

**U.S. Department of Labor**

Office of Federal Contract Compliance Programs  
New Jersey District Office  
200 Sheffield Street, Room 102  
Mountainside, NJ 07092



**CONCILIATION AGREEMENT  
BETWEEN THE  
U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS  
AND  
OPEN TEXT INC.  
100 TORMEE DRIVE  
TINTON FALLS, NJ 07712  
OFCCP CASE NUMBER: R00209996**

**I. Preliminary Statement**

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated the Open Text Inc. facility located at 100 Tormee Drive, Tinton Falls, New Jersey ("Open Text"), beginning on December 19, 2018. OFCCP found that Open Text failed to comply with the 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"), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 ("VEVRAA"), and their respective implementing regulations at 41 C.F.R. Sections 60-1, 60-2, 60-3, 60-4, 60-300, and 60-741. OFCCP notified Open Text of the specific violations and the corrective actions required in a Notice of Violation ("NOV") issued on January 30, 2020. 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 Open Text enter into this Conciliation Agreement ("Agreement"), and the parties agree to all the terms therein.

**II. General Terms and Conditions**

1. In exchange for Open Text's fulfillment of all its obligations in the Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Open Text violates any provision of this Agreement, as set forth in Paragraph 9, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Open Text'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. Open Text 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 Open Text of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring non-discrimination or equal employment opportunity through affirmative action.

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4. Open Text 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 (the "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 Open Text submits its final progress report required in Section VIII, below, unless OFCCP notifies Open Text in writing before the expiration date that Open Text 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 Open Text has met all of its obligations under the Agreement.
10. If Open Text violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-1.34, 41 C.F.R. 60-300. 63 and/or 41 C.F.R. 60-741.63 will govern:
    - i. OFCCP will send Open Text a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. Open Text 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 Open Text 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 Open Text, 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.

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- b. Open Text may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, 41 C.F.R. 60-741.66, or 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.
11. Open Text neither admits nor denies 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

**Violation 1:** During the period July 1, 2017 through June 30, 2018, Open Text failed to collect and maintain personnel and employment records and conduct adverse impact analyses in accordance with the requirements of 41 C.F.R. § 60-1.12(a) and Part 60-3. Specifically, during the review period, Open Text did not preserve all records relating to the analyses of the impact of employee selection procedures, as required. Open Text failed to conduct an adequate adverse impact analyses required by 41 C.F.R. 60-3.15A and 60-3.4.

**Remedy 1:** Open Text will immediately ensure that its records are collected and maintained in accordance with the requirements of 41 C.F.R. § 60-1.12(a) and Part 60-3. Open Text will conduct adverse impact analyses on at least an annual basis for the purpose of determining whether adverse impact exists against applicants based on race, sex, or ethnic group in hiring, promotion, termination, and other personnel activities. These analyses will be done by job for each group constituting more than 2% of the labor force in the relevant labor area or 2% of the applicable workforce. If adverse impact is identified in the total selection process, Open Text will evaluate each individual component of the selection process for adverse impact. If adverse impact is found to exist in any of the

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individual components of the selection process, Open Text will validate each such component in accordance with the Uniform Guidelines on Employee Selection Procedures or utilize selection procedures, which do not result in adverse impact.

**Violation 2:** During the period July 1, 2017 through June 30, 2018, Open Text failed to include the Equal Employment Opportunity clause in its entirety or by reference in its subcontracts and purchase orders with its subcontractors and/or vendors, as required by 41 C.F.R. 60-1.4, 41 C.F.R. 60-300.5 and 41 C.F.R. 60-741.5.

**Remedy 2:** Open Text will immediately include the required Equal Employment Opportunity clause in all future subcontracts and purchase orders, either in its entirety or by reference.

**Violation 3:** During the period July 1, 2017 through June 30, 2018, Open Text failed to immediately list all employment openings with either the state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred in violation of 41 C.F.R. 60-300.5(a) 2-6.

**Remedy 3:** Open Text will list all employment openings as they occur with an appropriate employment service delivery system (ESDS) (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 Open Text, as required by 41 C.F.R. 60-300.5(a) 2-6. With its initial listing, and as subsequently needed to update the information, Open Text will also 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 Open Text official responsible for hiring at each location, in accordance with 41 C.F.R. 60-300.5(a)4. Should any of the information in the disclosures change since it was last reported to the ESDS, Open Text shall provide updated information simultaneously with its next job listing.

**Violation 4:** During the period July 1, 2017 through June 30, 2018, Open Text 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 C.F.R. 60-300.44(f). Specifically, Open Text did not enlist the assistance and support of appropriate organizations, which serve qualified protected veterans, in order to fulfill its commitment to provide meaningful employment opportunities for such veterans.

**Remedy 4:** Open Text 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 C.F.R. 60-300.44(f) (2). Open Text will annually review its outreach and recruitment activities, assess their effectiveness, and document this

review, in accordance with 41 C.F.R. 60-300.44(f)(3). Open Text will document all activities it undertakes to comply with this section, in accordance with 41 C.F.R. 60-300.44(f)(4).

**Violation 5:** During the period July 1, 2017 through June 30, 2018, Open Text failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, document these activities, assess their effectiveness, and document its review, in violation of 41 C.F.R. 60-741.44(f). Specifically, Open Text did not enlist the assistance and support of appropriate organizations, which serve qualified individuals with disabilities, in order to fulfill its commitment to provide equal employment opportunity for such individuals.

**Remedy 5:** Open Text will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities, such as those described at 41 C.F.R. 60-741.44(f)(2). Examples of additional types of outreach and positive recruitment activities include, but are not limited to:

- Entering into formal, written relationships with organizations to accomplish specified objectives, such as training, and/or referring job applicants with work experience or job skills that match or are related to existing and anticipated job vacancies;
- Creating internship programs for students with disabilities from local colleges and universities;
- Using the Workforce Recruitment Program (WRP) for students and graduates with disabilities to identify qualified temporary and permanent job candidates. See <http://wrp.jobs/employers/>;
- Participating in job fairs targeting qualified individuals with disabilities; and
- Using local disability service organizations or other resources identified by the contractor's existing Employee Resource Group (ERG) on disability to recruit qualified temporary and permanent job candidates.

Additional examples are in the text of the regulations.

Open Text will annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 C.F.R. 60-741.44(f)(3). Open Text will document all activities it undertakes to comply with this section, in accordance with 41 C.F.R. 60-741.44(f)(4).

#### IV. OFCCP Monitoring Period

1. **Recordkeeping.** Open Text agrees to retain all records relevant to the violations cited in *Sections 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. Open Text will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

2. **Open Text Reports.**

**Schedule and Instructions.** Open Text agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

Open Text will submit two (2) progress reports. The first progress report shall be due August 31, 2020 and will cover the period beginning July 1, 2019 through June 30, 2020. The second progress report shall be due August 31, 2021 and will cover the period beginning July 1, 2020 through June 30, 2021.

Open Text will submit the following in each progress report:

- a. The total number of applicants and hires for each job title or job group during the reporting period.
- b. For each job title or job group, the breakdown by applicable race, gender and ethnic group of all applicants and hires.
- c. For each job title or job group, the results of Open Text'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 subparagraph b, above.
- d. For each job title or job group, where adverse impact is indicated, the qualifications that Open Text used, if any, and the stage at which Open Text used the qualification(s), as a screening device.
- e. For each case where the total selection process has an adverse impact, as defined in 41 C.F.R. 60-3.4D, the results of Open Text's evaluation of the individual components of the selection process for adverse impact.
- f. The actions taken by Open Text, where action is appropriate, after determining that any component of the selection process has an adverse impact on members of groups set forth in subparagraph b, above.



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- g. Documentation of Open Text's inclusion of the Equal Employment Opportunity clause in its entirety or by reference in its subcontracts and purchase orders with its subcontractors and/or vendors.
- h. Documentation of Open Text's listing, on an ongoing basis, all employment openings, as defined by 41 C.F.R. 60-300.5(a) 2-6, with the state workforce agency or with the local ESDS, including a list of all vacancies. Proof that Open Text advised the ESDS that it is a federal contractor; and provided the ESDS with the contact information for the Open Text official responsible for hiring at each of its locations, in accordance with 41 C.F.R. 60-300.5(a) 4.
- i. Documentation of Open Text's annual review of the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified protected veterans. Documentation of each evaluation, including at a minimum the criteria used to evaluate the effectiveness of each effort and Open Text's conclusion as to whether each effort was effective.
- j. Documentation of Open Text's annual review of the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities. Documentation of each evaluation, including at a minimum the criteria used to evaluate the effectiveness of each effort and Open Text's conclusion as to whether each effort was effective.

Open Text will submit reports to Compliance Officer (b) (6), (b) (7)(E) at: (b) (6), (b) (7)(E). Open Text 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 Open Text provides in accordance with this Agreement are customarily kept private or closely-held, and Open Text believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Open Text will provide such reports to OFCCP marked as "Confidential." In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.

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

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## V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Open Text Inc., 100 Tormee Drive, Tinton Falls, New Jersey.

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

Brian Sweeney  
SVP/Chief HR Officer  
Open Text Inc.  
Tinton Falls, New Jersey

DATE Feb 27, 2020

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

Joanne Karayiannidis  
District Director  
New Jersey District Office  
OFCCP - Northeast Region

DATE 2/27/2020

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

Toxi Roane  
Assistant District Director  
New Jersey District Office  
OFCCP - Northeast Region

DATE 2/27/20

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

(b) (6), (b) (7)(E)  
Compliance Officer  
New Jersey District Office  
OFCCP - Northeast Region

DATE 2/27/20