

# CONCILIATION AGREEMENT

Between

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

and

TakeCare Insurance Company  
415 Chalan San Antonio  
Tamuning, Guam 96913

## **PART I. PRELIMINARY STATEMENT**

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated TakeCare Insurance Company's (TakeCare) facility located at 415 Chalan San Antonio, Tamuning, Guam 96913, and found that TakeCare was not in compliance with Executive Order 11246, as amended ("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"); and their implementing regulations at 41 C.F.R. Section(s) 60-1, 60-2, 60-3, 60-4, 60-300 and 60-741. OFCCP notified TakeCare of the specific violations found and the corrective actions required in a Notice of Violation issued on December 2018. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and TakeCare enter this contract ("Agreement") and agree to all the terms stated below.

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

1. In exchange for TakeCare's fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violations described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Part III if TakeCare violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. TakeCare agrees that OFCCP may review its compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. TakeCare will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.

3. This Agreement does not constitute an admission by TakeCare of any violation of or noncompliance with any laws or of any other wrongdoing whatsoever, including but not limited to any violation of EO 11246, Section 503 of the Rehabilitation Act of 1973, as amended ("Section 503"), the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA") and their implementing regulations at 41 CFR Chapter 60, or other laws, nor has there been an adjudicated finding that Contractor violated any laws.
4. TakeCare understands that nothing in this Agreement relieves TakeCare of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, and other applicable equal employment laws.
5. TakeCare promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual: benefits from this Agreement, files a complaint or participates in any investigation or proceeding under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 C.F.R. § 60-1.32(a).
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
8. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement becomes effective on the day it is signed by the District Director of the San Jose District Office (the "Effective Date") unless the Regional Director or Director of OFCCP indicates otherwise within 45 calendar days of the date the District Director signs the Agreement.
10. This Agreement will expire sixty (60) days after TakeCare submits the final progress report required in Part IV below, unless OFCCP notifies TakeCare in writing prior to the expiration date that TakeCare has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines TakeCare has met all of its obligations under the Agreement.
11. If TakeCare violates this Conciliation Agreement,
  - A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:

- 1) If OFCCP believes that TakeCare violated any term of the Agreement while it was in effect, OFCCP will send TakeCare a written notice stating the alleged violations and summarizing any supporting evidence.
  - 2) TakeCare will have 15 days from receipt of such notice to demonstrate in writing that it has not violated the Conciliation Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
  - 3) If TakeCare 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.
  - 4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- B. TakeCare may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. § 60-741.66, 41 C.F.R. § 60-300.66 and/or other appropriate relief for violation of this Agreement.

### **PART III. SPECIFIC VIOLATIONS, REMEDIES AND CORRECTIVE ACTION**

#### **1. 41 CFR § 60-2.17(d) – INTERNAL AUDIT AND REPORTING – E.O. 11246**

**STATEMENT OF VIOLATION:** During the period of April 1, 2017 through March 31, 2018, TakeCare failed to develop and implement an Internal Audit and Reporting system that periodically measures the effectiveness of its total affirmative action program in accordance with the requirements of 41 CFR § 60-2.17(d).

**CORRECTIVE ACTION TAKEN:** TakeCare agreed with and is fully committed to maintaining a compliant internal audit and reporting system which periodically measures the effectiveness of their total affirmative action program, establishes an internal reporting on a scheduled basis, implements a review of report results at all levels of company management, and submits recommendations for program improvements to TakeCare's top management.

#### **2. 41 CFR § 60-300.44(h) – INTERNAL AUDIT AND REPORTING – VEVRAA**

**STATEMENT OF VIOLATION:** During the period of April 1, 2017 through March 31, 2018, TakeCare failed to develop and implement an Internal Audit and Reporting system that periodically measures the effectiveness of its VEVRAA affirmative action program (AAP) in accordance with the requirements of 41 CFR § 60-300.44(h).

**CORRECTIVE ACTION TAKEN:** TakeCare agreed with and is fully committed to maintaining and remaining compliant with the required audit and reporting system as well as with outreach to protected veterans, determine the degree to which their objectives were obtained, measure their compliance with their VEVRAA affirmative action program specific obligations, prepare an annual written assessment, and document the actions they took to comply, and retain these documents subject to recordkeeping requirements of 41 CFR § 60-300.80.

**3. 41 CFR § 60-741.44(h) – INTERNAL AUDIT AND REPORTING – SECTION 503**

**STATEMENT OF VIOLATION:** During the period of April 1, 2017 through March 31, 2018, TakeCare failed to develop and implement an Internal Audit and Reporting system that periodically measures the effectiveness of its Section 503 affirmative action program in accordance with the requirements of 41 CFR § 60-741. 44(h).

**CORRECTIVE ACTION TAKEN:** TakeCare agreed with and is fully committed to maintaining a compliant audit and reporting system to measure effectiveness of their Section 503 outreach to individuals with disabilities, determine the degree to which their objectives were obtained, measure their compliance with their affirmative action program specific obligations, prepare an annual written assessment, and document the actions they took to comply, and retain these documents subject to record keeping requirements of 41 CFR § 60-741.80.

**4. 41 CFR § 60-300.44(f) – OUTREACH AND RECRUITMENT – VEVRAA**

**STATEMENT OF VIOLATION.** During the period of April 1, 2017 through March 31, 2018, TakeCare 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)(2).

**CORRECTIVE ACTION TAKEN:** Technical Assistance provided resulted in TakeCare’s establishing a positive outreach relationship with Patriot Enterprises, LLC, Guam’s premier veteran’s recruitment, staffing and employment agency as part of their external outreach and positive recruitment activities to effectively recruit qualified protected veterans. TakeCare agreed with and is fully committed to maintaining and remaining compliant with the requirement to annually review its outreach and recruitment activities, assess their effectiveness, document all of their outreach activities undertaken to remain compliant, and maintain these records for a period of three years.

**5. 41 CFR § 60-300.44(j) – TRAINING**

**STATEMENT OF VIOLATION.** TakeCare failed to provide evidence they planned and conducted training of personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes to ensure that the commitments in

TakeCare's affirmative action program are implemented, in violation of 41 CFR § 60-300.44(j).

**REMEDY:** TakeCare will train all employees involved in the recruitment, screening, selection, promotion, disciplinary, and related processes to ensure that the commitments in TakeCare's affirmative action program are implemented in accordance with 41 CFR § 60-300.44(j). TakeCare must document this training.

#### **PART IV. REPORTS REQUIRED**

1. TakeCare will submit one report as described below to: OFCCP, Lynda Sakseangvirat, District Director, San Jose District Office, Pacific Region, at US Department of Labor – OFCCP, 96 North 3d Street, Suite 410, San Jose, CA 95112. TakeCare agrees to retain records pertinent to the violation(s) cited in Part III above and to the reports submitted in compliance with Paragraph 3, below. These records shall include data and information underlying the required reports, specifically, but not limited to all applications and personnel records. The records will be retained until the expiration of this Agreement or consistent with regulatory requirements, whichever is later.

#### **REPORT(S) DUE DATE**

#### **PERIOD COVERED**

July 15, 2020

June 28, 2019 – June 27, 2020

2. The report (except where indicated otherwise) shall include at least:

Violation #1 - #4: No reporting requirement.

Violation #5: Evidence that TakeCare conducted and documented training to ensure its AAP is implemented and all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes are appropriately trained in accordance with 60-300.44(j).

3. TakeCare will retain all records and data pertinent to the violations resolved by this Agreement and/or used to prepare required reports until this Agreement expires or as long as required by OFCCP's regulations, whichever date occurs later.

#### **PART V. SIGNATURES**

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and TakeCare Insurance Company, 415 Chalan San Antonio, Tamuning, Guam 96913.

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

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

Mr. Joseph Husslein  
TakeCare Insurance Company  
415 Chalan San Antonio  
Tamuning, Guam 96913

Ar

(b) (7)(C), (b) (7)(E)  
Compliance Officer  
Guam Field Office  
Pacific Region

DATE: 7/02/2019

DATE: 07/02/2019

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

Lynda C/ Sakseangvirat  
District Director  
San Jose, Hawaii Area, and Guam Field Offices

DATE: 07/02/2019