

Conciliation Agreement  
Between the  
U.S. Department of Labor Office of Federal Contract Compliance Programs  
And  
Intelligent Waves, LLC

**I. Preliminary Statement**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Intelligent Waves LLC (Intelligent Waves) establishment located at 1801 Robert Fulton Drive, Suite 440, Reston, VA 20191, beginning on November 5, 2021. OFCCP found that Intelligent Waves failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order) and its respective implementing regulations at 41 Code of Federal Regulations (CFR) Parts 60-1, 60-2, and 60-3.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and Intelligent Waves 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 Intelligent Waves' fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Intelligent Waves 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 Intelligent Waves' compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Intelligent Waves 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 Intelligent Waves 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. Intelligent Waves and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246.
5. Intelligent Waves 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 corrections.
8. This Agreement becomes effective on the day it is signed by the 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 Intelligent Waves submits its final progress report required in Section VIII, below, unless OFCCP notifies Intelligent Waves in writing before the expiration date that Intelligent Waves 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 Intelligent Waves has met all of its obligations under the Agreement.
11. If Intelligent Waves violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-1.34 will govern:
    - i. OFCCP will send Intelligent Waves a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. Intelligent Waves 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 Intelligent Waves is unable to demonstrate that it has not violated the Agreement, or if OFCCP's 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 Intelligent Waves, 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. Intelligent Waves 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. Intelligent Waves neither admits nor denies any violation of the Executive Order, Section 503 or VEVRAA, and their implementing regulations at 41 Chapter 60, nor has there 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.
14. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than OFCCP.
15. Each party shall bear its own fees and expenses with respect to this matter.
16. 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.
17. 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 preliminarily found that Intelligent Waves is not in compliance with the nondiscrimination requirements of the equal opportunity clause of Executive Order 11246 Section 202 and 41 CFR 60-1.4(a)(1). OFCCP identified a statistically significant disparity (equivalent to a shortfall of five (5)), not otherwise explained, in the hiring of Black Test Instrumentation Technician applicants on the basis of their race.

### **IV. Financial Remedy**

1. **Settlement Amount.** Intelligent Waves agrees to a settlement amount of \$435,368.12 to resolve the specific violation set forth above. The total settlement amount includes \$410,296.14 in back pay and \$25,071.98 in interest (Settlement Fund).

## 2. Allocation

- a. **Total Amount to be Allocated.** The back pay and interest amounts of the Settlement Fund will be distributed among the eligible applicants as explained in this Section. The settlement fund is an amount that represents estimated back pay and accrued interest. The Contractor's share of statutory taxes/contributions on the portion representing back pay, such as Federal Income Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) or other state and/or local taxes, is not part of the Settlement Fund. Contractor will be responsible for any banking account fees related to the Settlement Fund. Individual shares will include appropriate deductions for each individual's share of payroll deductions required by law on the portion representing back pay only.
- b. **Affected Applicants Eligible to Receive Payments.** The Settlement Fund will be distributed to all Affected Applicants (identified in Attachment A) who timely respond to the Notice Process as explained below, and whose eligibility is verified (hereinafter, Eligible Applicants). These individuals will be listed on the Final List of Eligible Applicants (Final List). The process of determining the Final List is explained below under the Notice Process. OFCCP will determine the final amount for each Eligible Applicant based on the formula or other terms provided in this Agreement. All Eligible Applicants who comply with the obligations set forth in this Agreement are entitled to their share of the monetary settlement regardless of whether they are currently interested in employment with Intelligent Waves.
- c. **Payments to Eligible Applicants.** OFCCP will provide Intelligent Waves a list of the payment amount for each Eligible Applicant on the Final List by the date set forth on the Timeline. Intelligent Waves will issue checks or make electronic payments to each Eligible Applicant in the stated amount, along with appropriate tax reporting forms (such as Internal Revenue Service (IRS) Forms W-2 and 1099) by the date set forth on the Timeline. OFCCP will receive timely documentation of all payments made and any payments returned undelivered, or any checks not cashed, as set forth on the Timeline. Any check that remains uncashed 180 days after the date the check was mailed to the Eligible Applicant will be void. With respect to any uncashed funds, Intelligent Waves will make a second distribution, in equal amounts, to all Eligible Applicants who cashed their first check if the amount of such remaining unclaimed funds would result in payment of \$30.00 or more (before adjustments) to each such Eligible Applicant.
- e. **Tax Payments, Forms and Reporting.** Intelligent Waves shall pay its share of social security withholdings, and any other tax payments required by law from additional funds separate from the Settlement Fund. Intelligent Waves shall mail to each Eligible Applicant 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 Applicants either at the time of payment, electronically or with the settlement checks, or at the end of the year. No Eligible Applicant will be required to complete an IRS Form W-

4 or W-9 in order to receive payments under this settlement.<sup>1</sup> Pursuant to the Tax Cuts and Jobs Act (TCJA) OFCCP will report to the IRS via a form 1098-F when an employer (or individual) is required to pay fines, penalties, restitution, remediation, or other costs in excess of \$50,000 as a result of a violation of law or an investigation or inquiry into a violation of law.<sup>2</sup>

### 3. Notice Process

- a. **OFCCP and Intelligent Waves Obligations under the Notice Process.** The Notice Process set forth in this Agreement is intended to provide Affected Applicants a meaningful opportunity to understand their rights and obligations and act on them in a timely manner. As specified in the Timeline and as otherwise necessary to fulfill this Agreement, Intelligent Waves and OFCCP will regularly meet and confer in person, or by phone, email, and/or virtual conference, on the notice process to determine how best to carry out the Notice provisions of this Agreement, and to decide whether any activity, deadline or document should be modified. Any in person meeting will be require at least three weeks' notice. OFCCP and Intelligent Waves agree not to unreasonably withhold consent to reasonable modifications proposed by either party.
- b. **Notice Documents.** Intelligent Waves will distribute Notice Documents to Affected Applicants identified in Attachment A consistent with the sample Notice Documents contained in Attachment C. The Notice Documents may include a Notice, Release of Claims and Information Verification and Employment Interest Forms. The Notice Documents may also include other materials such as standard OFCCP or U.S. Department of Labor materials, instructions or a cover sheet, job applications, or other information that better enables Affected Applicants to understand their rights and obligations and act on them in a timely manner. 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. As specified in the Timeline and as otherwise necessary to fulfill this Agreement, the parties will meet and confer on any reasonable modifications of the sample Notice Documents or additions to the materials distributed by Intelligent Waves, if proposed by either party.
- c. **Timeline.** Attachment B sets forth the agreed Timeline for Notice and for the parties' other obligations under this Agreement. The parties will meet and confer on any reasonable modifications to the Timeline proposed by either party.

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<sup>1</sup> IRS guidance states that an employer can assume a single deduction in the absence of a W-4 form. *See 26 CFR 31.3402(f)(2)-1(a)*.

<sup>2</sup> The IRS issued its implementing regulations in January 2021.

<https://www.federalregister.gov/documents/2021/01/19/2021-00741/denial-of-deduction-for-certain-fines-penalties-and-other-amounts-related-information-reporting>

- d. **Search for Affected Applicants.** OFCCP shall provide Intelligent Waves with complete contact information in its possession or its authority to obtain on the Affected Applicants by the date set forth in the Timeline.
- e. **Distribution of Mail Notice to Affected Applicants.** Intelligent Waves will provide the Initial Notice, Release of Claims, and Information Verification and Employment Interest Forms by regular first-class mail. Intelligent Waves will send copies of all of the Notice Documents as defined above, including a postage-paid return envelope, by first class mail, to the best available mailing address for each Affected Applicant, by the date set forth in the Timeline. If envelopes from the initial mail notice are returned with forwarding addresses, Intelligent Waves will re-mail the Notice Documents within five (5) days of receipt of the forwarding address.

Based on the response to the initial mail notice, the parties will meet and confer by the date set forth in the Timeline to assess the results of the initial mail notice and to ensure that the second round of mail notice maximizes the potential response rate. A second mail notice will be sent to Affected Applicants with valid addresses who fail to respond to the first mail notice unless the parties agree otherwise.

- f. **Distribution of Notice by Other Means.** Intelligent Waves shall work with the OFCCP to develop a recommended plan for Notice by other means in addition to first class mail.
- g. **Notice Deadline.** The final deadline for any Affected Applicant to respond to the notice is set forth in the Timeline. The parties will prominently display this deadline on all materials they distribute in paper or online form regarding this Agreement, and explain that failure to respond by this deadline will result in a forfeiture of any relief provided by this Agreement.
- h. **Technical Assistance.** The parties will timely respond to any inquiries from Affected Applicants using information consistent with this Agreement and the Notice Documents and will document all inquiries and the result. OFCCP will provide contact information for individuals to contact OFCCP regarding this Agreement. The parties will prominently display this contact information on all materials they distribute in paper or online form regarding this Agreement. Intelligent Waves will provide OFCCP contact information to any Affected Applicant with questions or concerns.
- i. **Exchange of Information Regarding Affected Applicants.** Intelligent Waves and OFCCP will timely exchange information regarding Affected Applicants, including updated contact information and the results of any technical assistance provided.
- j. **Final List of Eligible Applicants.** The Final List will include all Affected Applicants who timely respond to the Notice and submit the Information Verification Form and Release of Claims by the deadline set forth in the Timeline and whose eligibility is verified by OFCCP. The parties will establish the Final List by the date

set forth in the Timeline. The parties will meet and confer on any outstanding issues or questions regarding the Final List. Either party may identify potentially eligible Applicants who may have been erroneously excluded from the original or any subsequent list. OFCCP shall make the final determinations of eligibility but will make every effort to negotiate in good faith to resolve any dispute about the Final List. Intelligent Waves will provide to OFCCP any information necessary to determine the Final List.

- k. **Documentation of Payments.** By the deadline set forth in the Timeline, Intelligent Waves will provide OFCCP with copies of cancelled checks or electronic documentation of all payments to Eligible Applicants, including the amounts paid, the date payment was sent, the date payment was received or the check cashed, and any uncashed or returned checks. In the event of a second distribution, Intelligent Waves will provide similar documentation on the second distribution.
- l. **Intelligent Waves' Expenses.** Intelligent Waves will pay all expenses associated with carrying out its duties pursuant to this Section, from funds separate and apart from the amount designated in this Agreement for the Settlement Fund.

## V. **Additional Individual Relief**

### 1. **Job Opportunities**

- a. **Description of Job Opportunities.** As vacancies occur in the Test Instrumentation Technician job title (or any renamed job title for this position), Intelligent Waves shall make bona fide job offers with retroactive seniority to Eligible Applicants who have: (1) expressed interest in employment using the Information Verification and Employment Interest form; (2) meet the minimum qualifications for the Test Instrumentation Technician position (or any renamed job title for this position); and (3) who are not currently employed in the job at issue by Intelligent Waves, until five (5) Eligible Applicants are hired or the list of Eligible Applicants is exhausted, whichever comes first. Until that time, these Eligible Applicants will have priority over all other candidates for hire into the Test Instrumentation Technician position (or any renamed job title for this position). As vacancies occur in the Test Instrumentation Technician position (or any renamed job title for this position), Intelligent Waves shall contact the Eligible Applicants with a written job offer in the order in which they submitted their Information Verification and Employee Interest Form and Release of Claims Form, or, if the Forms were received on the same day, in the order of their original application date.

The report-to-work date for Eligible Applicants hired pursuant to this Agreement shall be no later than fourteen (14) days after the date the written job offer is accepted. The Eligible Applicant must report to work on the day designated or provide Intelligent Waves notice of good cause for their absence on or before that date. If good cause is provided, the Eligible Applicant must report to work within five (5) days of the original designated start date. Otherwise, Intelligent Waves may

withdraw the job offer and shall be under no obligation to hire the Eligible Applicant under this Agreement, but remains obligated to hire until five (5) Test Instrumentation Technician positions are filled or the list of Eligible Applicants is exhausted, whichever comes first.

Intelligent Waves agrees to pay Eligible Applicants hired under this provision at least the current entry level wage for Test Instrumentation Technician positions and provide all regular and on-the-job training currently provided to employees in that position.

- b. **Reporting.** For the Test Instrumentation Technician job title (or any renamed job title for this position), Intelligent Waves will document the job offers and hires, including job offers made, reasons for rejection, and Eligible Applicants hired and terminated during the monitoring period as set forth in Section VIII, OFCCP Monitoring Period, below.

## **VI. Modifications to Employment Practices and Other Non-Monetary Relief**

1. **Review of Selection Procedures.** Intelligent Waves will evaluate its selection procedures for Job Group 3 - Technicians to ensure that they do not result in unlawful discrimination. Specifically, Intelligent Waves will evaluate its hiring process for Job Group 3 - Technicians to ensure equal access to opportunities for all eligible and willing applicants and employees, regardless of sex, sexual orientation, gender identity, race/ethnicity, color, national origin, and/or religion, as required by Executive Order 11246, as amended.
  - a. Intelligent Waves will create a job description and selection process for the Test Instrumentation Technician position that describes the essential functions, the basic written qualifications which are objective, non-comparative, and job related, and the criteria used in each step of the hiring process, including any application steps, screens, interviews, or other selection procedures.
  - b. Intelligent Waves will list clearly on its recruiting materials and job postings the minimum qualifications, if any, for the Test Instrumentation Technician position.
2. Intelligent Waves will ensure all policies and qualification standards are uniformly applied to all applicants.
3. **Senior HR Official.** Intelligent Waves will choose a Senior Human Resources Official (HR Official), with experience applicable to the industry for the purposes of evaluating its policies, procedures, and practices related to the hiring process for its Job Group 3 - Technicians (or any renamed job group or renamed job titles for positions found in Job Group 3 - Technicians) to ensure that hiring decisions are made without regard to the protected status of applicants.

The HR Official will evaluate the policies and procedures Intelligent Waves currently uses to hire and compensate individuals in Job Group 3 - Technicians positions. The



HR Official will conduct an on-site visit to the work location and use professional standards for job analyses to gain an understanding of the jobs and applicable policies. The HR Official will thoroughly evaluate the interview process and applicant tracking system, including:

- a. Within sixty (60) days after the Effective Date of this Agreement, the HR Official will submit to Intelligent Waves and OFCCP a proposal that describes the methodology to be used in the evaluation. Upon receipt of the proposal, Intelligent Waves and OFCCP will negotiate in good faith any amendments thereto.

The proposal will estimate the time necessary to conduct a comprehensive evaluation of Intelligent Waves' hiring practices and write a report containing the HR Official's findings and recommendations. The proposal will outline provisions for the implementation and effectiveness of the HR Official's recommendations. The evaluation and recommendations will cover the following areas:

- i. Procedures to recruit, screen, interview, select, reject, and hire applicants for Job Group 3 - Technicians positions (or any renamed job group or renamed job titles for positions found in Job Group 3 - Technicians) without regard to race/ethnicity, sex, sexual orientation, gender identity, color, national origin, and religion in compliance with Executive Order 11246, as amended.
- ii. Evaluation of recruitment efforts (methods and sources) for Job Group 3 - Technicians and recommendations for additional strategies to increase the representation of qualified Black applicants.
- iii. Procedures to limit subjectivity and implicit bias in the hiring process, including identifying objective qualifications and criteria to be used to select and/or eliminate from further consideration persons expressing an interest in employment at each step of the hiring process (i.e., application screen, interview, post-offer screen, etc.).
- iv. Procedures to ensure that persons expressing an interest in employment are tracked and dispositions are recorded and documented consistently at each step in the hiring process.
- v. Procedures to ensure that each step of the total hiring process is analyzed and that information on individual components of the process are collected, maintained and available. This will include for example, information on any knockout questions, data management techniques, artificial intelligence, algorithms, automated systems, or other technology-based selection procedures used in the recruitment and/or the total selection and hiring process.

- vi. Procedures to ensure that documents are retained in accordance with 41 CFR 60-1.12(a) and Part 60-3.
  - vii. Procedures to train all employees involved in the hiring process on the policies and practices.
  - viii. Procedures to ensure that adverse impact analyses are conducted in accordance with 41 CFR Part 60-3, including an evaluation of the individual components and qualifications, if statistical disparities exist.
- b. Within sixty (60) days of the conclusion of the HR Official's evaluation, Intelligent Waves will submit a report to OFCCP to include the following:
- i. A description of the evaluation conducted by the HR Official.
  - ii. A summary of the HR Official's findings regarding current policies and practices related to recruitment and hiring of Job Group 3 - Technicians.
  - iii. The HR Official's findings and recommendations regarding each of the items set forth in Paragraph 3 above, as well as any other items included in the HR Official's proposal.
  - iv. Any additional recommended actions or revisions to the policies, practices, and procedures for Job Group 3 - Technicians to ensure equal opportunity for all persons expressing an interest in employment.
- c. Within ninety (90) days of concluding the evaluation, Intelligent Waves will train all individuals involved in recruiting, selecting, and tracking applicants for Job Group 3 - Technicians positions (or any renamed job title for this position) on any revisions to its recruitment and selection processes or policies. The training will include instruction in the following: proper implementation of the recruitment, tracking and selection procedures; neutral application of the specified qualifications and criteria used at each step in the hiring process; and the procedures to be used to ensure documents are retained in accordance with 41 C.F.R. 60-1.12(a) and Part 60-3. Within ten (10) days of completing the training, Intelligent Waves will provide OFCCP with documentation to confirm that the training was completed.

Intelligent Waves shall submit the following information to OFCCP:

- i. name and title of the trainer,
- ii. date(s), time(s), and location(s) of the training,
- iii. all materials distributed to the participants of the training, and

- iv. name and title of each employee who attended the training.

## VII. Technical Violations and Remedies

1. **VIOLATION:** During the period November 5, 2019 through August 31, 2021, Intelligent Waves failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60-1.12(a) and (e) and 60-3.4(A) and (C). Specifically, Intelligent Waves failed to keep applicant, testing, interview, hiring or other general personnel or employment records which would disclose the impact which its tests and other selection procedures, including any artificial intelligence, algorithms, automated systems, or other technology-based selection systems, have upon employment opportunities of persons by identifiable race, sex, or ethnic group.

**REMEDY:** Intelligent Waves shall keep and preserve complete and accurate personnel and employment records, in accordance with 41 CFR 60-1.12(a) and (e), and 60-3.4(A) and (C), and will keep and preserve those records for a period of not less than two years from the date of the making of the record or the personnel action, whichever occurs later. However, if Intelligent Waves has a total workforce of 150 or fewer employees or does not have a government contract of at least \$150,000, the minimum record retention period shall be one year from the making of the record or the personnel action, whichever occurs later, as permitted by 41 CFR 60- 1.12(a). Intelligent Waves will evaluate the impact that its tests and other selection procedures, including any artificial intelligence, algorithms, automated systems, or other technology-based selection systems, have upon employment opportunities of persons by identifiable race, sex, or ethnic group, in accordance with 60-3.4(A) and (C).

2. **VIOLATION:** During the period November 5, 2019 through August 31, 2021, Intelligent Waves failed to develop and implement an internal audit and reporting system that periodically measures the effectiveness of its total affirmative action program, as required by 41 CFR 60-2.17(d). Specifically, Intelligent Waves failed to design and implement an internal audit and reporting system to monitor all aspects of personnel activity.

**REMEDY:** Intelligent Waves shall develop and implement an internal audit and reporting system that periodically measures the effectiveness of its total affirmative action program, as required by 41 CFR 60-2.17(d). Specifically, Intelligent Waves will monitor records of all personnel activity, including applicant and hiring activity at all levels to ensure its nondiscriminatory policy is carried out; require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained; review report results with all levels of management; advise top management of program effectiveness; and submit recommendations to improve unsatisfactory performance.

3. **VIOLATION:** Intelligent Waves failed to preserve its AAP and documentation of good faith efforts for the immediately preceding AAP year, as required by 41 CFR 60-1.12(b). Specifically, Intelligent Waves failed to preserve its documentation of outreach and recruitment for females for job groups 2B - Technical Professionals and 2C - Engineers & Developers.

**REMEDY:** Intelligent Waves shall preserve its AAP and documentation of good faith effort for the immediately preceding AAP year, as required by 41 CFR 60-1.12(b).

## VIII. OFCCP Monitoring Period

1. **Recordkeeping.** Intelligent Waves agrees to retain all records relevant to the violations cited in Sections III and VII 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. Intelligent Waves will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever date is later.
2. **Intelligent Waves Reports.**
  - a. **Schedule and Instructions.** Intelligent Waves agrees to furnish OFCCP with one progress report during the Monitoring Period according to the following schedule:
    - i. **Progress Report 1:** The time period for the first report will be September 1, 2023, through February 29, 2024, and the report due date will be April 1, 2024.

Intelligent Waves will submit this report to Marlene Williams at **(b) (6), (b) (7)(C)** [@dol.gov](mailto:marlene.williams@dol.gov). Intelligent Waves and OFCCP have a common interest in the information being provided in the report pursuant to this Agreement. To the extent the report Intelligent Waves provides in accordance with this Agreement are customarily kept private or closely held, and Intelligent Waves believes should remain confidential under Exemption 4 of FOIA in the event of a FOIA request, Intelligent Waves will provide such report to OFCCP marked as “Confidential.” In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents to the extent possible under the law.

- b. **Reports on Job Offers.** In the Progress Report, Intelligent Waves will report on all job offers and hires made to date, pursuant to the Agreement until all of the job opportunities for the reviewed establishment are filled or the list of Eligible Applicants expressing interest in the positions is exhausted. This includes:

- i. Documentation of all job offers made to Eligible Applicants, including the names of individuals offered jobs, the date of their application, the date of the offer, the date the offer was accepted or rejected, and the starting pay.
  - ii. Documentation of Eligible Applicants who expressed interest in job offers who did not successfully complete the application process, including the names of these individuals, the date of their application, if any, and the reason Intelligent Waves determined they did not successfully complete the application process. This includes individuals who did not receive job offers because all available positions were filled.
  - iii. Documentation of Eligible Applicants who were hired and terminated during the life of this Agreement and the reason for the termination.
  - iv. Documentation of the number of available positions remaining to be filled and the number of Eligible Applicants still on the list.
  - v. Documentation of the start dates for Eligible Applicants who were hired.
  - vi. If Intelligent Waves has not filled all of the positions specified in this Agreement by the Progress Report date, documentation of the reason this action is not complete and the good faith efforts being taken and planned to complete it.
  - vii. If Intelligent Waves fails to meet its hiring obligations under this Agreement by the close of the Monitoring Period, OFCCP reserves its rights under Section II, Paragraphs 9 and 10 of this Agreement to extend the monitoring period or to pursue enforcement remedies.
- c. **Reports on Modifications to Personnel Practices.** In the Progress Report, Intelligent Waves will report on all modifications of personnel practices made to date pursuant to Part VI of this Agreement and provide documentation of its compliance with the remedy provisions of this Agreement.
- d. **Reports on Technical Violations.** In the annual Progress Report, Intelligent Waves will report the following information for the Test Instrumentation Technician job title (or any renamed job title for this position):
- i. An applicant flow log containing the following information: the name, race, ethnicity (Hispanic or non-Hispanic), gender, referral source, job title applied for, application date, and if applicable, interview status, interview date, hire date, job title hired into, and/or other disposition. For all applicants not selected, the applicant flow log must identify the reason for non-selection. The applicant flow log must also identify the pass/fail stage in the selection process for each applicant, and any step or component of the selection process that has adverse impact;

- ii. A new hire log identifying for any such applicant who is hired the name, race, ethnicity (Hispanic or non-Hispanic), gender, job title hired into, and the date of hire;
  - iii. Documentation to confirm that Intelligent Waves developed and implemented an auditing system that periodically measures the effectiveness of its total affirmative action program, as required by 41 C.F.R. § 60-2.17(d);
  - iv. Documentation of outreach and recruitment undertaken to actively recruit females for job groups 2B - Technical Professionals and 2C - Engineers & Developers during the reporting period, including but not limited to copies of vacancy announcements and copies of any responses received from the organizations Intelligent Waves listed in its action-oriented programs.
  - v. Intelligent Waves will conduct an analysis of the total 12 months of applicant to hire data from progress reports #1 and report the findings of this analysis. This report must include, but is not limited to, a summary of the results of Intelligent Waves' statistical analysis, including any adverse statistical findings, as detailed in 41 CFR 60-3.4, and the actions taken to resolve them.
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 Intelligent Waves' final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify Intelligent Waves in writing within sixty (60) days of the date of the final progress report that Intelligent Waves 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 Intelligent Waves within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Intelligent Waves has: (a) met all of its obligations under the Agreement or (b) confirms that Intelligent Waves has not met its obligations and the parties have not reached an agreement to resolve this non-compliance.

**IX. SIGNATURES**

The person signing this Agreement on behalf of Intelligent Waves personally warrants that they are fully authorized to do so, that Intelligent Waves has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Intelligent Waves.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Intelligent Waves LLC, 1801 Robert Fulton Drive, Suite 440, Reston, VA 20191.

Type text here

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

\_\_\_\_\_  
Tony Crescenzo  
President and Chief Executive Officer  
Intelligent Waves LLC  
1801 Robert Fulton Drive, Suite 440  
Reston, VA 20191

DATE: Apr 20, 2023

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

\_\_\_\_\_  
Samuel Maiden  
Regional Director  
Mid-Atlantic Region

DATE: 04/21/2023

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

\_\_\_\_\_  
Marlene Williams  
Director of Outreach and Education  
Mid-Atlantic Region

DATE: April 20, 2023

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

\_\_\_\_\_  
Compliance Officer  
Arlington District Office  
Mid-Atlantic Region

DATE: Apr 20, 2023

**Attachments:**

- A. List of Affected Applicants
- B. Timeline
- C. Notice Documents

**ATTACHMENT A**

**List of Affected Applicants**

#	Applicant ID	Name
1	<b>(b) (6), (b) (7)(C)</b>	
2		
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## ATTACHMENT B – Timeline

ACTIVITY	DATE
Intelligent Waves Mails Notice Documents (First Mailing)	April 16, 2023
Deadline for Affected Applicants to Reply to Notice	May 16, 2023
Intelligent Waves and OFCCP meet to discuss results of initial mail notice and/or Contractor notifies OFCCP of undeliverable mailings and provides OFCCP with a list of individuals who have not responded to the first mailing (name and last known contact information)	May 26, 2023
OFCCP Provides Updated Contact Information to Intelligent Waves	June 5, 2023
Intelligent Waves Mails Notice Documents (Second Mailing)	June 15, 2023
Deadline for Affected Applicants to Reply to Second Notice	July 15, 2023
Intelligent Waves Provides List of its Determination of Eligible Applicants	July 30, 2023
OFCCP Reviews and Approves Final List and Distribution Amounts	August 14, 2023
Intelligent Waves Mails Back Pay Checks	August 29, 2023
Intelligent Waves Notifies OFCCP of Any Checks Returned as Undeliverable	September 23, 2023
OFCCP Provides Updated Addresses	October 3, 2023
Intelligent Waves Mails Back Pay Checks to New Addresses	October 13, 2023

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ACTIVITY	DATE
Distribution of Remaining Funds to Eligible Applicants	February 20, 2024
Intelligent Waves provides OFCCP with copies of cashed checks or electronic documentation from back pay disbursement to Eligible Applicants	March 21, 2024

**Additional Reporting Requirements**

ACTIVITY	DATE
OFCCP is provided with a copy of the Senior HR official's proposal, per Section VI, part 2(a)	60 days from the execution of the Conciliation Agreement
OFCCP is provided with a copy of the Senior HR official's evaluation	60 days from the conclusion of the Senior HR Official's evaluation
Intelligent Waves will train all individuals involved in recruiting, selecting, and tracking applicants for Job Group 3 – Technicians positions	90 days from the conclusion of the Senior HR Official's evaluation
Intelligent Waves will provide OFCCP with documentation to confirm that the training was completed.	10 days after the training is completed
Intelligent Waves will submit its first progress report	April 1, 2024
Intelligent Waves will submit its second progress report	October 1, 2024

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ATTACHMENT C-1

NOTICE TO AFFECTED CLASS

Dear [name]:

Intelligent Waves and the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) have entered into a Conciliation Agreement (Agreement) to remedy the violations of Executive Order 11246 (E.O. 11246), that OFCCP found during a compliance review of Intelligent Waves' 1801 Robert Fulton Drive, Suite 440, Reston, VA 20191 facility. OFCCP found that during the period of November 5, 2019 through August 31, 2021 (Review Period) Intelligent Waves did not comply with the nondiscrimination requirements of E.O. 11246 for hiring Blacks in Test Instrumentation Technician positions. OFCCP preliminarily found that there was a disparity in the hiring of Test Instrumentation Technician based on race. Intelligent Waves has not admitted to any violation of E.O. 11246, and there has not been any adjudicated finding that Intelligent Waves violated any laws. OFCCP and Intelligent Waves entered into the Agreement to resolve the matter without resorting to further legal proceedings. You have been identified as a qualified individual who applied for a Test Instrumentation Technician during that time period, but was not hired.

As part of this Agreement, you are eligible to receive a distribution of at least \$[XXX] less lawful payroll deductions. Under the terms of this Agreement it may take up to eight months from the date of this letter before you receive your distribution. In order to be eligible for a payment, you must complete, sign, and return the enclosed Information Verification and Employment Interest Form Verification and Release of Claims Form, if applicable. The form(s) 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]  
**Test Instrumentation Technician**  
[Intelligent Waves]  
[Address]

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

In addition to the monetary distribution, Intelligent Waves will be making job offers for Test Instrumentation Technicians to a limited number of individuals receiving this notification. It is not certain that you will receive a job offer. If you are still interested in employment with Intelligent Waves, please check the appropriate box on the enclosed Information Verification and Employment Interest Form. Those receiving this notice will be considered for Test Instrumentation Technician positions in the order that Intelligent Waves receives the Information Verification and Employment Interest Form expressing an interest in employment. All individuals hired pursuant to this Agreement will be provided with retroactive seniority for

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purposes of benefits. If you have any questions you may call [*name*] at [*company*] at [*phone number*], or OFCCP Compliance Officer (b) (6), (b) (7)(C) at (b) (6), (b) (7)(E) or (b) (6), (b) (7)(C)@dol.gov. Your call will be returned as soon as possible.

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO INTELLIGENT WAVES BY [*insert date by which class members must respond*], YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT OR TO BE CONSIDERED FOR A JOB OFFER.**

Sincerely,

*[Name]*

Enclosures

Information Verification and Employment Interest Form

Release of Claims Form

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ATTACHMENT C-2

INFORMATION VERIFICATION & EMPLOYMENT INTEREST FORM

You must complete this form in order to be eligible for the monetary payment and/or employment opportunities under the terms of the Conciliation Agreement (“Agreement”) between Intelligent Waves 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 Intelligent Waves at the address below if your address, email address or phone number changes within the next twelve months.

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

Please indicate below whether you are currently interested in employment in a Test Instrumentation Technician with Intelligent Waves. 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 Intelligent Waves as a Test Instrumentation Technician.

No, I am not currently interested in employment with Intelligent Waves as a Test Instrumentation Technician.

**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 OR TO BE CONSIDERED FOR A JOB OFFER.**

*[Name]*  
*[Address]*

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT C-3**

**RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246**

This Release of Claims (Release) under Executive Order 11246, as amended, is a legal document. This document states that in return for Intelligent Waves LLC (Intelligent Waves) paying you money, you agree that you will not file any lawsuit against Intelligent Waves for allegedly violating Executive Order 11246, as amended, in connection with its selection procedures for applicants for the Test Instrumentation Technician position. It also says that Intelligent Waves does not admit it violated any laws. 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 the payment of at least \$[XXX] (less deductions required by law) by Intelligent Waves to me, which I agree is acceptable, I, (print name) \_\_\_\_\_, agree to the following:

**I.**

I hereby waive, release and forever discharge Intelligent Waves, 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, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have had which relate to my nonselection for employment as a Test Instrumentation Technician on the basis of my race at any time through the effective date of 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, as amended, relating to my nonselection with Intelligent Waves through the Effective Date of this Release.

**II.**

I understand that Intelligent Waves denies that it treated me unlawfully or unfairly in any way and that Intelligent Waves 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 and to resolve the matter without further legal proceedings in the compliance review initiated by OFCCP on November 5, 2021. I further agree that the payment of the aforesaid sum by Intelligent Waves to me is not to be construed as an admission of any liability by Intelligent Waves.

**III.**

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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 Intelligent Waves.

IN WITNESS WHEREOF, I have signed this document on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

\_\_\_\_\_  
Signature

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