

Federal Employee Program Flow-Down Provisions Addendum  
(Commercial)

The clauses of this Federal Employee Program Flow-Down Provisions Addendum (“Addendum”), are a part of and are applicable, as indicated, to the Agreement entered into by and between Customer (“Plan”) and Supplier or Independent Contractor (“Subcontractor”). In the event of any conflict or inconsistency between the terms of the Addendum and the terms of the Agreement, the terms of the Addendum shall apply, but only with respect to services related to the Federal Employee Program. Any term not defined herein shall have the meaning set forth in the Agreement. Notwithstanding the foregoing, for the purposes of this Addendum, all reference to “subcontract” shall refer to the Agreement.

The Agreement is for goods or services that are within the definition of a “commercial item” or “commercial service” at FAR § 2.101. The following Department of Labor (“DOL”), Federal Acquisition Regulation (“FAR”) and Federal Employees Health Benefits Acquisition Regulations (“FEHBAR”) clauses are incorporated by reference into the Agreement unless a parenthetical appearing after the clause citation otherwise limits its application. These clauses are given the same force and effect as if set forth in full text. “Plan” shall be substituted for “Government”, “Contracting Officer”, and “Contracting Officer”, and “Subcontractor” shall be substituted for “Contractor” and “Carrier”, where those terms appear in the clauses below.

Subcontractor acknowledges that it has read and understands each of the incorporated clauses below. The FEHBAR and DOL clauses, as well as the entire Code of Federal Regulations, are available in full text at [www.gpo.gov/fdsys/browse/collectionCfr.action](http://www.gpo.gov/fdsys/browse/collectionCfr.action). The FAR and FEHBAR clauses are available in full text at [www.acquisition.gov](http://www.acquisition.gov) under either the “Federal Acquisition Regulation (FAR)” tab (which contains the most current FAR clauses) or the “Archives” tab (which contains prior versions) and from the Plan upon request. When using the electronic database, Subcontractor is advised to be certain that the date of the FAR or FEHBAR clause appearing in this Addendum matches the date of the FAR or FEHBAR clause read in the database. This is important because the subcontract may incorporate a version of the FAR or FEHBAR clause that is older than the version that appears under the “Federal Acquisition Regulation (FAR)” tab in the database or the current version of the Code of Federal Regulations. For example, assume this subcontract incorporates a 2005 FAR clause but the current (or last version issued by the Government) is dated 2007. The 2005 FAR clause will be found only under the “Archives” tab.

Subcontractor agrees to flow down all applicable DOL, FAR, FEHBAR, and FEP Contract clauses to any lower-tier subcontractors approved in writing by Plan.

Unless otherwise specified in the clauses listed below, in order to allow Plan sufficient time to perform its obligations under the clauses, whenever a clause requires action by Subcontractor within a particular time, that action shall be completed five (5) calendar days prior to the time identified in the clause, unless the clause requires action within five (5) calendar days or less, in

which event the action shall be completed (2) two calendar days prior to the time identified in the clause.

“Commercial item”/“commercial service” means —

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and- (i) Has been sold, leased, or licensed to the general public; or (ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for- (i) Modifications of a type customarily available in the commercial marketplace; or (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means, modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if- (i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services- (i) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and (ii) “Market prices” means current prices that are established in the course of ordinary trade

between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors;

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

### **MANDATORY DOL CLAUSES**

#### **DOL Clause**

#### **Title**

41 C.F.R.

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES.

60-741.5(a)

**This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

(This reference, including the bolded text that follows, must be incorporated into all FEP subcontracts where the work is performed within the United States and the FEP subcontract is valued over \$10,000 (including indefinite quantity contracts unless the Plan has reason to believe that annual costs for the contract will not exceed \$10,000)).

41 C.F.R.

EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS

60-300.5(a)

(March 24, 2014). **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.** (This reference, including the bolded text that follows, must be incorporated into all FEP subcontracts where the work is performed within the United States and the FEP subcontract is valued over \$100,000 (including indefinite quantity contracts unless the Plan has reason to believe that annual costs for the contract will not exceed \$100,000)).

## **MANDATORY FAR CLAUSES (48 C.F.R.)**

<b><u>FAR Clause</u></b>	<b><u>TITLE</u></b>
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (April 2010) (Incorporated into subcontract if subcontract value exceeds \$5,000,000 and has a performance period in excess of 120 days.) Subcontractors shall provide written notice to the Plan of all disclosures of violations of the civil False Claims Act or of Federal criminal law. The Plan, in turn, must provide written notice to the Chief Washington Counsel for FEP. BCBSA will serve as the point of contact with the OPM OIG.
52.203-15	WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (June 2010) (Incorporated into Subcontracts funded under the Recovery Act.)
52.204-7	SYSTEMS FOR AWARD MANAGEMENT (October 2018) (Incorporated into all subcontracts for commercial items.)
52.204-13	SYSTEMS FOR AWARD MANAGEMENT MAINTENANCE (October 2018) (Incorporated into all subcontracts for commercial items.)
52.204-23	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVEREDE ENTITIES (July 2018) (Incorporated into all subcontracts for commercial items.)
52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (August 2020) (Incorporated into all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.)
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (October 2018) (Incorporated into subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 ( \$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.)
52.222-21	PROHIBITION OF SEGREGATED FACILITIES (April 2015). (Incorporation into a subcontract if FAR 52.222-26 is flowed down).

- 52.222-26 EQUAL OPPORTUNITY (April 2015) (Incorporated into subcontract unless subcontract is exempt from all requirements of Executive Order 11246 – see FAR 22.807 for a list of exemptions.)
- 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (June 2020) (Incorporated into subcontract if subcontract value equals or exceeds \$150,000 and neither Executive Order 11246 nor the Department of Labor rules provide an exemption.)
- 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (June 2020) (Incorporated into subcontract if the subcontract value equals or exceeds \$15,000, and no DOL exemption applies.)
- 52.222-37 EMPLOYMENT REPORTS ON VETERANS (June 2020) (Incorporated into subcontract if FAR 52.222-35 is flowed down, the value of the subcontract equals or exceeds \$150,000, and Executive Order 11246 and DOL rules provide no exemption. The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award.)
- 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (December 2010) (Incorporated into every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.)
- 52.222-50 COMBATING TRAFFICKING IN PERSONS (October 2020) (All provisions incorporated into a subcontract; the requirements of paragraph (h) apply only to any portion of a subcontract that is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States and has a value that exceeds \$550,000.)
- 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (October 2015) (Incorporated into any subcontract valued over \$3,500 (but excluding Subcontracts performed outside the United States or that are only for commercial services that are part of the purchase of a commercially available off-the-shelf item.)

- 52.225-26 CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (July 2013) (Incorporated into subcontract for non-DoD agency if performance is in an area of combat operations or other significant military operations).
- 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (December 2013) (Incorporated into subcontract if Subcontractor is a small business concern).
- 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (June 2020) (Requires Subcontractor to include the FAR clauses listed in Subsection (c)(1) of FAR 52.244-6 in subcontracts with commercial item/service vendors and to include the clause in any Subcontracts with lower-tier non-commercial item/service subcontractors. Contractor Code of Business Ethics and Conduct (June 2020) (41 U.S.C. 3509), if the subcontract exceeds the threshold specified in FAR 3.1004(a) on the date of subcontract award.)
- 52.247-64 PREFERENCE FOR PRIVATELY OWNED US-FLAG COMMERCIAL VESSELS (February 2006) (Incorporated into subcontract for the acquisition of commercial items and where the subcontract is for ocean transportation services, construction services, or transported supplies Subcontractor is reselling or distributing without adding value or shipped in direct support of the U.S. military.)

**MANDATORY FEHBAR CLAUSES (48 C.F.R.)**

**FEHBAR**

<b><u>Clause</u></b>	<b><u>TITLE</u></b>
1652.222-70	NOTICE OF SIGNIFICANT EVENTS (November 2020) (Incorporated into subcontract or subcontract modification if the amount of the subcontract or modification to be charged to FEP will equal or exceed the TINA threshold and 25% of the total subcontract cost.)

## **MANDATORY FEP CONTRACT CLAUSES**

CS 1039 Section 1.9(a),	PLAN PERFORMANCE – EXPERIENCE RATED FFS CONTRACTS, DETECTION OF FRAUD AND ABUSE (January 2015). (Although this clause does not appear in CS 1039 as a mandatory flow-down, it nonetheless imposes obligations on Plans to provide annual reports on the costs and benefits of the Plan’s fraud and abuse control program—including detection and elimination of fraud and abuse by, among others, subcontractors. Thus, we have included it under the mandatory flow-down clauses.) (The change incorporates the January 2015 version of the clause (updated from January 2013), which updates the Fraud, Waste, and Abuse information reported annually by the Plans, which includes, among other things, information from subcontractors.)
Section 1.30,	HEALTH INFORMATION TECHNOLOGY PRIVACY AND SECURITY (January 2016) (Although this clause does not appear in CS 1039 as a mandatory flow-down, it nonetheless imposes obligations on Plans to ensure that all subcontractor, large provider and vendor websites or web portals link to the subcontractor’s, large provider’s, or vendor’s notice of privacy practices and/or privacy policies and that such privacy practices and/or policies are displayed at the bottom, or prominently displayed elsewhere, on the website or portal)

## **OPTIONAL FAR, FEHBAR, AND FEP CONTRACT CLAUSES**

The optional clauses below are also incorporated by reference into the subcontract, if applicable (e.g., some optional clauses are applicable only if the FEP subcontract exceeds a certain threshold amount or if the clauses apply to the subcontractor.) These clauses are to be given the same force and effect as if set forth in full text. “Plan” shall be substituted for “Government”, “Contracting Officer”, and “Contracting officer” and “Subcontractor” shall be substituted for “Contractor” and “Carrier”, where those terms appear in the referenced clauses.

Subcontractor acknowledges that it has read and understands each of the incorporated optional clauses below, as applicable. The FEHBAR and DOL clauses, as well as the entire Code of Federal Regulations, are available in full text at [www.gpo.gov/fdsys/browse/collectionCfr.action](http://www.gpo.gov/fdsys/browse/collectionCfr.action). The FAR clauses are available in full text at [www.acquisition.gov](http://www.acquisition.gov) under either the “Federal Acquisition Regulation (FAR)” tab (which contains the most current FAR clauses) or the “Archives” tab (which contains prior versions) and from the Plan upon request. When using the electronic database, Subcontractor is advised to be certain that the date of the FAR or FEHBAR clause appearing in this Addendum matches the date of the FAR or FEHBAR clause read in the database. This is important because the subcontract may incorporate a version of the FAR or FEHBAR clause that is older than the version that appears under the “Federal Acquisition Regulation (FAR)” tab in the database or the current version of the Code of Federal Regulations. For example, assume this subcontract incorporates a 2005 FAR clause but the current (or last version issued by the Government) is dated 2007. The 2005 FAR clause will be found only under the “Archives” tab.

Subcontractor agrees to flow down all applicable DOL, FAR, FEHBAR, and FEP Contract optional clauses to any lower-tier subcontractors approved in writing by Plan.

**OPTIONAL FAR Clauses (48 C.F.R)**

<b><u>FAR Clause</u></b>	<b><u>Title</u></b>
52-203-11	CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (September 2007) (Incorporated into subcontract if valued over \$100,000.) [ <b>Note: This is a mandatory clause for government solicitations valued over \$100,000. It requires an offeror to certify that no federal funds have been paid or will be paid to any person to influence a federal official or employee to award the contract in violation of FAR 52.203-12.</b> ]
52.204-21	BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (June 2016) Other than contracts for commercially available off-the-shelf-items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.
52.209-6	PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (October 2015) (Incorporated into Subcontracts with a value in excess of \$35,000 unless the subcontract is for commercial items or a commercially available off-the-shelf item, meaning a commercial item sold in substantial quantities in the commercial market.)
52.215-2	AUDIT AND RECORDS – NEGOTIATION (October 2010) (Incorporated into subcontract if it exceeds the simplified acquisition threshold and: (1) is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract or any combination thereof; (2) requires submission of cost or pricing data; <u>or</u> (3) requires vendor to furnish certain costs, funding, or performance reports. Substitute “Contracting Officer and Plan” for “Contracting Officer”.)



### **OPTIONAL FAR Clauses (48 C.F.R)**

<b><u>FAR Clause</u></b>	<b><u>Title</u></b>
52.243-1	CHANGES – FIXED PRICE (August 1987) (Incorporated into fixed price subcontract using applicable Alternate Clause.)
52.243-2	CHANGES – COST REIMBURSEMENT (August 1987) (Incorporated into cost-reimbursement subcontract using applicable Alternate Clause.)
52.243-3	CHANGES – TIME-AND-MATERIALS OR LABOR-HOURS (September 2000) (Incorporated into subcontract when a time and materials or labor-hour contract is contemplated.)
52.249-6	TERMINATION (Cost Reimbursement) (May 2004) (Incorporated in cost-reimbursement subcontract appropriately modified in accordance with FAR 49.503(c).)

### **OPTIONAL FEHBAR Clauses (48 C.F.R)**

<b><u>Clause</u></b>	<b><u>Title</u></b>
1652.204-70	CONTRACTOR RECORDS RETENTION (July 2005) (Incorporated into subcontract if subcontractor has in its possession records that support FEP Costs on the FEP Annual Statement and/or individual enrollee and/or patient claims records.)
1652.215-71	INVESTMENT INCOME (January 1998) (Applies to interest on audit findings or compromised audit findings paid <b>prior to</b> issuance of an OPM Final Decision.)
1652-224-70	CONFIDENTIALITY OF RECORDS (January 1991)
1652-243-70	CHANGES – NEGOTIATED BENEFITS CONTRACTS (January 1998)
1652-244-70	SUBCONTRACTS (July 2005) (Incorporated into subcontract if subcontractor may itself subcontract.)
1652.246-70	FEHB INSPECTION (July 2005) (Incorporated into any subcontract for claims payment, underwriting, and/or administrative services. Substitute “Subcontractor” for “Carrier” and “Contractor”. Substitute “Contracting officer and Plan” for “Contracting officer”. Paragraph (b) of the Clause does not apply if subcontract is subject to FAR 52.215-2.)

**OPTIONAL FEHBAR Clauses (48 C.F.R)**

<b><u>Clause</u></b>	<b><u>Title</u></b>
1652-249-71	FEHBP TERMINATION FOR CONVENIENCE OF THE GOVERNMENT – NEGOTIATED BENEFITS CONTRACTS (January 1998)
1652-249-72	FEHBP TERMINATION FOR DEFAULT – NEGOTIATED BENEFITS CONTRACTS (January 1998)

**OPTIONAL FEP CONTRACT CLAUSES**

<b><u>FEP Clause</u></b>	<b><u>Title</u></b>
CS 1039	Section 1.7, STATISTICS AND SPECIAL STUDIES (January 2009) (Incorporated if Plan or FEP may need statistical records of subcontractor's operations.)
CS 1039	Section 1.22, ADMINISTRATIVE SIMPLIFICATION – HIPAA (January 2008)
CS 1039	Section 1.23, HIPAA COMPLIANCE (January 1998)
CS 1039	Section 1.28, CARRIER DISASTER RECOVERY PLAN (January 2007)
CS 1039	Section 1.29, HEALTH INFORMATION TECHNOLOGY REQUIREMENTS (January 2011)