

Conciliation Agreement  
Between the  
U.S. Department of Labor Office of Federal Contract Compliance Programs  
and  
Neuronetics, Inc.

**I. Preliminary Statement**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Neuronetics, Inc. (Neuronetics) establishment located at 3222 Phoenixville Pike, Malvern, PA 19355 beginning on October 18, 2021. OFCCP found that Contractor failed to comply with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA) and their respective implementing regulations at 41 CFR Parts 60-1 and 60-300.

OFCCP notified Neuronetics of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on August 12, 2022.

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

**II. General Terms and Conditions**

1. In exchange for Neuronetics' fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violation(s) alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Neuronetics violates any provision of this Agreement, as set forth in Paragraph 10, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Neuronetics' compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Neuronetics 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 OFCCP requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves Neuronetics of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. Neuronetics 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.

5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This Agreement 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 corrections.
7. This Agreement becomes effective on the day it is signed by the District Director (Effective Date).
8. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement will expire sixty (60) days after Neuronetics submits its final progress report required in Section IV, below, unless OFCCP notifies Neuronetics in writing before the expiration date that Neuronetics 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 that Neuronetics has met all of its obligations under the Agreement.
10. If Neuronetics violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-300.63 will govern:
    - i. OFCCP will send Neuronetics a written notice stating the alleged violation(s) and summarizing any supporting evidence.
    - ii. Neuronetics 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 Neuronetics 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 Neuronetics, 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 in the Agreement.
  - b. Neuronetics may be subject to the sanctions set forth in 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.

11. Neuronetics does not admit any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
12. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
13. 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 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. Technical Violations and Remedies**

1. **VIOLATION:** During the January 1, 2020 through June 30, 2021 review period, Neuronetics failed to immediately list all employment openings with either the state workforce agency job bank or a local employment service delivery system (ESDS) serving the location where the openings occurred, in violation of 41 CFR 60-300.5(a) 2-6.

**REMEDY:** Neuronetics will list all employment openings as they occur with an appropriate employment service delivery system (either the state workforce agency job bank or a local ESDS) where the openings occur, in a manner and format that will allow the ESDS to provide priority referrals of protected veterans to Neuronetics, as required by 41 CFR 60-300.5(a)2-6. With its initial listing, and as subsequently needed to update the information, Neuronetics will advise the employment service delivery system that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state, and provide the employment service delivery system with the name and address of each of its hiring locations within the state and the contact information for the contractor official responsible for hiring at each location, in accordance with 60-300.5(a)4. Should any of the information in the disclosures change since it was last reported to the ESDS, Neuronetics shall provide updated information simultaneously with its next job listing.

2. **VIOLATION:** During the period January 1, 2020 through June 30, 2021, Neuronetics failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified protected veterans, document these activities, assess their effectiveness, and document its review, in violation of 41 CFR 60-300.44(f). Specifically, Neuronetics could not provide documentation or other evidence to demonstrate that it had engaged in effective outreach and recruitment commensurate with the number of hiring opportunities it had during the review period.

**REMEDY:** Neuronetics will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified protected veterans, such as those described at 41 CFR 60-300.44(f)(2). Neuronetics will annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-300.44(f)(3). Neuronetics will document all activities it undertakes to comply with this section, in accordance with 41 CFR 60-300.44(f)(4).

#### **IV. OFCCP Monitoring Period**

1. **Recordkeeping.** Neuronetics agrees to retain all records relevant to the violations cited in Section III above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. Neuronetics will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

2. **Contractor Reports.**

Neuronetics agrees to furnish OFCCP with the following reports during the Monitoring Period. Each report will contain the documentation specified according to the dates scheduled:

- a. Progress Report 1: Due on January 30, 2023 covering the period of July 1, 2022 through December 31, 2022.
- b. Progress Report 2: Due on January 30, 2024 covering the period of January 1, 2023 through December 31, 2023.

Progress Reports 1 & 2 will include the following:

- i. Copies of relevant correspondence from each of the organizations or other documentation of outreach efforts used during the reporting period in efforts to recruit qualified protected veterans;
- ii. A list of all employment openings that occurred; a) documentation to confirm these openings were listed with the appropriate ESDS (either the state

workforce agency job bank or a local ESDS) where the openings occurred, in a manner and format that allows the ESDS to provide priority referrals of protected veterans to Neuronetics; b) in the first report, documentation that Neuronetics advised the appropriate ESDS, with its initial listing, that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state; and c) in the first report, documentation to confirm that, in its initial listing, Neuronetics provided the ESDS with the name and address of each of its hiring locations within the state, and the contact information for the Neuronetics official responsible for hiring at each location. Documentation of the above should include copies of the written notification(s) to the ESDS. Should any of the information in the disclosures change since it was last reported to the ESDS, Neuronetics shall provide updated information simultaneously with its next job listing;

- iii. Copies of all responses received from each employment service delivery system used during the report period; and
- iv. Documentation to verify that Neuronetics undertook appropriate outreach and positive recruitment activities reasonably designed to effectively recruit qualified protected veterans and conducted an assessment of its efforts. This documentation should include a copy of the sections of Neuronetics' AAP that list: a) Its outreach activities with supporting documentation; b) An assessment of the effectiveness of each activity; and c) A copy of Neuronetics' annual assessment of the effectiveness of the totality of its outreach activities, as required by 41 C.F.R. § 60-300.44(f)(3). Neuronetics should note that 41 C.F.R. § 60-300.44(f) lists examples of several types of organizations that may be enlisted for assistance and support in recruiting and developing on-the-job training opportunities for protected veterans.

Neuronetics will submit reports to District Director Brooke Sensenig, 2 Hopkins Plaza, Suite 600, Baltimore, MD 21201 or to email addresses

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (preferred). Neuronetics and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports Neuronetics provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely held, and the Neuronetics believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Neuronetics will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will promptly notify Neuronetics of the FOIA request and provide Neuronetics an opportunity to object to disclosure. OFCCP will withhold disclosure of such reports to the maximum extent allowable by law.

- 3. **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 Neuronetics' final progress report as set

forth in Section II, Paragraph 9 above. If OFCCP fails to notify Neuronetics in writing within sixty (60) days of the date of the final progress report that Neuronetics 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 Neuronetics within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Neuronetics has met all of its obligations under the Agreement.

## V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Neuronetics, Inc., 3222 Phoenixville Pike, Malvern, PA 19355.

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

Keith Sullivan  
President & CEO  
Neuronetics Inc.  
Malvern, PA 19355

DATE: 8/23/2022

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

Brooke Sensenig  
District Director  
Mid-Atlantic Region

DATE: 08/23/2022

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

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

Compliance Officer  
Mid-Atlantic Region

DATE: 8-23-22