

# **CONCILIATION AGREEMENT**

Between

**THE U.S. DEPARTMENT OF LABOR**

**OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS**

And

**MERIT SERVICES, INC.**

## **I. PRELIMINARY STATEMENT**

The Office of Federal Contract Compliance Programs (OFCCP) began an evaluation of the Merit Services, Inc. (Merit) establishment located at 1600 West Merit Way, South Jordan, UT 84095 in November 2013. OFCCP shared its findings of hiring discrimination with Merit in a Pre-Determination Notice (PDN) dated October 31, 2018, and additional findings in a Notice of Violations (NOV) issued on September 26, 2019, that allege Merit failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order), and its implementing regulations at 41 Code of Federal Regulations (C.F.R.) Chapter 60.

In the interest of resolving the violations without engaging in further investigation and in exchange for sufficient and valuable consideration described in this document, OFCCP and Merit enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

The attachments to this Agreement are deemed incorporated into this Agreement.

## **II. GENERAL TERMS AND CONDITIONS**

1. In exchange for Merit's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246 based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Merit violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Merit's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents pertinent to Merit's compliance with this Agreement. Merit will permit access to its premises during normal business hours for these purposes and

will provide OFCCP with all hard copy or electronic reports and documents it requests, including those specified in this Agreement.

3. Nothing in this Agreement relieves Merit 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), the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA), their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. Merit and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246.
5. Merit agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the correction.
8. This Agreement becomes effective on the day it is signed by the Southwest and Rocky Mountain Regional Director (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after Merit submits its final progress report required in Section VII, below, unless OFCCP notifies Merit in writing before the expiration date that Merit has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines Merit has met all of its obligations under the Agreement.
11. If Merit violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-1.34 will govern:
    - i. OFCCP will send Merit a written notice stating the alleged violations and summarizing any supporting evidence.

- ii. Merit shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
  - iii. If Merit 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.
  - iv. In the event of a breach of this Agreement by Merit, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms agreed to in the Agreement.
- b. Merit may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, and/or other appropriate relief for violating this Agreement.
12. Merit denies any violation of the Executive Order, Section 503 or VEVRAA, and there has not been an adjudication on the merits regarding any such violation.
13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
14. Each party shall bear its own fees and expenses with respect to this matter.
15. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
16. All references to "days" in this Agreement, and in the Timeline included as Attachment B, are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

### **III. DISCRIMINATION VIOLATION**

**VIOLATION:** OFCCP found that Merit was not in compliance with 41 C.F.R. § 60-1.4(a)(1). Specifically, OFCCP alleges that Merit discriminated in the hiring of male applicants for Production Operator II positions during the period of November 18, 2011 through November 18, 2013 (Review Period). OFCCP's analysis showed a statistically significant hiring disparity with a shortfall of 46 male applicants.

**REMEDY:** Merit agrees to ensure equal employment in its hiring practices for Production Operator II positions and provide an appropriate remedy to the class of rejected male applicants to include back pay, hiring, and certain benefits. Merit will also provide EEO training as discussed below. Merit agrees to take the following corrective actions in accordance with the deadlines set forth in the Timeline (Attachment B).

#### **IV. REMEDY FOR DISCRIMINATION VIOLATION**

##### **1. Settlement Fund**

- a. **Settlement Fund Account.** In the interest of resolution, Merit agrees to pay a total of \$295,000 (Settlement Fund) to resolve the alleged violations set forth above. The settlement fund is a negotiated amount that represents estimated back pay and accrued interest. Merit's share of taxes on the portion representing back pay (such as federal, state and/or local taxes and Federal Income Contributions Act (FICA)) is not part of the Settlement Fund. Merit will be responsible for all employer-paid taxes and all banking account fees.
- b. **Specific Settlement Fund Amounts.** The total Settlement Fund amount includes \$270,000 in back pay and \$25,000 in interest to resolve the violation above.
- c. **Total Amount to be Allocated.** The back pay and interest amounts of the Settlement Fund will be equally distributed among individuals included on the Final List of Eligible Class Members. Individual distributions will include appropriate deductions for each individual's share of payroll deductions required by law on the portion representing back pay only, such as federal (FICA and Federal Unemployment Tax Act (FUTA)), state or local taxes.

##### **2. Notice Process**

- a. **Notice Documents.** Merit will distribute Notice Documents contained in Attachment C, D and E to Affected Class Members identified in Attachment A. The Notice Documents include a Notice, Release of Claims, and Information Verification Form. The Notice Documents will make clear the information about the settlement is being provided by or on behalf of the U.S. Department of Labor.
- b. **Notice to Affected Class Members.** By the deadline set forth in the Timeline, Merit will provide initial notice to the Affected Class Members on Attachment A by regular first-class mail. Merit will send copies of the Notice, Verification Form, Release, and a postage-paid return envelope to the mailing address for each Affected Class Member.
- c. On a biweekly basis, Merit will notify OFCCP of all letters returned as undeliverable, and will re-mail the Notice to Affected Class Members for whom OFCCP provides an updated address within five days of receiving it from OFCCP.

In instances where an address or email were not provided to OFCCP, Merit agrees to make at least three attempts to contact by phone the Eligible Class Members listed in the Agreement (Attachment A). Merit will mail the notice document for all Class Members with whom they were able to find an address or email. Merit will report these efforts to OFCCP and include the phone number used, date and time of the contact and the results of contact on a bi-weekly basis. This will be in accordance with the timeline, until the list is exhausted, or before 60 days of the effective date.

Per the Timeline, Merit will provide OFCCP the names of Affected Class Members who did not respond to the Notice Documents, or who failed to return both forms or to sign a form as required. OFCCP may attempt to locate those Affected Class Members who did not respond, and may reach out to Affected Class Members who did not submit both forms or who failed to sign a form. OFCCP will provide Merit with information for a second mailing in accordance with the Timeline. Merit will send a second mail distribution to all Affected Class Members who did not respond to the first mailing.

- d. **Notice Deadline.** The final deadline for any Affected Class Member to respond to the Notice will be prominently set forth in the Notice documents and in any other materials distributed regarding this Agreement, and will clearly explain that failure to respond by this deadline will result in a forfeiture of any relief provided by this Agreement.
- e. **Final List of Eligible Class Members.** The Final List will include all Eligible Class Members who timely respond to the Notice and submit the Verification Form and Release by the deadline set forth in the Notice and whose eligibility is verified by OFCCP. All Eligible Class Members on the Final List will be eligible for a payment, and those who indicate an interest in employment will be eligible to be considered for a job pursuant to section 4 of this Agreement. Merit will draft the Final List and submit it to OFCCP by the date set forth in the Timeline. OFCCP shall make the final determinations of eligibility but will consider Merit's input and negotiate in good faith to resolve any dispute about the Final List. OFCCP will return the approved Final List to Merit by the date specified in the Timeline.

### 3. Allocation of Financial Remedy

- a. **Class Members to Receive Payments.** The Settlement Fund will be equally distributed to all Eligible Class Members (identified in Attachment A) who timely respond to the Notice Process explained below, and whose eligibility is verified (Eligible Class Members). These individuals will be listed on the Final List of Eligible Class Members (Final List).
- b. **Payments to Eligible Class Members.** Merit will issue checks as the sole payor in an equal amount to each Eligible Class Member by the date set forth in the Timeline. Merit will provide OFCCP with documentation of all payments made, all payments

returned as undelivered, and all checks not cashed by the deadline set forth in the Timeline. Any check that remains uncashed 180 days after the initial date the check was mailed to the Eligible Class Member will be void. With respect to any uncashed funds, Merit will make a second distribution to all Eligible Class Members who cashed their first check within the required period if the remaining uncashed amount would result in a second payment of \$20.00 or more to such Eligible Class Members. Merit will mail the second distribution to those Eligible Class Members by the date specified in the Timeline.

If the total amount of the uncashed funds would result in a second payment of less than \$20.00, Merit will use those uncashed funds to provide training in equal employment opportunity to its personnel in addition to the training it is obligated to provide in the Revised Hiring Process.

**c. Tax Payments, Forms and Reporting.** Merit will pay its share of social security withholdings, and any other tax payments required by law from additional funds separate from the Settlement Fund. Merit shall mail to each Eligible Class Member an IRS Form W-2 for that portion of the payment representing back pay and an IRS Form 1099 for that portion of the payment representing interest. These IRS forms will be provided to the Eligible Class Members either at the time of payment with the settlement checks or at the end of the year. No Eligible Class Member will be required to complete a W-4 or W-9 in order to receive payments under this Agreement.

**d. Documentation of Payments.** By the deadline set forth in the Timeline, Merit will provide OFCCP with documentation of all payments made to Eligible Class Members, including the amounts paid, the date payment was sent, the date the check was cashed, and any uncashed or returned checks. In the event of a second distribution, Merit will provide similar documentation on the second distribution.

#### **4. Employment**

a. As positions become available at Merit, Merit will consider employment of only those qualified Eligible Class Members who (1) timely return a completed Interest Form expressing interest in employment with Merit as a Production Operator II, (2) timely return a signed Release, (3) are not currently employed by Merit at any establishment, (4) complete an application, and (5) meet Merit's job requirements (including any pre- and post-offer screening requirements<sup>1</sup>) that were in place during the review period until forty-six (46) Eligible Class Members are hired or until the list of Eligible Class Members expressing an interest in employment is exhausted, whichever occurs first.

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<sup>1</sup> Pre-offer requirements include at least 18 years of age and graduated from high school (or equivalent). Post offer requirements include background check, drug test, vision test and verification of eligibility to work in the US.

- b. Eligible Class Members will be considered in the order Merit receives their Verification form expressing an interest in a job. If Merit receives more than one response on any given day, those Eligible Class Members will be considered for employment based on the date of their original application with the earliest application being considered first.
- c. Merit must initiate its hiring of Eligible Class Members immediately based on the responses of the Eligible Class Members interested in employment and must complete its hiring obligations under this section within 24 months of the Effective Date of this Agreement to the extent it has a sufficient number of open Production Operator II positions available during the 24-month period. If Merit is not able to hire 46 Eligible Class Members or exhaust the list of Eligible Class Members expressing an interest in employment within 24 months, OFCCP may extend the term of this Agreement until Merit satisfies its hiring requirement.
- d. Eligible Class Members will be allowed up to five (5) days to accept an employment offer and up to fourteen (14) days to report for work after receiving a written or emailed job offer from Merit. The Eligible Class Members hired into Production Operator II positions pursuant to this Agreement will be paid the current wage rate for the Production Operator II position, and must be provided with the same benefits and opportunity to earn overtime and shift differentials as other Production Operator II employees.
- e. Merit will make at least two attempts by phone and two additional attempts by email to contact qualified Eligible Class Members who have expressed an interest in employment with Merit. If a qualified Eligible Class Member fails to respond to Merit's efforts to contact them, Merit will contact the next qualified Eligible Class Member on the Final List of Eligible Class Members in accordance with section 4.b. below. Similarly, any Eligible Class Member who fails to satisfy any of the conditions set forth in section 4.a. above, shall be disqualified from employment with Merit pursuant to this Agreement, however, Merit still must place 46 Eligible Class Members interested in a position. Eligible Class Members who are offered employment with Merit must report to work on the day mutually agreed upon by Merit and the Eligible Class Member. If the Eligible Class Member fails to report to work, Merit may rescind the job offer and shall have no obligation to hire the applicant pursuant to this Agreement but still has to meet the placement obligations.
- f. All Eligible Class Members hired pursuant to this Agreement will be subject to Merit's normal employment policies and procedures applicable to employees, including performance management and employee conduct.

## **V. NON-MONETARY REMEDIES**

1. **Compliance.** Merit will ensure that all applicants are afforded equal employment opportunities. Merit agrees to continue and/or to implement the corrective actions detailed below.
2. **Revised Hiring Process.** Merit will revise, in writing and as appropriate, the practices, policies and procedures it uses to select applicants for Production Operator II positions (Revised Hiring Process). The Revised Hiring Process requires Merit to do following:
  - a. Determine the essential functions of the Production Operator II positions; the minimum qualifications including required skills and certifications; and the criteria to be used at each step of the hiring process, including any application screens, interviews, tests, credit checks, reviews of criminal history, reference checks, drug testing, or any other selection procedure.
  - b. Ensure that its job-related qualification standards for Production Operator II positions reflect the duties, functions, and competencies of the position;
  - c. Ensure all policies and qualification standards are uniformly applied to all applicants;
  - d. Ensure that Merit documents specific reason(s) for rejection at all stages of the hiring process including any skills and/or qualifications an applicant is lacking;
  - e. List clearly on its recruiting materials and job postings the minimum qualifications, including required skills and certifications; and
  - f. Ensure records are kept and maintained on the hiring process.
3. **Training.** In accordance with the Timeline, Merit will train all individuals involved in any way in recruiting, selecting, or tracking applicants for Production Operator II positions at Merit on the Revised Hiring Process. The training will include instruction on the proper implementation of the recruitment, tracking and selection procedures; neutral application of the specified qualifications and criteria that will be used at each step in the hiring process; procedures to be used to document the decisions made at each step in the hiring process; and the procedures to be used to ensure that documents are retained in accordance with 41 C.F.R. § 60-1.12(a) and Part 60-3. Merit will meet with local management and all individuals responsible for the selection process and review its equal employment obligations and nondiscrimination policies related to hiring. Specific attention will be directed to ensure that male applicants, who benefit from the provisions of this Agreement, are not retaliated against.
4. **Recordkeeping and Retention.** Merit will implement or revise, as appropriate, procedures to ensure that applicants are tracked and decisions are documented at each step in the hiring process. Merit will implement or revise, as appropriate, procedures to ensure that documents are retained in accordance with 41 C.F.R. 601.12(a) and Part 60-3.



5. **Monitoring.** Merit agrees to monitor Production Operator II selection rates at each step of its selection process, including (as applicable) the initial application screening, the phone interview, each interview step, as well as any pre- and post-offer screening steps such as tests and background checks. If Merit adds or changes a step in its process, the additional step will also be analyzed. When Merit finds that a selection procedure or qualification has an adverse impact, as defined in 41 C.F.R. § 3.4D, on the hiring of applicants of a particular race or gender, Merit will eliminate the procedure, identify a legitimate business need for the selection procedure, choose an alternative procedure, or validate the procedure in accordance with the Uniform Guidelines on Employee Selection Procedures codified at 41 C.F.R. Part 60-3. Merit agrees to maintain and make available to OFCCP records concerning the impact of the selection process for Production Operator II at Merit. The records will include the race and gender of applicants, hires, and the selection procedures utilized. Merit will retain this information until the expiration of this Agreement or as long as required by the regulations, whichever is later.

## **VI. TECHNICAL VIOLATIONS AND REMEDIES**

1. **VIOLATION:** OFCCP found that for the period of November 18, 2011 through at least November 18, 2013, Merit failed to maintain and have available for inspection records that would disclose the impact that its tests and other selection procedures had on employment opportunities, as required by 41 C.F.R. § 60-3.4A, and 41 C.F.R. § 60-3.15.

Specifically, OFCCP found that Merit did not evaluate the impact of its tests on employment or promotional opportunities and did not keep records of the results of all such tests that were necessary to analyze whether the tests resulted in adverse impact.

**REMEDY:** Merit must establish and implement procedures to collect, maintain and have available all personnel and employment records in accordance with the requirements of 41 C.F.R. § 60-1.12.

2. **VIOLATION:** OFCCP found that for the period of November 18, 2011 through at least November 18, 2013, Merit failed to maintain and have available for each job adverse impact analyses of the selection processes for hiring, promotions and terminations in accordance with the requirements of 41 C.F.R. § 60-3.4 and 41 C.F.R. § 60-3.15A.

Specifically, Merit did not maintain and have available for each job information on adverse impact of the selection process for that job. Consequently, in its 2013 affirmative action program, Merit neither found nor addressed the selection disparities that resulted from its personnel procedures, and did not maintain and have available records or other information showing which individual components of the total selection process had an adverse impact.

**REMEDY:** Merit must ensure that it maintains and has available for inspection records or other information that will disclose the impact that each component of its selection process has upon employment opportunities, including all pre- or post-employment tests at the facility, as required by 41 C.F.R. § 60-3.4A, and 41 C.F.R. § 60-3.15.

## **VII. REPORTS AND MONITORING**

- 1. Progress Reports.** Merit will submit four progress reports covering each six-month period of this Agreement. The first progress report shall be due seven months from the Effective Date and will cover the 6-month period beginning with the Effective Date. The second report shall cover the successive six-month period, and shall be submitted 30 calendar days after the close of that six-month period. The same schedule will repeat for the second year of reporting for reports three and four respectively. Merit must submit the documents and reports described below to:

Lauren Blunck  
Denver Assistant District Director  
1244 Speer Blvd., Suite 540  
Denver CO, 80204

Merit will submit the following in each annual progress report:

- a. Documentation of monetary payments to all Eligible Class Members, unless otherwise provided. The documentation will include the names of Eligible Class Members who were paid, and, for each Eligible Class Member, the number and the amount of the check and the date the check cleared the bank. Merit will provide OFCCP with copies of all canceled checks upon request.
- b. Documentation of specific hiring activity for Eligible Class Members who were hired into the Production Operator II job title in accordance with this Agreement, including name, date of hire, job title hired into, and rate of pay,
- c. For Eligible Class Members who were considered for employment but were not hired, the reason for non-placement along with all relevant documentation reflecting why an Eligible Class Member was not hired.
- d. Information for Eligible Class Members who have terminated during the progress reporting period to include name, hire date, termination date and reason for termination.
- e. The total number of job seekers, applicants, and hires and the breakdown by race, gender and ethnic group of applicants and hires for Production Operator II positions during the reporting period.
- f. For each applicant not hired, the specific reason for their rejection, such as the specific skill or qualification the applicant lacks.
- g. For Production Operator II positions, the results of Merit's analysis as to whether its total selection process has adverse impact, as defined in 41 C.F.R. § 60-3.4D, on those

members of groups set forth in 41 C.F.R. § 60-3.4B. For purposes of the adverse impact analysis for the Production Operator II jobs only, Merit will not include hires made of Eligible Class Members pursuant to this Agreement in that analysis. OFCCP may analyze a period longer than 6 months to determine if adverse impact exists.

- h. For each case in which the total selection process has an adverse impact, as defined in 41 C.F.R. § 60-3.4D, the results of Merit's evaluation of the individual components of the selection process for adverse impact.
- i. The actions taken by Merit upon determining that any component of the selection process has an adverse impact on members of groups set forth in subparagraphs 1 and/or 2 above.
- j. Merit will continue submitting the information in subsections 1-3 above in the four bi-annual progress reports until OFCCP determines that the settlement monies have been disbursed and either the offer/hire obligations have been met or the list of Eligible Class members interested in a Production Operator II position at Merit has been exhausted, whichever occurs first. If complete documentation is provided in one progress report, it need not be resubmitted in a subsequent progress report.

OFCCP will review each progress report and respond in writing if the report is insufficient within 60 days of receipt.

- 2. Reports on Revised Hiring Process and Training.** In each Progress Report Merit will report on all revisions it has made to its hiring process pursuant Part V of this Agreement. Merit will also provide documentation of training, including the date of the training, who provided the training, the number of people attending the training, and the job titles of the people attending the training.
- 3. Recordkeeping.** Merit agrees to retain all records relevant to the violations cited in Sections III and VI above. Merit will retain the records until this Agreement expires or for the period required by the regulations, whichever is later.
- 4. Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts Merit's final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify Merit in writing within sixty (60) days of the date of the final progress report that Merit has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies Merit within the allotted time that it has not fulfilled all of its obligations, this Agreement will automatically be extended until the date that OFCCP determines Merit has met all of its obligations under the Agreement.

## **VIII. SIGNATURES**

The person signing this Agreement on behalf of Merit personally warrants that he or she is fully authorized to do so, that Merit has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Merit.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Merit Services, Inc., 1600 West Merit Way; South Jordan, 84095.

(b) (6), (b) (7)(C)

Fred P. Lampropoulos  
Chairman and Chief Executive Officer  
Merit Medical Systems, Inc.  
South Jordan, UT 84095

DATE: 7/28/21

(b) (6), (b) (7)(C)

Melissa L. Speer  
Regional Director  
Southwest and Rocky Mountain Region

DATE: 7-29-2021

Attachments:

- A. List of Affected Employees
- B. Timeline
- C. Notice to Affected Class Members
- D. Information Verification Form
- E. Release of Claims Under Executive Order 11246

**ATTACHMENT A**  
**LIST OF AFFECTED CLASS MEMBERS**

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## ATTACHMENT B

### TIMELINE

Company Name: Merit Services Inc. Effective Date of Conciliation Agreement:		07/28/2021
Action Required	Number of Days	Due Date
Merit will notify male class members found on Attachment A within 45 days of the effective date of the Agreement.	45	09/11/2021
Merit shall initiate its hiring obligations of eligible male classmembers after 45 days of the effective date of this Agreement.	45	09/11/2021
Merit will provide OFCCP with new contact information found for Eligible Class Members and the results of its efforts to include the phone number used, date and time of contact and results on a bi-weekly basis	60	09/26/2021
Within 60 calendar days of the effective date of the Agreement, Merit will revise, in writing, the practices, policies and procedures it uses to recruit, track and hire applicants for Production Operator II Positions.	60	09/26/2021
Merit will notify OFCCP within 75 calendar days of the effective date of all male class member letters returned as undeliverable and provide a list to OFCCP of those class members who have not yet responded to the Notice and/or have not returned a fully executed Interest Form and Release.	75	10/11/2021
OFCCP will provide updated contact information to Merit within 15 calendar days of OFCCP's receipt of the list of non-responsive classmembers.	90	10/26/2021
Within 90 calendar days of the effective date of the Agreement, Merit will fully implement the Revised Hiring Process and will train all individuals involved in any way in recruiting, selecting or tracking applicants for Production Operator II Positions.	90	10/26/2021
Merit will mail a second Notice, Interest Form, Release, and postage paid return envelope to male class members OFCCP located within 15 days of receipt of the updated contact information from OFCCP.	105	11/10/2021
Class member deadline to be Entitled to Relief (Signed Interest Form and Release)	180	01/24/2022
Merit will provide OFCCP a list of those class members who responded, along with copies interest forms and releases.	190	02/03/2022
Within 205 calendar days of the effective date of Agreement, OFCCP will review with Merit and approve the final list of eligible male class members	205	02/18/2022
Merit will disburse monetary settlement for the male class members within 230 calendar days of the effective date of the agreement.	230	03/15/2022
Merit will provide OFCCP bank verification of payments made to Eligible Hiring Class Members.	260	04/14/2022
Uncashed checks are void	300	05/24/2022
Second disbursement to class members if needed (30 days after the checks are voided).	330	06/23/2022
Merit's first monitoring report is due to OFCCP (summary data for all applicants and hires)	180	01/24/2022
Merit's second monitoring report is due to OFCCP (summary data for all applicants and hires)	360	07/23/2022
Merit's third monitoring report is due to OFCCP (summary data for all applicants and hires)	420	11/05/2022
Merit's fourth monitoring report is due to OFCCP (summary data for all applicants and hires)	560	03/25/2023
Terminate of CA in 2 years from the effective date	730	07/28/2023

## ATTACHMENT C

### NOTICE TO AFFECTED CLASS

Dear [name]:

Merit Services, Inc. (Merit) and the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) have entered into a Conciliation Agreement (Agreement) to remedy alleged violations of Executive Order 11246 (E.O. 11246) that OFCCP found during a compliance review of Merit's Salt Lake City, Utah facility located at 1600 West Merit Way; South Jordan, 84095. OFCCP's analysis showed statistical disparities in Merit's hiring between men and women between November 18, 2011 and November 18, 2013. Merit has not admitted to any violation of E.O. 11246 and there has not been any adjudicated finding. OFCCP and Merit entered into the Agreement to resolve the matter without resorting to further legal proceedings.

You have been identified as one of the individuals who applied to a position located in the Production Operator II position at Merit during the above-reference timeframe. Under the Agreement, you may be eligible to receive a payment representing a pro rata share of back pay and interest (less deductions required by law). Under the terms of the Agreement, it may take up to [number] months from the date of this letter before you receive your payment. In order to be eligible for a payment, you must complete, sign, and return the enclosed Information Verification and Release of Claims Forms. These forms should be mailed as soon as possible to the address below. **In order for you to be eligible to participate in the settlement, your documents must be received by [insert date by which class members must respond].**

[Name]  
[Position]  
[Merit]  
[Address]

You may use the enclosed postage-paid return envelope to return the completed and signed Information Verification and Release of Claims Forms.

If you have any questions, you may call NAME PHONE NUMBER, or email OFCCP Compliance Officer (b) (7)(C), (b) (6)@dol.gov. Your message will be returned as soon as possible.

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENT(S) TO MERIT BY [insert date by which class members must respond], YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT.**

Sincerely,

***[Name]***

Enclosures

Information Verification Form  
Release of Claims Form

## ATTACHMENT E

### INFORMATION VERIFICATION FORM

**You must complete this form in full in order to be eligible for the monetary payment under the terms of the Conciliation Agreement (Agreement) between Merit Services, Inc. and the Department of Labor's Office of Federal Contract Compliance Programs. Please print legibly, except for the signature.**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Nos.: Home \_\_\_\_\_ Cell \_\_\_\_\_ Work \_\_\_\_\_

Email \_\_\_\_\_

Notify Merit at the address below if your address, email address or phone number changes within the next twelve (12) months.

For purposes of this settlement, it is necessary to verify your gender below:

Male ☐ Female ☐

Social Security Number (to be used for tax purposes only): \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Are you currently an employee of Merit? Yes ☐ No ☐

Please indicate below whether you are currently interested in employment in a Production Operator II position with Merit. If you complete, sign, and return this Information Verification and Employment Interest Form, you remain eligible for the monetary payment whether or not you are interested in employment at this time.

- ☐ Yes, I am still interested in employment with Merit in a Production Operator II position at Merit's facility located in the Salt Lake City area.
- ☐ No, I am not currently interested in employment with Merit in a Production Operator II position.

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO THE ADDRESS BELOW BY [DATE CLASS MEMBERS MUST RESPOND], YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT AND WILL NOT BE ELIGIBLE FOR EMPLOYMENT WITH MERIT.**



*[Name]*  
*[Address]*

I, (print name)\_\_\_\_\_, certify the above is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## ATTACHMENT F

### RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

*PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY FROM THE SETTLEMENT.*

This Release of Claims (Release) under Executive Order 11246 is a legal document. This document states that in return for Merit Services, Inc. (Merit) paying you money, you agree that you will not file any lawsuit against Merit for allegedly violating Executive Order 11246 related to its hiring practices. It also says that Merit does not admit it violated Executive Order 11246. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money.

In consideration of payment of at least \$ \_\_\_\_\_ (less deductions required by law) by Merit to me, which I agree is acceptable, I (printname) \_\_\_\_\_ agree to the following:

#### I.

I hereby waive, release and forever discharge Merit, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246 which I or my representatives (*heirs, executors, administrators, or assigns*) have or may have which relate in any way to the selection of applicants for the Production Operator II position at Merit on the basis of my gender at any time prior to the date of my signature on this Release. By signing this agreement, I agree that I have been made whole for any claim that could have been brought under Executive Order 11246 relating to my non-selection with Merit through the Effective Date of this Release.

#### II.

I understand that Merit denies that it treated me unlawfully or unfairly in any way and that Merit entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) and agreed to make the payment described above to resolve alleged disparities in hiring from November 2011 through November 2013 and to resolve the matter without further legal proceedings in the compliance review initiated by OFCCP on November 14, 2013. I further agree that the payment of the aforesaid sum by Merit to me is not to be construed as an admission of any liability by Merit.

**III.**

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors and seek legal advice. I further declare that I have decided of my own free will to sign this Release.

**IV.**

I understand that if I do not sign this Release and return it to the contact listed on the enclosed Notice to Affected Class Members, by the deadline listed on the Notice, I will not be entitled to receive any payment (less deductions required by law) from Merit.

IN WITNESS WHEREOF, I have signed this document on this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature