

## **Federal Employee Health Benefits Program Addendum**

This Federal Employee Health Benefits Program (FEHBP) Addendum (as amended from time to time) is hereby incorporated into the Enterprise Master Services Agreement ("Agreement") between Blue Cross Blue Shield of Michigan and/or Blue Care Network (each individually, or collectively, "Buyer") and Supplier (otherwise known as Vendor, Subcontractor, Independent Contractor, or however the party may be identified in 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 Supplier.

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

Buyer may amend the FEHBP Addendum to include new or revised DOL, FAR and FEHBAR Flow-Down Clauses required under the OPM contract by providing sixty (30) days prior written notice of such amendment. Subcontractor's signature is not required to make any such amendment effective.

### **Part I. FAR and FEHBAR Flow-Down Clauses for *Non-Commercial* Item/Service Subcontracts**

If the 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 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" 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 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 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. FLOW-DOWN CLAUSES REGARDLESS OF SUBCONTRACT VALUE

### CS 1039 Clauses

Section 1.30 HEALTH INFORMATION TECHNOLOGY PRIVACY AND SECURITY (Jan 2019) (Requires that subcontractor's websites or web portals link to the subcontractor'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).

### FAR Clause 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)

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020)

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 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 (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 22.8097 for a list of exemptions.)

52.222-29 NOTIFICATION OF VISA DENIAL (April 2015) (Incorporated into all subcontracts for non-commercial items).

52.222-50 COMBATING TRAFFICKING IN PERSONS (Oct 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 ("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.)

252.223-7999 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 2021-O0009) (OCT 2021) (Incorporated into all Subcontracts for services (including construction) performed in whole or in part within the United States or its outlying areas at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

(a) Definition. As used in this clause – United States or its outlying areas means—

- (1) The fifty States;
- (2) The District of Columbia;
- (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
- (4) The territories of American Samoa, Guam, and the United States Virgin Islands; and
- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(b) Authority. This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).

(c) Compliance. The subcontractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

FEHBAR

Clause	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".)

1652.204-70 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) (Incorporated into all agreements with FEP underwriters; substitute "underwriter" or another appropriate reference for the term "Carrier".)

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.)

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)

#### B. ADDITIONAL CLAUSES -- SUBCONTRACTS OVER \$3,500

FAR Clause Title

52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (August 2013). (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 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 C.F.R. 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, included 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)). The Regulations require that the flow down appear in all applicable FEP subcontracts with both the reference and the accompanying explanatory text. The explanatory text is required to be bolded. See 41 C.F.R. § 60-741.5(c).

FAR Clause Title

52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS (December 2010) (Incorporated into Subcontract if Subcontract value equals or exceeds \$10,000, and no DOL exemption applies.)

52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER NATIONAL LABOR RELATIONS ACT (December 2010) (Incorporated into Subcontract if the Subcontract value exceeds \$10,000, will be wholly or partially performed in the United States, and no DOL exemption applies.)

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 CLAUSES -- 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 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 CLAUSES -- 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 item, meaning a commercial item.

E. ADDITIONAL CLAUSES -- SUBCONTRACTS OVER \$100,000

DOL Clause Title

41 C.F.R. EQUAL OPPORTUNITY FOR VEVRRA 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)). The Regulations require that the flow down appear in all applicable FEP subcontracts with both the reference and the accompanying explanatory text. The explanatory text is required to be bolded. See 41 C.F.R. § 60-300.5(d).

G. ADDITIONAL CLAUSES -- SUBCONTRACTS OVER \$150,000

FAR Clause Title

52.203-7 ANTI-KICKBACK PROCEDURES (June 2020) (Subcontractor 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) (Subcontractor 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 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 \$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.)

#### H. ADDITIONAL CLAUSES -- SUBCONTRACTS OVER THE SIMPLIFIED ACQUISITION THRESHOLD (currently \$250,000; see FAR 2.101)

FAR Clause Title

52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (June 2020) (The following language, including paragraph (c), must be incorporated into Subcontract if it exceeds the simplified acquisition threshold, which is currently set at \$250,000). "(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112 -239) and FAR 3.908. (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation. (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold."

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-redeterminable contract or any combination thereof; (2) requires submission of certified cost or pricing data; or (3) requires Supplier to furnish certain cost, funding, or performance reports. Substitute "Contracting Officer and Plan" for "Contracting Officer".)

52.227-1 AUTHORIZATION AND CONSENT (June 2020)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (June 2020)

#### I. ADDITIONAL CLAUSES -- SUBCONTRACTS OVER \$700,000

FAR Clause Title

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (October 2015) (Incorporated into subcontracts 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 a 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.)

J. ADDITIONAL CLAUSES -- SUBCONTRACTS THAT EXCEED THE THRESHOLD FOR SUBMISSION OF COST OR PRICING DATA ("TINA THRESHOLD") AT FAR 15.403-4 (\$2,000,000 as of October 1, 2020)

FAR Clause 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 (Nov 2020) (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 \$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.

**Part II.**  
**Flow-Down Clauses for *Commercial Item/Service Subcontracts***

If the Subcontract 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 Subcontract 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" 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 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 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 nongovernmental 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 supplier, 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.

#### A. FLOW DOWN 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 C.F.R. 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 FEB subcontract is valued over \$10,000 (including indefinite quantity contracts unless the Plan has reason to believe that the annual costs for the contract will not exceed \$10,000)). The Regulations require that the flow down appear in all applicable FEP subcontracts with both the reference and the accompanying explanatory text. The explanatory text is required to be bolded. See 41 C.F.R. § 60-741.5(c).

##### 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)). The Regulations require that the flow down appear in all applicable FEP subcontracts with both the reference and the accompanying explanatory text. The explanatory text is required to be bolded. See 41 C.F.R. § 60-300.5(d).

FAR Clause Title

52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (September 2007) (Incorporated into Subcontract if valued over \$100,000.)

52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (October 2015) (Incorporated into Subcontract if Subcontract value exceeds \$6 million 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 SYSTEM 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) (Paragraph (c) of FAR 52.204-21 requires flow-down of this clause for subcontracts (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its 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 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 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)
- 52.222-21 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 22.8097 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 DOL 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 no provisions will be binding upon each subcontractor.)
- 52.222-50 COMBATING TRAFFICKING IN PERSONS (October 2020) (Incorporated into Subcontract with Alternate 1 if Subcontract will be performed outside the United States.)

52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (October 2015) (Incorporated into any Subcontract valued over \$3,500 (but excluding Subcontracts performed outside of 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. Paragraph (k) of FAR 52.222-55 requires flow-down of this Clause for subcontracts that are subject to the Service Contract Labor Standards statute of the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.)

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. Paragraph (m) of FAR 52.222-62 requires flow-down of this Clause for subcontracts that are subject to the Service Contract Labor Standards statute of the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.)

52.224-3 PRIVACY TRAINING (January 2017) (Incorporated into subcontract if flow down is required in accordance with 52.224-3(f). Paragraph (f) of FAR 52.224-3 requires flow-down of this Clause for subcontracts when subcontractor employees will (1) Have access to a system of records; (2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) Design, develop, maintain, or operate a system of records.)

52.225-26 CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (October 2016) (Incorporated into Subcontracts for commercial items for non-DoD agencies if performance is in an area of combat operations or other significant military operations.)

52.232.40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS CONTRACTORS (December 2013) (Incorporated into subcontracts for commercial items if the subcontractor is a small business concern).

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (June 2020) (Requires Subcontractor to include the listed FAR clauses in subcontracts with commercial item/service suppliers and to include the clause in any subcontracts with lower-tier non-commercial item/service subcontractors. Contractor Code of Business Ethics and Conduct (Jun 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 unless Subcontract is for the acquisition of any commercial item or service except for ocean transportation services, construction services, or transported supplies Subcontractor is reselling or distributing without added value.)

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.)

**Part III**  
**E-Verify**

EMPLOYMENT ELIGIBILITY VERIFICATION (FAR 52.222-54).

A. Definitions. For purposes of this Part III, the following definitions apply:

(1) *Employee assigned to the contract* means an employee who was hired after November 6, 1986 (after November 27, 2009 in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 48 CFR 22.1803. An employee is not considered to be directly performing work under a contract if the employee:

- (i) Normally performs support work, such as indirect or overhead functions; and
- (ii) Does not perform any substantial duties applicable to the contract.

(2) *Subcontract* means any contract (as defined in 48 CFR 2.101) entered into by a subcontractor to furnish supplies or services required to be performed under the Agreement(s) or applicable Statements of Work (SOW) or other underlying legal documents. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

(3) *Commercially available off-the-shelf (COTS) item* means:

- (i) any item of supply that is:
  - 1. A commercial item as defined by FAR;
  - 2. Sold in substantial quantities in the commercial marketplace; and
  - 3. Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and
- (ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products. Pursuant to 46 CFR 525.1(c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

(4) Not Previously Enrolled. If Supplier is not enrolled as a Federal Contractor in the E-Verify program at time of execution of the Amendment, the Supplier shall:

- (5) Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of execution of the Amendment; and
- (6) Within 90 calendar days of enrollment in the E-Verify program, use E-Verify to initiate verification of employment eligibility of all new hires of the Supplier, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire.

B. Previously Enrolled - more than 90 Days. If Supplier is enrolled as a Federal Contractor in E-Verify at time of execution of this Amendment and has been enrolled 90 calendar days or more:

- (1) Supplier shall initiate verification of all new hires of Supplier, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire;

C. Previously Enrolled - less than 90 Days. If Supplier is enrolled as a Federal Contractor in E-Verify at time of execution of this Amendment and has been enrolled less than 90 calendar days:

(1) Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, Supplier shall initiate verification of all new hires of Supplier, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire;

Additional Verification Requirements. Supplier shall also do one of the following:

(2) Verify Employees Assigned to the Contract. Supplier shall initiate verification for each employee assigned to the contract within 90 calendar days after the execution date of this Amendment or within 30 days after the assignment to the contract, whichever date is later; or

(3) Option to Verify All Employees. Supplier may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. If Supplier elects this option, Supplier shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of (i) enrollment in the E-Verify program or (ii) notification to E-Verify Operations of its decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

D. Exclusions. Supplier is not required by this Amendment to perform additional employment verification using E-Verify for any employee:

(1) who was previously verified through the E-Verify system by Supplier;

(2) who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual;

(3) who has undergone a completed background investigation and has been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

E. E-Verify MOU. Supplier shall comply for the period of performance of the Agreement(s), as amended, and applicable SOWs or other underlying legal documents, with the requirements of the E-Verify program MOU.

F. Web Site/Additional Information. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

G. Buyer Oversight. Supplier agrees to each of the following:

(1) Supplier shall provide Buyer proof of enrollment in the E-Verify program and proof of verification of employees upon request, including but not limited to a copy of the "Maintain Company" page and/or the Form I-9 verification number;

(2) In the event Buyer is audited for compliance by the Office of Personnel Management or other Federal agency, Supplier agrees to produce proof of verification of all audited employees and/or other documentation requested by the federal government; and

(3) Supplier grants Buyer the right to monitor and/or audit Supplier for Compliance with this Amendment.

H. Subcontracts. Supplier shall include the requirements of this Amendment, including this paragraph (appropriately modified for identification of the parties), in each subcontract:

- (1) where the contract is for:
- (2) Has a value of more than \$3,000; and
- (3) Includes work performed in the United States.

**Part IV**  
**Provisions Applicable Only to Pharmacy Benefit Managers (PBMs)**

The following provisions apply only to Suppliers that have contracted with Buyer to perform services as a pharmacy benefit manager (PBM). For purposes of this section, Supplier shall be referred to as “PBM.”

(a) Definitions. Under this section

- (1) “Expedited request” means a request initiated by the Prescriber, member, or member’s representative when the time limit for standard utilization management review for the prescribed medication could seriously jeopardize the patient’s life, health, or ability to regain maximum function.
- (2) “Licensed pharmacist” means an individual currently licensed by the appropriate jurisdiction to engage in the practice of pharmacy consistent with that jurisdiction’s laws and regulations.
- (3) “Manufacturer payment” means any and all compensation, financial benefits, or remuneration the PBM or any Third Party receives from a pharmaceutical manufacturer for any dispensing or distribution channel, including but not limited to, discounts, credits, rebates (regardless of how categorized), market share incentives, chargebacks, commissions, administrative or management fees, patient assistance and any fees received for sales of utilization data to a pharmaceutical manufacturer.
- (4) “Network pharmacy,” means any retail, mail order, specialty, or licensed pharmacy provider that contracts with the PBM.
- (5) “Pass-Through Transparent Pricing” means drug pricing in which Buyer receives the full value of all discounts, rebates, credits or other financial guarantees or adjustments including any true up or reconciliation.
- (6) “Pharmacy Benefit Manager” or “PBM” means the combination of
  - (i) a business or other entity that, pursuant to a contract with Buyer, either directly or through an intermediary, manages the prescription drug benefit provided by Buyer including, but not limited to, the processing and payment of claims for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of appeals or grievances related to prescription drug coverage, contracting with network pharmacies, and controlling the cost of covered prescription drugs; and
  - (ii) all entities that have a majority ownership interest in, or majority control over, the business or other entity that is in contract with Buyer referenced in (i).
- (7) “Prescriber” means any licensed, certified or otherwise legally authorized health care professional authorized by law to prescribe a prescription drug.
- (8) “Third Party” means any consultant, partner, administrator, intermediary or other entity outside the scope of the relationships between or among the PBM and the FEHB enrollee, Carrier, and/or OPM. It does not include wholesalers, distributors, or pharmacies.
- (9) “Total Product Revenue” means the total dollar sales of prescription drugs at the prescription price negotiated with clients and associated administrative fees, either through retail Networks or PBM-owned or controlled mail order pharmacies, with respect to the PBM’s entire client base, for the reporting period.
- (10) “Mid-year formulary change” is any change that occurs to the formulary during the plan year. Positive formulary changes enhance formularies by adding drugs or placing a drug on a lower costs sharing tier or removing or relaxing utilization management (UM) requirements for drugs. Restrictive formulary changes negatively impact formularies by removing drugs, moving drugs to higher tiers, or tightening UM requirements for drugs. (11) “Impacted member” is any member who is on a prescription drug that undergoes a mid-year formulary change. (12) “Written notice” means notification to each impacted

member by U.S. mail, secure email or text message (if approved by the member).

(b) Transparency Standards

- (1) The PBM shall not be majority-owned or majority-controlled by a pharmaceutical manufacturing company. The PBM must disclose to Buyer and OPM the name of any entity that has a majority ownership interest in or *majority control over the PBM*.
- (2) The PBM shall agree to provide Pass-Through Transparent Pricing as defined above for the following categories:
  - (i) Retail Pharmacies: The PBM shall charge Buyer no more than the amount as determined by Pass-Through Transparent Pricing paid to the pharmacy for each drug plus a dispensing fee.
  - (ii) Mail Order or Specialty Pharmacies not owned or affiliated with the PBM: The PBM shall charge Buyer no more than the amount as determined by Pass-Through Transparent Pricing paid to the pharmacy for each drug plus a dispensing fee.
  - (iii) Mail Order or Specialty Pharmacies owned or affiliated with the PBM: The PBM shall charge Buyer the cost of the drugs based on the pharmacy's actual acquisition cost, plus a dispensing fee. Costs shall not be based on industry benchmarks or set pricing including, but not limited to, Average Acquisition Cost (AAC), Maximum Allowable Charge (MAC), Average Wholesale Price (AWP), and Wholesale Acquisition Cost (WAC).
  - (iv) ~~The PBM must commit to minimum annual aggregate pharmacy claim discount guarantees, based on Average Wholesale Price (AWP) or other recognized industry benchmark, and maximum annual aggregate dispensing fee guarantees. PBM must reconcile Buyer claim costs to these guarantees no less frequently than annually. PBM must pay to Buyer any shortfall in meeting these pricing guarantees, with Buyer receiving any payment for under performance of the pricing guarantees to credit its' FEHB Program reserves.~~
- (3) The PBM or any other Third Party that negotiates or collects Manufacturer Payments allocable to Buyer agrees to credit to Buyer either as a price reduction or by cash refund the value of all Manufacturer Payments properly allocable to Buyer.
- (4) The PBM must identify sources of profit to Buyer and OPM as it relates to the FEHB contract.
- (5) All of the PBM's fees, including, but not limited to, administrative or dispensing fees, must be clearly identified to retail claims, mail claims, specialty claims, and clinical or other programs, if applicable. The PBM must agree to disclose each fee to Buyer and OPM.
- (6) The PBM, or any Third Party that negotiates or collects Manufacturer Payments allocable to the Plan, will provide Buyer with quarterly and annual Manufacturer

Payment Reports identifying the following information. This information shall be presented for both the total of all prescription drugs dispensed through the PBM, acting as a specialty and/or a mail order pharmacy, and its retail Network and in the aggregate for the 25 brand name drugs that represent the greatest cost to Buyer or such number of brand name drugs that together represent 75 percent of the total cost to Buyer, whichever is the greater number:

- (i) the dollar amount of Total Product Revenue;
  - (ii) the dollar amount of total drug expenditures for the Plan;
  - (iii) the dollar amount of all Manufacturer Payments earned by the PBM for the reporting period;
  - (iv) the Manufacturer Payments that have been (1) earned but not billed (2) billed and (3) paid to the PBM based on the drugs dispensed to the Plan members during the past year.
  - (v) the percentage of all Manufacturer Payments earned by the PBM for the reporting period that were Manufacturer Formulary Payments, which are payments the PBM receives from a manufacturer in return for formulary placement and/or access, or payments that are characterized as "formulary" or "base" rebates or payments pursuant to the PBM's agreements with pharmaceutical manufacturers;
  - (vi) the percentage of all Manufacturer Payments received by the PBM during the reporting period that were Manufacturer Additional Payments, which are all Manufacturer Payments other than Manufacturer Formulary Payments.
- (7) The PBM agrees to provide Buyer, at least annually, with all financial and utilization information requested by Buyer relating to the provision of benefits to eligible enrollees through the PBM and all financial and utilization information relating to services provided to Buyer, including but not limited to, a reasonable sample of retail pharmacy remittance advices, as selected by Buyer.
  - (8) Buyer shall provide any information it receives from the PBM, including a copy of its contract with the PBM to OPM. At OPM's request, Buyer must obtain from the PBM any reasonable information or reports

and provide it to OPM. A PBM providing information to a Carrier under this subsection may mark that information as confidential commercial information. Buyer, in its contract with the PBM shall effectuate the PBM's consent to the disclosure of this information to OPM. OPM shall handle the information in accordance with 5 CFR Part 294.

(9) Buyer will require that PBM:

- (i) Provide information to physicians, pharmacists, other health care professionals, consumers, and payers about the factors that affect formulary system decisions, including: cost containment measures; the procedures for obtaining non-formulary drugs; and the importance of formulary compliance to improving quality of care and restraining health care costs;
- (ii) Provide consumer education that explains how formulary decisions are made and the roles and responsibilities of the consumer; and
- (iii) Disclose the existence of formularies and have copies of the current formulary readily available and publicly accessible.

(10) In accordance with FEHBAR 1652.204-74, FAR 52.215-2 and FEHBAR 1652.246-70, all contracts and other documentation that support amounts charged and credited to Buyer contract are fully disclosed to and auditable by the OPM Office of Inspector General (OPM OIG). The PBM must provide the OPM OIG upon request complete copies of all PBM records including, but not limited to:

- (i) All PBM contracts with Participating Pharmacies, including invoices, receipts and credits;
- (ii) All PBM contracts with Pharmaceutical Manufacturers, including invoices, receipts, and credits;
- (iii) All PBM contracts with Third Parties purchasing or using claims data;
- (iv) All PBM transmittals in connection with sales of claims data to Third Parties or other entities;
- (iv) All PBM Maximum Allowable Cost (MAC) price lists;
- (v) All PBM records relating to patient assistance maximizer programs, optimizer programs, or similar arrangements with Third Parties; and

(vii) All PBM records pertaining to arrangements with Third Parties, including Group Purchasing Organizations (GPOs).

(vi) (11) The Carrier at the minimum must perform an annual check to ensure that the PBM adheres to the pricing standards outlined in (b)(2)(i), (ii), and (iii).

(c) Integrity Standards

- (1) PBM agrees to adopt and adhere to a code of ethics promulgated by a national professional association, such as the Code of Ethics of the American Pharmacists Association, for their employed pharmacists.
- (2) PBM must maintain applicable licenses as required by the appropriate jurisdiction's laws and regulations.
- (3) PBM shall only employ or contract with licensed pharmacists for roles that require such a license under the appropriate jurisdiction's laws and regulations.
- (4) PBM shall perform its duties with care, skill, prudence, diligence, and professionalism.
- (5) PBM shall notify Buyer in writing of any activity, policy, or practice of the PBM that directly or indirectly presents any conflict of interest with the duties imposed in this subsection.
- (6) PBM shall not enter into a contract with a pharmacy or pharmacist that prohibits or penalizes a pharmacy or pharmacist for disclosure of information to a member regarding:
  - (i) The cost of a prescription medication to the member; or
  - (ii) The availability of any therapeutically-equivalent alternative medications or alternative methods of purchasing the prescription medication, including but not limited to, paying a cash price that is less expensive to the member than the cost of the prescription under the Plan.

(d) Performance Standards

PBM must develop and apply a quality assurance program specifying procedures for ensuring contract quality on the following standards at a minimum and submit reports to Buyer on PBM's performance. PBMs must meet, at minimum, the standards set forth below:

(1) Claims Processing Accuracy

SPECIFICATION: the number of FEHB claims processed accurately divided by the total number of FEHB claims processed.



REQUIRED STANDARD: PBM shall accurately process at least 95 percent of FEHB claims.

(2) Claims Coding Accuracy

SPECIFICATION: the number of FEHB claims coded accurately divided by the total number of FEHB claims.

REQUIRED STANDARD: PBM shall accurately code at least 98 percent of FEHB claims

(3) Claims Timeliness

SPECIFICATION: the number of FEHB claims adjudicated (paid, denied, or a request for further information is sent out) within 30 working days from the date the PBM received the claim, divided by the total number of FEHB claims received.

REQUIRED STANDARD: The PBM shall adjudicate at least 95 percent of claims within 30 working days.

(4) Member Inquiries

SPECIFICATION: the number of written inquiries responded to within 15 working days divided by the total number of written inquiries received.

REQUIRED STANDARD: The PBM shall respond to at least 90 percent of inquiries within 15 working days.

(5) Written Inquiries Accuracy

SPECIFICATION: the number of FEHB written inquiries answered accurately divided by the total number of FEHB written inquiries received.

REQUIRED STANDARD: The PBM shall accurately answer at least 97 percent of FEHB written inquiries.

(6) Telephone Inquiries Accuracy

SPECIFICATION: the number of FEHB telephone inquiries answered accurately divided by the total number of FEHB telephone inquiries received

REQUIRED STANDARD: The PBM shall accurately answer at least 97 percent of FEHB telephone inquiries.

(7) Internet Inquiries Accuracy

SPECIFICATION: the number of FEHB Internet inquiries answered accurately divided by the total number of FEHB Internet inquiries received.

REQUIRED STANDARD: The PBM shall accurately answer at least 97 percent of FEHB Internet inquiries.

(8) Telephone Access - the PBM shall report on the following statistics concerning telephone access to the member services department (or its equivalent) for the given time period. Except that, if the PBM does not have a computerized phone system, report results of periodic surveys on telephone access.

(i) Call Answer Timeliness

SPECIFICATION: the percentage of calls answered by a live voice (during operating hours).

REQUIRED STANDARD: The PBM shall answer 80% of telephone calls by a live voice (during operating hours) within 30 seconds.

(ii) Telephone Blockage Rate

SPECIFICATION: the number of calls receiving a busy signal when calling the PBM, divided by the total number of calls received.

REQUIRED STANDARD: The PBM shall ensure that no more than 5 percent of calls receive a busy signal.

(iii) Telephone Abandonment Rate

SPECIFICATION: the number of calls attempted but not connected to a live voice, divided by the total number of calls attempted.

REQUIRED STANDARD: The PBM shall ensure that no more than 5 percent of calls are abandoned before connection to a live voice.

(iv) Initial Call Resolution

SPECIFICATION: the number of initial calls that result in a resolution of the issue, divided by the total number of initial calls for an issue.

REQUIRED STANDARD: The PBM shall resolve the issue during the initial call at least 80 percent of the time.

All other standards discussed below will have specific target goals PBM is expected to achieve. Buyer may permit PBM to measure compliance using statistically valid samples for the PBM's book of business. Agreed to standards shall be provided to OPM for its review and comment. If OPM has concerns about a particular standard, Buyer agrees to present OPM's concerns to the PBM and either revise the standard as requested by OPM or revise the standard to the extent feasible and present to OPM information demonstrating the problems associated with making the requested revisions in full.

- (1) Point of Service (POS) system response time. The PBM's network electronic transaction system provides rapid response to Network pharmacies.
- (2) POS system availability. The PBM's network electronic transaction system generally is available to, and accessible by, Network pharmacies.
- (3) Licensing. The PBM verifies the appropriate licensing of its Network pharmacies. This includes DEA registration for U.S. pharmacies, and the equivalent, if one exists, for pharmacies outside of the U.S.
- (4) Dispensing accuracy – The PBM dispenses its prescriptions to the correct patient and for the correct drug, drug strength and dosage in accordance with the prescription not less than 99.9 percent of the time.
- (5) Mail service pharmacy turnaround time – PBM promptly dispenses and ships at least 98 percent on average of all prescriptions not requiring intervention or clarification within 3 business days or meets an equivalent measure approved by OPM.
- (6) Specialty pharmacy shipment stability. Buyer or PBM's specialty pharmacy must have policies and procedures in place to promote effective shipping practices and monitor cold chain packaging. Specific areas to be addressed include achievement of internal and external metrics and the identification and appropriate use of best practices.
- (7) Quality of Drug Therapy. The quality assurance program implemented by PBM must include a process to measure the quality of its drug therapy provided to enrollees. Specific areas to be addressed include achievement of quality targets measured by both internal and external metrics; identification and appropriate use of best practices; and application of evidence-based medicine, as appropriate.

(e) Mid-Year Formulary Changes may not become effective until an itemized list is provided to OPMPharmacy@OPM.gov and your Contracting Officer. (1) Positive formulary changes may be effective at any time after the itemized list of Mid-year formulary changes is provided as set forth above. (2) FEHB Carriers must notify their Contracting Officer at least 70 days prior to making any Restrictive Formulary Change effective during the plan year that results in any Impacted Member. (3) FEHB Carriers must provide Impacted members with written notice of a Restrictive midyear formulary change at least 60 days prior to the date the formulary change becomes effective. (4) FEHB Carriers have the option to grandfather Impacted members of a restrictive formulary change for coverage and cost-sharing for the remainder of the plan year. In such cases, impacted member notification is not required. However, FEHB Carriers must notify OPMPharmacy@OPM.gov and their Contracting Officer at least 10 days prior to making any restrictive mid-year formulary change that has no member impact. (5) Carriers may immediately remove from their formulary drugs deemed unsafe based on new information on a drug's safety or efficacy or removed from the market by their manufacturer without meeting the advance notice requirement specified above. In such cases, FEHB Carriers must provide retrospective notice of any such formulary changes to impacted members and OPM as soon as possible.

(e) (f) Alternative Drug Options

PBM must, at a minimum, utilize the following protocols for PBM initiated drug interchanges (any change from the original prescription) other than generic substitutions:

- (1) The PBM must treat the Prescriber, and not itself, as the ultimate decision-maker. Furthermore, to the extent appropriate under the circumstances, the PBM must allow the patient input into that decision-making process. At a minimum, the PBM must provide the patient with a written notice in the package

sent to the patient that the drug interchange has occurred with the approval of the Prescriber.

(2) The PBM will obtain authorization for a drug interchange only with the express, verifiable authorization from the Prescriber as communicated directly by the Prescriber, in writing or verbally, or by a licensed medical professional or other office staff member as authorized by the Prescriber.

(3) The PBM must memorialize in appropriate detail all conversations with patients and Prescribers in connection with drug interchanging requests, including the identity of the contact person at the Prescriber's office and the basis for his or her authority.

(4) The PBM will only interchange a patient's drug from a lower priced drug to a drug with a higher cost to the patient or Plan when authorized by Buyer or the Plan.

(5) The PBM will permit pharmacists to express their professional judgment to both the PBM and Prescribers on the impact of drug interchanges and to answer Prescribers' questions. PBMs will not require pharmacists to, and will not penalize pharmacists for refusing to, initiate calls to Prescribers for drug interchanges that in their professional judgment should not be made.

(6) The PBM will offer to disclose, and if requested, will disclose to Prescribers, Buyer, and patients (i) the reason(s) why it is suggesting a drug interchange and (ii) how the interchange will affect the PBM, the Plan, and the patients financially.

~~L~~ (g) Utilization Management Timeframe – The PBM must promptly review and respond to requests for prior approval for specific drugs and any other utilization management edits following receipt of all required information.

(4) (i) For Expedited requests, the PBM must review and respond within 24 hours.

(ii) For other, non-expedited requests, the PBM must review and respond within 72 hours. \_

~~(2)~~ For expiring prescription prior authorizations (PAs), the PBM must:

~~(2)~~ (i) have in place a process to review all expiring PAs; and (ii) must notify members at least 45 days before the expiration of a PA for a maintenance medication.

~~J~~ (h) Patient Safety Standard - Buyer will require that its PBM establish drug utilization management, formulary process and procedures that have distinct systems for identifying and rectifying consumer safety issues including:

- (i) A system for identifying and communicating drug and consumer safety issues at point-of-service;
- (ii) A system of drug utilization management tools, such as prospective and concurrent drug utilization management that identifies situations which may compromise the safety of the consumer.
- (iii) A system/process for error reporting; and
- (iv) A system/process for identifying/managing risk

~~K~~ (i) Safety and Accessibility for Consumers - Buyer will require that its PBM meets the following standards related to pharmacy Network management and consumer access to medications.

(1) Buyer will require that its PBM define the scope of its services with respect to:

- (i) The distribution channels offered (e.g. pharmacy Network, mail order pharmacies, or specialty pharmacies);
- (ii) The types of pharmacy services offered within each distribution channel; and
- (iii) The geographic area served by each distribution channel.

(2) Buyer will require that for each distribution channel provided by its PBM, the PBM:

- (i) Establishes criteria and measures actual performance in comparison to those criteria; and
- (ii) Makes improvements where necessary to maintain the Network and meet contractual requirements.

(3) Buyer will require that its PBM establish a quality and safety mechanism for each distribution channel in order to identify and address concerns related to:

- (i) Quality and safety of drug distribution; and
- (ii) Quality of service

~~L~~ (j) Fraud, Waste, and Abuse

— (1) The PBM must establish fraud, waste and abuse detection processes and procedures, with distinct systems for identifying and rectifying FWA issues including:

- (i) A system designed to detect and eliminate FWA
- (ii) A system that assesses its vulnerability to FWA to include, but not limited to, performing post-payment reviews and audits of providers identified either

- proactively or reactively;
  - (iii) A system/process for FWA reporting; and
  - (iv) A system/process for identifying/managing risk
- (2)(Any Third Party or entity providing services or supplies related to the administration of payments or benefits must certify to the PBM that it has established fraud, waste and abuse detection processes and procedures, with distinct systems for identifying and rectifying FWA issues including:
- (i) A system designed to detect and eliminate FWA;
  - (ii) A system that assesses its vulnerability to FWA to include, but not limited to, performing post- payment reviews and audits of providers identified either proactively or reactively;
  - (iii) A system/process for FWA reporting; and
  - (iv) A system/process for identifying/managing risk.

(k) Contract Terms - The contract between the PBM and Buyer must not exceed 3 years without re-competition unless the Contracting Officer approves an exception. Buyer's PBM contract must allow for termination based on a material breach of any terms and conditions stated in Buyer's PBM contract. Buyer must provide sufficient written notice of the material breach to the PBM and the PBM must be given adequate time to respond and cure the material breach.