fact prohibits, making recommendations for or against enrollment into a specific MCO.

**Conflict of Interest:** Any group of acts, facts or circumstances that, according to ASES’s determination and judgment, appears to bring into question the actual or perceived independence, objectivity and fair treatment of the Contractor. That includes, but is not limited to, a personal or business interest that may represent a real, potential or apparent Conflict of Interest, as it relates to the performance of the Contract or that may create even the appearance of impropriety. It also includes situations where the Enrollment Counselor or ASES’s personnel or their relatives or relationships, up to a fourth degree of consanguinity and second degree of affinity, have intentionally affected the procedures to their favor or for their own benefit or the benefit of their family members or friends.

This term also incorporates the requirements for conflict of interest safeguards for Enrollment Counselors under 42 CFR 438.810.

**Contract:** The written agreement between ASES and the Contractor; comprised of this Contract, any addenda, appendices, attachments, or amendments thereto.

**Contract Term:** The duration of time that this Contract is in effect, as defined in Article 11 of this Contract.

**Contractor:** The Enrollment Counselor that is a Party of this Contract, which contracts hereunder with ASES under the GHP Program for the provision of Enrollment Counselor functions.

**Cultural Competency:** A set of interpersonal skills that allow individuals to increase their understanding, appreciation, acceptance, and respect for cultural differences and similarities within, among, and between groups and the sensitivity to know how these differences influence relationships with Enrollees. This requires a willingness and ability to draw on community-based values, traditions and customs, to devise strategies to better meet culturally diverse Enrollee needs, and to work with knowledgeable persons of and from the community in developing focused interactions, communications, and other supports.

**Daily Basis:** Each Business Day.

**Data:** Information in digital form that can be transmitted or processed.

**Disenrollment:** The termination of an individual's Enrollment in an MCO.

**Domestic Violence Population:** Certain survivors of domestic violence referred by the Office of the Women's Advocate or the Department of the Family, or other agency with jurisdiction, and enrolled in the GHP Program.

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

**Effective Date of Enrollment:** Shall have the meaning prescribed to it in Section 5.2.1 of the Contract.

**Eligible Person:** A person eligible to enroll in the GHP Program, as provided in Section 1.3 of this Contract.

**Enrollee:** A person who is currently enrolled in the GHP Program and an MCO and who, by virtue of relevant Federal and Puerto Rico laws and regulations, is an Eligible Person listed in Section 1.3 of this Contract.

**Enrollment:** The process by which a Potential Enrollee becomes an Enrollee of the GHP Program and an MCO.

**Enrollment Activities:** Defined at 42 CFR 438.810(a) as activities such as distributing, collecting, and processing enrollment materials and taking and effectuating enrollment by phone, in person or through electronic modes of communication.

**Enrollment Counselor:** An individual or entity that performs Choice Counseling and Enrollment Activities.

**Enrollment Term:** An Enrollee's twelve (12) month period of Enrollment with an MCO under the GHP Program.

**Foster Care Population:** Children who are in the custody of the Puerto Rico Administration of Families and Children ("ADFAN") and enrolled in the GHP Program.

**Go-Live Date:** The date on which all direct services to be provided by the Enrollment Counselor receive readiness approval by ASES, which is currently anticipated to be 1, 2019.

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

**Health Insurance Portability and Accountability Act ("HIPAA"):**

The (i) Health Insurance Portability and Accountability Act of 1996, including its Omnibus Rule; (ii) applicable provisions of the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009; and (iii) their accompanying rules, regulations, standards and procedures

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

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

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

**Interactive Voice Response ("IVR") System:** Call Center function that allows callers to request assistance and check on the status of requests and updates.

**Licensing Fee** – Payment made to the Contractor by which ASES is authorized and entitled to use the Web-Based Application and Provider Search Portal developed by the Contractor for the services object of this RFP. Includes all charges and costs necessary to maintain the Web-based application and Provider Search Portal updated and running to perform the contracted services object of this RFP including those in Appendix H-3. This fee includes any and all the required changes to the Web Based Application and

Provider Search Portal updates that are determined necessary to make the system work. (**Costs credited back to ASES if Web-based application and Provider Search Portal is purchased**).

**Maintenance Fee:** Includes all charges and costs related to the maintenance of the equipment and infrastructure to be dedicated to the project and systems refresh required to keep them updated and running to perform and fulfill the contracted services, responsibilities and obligations object of this RFP.

**Managed Care Organization (“MCO”):** An entity that is organized for the purpose of providing health care and is licensed as an insurer by the Puerto Rico Commissioner of Insurance (“PRICO”), which contracts with ASES for the provision of Covered Services and Benefits Island-wide on the basis of PMPM Payments, under the GHP program.

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

**Network Provider:** A Medicaid-enrolled Provider that has a Provider Contract with a Contractor under the GHP Program. This term includes Providers in the General Network and Providers in the Preferred Provider Network (“PPN”).

**New Enrollee:** An Eligible Person who has become a first-time Enrollee of the GHP.

**Occupation Level:** A measure of how much time Call Center Choice Counselors spend on live calls and/or completing work related to those calls.

**Open Enrollment:** A period of ninety (90) Calendar Days during which Enrollees have one (1) opportunity to select a different MCO or PCP, without cause, as set forth in Section 5.3 of this Contract.

**Personal Health Information (“PHI”):** Per 42 CFR Part 160 and 42 CFR Part 164, individually identifiable health Information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium.

**Potential Enrollee:** A person who has been certified by the Puerto Rico Medicaid Program as eligible to enroll in the GHP (whether on the basis of Medicaid eligibility, CHIP eligibility, or eligibility as a member of the State Population), but who has not yet enrolled with the GHP Program or with an MCO.

**Prevalent Non-English Language:** A non-English language spoken primarily by more than five percent (5%) of Potential Enrollees and Enrollees in Puerto Rico, as determined by the Government.

**Primary Care Physician (“PCP”):** A licensed medical doctor (MD) who is a Provider and who, within the scope of practice and in accordance with Puerto Rico Certification and licensure requirements, is responsible for providing all required Primary Care to Enrollees.

**PRITS:** Is the Puerto Rico Innovation and Technology Service. It is the Office of the Executive Branch of the Government of Puerto Rico in charge of the implementation, development and coordination of the government’s public policy on innovation, information and technology created by Act No. 75 of July 25, 2019.

**PCP Panel:** The number of Enrollees a PCP can adequately serve. A PCP Panel is open so far as the PCP has not reached the maximum number of Enrollees it may serve, and closed once that limit has been exceeded, in which case the PCP cannot accept new Enrollees.

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

**Service Level:** A measure of Call Center Choice Counselor productivity in real time as Call Center Choice Counselors take calls, expressed in a percentage of calls answered within a specified time in seconds.

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

**Subcontractor:** Any organization or person, including the Contractor’s parent, subsidiary or Affiliate, who has a Subcontract with the Contractor to provide any function or service specifically for this Contract. For the avoidance of doubt, a Subcontractor shall not include Contractor’s enterprise-wide vendors that perform services for Contractor in the ordinary course of business and are not for the specific execution of this Contract. For clarification, Contractor shall be responsible for the actions of its enterprise-wide vendors as if such vendor activities were performed by Contractor.

**Termination Date of the Contract:** The date designated by ASES as the date that services under this Contract shall end, pursuant to Article 23 of this Contract.

**Website Hosting Fee:** All the costs related to the services and technologies needed to keep running and functional the web page to be created for this project, including the cost for the acquisition of the domain name and storage space. (Cost of development, enhancement and of the domain will be credited to ASES if Web-based application and Provider Search Portal is purchased).

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

## **ARTICLE 3           ASES RESPONSIBILITIES AND RIGHTS**

### **3.1    General Provision**

- 3.1.1    ASES will monitor Contractor’s performance under this Contract, and provide oversight of all aspects of the Contractor’s operations as an Enrollment Counselor.

## **3.2 Legal Compliance**

- 3.2.1 ASES will monitor the Contractor's compliance with all Puerto Rico and Federal laws and regulations applicable to Contractor as set forth in Section 25.2.

## **3.3 Coordination with Contractor's Key Staff**

- 3.3.1 ASES will make diligent, good-faith efforts to facilitate effective and continuous communication and coordination with the Contractor in all areas of the Enrollment Counselor operations. Specifically, ASES will designate an account manager who will serve as a liaison to corresponding individual(s) on the Contractor's staff.

## **3.4 Information Systems and Reporting**

- 3.4.1 Upon mutual written agreement by authorized representatives of Contractor and ASES), ASES may (i) modify, expand, or delete the requirements contained in this Contract with respect to the Data that Contractor is required to submit to ASES or (ii) issue new Data requirements, subject to consultation with Contractor. Unless otherwise stipulated in the Contract or mutually agreed upon by the Parties, the Contractor shall implement any such modification, addition, deletion or new requirements within the timeframe(s) set forth in such written agreement between Contractor and ASES.

- 3.4.2 Unless otherwise established by the parties, ASES will make available a secure FTP server, accessible via the Internet, for receipt of electronic files and reports from the Contractor. When such systems are not operational, ASES and the Contractor shall agree mutually on alternate methods for the secure exchange of files.

## **3.5 Evaluation of Contractor Operations**

- 3.5.1 ASES may evaluate the Contractor's implementation of obligations and operations under this Contract prior to the Go-Live Date and on an ongoing basis for the duration of the Contract Term. Such reviews may include desk and on-site reviews or policies, procedures, and IT systems, and interviews with staff.

### **3.5.1.1 Readiness Review:**

- 3.5.1.1.1 ASES will conduct desk audits, testing of systems and interviews with the Contractor's staff and that of its Subcontractor, if any, to assess their readiness to effectively administer and provide all the services defined in this Contract.

3.5.1.1.2 Prior to Go-Live Date, the Contractor must demonstrate, to ASES' satisfaction, that it is fully capable of performing all duties under this Contract, including demonstration of, but not limited to the following:

- a. Call Center is fully operational;
- b. The web-based application and the Provider Search Portal are fully operational;
- c. Contractor's integrated information technology systems and services are adequate to ensure that any disruptions to service will be minimal and not impact the delivery of services to beneficiaries;
- d. Contractor and its subcontractor, if any, has hired and trained its staff in accordance with the requirements outlined in the RFP and this Contract;
- e. Contractor has provided all required privacy and security documentation and Continuity of Operations and Disaster Recovery documentation, including any test results.

3.5.1.3. Any changes required to the Contractor processes and those of its Subcontractor, if any, as identified through readiness review activities must be made by prior to Go-Live. Costs associated with these changes must be borne by the Contractor.

3.5.1.4 Payment of any implementation costs is contingent upon the Contractor's ability to meet all the readiness review requirements.

3.5.1.4.1 One time start up and implementation costs for all enrollment counselor functions include, but are not limited to services, hiring, and system build requirements for both Information Technology (IT) and non-IT functions, administrative expenses, recruitment expenses, training expenses, as further detailed:

- i. implementation costs for building the Web-Based Application and Provider Search Portal.
- ii. other system implementation costs associated with enrollment counselor functions that are distinct from the web-based application or provider search portal.
- iii. implementation technology costs for call center functions, including but not limited to: systems, equipment, and phone lines/service contracts.
- iv. implementation infrastructure costs not specifically attributed to a specific enrollment counselor function.
- v. implementation equipment costs for the Web-Based Application and Provider Search Portal.
- vi. all other implementation information technology costs that are not captured above.

3.5.1.5 The Contractor and its Subcontractor, if any, shall cooperate in the readiness review.

3.5.2 ASES may elect to conduct any assessment or examination of individual Choice Counselors prior to working directly with Potential Enrollees and Enrollees. ASES reserves the right to also perform such assessment during the Contract Term.

3.5.3 ASES may provide the Contractor with a summary of findings from any evaluation of operations, as well as areas requiring remedial action with the timeframes to correct the findings. Failure to properly comply with the timeframes established may be cause for the termination of the Contract.

**ARTICLE 4 ENROLLMENT COUNSELOR FUNCTIONS**

**4.1 Choice Counseling and Enrollment Activities**

4.1.1 The Contractor shall have a sufficient number of trained, qualified and experienced Choice Counselors available in-person at Medicaid Eligibility Offices, and other locations throughout Puerto Rico, as determined by ASES, as well as through the Call Center and electronic modes of communication. Unless otherwise specified by ASES, said staff shall be available in the following schedule, though ASES at its discretion and with forty-eight (48)

hours advance notice, may occasionally, under exceptional circumstances, require Contractor to make resources available to perform Choice Counseling on Saturdays and/or Sundays and/or holidays:

4.1.1.1 On Site Choice Counselors at the Medicaid Offices - from 7:30 AM until 4:00 PM, except those specific offices identified to Contractor by ASES in writing having a different official schedule. ASES reserves the right to set for Contractor, through prior written notice, a specific schedule for staffing of Medicaid Offices and/or other settings designated by ASES, and the requisite number of days per week per Medicaid Office and/or other setting. Any specific schedule so notified by ASES can be modified only with written approval from ASES;

4.1.1.2 On Site Choice Counselors at other locations throughout Puerto Rico - regular business hours of said location as identified by ASES in writing;

4.1.1.3 Call Center Choice Counselors – 8:00 AM until 6:00 PM.

4.1.2 The Contractor shall ensure that the Choice Counselors comply with the following responsibilities and requirements:

4.1.2.1 Are able to assist Potential Enrollees and Enrollees in understanding the nature of the GHP Program and direct Potential Enrollees and Enrollees to other resources as appropriate, such as his/her MCO or the Call Center;

4.1.2.2 At a minimum, are able to provide detailed information and respond to inquiries regarding the nature of managed care, the scope of benefits under the GHP Program, and information about MCOs and Network Providers, in a Culturally Competent manner;

4.1.2.3 Conduct Enrollment Activities, including facilitating enrollment in the Enrollee's choice of MCO and/or PCP/PMG, through the accurate and timely entry of required information in the Web-based Application System created under this contract, or any other technological information system determined by ASES, to enable ASES to complete processing of the Enrollment and/or PCP/PMG selection with the appropriate MCO. The Enrollee or his or her Authorized Representative may choose the Enrollee's MCO and PCP/PMG and request disenrollment orally or in writing;

- 4.1.2.4 Document requests for MCO, PCP/PMG Enrollments upon receipt and maintain a log, in a format specified by ASES, of Choice Counseling sessions performed on a Daily Basis;
- 4.1.2.5 Submit MCO or PCP/PMG selections to ASES using the Web-Based Application, or any other technological information system, as determined by ASES, to record the Enrollee's selection.
- 4.1.2.6 Register a visitor upon arrival for in-person Choice Counseling, and ensure that (i) the average wait time to meet with a Choice Counselor does not exceed forty-five (45) minutes, and (ii) the average time for the in-person Choice Counseling session does not exceed twenty-five (25) minutes, unless good cause exists for additional time for the session. Contractor must be able to produce evidence of compliance with these standards upon ASES's request;
- 4.1.2.7 Demonstrate sufficient familiarity with the GHP program before the Go-Live Date. Accordingly, ASES may elect to conduct any assessment or examination of Contractor and/or individual Choice Counselors prior to direct interaction with Potential Enrollees or Enrollees. ASES reserves the right to also perform such an assessment or examination during the Contract Term. ASES also reserves the right to request removal of Choice Counselors or other staff of Contractor for cause.

## **4.2 Call Center Services**

- 4.2.1 The Contractor shall operate a Call Center (a toll-free telephone help line to provide phone-based Choice Counseling) equipped with state-of-the-art caller identification, real time monitoring tools to ensure quality standards, automatic call distribution equipment capable of handling expected call volume, and access to interpreter service for Potential Enrollees and Enrollees whose primary language is English or a Prevalent Non-English Language (other than Spanish). ASES will provide the Contractor the portability of ASES's toll free numbers (1-800-981-2737 and 1-833-253-7721) to be used during the Contract Term, unless otherwise requested by ASES. Upon termination of the Contract or written request by ASES, Contractor shall cease use of ASES's toll free numbers, and such numbers and their portability will be immediately returned to ASES for its exclusive use pursuant to the applicable terms of Article 16 of this Contract. If during the term of the contract Contractor must acquire other phone number(s) to support the requirements of this Section, it must relinquish ownership of the toll-free number(s) upon contract termination or expiration, at which time ASES must take title of said telephone number(s). All costs accrued, due, and owing on these numbers, including but not limited to, any taxes, penalties or fines must be the sole obligation of the Contractor.
- 4.2.2 Call Center Choice Counselors will use flow chart protocols and scripts developed by the Contractor and approved by ASES, as well as any other scripts and materials

provided by ASES for this purpose. Contractor must have a policy and procedure, to be produced upon request by Contractor to ASES, to ensure consistent and high-quality responses are provided to all Potential Enrollees and Enrollees who contact the Call Center.

#### 4.2.3 Call Center Required Functionality:

- 4.2.3.1 The Call Center must provide an IVR System. During Business Hours, the IVR System must have the capability to offer callers the option at each prompt to speak with a Choice Counselor rather than continue through additional prompts. The IVR must be available twenty-four (24) hours a day, seven (7) days a week. The IVR System script must be approved by ASES prior to implementation and in advance of any changes.
- 4.2.3.2 The Call Center must use an automated phone triage system, approved by ASES, to redirect callers with questions unrelated to the Enrollment Counselor's responsibilities to other entities (i.e., Puerto Rico Medicaid Office, ASES, or MCO), as appropriate.
- 4.2.3.3 The Call Center must provide an After-Hours message advising callers of hours of operation and the option to connect directly to the IVR System or to a voicemail box without disconnecting.
- 4.2.3.4 The Call Center will provide a Call Back call within twenty-four (24) hours of the Potential Enrollee or Enrollee voice mail message.
- 4.2.3.5 The Call Center shall have the technological infrastructure to handle expected number of call-based counseling sessions. Minimally, this would include voice over internet protocol (VOIP) and call-handling software with a sophisticated queue management, monitoring and reporting capabilities. Callers must receive notification to inform the Potential Enrollee, Enrollee or Authorized Representative that call monitoring or recording, as applicable, may occur.
- 4.2.3.6 The Call Center's technological infrastructure shall be scalable to allow the Choice Counselors to handle both expected and unanticipated surges in activity.
- 4.2.3.7 The Call Center must establish, operate, monitor and support an automated call distribution system that supports all standards, services, requirements, compliance and key performance indicators (KPIs) required by ASES, including but not limited to:

- 4.2.3.7.1 A toll-free telephone help link that has the capacity to process a large volume of calls daily during peak time and to adjust to increased call volume;
- 4.2.3.7.2 A call pick-up system that places the call in a queue.
- 4.2.3.7.3 The ability to measure and report daily the average speed of answer by a live Choice Counselor (by type of call and for all calls in the aggregate), average call wait times, percentage of calls to Contractor receiving a busy signal, Blocked Calls, Abandoned Calls (by type of call and for all calls in the aggregate), and average time to abandon. Also, the ability to perform and report a daily analysis of the quantity, length and types of calls received.
- 4.2.3.7.4 Informational messages advising callers as to expected wait times while on hold to speak to a live Choice Counselor. ASES may also request Contractor to deliver educational or other messages to improve the Enrollee experience while on hold;
- 4.2.3.7.5 The availability of oral translation and TTY/TDD services so that Potential Enrollees and Enrollees in need of such services will not have to disconnect to access these services. The Call Center shall ensure sufficient training, processes and technical capabilities to appropriately serve callers who may be totally or partially deaf and/or deafblind.
- 4.2.3.7.6 The ability to record and retain all incoming and outgoing calls for quality assurance purposes and in compliance with record retention requirements set forth in Article 21 of this Contract.
- 4.2.3.7.7 The ability to transfer calls to other telephone lines as necessary without diminishing inbound or outbound call capacity at the Call Center; and
- 4.2.3.7.8 The ability to monitor calls from a remote location by a third party, including ASES.
- 4.2.3.8 The Call Center shall maintain a process for the handling of problematic calls in accordance with Contractor's escalation policy and procedure. This policy is subject to review and approval by ASES.
- 4.2.3.9 Enrollment Counselor shall be able to comply with the requirements of the Call Center Statistics Interface which includes,

but is not limited to, producing a file in CSV format on a daily basis or other schedule established by ASES and/or the Puerto Rico MMIS, containing the call statistics data required for the Call Statistics Scorecard and Trends report views on the in Sight Analytics Contact Management Report.

#### 4.2.4 Call Center Performance Metrics:

4.2.4.1 The Call Center shall meet the following performance standards, which shall each be measured on a monthly basis during the Contract Term. Failure to meet the following performance metrics may result in financial penalties as set forth in Section 10.3 of the Contract:

4.2.4.1.1 *Answer Rate.* Ninety five percent (95%) of calls are answered by a live voice;

4.2.4.1.2 *Wait or Hold Times.* Wait or hold times after initial IVR selection to speak to a live operator at the Call Center and an answer by a live operator shall not exceed two (2) minutes.

4.2.4.1.3 *Abandoned Calls.* Less than or equal to five percent (5%).

4.2.4.1.4 *Follow-Up Calls.* One hundred percent (100%) of voicemails shall be returned within one (1) Business Day.

4.2.4.1.5 *Service Level.* Equal or greater than eighty percent (80%) within thirty (30) seconds.

4.2.4.1.6 *Call Center Outage.* Less than two percent (2%) of time during the Call Center's Business Hours that the Call Center is unable to accept inbound calls.

4.2.4.1.7 *First Call Resolution.* Ninety-five percent (95%) of calls resolved by Call Center during the first interaction with the Potential Enrollee or Enrollee.

4.2.5 The Call Center must be ready to begin receiving calls from Potential Enrollees and Enrollees by the Go-Live Date. During the Annual Open Enrollment Period, or in the event of an MCO termination or significant adverse change in an MCO's Provider Network, the Contractor must be able to accommodate a higher than usual volume of calls. ASES shall provide notice to the Contractor of the expected number of Enrollees impacted during an MCO termination or significant adverse change in an MCO's Provider Network as soon as reasonably practicable and no later than thirty (30) days before the accommodation is required.

- 4.2.6 The Call Center must have the upgrade capability to simultaneously handle a higher than normal volume of calls during Annual Open Enrollment Period or in the event of an MCO termination or significant adverse change in an MCO provider network (e.g., loss of a large clinical or hospital system). ASES shall provide notice to the Contractor of the expected number of Enrollees impacted during an MCO termination or significant adverse change in an MCO's Provider Network as soon as reasonably practicable and no later than thirty (30) days before the accommodation is required.
- 4.2.7 Direct calls to the appropriate Enrollee Satisfaction Survey as described in Section 6.5 of this Contract.
- 4.2.8 The Contractor must provide the necessary furniture (cubicles, shelves, chairs, desks, etc.) and computer equipment (computers, printers, etc.), telephones and all other facilities needed for the Call Center. Individually equipped units shall be referred to as a workstation, service station or seat.

### **4.3 Information System, Web-Based Application and Provider Search Portal**

- 4.3.1 The Web-Based Application and Provider Search Portal shall be designed to support all enrollment counselor activities and functions under this Contract, and must comply specifically with all the requirements of Article 4 and Article 8 of this Contract as well as Appendix H of the RFP and all applicable federal and state laws, rules and regulations. The Web-Based Application and Provider Search Portal must be operational and available for use as set forth under this Section by the Go-Live Date.
- 4.3.2 The Web-Based Application must offer a secure platform to allow access by Enrollees, Choice Counselors and ASES personnel, after appropriate user authentication, to provide real-time information and, at a minimum, allow users to:
  - 4.3.2.1 Create and manage log-in information including user name and password;
  - 4.3.2.2 View Enrollee's current Medicaid eligibility, demographic information, and case information, including but not limited to name of the current MCO and Open Enrollment dates;
  - 4.3.2.3 Compare available MCOs using selection criteria such as extra benefits, participating hospitals, PCPs, and specialty providers;
  - 4.3.2.4 Manage enrollment online, including enrollment or disenrollment from an MCO and selecting a PCP and PMG at the time of enrollment;
  - 4.3.2.5 Opt-in and opt-out of electronic or other communication;
  - 4.3.2.6 View and download Enrollee materials specific to the Enrollee;
  - 4.3.2.7 Accept updates regarding open/closed enrollment in an MCO;

- 4.3.2.8 Accept daily updates to any of the Enrollee data elements transmitted by ASES and/or its Agent(s);
- 4.3.2.9 Accept MCO provider network data, including PCPs and PMGs, to inform Choice Counseling;
- 4.3.2.10 Accept updates regarding open and closed PCP Panels, and prevent Enrollee selection of a PCP with a full Panel;
- 4.3.2.11 Transmit to ASES, or its Agent (via FTP or other prescribed protocol), MCO choice transactions within twenty-four (24) hours of an enrollee's selection of an MCO and, if applicable, a PCP and PMG;
- 4.3.2.12 Collect Enrollee selection of MCO or MCO/PCP/PMG through the communication methods specified by ASES, including but not limited to telephone, web and in-person, document requests for MCO selections upon receipt;
- 4.3.2.13 For any portions of the Web-Based Application that is visible to Enrollees, incorporate ASES's design and image elements and standards and be approved by ASES prior to use;
- 4.3.2.14 Ensure that the elapsed time from the command to view a response on the Web-Based Application until the response appears or loads to completion does not exceed five (5) seconds ninety-nine percent (99%) of the time.
- 4.3.2.15 Process any relevant files received from ASES to support ongoing operations;
- 4.3.2.16 Comply with all other technical specifications stated in Attachment 5;
- 4.3.3 The Provider Search Portal must be publicly accessible to Potential Enrollees and shall incorporate ASES's design and image elements and standards and must be approved by ASES prior to use. The Provider Search Portal must also:
- 4.3.3.1 Be available twenty-four (24) hours a day, seven (7) days a week;
  - 4.3.3.2 Comply with Section 508 of the Rehabilitation Act, Puerto Rico Act 229 of 2003, as amended, and any other applicable laws governing accessibility;
  - 4.3.3.3 Offer an easily searchable public area of the Provider Search Portal that allows access to general information relevant to the GHP Program or MCOs, including, but not limited to, provider listings, without requiring the Enrollee or Potential Enrollee to log in to the secure area of the website.

4.3.3.4 Complies with all other technical specifications stated in Attachment 5.

4.3.4 All network connections of data interface between the Contractor and ASES must include the following minimum-security features:

4.3.4.1 To the extent Contractor has access to ASES' internal networks, the network from which the Contractor will access the internal network of ASES will be isolated from any other network in the Contractor's facilities, especially any public networks that may exist;

4.3.4.2 To the extent Contractor has access to ASES' internal networks, Equipment assigned to staff dedicated to this project and that will be connected to the internal network of ASES may not have installed any software that has not been previously authorized by ASES, and only that software that is strictly necessary for the provision of services will be used. Installing new software or changes in the existing configuration must be duly authorized by ASES;

4.3.4.3 Provide authentication, authorization and "accounting" through a firewall to all incoming connections;

4.3.4.4 Implement any additional security measures that ASES may require for the protection of information and that are reasonable in light of the requirements necessary for the proper provision of the services under this Contract;

4.3.4.5 Comply with all other technical specifications stated in Attachment 5.

4.3.5 The Contractor must provide properly trained and certified IT technicians to support, appropriately address, and resolve technical situations that require immediate attention.

4.3.6 The Contractor guarantees that it possesses all necessary software licenses for the provision of all the services required by this Contract and agrees to keep them updated for the duration of the Contract. This is a material condition of this Contract. Failure to comply with this section may be cause for the termination of the Contract and/or the imposition of sanctions and/or other penalties.

4.3.6.1 In case of a third-party allegation of infringement in the use of the software and technology used by the Contractor to provide the services object of this Contract, the Contractor will Immediately take, at its sole expense, all necessary measures to avoid an interruption of, or adversely affect, the execution of the Enrollment Counselor Activities and services under this Contract.

4.3.7 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit ASES to use such item or items.

4.3.7.1 The Contractor will defend or settle, at its own expense, any claim or suit against ASES alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend ASES against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided ASES (i) promptly notifies the Contractor in writing of the claim. The obligations of this paragraph are in addition to those stated in Section 4.3.7.2 below.

4.3.7.2 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for ASES the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

4.3.8 ASES reserves the right in its sole discretion to acquire the rights to the Web-Based Application and Provider Search Portal as developed by Contractor under this Contract at any time during the Contract Term. The agreed-upon purchase price for the acquisition of these rights shall be \$       . Any prior payment of Licensing and Application fees, the cost for the acquisition of the web page domain and other expenses paid under this contract for the development and enhancement of the Web-based Application and Provider Search Portal including related implementation costs shall be applied and credited as an off-set to the agreed-upon purchase price, as further detailed in the Fee Schedule of this Contract. See, Attachment 1 of this Contract.

4.3.8.1 If ASES asserts the right to purchase the Web-Based Application and Provider Search Portal, the Contractor guarantees that it will pass to ASES a clear title to said intellectual property. This includes any copyrights and patents over said products. In case of a third party claim against ASES's property right to such intellectual property, the Contractor will comply with all the obligations stated in Sections 4.3.7.1 & 4.3.7.2 above.

## **Account Management**

4.4.1 The Contractor shall provide the services of one (1) Account Manager, unless otherwise specified by ASES, dedicated to the GHP Program, who is responsible for the following activities:

4.4.1.1 Hold and/or attend regular meetings, whether during implementation of services under this Contract or otherwise during the Contract Term, with internal partners and key personnel of ASES, Medicaid, and other stakeholders as identified by ASES;

4.4.1.2 Act as a liaison between ASES, Medicaid, Choice Counselors and corresponding team leaders and supervisors and other personnel of the Contractor;

4.4.1.3 Assess the compliance of services provided under this Contract, and work to implement required improvements and corrective actions;

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

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

4.4.1.6 Submit regular reports, as requested by ASES, regarding the services under contract;

4.4.1.7 Conduct other related tasks as requested by ASES.

#### **4.5 Other Contractor Responsibilities**

4.5.1 The Contractor shall properly train, monitor, and mitigate performance issues of Choice Counselors on an ongoing basis. Choice Counselors shall pass all applicable assessment(s) and examination(s) prior to direct interaction with Potential Enrollees and Enrollees.

4.5.2 The Contract shall provide ASES with the required number of agents, managers, supervisors, quality monitors and internal trainers to guarantee the quality of services and that the desired service levels are met.

4.5.3 The Contractor shall provide the administrative support to Choice Counselors, Supervisors, Account Manager, other Key Personnel, and any other personnel, to perform their corresponding duties and responsibilities to properly provide the contracted services.

4.5.4 The Contractor shall maintain proper records and evidence of the activities and tasks performed by the Choice Counselors, Account Manager and other staff for the period of time to be established by ASES. At a minimum, the records must include any and all reports required under the contract, logs of orientations performed daily, attendance sheets to training sessions, and

regular attendance sheets of all staff involved in the provision of services of this contract.

4.5.5 The Contractor's operations under this Contract shall be HIPAA compliant.

4.5.6 The Contractor shall have in place a Business Continuity and Disaster Recovery ("BC-DR") Plan.

4.5.7 The Contractor shall have adequate procedures for:

4.5.7.1 Comprehensive data security;

4.5.7.2 Records retention;

4.5.7.3 System refreshes.

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

4.5.9 Enrollment Counselor must inform ASES of any situation that may affect the provision of contracted services Immediately after incurring in the knowledge that such situation exists or may occur.

#### **4.6 Staff Qualifications, Staffing Levels and Key Personnel**

4.6.1 The Contractor shall have sufficient qualified, knowledgeable and experienced personnel necessary to successfully and efficiently carry out all requirements under this Contract for the duration of the Contract Term. At minimum, the Contractor must maintain the needed staffing levels for Choice Counselors to comply with the requirements set forth under Sections 4.2.3 and 4.2.4 of this Contract.

4.6.2 The Contractor shall submit an organizational chart of staff assigned under this Contract within fifteen (15) Calendar Days of the Effective Date of the Contract for ASES' review and approval prior to the Go-Live Date. Any changes to the approved organizational chart shall be submitted and prior approved by ASES.

- 4.6.3 All Choice Counselors must be properly trained, demonstrate competency and be able to communicate effectively with Potential Enrollees and Enrollees. The Contractor must employ a sufficient number of Choice Counselors who are fluent in English and Spanish to allow for Culturally Competent communication.
- 4.6.4 The Contractor shall have one (1) supervisor per twenty-five (25) Choice Counselors, or a different ratio if justified by Contractor and approved by ASES.
- 4.6.5 The Contractor must provide the necessary equipment for in-person, on-site Choice Counselors as well for Call Center Choice Counselors. In person on site choice counselors nor any other staff from the Contractor will be allowed to connect any of its own equipment nor Contractor-owned equipment to a State LAN/WAN or WLAN for the performance of the services under this Contract without prior written approval by ASES.
- 4.6.6 All personnel must be located in Puerto Rico and be available to start providing direct services to Potential Enrollees and Enrollees under this Contract no later than the Go-Live Date.
- 4.6.7 The Contractor must have in place a detailed staffing contingency plan for handling sudden and unexpected increases in enrollment, MCO/PMG changes, and call volumes. This contingency plan must include a description of how the plan will be implemented and coordinated with ASES.
- 4.6.8 The Contractor must provide, at minimum, the following key personnel to perform the services set forth under this Contract: (i) an Account Manager, (ii) an IT Manager, (iii) a Call Center Manager, and (iv) an On-Site Choice Counselor Manager (the “Key Personnel”).
- 4.6.8.1 The Contractor must not substitute Key Personnel without prior written approval by ASES. The Contractor must notify ASES of any desired substitution of Key Personnel, including the name, role, resume, and other information requested by ASES for the recommended substitute.
- 4.6.8.2 Within ten (10) calendar days of the request for substitution, ASES will notify Contractor if the recommended substitute is acceptable. If ASES does not accept the recommended substitute, the Contractor shall have ten (10) calendar days to make another recommendation. The Contractor must keep the role staffed in the interim until ASES approves a requested substitution.
- 4.6.8.3 ASES may, at its sole discretion, request Contractor the substitution of any Key Personnel for cause.
- 4.6.8.4 All Key Personnel must be available on-site and ready to perform their assigned duties as of the Go-Live Date or earlier during the transition period, if necessary.

## ARTICLE 5 ELIGIBILITY AND CHANGE OF MCO, PMG, OR PCP

### 5.1 Eligibility

- 5.1.1 Medicaid has the sole authority to determine eligibility for the GHP, as provided in Federal law and Puerto Rico's State Plan, with respect to the Medicaid and CHIP Eligible and with respect to the Other Groups listed in Section 1.3.1.4, as provided in Article VI, Section 5 of Act 72 and other Puerto Rico law and regulation.
- 5.1.2 Effective Date of Eligibility. ASES shall maintain the Effective Date of Eligibility for services under the GHP and provide such information to the Contractor.

### 5.2 Enrollment

#### 5.2.1 Effective Date of Enrollment

5.2.1.1 Except as provided below, Enrollment, whether chosen or automatic, will be effective (hereinafter referred to as the "Effective Date of Enrollment") the same date as the period of eligibility specified on the MA-10.

5.2.1.2 Changes in Enrollment requested by the Enrollee shall be effective the first Calendar Day of the second month following the month in which the Enrollee has made such request. Notwithstanding the foregoing, if an Enrollee requests a change in enrollment during the first twenty (20) Calendar Days of any month, that change will be effective the first Calendar Day of the following month. For example, a request received January 10<sup>th</sup> will be effective February 1<sup>st</sup>, whereas a request received January 21<sup>st</sup> will be deemed effective March 1<sup>st</sup>. An Enrollee's requested change will be deemed approved and effective as described above despite the Contractor's failure to comply with this section.

5.2.1.3 Enrollees shall remain enrolled with an MCO until the occurrence of an event listed in Section 5.4 (Disenrollment).

### 5.3 Open Enrollment Periods

- 5.3.1 New Enrollees. New Enrollees to the GHP will have one (1) opportunity to select a MCO during the Medicaid eligibility process with the Puerto Rico Medicaid Program. If the New Enrollee does not select a MCO, the Puerto Rico Medicaid Program will select a MCO on behalf of the New Enrollee. New Enrollees shall be permitted to select a different MCO once without cause, regardless of how the initial selection of MCO was made, during their Open

Enrollment Period, which shall begin on the New Enrollee's Effective Date of Enrollment.

5.3.2 All Enrollees. All Enrollees will have the opportunity to select a contractor without cause during the Annual Open Enrollment period.

5.3.2.1 If a New Enrollee's Open Enrollment Period in Section 5.3.1 coincides with the Annual Open Enrollment Period, the Open Enrollment Period in Section 5.3.1 controls.

5.3.3 The Foster Care Population and Domestic Violence Population will be AutoEnrolled in one MCO and are not eligible to enroll into another MCO.

5.3.4 When an Enrollee ceases to be part of the Domestic Violence or Foster Care Populations but continues to be an Eligible Person, it will be considered a for cause reason for which the Enrollee may select a new MCO.

5.3.5 When an Enrollee ceases to be eligible for the Platino Program but continues to be eligible for the GHP, it is a for cause reason for which the Enrollee may select a new MCO.

5.3.6 If the Enrollee does not make a change in MCO during the Open Enrollment Period, the Enrollee will remain enrolled with his/her current MCO.

#### 5.4 **Disenrollment**

5.4.1 Disenrollment occurs only when ASES or the Medicaid Program determines that an Enrollee is no longer eligible for the GHP; or when Disenrollment is requested by the MCO or Enrollee or his or her Authorized Representative for cause, and approved by ASES or the Enrollment Counselor in accordance with the guidelines set forth in this Contract. The Foster Care Population and Domestic Violence Populations are not eligible to disenroll from their Auto Enrolled GHP Plan.

5.4.2 Disenrollment will be processed by ASES, and ASES will issue notification to the MCO who will in turn notify the beneficiary. When an email is provided by the beneficiary, the Contractor shall also generate an automatic notice to the beneficiary confirming the disenrollment request. In all cases the Contractor must provide the beneficiary with a confirmation number to track the transaction.

5.4.2.1 In cases where the beneficiary needs to receive health services before the change of MCO is effective and the current MCO does not have available on its provider network the applicable provider, the Contractor will notify ASES of the situation IMMEDIATELY for the corresponding Coordination of Benefits.

5.4.3 The Enrollment Counselor may accept disenrollment requests from the Enrollee or his or her Authorized Representative at any time orally or in writing. The Enrollment Counselor may approve disenrollment requests made outside of Open Enrollment provided that (1) the Enrollee or Authorized Representative has stated an appropriate cause to disenroll, and (2) the Enrollment Counselor ensures that the Enrollee's disenrollment happens within the required timeframes as specified by 42 C.F.R. 438.3(q); 42 C.F.R. 438.56(c); (d)(3)(ii); and (e)(1)-(2). If the Enrollee or Authorized Representative has not stated an appropriate cause to disenroll, or the Enrollment Counselor is unsure of the same, the Enrollment Counselor shall forward the request to ASES for further determination.

5.4.3.1 The following, among other similar circumstances, constitute cause for Disenrollment by the Enrollee:

5.4.3.1.1.1 The Enrollee moves outside of Puerto Rico;

5.4.3.1.1.2 The Contractor's Plan does not, due to moral or religious objections, cover the health service the Enrollee seeks.

5.4.3.1.1.3 The Enrollee needs related services to be performed at the same time, and not all related services are available within the network. The Enrollee's PCP or another Provider in the Contractor's Network have determined that receiving services separately would subject the Enrollee to unnecessary risk.

5.4.3.1.1.4 Other acceptable reasons for Disenrollment at Enrollee request, per 42 CFR 438.56(d)(2), including, but not limited to, poor quality of care, lack of Access to Covered Services, or lack of Providers experienced in dealing with the Enrollee's health care needs; and

5.4.3.1.1.5 The Enrollee has become eligible for a Platino Program or has experienced a change in his or her eligibility as a member of the Domestic Violence or Foster Care Populations.

## 5.5 **Change of a Primary Medical Group ("PMG") and Primary Care Physician ("PCP")**

5.5.1 Change of a PMG and PCP

5.5.1.1 During the Open Enrollment Period, the Enrollee can change his/her selected or Auto-Assigned PMG and PCP. The Contractor can offer appropriate Choice Counseling assistance to the Enrollee during the selection of a different PCP and PMG. The Foster Care Population and Domestic Violence Population are not assigned to a PMG or PCP. The changes of PMG or/and PCP should be performed by the MCOs, though the Enrollment Counselor may process changes in PMG or PCP only if the Enrollee is also changing to a different MCO.

5.5.1.2 The Contractor shall educate Enrollees on the choice of PCPs as follows:

5.5.1.2.1 Adult Enrollees should choose among the following types of practitioners as their PCP: general practice, family practice, or internal medicine.

5.5.1.2.2 Female Enrollees age twelve (12) and older shall be informed about their option to directly choose an obstetrician/gynecologist as a PCP with their selected MCO.

5.5.1.2.3 Enrollees under twenty-one (21) years of age shall be recommended to choose a pediatrician as a PCP.

## **ARTICLE 6 INFORMATION REQUIREMENTS**

### **6.1 Written and Electronic Materials**

6.1.1 All educational and orientation content to be used for Choice Counseling purposes will be designed and developed by ASES. The Contractor must only use such approved written materials in the performance of its responsibilities under this Contract.

6.1.2 ASES reserves the right to notify the Contractor to discontinue or modify written materials that have been provided by ASES.

6.1.3 The Contractor may provide ASES any suggested changes for the written materials that will be distributed to all Enrollees. The Contractor, however, shall not issue, alter, modify or otherwise change any written materials without ASES's prior written approval.

### **6.2 Requirements for Written and Electronic Materials**

6.2.1 The Contractor shall maintain written policies and procedures governing the distribution of written materials.

6.2.2 The Contractor shall make all written materials available through auxiliary aids and services or alternative formats, and in a manner that takes into

consideration the Enrollee's or Potential Enrollee's special needs, including Enrollees and Potential Enrollees who are visually impaired or have limited reading proficiency. The Contractor shall notify all Enrollees and Potential Enrollees that Information is available in alternative formats and shall instruct them on how to access those formats. Consistent with 42 CFR 438.10(d)(3), ASES will ensure that all written materials include taglines in the prevalent languages, as well as large print, with a font size of no smaller than 18 point, to explain the availability of written and oral translation to understand the Information provided and the toll-free and TTY/TDD telephone number of the Call Center dedicated to phone and internet Enrollment Counselor functions.

6.2.3 ASES will provide all written information available in Spanish or other applicable Prevalent Non-English Languages, with a language block in English, explaining that (i) Enrollees may access an English translation of the Information if needed, and (ii) the Contractor will provide oral interpretation services into any language other than Spanish or English, if needed. Such translation or interpretation shall be provided by the Contractor at no cost to the Enrollee. The language block and all other content shall comply with 42 CFR 438.10(d)(2).

6.2.4 If oral interpretation services are required in order to provide Choice Counseling to a Potential Enrollee or Enrollee who does not speak either English or Spanish, the Contractor must, at its own cost, make such services available in a third language, in compliance with 42 CFR 438.10(d)(4).

6.2.5 All written materials shall be worded such that they are understandable to a person who reads at the fourth (4<sup>th</sup>) grade level.

6.2.6 All written materials must be clearly legible with a minimum font of size twelve (12) point.

6.2.7 Within ninety (90) Calendar Days of a notification from ASES that ASES has identified a Prevalent Non-English Language other than Spanish or English, ASES will translate all written materials provided to Enrollees and Potential Enrollees into and made available in such language.

6.2.8 All written and electronic materials must also comply with all applicable state regulations, including those regulating electronic communications and transactions.

### **6.3 Enrollee Rights and Responsibilities**

6.3.1 The Contractor shall have written policies and procedures regarding the rights of Enrollees and shall comply with any applicable Federal and Puerto Rico laws and regulations that pertain to Enrollee rights, including those set forth in 42 CFR 438.100, and in the Puerto Rico Patient's Bill of Rights Act 194 of

August 25, 2000; the Puerto Rico Mental Health Law Act 408 of October 2, 2000, as amended and implemented; and Law 77 of July 24, 2013 which created the Office of the Patient Advocate. At a minimum, the policies and procedures and content of Choice Counseling activities shall specify the Enrollee's right to:

- 6.3.1.1 Receive information pursuant to 42 CFR 438.10;
- 6.3.1.2 Be treated with respect and with due consideration for the Enrollee's dignity and privacy;
- 6.3.1.3 Have all records and medical and personal information remain confidential;
- 6.3.1.4 Be free from any form of restraint or seclusion as a means of coercion, discipline, convenience, or retaliation, as specified in 42 CFR 482.13(e) and other Federal regulations on the use of restraints and seclusion;
- 6.3.1.5 Choose an Authorized Representative to be involved as appropriate in making care decisions;
- 6.3.1.6 Freely exercise his or her rights, including those related to filing a Grievance or Appeal, and that the exercise of these rights will not adversely affect the way the Enrollee is treated;
- 6.3.1.7 Receive Information about Covered Services and how to access Covered Services and Network Providers;

#### **6.4 Interpreter Services**

- 6.4.1 The Contractor shall provide oral interpreter services to any Enrollee or Potential Enrollee who speaks any language other than English or Spanish as his or her primary language, regardless of whether the Enrollee or Potential Enrollee speaks a language that meets the threshold of a Prevalent Non-English Language. This also includes the use of auxiliary aids and services such as TTY/TDD and the use of American Sign Language. The Contractor is required to notify its Enrollees of the availability of oral interpretation services and to inform them of how to access oral interpretation services. There shall be no charge to an Enrollee or Potential Enrollee for interpreter services or other auxiliary aids.

#### **6.5 Enrollee Satisfaction Survey**

- 6.5.1 The Contractor shall implement Enrollee Satisfaction Surveys to evaluate Enrollment Counselor services under this Contract. Contractor shall use the results of these surveys to timely identify and resolve potential concerns,

address identified issues, and develop strategies for on-going improvement and corrective action. The surveys will include, but not be limited to:

6.5.1.1 Call Center Survey to measure responsiveness, knowledge, timeliness, politeness, and overall quality of service. This survey must be offered as optional for all Enrollees.

6.5.1.2 Web-Based Application Survey to measure web-based enrollment for ease of use, convenience, average length of time to enroll, help function effectiveness; clarity and comprehensiveness; and Enrollee's overall ability to make enrollment decisions. This survey must be automatically offered at the end of the web-based enrollment as optional for all Enrollees.

6.5.1.3 On-site Choice Counseling survey to measure responsiveness, knowledge, politeness, and overall quality of service. This survey must be offered as optional for all Enrollees at the end of the counseling session.

6.5.2 The Contractor must submit survey questions and methodologies to ASES for review and approval prior to use. ASES reserves the right to develop and provide the survey and methodologies to be used by Contractor.

6.5.3 Reports, including Contractor's evaluation of survey results and recommendations for enrollment approach adjustments, must be provided to ASES on a regular schedule to be determined by ASES, and on an ad hoc basis as requested.

6.5.4 Results of surveys must be transmitted to and shared with ASES without any modifications for ASES's own independent review and audit.

6.5.5 Based on survey results, the Contractor may be required at ASES's discretion to provide further explanation as to survey results to resolve issues or improve processes.

## 6.6 Member Experience

6.6.1 Enrollees shall be able to submit feedback or complaints with Contractor relating to the performance of services by Contractor, at any time and in writing or orally, using an internal handling process to be approved by ASES. This process must be documented in policies and procedures and posted on a publicly available website as well as in written materials that may be issued by the Contractor. Such feedback or complaints may include, but are not limited to:

6.6.1.1 Quality of services provided;

6.6.1.2 Aspects of interpersonal relationships such as rudeness of a Choice Counselor, or failure to respect the Enrollee's rights, regardless of whether remedial action is requested; and/or

6.6.1.3 Responsiveness to Enrollees regarding a problem or question.

6.6.2 The Contractor's complaint process must not be administratively burdensome on the Enrollee or his or her Authorized Representative. and shall be consistent with the requirements herein:

6.6.2.1 The Contractor shall provide any assistance in completing forms and other procedural steps related to an Enrollee complaint, including but not limited to the use of auxiliary aids and services upon request or referring the Enrollee to an ombudsman program for further assistance if desired. The web page must include a link in compliance with Article 8 of Act 229 of August 8, 2016, as amended.

6.6.2.2 The Contractor shall acknowledge, in writing, receipt of each complaint within five (5) Calendar Days of receipt.

6.6.2.3 The Contractor shall provide written notice of resolution of the complaint to the Enrollee and/or Authorized Representative no later than thirty (30) Calendar Days of receipt of the complaint.

6.6.2.4 Any written notices shall be sent via mail or, with the Enrollee's or Authorized Representative's consent, via electronic written communication.

6.6.3 The Contractor shall maintain a record of all complaints received and report such information to ASES upon request or when the nature of the complaint warrants that it be promptly divulged to ASES, such as when the non-divulgence would result in the beneficiary not receiving a service or not being able to exercise a right absent intervention by ASES

## **ARTICLE 7 ADMINISTRATION AND MANAGEMENT**

### **7.1 General Provisions**

7.1.1 The Contractor shall be responsible for the administration and management of all requirements of this Contract, and consistent with the Medicaid Managed Care regulations that apply to Enrollment Counselor functions at 42 CFR Part 438.

7.1.2 All costs and expenses related to the administration and management of this Contract shall be the responsibility of the Contractor.

### **7.2 Training and Staffing**

7.2.1 The Contractor shall conduct ongoing training for all of its staff involved in the direct services provided under this Contract to ensure appropriate functioning in all areas and to ensure that staff:

- 7.2.1.1 Understand the GHP program and the Medicaid Managed Care requirements;
- 7.2.1.2 Are aware of all programmatic changes that may occur throughout the Contract Term; and
- 7.2.1.3 Are trained in the provision of Choice Counseling activities in a Culturally Competent manner.
- 7.2.2 The Contractor shall provide customer service best practice and phone etiquette training to all Call Center Choice Counselors;
- 7.2.3 The Contractor shall provide Choice Counselors and pertinent staff training on the use of the Web-Based Application and Provider Search Portal.
- 7.2.4 The Contractor must ensure all of its staff, including new hires, receive training before providing direct services to Enrollees and thereafter at least annually, including, but not limited to:
  - 7.2.4.1 The subject matter areas discussed above in Sections 7.2.1, 7.2.2 and 7.2.3 of the Contract;
  - 7.2.4.2 Awareness of and sensitivity to the needs of persons who may be disadvantaged by income, disability and/or illiteracy, or who may be non-Spanish speaking;
  - 7.2.4.3 Use of bilingual interpreters, TTY machines, and other communication devices for the disabled;
  - 7.2.4.4 HIPAA and other data security and privacy protocols.
- 7.2.5 The Contractor must update the training materials and the training of personnel as changes may require or to improve the customer experience. Training materials must be provided to ASES prior to their use. All training content related to the GHP and Enrollment Process will be developed and provided by ASES on a "train the trainer" basis. The Contractor must use the approved training content to provide re-education and mitigation activities to Choice Counselors and other supporting staff, on an ongoing basis.
- 7.2.6 The Contractor shall submit a staff training plan to ASES for review and prior written approval prior to the Go-Live Date. The Contractor shall update the training plan annually and submit it to ASES for approval within sixty (60) Calendar Days.

## **ARTICLE 8 INFORMATION MANAGEMENT AND SYSTEMS**

### **8.1 General Provisions**

The Contractor shall have Information management processes and Information Systems that enable it to meet the Contract's services and reporting requirements. The System must meet ASES and Federal reporting requirements, and any other applicable Puerto Rico and Federal laws, rules and regulations including but not limited to the standards and operating rules in Section 1104 of the PPACA and associated regulations, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

8.1.1 The Web-Based Application System shall possess capacity sufficient to handle the workload projected for the start of the program and will be scalable and flexible, so they can be adapted as needed, within negotiated timeframes, in response to program or Enrollment changes.

8.1.2 The Contractor shall participate in systems work groups organized by ASES. The Systems work groups will meet on a designated schedule as agreed to by ASES and the Contractor.

8.1.3 The Contractor shall provide a continuously available electronic mail communication system and link with ASES. This system shall be:

8.1.3.1 Available from the workstations of the designated Contractor contacts; and

8.1.3.2 Capable of attaching and sending documents created using software products other than those utilized by Contractor, including Puerto Rico's currently installed version of Microsoft Office and any subsequent upgrades as adopted.

## 8.2 Global System Architecture and Design Requirements

8.2.1 The Contractor shall comply with Federal and Puerto Rico policies, standards and regulations in the design, development and/or modification of the Systems it will employ to meet the aforementioned requirements and in the management of information contained in those Systems. Additionally, the Contractor shall adhere to ASES and Puerto Rico-specific system and Data architecture standards and/or guidelines.

8.2.2 The Contractor's Systems shall meet Federal and industry standards of architecture, including but not limited to the following requirements:

8.2.2.1 Conform to HIPAA standards for Data and document management;

8.2.2.2 Contain controls to maintain information integrity. These controls shall be in place at all appropriate points of processing. The controls shall be tested in periodic and spot audits following a methodology to be developed jointly by and mutually agreed upon by the Contractor and ASES; and

- 8.2.2.3 Partner with ASES in the development of transaction/event code set, Data exchange and reporting standards not specific to HIPAA or other Federal efforts and will conform to such standards as stipulated in the plan to implement the standards.
- 8.2.2.4 Be supported by listings, transaction reports, update reports, transaction logs, or error logs;
- 8.2.3 The Contractor shall house indexed images of documents used by Enrollees to transact with the Contractor in the appropriate database(s) and document management systems so as to maintain the logical relationships between certain documents and certain Data. The Contractor shall follow all applicable requirements for the management of Data in the management of documents.
- 8.2.4 The Contractor shall institute processes to insure the validity and completeness of the Data it submits to ASES. At its discretion, ASES will conduct general Data validity and completeness audits using industry-accepted statistical sampling methods.
- 8.2.5 Where a System is herein required to, or otherwise supports, the applicable batch or on-line transaction type, the system shall comply with HIPAA standard transaction code sets.
- 8.2.6 The Contractor shall assure that all Contractor staff is trained in all HIPAA requirements, as applicable.
- 8.2.7 The layout and other applicable characteristics of the pages of Contractor websites shall be compliant with Federal “Section 508 standards” and Web Content Accessibility Guidelines developed and published by the Web Accessibility Initiative and, Puerto Rico Act 229 of 2003, as amended.

### **8.3 System and Data Integration Requirements**

- 8.3.1 The Contractor’s systems shall be able to transmit, receive and process Data in HIPAA-compliant formats that are in use as of the Contract Go-Live Date.
- 8.3.2 Data and Report Validity and Completeness. The Contractor shall institute processes to ensure the validity and completeness of the data, including reports, it submits to ASES. At its discretion, ASES will conduct general data validity and completeness audits using industry-accepted statistical sampling methods. Control totals shall also be reviewed and verified
- 8.3.3 The Contractor’s applications shall be able to interface with ASES’s systems for purposes of Data exchange and will conform to standards and specifications set by ASES.

### **8.4 Data Certification**

8.4.1 The Contractor shall certify all Data pursuant to 42 CFR 438.606. The Data that must be certified includes, but is not limited to, Enrollment Information, and other Information required by ASES and contained in this Contract, the Contractor's Proposal, and related documents. The Data must be certified by one of the following: the Contractor's Chief Executive Officer ("CEO"), the Contractor's Chief Financial Officer ("CFO"), or an individual who has delegated authority to sign for, and who reports directly to the Contractor's CEO or CFO. The certification must attest, based on best knowledge, Information, and belief, as follows:

8.4.1.1 To the accuracy, completeness and truthfulness of the Data; and

8.4.1.2 To the accuracy, completeness, and truthfulness of the documents specified by ASES.

8.4.1.3 The Contractor shall submit the certification concurrently with the certified Data.

## **8.5 Information Management Process and Information Systems Documentation Requirements**

8.5.1 The Contractor shall ensure that written System Process and Procedure Manuals document and describe all manual and automated system procedures for its information management processes and Information Systems. These manuals shall be provided to ASES Immediately upon request.

8.5.2 The System User Manuals shall contain information about, and instructions for, using applicable System functions and accessing applicable system Data.

8.5.3 When a System change that would alter the conditions and services agreed upon in this Contract is subject to ASES sign off, the Contractor shall draft revisions to the appropriate manuals prior to ASES sign off of the change.

8.5.4 Updates to the electronic version of these manuals shall occur in real time; updates to the printed version of these manuals shall occur within ten (10) Business Days of the update taking effect.

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

## **8.6 Reporting Functionality Requirements**

8.6.1 The Contractor's Systems shall have the capability of producing a variety of reports that support program management, policymaking, quality improvement, program evaluation, and assessment of compliance with Federal and Puerto Rico requirements.

8.6.2 The Contractor shall extend access to this mechanism to select ASES personnel in a secure manner to access Data, including program and fiscal information regarding Enrollees served, services rendered, etc. and the ability for said personnel to develop and/or retrieve reports. This requirement could be met by the provision of access to a decision support system/Data warehouse. The Contractor shall provide training in and documentation on the use of this mechanism.

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

## **ARTICLE 9 REPORTING**

### **9.1 General Requirements**

9.1.1 The Contractor must submit all reports expressly mentioned in this Contract, as further described in Attachment 6, as well as any additional report, data, documentation or information that ASES or CMS may require the Contractor to submit from time to time, to measure performance and quality of services as well as to obtain relevant information necessary for the proper operation of the GHP program. All correspondence, communications, documents, reports, analysis or material produced or related to this Contract shall at all times be the property of ASES. Any such reports, documents, correspondence, analysis or materials shall be provided at no additional cost to ASES.

9.1.2 If ASES requests any revisions to the reports already submitted, the Contractor shall make the changes and re-submit the reports, according to the time period and format specified by ASES.

9.1.3 The Contractor shall submit all reports to ASES in the manner and format prescribed by ASES.

## **ARTICLE 10 ENFORCEMENT: LIQUIDATED DAMAGES, REMEDIES AND GUARANTEES**

### **10.1 General Provisions**

If the Contractor's performance of the services does not comply in any material respect with the terms of this Contract and such non-compliance is attributable to the Contractor, ASES may elect to require the Contractor, at the Contractor's expense, to re-perform any defective or non-conforming service when such reperformance is reasonably necessary and practical under the circumstances. The re-performance of services is independent of any obligation to provide compensation for losses or any other remedies that ASES may have under this Contract of applicable law.

- 10.1.2 ASES may impose penalties and/or sanctions and/or liquidated damages pursuant to Puerto Rico Act No. 72-1993 and Regulation 8446.
- 10.1.3 Notwithstanding any penalty, sanction, including liquidated damages, imposed upon the Contractor, other than Contract termination, the Contractor shall continue to provide all Enrollment Counselor functions under this Contract.

## 10.2 Liquidated Damages

10.2.1 In the event the Contractor is in default as to any applicable term, condition, or requirement of this Contract, at any time following the Effective Date of this Contract, the Contractor agrees that ASES may assess liquidated damages against the Contractor for any such default, in accordance with this Article 10. The assessment or non-assessment of liquidated damages under the Contract cannot and will not limit the power or authority of ASES to seek or impose, as applicable, fines, civil money penalties, sanctions, or other remedies under Article 10 of this Contract in including contractual penalties or otherwise under Puerto Rico or Federal laws or regulations, including but not limited to Section 1802 of the Puerto Rico Civil Code and Puerto Rico Act No. 72-1993.

10.2.2 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 are listed hereunder. ASES retains the discretion to impose liquidated damages or other sanctions for the Contractor's non-compliance with an obligation of the Contractor under this Contract or Puerto Rico Law that is not specified under this Article.

10.2.3 The following constitute punishable events to which liquidated damages apply as stated under each event to the extent such failure or noncompliance is caused by Contractor:

10.2.3.1 Material non-compliance with an ASES or CMS directive, determination or notice to cease and desist, 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: TEN THOUSAND DOLLARS (\$10,000.00) per violation;

10.2.3.2 Repeated noncompliance by the Contractor with any material obligation that adversely affects the services that the Contractor is required to provide under this Contract, after receiving prior written notice from ASES that such noncompliance is occurring and adversely affecting Services, and a mutually agreed upon timeframe to correct the noncompliance has expired: TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$2,500.00)

per day exceeding the mutually agreed upon timeframe per violation, incident, or occurrence;

10.2.3.3 Repeated noncompliance by the Contractor with contract obligations not otherwise specifically mentioned in this Section, after receiving prior written notice from ASES that such noncompliance is occurring, and a mutually agreed upon timeframe to correct the noncompliance has expired: FIVE HUNDRED DOLLARS (\$500.00) per day exceeding the mutually agreed upon timeframe per violation, incident, or occurrence;

10.2.3.4 Failure of the Contractor to comply with the confidentiality provisions of the Contract: FIVE HUNDRED DOLLARS (\$500.00) per record

10.2.3.5 Making recommendations for or against enrollment into a specific MCO or attempting to influence an Enrollee or Potential Enrollee's selection favoring a particular MCO. FIVE THOUSAND DOLLARS (\$5,000.00) for each individual instance.

### **10.3 Penalties**

10.3.1 ASES may deduct from the Contractor's monthly invoices the following amounts as a penalty for the following events to the extent such failure or noncompliance is caused by Contractor. Penalties may be assessed in the amounts indicated in this section for the period in which the deficiency occurs. Penalties may be retroactive to the date of required written notice assessing penalties against Contractor, and such damage assessments may continue until ASES determines the deficiency has been cured:

10.3.1.1 Systems Readiness: Accurate ASES data to be uploaded to Contractor's Information Systems, and all such Information Systems, Web-Based Application and Provider Search Portal approved by ASES for use by Enrollees and ASES personnel in advance of Open Enrollment. FOUR HUNDRED THOUSAND DOLLARS (\$400,000) for readiness delayed past June 30, 2019.

10.3.1.2 Unscheduled Information Systems, Web-Based Application and Provider Search Portal Unavailability (collectively, "System Unavailability"), in ASES' discretion, ZERO DOLLARS (\$0.00) for the first 30 minutes in each month, and FIVE THOUSAND DOLLARS (\$5,000.00) for each subsequent thirty (30) minute period or portions thereof in each month;

10.3.1.3 Failure to correct a material 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:

10.3.1.3.1 One (1) to fifteen (15) Calendar Days late: ONE THOUSAND DOLLARS (\$1,000.00) per Calendar Day for days 1 through 15;

10.3.1.3.2 Sixteen (16) to thirty (30) Calendar Days late: TWO THOUSAND DOLLARS (\$2,000.00) per Calendar Day for days 16 through 30; and

10.3.1.3.3 More than thirty (30) Calendar Days late: EIGHT THOUSAND DOLLARS (\$8,000.00) per Calendar Day for days 31 and beyond.

10.3.1.4 Failure to submit required reports in the timeframes established in the Contract or subsequently by ASES or the submission of an incomplete report that is not corrected by the Contractor within 24 hours of submission. This includes the daily transmission of MCO/PCP/PMG choice transactions required under Section 4.3.2.11 of this Contract. TWO HUNDRED DOLLARS (\$200.00) per untimely report per day exceeding the established timeframe;

10.3.1.5 Failure to meet the Call Center performance standards:

10.3.1.5.1 Calls Abandoned: Defined as the number of inbound calls disconnected by the caller after three (3) seconds and are neither a Call Handled nor a Self Service. Calls Abandoned rate will be calculated as:  $(\text{Total Calls Offered} - \text{Total Calls Short Abandoned} - (\text{Total Calls Handled} + \text{Total Self-Service Calls})) / \text{Total}$ . One percent (1%) of monthly invoice for rates which exceed five percent (5%) per month.

10.3.1.5.2 Call Center Outage: Defined as the number of minutes the Call Center is unable to accept new inbound calls. One percent (1%) of monthly invoice for rates which exceed five (5) minutes of unscheduled time during which the Call Center is unable to accept new inbound calls a month.

10.3.1.5.3 Wait/hold times: Defined as the time between a call being initially answered, including answered by an operating system, and a response by a live operator to a caller's inquiry. One percent (1%) of monthly invoice for rates

which exceed two (2) minutes for ninety-five percent (95%) of all incoming calls a month.

10.3.1.5.4 Service Level: Defined as the number of seconds it takes for an inbound call to reach a live agent or reach a Self-service option. One percent (1%) of monthly invoice for rates which exceed eighty percent (80%) of calls answered within thirty (30) seconds a month.

10.3.1.5.5 First Call Resolution: Defined as the percent of contacts that are resolved by the Call Center on the first interaction with the caller. One-half of one percent (0.5%) of monthly invoice for rates which exceed ninety-five percent (95%) a month.

10.3.1.6 Timely Response to Electronic Correspondence: Defined as response time on Web-Based Application to enrollments with MCO/PCP/PMG selection.

10.3.1.6.1 Responses to Enrollees within two (2) Business Days less than one hundred percent (100%) to ninety-five percent (95%) of the time a month: one percent (1%) of monthly invoice.

10.3.1.6.2 Response to Enrollees within two (2) Business Days less than ninety-five percent (95%) to eighty-five percent (85%) of the time a month: two percent (2%) of monthly invoice.

10.3.1.6.3 Response to Enrollees within two (2) Business Days less than eighty-five percent (85%) of the time a month: three percent (3%) of monthly invoice.

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

10.3.1.7.1 Implementation of the (BC-DR) plan exceeds the proposed time by three (3) or less Calendar Days: TWO THOUSAND DOLLARS (\$2,000) per day up to day 3;

10.3.1.7.2 Implementation of the (BC-DR) plan exceeds the proposed time by more than three (3) and up to six (6) Calendar Days: FIVE THOUSAND DOLLARS (\$5,000) per each day beginning with day 4 and up to day 6;

10.3.1.7.3 Implementation of the (BC-DR) plan exceeds the proposed time by more than six (6) and up to twelve (12) Calendar Days, TEN THOUSAND DOLLARS (\$10,000) per day beginning with day 7 and up to day 12;

10.3.1.7.4 Implementation of the (BC-DR) plan exceeds the proposed time by more than twelve (12) Calendar Days: TWENTY THOUSAND DOLLARS (\$20,000) per each day beginning with day 12.

10.3.1.8 Failure to Record or Retain Call Recordings:

10.3.1.8.1 Failure to record, retain a recording, or make available a recording of incoming or outgoing calls for quality assurance purposes: TWO HUNDRED DOLLARS (\$200.00) per unrecorded or unavailable call up to a maximum of thirty thousand dollars (\$30,000.00) per day for unavailable recordings of calls made or received in the same day.

#### 10.4 Guarantees

10.4.1 The Contractor guarantees ASES a fully functional enrollment system, which encompasses all the deliverables set forth in this Contract as detailed in Article 4, to be operational and in place by September 1, 2019. Except in the event of ASES' delay or failure to provide Contractor with the data, materials (e.g. branding) information and/or deliverables, whether required to be provided by ASES under this Agreement or requested by Contractor in writing (including via e-mail) in order to be able to complete a required task, and for which Contractor has provided ASES with advance notice of such delay or failure impacting the September 1, 2019 date, Contractor's failure to comply with this Guarantee will cause ASES to deduct from the Contractor's first monthly invoice the total amount of FOUR HUNDRED THOUSAND DOLLARS (\$400,000).

### ARTICLE 11 IMPLEMENTATION AND CONTRACT TERM

11.1 The Contractor shall perform certain procedures and activities that will be accomplished during the period between the Effective Date of this Contract and March 1, 2020, which is the Implementation Date of this Contract. There shall be coordination and cooperation with ASES and its representatives during all phases of the implementation process.

11.1.1 Costs associated with the readiness review and preparation for the Contract Go Live date and implementation, except as otherwise specifically permitted under this Contract, shall be borne solely by the Contractor.

11.1.2 Payment of the agreed upon one-time implementation costs is contingent upon the Contractor's ability to meet all readiness review requirements.

11.2 Subject to and upon the terms and conditions herein, this Contract shall be in full force and effect on the day it is signed by both parties and registered at the Office of the Comptroller of the Government of Puerto Rico, and shall continue until 11:59 p.m. on \_\_\_\_\_, subject to the availability of funds.

- 11.3 The Contractor shall begin providing Enrollment Counselor services to Enrollees on April 1, 2020 at 12:01 a.m., Puerto Rico Time, which shall be deemed to be the Implementation Date of the Contract or Go Live Date. The Contract shall expire at the close of the Contract Term unless earlier terminated under Article 23.
- 11.4 Notwithstanding any provision to the contrary in this Contract, ASES shall have the right to terminate this Contract by providing Contractor with thirty (30) days' prior notice by registered mail, return receipt requested, or overnight express mail.
- 11.5 The rights, duties and responsibilities of ASES and Contractor shall continue in full force and effect during the applicable notice period. ASES, however, shall be obligated to pay all fees and expenses incurred up to the effective date of termination, in accordance with the terms of this Agreement.

## **ARTICLE 12 PAYMENT FOR SERVICES**

### **12.1 Compensation:**

12.1.1 The Contractor shall be compensated as follows:

12.1.1.1 ASES shall compensate the Contractor for the term of this Contract up to the maximum total amount of [REDACTED].

12.1.1.2 ASES will pay the Contractor for the services as specified in the Fee Schedule, as set forth in Attachment 2 to this Contract.

12.1.1.3 Attachment 2 to this Contract establishes the terms under which the Contractor's compensation payable hereunder will be invoiced, paid and adjusted from time to time.

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

12.1.3 Payments made by ASES under the terms of this Agreement shall be paid from the budget item account corresponding to account number [REDACTED].

12.1.4 At ASES's discretion, amounts assigned to specific line items in the Fee Schedule included as Attachment 2 to this Contract may be reassigned to other line items by prior written approval of the Executive Director of ASES.

### **12.2 Invoice Requirements:**

12.2.1.1 The Contractor will submit monthly, detailed certified invoices to ASES for services rendered in a month within the first five (5)

Business Days of the month following the period involved. If the invoice is not submitted within the first five (5) Business Days of the month following the period involved, payment may be issued within the following month. ASES will not honor invoices submitted sixty (60) Calendar Days or more after services were rendered.

12.2.1.2 Invoices will only be the costs associated with the performance of the Contract as specifically established in Attachment 1 to this Contract.

12.2.1.3 Each invoice shall include an itemized detail of the services rendered, must be certified as just and correct, and should certify that payment thereof has not been received. An authorized representative of the Contractor should issue the certification. The invoice should detail the available balance of the Agreement when submitting the invoice as well as the available balance of the Agreement at the time the invoice is delivered. The Contractor is solely responsible of assigning the necessary resources for the delegated cases and matters, and of knowing the remaining balance under the contract. The invoices should be presented accompanied with a short summary of the total quantity of the Contract, the invoices sent and the available balance of the Contract which will be formatted as:

Contract Number:		
Balance \$	_____	
Invoice detail xxx		\$ _____
Invoice xxx		\$ _____
Invoice xxx		\$ _____
Current invoice xxx		\$ _____
Balance at the date of this invoice		\$ _____

12.2.1.4 The Contractor shall submit all invoices in duplicate form. ASES will review the invoices and will proceed with proper payment if they are adequate. ASES will administer the payment by means of an electronic transfer pursuant to Attachment 3 to this Contract. ASES reserves the right to review all the invoices and perform all necessary audits. The invoice shall include the following certification:

“We certify under penalty of nullity that no public employee of ASES will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Contract. The only consideration to be received in exchange for the delivery of services provided is the

agreed upon price that has been negotiated with an authorized representative of the ASES. The total amount shown on this invoice is true and correct. The services have been rendered, and no payment been received.”

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

**POSTAL ADDRESS**

**PHYSICAL ADDRESS**

Executive Director  
Administración de Servicios de Salud  
P.O. Box 195661  
San Juan, PR 00919-5661

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

12.2.1.6. If the Contractor does not comply with the above requirements in the submission of the invoices, it will waive its right to payment for services rendered. Contractor will provide ASES with sample invoices and supporting documentation required in Attachment 1 to this Contract. In order for Contractor to be in compliance with this Section 12.2.1.6, ASES shall approve such documents within five (5) Business Days of Contractor providing the samples prior to producing the actual invoices and supporting documentation for the Services rendered under this Contract.

12.2.1.7 ASES shall verify invoices approximately within twenty (20) Business Days of the receiving date of the invoice and, if the invoice complies with this Contract, ASES will process the payment to the Contractor approximately within thirty (30) Calendar Days of the approval of the invoice. ASES will promptly notify the Contractor of any questions regarding invoices.

12.2.1.8 The Contractor will not receive any payment for services rendered under this Agreement before the Contract is registered at the Office of the Comptroller of the Government of Puerto Rico, as required by Act Number 18 of October 30, 1975, as amended.

**ARTICLE 13 FINANCIAL MANAGEMENT**

13.1 The Contractor shall provide, throughout the Contract Term, any necessary and related information that is deemed necessary by ASES in order to evaluate the Contractor’s financial capacity and stability.

**ARTICLE 14      RELATIONSHIP OF PARTIES**

14.1 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.

14.1.1 The Contractor recognizes that none of its employees or staff, either subcontracted or hired, shall be entitled to employment benefits such as vacations, sick leave, retirement benefits and others because of its condition as an independent contractor. The Contractor shall not have any power or right to enter into agreements on behalf of ASES.

14.2 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 15      INSPECTION OF WORK**

15.1 ASES, the Puerto Rico Medicaid Program, the Medicaid Fraud Control Unit and other agencies of the State Government, the US Department of Health and Human Services, the General Accounting Office, the US Comptroller General, the Comptroller General of Puerto Rico, if applicable, or their authorized representatives, shall have the right to enter 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 16      GOVERNMENT PROPERTY**

16.1 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 object of the scope of work of this Contract, or to take any additional actions that may be necessary in the future to effectuate this provision fully.

16.2 The Contractor shall be responsible for the proper custody and care of any ASES owned property furnished by ASES, and/or Puerto Rico Department of Health, for the Contractor's use in connection with the performance of this Contract. The Contractor will reimburse ASES, and/or Puerto Rico Department of Health-owned property furnished, for its loss or damage, normal wear and tear excepted, while such property is in the Contractor's custody or use. At the expiration or termination of this Contract,

said property must be returned to ASES and/or Puerto Rico Department of Health in good and working condition.

## **ARTICLE 17 OWNERSHIP AND USE OF DATA AND SOFTWARE**

### **17.1 Ownership and Use of Data**

- 17.1.1 All Information created from Data, documents, messages (verbal or electronic), reports, drawings, studies, specifications, estimates, tests, maps, designs, graphics and computations, or meetings involving or arising out of or in connection with this Contract is property of ASES (hereinafter referred to as “ASES Data and Information”). Hence, all the documents related to the Contract will be subject to evaluation and audits, and shall be made available, within a reasonable period of time and without modifications, for evaluation by ASES’s personnel or their authorized representatives. Additionally, ASES will have the right to copy all the documents requested, at no cost to ASES.
- 17.1.2 All documents related and produced as a result of this Contract, including but not limited to: policies, procedures, analysis, protocols, and communications, must be made available and filed with ASES’s representatives, without changes to their original format (no PDF), whenever requested. In the event that ASES request copies of these documents, the Contractor shall deliver them without alterations and/or omissions. The Contractor shall not refuse such delivery, and if so, it will constitute an obstruction to the efforts of ASES’ auditors and a breach of Contract subject to penalties and sanctions.
- 17.1.3 No deliverable, report, data, procedure or system created by the Contractor for ASES that is necessary to fulfilling the Contractor’s responsibilities under the Contract, as determined by ASES, shall be considered proprietary of the Contractor.
- 17.1.4 The Contractor shall make all Data and Information available to ASES or its authorized representatives, which will also provide the Data to CMS or other pertinent government agencies and authorities upon request. The Contractor is expressly prohibited from sharing, distributing, disseminating, or publishing ASES Data and Information without the express prior written consent of ASES. ASES shall determine in its sole discretion what constitutes ASES Data and Information, and such decisions shall not be subject to appeal.
- 17.1.5 The Contractor shall report to ASES, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Data delivered under this Contract and shall comply with the obligations stated under Sections 4.3.6, 4.3.7 & 4.3.8 of this Contract, as applicable.
- 17.1.6 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to ASES hereunder and if such markings are affixed,

ASES shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

17.1.7 To the extent applicable to this Contract, including if ASES exercises its rights under Section 4.3.8 of this Contract, this Section describes the intellectual property ownership requirements that the Contractor shall meet:

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

17.1.7.1.1 All computer software and programs, which have been designed or developed for ASES, or acquired by the Contractor on behalf of ASES, which are used in performance of the Contract.

17.1.7.1.2 All internal system software and programs developed by the Contractor or subcontractor, including all source codes, which result from the performance of the Contract; excluding commercial software packages purchased under the Contractor's own license.

17.1.7.1.3 All necessary data files.

17.1.7.1.4 User and operation manuals and other documentation.

17.1.7.1.5 System and program documentation in the form specified by ASES.

17.1.7.1.6 Training materials developed for ASES's staff, agents or designated representatives in the operation and maintenance of this software and other programs.

17.1.8.2 To the extent applicable, but not including if ASES exercises its rights under Section 4.3.8 of this Contract, 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, software, programs, business plans, policies and procedures, which ASES acknowledges are the exclusive property of the Contractor (collectively, "Contractor Pre-Existing IP"). 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 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.

17.1.9 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.

17.1.10 The Contractor shall not transfer, assign, dispose or sell the information described in this Article 17 to third parties, or use it for commercial purposes or in their own private businesses. Engaging in such a practice constitutes a violation of HIPAA and ASES's property rights and shall result in penalties, fines or the rescission and termination of this Contract.

## 17.2 Loss of Data

17.2 In the event of loss of any ASES Data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data at its own cost in the manner and within the schedule set by ASES. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its

best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Contractor is working hereunder.

## **ARTICLE 18            CRIMINAL BACKGROUND CHECKS**

- 18.1 ASES is prohibited by law from entering into contracts with any person or entity that has been, or whose affiliated subsidiary companies, or any of its shareholders, partners, officers, principals, managing employees, subsidiaries, parent companies, officers, directors, board members, ruling bodies have been convicted of, or sentenced to imprisonment, in Puerto Rico, the other USA jurisdictions, or any other jurisdiction, for any crime involving corruption, fraud, embezzlement, or unlawful appropriation of public funds, pursuant to Act No. 2 of 2018.
- 18.2 Before the Effective Date of this Contract, and in order for the Contract to take effect, the Contractor shall provide to ASES a certification that, to the best of its knowledge and belief after diligent investigation, neither the Contractor and its subcontractor, if applicable, nor the affiliated persons/entities listed in Section 18.1 falls under the prohibition stated in Section 18.1. In the event Contractor knows that it or one of its Subcontractors is under investigation for, or accused of, in Puerto Rico or any other jurisdiction, a crime involving corruption, fraud, embezzlement, or unlawful appropriation of public funds, pursuant to Act No. 2 of 2018, it must affirmatively disclose this information to ASES in writing immediately upon acquiring such knowledge. ASES may terminate this Contract at its discretion for failure to make such a disclosure.
- 18.3 ASES may terminate this Contract if ASES determines that the Contractor, or any of the natural persons listed in Section 18.1, falls within the prohibition stated in Section 18.1.
- 18.4 During the Contract Term, the Contractor shall promptly (within twenty (20) Business Days of the date it receives the information) report any significant fact or event related to the rule stated in this Article.
- 18.5 In cases in which none of the events listed in Section 18.1 has occurred, but statements or admissions of crimes have been made by or against the Contractor or one of its shareholders, partners, officers, principals, subsidiaries, or parent companies, or subcontractors ASES shall provide all pertinent information about the matter, within twenty (20) Business Days from the date it receives the information, to the Secretary of Justice of Puerto Rico, who will make the pertinent findings and recommendations concerning the Contract.
- 18.6 In addition, as provided in 42 CFR 455.106(c), ASES may refuse to enter into or renew an agreement with any entity if any person who has an ownership or control interest in the entity, or is an Agent or managing employee of the entity, has ever been convicted of a criminal offense related to the person's involvement in any program

established under Medicare, Medicaid, or the Title XX services programs. Before the Effective Date of this Contract, pursuant to 42 CFR 455.106(a), the Contractor shall disclose to ASES the identity of any person who has ever been convicted of a criminal offense related to the Medicare, Medicaid, or Title XXI services programs.

- 18.7 If the Contractor is included in the Registry of Convicted Persons for Corruption and Related Offenses “Registro de Personas convictas por Corrupción y Delitos Relacionados,” this Contract will be null and the funds paid will have to be returned to ASES.

## **ARTICLE 19 SUBCONTRACTS**

### **19.1 Use of Subcontractors**

19.1.1 Neither this Agreement, nor the services to be provided hereunder, may be assigned or subcontracted without the prior written approval of ASES, in its sole discretion. The request to contract a third party must specify the matters in which he/she will intervene and must be submitted in writing. This request must be submitted in writing, and include the same documents and certifications required for government contracting that were required from the Contractor prior to the granting of this contract. The delegation of services without the mentioned authorization will be sufficient cause to terminate this contract. Failure to comply with this clause will hold the Contractor responsible for any damages or losses that may be caused to ASES, whether directly or indirectly.

19.1.2 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. In the event that a Subcontractor is incapable of performing the service contracted for by the Contractor, the Contractor shall (i) notify ASES Immediately and (ii) assume responsibility for providing the services that the Subcontractor is incapable of performing. The Contractor shall remain obligated to provide any services that the Subcontractor is incapable of performing.

19.1.3 If the Contractor becomes aware of a Subcontractor’s failure to comply with this Contract, the Contractor shall correct the failure within five (5) Business Days of becoming aware of the failure and inform ASES of the same.

19.1.4 All Subcontracts between the Contractor and Subcontractors must be in writing, must comply with all applicable Medicaid laws and regulations, including subregulatory guidance and provisions set forth in this Contract, as applicable, and must specify the activities and responsibilities delegated to the Subcontractor containing terms and conditions consistent with the applicable requirements that pertain to the service or activity performed by the Subcontractor.

- 19.1.7 The Subcontracts 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 associate agreement between the Parties.
- 19.1.6 All Subcontracts between the Contractor and Subcontractors must ensure that the Contractor evaluates the prospective Subcontractor's ability to perform the activities to be delegated; monitors the Subcontractor's performance on an ongoing basis and subjects it to formal review according to a periodic schedule established by ASES and consistent with industry standards or Puerto Rico laws and regulations; and identifies deficiencies or areas for improvement, ensuring that corrective action is taken as appropriate or required. The Contractor must provide to ASES, on behalf of the Subcontractor, any and all materials required under Puerto Rico law to enter into a contract with the Puerto Rican government.
- 19.1.7 The Contractor shall not engage nor contract with a person or entity that is debarred or suspended or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation (FAR) or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549, or a person or entity that is an Affiliate, as defined in FAR, of a such a person or entity (see 42 CFR 438.610). Neither shall the Contractor engage nor contract for the provision of the services under this Contract with a person or entity that is, or whose affiliated subsidiary companies, or any of its shareholders, partners, officers, principals, managing employees, subsidiaries, parent companies, officers, directors, board members, ruling bodies have been convicted of, or sentenced to imprisonment, in Puerto Rico, the other USA jurisdictions, or any other jurisdiction, for any crime involving corruption, fraud, embezzlement, or unlawful appropriation of public funds, pursuant to Act No. 2 of 2018, as amended.
- 19.1.8 ASES shall have the right to review all financial or business transactions between the Contractor and a Subcontractor at any time upon request. ASES, CMS, or Office of Inspector General may inspect, evaluate and audit the Subcontractor at any time if ASES, CMS or Office of Inspector General determines there is a reasonable possibility of fraud or similar risk. ASES shall also retain the right to review all criminal background checks for all employees of the Subcontractor as well as any past exclusions from Federal programs.
- 19.1.9 The Contractor shall provide ASES Immediate notice by certified mail, of any action or suit filed and of any claim made against the Contractor by the Subcontractor or against a Subcontractor(s) that, in the opinion of the Contractor, may result in litigation related in any way to this Contract. The Contractor shall provide notification in writing as to how this action or suit may affect the overall provision of services to Enrollees and the Contractor's plan to mitigate such affect.

- 19.1.10 The Contractor shall give ASES Immediate notice in writing by registered mail or certified mail of any action or suit filed by any Subcontractor and prompt notice of any claim made against the Contractor by any Subcontractor or vendor that, in the opinion of Contractor, may result in litigation related in any way to this Contract.
- 19.1.11 Any Subcontractor must provide ASES an attestation that it is free of any Conflicts of Interest.
- 19.1.12 ASES shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

**ARTICLE 20 CERTIFICATIONS**

20.1 The Contractor has provided, as a condition for the execution of this Agreement, the certifications and other documents set forth below. It is expressly recognized that the foregoing is a material condition of this Contract. If any certification, document, acknowledgment, or other representation or assurance on the Contractor's part under this Article 20 or elsewhere in this Contract, is not correct or is determined to be false or misleading, in whole or in part, it shall be sufficient cause for ASES to terminate the Contract and the Contractor shall reimburse ASES any sum of monies received under the same.

20.2 Certifications:

- 20.2.1 Certification issued by the Treasury Department of Puerto Rico (Model SC2888) with evidence that that the Contractor has filed income tax returns in the past five (5) years or has non-profit status;
- 20.2.2 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);
- 20.2.3 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;
- 20.2.4 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;
- 20.2.5 Evidence of Incorporation and of Good Standing issued by the Department of State of Puerto Rico;
- 20.2.6 Certification of current municipal license tax ("Patentes Municipales"), if applicable;

- 20.2.7 Certification issued by the Minor Children Support Administration (“ASUME”, by its Spanish acronym) of no outstanding alimony or child support debts, if applicable;
- 20.2.8 Merchant Registry Certification (Model SC 2918)
- 20.2.9 Certification of Sales Tax Return File (IVU for its Spanish acronym) (model SC 2927) and if apply, certification of No Debt of Sales Tax Return.
- 20.2.10 Certification that the Contractor possesses the required Insurance Coverage established in Article 24 and/or it will obtain the same. In addition, Contractor will provide evidence of the insurance policies as established in Article 24 in the form of certificates of insurance to ASES within three (3) Calendar Days after the Execution of the Contract and upon any renewal thereafter.

20.3 The Contractor also represents, certifies and guarantees that:

- 20.3.1 It will disclose by written communication to ASES with which government agencies, public corporations or municipalities it enters into contract with during the term of this Contract.
- 20.3.2 It has received a copy of and agrees to comply with the Code of Ethics for contractors, suppliers and applicants for economic incentives of the Executive Agencies of the Government of Puerto Rico and the Government Ethics Law, as amended.
- 20.3.3 At the time of execution of this Contract it is not engaged in or is a party to any lawsuit against the Government of Puerto Rico, or any of its instrumentalities, agencies or municipalities.
- 20.3.4 It has provided a list of all contracts the Contractor has with government agencies, public corporations or municipalities, including those contracts in the process of being executed;
- 20.3.5 Is authorized to do business in Puerto Rico. For this purpose it has provided ASES with a Certificate of Existence and Good Standing issued by the Department of State of the Government of Puerto Rico and a corporate resolution where the Contractor expressly authorizes the undersigned to execute this Contract on behalf of the corporation.
- 20.3.6 At the moment of the execution of this Contract is in complete compliance with Public Law Number 168 of 2000, as amended, also known as “Ley de Mejoras al Sustento de Personas de Edad Avanzada de Puerto Rico.”
- 20.3.7 Contractor warrants that at the time of execution of this Contract it has no obligation to retain child support payments. It is expressly acknowledged that this is an essential condition of this Contract, and if this certification is

incorrect, ASES shall terminate this Contract immediately and the Contractor will have to reimburse ASES.

20.3.8 During the term of this Contract the Contractor agrees to pay all unemployment insurance premiums due in accordance with applicable law. The Contractor represents that as of the date of execution of this Contract, it is current on payment of unemployment insurance premiums due in accordance with applicable law and has submitted to ASES a negative certification of debt from the Department of Labor and Human Service of the Commonwealth of Puerto Rico.

20.3.9 Is in compliance with the Compensation System for Work-Related Accidents Act (“Fondo del Seguro del Estado de Puerto Rico”) and is current on payment of workers' compensation premiums.

#### **20.4 TAX RESPONSIBILITY AND LIABILITY**

20.4.1 As of the date of execution of this Contract and during the past five (5) years, it has filed its Puerto Rico tax returns, and Social Security tax returns with the U.S. Government as required by applicable law.

20.4.1.1 It is expressly acknowledged that this is an essential condition of this Contract, and if this certification is incorrect, ASES shall terminate this Contract immediately and the Contractor will have to reimburse ASES.

20.4.1.2 By the end of this Contract, the Contractor will present an updated Certification of Debt. The Contractor acknowledges that the last payment owed under this Contract will be disbursed if such Certification of Debt is negative and no money is owed to the Treasury Department of the Government of Puerto Rico. If by the end of this Contract there is an outstanding balance owed that cannot be cleared by the Treasury Department, the Contractor agrees to cancel the amount through retention from last payment.

20.4.1.2.1 For purposes of this Contract, tax debt shall mean any debt that the Contractor or any of its officials or other parties which ASES authorizes the Contractor to subcontract, may have with the Government of Puerto Rico for income taxes, excise taxes, real or chattel property taxes, including any special taxes levied, license rights, tax withholdings for payment of salaries and professional services, taxes for payment of interests, dividends and income to individuals, corporations and non-resident partnerships, for payment of interests, dividends, and other earnings shares to residents, and social security for chauffeurs.

- 20.4.2 The Contractor is an independent contractor and as such shall be responsible of the payment of its income taxes and its individual and employers' withholdings under the applicable tax laws of Puerto Rico or the US Internal Revenue Code. The Contractor is not entitled to fringe benefits, such as retirement or disability. ASES will neither retain, nor discount, any amounts from payments made to the Contractor for income tax purposes or for Social Security, except those applicable in accordance with the Puerto Rico Internal Revenue Code and its regulations.
- 20.4.3 The Contractor will offer professional and consulting services to ASES. Therefore, ASES will be responsible for the withholding of one-point five percent (1.5%) of the amounts paid under this Contract, and shall forward such withholding to the Treasury Department of the Commonwealth of Puerto Rico pursuant to Public Law Number 48- 2013.
- 20.4.4 The Code of Internal Revenue establishes that ASES will withhold ten percent (10%) from the professional services payment rendered under this Agreement, if it is a foreign corporation under the law of any state, twenty percent (20%) of the payment will be withhold and if it is a foreign corporation under the law of other country, it will be withhold twenty-nine percent (29%), unless the Contractor presents to ASES a retention waiver from the Treasury Department of the Commonwealth of Puerto Rico. The items to defray the subsistence allowance, accommodation or other similar expenses will not be subject to withholding.
- 20.4.5 The Contractor represents that as of the date of execution of this Contract, it is current on payment of property taxes in accordance with applicable law. It is expressly acknowledged that this is an essential condition of this Contract, and if this certification is incorrect, ASES shall terminate this Contract immediately and the Contractor will have to reimburse ASES.

## **ARTICLE 21 RECORDS REQUIREMENTS**

### **21.1 General Provisions**

- 21.1.1 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. 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.

21.1.2 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 US Comptroller General, the Comptroller of Puerto Rico and ASES, as to the maintenance of records related to this Contract.

21.1.3 Puerto Rico and Federal standards for audits of ASES agents, contractors, and programs are applicable to this Contract and are incorporated by reference as though fully set out herein.

ASES, its designees or the Comptroller's Office, shall have the right during the term of this Agreement or up to ten (10) years after the term, to review and audit Contractor's records relating to Contractor's services under this Agreement.

## **ARTICLE 22 CONFIDENTIALITY**

### **22.1 General Confidentiality Requirements**

22.1.1 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 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.

22.1.2 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.

22.1.3 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.

22.1.4 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.

22.1.5 In 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.

22.1.6 The Contractor must comply with HIPAA notification requirements, including those set forth in HITECH. The Contractor must notify ASES Immediately of all breaches or potential breaches of unspecified PHI, as defined by HITECH, without unreasonable delay 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.

22.1.7 Assurance of Confidentiality

22.1.7.1 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.

22.1.7.2 The Contractor shall inform and provide quarterly trainings to each of its employees and subcontractor 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.

22.1.8 Return of Confidential Data

22.1.8.1 The Contractor shall return all Personal Health Information Data furnished or obtained pursuant to this Contract promptly at the request of ASES in whatever form it is maintained by the Contractor and subcontractor, if any. Upon the termination or completion of the Contract, the Contractor and subcontractor, if any, may not use any such Data or any material derived from the Data for any purpose not permitted by Puerto Rico or Federal law or regulation. Where so instructed by ASES, the Contractor shall destroy such Data or material if permitted and required by Puerto Rico or Federal law or regulation in the presence of ASES personnel. ASES Data and Information must be destroyed or returned to ASES in accordance with ASES' instructions. It is understood and accepted by the Contractor and its subcontractor(s), if any, that ASES will have unrestricted access to all technological equipment used by Contractor to provide services under this contract for auditing purposes and/or in order to certify that all ASES Data has been properly eliminated from said equipment.

#### 22.1.9 Publicizing Safeguarding Requirements

22.1.9.1 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.

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

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

22.1.9.4 This Article 22 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.

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

22.1.10.1 The Contractor is responsible for, and 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.

22.1.10.2 The Contractor shall remove any person from performance of services hereunder upon notice that ASES reasonably believes that such person has failed to comply with the confidentiality obligations of this Contract. The Contractor shall replace such removed personnel in accordance with the staffing requirements of this Contract.

22.1.11 ASES, the Puerto Rico Government including the Medicaid Fraud Control Unit, Federal officials as authorized by Federal law or regulations and/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.

22.1.12 The confidentiality provisions contained in this Contract survive the termination of this Contract.

## 22.2 HIPAA Compliance

22.2.1 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 Attachment 4 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. The Contractor must comply with all applicable Puerto Rico and Federal privacy and confidentiality laws.

### 22.3 Data Breach

22.3.1 The Contractor shall report to ASES, as required in Section 13402 of the HITECH Act and Law No. 111 of 2005, known as the "Citizen Information Law on the Security of Information Banks", 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.

22.3.2 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:

- 22.3.2.1 One or two sentence descriptions of the event;
- 22.3.2.2 Description of the roles of the people involved in the Breach (e.g., employees, participant users, service Providers, unauthorized persons, etc.)
- 22.3.2.3 The type of Data / Information as well as Personal Health Information that was breached;
- 22.3.2.4 Enrollees likely impacted by the Breach;
- 22.3.2.5 Number of individuals or records impacted/estimated to be impacted by the Breach;
- 22.3.2.6 Actions taken by the Contractor to mitigate the Breach;
- 22.3.2.7 Current status of the Breach (under investigation or resolved);

22.3.2.8 Corrective action taken, and steps planned to be taken to prevent a similar Breach.

22.3.3 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 23 TERMINATION OF CONTRACT**

### **23.1 General Procedures**

In addition to any other non-financial remedy set forth in this Contract or available by law, and subject to compliance with the termination procedures set forth in Section 23.4 below, ASES may terminate this Contract for any or all of the following reasons:

23.1.1 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;

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

23.1.1.3 In the event that the Contractor or any of its shareholders, director, officers, or employees fall under the prohibition stated in Article 18 of this Contract.

23.1.2 The Contractor shall have a limited right of termination of this Contract only in the events described in Section 23.6 (Limited Right of Termination by the Contractor) of this Contract.

23.1.3 Each Party shall have the opportunity to cure any default alleged in a termination notice, upon receiving a written termination notice from 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 five (5) 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. Said acceptance shall not be unreasonably withheld, conditioned or delayed.

### **23.2 Termination for no cause**

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.

### **23.3 Termination for Insufficient Funding**

23.3.1 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.

23.3.2 The Termination Date of the Contract when the Contract is terminated due to insufficient funding shall be sixty (60) Calendar Days after ASES delivers written notice to the Contractor, unless available funds are insufficient to continue payments in full during the sixty (60) Calendar Day period, in which case ASES shall give the Contractor written notice of an earlier date at which the Contract shall terminate.

23.3.3 Upon termination, the Contractor shall comply with any specified phase out requirements. The Contractor agrees that it will not engage in any behavior or inaction that prevents or hinders the work of another contractor or ASES, as the case may be.

23.3.4 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.

23.3.5 Availability of funds shall be determined solely by ASES.

### **23.4 Termination Procedures**

23.4.1 ASES will issue a written notice of termination to the Contractor by certified mail, return receipt requested, or in person with evidence of delivery. The notice of termination shall cite the provision of this Contract giving the right to terminate, the circumstances giving rise to termination, and the Termination Date of the Contract. Termination shall be effective at 11:59 p.m. EST on the Termination Date of the Contract.

23.4.2 Upon receipt of notice of termination or on the date specified in the notice of termination and as directed by ASES, the Contractor shall:

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

23.4.2.2 Place no further orders or subcontract for materials, services, or facilities, except as may be necessary for completion of such

portion of the work under the Contract prior to termination that is already in process;

- 23.4.2.3 Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
- 23.4.2.4 Assign to ASES, in the manner and to the extent directed by ASES, all of the right, title, and interest of Contractor under the orders or subcontracts so terminated, in which case ASES will have the right, at its discretion, to settle or pay any or all Claims arising out of the termination of such orders and subcontracts;
- 23.4.2.5 With the prior written approval of ASES, settle all outstanding liabilities 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;
- 23.4.2.6 Complete the performance of such part of the work that was not terminated by the notice of termination;
- 23.4.2.7 Take such action as may be necessary, or as ASES may direct, for the protection and preservation of any and all property or information related to the Contract that is in the possession of the Contractor and in which ASES has or may acquire an interest;
- 23.4.2.8 Promptly make available to ASES any and all records related to the Contractor's activities undertaken pursuant to this Contract. Such records shall be provided at no expense to ASES;
- 23.4.2.9 Submit to ASES all scripts used at Call Centers to communicate with Enrollees during the transition period;
- 23.4.2.10 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;
- 23.4.2.11 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
- 23.4.2.12 Comply with any other termination obligation under this contract.
- 23.4.2.13 Meet with ASES personnel, as requested, to ensure satisfactory completion of all obligations under the Termination Plan.

## **23.5 Termination Claims**

23.5.1 After receipt of a notice of termination, the Contractor shall submit to ASES any pending invoices in the form, and with the certification prescribed by ASES. Such invoices shall be submitted promptly but in no event later than two (2) months from the Termination Date of the Contract. Upon failure of the Contractor to submit its the invoices 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.

23.5.2 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:

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

23.5.2.2 For partially completed services, at a prorated rate of the applicable price(s) established in the Fee Schedule.

23.5.3 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.

### **23.6 Limited Right of Termination by the Contractor**

23.6.1 Subject to compliance with the termination procedures set forth in Section 23.4, the Contractor may terminate this Contract under the following circumstances:

#### **23.6.1.1 Termination For Non-Payment.**

23.6.1.1.1 After a written notice of default by the Contractor to ASES for lack of payment of an outstanding debt, which has not been corrected within thirty (30) days of the notice of default, the Contractor may terminate the Contract.

23.6.1.1.2 For this purpose, an outstanding debt will be considered an invoice that has been finally approved for payment by the Finance Department of ASES and has not been paid within sixty (60) days of said approval.

## ARTICLE 24 INSURANCE

24.1 The Contractor shall prior to the commencement of work, procure the insurance policies identified below at the Contractor's own cost and expense and shall furnish ASES with proof of coverage in the amounts indicated. It shall be the responsibility of the Contractor to require any Subcontractor to secure the same insurance coverage as prescribed herein for the Contractor, and to obtain a certificate evidencing that such insurance is in effect. In the event that any such insurance is proposed to be reduced, terminated or cancelled for any reason, the Contractor shall provide to ASES at least thirty (30) Calendar Days prior written notice. Prior to the reduction, expiration and/or cancellation of any insurance policy required hereunder, the Contractor shall secure replacement coverage upon the same terms and provisions as required in this Agreement, to ensure no lapse in coverage, and shall furnish, at the request of ASES, a certificate of insurance indicating the required coverage. The provisions of this Section shall survive the expiration or termination of this Contract for any reason. In addition, the Contractor shall indemnify and hold harmless ASES and the Government from any liability arising out of the Contractor's or its Subcontractor's untimely failure in securing insurance coverage as prescribed herein:

24.2 Workers' Compensation Insurance, the policy(ies) to insure the statutory limits established by law of Puerto Rico. The Workers' Compensation Policy for employees and contractors who are not considered their own employer due to the degree of control exercised over them by the Contractor in terms of supervision, provision of materials and work conditions, must include Coverage B – Employer's Liability Limits of:

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

24.2.2 Bodily injury by disease: five hundred thousand dollars (\$500,000) each employee and contractor who is not considered their own employer due to the degree of control exercised over them by the Contractor in terms of supervision, provision of materials and work conditions; and 24.2.3 One million dollars (\$1,000,000) policy limits.

24.2.3 The Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Worker's Compensation Coverage.

24.3 The Contractor shall have commercial general liability policy(ies) as follows:

24.3.1 Combined single limits Bodily Injury and Property Damage of one million dollars (\$1,000,000) per occurrence and in the aggregate including personal and advertising injury and contractual liability; and

24.3.2 On an "occurrence" basis.

- 24.4 The Contractor shall have commercial auto liability insurance with limits of \$1,000,000 and the following forms: Non-Owned Autos and Hired Autos.
- 24.5 The Contractor shall have professional liability insurance with limits not less than \$5,000,000.
- 24.6 The Contractor shall have excess liability insurance respect to the commercial general liability policy described above, in an umbrella form and on an occurrence basis with limits of at least \$1,000,000 per occurrence and in the aggregate;
- 24.7 The Contractor shall have Cyber Security Liability Insurance with limits of at least \$5,000,000.00.
- 24.8 The Contractor shall have all-risks Property insurance for ASES's records and data in Contractor's care, custody and control equal to one hundred percent (100%) of the full replacement value;
- 24.9 The commercial general liability policies and the Cyber Security Liability policy must have the following endorsements:
- 24.9.1 Naming the ASES and the Department of Health of Puerto Rico as an additional insured; and
  - 24.9.2 Including a hold harmless agreement
- 24.10 The excess liability, the commercial auto liability, professional liability insurance policies must include the ASES and the Department of Health of Puerto Rico as an additional insured.
- 24.11 Policies cannot be cancelled or modified without providing thirty (30) Calendar Days prior written notice to ASES and the Department of Health, Office of Insurance and Risks ("Oficina de De Seguros y Riesgos"), P.O. Box 709184, San Juan, Puerto Rico 00936-8184.
- 24.12 Insurance companies affording coverage hereunder must be duly authorized to do business in Puerto Rico and duly certified by the Insurance Commissioner of Puerto Rico, excluding those offering excess liability, and have an A.M. Best's rating of A-VII or better.
- 24.13 Contractor shall be responsible for any damages and injuries caused by the negligent handling or the abandonment of the responsibilities under this Contract and will thus exempt ASES and the Department of Health from any obligation or responsibility from such actions.

## **ARTICLE 25 COMPLIANCE WITH ALL LAWS**

### **25.1 Nondiscrimination**

25.1.1 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, sexual orientation, gender, gender identity, ethnicity, marital status, birth, or for the person's physical or mental impairment, 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.), and section 1557 of the Patient Protection and Affordable Care Act. Nondiscrimination in employment practices is applicable to employees for employment, promotions, dismissal and other elements affecting employment.

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

## 25.2 **Compliance with All Laws in the Delivery of Service**

25.2.1 The Contractor agrees that all work done under this Contract will comply fully with and abide by all Federal and Puerto Rico laws, rules, regulations, statutes, policies, or procedures that are applicable to Contractor in its capacity as a service provider under this Contract, including as a Choice Counselor and any other laws specifically referenced in this Contract as applying to Contractor.

25.2.2 All applicable Puerto Rico and Federal laws, rules, and regulations, consent decrees, court orders, policy letters and normative letters, and policies and procedures, 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.

25.2.3 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, and to the extent authorized representatives of each party are unable to resolve in a timely manner, acting reasonably and in good faith, ASES's determination on this matter shall be conclusive and not subject to appeal.

- 25.2.4 The Contractor certifies and warrants to ASES that at the time of execution of this Contract it is a corporation or entity duly authorized to conduct business in Puerto Rico, and has filed all the required income tax returns for the preceding five years.

## **ARTICLE 26 CONFLICT OF INTEREST AND CONTRACTOR INDEPENDENCE**

- 26.1 The Contractor acknowledges that in executing its professional services pursuant to this Agreement, it has the obligation to exhibit complete loyalty towards ASES, including having no adverse interests against it, as well as having no material adverse interests to other Puerto Rico government entities. Adverse interests include representing clients who have or may have interests that are contrary to ASES or other Puerto Rico government entities. This duty includes the continued obligation to disclose to ASES all circumstances of its relations with clients and third persons that could influence the Contractor in a materially adverse way in the execution of its duties under the Agreement.

Adverse interests also arise when, among others, the Contractor must support on behalf of one client that which it has a duty to oppose on behalf of another client. Adverse interests also arise when so stated in standards of ethics applicable to the Contractor's profession, or Puerto Rico's laws and regulations.

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

- 26.2 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 of each calendar year; and at any time, within fifteen (15) Calendar Days of request by ASES. This obligation equally extends to Contractor's subcontractor under this Contract, if any.
- 26.3 It shall be the responsibility of the Contractor to maintain independence and to establish necessary policies and procedures to assist the Contractor and its subcontractor, if any, in determining if the actual individuals performing work under this Contract have any impairment to their independence.
- 26.4 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 employees or Subcontractors.
- 26.5 The conduct herein described by one of the Contractor's directors, officers or employees shall constitute a violation of this prohibition. The Contractor shall avoid even the appearance of the existence of a conflict of interest.
- 26.6 The Contractor acknowledges the power of the Executive Director or its representative to

oversee the enforcement of the prohibitions herein established.

In the event the Executive Director or its representative determines the existence or the emergence of adverse interests with the Contractor, he/she shall inform such findings in writing and his/her intentions to terminate the Agreement after a thirty (30) day term. Within such term, the Contractor shall be entitled to a meeting with the Executive Director to present its arguments regarding the alleged conflict of interest. If such meeting is not requested within the specified term, or if the controversy is not settled satisfactorily during the thirty (30) day term, the Agreement shall be resolved at the end of said thirty (30) day period; provided, however, that, at ASES' discretion, the Executive Director may grant the Contractor an additional fifteen (15) days to cure the conflict of interest.

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

The Contractor certifies that neither it, nor any of its employees or officers, has an interest in this agreement that may interfere with their official duties as employees of any agency, instrumentality, public corporation or municipality of the Government of Puerto Rico.

The Contractor certifies that at the time of the execution of this Agreement, it does not have nor does it represent anyone who has interests that are in conflict with those of the Government of Puerto Rico, or any of its agencies or municipalities, or ASES. If such conflicting interests arise after the execution of this Agreement, the Contractor shall notify ASES immediately.

## **ARTICLE 27 CHOICE OF LAW OR VENUE**

27.1 This Contract shall be governed by and construed in accordance with the laws of the Government of Puerto Rico. The courts and authorities of the Government of Puerto Rico shall have jurisdiction over all controversies that may arise with respect to this Contract. The parties hereby waive any other venue to which they might be entitled by virtue of domicile or otherwise.

27.2 Should either party initiate or bring suit or action before any other court, it is agreed that upon application, any such suit or action shall be dismissed, without prejudice, and may be filed in accordance with this provision. The party bringing the suit or action

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

**ARTICLE 28 ATTORNEY'S FEES**

28.1 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 29 SURVIVABILITY**

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

**ARTICLE 30 PROHIBITED AFFILIATIONS WITH INDIVIDUALS DEBARRED OR SUSPENDED**

30.1 The Contractor certifies that it and its subcontractor, if any, are 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 31 WAIVER**

31.1 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.

31.2 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 32      FORCE MAJEURE**

32.1 Neither Party of this Contract shall be held in breach nor 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, casualty, lockouts, acts of war, epidemics, fire, earthquakes, or other disasters and other occurrences outside of the reasonable control of the parties as long as such party is reasonably attempting to correct the cause of the delay. During the delay or failure in performance, the delayed party will, implement reasonable work-around plans, computer system disaster recovery or other commercially reasonable means to facilitate the performance of its obligations under this Contract until the delay has ended or failure has been corrected.

**ARTICLE 33      BINDING**

33.1 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 34      TIME IS OF THE ESSENCE**

34.1 Time is of the essence in this Contract. Any reference to “days” shall be deemed Calendar Days unless otherwise specifically stated. Notwithstanding the foregoing, a failure by Contractor to deliver services by anytime expressed in this Agreement, or meet any other time for delivery, will not give rise to a termination right unless such failure would give rise to a termination right under Article 23 without reference to this Article 34.

**ARTICLE 35      AUTHORITY**

- 35.1 ASES has full power and authority to enter into this Contract as does the person acting on behalf of and signing for the Contractor.
- 35.2 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. The Contractor further represents that it has the power and authority to execute, deliver and perform this contract and hat the execution, delivery and performance the Contract has been duly authorized by all necessary action required by its operating agreement and other charter documents.
- 35.3 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.
- 35.4 Each party acknowledges that it understands this Contract and agrees to be bound by it.

**ARTICLE 36 ETHICS IN PUBLIC CONTRACTING**

- 36.1 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.
- 36.2 The Contractor understands, states, and certifies that it will comply with the requirements of the Code of Ethics for Contractors, Suppliers and Applicants of Economic Incentives of the Government of Puerto Rico, as described in Title III of Act 2 of January 4, 2018, known as the “Anticorruption Code for the New Puerto Rico.”
- 36.3 Both Parties hereby declare that, to the best of their knowledge, no public officer or employee of the Government of Puerto Rico, its agencies, instrumentalities, public corporations or municipalities or employee of the legislative or judicial branches of the government has any direct or indirect interest in the present Contract that is not duly recognized by law; that no person requested or accepted gifts, gratuities, favors, services, donations, loans or anything else in return for this Contract; that no person requested or accepted any goods from the Contractor as payment for performing the duties and responsibilities of their jobs with ASES; and that the Contractor has no family relationship, within the fourth degree of consanguinity or second degree of affinity, with any official or employee of ASES with the power to influence and participate in public policy decisions of ASES.

**ARTICLE 37 CONTRACT LANGUAGE INTERPRETATION**

- 37.1 The Contractor and ASES agree that in the event of a disagreement regarding, arising out of, or related to, Contract language interpretation, to the extent authorized representatives of each party are unable to resolve in a timely manner, acting reasonably and in good faith, ASES’s interpretation of the Contract language in dispute shall control and govern.

**ARTICLE 38 ARTICLE AND SECTION TITLES NOT CONTROLLING**

- 38.1 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 39 LIMITATION OF LIABILITY/EXCEPTIONS**

- 39.1 Except for (i) Contractor’s breach of its confidentiality obligations under Section 22.1, (ii) Contractor’s fraudulent, criminal or willful and intentional misconduct, (iii) Contractor’s infringement of the intellectual property rights of a third party by use of Contractor’s Pre-Existing IP contemplated hereunder and/or Contractor’s provision of the Services, or (iv) bodily injury, including death, or damage to tangible personal or real property incurred while Contractor is performing the Services and to the extent

caused by the negligent or willful acts or omissions of Contractor's personnel or agents in performing the Services, Contractor's aggregate liability during the term of this Agreement, including for any amounts paid by Contractor under Article 10, shall exceed Fifty Million Dollars (\$50,000,000) (the "Damages Cap"). Unless otherwise prohibited by applicable law, ASES shall be entitled to seek incidental, consequential, punitive or special damages incurred in connection with Contractor's material breach of this Contract, subject to the Damages Cap. The terms of this clause are equally applicable to acts committed or incurred by the Contractor's subcontractor under this Contract, if any.

**ARTICLE 40 COOPERATION WITH AUDITS**

40.1 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.

40.2 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.

40.3 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 41 AMENDMENT IN WRITING**

41.1 No amendment of this Agreement shall be valid unless in writing, signed by both Parties and properly registered with the Office of the Comptroller of the Government of Puerto Rico, except for those routine change orders that are included in the Licensing Fee and represent no additional charge, as established in Attachment 5 to this Contract and more specifically in Appendix H-3 of the RFP.

41.1.1 Routine Change Orders:

41.1.1 ASES may submit a Change Order by email or by any other means of communications established between the parties. As soon as practicable thereafter, the parties shall discuss the requested change, which include discussion of the feasibility of proceeding with such a change, the impact of the change on the services and the proposed implementation date for the change.

41.1.1.2 If the Parties mutually agree that the requested change exceeds the scope of the descriptions provided in Appendix H-3, the parties will mutually agree on the corresponding fee and the change order must comply with all the requirements for an amendment to the Contract.

- 41.2 No 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.
- 41.3 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.
- 41.4 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, the Government of Puerto Rico Fiscal Plan as certified by the Financial Oversight and Management Board for Puerto Rico (FOMB) pursuant to the Puerto Rico Oversight, Management and Economic Stability Act of 2016, or as may be required by the FOMB. The Contractor shall consent to any such amendment.
- 41.5 This Contract is subject to CMS and PRITS approval and may require amendment or the provision of additional information at CMS' and/or PRITS request.

#### **ARTICLE 42 CONTRACT ASSIGNMENT**

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

#### **ARTICLE 43 SEVERABILITY**

- 43.1 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 44 ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

- 44.1 This Contract constitutes the entire agreement between the Parties with respect to the subject matter herein and supersedes all prior negotiations, representations, or contracts. No written or oral agreements, representations, 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.
- 44.2 The terms of Contractor's Proposal are incorporated by reference, except as otherwise provided in this Contract. Moreover, in reference to the Proposal, the Order of Precedence is as follows: (a) Best and Final Offer or negotiation documents, in reverse chronological order, if any; (b) Written clarifications, in reverse chronological order,

if any. However, in the event of a conflict between the terms of this Contract and the terms of Contractor's Proposal, the terms of this Contract shall prevail.

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

**ARTICLE 45 INDEMNIFICATION**

45.1 The Contractor hereby releases and agrees to indemnify and hold ASES, the Government, and its departments, agencies, and instrumentalities harmless from and against any and all claims, demands, liabilities, losses, costs or expenses, and attorneys' fees, caused by, growing out of, or arising from this Contract, (i) due to any failure by Contractor to perform as required by this Agreement 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 (ii) due to Contractor's negligence, gross negligence, or fraudulent, criminal or willful and intentional misconduct, or (iii) due to any breach of this Contract by the Contractor, or (iv) due to the violation of any pertinent Federal, Puerto Rico or local law, rule or regulation applicable to Contractor. 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 46 NOTICES**

46.1 All notices, consents, approvals, and requests required or permitted shall be given in writing and shall be effective for all purposes if hand delivered or sent by (i) personal delivery, (ii) expedited prepaid delivery service, either commercial or US Postal Service, with proof of attempted delivery, (iii) telecopies, or (iv) electronic mail. In each case of (c) and (d), with answer back acknowledged, addressed as follows:

46.1.1 If to ASES at:

Mailing Address:

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

Attention: Executive Director

Physical Address:

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

46.1.2 If to Contractor at:

Mailing Address:

Physical Address:

- 46.1.3 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 47 OTHER MANDATORY GOVERNMENT CLAUSES**

- 47.1 The present contract constitutes an inherent and mandatory component of the Government Health Plan, for which reason it is exempted from Act No. 66 of 2014 and Act No. 3 of 2017, and corresponding government memorandums.
- 47.2 Parties recognize and acknowledge that the contracted services can be rendered to any entity of the Executive Branch, with which ASES execute an interagency agreement or by direct disposition of the Governor's Chief of Staff (Secretario de la Gobernación). These services shall be rendered under the same terms and conditions specified on the present Contract, as for work hours and compensation. Although this contract is exempted from this requirement, it is included for purposes of uniformity.
- 47.3 For purposes of this Section, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as instrumentalities and public corporations, and the Office of the Governor.
- 47.4 The Governor's Chief of Staff shall have the power to cancel this Agreement at any moment. Although this contract is exempted from this requirement, it is included for purposes of uniformity.
- 47.5 In case this Agreement is exempted from authorization from the Governor's Chief of Staff according to the dispositions specified in Section VI of the Memorandum Number 2017-001, the Governor's Chief of Staff shall have discretion to take any necessary steps in those situations when a breach or potential breach with the public policy established by the Governor is observed.

## **ARTICLE 48 PERFORMANCE BOND**

48.1 The Contractor must provide prior to signing the contract and maintain throughout the term of the Contract a Performance Bond in the amount of 100% of the annual contract amount. The Bond must be issued by an insurance company duly authorized to do business in Puerto Rico, duly certified by the Office of the Insurance Commissioner of Puerto Rico and approved by ASES.

48.2.1 At the conclusion of the first contract year and no later than the last day of the first month of the following contract year, if applicable, the Contractor must provide ASES evidence of the renewed Performance Bond, in the corresponding amount to said contract year. Failure to comply with this clause will cause ASES not to process any pending invoice for said contract year.

48.2 The Contractor must also obtain from the Subcontractor, if any, a Performance Bond in the amount of 100% of the annual subcontract amount. The same must be maintained throughout the term of the subcontract and be from an insurance company that complies with the same requirements mentioned in Section 48.1 above.

48.2.1 The Contractor must provide ASES, prior to signing the contract, evidence of the subcontractor's Performance Bond.

48.2.2 At the conclusion of the first subcontract year and no later than the last day of the first month of the following subcontract year, the Contractor must provide ASES evidence of the subcontractors' renewed Performance Bond, in the corresponding amount to said subcontract year. Failure to comply with this clause will cause ASES not to process any pending invoice for said contract year.

48.3 It is expressly recognized that the foregoing are material conditions of this Contract. Failure to comply with these conditions, shall be sufficient cause for ASES to terminate the Contract.

*(Signatures on following page)*

**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)**

\_\_\_\_\_  
Executive Director  
EIN: 66-0500678

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_  
Date

DRAFT