

2019-000015

**COMMONWEALTH 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, Mrs. Angela M. Avila Marrero, of legal age, married 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, married, and resident of Alexandria, Virginia, U.S.A., and authorized to appear herein by a Certificate of Corporate Resolution dated July 2, 2018.

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 perform 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 **SECOND PARTY** to render professional services in support of the Request for Proposal (RFP) activities being conducted for the contracting and implementation of the new health care model for the Government Health Plan (GHP). Services to be rendered are included in the proposal dated April 9, 2018, and incorporated as Appendix.

The services, as proposed by the **SECOND PARTY** shall be as follows:

- Technical assistance for procurement of managed care plans
 - Meet with leadership and key personnel to identify elements of Managed Care Organizations (MCO) proposals to include in the final contract beginning October 1, 2018.



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- Draft necessary contract language and support ASES during the approval process with CMS as needed.
- Provide presentations and/or training to ASES, Medicaid, MCOs and others regarding changes to the program.
- MCO readiness activities
 - Develop on-site readiness review approach and tools.
 - Train ASES and other staff to lead readiness review teams.
 - Participate on readiness review teams and prepare report on readiness assessment.
 - Provide evaluation guides for written deliverables. ASES shall review submitted deliverables and manage revisions as required.
- Operations and implementations
 - Auto enrollment/eligibility changes
 - Provide research and guidance regarding necessary elements of the algorithm.
 - Provide project oversight support.
 - Enrollment broker
 - Provide required operational elements
 - Assist in the development of Memorandum of Agreement (MOA) between government agencies.
 - Assist in the development of a Request for Proposals (RFP) as necessary.
 - Provide project oversight, support and training
 - Develop contractor reporting manual
 - Inventory current contractor reporting requirements and needs
 - Develop list of required reports for new GHP contract including data sources and submission requirements
 - Develop Contractor Reporting Manual for all contractors.
 - Network adequacy requirements
 - Identify appropriate contract language for submission to CMS
 - Assist in setting initial standard for Contractor's Network submissions and determination of readiness.
 - Assist in setting policy for monitoring and managing the network in steady-state.
 - Quality strategy
 - Assist in the development of the required Quality Strategy as described at 42 CFR 438.340.

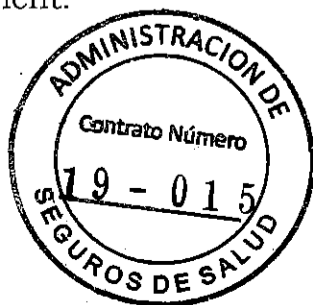


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- Reorganization blueprint
 - Evaluate current administrative organization of health delivery system in Puerto Rico including Medicaid, ASES and the Department of Health.
 - Develop gap analysis to identify functions necessary for a highly functioning Medicaid system.
 - Prepare recommendations for the organization of resources and responsibilities under the new GHP.
 - Mental Health Parity And Addictions Equity Act (MHPAEA)
 - Provide training to ASES and other Government staff
 - Facilitate Government decisions (ADLs, FRs, QTLs, NQTLs, Definitions).
 - Provide training to MCO
 - Develop RFIs for MCO (FR/QTL RFI and NQTL RFI).
 - Validate MCO Parity analysis
 - Draft Report for CMS and public.
 - Non-Emergency Medical Transportation (NEMT)
 - > Coordinate efforts between ASES and municipalities to update agreements and operations guidelines
 - Federal technical assistance
 - Conduct research and develop guidance on Federal compliance issues.
 - Participate in discussions/negotiations with CMS Region II
 - Provide training and direction to ASES and other staff.
 - Assist in the development and implementation of 340B for oncology drugs.
 - Any other related services that **ASES** may require, through its Executive Director or delegated personnel.
2. This Agreement will be in effect from the date of its full execution until July 31, 2018. 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.



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

- Jessica Osborne – Principal – Client Relationship Lead
- Nicole Kaufman – Senior Associate
- Jonathan Myers – Senior Associate
- Laura Pavlecic – Principal
- Maggie Wolfe – Senior Associate
- Rachel Wright – Senior Associate

4. **ASES** shall compensate **SECOND PARTY** for the term of this Agreement up to the amount of **one hundred eighteen thousand seven hundred eight dollars and thirty-three cents (\$118,708.33)**, for services rendered. Reasonable travel expenses are included on this amount, with the previous authorization of **ASES**.

If at any moment, SECOND PARTY estimates that the monthly allocated authorized amount shall be insufficient to cover the services to be rendered within the month, SECOND PARTY shall notify the matter in writing to the Executive Director, in order to receive written approval for payment in excess of the monthly limit.

5. Payments made by **ASES** under the terms of this Agreement shall be paid from the budget item account corresponding to number **126-6320-018**.

6. **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:

Contract Number:

Balance \$ _____

Invoice detail xxx

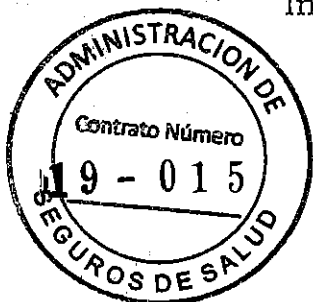
Invoice xxx

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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: Invoice for the federal program HITIMPLEMENTATION.

Example: ASES regular invoice.

7. **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 pursuant to Appendix B of this Contract. **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.

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

POSTAL ADDRESS

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

PHYSICAL ADDRESS

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

9. 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.
10. **ASES**, it 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.



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11. **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.
12. 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 be submitted in writing, and include the same documents and certifications required for government contracting that were required from **SECOND PARTY** 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 you responsible for any damages or losses that may be caused to **ASES**, whether directly or indirectly.
13. **SECOND PARTY** acknowledges the proprietary and confidential nature of all internal, non-public, information systems, financial and business information relating to **ASES**, the Government of Puerto Rico, its agencies, corporations, and municipalities and their personnel. **SECOND PARTY** and its employees shall keep in strict confidence all such information and shall not make public or disclose any said materials without the previous written consent of **ASES**. **SECOND PARTY** will ensure that any authorized subcontractor or expert is subject to this confidentiality obligation. The obligations for confidentiality in this agreement shall survive termination by either party and the expiration of this agreement.
14. **SECOND PARTY** will furnish **ASES** with reports, analysis or other such materials as **ASES** may reasonably request. All correspondence, communications, documents, reports, analysis or material produced or related to this Agreement shall at all time be the property of **ASES**. Any such reports, documents, correspondence, analysis or materials shall be provided at no additional cost to **ASES**.
15. 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.

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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 PRHIA's auditors and a breach of Contract subject to penalties and sanctions.

16. 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**.
17. 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.
18. The **SECOND PARTY** is required to perform transfers of knowledge on a continuous basis with ASES personnel. 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.
19. 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. ASES's 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 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.

20. 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



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termination, ASES is hereby authorized to use to the extent allowable by any applicable commercial software and hardware licensing that exists at that moment or with which agreement can be reached at that moment with the vendor to modify such licensing to permit its use by **ASES**. This shall be at no cost to **ASES** and such properties for a period of one hundred and twenty (120) Calendar Days to effect an orderly transition to any new **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.

21. 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.
22. **SECOND PARTY** acknowledges the Health Insurance Portability and Accountability Act of 1996 (better known as HIPAA), and that its privacy and security rules requires any entity covered by said legislation to train its workforce in their provisions on privacy, confidentiality and security of protected information, as defined in the Act and its regulations. The Act requires the covered entity to set policies and procedures relating to privacy, confidentiality, creation, management, transmission, and access of protected information, and to train its workforce in such policies and procedures. **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



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regulations, and any state law or regulation regarding privacy, confidentiality and security of information.

The parties agree to sign a Business Associate Agreement.

23. **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;
- 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.

24. **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.

25. **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,



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and any interest that could influence **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.

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

Furthermore, **SECOND PARTY's** failure to comply with its duties and responsibilities and to perform the services set forth herein, or its negligence or unlawful behavior in the execution of the Agreement, shall constitute a breach of the Agreement by **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.

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**



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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.

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**.

27. **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.
28. **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.
29. **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**.
30. **SECOND PARTY** certifies that it does not have other contracts with government agencies, public corporations, or municipalities. **SECOND PARTY** will disclose by written communication to **ASES** with which government agencies, public corporations or municipalities it enters into contract with.
31. **SECOND PARTY** 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



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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. It is expressly acknowledged that this certification is an essential condition of this Agreement. If the certification 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.

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.

32. **SECOND PARTY** hereby 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.

33. 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**.

SECOND PARTY certifies that as of the date of execution of this



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Agreement and during the past five (5) years, it has not been required to file Puerto Rico tax returns, and Social Security tax returns with the U.S. Government as required by applicable law. **SECOND PARTY** has submitted a Negative Certification of Debt from the Treasury Department of the Government of Puerto Rico.

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**.

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.

35. 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.

36. **SECOND PARTY** has provided ASES 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 are incorrect, **ASES** shall terminate this Agreement immediately and **SECOND PARTY** will have to reimburse **ASES**.

37. **SECOND PARTY** represents that as of the execution of this



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Agreement, it is current on payment of workers' compensation premiums in accordance with applicable law. **SECOND PARTY** has provided **ASES** 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 this certification is incorrect, **ASES** shall terminate this Agreement immediately and **SECOND PARTY** will have to reimburse **ASES**.

38. During the term of this Agreement **SECOND PARTY** 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 this certification is incorrect, **ASES** shall terminate this Agreement immediately and **SECOND PARTY** will have to reimburse **ASES**.

39. **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.

40. **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 Number 48-2013.

The Code of Internal Revenue establishes that **ASES** will withhold seven (7) percent from the professional services payment rendered under this Agreement, if it is a foreign corporation under the law of any state, twenty



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(20) percent of the payment will be withhold and if it is a foreign corporation under the law of other country, it will be withhold twenty-nine (29), percent unless 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.

41. **SECOND PARTY** 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 this certification is incorrect, **ASES** shall terminate this Agreement immediately and **SECOND PARTY** will have to reimburse **ASES**.

42. **SECOND PARTY** 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 this certification is incorrect, **ASES** shall terminate this Agreement immediately and **SECOND PARTY** will have to reimburse **ASES**.

43. **SECOND PARTY** warrants and agrees that in the provision of services under this Agreement it will not to discriminate on the basis of race, color, gender, origin or social status, age, political or religious beliefs or any other discriminating cause. **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.

44. **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."

45. **SECOND PARTY** agrees that in connection with the services



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provided hereunder, it will comply with all the applicable employment laws and regulations.

46. No amendment of this Agreement shall be valid unless in writing and signed by both parties.
47. 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:

ASES
PO Box 195661
San Juan, PR 00919-5661

MERCER Health and Benefits, LLC
Washington Square
1050 Connecticut Avenue, Suite 700
Washington, DC 20036

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.

48. **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**.
49. 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.
50. 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.



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51. This Agreement shall be governed by and construed in accordance with the laws of the Government of Puerto Rico. The courts and authorities of the Government of Puerto Rico shall have jurisdiction over all controversies that may arise with respect to this Agreement. The parties hereby waive any other venue to which they might be entitled by virtue of domicile or otherwise. Should either party initiate or bring suit or action before any other court, it is agreed that upon application, any such suit or action shall be dismissed, without prejudice, and may be filed in accordance with this provision. The party bringing the suit or action before a court not agreed to herein shall pay to the other party all the costs of seeking dismissal including reasonable attorney's fees.

52. **SECOND PARTY** is a foreign limited liability company, organized under the laws of Delaware. Because of this, **SECOND PARTY** has provided, as a condition for the execution of this Agreement, company certifications to fulfill the Government of Puerto Rico required certifications, listed below:

- a) Certification of having filed income tax returns in the past five (5) years from the Treasury Department of Puerto Rico (Model SC-6088)
- b) 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)
- c) 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).
- d) Certification from Puerto Rico's Department of Labor and Human Resources of compliance with unemployment insurance, temporary disability insurance and/or chauffeur's social security, if applicable.
- e) Certification of incorporation from the State Department of Puerto Rico.
- f) Certificate of Good Standing
- g) Certifications of no outstanding alimony or child support debts, if applicable.
- h) Merchant Registry Certification (Model SC 2918)
- i) 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.



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It is expressly recognized that the foregoing are material conditions of this Agreement. In the event the 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 monies received under the same.

53. **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", Law Number 3 of 2017, and Memorandum of the Puerto Rico Government Chief of Staff OSG 2018-003.

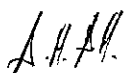
Nevertheless, **ASES** is not exempted from registering this transaction in the Government of Puerto Rico Office of Management and Budget (OGP by its Spanish acronym) Electronic Platform.

54. **THE 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 Government Chief of Staff (Secretario de la Gobernación). These services shall be rendered under the same terms and conditions specified on the present Agreement, as for work hours and compensation.

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.

55. The Government Chief of Staff has the power to cancel this Agreement at any moment.
56. In case this Agreement is exempted from authorization from the Government Chief of Staff according to the dispositions specified in Section VI of the Memorandum Number 2018-002, 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.

IN WITNESS WHEREOF, the parties hereto sign this Agreement, in San Juan, Puerto Rico this 2 day of July, 2018.

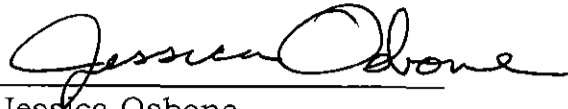


**PUERTO HEALTH
INSURANCE ADMINISTRATION**



Angela M. Avila Marrero
Executive Director
EIN:

MERCER Health and Benefits, LLC



Jessica Osbone
Principal/Client-Relationship
Manager
EIN:



A.H.A.H.