

Federal Employee Program Flow-Down Provisions Addendum (Non-Commercial)

This Federal Employee Program (“FEP”) Addendum (“FEP Addendum”) (as amended from time to time) is hereby incorporated into the Master Services Agreement or other such contracting document (“Agreement”) between Blue Cross & Blue Shield of Rhode Island (“Plan”) and the supplier (otherwise known as “Contractor”, “Vendor”, “Subcontractor”, “Independent Contractor”, “Supplier”, or however the party may be identified in the Agreement. In the event of any conflict or inconsistency between the terms of the FEP Addendum and the terms of the Agreement, the terms of the FEP 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 FEP Addendum, all reference to “subcontract” shall refer to the Agreement.

The Agreement is a subcontract of a federal procurement contract with the United States Office of Personnel Management (“OPM”). As such, the Agreement is subject to certain federal procurement clauses, the obligations of which must “flow down” to the Subcontractor.

The terms and conditions in the FEP Addendum supersede all prior agreements between the parties regarding the subject matter contained herein.

Plan may amend the FEP Addendum to include new or revised Department of Labor (“DOL”), Federal Acquisition Regulation (“FAR”) and Federal Employees Health Benefits Acquisition Regulation (“FEHBAR”) Flow-Down Clauses required under the OPM contract(s) by providing no less than sixty (60) days prior written notice of such amendment. Contractor’s signature is not required to make any such amendment effective.

If the Plan subcontract is for goods or services that do not fall within the definition of a commercial item at FAR § 2.101, certain clauses from the DOL, FAR and 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" and "Contracting Officer", and "Subcontractor" shall be substituted for "Contractor" and "Carrier", where those terms appear in the referenced.

Subcontractor acknowledges that it has read and understands each of the incorporated clauses below. The FAR, FEHBAR and DOL clauses, as well as the entire Code of Federal Regulations, are available in full text at www.acquisition.gov under either the “Browse the FAR” option (which contains the most current FAR clauses) or the “FAR Archives” option (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 clause appearing in this Addendum matches the date of the clause read in the database. This is important because the Subcontract may incorporate a version of the clause that is older than the version that appears in the "Current FAR" file in the database. For example, assume this Subcontract incorporates a 2005 clause but the current (or last version issued by the Government) is dated 2007. The 2005 clause will be found only in the "FAR (Archived)" file.

Subcontractor agrees to obtain written approval from the Plan to use any lower-tier subcontractor and to flow down all applicable DOL, FAR, FEHBAR, and FEP Contract clauses to any lower-tier subcontractors.

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 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 are categorized by increasing monetary subcontract value. 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 \$700,000, incorporate all clauses listed in groups A through J 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 its revised Subcontract valuation with Plan.

A. MANDATORY FLOW-DOWN CLAUSES REGARDLESS OF SUBCONTRACT VALUE

FAR Clauses Title

- 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 SURVEILLANCE 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 2018) (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 (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.)

- 52.244-6 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.)

**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.)

FEP Clauses Title

- CS1039
Section 1.30 HEALTH INFORMATION TECHNOLOGY PRIVACY AND SECURITY (January 2019). (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. Thus, we have included it under the mandatory flow-down clauses.)
- CS 1039
Section 1.9(a) PLAN PERFORMANCE – EXPERIENCE RATED FFS CONTRACTS DETECTION OF FRAUD AND ABUSE (January 2018). (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.)

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

FAR Clauses Title

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).)

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

DOL Clause Title

41 C.F.R.
60-741.5(a) EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES.
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.)

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).

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

FAR Clause Title

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 CLAUSE – SUBCONTRACTS OVER \$25,000

FEHBAR Title

Clause

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 CLAUSE – SUBCONTRACTS OVER \$35,000

FAR Clause Title

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 CLAUSE – SUBCONTRACTS OVER \$100,000

DOL Clause Title

41 C.F.R.
60-300.5(a) EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS
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

FAR Clauses Title

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.)

52.222-37 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)

FAR Clauses Title

- 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.)
- 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (June 2020) (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 the threshold specified in FAR 3.808. 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 (June 2020) (Incorporated into subcontracts that exceed \$250,000).
- 52.215-2 AUDIT AND RECORDS – NEGOTIATION (June 2020) (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”.)
- 52.227-1 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 Clauses 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 January 2021 \$ \$750,000 for prime contracts awarded before July 1, 2018, and \$2 million for prime contracts awarded on or after July 1, 2018; amounts adjusted for inflation)

FAR Clauses Title

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 the value of a pricing adjustment is expected to exceed the TINA threshold currently \$2,000,000 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.)

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

FAR Clause Title

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 OIG.

Federal Employee Program Flow-Down Provisions Addendum (Commercial)

The clauses of this Federal Employee Program Flow-Down Provisions Addendum (“FEP Addendum”), (as amended from time to time) is hereby incorporated into the Master Services Agreement or other such contracting document (“Agreement”) entered into by and between Blue Cross & Blue Shield of Rhode Island (“Plan”) and the supplier (otherwise known as “Contractor”, “Vendor”, “Subcontractor”, “Independent Contractor”, “Supplier”, or however the party may be identified in the Agreement. In the event of any conflict or inconsistency between the terms of the FEP Addendum and the terms of the Agreement, the terms of the FEP 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 FEP 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.acquisition.gov under either the “Browse the FAR” option (which contains the most current FAR clauses) or the “FAR Archives” option (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 FEP 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

<u>DOL Clause</u>	<u>Title</u>
41 C.F.R. 60-741.5(a)	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES 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. 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)).

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

<u>FAR Clause</u>	<u>Title</u>
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (October 2015) (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 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.)
- 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (January 2017) (Incorporated into all subcontracts for commercial items.)
- 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.)
- 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (June 2016) (Incorporated into all subcontracts other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204–21.)
- 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 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 all 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) (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.)

- 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 \$100,000, 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 \$3,000 (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.)
- 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (December 2015) (Incorporated into subcontract if flow down is required in accordance with paragraph (k) of FAR 52.222-55.)
- 52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (January 2017) (Incorporated into subcontract if flow down is required in accordance with paragraph (m) of FAR 52.222-62.)

- 52.224-3 PRIVACY TRAINING (January 2017) (Incorporated into subcontract if flow down is required in accordance with 52.224-3(f). (Incorporated into subcontract if flow down is required in accordance with 52.224-3(f).)
- 52.225-26 CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (October 2016) OUTSIDE THE UNITED STATES (July 2013) (Incorporated into subcontract for non-DoD agency for performance 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 SUBCONTRACTORS FOR COMMERCIAL ITEMS (June 2020) (Requires Subcontractor to include the listed FAR clauses in Subcontracts with commercial item/service vendors and to include the clause in any Subcontracts with lower-tier non-commercial item/service subcontractors.)
- 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 Clause

Title

- 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, currently \$2,000,000 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.)