

2024-00023

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

PROFESSIONAL SERVICE AGREEMENT

This Agreement for Professional Services (this "Agreement") is made and entered into by and between the Puerto Rico Health Insurance Administration, a public corporation of the Government of Puerto Rico created by Act Number 72 of September 7, 1993, as amended, (hereinafter referred to as "ASES" by its Spanish acronym), represented by its Executive Director, Edna Y. Marin Ramos, MA, of legal age, single and resident of Guaynabo, Puerto Rico; and **MERCER Health and Benefits, LLC**, a corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico (hereinafter referred to as "**SECOND PARTY**"), represented by its Principal, Jessica Osborne, of legal age, single, and resident of Alexandria, Virginia, U.S.A., and authorized to appear herein by a Certificate of the Professional Services Providers Registry (RUP, by its Spanish acronym), number **202211362** emitted by de Puerto Rico's General Services Administration (ASG by its Spanish acronym).

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

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

TERMS AND CONDITIONS

1. ASES agrees to engage with the **SECOND PARTY** to render professional services in Federal Compliance and Research, implementation support for special projects, financial services; MCO oversight & daily operations; Pharmacy Specialty Support; Staffing Plan Services.
2. The services to be provided by **SECOND PARTY** may encompass the following subjects and objectives, as included in the proposal incorporated as part of this Agreement:
 - A. Federal Compliance, Planning and Research:
 - 1) Conducting research and developing guidance on Federal compliance issues.
 - 2) Directed payment initiatives for provider reimbursement and renewals.
 - 3) State Plan Amendment support (as requested by ASES).
 - 4) Managed care organization (MCO) and pharmacy benefit manager (PBM) contract support.
 - 5) Providing information on implementation needs, operations considerations and compliance requirements.
 - 6) Participating in discussions/negotiations with CMS Region II and Central

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Office.

- 7) Providing training and direction to ASES and other staff.
- 8) Providing ad-hoc assistance to legal, planning, IT and compliance offices as requested.
- 9) Any other related services that ASES may require, through its Executive Director or delegated personnel.

B. Management of Directed Payments:

- 1) Develop new directed payments as a result of policy development.
- 2) Renewal of existing directed payment preprints (completion of preprints, responses to CMS questions, modification of contract language (if necessary)).

C. Financial and Encounter Data Audits:

- 1) CMS required financial and encounter audits as required under 42 CFR 438.602(e) (Managed Care Rule).

D. Plan Vital Procurement Support:

- 1) Assisting in the development of RFP language, questions and scoring and award methodology.
- 2) Providing training, tools, and communication documents.
- 3) Supporting bidders' conferences and public meetings.
- 4) Supporting bidders Q&A process.
- 5) Developing evaluation guides and score sheets.
- 6) Facilitating consensus decision making.
- 7) Developing final procurement report and required presentations.
Plan Vital Readiness Review (MCO)

E. Plan Vital Readiness Review (MCO):

- 1) Developing desk review and on-site review tools.
- 2) Training for evaluation team members.
- 3) Facilitating on-site review meetings and assistance with desk review.
- 4) Drafting comprehensive readiness report and network certification.
- 5) Completion of Mental Health Parity Analysis for any new MCO selected in procurement.

F. Comprehensive Oversight and Monitoring Plan (COMP)

- 1) Maintaining updates to the Reporting Guide specifications and measures used by MCOs.
- 2) Identifying new and updated key performance indicators (KPIs) as needed.
- 3) Quarterly side-by-side report review and training.
- 4) COMP data validation.
- 5) Support design and implement new federal reporting modules (EPSDT, CMS Scorecard, directed payments, HEDIS, Adult/Child Core sets and MCO Quality Rating System).
- 6) Support design and implement new Mental Health Parity modules.
- 7) Support design and implement Network Management modules.
- 8) Assisting with development, implementation and tracking of compliance activities.
- 9) Provide research and training as needed.
- 10) Continuing audit and validation activities (clinical and quality, finance).
- 11) Assist with external COMP reporting (AAFAF, MCO, other).

G. PBM-MDRP Readiness Review

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- 1) Developing desk review and on-site review tools.
- 2) Training for evaluation team members.
- 3) Facilitating on-site review meetings and assistance with desk review.
- 4) Claims testing
- 5) Drafting comprehensive readiness report and network certification.

H. Operations Support

- 1) Clinical Technical Assistance
- 2) Pharmacy Technical Assistance
- 3) Network Management Assistance
- 4) Plan Vital Comparative Data Study (PRMMIS and MedInsight)
- 5) Platino Reporting
- 6) Law 95 Reporting
- 7) General Project Management

I. Any other related services that ASES may require, through its Executive Director or delegated personnel.

J. ASES shall compensate **SECOND PARTY** an hourly rate of three hundred fifteen dollars (\$315.00). The **SECOND PARTY** team is composed of:

- **Jessica Osborne**, Client Relationship and Operations Lead
- **Kelly Pellino**, Project Manager
- **Jenny Feliciano**, COMP Lead and Project Manager
- **Dario Campelo**, Finance Lead
- **Kristen Coyle**, Pharmacy Lead
- **Rachel Wright**, Principal, Clinical Lead
- **Gosia Skinner**, Informatics Lead
- Additional team members as needed.

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3. This Agreement will be in effect from the date of its full execution until **June 30, 2024**. Notwithstanding any provision to the contrary in this Agreement, either party shall have the right to terminate this Agreement by providing the other party with thirty (30) days' prior notice by registered mail, return receipt requested, or overnight express mail.

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

4. The **SECOND PARTY** represents that it has full knowledge of any applicable federal or local law impacting the GHIP sponsored by the Commonwealth of Puerto Rico and the advice and services to be provided will consider such laws and regulations, including, but not limited to, the Balanced Budget Act of 1997, as amended; Social Security Act, as amended; the Medicaid Managed Care Regulations, as amended and Puerto Rico State Plan.

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ASES shall compensate **SECOND PARTY** for the term of this Agreement up to the amount of **two million dollars (\$2,000,000.00)** for services rendered only, except

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Jessica Osborne

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that this amount may be increased subject to written approval by either the Executive Director or Sub – Director.

6. As included in the proposal incorporated to this Agreement, the **SECOND PARTY** recognize that much of this engagement can be performed in their Washington, DC office and via conference calls. But, given the nature of the engagement, travel will be necessary. However, the **SECOND PARTY** will no longer charge ASES for any travel expenses.
7. Payments made by **ASES** under the terms of this Agreement shall be paid from the budget item account corresponding to number **131-6320-2024-018**.
8. **SECOND PARTY** shall submit monthly, detailed certified invoices to ASES for services rendered in a month within the first five (5) days of the month following the period involved. If the invoice is not submitted within the first five (5) days of the month following the period involved, payment may be issued within the following month. Each invoice 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 **SECOND PARTY** should issue the certification. The invoice should detail the available balance of the Agreement's budget when submitting the invoice as well as the available balance of the Agreement at the time the invoice is delivered. **SECOND PARTY** is solely responsible of assigning the necessary resources for the delegated cases and matters. 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:

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Contract Number:
Balance \$ _____
 Invoice detail xxx \$ _____
 Invoice xxx \$ _____
 Invoice xxx \$ _____
 Current invoice xxx \$ _____

Balance at the date of this invoice \$ _____

Each invoice must identify and detail the budget item for federal projects that will be billed with federal funds, as applicable. Those invoices must detail services by federal programs with a total for each project and the total billing. For example:

Example: Invoice for the federal program MMIS.
Example: ASES regular invoice.
Total invoiced (sum of all)

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

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9. **SECOND PARTY** 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. **ASES** reserves the right to review all the invoices and perform all necessary audits. The invoice shall include the following certification in Spanish:

Certifico bajo pena de nulidad absoluta que ningún servidor público del Departamento de Salud ni de la Administración de Seguros de Salud de Puerto Rico es parte o tiene algún interés en las ganancias o beneficios pecuniarios (en conjunto, "las Ganancias") producto del contrato objeto de esta factura; si fuera parte o tiene algún interés en las Ganancias, ha mediado una dispensa previa. La única consideración para suministrar los servicios objeto del contrato ha sido el pago acordado con el representante autorizado de las agencias. Certifico que el contenido de esta factura es justo y correcto y los servicios no han sido pagados.

ASES shall verify the invoices within twenty (20) working days of the date of the invoice and, if they are in compliance with the requirements set forth in this Agreement, will proceed with payment to the **SECOND PARTY** within thirty (30) days of said approval. ASES will promptly notify the **SECOND PARTY** of any questions regarding invoices so that the **SECOND PARTY** can receive timely payment. ASES will administer the payment by means of an electronic transfer. In the event any invoice goes unpaid for more than sixty (60) days, the **SECOND PARTY** reserves the right to suspend its performance of the services contracted for hereunder.

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

POSTAL ADDRESS

Edna Y. Marin Ramos, MA
Executive Director
Administración de Seguros de Salud
P.O. Box 195661
San Juan, PR 00919-5661

PHYSICAL ADDRESS

Edna Y. Marin Ramos, MA
Executive Director
Administración de Seguros de Salud
1549 Calle Alda
Urb. Caribe
San Juan, PR 00926-2712

11. If **SECOND PARTY** does not comply with the above requirements in the submission of the invoices, it will waive its right to payment for services rendered.
12. **ASES**, its designees or the Controller's Office, shall have the right during the term of this Agreement or up to five (5) years after the term, to review and audit **SECOND PARTY's** records relating to **SECOND PARTY's** services under this Agreement.
13. The **SECOND PARTY** shall not perform work, nor bill for services under this contract in excess of the amount available under the contract, unless the corresponding budget item is identified and approved, the contract is amended in writing, and such amendment is filed with the Office of the Comptroller of Puerto Rico.

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responsible for monitoring the billable balance of the amount available in the contract. The **SECOND PARTY** shall alert, prior to the exhaustion of the billable hours, about the need, if any, for an amendment to increase the amount, if necessary.

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

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

17. Neither this Agreement, nor the services to be provided hereunder, may be assigned, or subcontracted without the written approval of **ASES**. The request to contract a third party must specify the matters in which he/she will intervene and must be submitted in writing. This request must: (1) be submitted in writing, (2) identify the Subcontractor, (3) specify the tasks in which the Subcontractor will intervene, and (4) disclose the remuneration that the Subcontractor will receive for the work carried out, and the profit margin, if any, that the **SECOND PARTY** will have in relation to the subcontractor's paid fees. If the Subcontractor is to dedicate 25% or more of its time to the tasks assigned in the contract between **ASES** and **SECOND PARTY**, the Subcontractor must submit all the documents and certifications required from **SECOND PARTY** for the government contracting. See Circular Letter No. 1300-16-16 of the Puerto Rico Treasury Department.

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

18. The **SECOND PARTY** acknowledges the proprietary and confidential nature of all internal, non-public, information systems, financial, and business information relating to the **ASES**, the Government of the Commonwealth of Puerto Rico, its agencies, corporations, and municipalities and their personnel. The **SECOND PARTY**

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and its employees shall keep in strict confidence all such information and shall not make public or disclose any of said materials, except as necessary to perform its services, without the previous written consent of ASES. The **SECOND PARTY** will ensure that any authorized subcontractor or expert is subject to this confidentiality obligation. The restriction on confidentiality shall not apply to information that **SECOND PARTY** must disclose by law or legal process, (ii) is either already in the public domain or enters the public domain through no fault of the **SECOND PARTY**, (iii) is available to **SECOND PARTY** from a third party who, to the **SECOND PARTY** knowledge, is not under any non-disclosure obligation to ASES, or (iv) is independently developed by or for **SECOND PARTY** without reference to any confidential information of ASES. The obligations for confidentiality in this agreement shall survive termination by both parties and the expiration of this agreement.

19. The **SECOND PARTY** shall furnish ASES with reports, analysis, or other such materials as ASES may reasonably request, which, to the extent prepared by the **SECOND PARTY** specifically and exclusively for ASES shall at all-time be the property of ASES, subject to the **SECOND PARTY** reservation of rights in and to the **SECOND PARTY** tools and the prohibitions on distribution of **SECOND PARTY** work product to third parties in this Agreement. The Parties will sign a mutually agreed Business Associate Agreement.

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

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

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

22. The **SECOND PARTY** 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 **SECOND PARTY** is expressly prohibited from sharing, distributing, disseminating, or publishing **ASES** Data and Information without the express prior written consent of **ASES**. In the event of a dispute regarding what is or is not **ASES** Data and Information, **ASES's** decision on this matter shall be final and not subject to appeal.

23. The **SECOND PARTY** is required to perform transfers of knowledge on a continuous basis with **ASES** personnel. The **SECOND PARTY will be responsible of delivering reports regarding current work and completed work to the area that administers this agreement, each six (6), nine (9) months since the signature of the agreement and on or before the date the of the last payment made under this contract, or within the first ten (10) days from the date of termination, whichever first.** **SECOND PARTY** must have completed a transfer of knowledge that will guarantee an orderly continuity of services and labor, including source codes for programs, manuals, instructions and any other materials required to provide continuity and ensure that **ASES** personnel knows and understands completed and uncompleted tasks, as well as the status and items pending to complete unfinished tasks, as well as the status and items pending to complete unfinished tasks. The **SECOND PARTY** acknowledges and agrees that **ASES** will not paid the final invoice until the **SECOND PARTY** completes the said transfer of knowledge in writing and in any other format as may be requested by **ASES**.

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

25. To the extent applicable to this Agreement, this Section describes the intellectual property ownership requirements that the **SECOND PARTY** shall meet:

ASES shall have all ownership rights, not superseded by other licensing restrictions, in all materials, programs, procedures, etc., designed, purchased, or developed by the **SECOND PARTY** and funded by **ASES**. The **SECOND PARTY** shall use Agreement funds to develop all necessary materials, programs, products, procedures, etc., and data and software to fulfill its obligations under the Agreement. The **ASES** funding used in the development of these materials, programs, procedures, etc. shall be documented by the **SECOND PARTY**. **ASES** shall have all ownership rights in data and software, or modifications thereof and associated

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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 **SECOND PARTY** or any Subcontractor for work product created in the performance of this Contract. **ASES** reserves, on behalf of itself, the U.S. Department of Health and Human Services and its contractors, a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use such software, modifications, documentation and procedures. Such data and software includes, but is not limited to, the following:

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

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

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27. The **SECOND PARTY** shall not deny access to **ASES's** Data under any case or circumstances, nor retain **ASES's** Data while controversies between **ASES** and the **SECOND PARTY** are resolved and finally adjudicated. The **SECOND PARTY** may, in accordance with legal disaster recovery and records retention requirements, store copies of **ASES** data in an archival format (e.g. tape backups), which may not be returned or destroyed upon request. Such archival copies are subject to confidentiality obligations as may be set forth in this Agreement.

28. **SECOND PARTY** acknowledges the Health Insurance Portability and Accountability Act of 1996 (better known as HIPAA), and that its privacy and security rules require any entity covered by said legislation to train its workforce in their provisions on privacy, confidentiality, and security of protected information, as defined in the Act and its regulations. The Act requires the covered entity to set policies and procedures relating to privacy, confidentiality, creation, management, transmission, and access of protected information, and to train its workforce in such policies and procedures. **SECOND PARTY** acknowledges that it is subject to compliance with the policies and procedures of HIPAA and **ASES's** procedures established for compliance with HIPAA and its regulations. Hence, **SECOND PARTY** must comply with all terms and policies of the HIPAA and must follow all standards for the handling of protected information. **SECOND PARTY** should ask all employees, subcontractors, or agents to abide by the restrictions and conditions that apply to them in the management of protected information. **SECOND PARTY** certifies that it meets the standards set out on HIPAA and its regulations, as well as on any other state law that protects the privacy, confidentiality, and security of information. **ASES** reserves the right to cancel this contract if **SECOND PARTY** does not comply with this section of the Agreement, the HIPAA, its regulations, and any state law or regulation regarding privacy, confidentiality, and security of Information.

The parties agree to sign a Business Associate Agreement.

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

- One or two sentence description of the event;
- Description of the roles of the people involved in the event (e.g., employees, participant users, service Providers, unauthorized persons, etc.)
- The type of Data / Information as well as Personal Health Information that was breached;
- Enrollees likely impacted by the event;

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- Number of individuals or records impacted/estimated to be impacted by the event;
- Actions taken by the **SECOND PARTY** to mitigate the event;
- Current status of the event (under investigation or resolved);
- Corrective action taken and steps planned to be taken to prevent a similar event.

The **SECOND PARTY** 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.

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

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

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

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

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

32. **Termination:**

A. This Agreement may be terminated by **ASES** for any reason and at any time upon thirty (30) days or less, depending on the contracted services, written notice to **SECOND PARTY**.

B. Furthermore, **SECOND PARTY's** failure to comply with its duties and responsibilities and to perform the services set forth herein, or its negligence or

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unlawful behavior in the execution of the Agreement, shall constitute a breach of the Agreement by **SECOND PARTY** that entitles **ASES** to terminate this Agreement immediately without prior notice. **ASES** may also terminate this Agreement immediately without prior notice if probable cause for arrest is found or a judgment for conviction is entered against **SECOND PARTY** or any of its officers, employees, or subcontractors authorized by **ASES** under this Agreement, for any crime against the treasury, public faith, or for crimes involving public funds or property, either of state or federal origin; or if an extraordinary fiscal situation arises that justifies an immediate budget cut.

- C. It is expressly agreed that **SECOND PARTY** will conclude any pending work at the time of cancellation of the contract, as required by **ASES**. **ASES** will not be obliged to pay additional compensation to the agreed under this contract. **SECOND PARTY** will not be entitled to any additional compensation except the already billed until that date. The **SECOND PARTY** expressly acknowledges that in the eventuality of not existing or allocating funds for the payment of the contracted services, the contract will be terminated with no other right than to collect what has already been worked.
- D. It is noted that if the **SECOND PARTY** is part of the Registry of Convicted Persons for Corruption and Related Offenses "Registro de Personas convictas por Corrupción y Delitos Relacionados", this Contract will be null, and the funds paid will have to be returned to **ASES**.
- E. In accordance with Guide #16 of Circular Letter No. 93-11 of October 25, 2011, issued by the Office of Management and Budget of the Government of Puerto Rico, all contracts that are: (a) awarded in an electoral year; (b) paid with resources of funds allocated by the Legislature; and (c) have a contract term extending beyond December 31, 2020, may be rescinded at any time after December 31, 2020 by the new officials appointed during the new four-year administration period.

33. Conflict of Interest:

- A. **SECOND PARTY** certifies that neither it, nor any of its employees or officers, has an interest in this agreement that may interfere with their official duties as employees of any agency, instrumentality, public corporation, or municipality of the Government of Puerto Rico.
- B. **SECOND PARTY** 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, **SECOND PARTY** shall notify **ASES** immediately.
- C. **SECOND PARTY** certifies that it does not have other contracts with government agencies, public corporations, or municipalities. **SECOND PARTY** will disclose by

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written communication to **ASES** with which government agencies, public corporations, or municipalities it enters into contract with.

34. Subcontractors:

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

35. Certifications:

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

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- i. Certifies and guarantees that as of the date of execution of this Agreement and to the best of its knowledge, it has not been convicted and none of its shareholders, employees, officers, or agents have been convicted, have probable cause, and that it has no knowledge that any of the foregoing is subject of any investigation, in connection with a civil or criminal procedure in state or federal court for criminal charges related to the public treasury, the public trust, a public function, or a fault that involves public funds or property including **SECOND PARTY** its subsidiaries and/or a parent company. If the previously submitted certification to ASG is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for **ASES** to terminate this Agreement immediately, without prior notice. If the status of **SECOND PARTY** with regards to the charges previously mentioned should change at any time during the term of the Agreement, it shall notify **ASES** promptly. The failure to comply with this responsibility constitutes a violation of this Section and shall result in the remedies mentioned previously.
- ii. Certifies that at the time of execution of this Agreement it is not engaged in or is a party to any lawsuit against the Government of Puerto Rico, or any of its instrumentalities, agencies, or municipalities.
- iii. Certifies that as of the date of execution of this Agreement and during the past five (5) years, it has not been required to file Puerto Rico tax returns, and Social Security tax returns with the U.S. Government as required by

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applicable law. **SECOND PARTY** has submitted a Negative Certification of Debt from the Treasury Department of the Government of Puerto Rico.

1. It is expressly acknowledged that this is an essential condition of this Agreement, and if this certification is incorrect, ASES shall terminate this Agreement immediately and **SECOND PARTY** will have to reimburse ASES.
 2. By the end of this Agreement, the **SECOND PARTY** will present an updated Certification of Debt. The **SECOND PARTY** acknowledges that the last payment owed under this Agreement will be disbursed if such Certification of Debt is negative and no money is owed to the Treasury Department of the Government of Puerto Rico. If by the end of this Agreement there is an outstanding balance owed that cannot be cleared by the Treasury Department, the **SECOND PARTY** agrees to cancel the amount through retention from last payment.
 3. For purposes of this Agreement, tax debt shall mean any debt that **SECOND PARTY** or any of its officials or other parties which ASES authorizes **SECOND PARTY** to subcontract, may have with the Government of Puerto Rico for income taxes, excise taxes, real or chattel property taxes, including any special taxes levied, license rights, tax withholdings for payment of salaries and professional services, taxes for payment of interests, dividends and income to individuals, corporations and non-resident partnerships, for payment of interests, dividends, and other earnings shares to residents, and social security for chauffeurs.
- iv. Has provided ASG with a certificate of existence issued by the Department of State of the Government of Puerto Rico and a corporate resolution where **SECOND PARTY** expressly authorizes the undersigned to execute this Agreement on behalf of the corporation, if applicable. It is expressly acknowledged that these are essential conditions of this Agreement, and if these certifications previously submitted to ASG are incorrect, ASES shall terminate this Agreement immediately and **SECOND PARTY** will have to reimburse ASES.
- v. That as of the execution of this Agreement, it is current on payment of workers' compensation premiums in accordance with applicable law. **SECOND PARTY** has provided ASG with a negative certification of debt from the Workers Compensation Corporation of the Government of Puerto Rico, if applicable. It is expressly acknowledged that this is an essential condition of this Agreement, and if the certification previously submitted to ASG is incorrect, ASES shall terminate this Agreement immediately and **SECOND PARTY** will have to reimburse ASES.

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- vi. Agrees to pay all unemployment insurance premiums due in accordance with applicable law. **SECOND PARTY** represents that as of the date of execution of this Agreement, it is current on payment of unemployment insurance premiums due in accordance with applicable law and has submitted to ASES a negative certification of debt from the Department of Labor and Human Service of the Government of Puerto Rico. It is expressly acknowledged that this is an essential condition of this Agreement, and if the certification previously submitted to ASG is incorrect, ASES shall terminate this Agreement immediately and **SECOND PARTY** will have to reimburse ASES.
- vii. Warrants that at the time of execution of this Agreement it has no obligation to retain child support payments. **SECOND PARTY** has provided ASES with a certificate of no debt from the "Administración de Sustento de Menores" ("ASUME"). It is expressly acknowledged that this is an essential condition of this Agreement, and if the certification previously submitted to ASG is incorrect, ASES shall terminate this Agreement immediately and **SECOND PARTY** will have to reimburse ASES.
- viii. Represents that as of the date of execution of this Agreement, it is current on payment of property taxes in accordance with applicable law. **SECOND PARTY** has provided ASES with a negative certification of debt from the "Centro de Ingresos y Recaudación Municipales" of the Government of Puerto Rico. It is expressly acknowledged that this is an essential condition of this Agreement, and if the certification previously submitted to ASG is incorrect, ASES shall terminate this Agreement immediately and **SECOND PARTY** will have to reimburse ASES.
- ix. Has provided, as a condition for the execution of this Agreement, the following certifications to ASG:
1. Certification of having filed income tax returns in the past five (5) years from the Treasury Department of Puerto Rico (Model SC-6088)
 2. Certification from Puerto Rico's Treasury Department attesting that there is no outstanding debt or, if a debt exists, that it is subject to payment plan (or pending administrative review under applicable law or regulations) (Model SC-6096)
 3. Certification from Puerto Rico's Center for the Collection of Municipal Revenues ("CRIM" for its Spanish acronym) certifying that there is no outstanding debt in the past five (5) years or, if a debt exists, that it is subject to payment plan (or pending administrative review under applicable law or regulations).
 4. Certification from Puerto Rico's Department of Labor and Human Resources of compliance with unemployment insurance, temporary

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- disability insurance and/or chauffeur's social security, if applicable.
- 5. Certification of incorporation from the State Department of Puerto Rico.
- 6. Certificate of Good Standing
- 7. Certifications of no outstanding alimony or child support debts, if applicable.
- 8. Merchant Registry Certification (Model SC 2918)
- 9. Certification of Sales Tax Return File (IVU for its Spanish acronym) (model SC 2927) and if apply, certification of No Debt of Sales Tax Return.
- x. It is expressly recognized that the foregoing are material conditions of this Agreement. In the event the above certifications and acknowledgments contained in this clause are not correct, in whole or in part, it shall be sufficient cause for ASES to terminate the Agreement and **SECOND PARTY** shall reimburse ASES any sum of money received under the same.

36. 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 **SECOND PARTY** as payment for performing the duties and responsibilities of their jobs with **ASES**; and that **SECOND PARTY** 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**.

37. **SECOND PARTY** 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. **SECOND PARTY** is not entitled to fringe benefits, such as retirement or disability. **ASES** will neither retain, nor discount, any amounts from payments made to **SECOND PARTY** for income tax purposes or for Social Security, except those applicable in accordance with the Puerto Rico Internal Revenue Code and its regulations.

38. **SECOND PARTY** will offer professional and consulting services to **ASES**. Therefore, **ASES** will be responsible for the withholding of one point five (1.5) percent of the amounts paid under this contract and shall forward such withholding to the Treasury Department of the Government of Puerto Rico pursuant to Public Law

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A. The Code of Internal Revenue establishes that **ASES** will withhold ten (10) percent from the professional services payment rendered under this Agreement, if it is a foreign corporation under the law of any state, twenty (20) percent of the payment will be withheld and if it is a foreign corporation under the law of other country, it will be withhold twenty-nine (29), percent unless the **SECOND PARTY** presents to **ASES** a retention waiver from the Treasury Department of the Government of Puerto Rico. The items to defray the subsistence allowance, accommodation or other similar expenses will not be subject to withholding.

39. **SECOND PARTY** warrants and agrees that in the provision of services under this Agreement it will not discriminate based on race, color, gender, origin or social status, age, political or religious beliefs or any other discriminating cause. **SECOND PARTY** also acknowledges that under the provisions of Act No. 46 of March 4, 2002, it cannot discriminate against a person for his or her sexual orientation, gender, gender identity, ethnicity, marital status, birth, or for the person's physical or mental impairment.

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40. **SECOND PARTY** also certifies and warrants that at the moment the execution of this Agreement is in complete compliance with Public Law Number 168 of 2000, as amended, also known as "Ley de Mejoras al Sustento de Personas de Edad Avanzada de Puerto Rico."

41. **SECOND PARTY** agrees that in connection with the services provided hereunder, it will comply with all the applicable employment laws and regulations.

42. Documents presented by the **SECOND PARTY** that will become part of the Contract:

- A. Certification issued by the ASG as part of the active registry on the *Registro Único de Proveedores de Servicios Profesionales (RUP)*.
- B. Contractor Certification Requirement indicating if any subcontractor will be needed in connection with this Agreement.
- C. HIPAA training evidence, if applies.
- D. Conflict of Interest Certification by virtue of the PR Government Ethics.
- E. Evidence of active registry on the System for Award Management (SAM).
- F. Legal Entities Certification. CC num.013-2021 OGP

43. **SECOND PARTY** certifies that it has received a copy of and agrees to comply with Act No. 84 of June 18, 2002, as amended, which establishes the Code of Ethics for contractors, suppliers, and applicants for economic incentives of the Executive Agencies of the Government of Puerto Rico and the Government Ethics Law, Act No. 12, enacted on July 24, 1985, as amended.

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44. No amendment of this Agreement shall be valid unless in writing and signed by both parties.
45. Unless otherwise provided in this Agreement, any notice to the parties required or permitted hereunder will be deemed to have been duly given as of the date of receipt if in writing and delivered personally, mailed by certified mail, return receipt requested, or sent by overnight delivery by the U.S. Postal Service or other independent carrier, to the following:

MERCER Health and Benefits, LLC
Attn. Jessica Osborne, Principal
Washington Square
1050 Connecticut Avenue, Suite 700
Washington, DC 20036

Puerto Rico Health Insurance Administration (ASES)
PO Box 195661
San Juan, PR 00919-5661

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

46. The **SECOND PARTY** acknowledges that it cannot continue to provide services under this Agreement after its expiration date or when such services entail payment of an amount that exceeds the total allowed for this Agreement. No services will be paid in violation of this clause, and any request and acceptance of services in violation of this provision will be made without any legal authority and will not bind **ASES**.
47. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other oral or written representations, understandings or agreements relating to the subject matter hereof. Neither party shall be bound by the provisions of any pre-printed or other written terms and conditions subsequent to the date of this Agreement relating to the subject matter hereof unless such additional terms and conditions are made effective pursuant to the Amendments subsection of this section.
48. If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then such provision shall be invalid, but each other provision hereof not so affected shall be enforced fully as permitted by applicable law.
49. This Agreement shall be governed by and construed in accordance with the laws of the Government of Puerto Rico. If any dispute occurs between the Parties and if the Parties agree, they may attempt in good faith to resolve the dispute. If the Parties agree to mediation, they will choose a mutually acceptable mediator with a

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background in insurance, actuarial science or law. If such mediation fails after a good faith effort has occurred, a party may institute litigation or if the parties did not agree to submit the dispute to mediation. If a party files a lawsuit, such suit shall be filed in the Courts of the Commonwealth of Puerto Rico. The courts and authorities of the Government of Puerto Rico shall have jurisdiction over all controversies that may arise with respect to this Agreement. The parties hereby waive any other venue to which they might be entitled by virtue of domicile or otherwise. Should either party initiate or bring suit or action before any other court, it is agreed that upon application, any such suit or action shall be dismissed, without prejudice, and may be filed in accordance with this provision. The party bringing the suit or action before a court not agreed to herein shall pay to the other party all the costs of seeking dismissal including reasonable attorney's fees.

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

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

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51. **Circular Letter 013-2021 from the Office of Management and Budget of June 7, 2021:**

1. **ASES** certifies that **MERCER** was selected as a provider of the professional services described in this contract pursuant to Executive Order 2021-029. Likewise, **THE PARTIES** certify that they are aware of the provisions of said Executive Order and Circular Letter and that any contract covered by it that has not followed the processes and requirements established therein will be terminated."

2. At the time of signing this contract, **MERCER** does not maintains a contractual relationship in force with any entity of the Government of Puerto Rico. In addition, **MERCER** acknowledges and accepts that omitting to mention any governmental entity, with which it has a current contractual relationship may result in the termination of this contract if required by **ASES**.

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

A. Interagency services:

i. Both contracting **PARTIES** acknowledge and agree that the contracted services may be provided to any entity of the Executive Branch with which the contracting entity makes an interagency agreement or by direct order of the Office of Government Chief of Staff (Oficina del Secretario de la Gobernación). These services will be performed under the same terms and conditions regarding hours of work and

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compensation set forth in this Agreement. For the purposes of this clause, the term Executive Branch entity includes all agencies of the Government of Puerto Rico, as well as public instrumentalities and corporations. For purposes of this Section, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as instrumentalities and public corporations, and the Office of the Governor.

B. Termination:

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

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

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53. It is certified that the Legal Advisor of **ASES** reviewed this Contract and determined that it complies with the legal system.

54. **SECOND PARTY** shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by **SECOND PARTY** or developed during the course of the provision of the services provided such materials do not contain **ASES's** Confidential Information or proprietary data ("**SECOND PARTY Tools**"). Rights and ownership by **SECOND PARTY** of **SECOND PARTY Tools** shall not extend to or include all or any part of **ASES's** proprietary data or confidential information. To the extent that **SECOND PARTY** may include in the materials any **SECOND PARTY Tools**, **SECOND PARTY** agrees that **ASES** shall be deemed to have a fully paid up license to make copies of the **SECOND PARTY Tools** as part of this engagement for its internal

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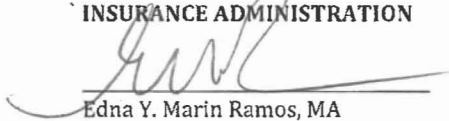
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business purposes and provided that such materials cannot be modified or distributed outside the PRHIA without the written permission of **SECOND PARTY** or except as otherwise permitted hereunder.

55. **SECOND PARTY** will perform all services in accordance with applicable professional standards. Except as expressly set forth herein, **SECOND PARTY** makes no warranties of any kind, express or implied, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose, and disclaims all warranties not expressly set forth in this Agreement. The Parties agree that **SECOND PARTY**, its officers, directors, agents and employees, shall not be liable to **PRHIA** under any theory of law including negligence, tort, breach of contract or otherwise, for any damages in excess of three (3) times the professional fees paid to **SECOND PARTY** with respect to the work in question during the twelve (12) months immediately preceding any claim giving rise to such liability. In no event shall **SECOND PARTY** be liable for lost profits of the **PRHIA** or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct or gross negligence of **SECOND PARTY**.

IN WITNESS WHEREOF, the parties hereto sign this Agreement, in San Juan, Puerto Rico this 6 day of July 2023.

**PUERTO RICO HEALTH
INSURANCE ADMINISTRATION**



Edna Y. Marin Ramos, MA
Executive Director
EIN:
Budget item account: 130-6320-018

131-6320-018

MERCER Health and Benefits, LLC



Jessica Osborne
Principal/Client-Relations Manager
EIN:

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