

Federal Employee Program Flow-Down Provisions Addendum
(Non-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 the 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.

If the Agreement is for goods or services that do not fall within the definition of a commercial item at FAR 2.101, certain clauses from the Department of Labor regulations (“DOL”), Federal Acquisition Regulation (“FAR”) and Federal Employees Health Benefits Acquisition Regulation (“FEHBAR”) are incorporated by reference, as designated below, and given the same force and effect as if set forth in full text. Unless otherwise stated immediately after the clause’s citation, “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 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. The FAR clauses are available in full text at 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.

How to identify the clauses that flow down to this Subcontract:

The mandatory flow-down clauses listed below are grouped by subcontract dollar value thresholds.

Subcontractor shall incorporate the clauses listed under subheading A, as instructed by the parenthetical following each clause citation. These clauses flow down to all subcontracts, regardless of their monetary value.

The remaining flow-down clauses (found in groups B through L) are categorized by increasing monetary subcontract value ranging from above \$10,000 to above \$5,000,000. Subcontractor must flow down the applicable clauses from each group valued at or below the Subcontract's value. Thus, the higher the value of the Subcontract, the greater the number of applicable groups to review and clauses to be incorporated. For example, if the subcontract is valued above \$5,000,000, incorporate all clauses listed in all twelve groups (A through L) unless the flow-down clause has limited application as noted.

To determine the subcontract's value, Subcontractor shall total its anticipated payments from Plan under the subcontract during the base period and any follow-on option years. Subcontractor shall confirm its subcontract valuation with Plan. Should the parties amend the subcontract and raise the total anticipated subcontract payments, Subcontractor is expected to comply with any additional flow-down clauses triggered by such modification. Subcontractor shall confirm the revised subcontract valuation with Plan.

A. MANDATORY FLOW-DOWN CLAUSES REGARDLESS OF SUBCONTRACT VALUE

<u>FAR Clauses</u>	<u>Title</u>
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (January 2011) (Incorporated into subcontract if Subcontractor is required to have routine physical access to a Federally-controlled facility and/or access to a Federally-controlled information system.)
52.204-23	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (July 2018) (Incorporated into all subcontracts, including subcontracts for the acquisition of commercial items.)
52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SUVEILLANCE SERVICES OR EQUIPMENT (August 2020) (Incorporated into all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.)

- 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (October 2010) (Incorporated into subcontract if Subcontractor is required to submit cost or pricing data or there will be post-award cost determinations subject to Part 31.)
- 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (July 2005) (Incorporated into subcontract if cost or pricing data is required from Subcontractor under FAR 52.215-12 (unless an exception in FAR 15.403 1 applies or if the pre-award cost determinations will be subject to Part 31).)
- 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION (May 2014) (Paragraphs (a) through (d) of this clause are incorporated into subcontracts if subcontract requires or involves the employment of laborers and mechanics. Subcontractor must include same portion of clause in any lower-tier subcontracts.)
- 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (April 2015) (Incorporated into 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.)
- 52.222-29 NOTIFICATION OF VISA DENIAL (April 2015).
- 52.222-50 COMBATING TRAFFICKING IN PERSONS (January 2022) (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 (“COTS”) items, acquired outside the United States, or services to be performed outside the United States and has a value that exceeds \$550,000.)
- 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (June 2020) (Incorporated into subcontracts and lower-tier subcontracts (other than those for commercial items or commercial services) that offer further subcontracting opportunities.)
- 52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS (June 2003) (Incorporated into subcontract if subcontract may involve international air transportation of personnel or property.)

DEFINITIONS:

“**Subcontract**” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“**Subcontractor**” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

“**United States**” means the 50 States, the District of Columbia, and outlying areas.

FEHBAR

Clauses

Title

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| 1652.203-70 | MISLEADING, DECEPTIVE OR UNFAIR ADVERTISING (January 1991) (Incorporated into subcontract if Subcontractor is an underwriter or an entity directly involved in the preparation or distribution of advertising materials. Substitute “Contractor” or another appropriate reference for the term “Carrier”.) |
| 1652.215-71 | INVESTMENT INCOME (January 1998) (Incorporated into all agreements with FEP underwriters; substitute “underwriter” or another appropriate reference for the term “Carrier”.) |
| 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.) |

MANDATORY FEP CONTRACT CLAUSES

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| CS1039
Section 1.7 | STATISTICS AND SPECIAL STUDIES (January 2022) (Although this clause does not appear in CS 1039 as a mandatory flow-down, but it nonetheless imposes obligations on Plans as modified subsection (e) to this section to provide reasonable guidance to the Carrier should they receive a third-party request about FEHB program related data that is unrelated to the administration of the contract.) |
| CS1039
Section 1.26 | STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS (January 2022) (Although this clause does not appear in CS 1039 as a mandatory flow-down, but it nonetheless imposes obligations on Plans as modified to update pharmacy benefit manager standards.) |
| CS1039
Section 1.30 | HEALTH INFORMATION TECHNOLOGY PRIVACY AND SECURITY (January 2016). The change incorporates the January 2016 version of the clause (updated January 2015). (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) |

CS1039 Section 1.37	PROCEDURES FOR INFORMATION SECURITY INCIDENT AND DATA BREACH REPORTING (January 2022) (Although this clause does not appear in CS 1039 as a mandatory flow-down, but it nonetheless imposes obligations on Plans to as modified Section (d) was updated to provide clarity to the carriers to send their security incident and data breach report to the Health Insurance Specialist.)
CS1039 Section 1.38	INCREASING TRANSPARENCY BY PROHIBITING GAG CLAUSES ON PRICE AND QUALITY INFORMATION (January 2022) (Although this clause does not appear in CS 1039 as a mandatory flow-down, but it nonetheless imposes obligations on Plans as OPM is adding this new section that would increase transparency by removing gag clause on price and quality information.)
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.)
CS1039 Section 2.7	DEBAREMENT AND OTHER SANCTIONS (January 2022) (Although this clause does not appear in CS 1039 as a mandatory flow-down, but it nonetheless imposes obligations on Plans as technical edits were made to this section.)
CS1039 Section 2.15	(January 2022) (This section was added as reserved to maintain consistency within the contracts.)
CS1039 Section 2.16	(January 2022) (This section was added as reserved to maintain consistency within the contracts.)
CS1039 Section 2.17	PART D CREDITABLE COVERAGE (January 2022) (This new section was added to state the requirement for carriers to provider Medicare Part D creditable coverage.)
CS1039 Section 2.18	SURPRISED BILLING (January 2022) (This new section was added to state the requirement for carriers to comply with the No Surprises Act in the Consolidated Appropriation Act of 2021 (December 27, 2020)).
CS1039 Section 5.71	COMBATING TRAFFICKING IN PERSONS (January 2022) (Although this clause does not appear in CS 1039 as a mandatory flow-down, but it nonetheless imposes obligations on Plans as OPM is adding definitions to

the end of subsection (a) that were inadvertently omitted.)

CS1039
Section 5.76

ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (January 2022) (This new section was added to state the requirement for carriers to comply with executive order 14042 ensuring adequate COVID-19 safety protocols for Federal Contractors.)

B. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS OVER \$3,500

FAR Clause

Title

FAR 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).)

FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (June 2020) (Incorporated into any subcontract providing non-commercial and commercial services valued over the micro-purchase threshold, which is currently \$10,000.00).

C. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS OVER \$10,000

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)).

FAR Clause

Title

52-222.40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER NATIONAL LABOR RELATIONS ACT (December 2010) (Incorporated into subcontract if subcontract value 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 the Executive Order 13496

of January 30, 2009.)

D. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS OVER \$15,000

<u>FAR Clauses</u>	<u>Title</u>
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.)

E. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS OVER \$25,000

<u>Clause</u>	<u>Title</u>
1652.232-72	NON-COMMINGLING OF FEHBP FUNDS (January 1991) (Incorporated into subcontract without qualification. Substitute “Subcontractor” for “Carrier and/or its underwriter”.)

F. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS OVER \$35,000

<u>FAR Clause</u>	<u>Title</u>
FAR 52.209-6	PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (June 2020). (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 (“COTS”) item. The Contractor shall require each proposed subcontractor whose subcontract will exceed the threshold specified in FAR 9.405-2(b) on the date of the subcontract award.)

G. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS OVER \$100,000

<u>FAR Clauses</u>	<u>Title</u>
41 C.F.R. 60-300.5(a)	EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS (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)).

H. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS OVER \$150,000

<u>FAR Clause</u>	<u>Title</u>
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (June 2020) (Incorporated into subcontracts that exceed \$150,000. The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award. The Plan must obtain and retain a “Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions” from each person requesting or receiving a subcontract exceeding \$150,000 under this contract. The disclosures must be passed along up the chain of contracting until the Plan has a copy of each disclosure form, which must be submitted to the Contracting Officer within 30 days after each calendar quarter.)
52.222-35	EQUAL OPPORTUNITY FOR VETERANS (June 2020) (Incorporated into subcontract if subcontract value equals or exceeds the threshold specified in FAR 22.1303(a) which is currently \$150,000, and neither Executive Order 11246 nor the Department of Labor rules provide an exemption.)
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.)

I. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS OVER THE SIMPLIFIED ACQUISITION THRESHOLD (currently \$250,000; see FAR 2.101)

<u>FAR Clauses</u>	<u>Title</u>
52.203-7	ANTI-KICKBACK PROCEDURES (June 2020). (Incorporated into subcontract with the exception of paragraph (c)(1) if the subcontract value exceeds the Simplified Acquisition Threshold, which is currently \$250,000. Check FAR 2.101 to confirm the current Simplified Acquisition Threshold. The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1) of this clause, in all subcontracts under this contract that exceed the threshold specified in Federal Acquisition Regulation 3.502–2(i) on the date of subcontract award.)

- 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (June 2020) (Incorporated into subcontracts that exceeds the Simplified Acquisition Threshold, which is currently \$250,000. Check FAR 2.101 to confirm the current Simplified Acquisition Threshold.)
- 52.215-2 AUDIT AND RECORDS – NEGOTIATION (June 2020 (Incorporated into subcontract if it exceeds the Simplified Acquisition Threshold, which is currently \$250,000, and if the subcontract: (1) is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-re- determinable contract or any combination thereof; (2) requires submission of cost or pricing data; or (3) requires vendor to furnish certain cost, funding, or performance reports.
- 52-223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (January 2022) (Incorporated into subcontracts and lower-tier subcontract that offer further subcontracting opportunities.) (Executive Order 14042 provides the contractor or subcontractor shall, for the duration of the contract, to provide the prescribed COVID-19 workplace safeguards for their workers.)
- 52.227-1 AUTHORIZATION AND CONSENT (June 2020) (Incorporated into subcontract if the subcontract value exceeds the Simplified Acquisition Threshold, which is currently \$250,000. Check FAR 2.101 to confirm the current Simplified Acquisition Threshold.)
- 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (June 2020) (Incorporated into subcontract if the subcontract value exceeds the Simplified Acquisition Threshold, which is currently \$250,000. Check FAR 2.101 to confirm the current Simplified Acquisition Threshold.)

J. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS OVER \$700,000

FAR Clause

Title

- 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (October 2015) (Incorporated into subcontract expected to exceed \$700,000 (or \$1,500,000 for construction of any public facility), Subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities—unless the acquisition is set aside or is to be accomplished under the 8(a) program.)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (October 2015) (Incorporated into subcontract if subcontract offers further subcontracting opportunities and requires compliance with FAR 52.219-8; clause does not apply to small business concerns.) If Subcontractor is not a small business concern and subcontract exceeds \$700,000 (or \$1,500,000 for construction of any public facility), Subcontractor must include 52.219-9 in lower tier subcontracts that offer subcontracting opportunities—unless the acquisition is set aside or is to be accomplished under the 8(a) program.)

K. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS THAT EXCEED THE THRESHOLD FOR SUBMISSION OF COST OR PRICING DATA (“TINA THRESHOLD”) AT FAR 15.403-4 (as of June 2020 \$2,000,000)

<u>FAR Clauses</u>	<u>Title</u>
52.215-12	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (June 2020) (Incorporated into subcontract if subcontract value exceeds the TINA threshold and Subcontractor is required to submit cost or pricing data in connection with the award of Subcontract.)
52.215-13	SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (November 2020) (Incorporated into subcontract if (1) the value of a pricing adjustment is expected to exceed the TINA threshold and (2) FAR 52.215-2 is not flowed down.)

FEHBAR

<u>Clause</u>	<u>Title</u>
1652.222-70	NOTICE OF SIGNIFICANT EVENTS (July 2005)(Incorporated into subcontract or subcontract modification if the amount of the subcontract <u>or</u> modification to be charged to FEP will equal or exceed the TINA threshold and 25% of the total subcontract cost.)

L. ADDITIONAL MANDATORY CLAUSES — SUBCONTRACTS OVER \$6,000,000

<u>FAR Clause</u>	<u>Title</u>
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (June 2020) (Incorporated into subcontract if subcontract value exceeds \$6,000,000 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 01G.)

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. The FAR clauses are available in full text at 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.

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.

OPTIONAL FAR Clauses (48 C.F.R)

<u>FAR Clause</u>	<u>Title</u>
52.203-3	GRATUITIES (April 1984) [Although this clause appears in CS 1039, it is not a mandatory flow-down clause. It applies to any subcontractor acting as the Plan’s agent. It places no obligations on the subcontractor other than to avoid illegal conduct.]
52.203-5	COVENANT AGAINST CONTINGENT FEES (May 2014) (Incorporated into subcontracts if subcontractor was involved in Contractor’s (i.e., BCBSA’s or a Blue Plan’s) proposal efforts under CS 1039.)

52-203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (January 1997) (Incorporated into subcontract if a possible violation of subsection 27 (a), (b), (c), or (d) of the Office of Federal Procurement Policy Act, 41 U.S.C. § 423, is of concern.)

OPTIONAL FAR, FEHBAR, AND FEP CONTRACT CLAUSES

FAR Clauses (48 C.F.R)

<u>FAR Clause</u>	<u>Title</u>
52-203-11	CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (September 2007) (Incorporated into subcontract if valued over \$100,000.) [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.]
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.
52.215-10	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (August 2011) (Incorporated into subcontract if subcontractor is required to submit a certificate of current cost and pricing (“CCCP”) because subcontract exceeds TINA threshold)
52.215-11	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS (October 1997) (Incorporated into subcontract where modification to subcontract may require a CCCP and FAR 52.215-10 has not been included.)
52.215-19	NOTIFICATION OF OWNERSHIP CHANGES (October 1997) (Incorporated into subcontract when cost or pricing data are required or cost determination is subject to FAR Subpart 31.2.)
52.217-8	OPTION TO EXTEND SERVICES (November 1999) (Incorporated into subcontract if subcontractor’s services may need to be extended past the date of the original subcontract)
52.217-9	OPTION TO EXTEND THE TERM OF THE SUBCONTRACT (March 2000) (Incorporated into subcontract if subcontractor’s services may need to be extended past the date of the original subcontract.)
52.223-6	DRUG-FREE WORKPLACE (May 2001)

52.223-14 TOXIC CHEMICAL RELEASE REPORTING (August 2003) (Incorporated into subcontract valued over \$100,000.)

OPTIONAL FAR, FEHBAR, AND FEP CONTRACT CLAUSES

FAR Clauses (48 C.F.R)

<u>FAR Clause</u>	<u>Title</u>
52.232-17	INTEREST (October 2010) (as modified by FEHBAR 1632.617 (January 1995) and restates in full in CS 1039, Section 5.34) (Applied to interest on audit findings or compromised audit findings paid <i>after</i> issuance of an OPM Final Decision.)
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (October 2004) [Note: This clause makes federal, not state, law applicable.]
52.239-1	PRIVACY OR SECURITY SAFEGUARDS (August 1996) (Incorporated into subcontract if subcontractor receives or handles government data.)
52.242-13	BANKRUPTCY (July 1995) [Note: This clause requires a subcontractor to give the Plan written notice of a bankruptcy filing within 5 days of the initiation of proceedings.]
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.)
52-243-6	CHANGE ORDER ACCOUNTING (April 1984) (Incorporated into subcontract if a CHANGES Clause is flowed down.)
52-244-5	COMPETITION IN SUBCONTRACTING (December 1996) (Incorporated into subcontract if subcontract offers further subcontracting opportunities to a lower-tier subcontractor.)
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)

<u>Clause</u>	<u>Title</u>
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 prior to issuance of an OPM Final Decision.)
1652.216-71	ACCOUNTING AND ALLOWABLE COST (January 2003) (Incorporated into subcontract with underwriters and cost based contractors.)
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.)
1652-249-71	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

<u>FEP Clause</u>	<u>Title</u>
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)