

## CONCILIATION AGREEMENT

(b) (3) (A)

### THE U. S. DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

(b) (3) (A)

and

### THE JOHNS HOPKINS UNIVERSITY APPLIED PHYSICS LABORATORY LLC

The parties to this Conciliation Agreement are The U.S. Department of Labor Office of Federal Contract Compliance Programs ("OFCCP"), (b) (3) (A) and The Johns Hopkins University Applied Physics Laboratory LLC ("JHU APL"), located at 11100 Johns Hopkins Road, Laurel, Maryland.

This Agreement becomes effective on the day upon reasonable notice to JHU APL that it is signed by both OFCCP's Regional Director of the Mid-Atlantic Region and (b) (3) (A) (the "Effective Date").

This Agreement will expire sixty (60) days after JHU APL submits the final progress reports required in Part IV, unless OFCCP (b) (3) (A) notify JHU APL in writing prior to the expiration date that JHU APL has not fulfilled all of its obligations under the Agreement, in which case the Agreement will be automatically extended until the date that OFCCP (b) (3) (A) determine JHU APL has met all of its obligations under the Agreement.

It is understood that this Agreement does not constitute an admission by JHU APL of any violation of any statute administered by the OFCCP (b) (3) (A) or any other statute, rule, regulation or common law theory relating to discrimination, harassment or retaliation in employment, nor has there been an adjudicated finding that JHU APL violated any laws.

## **SECTION A: OFCCP PROVISIONS**

### **PART I: OFCCP PRELIMINARY STATEMENT**

The OFCCP initiated a complaint investigation of JHU APL's facility located at 11100 Johns Hopkins Road, Laurel, Maryland based upon allegations that JHU APL discriminated against and/or retaliated against a class of individuals and found that JHU APL was not in compliance with the Executive Order 11246, ("E.O. 11246"), as amended, and its implementing regulations at 41 C.F.R. Chapter 60. OFCCP notified JHU APL of the specific violations found in a Notification of Results of Investigations issued May 23, 2012. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and JHU APL enter this contract ("Conciliation Agreement" or "Agreement") and agree to all the terms stated below.

## **PART II: OFCCP GENERAL TERMS AND CONDITIONS**

- A.** In exchange for JHU APL's fulfillment of all obligations in Section C. Part I and Part III of this Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246 based on the violations described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Section A. Part I and Part III if JHU APL violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations unrelated to the matters resolved by this Agreement.
- B.** JHU APL agrees that OFCCP may review its compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. JHU APL will permit access to its premises upon receipt of reasonable notice (at least 48 hours) during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.
- C.** JHU APL understands that nothing in this Agreement relieves JHU APL of its obligation to fully comply with the requirements of E.O. 11246, Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Section 503"), and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 ("VEVRAA"), their implementing regulations, and other applicable equal employment laws.
- D.** JHU APL agrees not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual: benefits from this Agreement, files a complaint or participates in any investigation or proceeding under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 C.F.R. § 60-1.32(a).
- E.** OFCCP and JHU APL understand the terms of this Agreement and enter into it voluntarily.
- F.** This document and its attachments contain the complete and final understanding of OFCCP and JHU APL with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
- G.** If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
- H.** If JHU APL violates this Conciliation Agreement,
  - 1.** The procedures set forth at 41 C.F.R. § 60-1.34 will govern:
    - a)** If OFCCP believes that JHU APL violated any term of the Agreement while it was in effect, OFCCP will send JHU APL a written notice stating the alleged violations and summarizing any supporting evidence.
    - b)** JHU APL will have 30 days from receipt of such notice to demonstrate in writing that

it has not violated the Conciliation Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

- c) If JHU APL is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
  - d) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
2. JHU APL may be subject to the sanctions set forth in Section 209 of the Executive Order, and/or other appropriate relief for violation of this Agreement if a violation is found after all appropriate procedures have been followed.

### **PART III: OFCCP SPECIFIC VIOLATIONS AND REMEDIES**

**COMPLAINANT** (b) (7)(C) **AND COMPLAINANT** (b) (7)(C)

#### **A. Statement of Violation**

OFCCP's investigations found that JHU APL is not in compliance with the nondiscrimination requirements of the equal opportunity clause of E.O. 11246 §202 and 41 C.F.R. §60-1.4(a)(1) and §60-1.32. OFCCP's investigation of JHU APL's processes and procedures found that during the period including and up to the termination of complainant (b) (7)(C) on January 7, 2010, JHU APL discriminated against (b) (7)(C) on the basis of race when it subjected her to a hostile work environment by retaliating against her, allowing her to be harassed, and subsequently terminating her on January 7, 2010. OFCCP's investigation of JHU APL's processes and procedures found that during the period including and up to the separation of employment of complainant (b) (7)(C) on October 26, 2010, JHU APL discriminated against (b) (7)(C) on the basis of gender with respect to compensation and race when she was subjected to a hostile work environment.

#### **B. OFCCP'S Specific Findings**

OFCCP's investigation found that JHU APL harassed, retaliated against, terminated, and otherwise discriminated against (b) (7)(C) on the basis of race and for engaging in protected EEO activity, in violation of the provisions of the Executive Order and its implementing regulations. (b) (7)(C) who is African American, was employed by JHU APL from August 26, 1987 until she was terminated on January 7, 2010. OFCCP's investigation found that JHU APL harassed, retaliated against, terminated, and otherwise discriminated against (b) (7)(C) including with respect to her compensation, on the basis of gender and for engaging in protected EEO activity, in violation of the provisions of the Executive Order and its implementing regulations.

### C. Remedy

JHU APL will cease and desist from harassment, intimidation, retaliation, and coercion, including but not limited to verbal, physical and visual forms, and ensure that it does not recur. JHU APL shall ensure that its employees and any other persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. JHU APL shall not harass, intimidate, threaten, coerce, or discriminate against any individual in response to the individual engaging in any of the following activities:

- Filing a complaint of discrimination based on any protected status under the Executive Order;
- Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Executive Order or its implementing regulations;
- Opposing any act or practice made unlawful by the Executive Order; or
- Exercising any other rights protected by the Executive Order.

(b) (3) (A)

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## REMEDIAL ACTIONS

**PART I:** (b) (3) (A) JHU APL shall implement the following remedial, make whole actions with respect to Complainant (b) (7)(C):

### **A. Notice**

Within fifteen (15) days of the Effective Date of this Agreement, JHU APL shall send to (b) (7)(C) (b) (7)(C) at her last known address, by Certified Mail/Return Receipt Requested or other form indicating proof of delivery, the letter entitled "Notice to Complainant" (Attachment 1A, "Notice"), and the "Information Verification & Interest Form" (Attachment 1B, "Interest

Form”), along with a postage paid return envelope.

**B. Eligibility**

To be eligible for a monetary distribution pursuant to this Agreement, (b) (7)(C) must complete and return the Interest Form to JHU APL so that it is postmarked within thirty (30) days of her receipt of the Notice and the Interest Form from JHU APL. If (b) (7)(C) receives, but does not return, the completed Interest Form to JHU APL within thirty (30) days of her receipt of the Notice and Interest Form, she will no longer be entitled to a monetary settlement amount under the terms of this Agreement. Within fifteen (15) days of its receipt of a completed Interest Form from (b) (7)(C) JHU APL will provide OFCCP (b) (3) (A) a copy of the documentation that was returned to JHU APL within the thirty-day period described in this paragraph. If (b) (7)(C) does not return the completed Interest form to JHU APL within the thirty-day period, JHU APL shall notify OFCCP (b) (3) (B) of such within fifteen (15) days of expiration of the thirty-day period, along with documentation of the date of delivery of the Notice and the Interest Form to (b) (7)(C) and any additional relevant documentation.

**C. Monetary Settlement**

If (b) (7)(C) returns a completed Interest Form within the thirty-day period as set forth in Paragraph B hereof, JHU APL shall pay to (b) (7)(C) \$81,938.96 (\$73,499.25 in back pay and \$8,439.71 in interest), less legal deductions required by law from back pay only (such as federal, state and/or local taxes and (b) (7)(C)'s share of FICA taxes). JHU APL will pay the Internal Revenue Service (“IRS”) the employer’s share of Social Security withholdings and will timely mail to (b) (7)(C) an appropriate IRS W-2 Form reporting the portion of the payment representing back pay.

In addition to the back pay, JHU APL shall pay to (b) (7)(C) \$88,514.65 representing all other damages. JHU APL will issue to (b) (7)(C) an IRS Form 1099 for the portion of the payment representing damages and interest. These IRS forms will be mailed at the end of the year.

JHU APL will pay (b) (7)(C) the monetary settlement amount within 45 days of its receipt of a completed Interest Form from (b) (7)(C)

**D. Release Agreement with (b) (7)(C)**

Contemporaneously with the execution of this Agreement, (b) (7)(C) is entering into a Release Agreement with JHU APL, to which neither (b) (7)(C) nor OFCCP are parties. The execution of the Release Agreement by (b) (7)(C) is a condition precedent to (b) (7)(C) receiving any payment under this Agreement, (b) (7)(C) OFCCP acknowledge and agree that if (b) (7)(C) fails to sign the Release Agreement or revokes it within seven (7) days of signing it she shall not be entitled to any payment hereunder.

**PART II:** OFCCP (b) (3) (A) agree that JHU APL shall implement the following remedial, make whole actions with respect to Complainant (b) (3) (A)



**A. Notice**

Within fifteen (15) days of the Effective Date of this Agreement, JHU APL shall send to (b) (7)(C) at her last known address, by Certified Mail/Return Receipt Requested or other form indicating proof of delivery, the letter entitled "Notice to Complainant" (Attachment 2B, "Notice"), and the "Information Verification & Interest Form" (Attachment 2B, "Interest Form"), along with a postage paid return envelope.

**B. Eligibility**

To be eligible for a monetary distribution pursuant to this Agreement, (b) (7)(C) must complete and return the Interest Form to JHU APL so that it is postmarked within thirty (30) days of her receipt of the Notice and the Interest Form from JHU APL. If (b) (7)(C) receives, but does not return, the completed Interest Form to JHU APL within thirty (30) days of her receipt of the Notice and Interest Form, she will no longer be entitled to a monetary settlement amount under the terms of this Agreement. Within fifteen (15) days of its receipt of a completed Interest Form from (b) (7)(C) JHU APL will provide OFCCP (b) (3) (A) a copy of the documentation that was returned to JHU APL within the thirty-day period described in this paragraph. If (b) (7)(C) does not return the completed Interest form to JHU APL within the thirty-day period, JHU APL shall notify OFCCP (b) (7)(C) of such within fifteen (15) days of expiration of the thirty-day period, along with documentation of the date of delivery of the Notice and the Interest Form to (b) (3) (A) and any additional relevant documentation.

**C. Monetary Settlement**

If (b) (7)(C) returns a completed Interest Form within the thirty-day period as set forth in Paragraph B hereof, JHU APL shall pay to (b) (7)(C) \$112,414.00 (\$100,835.46 in back pay and \$11,578.54 in interest), less legal deductions required by law from back pay only (such as federal, state and/or local taxes and (b) (7)(C) share of FICA taxes). JHU APL will pay the IRS the employer's share of social security withholdings and will timely mail to (b) (7)(C) an appropriate IRS W-2 Form reporting the portion of the payment representing back pay.

In addition to the back pay, JHU APL shall pay to (b) (7)(C) \$76,385.19 representing all other damages. JHU APL will issue to (b) (7)(C) an IRS Form 1099 for the portion of the payment representing damages and interest. These IRS forms will be mailed at the end of the year.

JHU APL will pay (b) (7)(C) the monetary settlement amount within 45 days of its receipt of a completed Interest Form from (b) (7)(C)

**D. Release Agreement with (b) (7)(C)**

Contemporaneously with the execution of this Agreement, (b) (7)(C) is entering into a

Release Agreement with JHU APL, to which (b) (3) (A) OFCCP are parties. The execution of the Release Agreement by (b) (7)(C) is a condition precedent to (b) (7)(C) receiving any payment under this Agreement, (b) (7)(C) and OFCCP acknowledge and agree that if (b) (3) (A) fails to sign the Release Agreement or revokes it within seven (7) days of signing it she shall not be entitled to any payment hereunder.

**PART III: OFCCP (b) (3) (A) ADDITIONAL REMEDIES**

JHU APL agrees to continue and/or to implement the following corrective actions:

**A. Revision and Dissemination of Policies and Procedures to Ensure No Harassment, Intimidation, Coercion or Retaliation**

1. JHU APL will provide its written policy describing its procedures to eliminate harassment, intimidation, coercion and retaliation in the workplace of all employees who engage in any of the protected activities protected by the E.O. 11246 and it implementing regulations.
2. JHU APL will provide the revised language in Item Number 15 under *Policies and Responsibilities Section 2.11* titled *Progressive Discipline*, that changed “*Knowingly, maliciously, and falsely accusing another of discrimination, research, or engineering fraud*”, as an example of a serious violation subject to termination to remove the word “discrimination” so the policy states: “*Knowingly, maliciously, and falsely accusing another of research or engineering fraud.*”
3. JHU APL will provide its EEO policy, which includes the job title, room number and telephone number, and a screenshot of its EEO website, which includes the name, job title, room number, email address and telephone number, of the JHU APL official who is primarily responsible for the company’s EEO and affirmative action obligations and a detailed description of the process for employees to make complaints concerning allegations of discrimination, harassment, intimidation, or coercion based on race, color, religion, gender, national origin, disability, or veteran’s status.
4. JHU APL will continue its annual review, and revise as necessary its compensation policies and practices, and will include guidance in its Training described in Section C. Part III D of this Agreement, to eliminate and prevent any pay disparities and in all aspects of compensation in its workforce, to ensure that its employees are paid without regard to race, ethnicity or gender or engagement in activities protected by the Executive Order and its implementing regulations. JHU APL will ensure proper application of its self-monitoring procedures relative to APL’s pay systems, including monitoring salary adjustments outside of the salary review cycles, as defined in its compensation policies and procedures.

**B. Procedures to Ensure the Complaint Intake Process is Free of Influence**

JHU APL will continue to annually notify all employees in writing of JHU APL’s non-tolerance of retaliation for filing an EEO complaint, opposing any act or practice made



unlawful under the Executive Order or exercising any other right protected by the Executive Order, (b) (3) (A) or any other law or regulation enforced (b) (3) (A) or OFCCP.

**C. Notice Posting**

JHU APL will continue to post (b) (3) (A) (attached as Attachment 3), in English, and now also in Spanish, informing employees of their rights. The (b) (3) (A) will remain posted in areas where they can be easily read and shall remain posted throughout the duration of this Agreement.

**D. Training**

1. JHU APL will provide at least two (2) hours of training on all federal equal employment opportunity laws, with a particular emphasis on the prohibitions against race, national origin and sex discrimination, harassment, and retaliation.
2. JHU APL will provide this training for all current line managers, employees with any responsibilities for hiring, preparing performance plans, and making transfer, promotion, and discharge decisions, including human resource personnel, and managers and supervisors involved in compensation decisions.
3. JHU APL agrees to have this training completed within five months from the date of the Conciliation Agreement, and this training shall be conducted by a qualified outside consultant, in-house counsel or law firm consented to by the OFCCP (b) (3) (A).
4. Within ten (10) business days of completion of this training, JHU APL will provide OFCCP (b) (3) (A) with a signed attendance list, the date and duration of training, an outline of the training, and a certification of completion.
5. New hires into the positions described above and current employees newly transferred or promoted into these positions shall receive this training online/via DVD within one month of such person's first day in the position.

**PART IV: OFCCP (b) (3) (A) REPORTING PROVISIONS**

**A. JHU APL agrees to provide two written reports and documents to:**

1. Tracie Brown, District Director, Pittsburgh District Office, U.S. Department of Labor, Office of Federal Contract Compliance Programs, William S. Moorhead Federal Building, 1000 Liberty Avenue, Room 2103, Pittsburgh, PA 15222.

(b) (3) (A)

**B. JHU APL agrees to provide written reports and documents:**

1. Within fifteen (15) days of its receipt of a completed Interest Form and Release Agreement from the Complainants, JHU APL will provide OFCCP (b) (3) (A) a copy of

the documentation that was returned to JHU APL, and within 105 calendar days of the Effective Date of this Agreement JHU APL must submit a copy of the checks sent to the Complainants. If the Complainants do not return a completed Interest form and Release Agreement to JHU APL within the thirty-day period, JHU APL shall notify OFCCP (b) (3) of such within fifteen (15) days of expiration of the thirty-day period, along with documentation of the date of delivery of the Notice and the Interest Form, and any additional relevant documentation.

2. Within the prescribed timeframes, JHU APL must submit all required documents and/or information referenced in Section C.
- C. For the duration of this Agreement, JHU APL agrees to maintain such records and data as are necessary to demonstrate its compliance with this Agreement and to verify that the reports submitted are accurate.
- D. For the duration of this Agreement, JHU APL will retain in an orderly fashion the following records:
1. All informal and formal EEO complaints;
  2. All appeals to EEO findings;
  3. All records and databases that include the items described in #1 and #2;
  4. All documentation related to the placement of employees via transfer, demotions, promotions, reclassifications, and terminations, who filed EEO complaints; and all other records in accordance with its obligations under 20 C.F.R. §§ 1602, 1607.

**PART V: SIGNATURES**

This Conciliation Agreement is hereby executed by and between OFCCP (b)(3)(A) and JHU APL located at 11100 Johns Hopkins Road, Laurel, Maryland.

(b)(7)(c)

JACQUELINE E. WELLS  
General Counsel  
The Johns Hopkins University  
Applied Physics Laboratory LLC

12/12/14  
DATE

(b)(7)(c)

MICHELE HODGE  
Regional Director  
Office of Federal Contract  
Compliance Programs

1/21/15  
DATE

(b)(3)(A)