

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 K) 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 eleven groups (A through K) 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.)
52.215-15	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 subcontract 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 (February 1999) (Incorporated into subcontract if FAR 52.222-26 is flowed down.)
- 52.222-26 EQUAL OPPORTUNITY (March 2007) (Incorporated into subcontract unless subcontract is exempt from all requirements of Executive Order 11246 — see FAR 22.8097 for a list of exemptions.)
- 52.222-50 COMBATING TRAFFICKING IN PERSONS (February 2009) (Incorporated into subcontract with Alternate 1 if subcontract will be performed outside the United States.)
- 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (October 2014) (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.)

FEHBAR

Clauses

Title

- 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.)

B. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS OVER \$3,000

<u>FAR Clause</u>	<u>Title</u>
FAR 52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION (August 2013) (Incorporated into any subcontract valued over \$3,000 (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 (AUG 2011) (Incorporated into any subcontract providing non-commercial and commercial services valued over \$3,000).

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

<u>DOL Clause</u>	<u>Title</u>
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)).

<u>FAR Clause</u>	<u>Title</u>
52-222.	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

FAR Clauses Title

52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (July 2014) (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

FEHBAR

Clause Title

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 \$30,000

FAR Clause Title

FAR 52.209-6 PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (August 2013). (Incorporated into subcontracts with a value in excess of \$30,000 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 and made available to the Government in the same form in which it is sold in the commercial market.)

FEP Contract

Clause Title

CS 1039 PLAN PERFORMANCE – EXPERIENCE RATED FFS CONTRACTS,

Section 1.9(a) 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.

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

<u>FAR Clauses</u>	<u>Title</u>
52.222-35	EQUAL OPPORTUNITY FOR VETERANS (July 2014) (Incorporated into subcontract if subcontract value equals or exceeds \$100,000, and neither Executive Order 11246 nor the Department of Labor rules provide an exemption.)
52.222-37	EMPLOYMENT REPORTS ON VETERANS (July 2014) (Incorporated into subcontract if FAR 52.222-35 is flowed down, the value of the subcontract equals or exceeds \$100,000, and Executive Order 11246 and DOL rules provide no exemption.)
41 C.F.R. 60-300.5(a)	EQUAL OPPORTUNITY FOR VEVRRAA 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 THE SIMPLIFIED ACQUISITION THRESHOLD (currently \$150,000; see FAR 2.101)

<u>FAR Clauses</u>	<u>Title</u>
52.203-7	ANTI-KICKBACK <u>PROCEDURES</u> (May 2014). (Incorporated into subcontract with the exception of paragraph (c)(1).)
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (October 2010) (Incorporated into subcontracts that exceed \$150,000. 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.)

- 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (April 2014) (Incorporated into subcontracts that exceed \$150,000).
- 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-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. Substitute “Contracting Officer and Plan” for “Contracting Officer”.)
- 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (May 2014) (Incorporated into subcontract expected to exceed \$650,000 (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.)
- 52.227-1 AUTHORIZATION AND CONSENT (December 2007)
- 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (December 2007)

I. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS OVER \$650,000

<u>FAR Clause</u>	<u>Title</u>
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (October 2014) (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 \$650,000 (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.)

J. ADDITIONAL MANDATORY CLAUSES – SUBCONTRACTS THAT EXCEED THE THRESHOLD FOR SUBMISSION OF COST OR PRICING DATA (“TINA THRESHOLD”) AT FAR 15.403-4 (as of January 2012 \$700,000)

<u>FAR Clauses</u>	<u>Title</u>
52.215-12	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (October 2010) (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 (October 1997) (Incorporated into subcontract if the value of a pricing adjustment is expected to exceed the TINA threshold and FAR 52.215-2 is not flowed down.)

FEHBAR

Clause

Title

1652.222-70 NOTICE OF SIGNIFICANT EVENTS (July 2005) (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.)

K. ADDITIONAL MANDATORY CLAUSES — SUBCONTRACTS OVER \$5,000,000

FAR Clause

Title

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 01G.