Negotiated Agreement between the U.S. Department of Justice, Justice Management Division, and American Federation of State, County and Municipal Employees, Local 3097

September 12, 2012

CONTENTS OF THE AGREEMENT (JMD/LOCAL 3097)

Article 1
Parties and Purpose of Agreement

Section 1. Definitions

(a) This Agreement is made and entered into by the Justice Management Division, also referred to as the Employer, and Local 3097 of the American Federation of State, County and Municipal Employees, AFL-CIO, also referred to as the Union. The Employer and the Union are referred to collectively as the Parties.

(b) The Employer hereby recognizes Local 3097 of the American Federation of State, County and Municipal Employees, AFL-CIO, as the exclusive representative of all employees in the unit (as defined below). The Union recognizes the responsibilities of representing the interests of all such employees, without discrimination and without regard to Union membership, with respect to grievances, personnel policies, practices and procedures, or other matters affecting their general working conditions.

Section 2. Collective Bargaining Agreement

This Agreement (and such supplemental agreements as may be agreed upon as the result of negotiations required by law or higher authority, or negotiations undertaken with the consent of both Parties), constitute the Collective Bargaining Agreement (CBA) between the Employer and the Union pursuant to the Federal Service Labor-Management Relations Statute (the Statute or FSLMRS), existing or future laws, and the regulations of appropriate authorities.

Section 3. Definition of Unit

(a) The Federal Labor Relations Authority has certified the Union as the exclusive representative of the bargaining unit as follows:

(b) Included: All professional and non-professional employees of the Justice Management Division, U.S. Department of Justice, employed in the Washington, D.C. metropolitan area.

(c) Excluded: All management officials; supervisors, confidential employees, employees engaged in Federal personnel work in other than a purely clerical capacity, employees engaged in investigative, or security work which directly affects national security, and others excluded by statute, regulation, or action of the Federal Labor Relations Authority; employees described in 5 U.S.C. §7112(b); and employees on student or other temporary appointments of ninety (90) calendar days or less.

Section 4. Coverage of the Agreement

(a) This Agreement covers only those positions included in the bargaining unit. For purposes of this Agreement, the term “employee(s)” means bargaining-unit employees.

Article 2
Rights of the Employer

Section 1. Employer Rights

The Employer has the Management Rights as delineated in 5 U.S.C. §7106, including the right:

(a) To determine the mission, budget, organization, number of employees and internal security practices of the Employer;

(b) In accordance with applicable laws:

(1) to hire, assign, direct, layoff, and retain employees, or to suspend, remove, reduce in grade or pay, or to take other disciplinary action against such employees;

(2) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Employer's operation shall be conducted;

(3) with respect to filling positions, to make selection for appointments from among properly ranked and certified candidates for promotions, or any other appropriate source, and

(4) to take whatever actions may be necessary to carry out the mission of the Employer during emergencies.

Section 2. Elective Elements

(a) Nothing in this Article shall preclude the two Parties from negotiating:

(1) at the election of the Employer, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Employer will observe in exercising any authority under this Article; and

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such management officials.

(b) The Parties note that, pursuant to law, the Employer has rights set out in subsection 2(a) above as well as those set out in Section 1. While the law gives the Employer the discretion to negotiate those subsection 2(a) rights, the Parties recognize and agree that the Employer retains those rights unless it expressly waives them in this Agreement or in the future. The Employer's rights in Section 1 cannot be waived. This does not preclude the Parties from negotiating procedures which the employer will observe in exercising their authority, as well as appropriate arrangements for employees adversely affected by the exercise of any authority under law or this Agreement.

Article 3
Rights of Employees

Section 1. Statutory Rights

(a) Each employee shall have the right to form, join, or assist any labor organization or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided by 5 USC Ch. 71, such right includes the right:

(1) to act for a labor organization in the capacity of a representative, and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under the law. Employees shall not be encouraged nor be discouraged by any supervisor or management official from exercising this right.

Section 2. Employee Concerns

Each employee, or a Union representative on behalf of the employee, has the right to bring matters concerning any grievance, personal policy or practice, or other condition of employment to the attention of appropriate management or Union representatives in accordance with applicable laws, rules, regulations, established policies and this Agreement. For purposes of this section, personal concerns that affect the workplace may include, at the written request of the employee, personal concerns on performance ratings/appraisals received, supervisory counseling provided, or conduct improvement discussions. The Employer and Union representatives shall maintain the confidentiality of the communication as required by law, rule, regulation, established policies, Attorney General order, or Executive Order, unless the employee waives confidentiality in writing.

Section 3. Private Conduct

(a) The Parties agree that the private conduct of an employee (i.e., conduct detached from the workplace) is generally not of concern to the Employer. However such conduct may be grounds for disciplinary action in accordance with applicable laws and regulations.

(b) The Employer will not ask an employee to keep a record of any other employee's private conduct except when:

(1) the Employer has reasonable suspicion to believe that the employee's private conduct violates the Department of Justice's Standards of Conduct or otherwise constitutes grounds for disciplinary action; and

(2) the request is approved in writing by the Assistant Attorney General for Administration or his or her designee.

Section 4. Employee Information

(a) Employees have the right to receive a copy of the material relied upon to support the reasons for disciplining the employee or in making any other determination about the employee's rights, benefits, or privileges under Federal personnel programs.

(b) Consistent with 5 C.F.R. §293.104, supervisors shall, to the greatest extent practicable, collect any information in personnel records directly from the individual employee concerned. Consistent with the Privacy Act, 5 U.S.C. §552a, an employee may request the correction of any record that pertains to him or her and is maintained by the Employer.

(c) Each employee and/or his or her properly authorized representative will have access to their individual entire electronic Official Personnel Folder (eOPF) through a secure Internet connection. The employee also has the right to inspect any portions of any official documents in the Employer's possession that pertain directly to the employee, subject to the Employer's lawful authority to withhold such files. Upon written request the Employer shall explain any exercise of this authority. Also, in accordance with applicable laws and regulations, the employee may, print out or duplicate documents and other electronic Official Personnel Folder contents. Each employee shall have access, upon request, to statutes, regulations, rules, or orders pertaining to general personnel policies or practices of the Employer.

(d) Electronic Official Personnel Folders shall be maintained as prescribed by governing law, rules or regulations. Employees may request, pursuant to applicable government-wide regulations, amendments and/or additions to their official records. Each employee has the right to challenge any information about himself or herself and if it is incorrect, have it removed from the Folder and destroyed insofar as law and regulations of higher authority permit. The Employer shall not reveal any information about the employee to an outside party except in accordance with governing law and regulation or the employee's express written permission.

(e) The Employer, through its Human Resources Division, shall assist requesting employees in understanding governing personnel policies, regulations, and laws, as well as the provisions of this Agreement; and in obtaining information on benefits available to those in government service.

(f) Employees have the right to know their supervisory chain-of-command and to request their own and the office's current workload priorities.

Section 5. Privacy

(a) The Employer shall not photograph or videotape any employee without the employee's consent, except at events or gatherings at the Employer's facilities, at events or gatherings sponsored by the Employer, or as needed for security or as part of an official administrative or criminal investigation.

(b) All mail delivered to the workplace is presumed to be official mail, and its handling is to be consistent with DOJ Order 2400.3. In order to preclude the inadvertent opening of mail that is personal in nature, employees are urged to use a home address for personal mail. Employee electronic mail communications normally shall be held confidential and not subject to third party scrutiny, unless such scrutiny would be required to meet operational or security needs consistent with DOJ Order 2740.1A.

(c) The Employer shall not require employees to disclose information about their race, creed, color, sex, religion, national origin, age, physical or mental disability, sexual orientation,

marital or parental status, lawful political or Union affiliation, or genetic information. When the Employee has provided such information, the Employer shall not disclose such information without the employee's consent.

Section 6. Employee Disclosures

(a) Pursuant to 5 U.S.C. §2302(b)(8)(A):

(1) Each employee has the right under law to disclose information that he or she reasonably believes evidences a violation of any law, rule, or regulation or is gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense, or the conduct of foreign affairs.

(2) The Employer shall not take or fail to take a personnel action with respect to any employee as a reprisal for the exercise of the above right. .

(b) Such protections shall also be extended to employees who choose to file an appeal regarding such disclosure(s) with the Merit Systems Protection Board (MSPB) under 5 CFR 1209.

Section 7. Employee Pay

(a) If an employee does not receive a salary payment when due, the Employer will initiate the process to produce a substitute payment as soon as possible, normally within five (5) workdays of notification by the employee of non-payment.

(b) The Employer agrees to comply with any legal process in the nature of a garnishment of an employee's pay consistent with 5 U.S.C. §5520a and regulations promulgated to carry out its purpose, including applicable restrictions of the Consumer Credit Protection Act to which the Statute and its regulations are subject. The Employer shall not disclose information on an employee to any party or firm claiming to be a creditor of the employee, except when such disclosure is consistent with law, rule, or regulation.

Section 8. Office Space

Employees shall have the right to tastefully decorate their work area provided such decorations are in conformance with Federal and Employer guidelines regarding health, safety, and prohibitions against defacing building property and other applicable laws and regulations of higher authority.

Section 9. Treatment

(a) Employees shall be treated with respect and courtesy in their interactions with supervisors, managers, and other coworkers. Employees shall treat supervisors and managers with respect and courtesy. All employees have a right to a workplace free of hostility and harassment. Insulting remarks or insensitive jokes from co-workers or managers are indicative of a Hostile Work Environment (HWE). Any employee who believes that he or she may be in a hostile working environment should report this situation to one of the following:

(1) Their direct manager or next higher official in their department;

(2) JMD Human Resources Officer;

(3) Justice Management Division's EEO Office;

(4) Office of Professional Responsibility;

(5) Office of the Inspector General; or

(6) Union Official of Local 3097.

(b) Managers and supervisors have the responsibility of ensuring that HWE training (such as NO FEAR Act) is in place for new supervisors regarding Employer policies concerning HWE. Follow up training, when required, should be given to supervisors.

Section 10. Employee Responsibilities and Protections

If the employee has substantial reasons to believe an order is unlawful, the employee may seek guidance from higher level supervisory personnel or Union representatives. A refusal to carry out a lawful order promptly may, however, subject the employee to a disciplinary action.

Section 11. Union Representation

(a) Weingarten Rights. Each employee has the right to Union representation at any examination by the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation. The Employer shall inform employees annually of this right to representation.

(b) Other Representation. It is the Employer's policy to permit Union representation for bargaining unit employees, at their request, at the following types of meetings called by the Employer:

(1) grievances, EEO complaints, and appeals;

(2) termination meetings;

(3) confidential meetings concerning work-related health problems or the accommodation of a handicap;

(4) meetings concerning any personnel policy, or practice, or other general condition of employment.

(c) Except in cases of emergency, the Employer will provide employees notice of such meetings two (2) workdays in advance.

(d) Except as provided for above in sub-section (a) above, these meetings do not include confidential meetings concerning performance ratings or appraisals, supervisory counseling meetings, or conduct improvement meetings. Nothing in this section shall forbid a supervisor from consenting to the presence of a Union representative at any such meeting, at the request of the employee.

Section 12. Smoking

The Employer shall prohibit smoking of tobacco products consistent with Executive Order 13058 in all JMD-controlled portions of the workplace. Smokers will follow the policy, procedures, and arrangements in Article 8 (Health and Safety), Section 10 on smoking.

Section 13. Contacts

Employees may contact the following offices or persons during working hours regarding personal work-related problems or health problems, as appropriate, if they obtain permission from their supervisor for their absence from their workstation:

(a) the Human Resources Office;

(b) the EEO Office;

(c) a supervisor of higher rank than the employee's immediate supervisor;

(d) the ethics officials in the Office of the General Counsel;

(e) the Employee Assistance Program Office;

(f) the Employer's Occupational Health Manager;

(g) administrative services such as payroll, travel, security; and

(h) Union representatives as governed by Article 4 (Rights of the Union), Section 7 (Access).

Normally such contact shall first be made by telephone. An employee is not required to describe the specific nature of the problem, but shall inform the supervisor either of the general nature of the problem or his or her destination. If the office workload precludes the employee's absence at the time of the request, the supervisor may deny the request but shall tell the employee that he or she may leave as soon as the workload permits. The supervisor may require the employee to take annual or sick leave if appropriate.

Section 14. Discrimination

The Parties agree that unlawful discrimination is unacceptable in the workplace and will not be condoned. Procedures and policies concerning alleged discrimination are contained in Article 7 (Equal Employment Opportunity).

Article 4
Rights of the Union

Section 1. Union Rights

The Union is the exclusive representative of all employees in the bargaining unit and is entitled to act for all bargaining unit employees, and to negotiate collective bargaining agreements which cover them. The Union has the right and obligation to represent all employees in the unit without discrimination and without regard to Union membership and to present its views to the Employer on matters of concern either orally or in writing. The Union shall be given the opportunity to be represented at formal discussions (including Weingarten discussions) between the Employer and employees concerning grievances, personnel policies and practices, and other general conditions of employment.

Section 2. Exercise of Rights

The Employer shall in no way restrain, interfere with, coerce, or discriminate against designated representatives of the Union in the exercise of their duties as representatives for the purpose of collective bargaining, handling grievances and appeals, furthering effective labor-management relationships, or acting in accordance with applicable regulations and agreements on behalf of an employee or group of employees within the bargaining unit.

Section 3. Information

(a) The Employer shall provide the Union once each month a list of each employee's name, series, grade, title, and organizational location as well as a list of accessions and separations. In addition, the Employer shall provide the Union with a list of transfers, conversions, details, reassignments, demotions, and promotions as frequently as such lists are prepared by management but, in any case, no less than twice each year.

(b) The Employer shall provide the Union with any changes or amendments to orders, regulations, or policies of the Justice Management Division, which concern personnel rules or practices applicable to bargaining unit employees.

(c) The Employer shall provide the Union with reasonable access, for the purpose of reviewing and copying, to any government-wide, Departmental, or Employer directive, rule or regulation concerning applicable personnel rules or practices.

(d) The Employer shall provide in a timely manner any other data which the Union might request pursuant to 5 U.S.C. §7114 (b) (4). Such requests must establish a particularized need for the information by providing a specific explanation as to why the information is needed and how it will be used. The Employer's response may be supplied in written or electronic form.

Section 4. Notice on Positions

The Employer shall notify the Union as soon as practicable (ordinarily within one week), and management shall consider its opinion, before the Employer places Union officers or stewards on special assignment and/or detail away from the work area within which they serve.

Section 5. Meetings

The Union shall have the right to designate the number and identity of its representatives at all meetings between the Employer and the Union and shall be given, when possible, at least forty-eight (48) hours notice of all such meetings. However, the number of Union representatives shall not exceed the number of Employer representatives, except by mutual agreement. The Union shall be consulted as to its availability prior to the scheduling of any such meetings.

Section 6. Committees

The Union shall have the right to be represented on committees that are not comprised exclusively of management officials that are concentrating on personnel policies, practices, and working conditions that directly affect bargaining unit employees as far as may be appropriate under applicable laws and regulations.

Section 7. Access

(a) Local 3097 representatives shall have access to unit employees at reasonable times for representational purposes when consistent with the work needs of the employee's office.

(b) Union representatives not employed by the Employer may meet with Local representatives and/or bargaining unit employees to discuss appropriate matters and may participate in meetings between the Union and the Employer. They shall be admitted to DOJ facilities for these purposes and issued required building passes.

Section 8. New Employee Information

The Union shall provide the Employer with a brief, informational memorandum stating the Union's representational status and the names and phone numbers of Union officers and stewards which the Employer shall give to newly hired employees in the bargaining unit during initial orientation. The Employer shall provide to the new employee the URL or hypertext link for accessing a copy of this Agreement.

Section 9. Distribution of Union Information

The Union shall have the right to distribute its newsletters, flyers, bulletins, notices and other publications to employees at their workstations or mailboxes, through the Employer's e-mail system, and on the Employer's Intranet page. Bulletin board space of at least six square feet, or, if less, half of currently attached bulletin board space shall be made available on each floor occupied by employee workstations for exclusive Union use. The Union may post on its designated bulletin board space its newsletters, flyers, bulletins, notices, and other publications, so long as each posting is dated and initialed by a Union representative. Nothing distributed or posted by the Union shall be libelous or violate the law, Executive Orders, applicable federal regulations, or this Agreement. Distribution to employee workstations shall occur when the distributor and the recipient are in non-duty status.

Article 5
Official Time and Union Representation

Section 1. General Use of Official Time

The Union shall be given the opportunity to be represented at formal discussions between the Employer and an employee or employee representative concerning grievances, personnel policies and practices, or matters affecting working conditions of employees. The Parties agree that Union attendance at labor-management meetings to resolve disputes shall be limited to the attendees necessary to have a full and frank discussion of the matters involved and shall not exceed the number of persons that represent management except with management's permission. In grievance discussions the Union shall normally be represented by one person.

Section 2. Union Representatives

a) The Employer agrees to recognize Union representatives for purposes of official time usage. For the purpose of carrying out representation functions, the Employer will recognize a Union President, a Chief Steward and seven (7) Stewards, to be designated by the Union. The Union will not designate more than three (3) Stewards from any single Justice Management Division Staff. The Union will designate a representational area for each Steward. The Steward will normally restrict his/her activities to that representational area. The Union will provide to the Employer and maintain current a written list of Union Officers and Stewards (and their areas of responsibility) who will be recognized under this Article. The representational activities of the Union Officers will be limited to those for which official time is provided under Section 4.

(b) By January 31st of each year, the Union shall provide the Employer with an updated list of designated Union Officers and Stewards. When new representatives are designated, the Union shall provide the Employer with an updated list in writing three (3) workdays before the individual will be recognized by the Employer for purposes of official time.

Section 3. Bank of Hours-President Local 3097

The President shall be allowed a reasonable amount of time to perform his/her duties as employee representative, subject to the limitations of law. The President, or a steward acting in his/her absence, shall be guaranteed at least one day/eight hours per week to staff the Union office. It is expected that the bulk of representational duties will be performed on that day. The Official Time spent on Union duties shall not exceed six hundred (600) hours per calendar year. Attendance at training classes (covered in Section 11) and new contract sessions (covered in Section 5) will not be counted against this bank of hours. Attendance at training presentations on the implementation of a new Agreement will not be counted against this bank of hours.

Section 4. Use of Official Time

The representatives identified in Section 2 shall be allowed a reasonable amount of official time to:

(a) assist employees in preparing and presenting complaints, grievances, and appeals under this Agreement;

(b) participate in formal discussions or consultations involving personnel policies and practices, and other matters concerning working conditions of employees;

(c) prepare for and participate in grievance arbitration procedures negotiated between the Parties;

(d) serve on labor-management committees specified in this Agreement; and

(e) participate in any other activities for which the Civil Service Reform Act allows employees to use official time.

Section 5. Official Time for Collective Bargaining

a) Union representatives and designated bargaining team members shall be granted official time for conducting collective bargaining (term or mid-term) negotiations up to and including the completion of bargaining mediation and impasse proceedings.

(b) Union representatives and bargaining team members shall be granted a reasonable amount of official time to prepare for the activities specified in Section 4(a) above.

(c) Time to negotiate and prepare for a new Agreement or a reopening of this Agreement (see Article 37 [Duration], Section 5) may be established as agreed by the Parties at the time of such negotiations.

Section 6. Request Procedures

(a) Before performing representational duties specified in Section 3 and 4 that reasonably may be expected to keep the representative from his/her work station for more than 30 minutes, Union representatives shall notify their immediate supervisor that representational activity is to be performed. The request form (Appendix A) will include:

(1) the representative's destination, and

(2) a reasonable estimate of the amount of time the activity will occupy.

(b) The Employer shall permit Union representatives to use official time that is reasonable, necessary, and in the public interest. Such requests will normally be granted for the time requested. However, if the legitimate work needs of the section prevent granting time as requested, the supervisor shall propose an alternate time when official time should be granted.

(c) If a Union representative is unable to perform a representational duty, the Union may reassign the activity to another Union representative or request that the activity justifying use of official time be postponed until the original representative is available. Such a request for postponement shall be granted unless the delay would adversely affect the Employer's work needs as defined above.

Section 7. Documentation

On the same day that a Union representative submits his or her time-sheet for time and attendance purposes, the Union representative shall forward to the official time keeper the amount of official time, broken down with sufficient detail to enable the Employer to meet OPM's reporting requirements.

Section 8. Prohibitions

Official time shall not be used for internal Union business, such as the solicitation of membership, Union elections, and the collection of dues. Official time shall not be used to lobby members of Congress on pending legislation.

Section 9. Travel

Travel expenses for Union officials who are the Employer's employees and who are consulting and assisting in resolving labor-management disputes, and travel expenses for employees required to travel in connection with a grievance or other labor-management issues shall be provided by the Employer only to the extent (1) such travel is required by management, (2) management determines payment would be in the Employer's best interests, (3) payment is required by law or regulation, or (4) payment is directed by the Federal Labor Relations Authority.

Section 10. Access

(a) International representatives, Union Council staff members, and other Union representatives shall be permitted on the Employer's premises, consistent with the Employer's normal internal security procedures, for the purposes of:

(1) attending Union meetings;

(2) participating in meetings with the Employer; and

(3) participating in labor management negotiations and other such activities.

Section 11. Training

The Employer will permit the Union up to two (2) paid workdays annually for each Union official cited in Section 2 to be used for training in employee representation, labor-management negotiations, and other non-internal Union business to be conducted when and where the Union determines. In addition, a bank of sixty (60) hours shall be apportioned among the Union officials as the Union determines. The Union will conduct this training at times when the release of the employees will not harm the Employer's work needs. Time for training will be requested as far in advance as is possible and in accordance with Section 6 request procedures. When possible, a syllabus or other description of the training will be provided to the Employer.

Article 6
Use of Official Facilities and Services

Section 1. Union Office

a) Except as provided for below in paragraph b, for the life of this Agreement, the Employer shall provide the Union with offices and storage space. The spaces designated shall be lockable with keys provided to designated Union officials. They shall total no less than 200 square feet.

b) The current offices and storage space are Room 1E.1002 Two Constitution Square and Room 1015 National Place. Should the Employer need to relocate the union space due to compelling operational needs, it shall notify the Union no less than twenty (20) workdays prior to the date of the anticipated relocation. If requested by the Union, bargaining shall proceed under the terms of Article 36 (Midterm and Implementation Negotiations).

c) These offices shall be used for all Union organizational purposes and all other business that concerns the Union's internal affairs. Unless the use of another enclosed office is more appropriate and in no way interferes with the Employer's activities, the two Union offices shall also be the exclusive workplace offices that the Union and its representatives use when preparing labor-management proposals, planning labor-management meetings, preparing other labor-management activities, and meeting for representational and counseling purposes. The office shall also be listed in the telephone directory by the Union’s name and room and telephone number(s).

Section 2. Joint Use Space

Consistent with such factors as location, the time when space is needed, and internal security considerations, the Employer shall promptly approve the Union's request for use of space (other than the Union offices) for meetings with employees in the unit if the space requested is available.

Section 3. Office Equipment

The Union President or designated Union Officers or Stewards may make reasonable use of the Employer's fax and photocopying equipment for official Union business. The Union office at Two Constitution Square will be supplied with: a telephone; access to a photocopier; desk; no less than four (4) chairs and two (2) file cabinets; a computer with connectivity to the Employer’s network, intra and internet; access to a printer; as well as an operable email account. The Union’s phone and email shall be used for official purposes. The Union office at National Place will be supplied with: a telephone; desk; no less than four (4) chairs and two (2) file cabinets. Except in cases where the Employer has a demonstrably reasonable suspicion that such usage is unlawful, all Union communications shall be confidential and not subject to Employer scrutiny.

Article 7
Withholding of Union Dues

Section 1. Employee Eligibility

The Employer agrees to withhold the dues of Union members under the procedures in this Article on a biweekly basis through payroll deductions, as subject to applicable laws, rules, and regulations. This Article is applicable to all employees who meet the following criteria:

(a) who are members of the bargaining unit;

(b) who have voluntarily completed SF-1187 (Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues); and

(c) who receive compensation sufficient to cover the total amount of the allotment.

Section 2. Union Responsibilities

The Union shall:

(a) notify Human Resources in writing of:

(1) the names and titles of officials authorized to make the necessary certifications of SF-1187, and name and address of the person or party to whom the check shall be payable; and

(2) any change in the amount of membership dues.

(b) forward properly executed and certified SF-1187's to the Human Resources Division on a timely basis;

(c) promptly, within one pay period of receipt, forward an employee's revocation or memorandum for revocation to the Human Resources Division when such is submitted to the Union; and

(d) notify the Human Resources Division of the Union's current dues schedule and any changes thereto. The Union agrees that such changes shall not occur more often than once a year.

Section 3. Certification and Remittance

The Employer agrees to:

(a) increase the dues withheld to the correct amount promptly following an employee's promotion, within-grade increase, or other salary increase as long as Union dues are percentages of salary; and

(b) Within ten (10) workdays after the end of the pay period remit the amount due to the Union to the payee designated by the Union barring any systems errors by the payroll processing provider. In such instances, the Employer shall notify the Union as quickly as is possible, detailing the nature of the error and its anticipated correction date. Once the error has been corrected, the Employer will remit the unpaid dues to the Union. Remittance to the Union shall be within one pay period of such correction.

Section 4. Employer Responsibilities

The Employer, at no cost to the Union, shall:

(a) upon receipt of SF Standard Form 1187, Request for Payroll Deductions for Labor Organization, Human Resources will process the allotment of dues withholding effective the first full pay period after receipt;

(b) withhold dues on a bi-weekly basis;

(c) withhold new amounts of dues upon the receipt by the Department of Justice payroll office of the employee's certified and correctly completed SF-1187;

(d) provide the names of the Union members in alphabetical order for whom deductions were made and the amount of each deduction;

(e) provide the total number of members for whom dues were withheld; and

(f) total the amount of dues withheld.

Section 5. Revocation of Union Dues

(a) The Employer shall give the Union an explanation of each SF-1188 that is not processed and shall send the Union a copy of each written revocation it receives from any employee. If the Employer determines an employee must be removed from dues withholding (because of a promotion or other reason), the Employer shall immediately notify the Union of the intended action and the reason for such action.

(b) A dues withholding request (SF-1187) submitted by a bargaining unit employee may not be revoked for a period of one (l) year, except in the situations described below. The effective dates of action under this Article are the following:

(1) If the employee has been a Union member for a period exceeding 365 calendar days, a request for revocation (SF-1188) of Union membership, regardless of when received, shall not become effective until the open period for revocation, specifically, the first pay period of the calendar year. However, for first-year Union members: an SF-1188 must be filed by an employee during the thirty (30) calendar day period prior to the anniversary date of his or her first dues withholding. The revocation will become effective on the pay period beginning on or before the anniversary date in which the dues deduction went into effect.

(2) Termination due to separation or moving to a position outside the bargaining unit or expulsion from the Union shall automatically be at the end of the pay period in which the separation, transfer, promotion, or expulsion is effective.

(3) Should the Employer erroneously continue deducting an employee's dues after such deductions should have been terminated, any excess payment to the Union shall be subtracted from the next payment to the Union after the error is detected but only if the Union has been provided with a written statement explaining the reasons the error occurred.

Article 8
Health, Safety, Facilities and Services

Section 1. Reference

This Article will comply with those safety and health standards applicable to its worksites. The following standards will be followed.

(a) DOJ Order 1779.2B;

(b) The Occupational Safety and Health Act of 1970;

(c) Applicable rules and regulations, including part 1960 of Title 29 of the Code of Federal Regulations as well as those regulations issued pursuant to the Occupational Safety and Health Act as they apply to Federal agencies;

(d) Executive Order 12196; and

(e) Applicable standards of the Department of Justice and its Offices, Boards, and Divisions.

Section 2. The Employer's Responsibilities

The Employer recognizes the importance of health and safety and agrees to:

(a) Provide emergency service, including first-aid kits which shall be placed, at a minimum in a central location in each building occupied by forty (40) or more bargaining unit employees. In buildings of four (4) floors or more, there will be at least two (2) such central locations;

(b) Provide clean restrooms in which normal supplies shall be available at all times, including hot water during work hours. The Employer shall work with GSA and the lessor to insure that the restrooms are cleaned on a daily basis and that all equipment is in working order;

(c) Consistent with 29 CFR 1960.2, have a Designated Health and Safety Official;

(d) Designate an Occupational Safety and Health Manager (OSHM) responsible for reviewing workplace safety concerns submitted by employees and the Union, as well as employee complaints of repetitive stress injuries, and considering appropriate ergonomic corrective measures. Employees with complaints or concerns are encouraged to contact the OSHM, consistent with Article 3 (Rights of Employees), Section 13, if their immediate supervisor is unable to resolve the matter to the employee's satisfaction. The Employer shall maintain an electronic listing of the telephone number for the OSHM accessible to employees on the Employer's Intranet;

(e) Consistent with Section 9 (Emergency Plan) of this Article, provide training or notification to employees sufficient to educate them in the fire and disaster plans and how to respond when a plan is activated; and

(f) The Employer will not require any employee to use any equipment or substance barred by OSHA regulation or in a manner barred by OSHA regulation. Upon request by the Union, the Employer will request from a manufacturer available data showing adverse effects on employees of a substance or item.

Section 3. Joint Management Responsibilities

The Employer agrees to work with the appropriate Department of Justice, General Services Administration, and other Federal agency officials to:

(a) Provide employees with a safe, healthful work environment in accordance with GSA and OSHA guidelines and Executive Order 12196;

(b) As required by government-wide rule or regulation, the Employer will abate unsafe or unhealthful working conditions in order to keep the workplace free from recognized hazards that are likely to cause physical harm;

(c) Provide and maintain fire and disaster plans and equipment, including an alarm system audible to all employees. The Employer will work with the Department of Justice, the lessor, and GSA to ensure that fire drill requirements are met on an annual basis, and to have installed adequate smoke detection devices and exit signs on each floor that will be visible during power failures. Employee or Union reports of dangerous conditions shall be responded to in accordance with Executive Order 12196;

(d) Seek adherence to GSA guidelines on temperature, humidity, and oxygen levels. All floors and stairways will be monitored on a regular basis to assure that they are safe. The Employer will work with the lessor or GSA, as appropriate, to have safe electrical equipment, adequate ventilation in all work areas, and an environment free of roaches and rodents maintained in the building. The Employer will provide OSHA inspectors access to the premises at reasonable times when requested;

(e) The Employer will make every effort to follow GSA regulations in providing facilities appropriate and adequate for the needs of disabled employees;

(f) As provided for in Article 36 (Midterm Negotiations), the Employer shall inform the Union, and the Union shall be given an opportunity to pursue appropriate negotiations, before new, substantially different office equipment is introduced into employee work areas; and

(g) Make arrangements for a suitable number of employees to obtain training in first aid and CPR training and retraining of sufficient enough nature so as to maintain CPR certifications. The names and locations of employees so trained will be distributed to all bargaining unit members and updated as necessary.

Section 4. Employee Protections and Responsibilities

(a) If an employee is assigned duties that he or she reasonably believes could possibly endanger his or her health or jeopardize his or her personal safety or well-being, the employee will notify his or her supervisor of the situation. If the supervisor cannot resolve the problem and agrees with the employee, the supervisor will, under normal circumstances, delay the assignment and refer the matter through the proper channels for appropriate action, unless the delay would unduly interfere with the Employer’s operations. Where the supervisor does not agree with the employee's concerns, the employee has the right to consult with the Union or a higher level supervisor and will be granted permission to leave his or her duty station for such purpose.

(b) Pursuant to 29 CFR 1960.46, the employee may elect not to perform his or her assigned tasks when he or she reasonably believes that such task(s) might pose an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures. In such instances he or she may leave the danger area, without loss of pay or charge of leave, or other

adverse consequences of any sort, provided that he or she, when practicable performs other work not involving danger. If an employee believes he or she is threatened by an accident, industrial or social dispute, or civil disorder in or about his or her work area, the employee will notify the supervisor of the situation. If the Employer knows of any hazardous condition that could affect employees, the Employer shall advise the Union and the involved employees as soon as possible as to what actions they should take. Supervisors will take such legitimate concerns into consideration when making work assignments or giving advice for avoiding possible dangers.

(c) Pursuant to 29 CFR 1940.46, the Employer shall assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an alleged unsafe or unhealthful working condition or because of the exercise of any right afforded to him or her by law or rule or regulation in such matters.

Section 5. Inspection and Abatement

(a) Pursuant to 29 CFR 1960 and Executive Order 12196, the Employer will ensure the prompt abatement of unsafe and unhealthful conditions. To that effect, all areas of each workplace with JMD employees shall be inspected annually. More frequent inspections shall be conducted in all workplaces where there is an increased risk of accident, injury, or illness due to the nature of the work performed. Sufficient unannounced inspections and follow-up inspections shall be conducted by the Employer to ensure that hazardous workplace conditions are successfully identified and abated. Such inspections shall be conducted in accordance with the procedures of 29 CFR 1960.26. The Union shall be given as much notice as is practicable.

(b) In cases where it has been determined that unsafe or unhealthful conditions are present in a work area, appropriate notices shall be posted and investigative reports shall be prepared. Such postings and reports shall be executed in accordance with applicable regulations, rules, and orders. Absent compelling reason(s), notices of unsafe or unhealthful working conditions shall be posted no later than fifteen (15) calendar days after findings of safety violation(s) and no later than 30 (thirty) calendar days after findings of health violation(s). Postings of unsafe or unhealthful working conditions shall remain posted until the hazard has been abated or for three (3) workdays, whichever is later.

(c) In situations involving conditions which might reasonably be expected to cause death or serious harm, the Employer shall notify affected employees and the responsible official or supervisor immediately. The Employer shall undertake immediate abatement of the conditions and withdraw all employees from the workplace.

(d) Accidents shall be investigated and reported in accordance with 29 CFR 1960.29. If a written investigative report of an accident is prepared in accordance with the CFR, the Union shall be supplied with any and all such reports within one (1) week of their completion.

(e) All work areas and hallways will be kept uncluttered and free of tripping hazards.

Section 6. On-the-job Injury

(a) When an employee is injured on the job the employee shall notify his or her supervisor and report the injury on the appropriate forms. The supervisor will refer the employee to the health unit or other medical service as appropriate and permitted by applicable law, rule and regulation. The supervisor will also advise the employee of his or her right to file for compensation benefits and how to obtain information on benefits under the Federal Employees Compensation Act. The employee shall also be advised as soon as possible if, in accordance

with applicable law, rule or regulation, compensation benefits can be used in lieu of sick or annual leave. The Employer will post information on reporting job related illness or injury on all bulletin boards and on the Employer's Intranet.

(b) Should an employee become disabled by a job-related injury or illness and he or she is unable to perform his or her duties, the Employer, upon the employee's request and with appropriate medical documentation, shall attempt to reassign the employee to a position of equal pay where his or her injury or illness will not interfere with his or her duties. If the disability is temporary and documented and is expected to continue for less than one hundred and twenty (120) calendar days, the Employer, consistent with its needs, will attempt to detail the employee to another position with duties he or she is able to perform.

Section 7. Health Accommodations

(a) An employee who makes a request for office relocation or a reassignment for health reasons will have the request promptly considered. Where feasible, the request shall be granted. The employee shall provide whatever medical evidence is necessary to substantiate a request for such accommodation. Such information shall be kept confidential and disseminated only to those management officials having a direct need for it.

(b) Employees adversely affected by a temporary condition such as allergic reaction to paint fumes during office painting, will where feasible, be sent to other work sites for the duration of the temporary condition.

Section 8. Counseling/EAP

(a) The Employer agrees to notify each employee at least annually of DOJ counseling and support services. New employees shall be notified at the time of their orientation.

(b) The Employer will permit all employees to use Department of Justice counseling services. Employees will be placed in such leave status as is appropriate when utilizing these services. The release of employees for counseling and inquiries into the specifics of the problems for which counseling is sought is governed by Article 3 (Rights of Employees).

(c) The Parties agree that alcoholism and drug abuse are health problems and that employees who suffer from them and non-permanent physical problems should be encouraged to seek treatment and given a reasonable opportunity to recover. In the event the Employer believes an employee has such a problem, the Employer will advise the employee of the counseling and other rehabilitative services that are available and under what terms the employee will avail himself or herself of these services. The Employer recognizes that certain emotional difficulties are treatable in the same manner.

(d) If the employee participates in the counseling or rehabilitation program the Employer shall take such cooperation into consideration in determining whether discipline or adverse action based on performance is appropriate. The Union agrees to help those employees who request its assistance in such matters and will work with the Employer in finding resolutions to problems arising under this section. However, this shall not be construed as relinquishing the Union's responsibility to represent the employee upon his or her request in personnel actions arising from alleged alcoholism, drug abuse, emotional illness, or other personal problems.

Section 9. Emergency Plan

Occupant Emergency Plans are maintained for the building. The Employer, consistent with its authority and ability to do so, will update the Occupant Emergency Plan as needed, taking into consideration available and emerging safety equipment and techniques.

Section 10. Break Room

In buildings with more than one hundred (100) bargaining unit employees, the Employer shall maintain at least one room in the building where employees may eat their lunch.

Section 11. Benefits Information

The Employer will publicize the availability of pre-retirement counseling to employees, including their rights and obligations under the provisions of the civil service retirement, health benefits, and life insurance programs.

Section 12. Smoking

(a) Environmental tobacco smoke has been identified by the Environmental Protection Agency as a major source of harmful indoor air pollution and a known cause of lung cancer, respiratory illness and heart disease. Pursuant to Executive Order No. 13058, 62 Federal Regulation 4345 (1997), Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace, it is the policy of the Department of Justice to:

(1) Protect all Department of Justice employees, contractors, and visitors from the health hazards caused by exposure to tobacco smoke;

(2) Ban smoking of tobacco products in all Department of Justice work places;

(3) Prohibit the sale of tobacco products in vending machines located in or around any Federal Building under the jurisdiction of Department of Justice, unless the location of the vending machine is such that unattended minors are prohibited;

(4) Prohibit the distribution of free samples of tobacco products in or around any Federal building under the jurisdiction of the Department of Justice; and

(5) Designate outdoor smoking areas where possible. Because environmental tobacco smoke is classified as a potential occupational carcinogen, exposure to it must be reduced to the lowest feasible concentration to provide Department of Justice employees, visitors, and contractors with the safest work environment possible. Therefore, smoke break areas shall be outdoors and a minimum of 25 feet from points of ingress and/or egress into the work place. Indoor designated smoking areas are prohibited.

(b) The policy of the Employer is to ensure that smokers and non-smokers are treated fairly with regard to lunch periods and/or breaks from their work and the office. Therefore:

(1) Smokers are advised that they have the same obligation to work a full work day, as do all other employees;

(2) If an employee needs to take more than one break during the day on a regular basis, the employee shall provide his or her supervisor with the employee's normal break schedule, in writing, for approval. In addition, when an employee is to take more than one break in any day, the employee shall notify his or her supervisor when leaving and returning from each break so that the supervisor knows the employee's whereabouts; and

(3) Employees shall take their breaks at times that do not interfere with their duties.

Section 13. Health Services Unit

The Employer agrees, insofar as possible, to maintain current levels of health services for bargaining unit members. Prior to implementing any changes in current levels of health services, health unit staffing levels, health services locations, and/or hours of service, the Employer will negotiate over such changes in accordance with the provision of Article 36 (Midterm Negotiations).

Section 14. After-hours Safety

If an employee is required, expected or permitted to work outside official business hours; the Employer will make adequate security arrangements, which may include assistance in finding transportation and/or making reimbursements for taxi fare in accordance with applicable regulations.

Article 9
Position Classification

Section 1. General Principles

The Code of Federal Regulations states that the General Schedule classification system is a comprehensive, orderly system for classifying positions by occupational group, series, class, and grade according to similarities and differences in duties, responsibilities, and qualification requirements. The principles underlying this occupational cataloging system are:

(a) the need to identify positions with appropriate qualification standards;

(b) equal pay for substantially equal work; and

(c) variations in ranges of basic pay for different employees should be in proportion to substantial differences in the difficulty, responsibility, and qualification requirements of the work performed.

Section 2. Position Descriptions

(a) As soon as is possible, but not later than twenty (20) workdays after entry on duty or change of duties, the Employer shall provide an employee with an accurate position description. Position descriptions shall be dated and shall contain the principal duties and responsibilities, supervision received, and organizational location of the supervisor. The Employer is solely responsible for establishing and changing position descriptions and assigned duties in accordance with law and regulation and this Agreement.

(b) The Employer will notify the Union at least ten (10) workdays in advance of proposed actions that will change the classification (title, series, or grade) of employee positions; or add or delete an employee's major duty and/or responsibility.

(c) A standard notice (normally by email) will be sent to employees five (5) workdays in advance with a copy of the new/updated PD.

(d) After Employer notice in subsection (b) above, the Union will be given the opportunity to:

(1) within five (5) workdays suggest alternative language to make the PD clearer and easier to understand; and/or

(2) request an extension to the notice period or content of notice (different from paragraph (c) above).

(e) Should there be matters not covered by paragraphs (c) and (d) above, the Union shall be given the opportunity to negotiate pursuant to Article 36 (Midterm Negotiations), over such changes to the full extent of the law.

Section 3. Disputed Classification

Should an employee find inaccuracies in his or her position description or be dissatisfied with the classification, the employee may discuss the problem with the supervisor. If the employee is still dissatisfied with the description of major duties, this may be addressed through the grievance procedures (Article 34). After all outstanding issues with the description have been resolved; an employee still dissatisfied with his or her position classification may appeal the classification or

grade of his position or the coverage of his position under the General Schedule. Position classification appeals may be made to the Department or to the Office of Personnel Management (OPM). General Schedule employees may appeal to the Department instead of or before appealing to OPM, and prevailing rate (wage grade) employees MUST appeal to the Department before continuing an appeal to OPM. The classification of a position is grievable under the Grievance Procedure (Article 34) only if it results in a reduction in pay or grade (pursuant to 5 U.S.C. §7121).

Section 4. Improper Classification

When, as a result of a classification audit or survey, it is determined that a position is improperly classified, the Employer agrees to take corrective action. Such action may entail a restructuring of the position, a redistribution of the grade controlling duties, or the reclassification of that position at a higher level. Should it become necessary to demote an employee because it has been determined that the position has been erroneously classified at a higher grade level, the Employer shall notify the Union of the misclassification. The Employer agrees to meet with a designated Union representative to discuss employee concerns at least twenty (20) workdays prior to the effective date of the downgrade. The Employer will consider reasonable alternatives to demoting an employee whose position has been erroneously classified.

Section 5. General Duties

The Employer agrees that phrases such as "other related duties" or "other duties as assigned" normally mean assignments reasonably related to the employee's grade, position, and qualifications. Consistent with the CFR and position classification standards, the temporary assignment of lower level responsibilities shall not ordinarily affect the grade of the employee to whom the additional duties have been assigned.

Section 6. Notices and Information

(a)When the Employer conducts an overall review of Employer position descriptions, such as implementation of a new OPM Classification Standard, it shall notify the Union twenty (20) workdays in advance.

(b) The Employer shall provide timely notice to an employee in the bargaining unit prior to a desk audit. Such an employee may consult with a Union representative about such an audit.

Article 10
Merit Promotion

Section 1. General Provisions

(a) All bargaining unit positions will be filled on the basis of merit and except where otherwise provided by law without regard to an employee's color, race, religion, national origin, politics, marital status, membership or non-membership in an employee organization, non-disqualifying physical handicap, age, sex, or on the basis of personal favoritism.

(b) The Employer shall make every effort to utilize to the maximum extent possible the skills and talents of its current employees. Careful consideration will be given to filling vacant positions through the utilization of present employees.

(c) The competitive procedures of this Article will apply to those circumstances set forth and defined in the Employer's Merit Promotion Plan.

Section 2. Vacancy Announcements

(a) The minimum areas of consideration are –

(1) for GS-8 and below, status employees of the Employer;

(2) for GS-9 through GS-13, all status employees of the Department of Justice offices, boards, and divisions;

(3) for GS-14 and above, all status employees of the Department of Justice.

(b) The Employer shall attempt to find candidates within the minimum area of consideration, but may expand the area of consideration if the minimum area of consideration does not produce enough high quality candidates or the Employer finds it is necessary to conduct a broader search.

(c) Announcements for Bargaining Unit positions shall be open for a minimum of ten (10) calendar days. The Director, OBD Human Resources, except where otherwise prohibited, may make exceptions to the length of the open period, prior to the time frame of the opening, for objective, mission-oriented purposes, documenting such reasons in the case file. Announcements shall be available to employees through the Office of Personnel Management web site, www.usajobs.opm.gov. Copies of each announcement shall also be provided to the Union.

(d) Vacancy announcements will, as a minimum, contain the following information:

(1) the title, series, and grade of the position, as well as the number of vacant positions expected to be filled and an announcement number;

(2) duty Location and office;

(3) the area of consideration;

(4) the duties of the position;

(5) the minimum qualifications required, all selective placement factors, if any, and all positive education requirements, if any;

(6) the pertinent knowledges, skills, and abilities to be evaluated;

(7) a statement of whether or not the position has promotion potential, and if so to what grade, and, if applicable, that the position is a trainee or understudy position;

(8) DOJ's equal employment opportunity policy;

(9) the opening date of the announcement;

(10) the closing date of the announcement;

(11) instructions on how to apply;

(12) whom to contact for additional information;

(13) pay ranges;

(14) a statement of the amount of travel involved, if more than occasional;

(15) Reasonable Accommodation Policy; and

(16) any special notes or instructions, e.g., whether reapplication is necessary for positions being re-announced, the authority to extend temporary promotions, the changes effected by an amendment, and so forth.

Section 3. Qualification Requirements

(a) Employees shall fully satisfy the time-in-grade and time-after-competitive appointment requirements as well as qualification requirements for the position at the time of any consideration for selection.

(b) Candidates shall be rated basically qualified for a position if they meet the minimum qualification requirements for a General Schedule position described in OPM's Qualification Standards for General Schedule Positions as supplemented by valid job-related selective placement factors, if any.

Section 4. Evaluation and Ranking

(a) The best qualified candidates shall be identified through an impartial evaluation of eligible candidates based upon uniformly applied job-related evaluation criteria.

(b) The supervisor and/or office head of the position to be filled has the responsibility for preparing the rating criteria, i.e., crediting plan. The Human Resources staff shall review the criteria for reasonableness and appropriateness.

(c) Candidates shall be evaluated based upon their most recent performance appraisal; experience; education; pertinent job-related training; self-development and outside activities; and awards (achievements that earned an employee special recognition, both monetary and non-monetary) earned within the last five (5) years.

Section 5. Rating and Ranking Procedures

(a) Before beginning the ranking procedures, the application shall be reviewed by Human Resources to ensure the candidate is within the area of consideration, meets minimum qualifications (including selective placement factors, if identified), and meets time in grade requirements.

(b) Rating and ranking shall be accomplished by an automated system and Human Resources staff.

(c) Based upon the span of numerical scores, the HR specialist (or panel members) shall identify the logical or meaningful breakpoint that distinguishes the best qualified candidates from the other qualified candidates. The best qualified candidates shall be those individuals with the highest scores. There shall be a significant, or meaningful, break in numerical rankings separating the best qualified group from the remaining candidates.

(d) A list of qualified candidates is received from HR and an interview panel is established to screen the applicants. The members of the panel shall meet to evaluate best candidates. Panels will consist of at least three (3) persons responsible for evaluating candidates. The panel members shall be at the grade being filled or higher and at least one (1) panel member should be a subject matter expert in the same field as the vacant position. The interview shall be sufficient to provide the applicant an opportunity to inform the panel members of any qualifications not apparent from the resume.

(e) The best qualified candidates shall be referred in alphabetical order to the selecting official. Individual scores shall not be provided.

Section 6. Selection

(a) The recommending and/or selecting official may offer an additional interview to the best qualified candidates.

(b) The selecting official is not required to select a candidate from the referral list and may select from any other appropriate source. He or she may request an extension of the area of consideration or additional recruitment efforts or may fill the job by some other type of placement action. However, if selection is to be made from among those candidates who were rated and ranked under merit staffing procedures, the range of selection is limited to those candidates who have been identified as best qualified.

(c) If the selecting official does not take action within ninety (90) days after receiving the list of best qualified candidates, the merit promotion list shall be canceled. Exceptions may be granted by Human Resources in extenuating circumstances.

Section 7. Employee Notification

Employees shall be notified in writing, or electronically, if they do not meet the requirements of the position, their application is incomplete, or they were referred to the selecting official but not selected. The Employer shall provide notification as soon as possible.

Section 8. Merit Promotion Records

A promotion folder shall be established in Human Resources for each specific promotion or other placement action filled under the competitive procedures of this Article. All documentation concerning merit selection actions shall be maintained in accordance with the recordkeeping provisions of OPM, this Agreement, and DOJ Order 1335. It shall be kept for two (2) years or until a formal OPM evaluation of the program, whichever time period is shorter and absent any grievance concerning such an action. The folder shall contain the following information:

(1) a copy of the vacancy announcement;

(2) a copy of the position description;

(3) selective factors used (if any);

(4) any quality ranking factors;

(5) all rating and ranking factors used;

(6) a list of all eligible candidates and their applications;

(7) a list of and identification of breakpoints of best qualified candidates;

(8) the name of the applicant selected and the selecting official;

(9) copies of all written and electronic correspondence with applicants; and

(10) copies of the interview questions, along with the composition of the interview panel, and name(s) of the recommending and/or selecting official.

Section 9. Requests for Information

(a) An employee or his/her Union representative may request information concerning the procedures and operation of this Article.

(b) Upon a specific request to Human Resources, an employee who applied for or who was considered for a position (or his/her Union representative) shall be given the following:

(1) the minimum qualifications for the position, including selective placement factors, if any, and quality ranking factors, if any;

(2) whether or not the employee was rated Best Qualified and as specifically as is possible how the rating was arrived at;

(3) any other records that pertain specifically to the inquiring employee.

(c) Upon specific request to Human Resources, an employee who applied for or who was considered for a position (or his/her Union representative) may be given the following:

(1) all factors used in the evaluation process and how they were applied; and

(2) the procedures used for ranking candidates.

(d) Upon specific request to the Human Resources, the Union may be provided with the numerical ratings and the cut-off score as determined by the HR specialist/automated system or the panel members. Identifiers such as the applicant's name and social security number shall be deleted.

Section 10. Resolution of Disputes

(a) An employee who feels that he or she has been denied a promotion because of a violation of this Article may grieve through the grievance procedures of Article 34 (Grievance Procedures) or file a formal complaint through the procedures of Article 11 (EEO). However, a non-selection from a group of properly ranked and certified individuals is not by itself a basis for a grievance.

(b) In the processing of complaints or grievances concerning actions taken under this Article the Union shall, upon request, be furnished with copies of all records, subject only to the Employer's authority to withhold such records under applicable laws and regulations that pertain to the subject action.

Article 11
Equal Employment Opportunity

Section 1. General Principles

The Justice Management Division is committed to treating its employees fairly and equitably. In accordance with DOJ Order 1200.1, Part 4-1, and all applicable laws, the Employer shall provide, assure, and promote equality in employment for all persons on the basis of merit. This includes discrimination based on race, creed, color, sex, religion, national origin, age, physical or mental disability, sexual orientation, genetic information, or marital or parental status.

Section 2. Definition

The Parties agree to adhere to all Federal laws and regulations that prohibit discrimination. The Parties recognize that prohibited discrimination may take the form of unlawful harassment. Sexual harassment shall be defined according to 29 C.F.R. §1604.11.

Section 3. Responsibilities

(a) Through positive and continuing efforts, the Parties shall seek to realize full equal employment opportunity for all unit employees. The Parties agree that positive steps must continue to be taken to prohibit discrimination and to utilize to the fullest extent possible the job-related skills of all employees within the unit. The Employer shall provide opportunities for employees to enhance their job-related skills.

(b) The Union shall assist and cooperate with the Employer whenever feasible to assure full equal employment opportunity. The Union also shall advise the Employer of problems associated with equal employment opportunity of which it is aware.

Section 4. EEO Staff and Process

The Employer shall post the names, phone numbers, and workplace locations of EEO staff and counselors on DOJNet and in appropriate areas around the workplace, updating each as necessary. Subject to the procedures provided for below in Section 9 of this Article, the Employer shall post the EEO complaint procedure on DOJNet, as well as any current Employer affirmative action program.

Section 5. Mutual Respect

All employees shall treat fellow employees with basic respect and dignity and not practice themselves, nor condone in others, discriminatory behavior in employment based on grounds set forth in Section 1 above.

Section 6. Union Representation

An employee may request Union representation in any formal EEO proceedings conducted by the Employer. Complainants may be accompanied, represented, and advised at any stage in the complaint procedures by a representative. Within forty-five (45) calendar days of the allegedly

discriminatory incident, the employee shall contact an EEO counselor. Continuing problems may be brought to a counselor's attention thereafter.

Section 7. EEO Data

The Employer, at least annually but no less than once per year, shall provide information to the Union containing the Employer's workforce composition by grade level, sex, and race.

Section 8. EEO Grievance/Complaint Rights

An employee, who believes the Employer has discriminated against him/her on the basis of the grounds set forth in Section 1 above, may file a grievance under the provisions of Article 34 (Grievance Procedures) or a formal discrimination complaint pursuant to the terms of this article, but not both. However, an employee's participation in the EEO informal pre-complaint procedure shall not bar an employee from filing a grievance under the terms of Article 34 (Grievance Procedure). Then, once the informal EEO counseling procedure has not led to a resolution, the employee must choose within fifteen (15) calendar days of notice to pursue either an EEO complaint or an Article 34 Grievance.

Section 9. EEO Policy Changes

Should the Employer propose to change any policy, practice, or program regarding EEO which is not already covered by this Article, it will meet, consult, and bargain to the full extent of the law with the Union.

Article 12
Career Development and Training

Section 1. General Principles

(a) The Parties agree that Career Development and Training shall be administered in accordance with DOJ Order 1200.1, Chapter 5-1. The Employer recognizes that the objective of employee development and training is to improve the efficiency and economy of its operations by (1) developing a well-trained work force, (2) assisting employees to achieve their highest potential consistent with Department, needs and (3) motivating employees to contribute to the success of the Department's mission.

(b) The Parties also agree that employees should be encouraged to seek advanced degrees and training. Government sponsored training should supplement and extend efforts currently being made by employees to acquire knowledge, skills, and abilities equipping them for the performance of official duties.

(c) The Employer recognizes its obligation to provide employees whatever training is necessary, within the limits of practicability, to perform their official duties. All employees shall receive equal consideration for training without regard to race, creed, color, sex, religion, national origin, age, physical or mental disability, sexual orientation, or status as a parent.

Section 2. Training Funds

All employees training funded by the Employer shall be mission-related and approved in advance. Consideration shall be given to the employee's current duties or duties he or she can reasonably be expected to perform in the future in the Department. The Employer shall determine how training funds can best be utilized to maximize the usefulness of such training for the Department.

Section 3. Training Requirements

(a) At the time a supervisor discusses performance requirements with an employee, the supervisor shall also discuss individual job-related training needs, career goals, and training and developmental opportunities to achieve those needs and goals. Training goals may be revised later with the supervisor's concurrence.

(b) All employees selected for positions with stated promotion potential (career ladder) shall have written training plans.

(c) The Employer shall maintain and have available for use by employees, supervisors, and the Union a variety of training announcements, catalogues, and notices, such as in learnDOJ.

(d) Employees may discuss training needs or opportunities with their supervisor or a specialist.

Section 4. Individual Development Plan (IDP)

(a) Purpose- JMD offices shall use an IDP as a means of:

(1) initiating a conversation between employees and their supervisors about individual developmental needs;

(2) implementing a succession plan (as a succession planning tool, the document may capture and track competencies); and

(3) documenting and tracking planned training.

(b) The IDP is a "living" document that may be changed as needs and organizational priorities change. It does not guarantee any personnel placement action, including promotion, nor that training will take place. The IDP is not to be perceived as a Performance Improvement Plan (PIP). While employees are required to complete IDP forms, if no further training/development is being sought, employees may check the box to elect that option. When a form is checked, management may still propose development that it feels would be beneficial.

(c) Format: The form and process used should allow for both employee and supervisory learning) and informal (e.g. reading or attending meetings) development activities and/or training to acquire the competencies needed to meet the stated goal(s) and serve to clarify objectives for all concerned by stating: (1) the contents have been discussed; (2) the goals are consistent with organizational priorities, and (3) the Parties have agreed to, and are willing to work toward accomplishing stated objectives, activities, and time frames, as priorities and resources permit.

(d) Roles and Responsibilities:

(1) Career development is a responsibility shared by the employee, the supervisor, and the organization. Employees have the primary responsibility for their own career development and should take the initiative to draft an IDP for discussion with their supervisor. Employees and supervisors are encouraged to review and discuss a draft Plan together to facilitate open communication. This dialogue will ensure both agree on what and how skills will be developed to enhance the employee's performance as it relates to the organization's mission.

(2) As the IDP is a working, living document, both the employee and supervisor should review the document periodically and update it as necessary. Such reviews should be handled as scheduled, sit-down meetings; and take place at least twice a year.

Section 5. Training Time

(a) Training during duty hours. When the Employer requires an employee to attend training, the Employer shall make reasonable efforts to provide the training during work hours.

(b) Training outside duty hours. Before attending training outside duty hours, the employee may request evaluation of pay entitlements under appropriate law, regulation, and policy.

(c) Alternate work schedules. If on an alternate work schedule during training, an employee shall discuss appropriate schedule adjustments with their supervisor prior to the training. This may include a change to his/her work schedule to a regular 80 hours during the pay period in which the training takes place when training schedules and work schedules are not the same.

Section 6. Training Requests

(a) Employees who wish to take training shall submit written requests for such training to their supervisors and request consideration for such training. This includes training conferences.

External training (primarily offered through outside resources) shall be evaluated by the Employer's training officer to determine whether it meets the Employer's training requirements and whether funding is available.

(b) When a supervisor has denied a written request for training contemplated in an employee's development plan, the supervisor shall explain in writing the specific reasons for the denial. Any requests for training that are not approved shall be returned with a written explanation

(c) Upon receiving notification that the training instances have been approved, employees shall submit internal training for approval through learnDOJ. Employees shall complete and submit training forms (SF-182) for external training through learnDOJ for approval. In addition to submitting external requests through learnDOJ, employees shall submit a request that include the name of the conference or training, why the they would like to attend, how this will benefit them in their current or future job performance, whether they have a membership in the organization sponsoring the conference, and a statement that the employee is willing to make a presentation to staff upon their return. Employees shall receive an email when the internal and external trainings have been approved.

(d) Training shall be approved by a supervisor before it can be taken. Depending upon workload priorities, employees and supervisors shall determine the best time for training during normal work hours.

(e) Employees who elect to take learnDOJ courses on their own time during non-work hours are allowed to do so. However, employees shall not receive overtime pay or compensatory time for such training unless it is approved in advance by their supervisors.

Section 7. Credit for Experience

When an employee is enrolled in an institution of higher education and seeks credit for on-the-job experience, the Employer shall respond to requests by the institution for information pertaining to the employee's job experience and provide the employee with a copy of the response.

Section 8. Continued Service Agreements

In accordance with DOJ Order 1200.1, Chapter 5-1, an employee may, with limited exception listed in the Order, be required to agree to continue in the employment of the government after the completion of the training.

Section 9. Reimbursement

Employees who do not successfully complete training funded by the Employer may be required to reimburse the Employer in accordance with the requirements of 5 C.F.R. §410.405.

Section 10. Upward Mobility and Affirmative Employment

(a) The Parties agree that is in their mutual interest to provide upward mobility and equal employment opportunities for all JMD bargaining unit employees in order to enable those employees to advance in their careers and to perform at their highest potential. The Parties further recognize that such employment opportunities should be consistent with the Employer's

work needs and requirements, as well as with the terms of this Agreement, any applicable laws, regulations, or directives from higher authority.

(b) There shall be a joint and systematic effort between the Employer and its employees to increase the opportunities for lower graded bargaining unit members and similarly situated minority, women, veteran, and disabled employees to attain their full career potential.

(c) Recruitment and training plans, and development programs shall be designed to produce a broad and diversified base of employees who are able to fill higher-graded technical, professional, program, and specialist positions.

Section 11. Joint Labor Management Career Development Committee

(a) Within six (6) months of the signing of this Agreement, the Employer and the Union will establish a Joint Labor Management Committee comprised of an equal and mutually agreed upon number of Union and Employer representatives.

(b) The Joint Committee shall meet on a quarterly basis at mutually agreeable times.

(c) The purposes and charges of the committee shall be to:

(1) provide the Employer and its employees with a yearly assessment of the overall effectiveness of the Employer's overall career development and training efforts;

(2) provide the Employer and its employees with a yearly assessment of the Employer's overall progress toward meeting the goals stated above in Section 10 of this Article;

(3) as part of such assessments, make recommendations regarding ways in which efficiencies in subsections (1) and (2) might be improved;

(4) make recommendations regarding ways of making information on qualification requirements for positions in JMD ranging from GS-5 to 13 which have upward mobility potential available and accessible to all qualified bargaining unit employees;

(5) make recommendations regarding ways of better providing or maintaining equal opportunity in employment for the purpose of achieving a representative and diverse workforce;

(6) help identify relevant training and educational courses and/or resources, such as career counseling, in order better enable employees to reach their career goals; and

(7) make recommendations regarding ways of maintaining and/or creating an effective coordination between the stated goals and terms of this Article and the terms and procedures provided for in Article 10 (Merit Promotion).

Section 12. Coverage and Scope

This Article is intended to supplement the provisions of DOJ Order 1411.2A (Upward Mobility) and DOJ 1200.1, Chapter 4-1 (Affirmative Employment Programs) as well as all applicable law, rules, and regulations covering affirmative action or upward mobility programs.

Article 13
Performance Rating and Standards

Section 1. General Provisions

(a) Except as otherwise provided for in this article, performance appraisals shall be made in accordance with applicable law, government-wide regulation, JMD/OBD Performance Management Program, and Departmental Order. The Employer's performance management system shall be applied equitably and fairly.

(b) Each employee shall be given an official rating each year. It is the Employer's policy that the employee's rating levels will be designated unacceptable, successful, excellent, or outstanding each year. Such ratings will follow the definitions for similar performance levels set out in DOJ Order 1200.1, Part 2, Chapter 15 and JMD/OBD Performance Management Program or any successor DOJ order which provides the framework for performance management within the Department.

Section 2. Definitions and Requirements

(a) A Performance Work Plan (PWP) is the aggregation of an employee's written critical work objectives and standards that set forth expected performance. PWPs should be developed by the supervisor with input from the employee to assure a common understanding of key elements to be performed and performance expectations. Performance ratings shall be based on established work objectives and shall be reasonable and achievable. PWPs shall be issued within thirty (30) calendar days of appointment, the beginning of a new rating period; or within thirty (30) calendar days after placement in a new position with substantially different duties or responsibilities. This includes promotion to a higher grade in the same organization.

(b) A Critical Work Objective is a work objective of such importance that unacceptable performance on the objective would result in a determination that an employee's overall performance is unacceptable. Failure to successfully improve performance to the successful level may result in corrective action up to and including removal. All performance elements included in employees PWPs shall be "critical." Performance work plans must contain a minimum of two critical objectives/ elements.

(c) A Performance Standard is a statement of the expectations or requirements established by the Employer that must be met to be appraised at a particular level of performance. A performance standard may include factors such as quality, quantity, timeliness, and manner of performance. A Work Objective is an important function of a position consisting of one or more duties that contribute to the accomplishment of organizational goals and objectives.

(d) The Performance Appraisal Record (PAR) is the form that is completed by the rating supervisor at the end of the rating cycle. It shall denote a rating level of "Unacceptable", "Successful", "Excellent", or "Outstanding" for each Critical Work Element, and a Summary Rating.

(e) Rating Official: The Rating Official is assigned at the lowest supervisory level and directly supervises employees' performance. Major areas of responsibility for the Rating Official during the rating period are:

(1) to define performance elements and standards;

(2) to inform employees throughout the rating period of their performance, and at least once a year, conduct a mid-year progress review; and

(3) to conduct a final evaluation of performance at the end of the rating period.

(f) Reviewing Official: The Reviewing Official must be a higher level than the Rating Official in all instances. He/she must review and approve all performance work plans and ratings of record for all employees rated unacceptable, successful, excellent and outstanding.

(g) Rating Period: The rating period for all employees shall begin October 1 of the current year and continue through September 30 of the following year. The minimum rating period shall be no less than ninety (90) calendar days. Employees must receive performance work plans, progress reviews, and performance evaluations in a timely manner.

(h) Summary level patterns: The levels are “Unacceptable", "Successful”, "Excellent", and “Outstanding” and they are defined as:

(1) Unacceptable – performance is below or fails to meet the requirements of one or more element standards for fulfilling management objectives and organizational goals in terms of quality, quantity, and/or timeliness of work;

(2) Successful – performance consistently meets and occasionally exceeds the requirements of element standards for fulfilling management objectives and organizational goals in terms of quality, quantity, and/or timeliness of work;

(3) Excellent – performance is well above or markedly exceeds the requirements of element standards for fulfilling management objectives and organizational goals in terms of quality, quantity, and/or timeliness of work; and

(4) Outstanding - extraordinary performance that notably exceeds all of management’s objectives and organizational goals.

Section 3. Performance Work Plan (PWP)

(a) During the first thirty (30) calendar days of the rating period, performance work plans will be discussed, signed and issued to all employees by Rating Officials. PWPs must be completed by Rating Officials and reviewed and approved by Reviewing Officials prior to being issued to employees.

(b) Rating officials will solicit the input of employees before implementing employees’ PWPs. The rating official shall meet with the employee at the beginning of his or her rating cycle to develop, review, and reissue a PWP. In no case shall the meeting between the rating official and the employee take place later than thirty (30) calendar days after the beginning of the rating cycle or thirty (30) calendar days from starting a new position.

(c) During the meeting the rating official will clearly and concisely describe the expectations and standards under each of the proposed work objectives, and shall also inform the employee that he or she may request that his or her PWP be reconsidered if an employee’s duties have been modified or if it can be shown that the work objectives or standards are unrealistic or are not pertinent to the position’s duties. The rating official will also inform the employee that any request for reconsideration shall be directed to the reviewing official. However, this provision should in no way be construed as a waiver of the Union’s right to bargain over the impact and implementation of the assignment of new duties to employees.

(d) Employees shall be notified five (5) workdays in advance of any meeting with a reviewing official under Sections 3 (b and c) above. For purposes of this Article, such meetings

between reviewing officials and their employees to discuss their PWPs shall be considered formal discussions. To that effect, upon the employee(s') request, the Union shall be afforded notice and the opportunity to attend such meetings.

(e) Subsequent to the meeting to discuss the PWP, the employee shall be provided five (5) workdays to submit any additional comments or input regarding the proposed Plan.

(f) PWP performance elements/standards must clearly state the strategic goals and objectives of the Employer (including human capital objectives) and desired results, tie in with Departmental goals, and reflect the duties and responsibilities specified in the employee's position description. They must be performance based and results-oriented. Performance standards must be established at the "successful" level. This level establishes the performance standard in terms of quality, quantity, and timeliness of work in fulfilling organizational and Departmental goals and objectives. Performance standards shall not be written at the "unacceptable" level. Performance standards may, but are not required to, be written at the "excellent" or "outstanding" levels.

(g) The PWP shall become official after having been signed by the supervisor, and the reviewing official, and received by the employee. If an employee disagrees with his/her PWP, s/he is not required to sign the PWP form. In such a situation, the rating official should document on the PWP form that the employee would not sign but that the PWP was communicated to the employee, the employee received a copy of the PWP, and he or she was informed that the plan was now in effect. The rating official must date this documentation.

(h) An employee may request that his or her PWP be reconsidered if an employee's duties have been modified or if it can be shown that the work objectives or performance standards are unrealistic or are not pertinent to the position's duties.

Section 4. Mid-cycle Feedback

(a) The supervisor will conduct at least one (1), but preferably more, progress review(s) with each employee during the appraisal cycle. At least one progress review shall be conducted no less than one hundred twenty (120) calendar days before the end of the performance cycle. The progress review centers around open, honest discussion between the rating official and the employee about the employee's work, skills and contributions.

(b) At a minimum, the mid-cycle discussion should cover skills (e.g. writing, speaking presentation, preparation of correspondence, customer service, cooperation with others, follow-up, etc.); methodologies (standard operating procedures, review processes, methods for obtaining input, etc.); potential impediments (uncooperativeness of team members, customers or contractors, insufficient feedback from the employee or the supervisor on assignments, poor working relationships between the employee and the rating official or with other office components, unavailability for work, etc.); equipment (hardware, software, telecommunications, etc.). During the meeting, each party will have an opportunity to address questions about what the employee and the rating official can do to increase the employee's ability to contribute to the component.

(c) Although not required, written narrative comments, if any, on the mid-cycle discussion may be documented on the Performance Work Plan. The employee and the Rating Official will sign and date page one of the Performance Management Record to indicate that the progress review has been completed.

Section 5. Performance Ratings

(a) The annual performance evaluation period under this Article shall cover the period between October 1- September 30. However, the rating of an employee who has not served ninety (90) calendar days in the same position, under the same Performance Work Plan, and under the same supervisor he or she had at the end of the last rating period shall be deferred until these conditions are met, unless a supplemental appraisal is secured from the employee's previous immediate supervisor or the rating is accomplished by the second-level supervisor, provided that the second-level supervisor shall have served as such for at least ninety (90) calendar days.

(b) The Rating Official will evaluate actual employee performance in comparison with defined expectations for successful performance for each performance element, and assign one of the rating levels that best represents the employee's performance as a whole – "Unacceptable", "Successful", "Excellent", and "Outstanding". He/she will check the appropriate box on the appraisal form indicating the rating level. A written narrative is required to document an employee's performance, expertise, honors/awards, or other notable achievements in at least some of the critical elements.

(c) Except as provided for in Section 7 (Unacceptable Performance), the rating official shall complete the Rating of Record within sixty (60) calendar days of the end of the appraisal cycle unless a rating of record cannot be prepared at the time specified in which case the appraisal period will be extended consistent with 5 C.F.R. §430.208(g). During the sixty (60) calendar-day period prior to the end of the rating cycle, the employee may provide a self assessment to the supervisor summarizing his/her work achievements for the appraisal cycle against each work objective. After reviewing the employee's input, the rating official can decide to meet with the employee to obtain more in-depth information regarding the employee's work performance. This discussion is solely to obtain clarifying or further supporting information from the employee about his/her performance, and not for the purpose of discussing assignment of specific achievement levels.

(d) The rating official will consider this input, as well as input from a variety of other sources, such as customer feedback, review of work products, input from team or project leaders, or others having knowledge of the employee's performance.

(e) The Rating Official assigns the summary rating level for the rating of record.

(f) The Reviewing Official must approve a Performance Appraisal Record (PAR) that is signed and submitted by a Rating Official. The Reviewing Official may adjust the evaluation prior to signing and approving it. The PAR is not final until the Reviewing Official approves it.

(g) After the performance appraisal has been completed and signed by the rating and reviewing officials, the rating official will schedule a meeting with the employee to discuss in detail his/her performance for the appraisal cycle. The employee should leave the discussion fully understanding the basis for the rating assigned. After discussion, the employee shall sign and date the appraisal. S/he can provide any comments s/he wishes on the document. The employee's signature only establishes receipt of the appraisal and does not establish agreement with the rating assigned. However, if the employee refuses to sign the rating, the supervisor shall document the appraisal indicating the employee refused to sign.

(h) Each employee shall be furnished a copy of his or her complete rating form along with any supporting documentation or commentary. The original of the form shall be filed in the employee's Performance Folder.

Section 6. Reassignments, Details and Temporary Promotions

(a) When an employee is reassigned to another position outside of his/her immediate section and has completed at least the minimum rating period, an interim summary rating shall be prepared and considered in deriving a rating of record at the end of the rating period. However, when an employee changes positions within a section and there is no substantive change in duties, an interim summary rating is not required.

(b) For details or temporary promotions within the work unit for more than one hundred twenty (120) calendar days, written performance elements and standards shall be provided to the employee, and an interim rating shall be completed at the end of the detail or rating period. A performance work plan shall be prepared in accordance with Section 3 of this Article and provided to the employee no later than thirty (30) calendar days after the effective date of the detail or temporary promotion. The performance work plan must also be approved by the official supervisor and the reviewing official. The Reviewing Official shall approve the interim rating prior to the supervisor of the detail discussing and issuing it to the employee. If the detail or temporary promotion continues through the end of the rating period, the interim performance rating will be designated as the annual rating of record.

(c) For details or temporary promotions between sixty (60) and one hundred twenty (120) calendar days in length, the supervisor of the detail should prepare a memorandum of record comparing the employee's progress to goals of the detail assignment. This memorandum should be given to the Rating Official of record and the employee's official supervisor, to be included in the annual performance rating of record.

Section 7. Unacceptable Performance

(a) Whenever a supervisor concludes that an employee's performance is not acceptable and would cause one or more performance elements to be rated at the "unacceptable" level, the supervisor shall:

(1) meet with the employee to perform a progress review and to specifically describe how the employee's work achievement is falling short of performance expectations, as well as what the employee needs to do bring his or her performance up to the "successful" level.

(2) discuss what guidance or assistance will be provided to the employee in order to bring his or her performance up to the "successful" level.

(3) advise the employee of specific deficiencies observed in the specific performance element(s) and the standard(s) associated with the element(s);

(4) provide the employee with a full opportunity to explain the observed deficiencies; and

(5) prepare a memorandum to the file summarizing the above discussions. The employee shall be provided a copy.

(b) After the oral notice in paragraph a, if an employee is still "Unacceptable" for one or more critical elements on the rating of record, the Rating Official shall provide to the employee a written Performance Improvement Plan (PIP) and an opportunity to raise his/her performance to the "Successful" level.

(c) The performance improvement period must be no less than thirty (30) calendar days in duration, but is typically sixty (60)-ninety (90) calendar days in length. Formal training, on-

the-job training, counseling, and closer supervision shall be used separately or in combination to address unacceptable performance, and should be addressed in the PIP. Depending on the circumstances, a detail may also be viable as an option.

(d) If, at the conclusion of the formal opportunity-to-improve period, the performance improves to the "Successful" level, a new performance appraisal record must be prepared reflecting the improved performance. Conversely, if performance has not improved to the "Successful" level, the employee shall be given a rating of "Unacceptable", and action shall be initiated to reassign, reduce in grade, or remove the employee.

Section 8. Notice of Proposed Performance-based Adverse Action

(a) Should the Employer propose to remove or demote an employee on the basis of their performance, that employee is entitled to thirty (30) calendar days' advance written notice. Such notice shall inform the employee of:

(1) the nature of the proposed action;

(2) the critical elements and work objectives of the employee's position involved in each instance of unacceptable performance;

(3) the specific instance(s) which demonstrate(s) unacceptable performance on which the proposed action is based;

(4) the time to reply regarding the proposed action and to whom;

(5) the right to be represented by the Union or other representative regarding the proposed action;

(6) the right to make an oral and/or written reply and to receive a written decision regarding the proposed action;

(7) who such reply should be tendered to; and

(8) the employee's appeal and grievance rights.

Section 9. Employee Reply Rights

The employee will be given the opportunity to respond orally and/or in writing prior to any final decision regarding the proposed action. Any request for an oral reply meeting must be tendered within seven (7) calendar days. Written replies must be submitted within fifteen (15) calendar days of receipt of the proposed action. Should the employee elect to reply orally, the Employer may make a written report of the oral reply. Should the Employer elect to make a written report of the reply, it will provide a signed copy of the report to the employee within seven (7) calendar days of the reply meeting. Extensions of the time frames provided for this Section may be granted in accordance with Section 12 of this Article.

Section 10. Decision Letter

(a) The Employer shall make its final decision within thirty (30) calendar days after the expiration of the final notice or within thirty (30) calendar days of any extension provided for by Section 12 below.

(b) The deciding official will be an official occupying a higher position (if one exists) than the official proposing the action.

(c) The deciding official shall prepare a decision letter, which shall include all of the following:

(1) a determination of the final action;

(2) findings addressing each instance of unacceptable performance listed in the notice of proposed action;

(3) a response to arguments raised during the employee's reply;

(4) the effective date of the action, if upheld;

(5) notice to the employee that he or she has option to appeal the action to the Merit Systems Protection Board (MSPB) or to grieve under the negotiated grievance procedure provided for in Article 34, but not both; and

(6) notice to the employee that he or she will be deemed to have elected his or her remedy at the time the employee timely files a grievance or files an appeal under the applicable MSPB procedure.

(d) Any decision to remove an employee or to reduce their grade must be based only on instances of unacceptable performance occurring during the one year period commencing on the issue date of the advance notice of proposed adverse action.

Section 11. Grievances Associated with Performance

(a) The substance of elements and performance standards in an employee's PWP, or any informal (interim) rating, given to the employee are not grievable, unless it is alleged that the provision of law, rule, or regulation, or the terms of this Agreement have been improperly applied.

(b) Once approved by the Reviewing Official, end-of-cycle ratings of satisfactory or above may be grieved under the procedures in Article 34 (Grievance Procedure), except that all grievances concerning performance ratings of satisfactory or above shall be presented in writing at Step One. The written grievance must be submitted on the Grievance Form set forth in Appendix B. The grievance should address the specific resolution requested such as: change of the overall rating level to a specified level, increase of an individual element rating, and/or, changing or removing remarks.

(c) Employees who, under the provisions of Section 10 of this Article, have been served notice that they will be subject to removal or a reduction in pay or grade may elect to grieve such action under the provisions of Article 34, or file an appeal with MSPB per applicable regulation.

(d) The grievance decision at Step 2 regarding grievances filed under either subsections (b) or (c) of this Section shall be final and not subject to further consideration or review within the Department. However, this decision may be taken to arbitration under Article 35 (Arbitration) procedures.

(e) An employee alleging discrimination regarding their performance rating or related actions taken against the employee retains all complaint and/or grievance rights as provided for by this Agreement and any applicable law, rule, and regulation.

Section 12. Medical Conditions and Accommodations for Unacceptable Performance

Pursuant to the terms of 5 CFR 432.105, the Employer:

(a) shall allow an employee to furnish medical documentation related to any medical condition which he or she believe may have contributed to their unacceptable performance. In considering such information, the Employer may require, or offer, a medical examination related to the condition or conditions which may have affected the employee's performance;

(b) shall notify any employee eligible for retirement who has furnished such information of their right to apply for disability retirement and shall provide that employee with information concerning how to apply; and

(c) may elect to extend the thirty (30) calendar day notice period for up to thirty (30) more calendar days for any of the following reasons:

(1) to enable the Employer to evaluate any and all medical documentation and information regarding the medical issue raised by the employee under subsection (a) above;

(2) to accommodate the employee's need for additional time to prepare and give his or her reply because the employee's illness or incapacitation does not allow him or her to meet the time frames specified in Section 9 of this Article; and

(3) to consider any reasonable accommodation regarding an employee's handicapping condition.

Article 14
Within-Grade Determinations

Section 1. General

Bargaining unit employees shall be eligible for within-grade pay increases and additional step increases as provided in 5 U.S.C. §5335, and as implemented by 5 C.F.R. Part 531, and this Agreement.

Section 2. Eligibility

(a) In order to be eligible for a within-grade increase, an employee shall be below step 10 of his or her grade level and meet the following requirements:

(1) the employee shall be performing at or above an acceptable level of competence. An "acceptable level of competence" is defined as an overall level of performance of at least Successful as indicated in the employee's most recent Rating of Record;

(2) the employee shall have completed the required waiting period for advancement to the next higher step of the grade of his or her position; and

(3) the employee shall not have received an equivalent increase during the waiting period.

Section 3. Notice

(a) When a supervisor becomes aware of changes in the employee's performance that would clearly warrant a denial of a within-grade increase, the supervisor, before the employee would be eligible for the within-grade increase, shall provide the employee written notice:

(1) that the employee is not performing at an acceptable level of competence;

(2) of the work objectives for which the employee's performance is deficient; and

(3) telling the employee that he or she may respond in writing to request reconsideration of the denial from a higher level supervisor in the organization who took no part in the denial, provided such request is submitted within fifteen (15) calendar days after receipt of the determination.

Section 4. New Rating

When the employee demonstrates sustained performance at an acceptable level of competence throughout the requisite notice period, his or her supervisor shall issue a new appropriate Rating of Record and approve the within-grade increase.

Section 5. Optional PIP

A supervisor issuing a notice of a denial of a within-grade increase to an employee consistent with Section 3 shall also review Article 13, (Performance Rating and Standards), Section 5 to determine whether a Performance Improvement Period would be appropriate.

Section 6. Time-frames

(a) A within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility. When, due to administrative error, oversight, or delay, a positive determination is made after the waiting period is completed, the effective date of the within-grade increase shall be retroactive to the date on which the within-grade would have been effective but for the error, oversight, or delay. Likewise, when a negative determination is reversed on reconsideration or appeal, the within-grade increase shall be deemed to have been granted on the original effective date, making the increase retroactive.

(b) When an acceptable level of competence is achieved and a within-grade increase determination is made after a negative determination of within-grade eligibility, the effective date is the first day of the first pay period after the positive determination. A new waiting period for the next within-grade increase commences on the effective date of the within-grade increase.

Section 7. Reconsideration

(a) When an employee requests reconsideration under Section 3 procedures, the Employer, in processing the request for reconsideration, shall ensure that:

(1) the employee has the opportunity to contest in writing, through the request for reconsideration, the basis for the negative determination;

(2) the employee has a right to a Union representative in preparing his or her request for reconsideration;

(3) the employee has in preparing his or her request for reconsideration a copy of all pertinent documents in the reconsideration file concerning supervisory appraisals of his or her level of competence;

(4) the employee and his or her representative are free from unlawful discrimination and reprisal for their work in submitting the request for reconsideration;

(5) that the employee and his or her representative be given up to fifteen (15) calendar days after receipt of the determination notice to respond in writing and that the employee and his or her representative shall be given a reasonable amount of official time to prepare the request for reconsideration; and that such time limit be extended in instances where: the employee was not notified of the time limit in which to respond or the employee was unable to timely respond because of circumstances beyond his or her control;

(6) a prompt decision is made in writing by a higher level supervisor in the organization (e.g., the second level supervisor) who took no part in the original decision.

(b) A supervisor may, at any time after a denial, reconsider the employee's eligibility and grant the within-grade increase if the supervisor is satisfied that the employee has sustained performance at an acceptable level of competence. A new Rating of Record indicating the employee is performing at the Successful level must be prepared to support this determination.

Section 8. Reconsideration Appeals and Grievances

(a) When a reconsideration sustains the original unfavorable decision, the affected employee may file a step 2 grievance as provided for in Article 34 (Grievance Procedure) of this Agreement. Time spent under the reconsideration process shall not be counted against the grievance time frames provided for in Article 34.

(b) Notwithstanding the above provision, the employee may elect to waive his or her reconsideration rights under Section 7 of this article and directly file at step 1 of the Article 34 grievance process.

Section 9. Annual Review

If a within-grade increase is denied, a new formal within-grade determination must be made within fifty-two (52) weeks after the expiration of the original waiting period.

Section 10. Delayed Determination

(a) A delay in determination must be made when:

(1) an employee has not had ninety (90) calendar days to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position, and the employee has not been given a performance rating in any position within ninety (90) calendar days before the end of the waiting period; or

(2) the employee has been reduced in grade because of unacceptable performance to a position in which he or she is eligible or will become eligible for a within-grade increase within ninety (90) calendar days.

(b) When an acceptable level of competence determination has been delayed under this Section, the employee shall be informed that his or her determination is postponed, that the appraisal period is extended, and of the specific requirements for sustained performance at an acceptable level of competence. The acceptable level of competence determination shall be based on a Rating of Record completed at the end of the ninety (90) calendar day minimum appraisal period established consistent with Article 13 (Performance Rating).

Section 11. Minimum Period

(a) An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the ninety (90) calendar days minimum appraisal period established consistent with Article 13 (Performance Rating) during the final fifty-two (52) calendar weeks of the waiting period. Such increase shall be granted for one or more of the following reasons:

(1) because of absences that are creditable service in the computation of a waiting period or periods under 5 CFR 531.406 of this subpart;

(2) because of paid leave;

(3) because the employee received service credit under the back pay provisions of subpart H of 5 CFR 550;

(4) because of details to another agency or employer for which no rating has been prepared;

(5) because the employee has had insufficient time to demonstrate an acceptable level of competence due to authorized activities of official interest to the Employer not subject to appraisal under 5 CFR 430 (including, but not limited to, labor-management partnership activities provided for by Section 2 of Executive Order 12871 and serving as a representative of a labor organization under chapter 71 of title 5, United States Code; or

(6) because of long term training.

(b) In such a situation there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his or her position of record for the minimum appraisal period under Article 13 (Performance Rating).

Article 15
Incentive Awards Program

Section 1. General Policy

The Parties agree that an Incentive Awards Program is a useful mechanism through which employees' accomplishments shall be recognized. The Employer shall maintain an Incentive Awards Program that ensures consistency and equity in the application of standards and criteria established for awards. The types of awards provided under this program include: Performance Awards, Significant Achievement Awards and Honorary Awards. Awards will be granted in accordance and conformity with the appropriate laws, regulations, orders, etc.
The Parties agree that the Incentives Awards Program shall be administered in accordance with applicable DOJ and the Employer Instructions and policy.

Section 2. Performance Awards

(a) Managers may establish and provide performance awards based on employee performance and as recommended by subordinate supervisors.

(b) Performance awards may be granted in recognition of a current performance rating in which the employee performed one or more work objectives in a manner clearly exceeding normal requirements over a period of at least six months. An employee may not receive more than one award, based in whole or in part, on the same performance. Performance awards include: Quality Step Increases (QSIs); Cash Awards; Time-off Awards (TOAs); and Combined Cash and TOAs.

(c) Quality Step Increases (QSI) shall be defined as set forth in 5 C.F.R. §531.504.

(d) Superior Performance Cash Awards may be granted in recognition of a summary rating of Successful or higher, in which performance on one or more work objective exceeds the Successful level. The award is awarded for Outstanding performance on all work objectives (both critical and noncritical) over a period of at least six months. Superior Performance cash awards may be between 1% - 4% of the employee's base salary (does not include locality pay), with 2% being the norm. A determination of the proper percentage of the award must be based on an assessment of the individual's overall achievements against all performance standards.

(1) To warrant consideration, the written performance appraisal must individually address in narrative format, the exceptional accomplishments, over and above the requirements of the Successful level, for each work objective.

(2) The amount of the award should be based upon the grade/salary level of the employee at the time of the performance. Performance awards may be no more than 10% of the employee's base salary (does not include locality pay).

(e) Time-Off Awards (TOA) may be granted in recognition of a summary rating of Successful or higher, in which performance on one or more work objectives exceeds the Successful level. The minimum amount of time-off that may be granted for a single contribution is four (4) hours.

(1) Full-time employees may be awarded a total of no more than 80 hours of time-off during any leave year. The maximum amount of time-off that may be approved for any single contribution is forty (40) hours.

(2) Part-time employees, or employees with uncommon tours of duty, may be awarded no more than an amount of time equal to the average number of work hours in the employee's bi-weekly scheduled tour of duty. The maximum award for any single contribution is one-half the maximum amount of time that can be granted during the leave year.

(f) Combined Cash and TOA may be granted in recognition of a summary rating of Successful or higher, in which performance on one or more work objectives exceeds the Successful level.

Section 3. Significant Achievement Awards

(a) Special Act or Service Award is granted in recognition of special act or service-type contributions of a one-time, nonrecurring nature, connected with or related to official employment such as: performance which has involved overcoming unusual difficulties; creative efforts that make important contributions to science or research; performance of assigned duties with special effort or innovation that results in increased productivity, economy, or other highly desirable benefits or exemplary or courageous handling of an emergency situation related to official employment. Special act or service awards include: Cash awards, Time-Off awards (TOA), or a combination of cash and TOA.

(b) On-the-spot Awards (OTSs) are "Special Act or Service" awards designed to promptly recognize one-time or short-term outstanding efforts by employees of a nature which might otherwise go unrecognized. They provide quick feedback and special recognition to employees who make extra efforts to perform duties or special assignments in an exemplary manner.

(1) An employee cannot be granted more than four OTSs in a calendar year but these may be granted at any time throughout the fiscal year.

(2) Only one award may be granted in recognition of a specific accomplishment.

Section 4. Honorary Awards

(a) Bureau and Office Heads have authority to request Certificates of Appreciation for their own signature. Certificates of Appreciation can be used to recognize employees with a timely opportunity to say "thank you" publicly to an individual for a deed well done.

(b) Length of Service Awards. Service in the Federal Government is recognized at five year intervals with a certificate and emblem.

(c) Office Heads may also recognize employees through the use of other "themed" non-monetary items.

Section 5. Disputes

Awards are given at the discretion of the Employer. An award (or non-receipt of an award) plus the amount, type, or timing of an award are not grievable.

Article 16
Details

Section 1. General Principles

(a) Definition -A detail is a temporary assignment of an employee to a different position or to a different set of duties for a specific period, with the employee returning to his/her regular duties at the end of the detail. During a detail the detailed employee continues to be the incumbent of the position from which he or she was detailed.

(b) The Employer is responsible for assuring that details do not compromise the open and competitive principles of the merit system and this Agreement. The Employer shall keep details as brief as possible consistent with the needs of the Employer. The Parties agree that details are a normal part of the day-to-day functioning of the Employer and that management has the right to detail employees in conformity with the law, the DOJ regulations, and this Agreement.

Section 2. Detail Procedures

(a) Normally details of an employee will be in increments of one hundred twenty (120) calendar days or less. This period may be extended for additional periods as specified in OPM regulations.

(b) The Employer shall consider excusing an employee from a detail if the assignment would cause that employee undue hardship.

(c) The Employer will notify any employee whom it intends to detail no less than fifteen (15) workdays prior to the beginning of the detail, unless the Employer can demonstrate reasonable cause as to why such notification cannot be provided. At the time of notification the Employer will also explain to the employee the purpose of the detail.

Section 3. Documentation

(a) An employee on a detail of more than thirty (30) calendar days will be provided a position description when one exists.

(b) An employee on a detail of sixty (60) calendar days or more will:

(1) have a permanent record of the detail which shall be maintained in the official personnel folder; and

(2) be provided with a Performance Work Plan in accordance with Article 13 (Performance Rating).

(c) An employee assigned to a detail with an unclassified set of duties for more than sixty (60) days, will be provided with a written statement of duties.

(d) An employee on a detail to a higher graded position for more than thirty (30) calendar days will have such detail maintained as a permanent record in the employee's personnel folder.

Section 4. Selection and Notification

(a) In detailing employees, the Employer shall give due consideration to the desires and qualifications of the employees as well as to management needs. Employees will not be detailed

as a disciplinary procedure except when the employee is detailed as a result of a settlement agreement between the Parties.

(b) An employee will ordinarily be notified as soon as possible after another supervisor makes a written or formal request for an employee's services on detail.

(c) The Employer agrees that employees shall be selected for details in a fair and equitable manner that avoids outright favoritism as the basis for the selection.

Section 5. Temporary Promotions

(a) Temporary promotions shall not exceed one hundred twenty (120) calendar days except as provided in subsection c (below).

(b) Merit promotion procedures do not apply when a detail or temporary promotion is intended for one hundred twenty (120) calendar days or less, or when a detail is to a position of the same grade and promotion potential.

(c) Temporary promotions of more than one hundred twenty (120) calendar days will be awarded in compliance with the procedures provided for in Article 10 (Merit Promotion).

Section 6. Performance Evaluations

The supervisor for a detail of more than one hundred twenty (120) calendar days will give the detailed employee an interim rating of his/her performance at the end of their detail. The interim rating shall be based on the duties which the employee has actually performed during his or her detail. The interim rating shall be considered by the employee's rating official in preparing the employee's rating of record in accordance with procedures of Article 13 (Performance Rating and Standards), Section 6.

Section 7. Rotation of Qualified Employees

(a) Should the employer determine a need to detail qualified employees, they shall first ask for volunteers for such assignment. If an insufficient number of qualified employees volunteer, the reassignments shall be rotated in order of reverse seniority. This provision shall apply unless the employer demonstrates reasonable cause as to why the assignment cannot be rotated.

(b) For the purposes of this Section, except in cases of emergency or of compelling Employer need, employees will be given at least twenty (20) workdays notice of the initial detail opportunity. This will run concurrently with the timeframes in Section 2 (c) above.

(c) Notwithstanding the above subsections, the Employer retains the right to determine the work unit or units from which employees will be considered for such details.

Section 8. Requesting Details

Employees are encouraged to plan and discuss career broadening/skills enhancement assignments through the Individual Development Plan (IDP) process (Article 12, Career Development). If such an assignment would involve a detail under the procedures of this Article, nothing in this Article precludes an employee from requesting a detail at any time. Supervisors shall seriously consider such requests unless such detail would interfere with Employer operations.

Article 17
Reassignment

Section 1. Purpose

The Employer may reassign employees for appropriate business reasons, such as to assure the better utilization of employee skills or abilities, make the best use of current staff, provide employees with opportunities to broaden their qualifications and experiences in the work performed by the Department, resolve work-related problems, or comply with employee requests for personal or other reasons.

Section 2. Definition

A reassignment is the permanent movement of an employee from his/her regular position to another position at the same grade which then becomes the employee's regular position.

Section 3. Notice

When a reassignment is required, the Employer shall notify the employee of the effective date of the reassignment at least fifteen (15) workdays prior to the effective date, whenever possible, and shall provide the employee the details of the new assignment as soon as possible. Any employee who feels a hardship will be caused by the reassignment may consult the Union within fifteen (15) workdays after the notice of the reassignment with regard to what recourse is available. The employee shall upon request be granted a prompt meeting with his or her supervisor, who shall give consideration to the employee's concern.

Section 4. Training in New Duties

When an employee is reassigned to a new position, no performance-based adverse action may be taken on the basis of a failure to learn new skills and abilities until after the employee has been given ninety (90) calendar days to perform any new duties involved in his or her new assignment and such training as may be necessary to perform the new function.

Section 5. Merit Principles

Unless otherwise specified in this Agreement, reassignments with known promotion potential will be made in accordance with the terms and conditions of Article 10 (Merit Promotion).

Article 18
Transfers of Function and Reorganizations

Section 1. Definitions

The term –

(a) "transfer of function" means –

(1) the transfer of bargaining unit positions from one competitive area to one or more other competitive areas; or

(2) the movement of bargaining unit positions to another commuting area;

(3) except as otherwise provided for in this Agreement, the provisions of Article 20 (Reduction in Force) shall be controlling regarding the implementation of transfer of functions of bargaining unit employees; and

(b) “reorganization" means the elimination of bargaining unit positions, addition of new bargaining unit positions in job classifications that previously did not exist in that established work unit, or redistribution of positions in an established work unit in the organization to the another new or existing work unit.

Section 2. Employer Obligations

The Employer shall:

(a) Not implement any reorganization without prior notification and consultation with the Union;

(b) Fully inform employees and the Union as soon as possible of plans for the transfer of functions or reorganizations; at a minimum, furnish the Union with:

(1) the names of affected employees;

(2) old and proposed organizational charts;

(3) the old and new position descriptions of affected employees, when applicable; and

(4) the anticipated implementation date(s) of the change.

(c) Consistent with Article 36 (Mid-Term Negotiations), notify the Union of any change and negotiate with the Union about procedures and appropriate arrangements for employees adversely affected by transfers of functions or reorganizations, such as any efforts to be made by the Employer to provide placement assistance and retirement and severance pay counseling to adversely affected employees.

Section 3. Implementation Procedures

In addition to Section 2, transfers of function and reorganizations will follow negotiation and timeframe procedures in accordance with Article 36 (Mid-term and Implementation Negotiations).

Article 19
Relocations

Section 1. General

The Employer will provide facilities and spaces for its employees which are adequate and conducive to the performance of their duties. It is also committed to providing a safe and healthy work environment for those employees. To that effect, it agrees to the following provisions.

Section 2. Meetings with Employees

Pursuant to the terms of Article 4 (Rights of the Union), the Union shall be given the opportunity to be present at any meeting between the Employer and employees concerning the relocation.

Section 3. Predecisional Consultation

Pursuant to Section 3 of Article 36 (Mid-term and Implementation Negotiations), the Employer will consult with the Union concerning any anticipated relocation.

Section 4. Notification

(a) Should the Employer, after consultation with the Union (when practicable), decide to proceed with the relocation it will notify the Union in writing of the pending relocation. Normally, the Employer will provide the Union with at least fifteen (15) workdays advance notification. Formal notification should include relevant information such as:

(1) the reason for the relocation;

(2) floor plans (if the move involves more than ten (10) employees in a group, floor plans of both the old and new locations may be provided, if readily available);

(3) the contemplated date of the relocation along with any applicable move schedules; and

(4) a list of all affected employees.

(b) When the Union anticipates employee issues it may request:

(1) the grades, positions, and/or applicable position descriptions of affected employees

(2) affected employees' computation dates when similarly situated employees are being offered different categories of work spaces; and

(3) dates, prior to that of implementation, during which the Union may inspect the proposed new location and employees work spaces.

Section 5. Bargaining Rights and Procedures

Should the Union wish to bargain on impact and implementation, negotiations shall proceed in accordance with Article 36 (Mid-term and Implementation Negotiations).

Article 20
Reduction in Force

Section 1. General Principles

Except as otherwise provided by the terms of this Article, a reduction in force (RIF) shall be covered by 5 C.F.R. Part 351, and other applicable rules and regulations.

Section 2. Employer's Rights and Obligations

When conducting a RIF, the Employer shall fulfill all requirements of the law, Government-wide regulations, Executive Orders, and Department of Justice regulations. RIFs shall not be used to discipline an employee or group of employees nor for the purpose of circumventing merit promotion procedures. However, the Employer retains its statutory right to determine when a RIF, furlough or transfer of function will be conducted and what positions will be affected.

Section 3. Alternatives to RIFs

The Employer, recognizing the adverse impact a RIF can have on the organization's morale, agrees as a matter of policy to carefully consider alternatives to a RIF in order to minimize as much as possible the number of positions affected by a RIF. This shall include reducing the number of positions through attrition, hiring freezes, transfers, retraining, details to other agencies, and the like insofar as such actions are practicable. The Employer shall minimize RIFs resulting from the introduction of new equipment or processes. The Employer shall, before conducting a RIF because of budgetary reasons, consult with the Union and consider cost-saving alternatives.

Section 4. RIF Notification

(a) The Employer shall notify the Union of any RIF as soon as practicable after a decision to conduct a RIF prior to notifying affected employees.

(b) The Employer shall notify the Union and employees at least sixty (60) calendar days in advance of the RIF effective date where practicable. The initial notice will set forth the competitive levels, the number of positions, the names of the employees, the proposed effective date, and a statement of the reason(s) for the RIF. However, the Employer may request that the Director of OPM approve a shorter notice period. If approved, the shortened notice period must be at least thirty (30) calendar days.

(c) The Employer shall notify each affected employee in writing consistent with the requirements of 5 C.F.R. Part 351, Subpart H – Notice to Employees. Content of the notice will include:

(1) the action to be taken, the reasons for the action, and its effective date;

(2) the employee's competitive area, competitive level, subgroup, service date, and three most recent ratings of record received during the last four (4) years;

(3) the place where the employee may inspect the regulations and records pertinent to this case;

(4) the reasons for retaining a lower-standing employee in the same competitive level under 5 C.F.R.§351.607 or §351.608;

(5) information on reemployment rights, except as permitted by 5 C.F.R.§351.803(a); and

(6) the employee's right, as applicable, to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations or to grieve under a negotiated grievance procedure.

Section 5. Information and Consultation

The Employer shall, upon request, notify the Union of its efforts to minimize the adverse effects of the RIF on employees and shall consult on the means to assure a smooth and cooperative basis for assisting affected employees. Nothing in this Section shall be construed to modify the rights guaranteed to either of the Parties by the Civil Service Reform Act ("CSRA").

Section 6. Competitive Levels and Areas

The Employer agrees that in any RIF action it shall establish competitive levels and areas that are consistent with the appropriate regulations.

Section 7. Employee Review of Records

(a) When an employee has been given a specific RIF notice, the employee and/or his or her representative shall have the right to review pertinent records to the extent permitted by law, subject only to the Employer's lawful authority to withhold information under the Privacy Act or other laws or Government-wide regulations. If any information is withheld, the requestor, upon written request, shall receive a description or list of the withheld information.

(b) Such right of review shall include an examination of all retention lists pertaining to all the positions for which the affected employee might be qualified.

Section 8. Retention Standing

The procedures by which an employee’s retention standing and placement will be determined shall be executed in accordance with 5 C.F.R. Part 351, Subpart E.

Section 9. Release from Competitive Level

(a) Pursuant to 5 CFR 351 Subpart F, the Employer shall release employees from their competitive level in the inverse order of their retention standing. However, employees so released shall retain all bumping or retreat rights as provided for in Subpart F of that same regulation.

(b) Should the Employer decide to furlough an employee or employees, it shall do so in accordance with the provisions of Article 21 (Furloughs) and 5 CFR 351.604 (or Subpart G).

Section 10. Right of First Refusal

When employees are displaced as a result of a decision to contract out their work in accordance with Article 22 (Consultants, Experts and Contracting-out) , the Employer will include in its solicitation a clause requiring the contractor to offer the right of first refusal for employment

openings under the contract to qualified downgraded or separated employees. Affected employees will not be required to exercise their right of first refusal until such time as the Employer has fully met its obligations, as provided for in this Article, regarding the affected employee(s) placement. Declining first refusal rights shall in no way diminish rights the employee might otherwise have under the provisions of this Article and this Agreement, or under any applicable rule or regulation.

Section 11. Reassignment under RIF

(a) An employee shall be given ten (10) workdays in which to accept or reject any reassignment offer made in accordance with his or her rights under the regulations or this Agreement. Absent circumstances that would cause the Employer to extend the time frame, the employee's failure to respond by the required date shall be considered a rejection of the offer. If an employee who has been affected by a RIF is not placed according to RIF regulations at his or her current grade level in another position for which he or she is qualified, he or she shall be considered in accordance with OPM regulations for other positions for which he or she may qualify.

(b) Employees assigned to a lower graded or lower paying position because of a RIF shall be entitled to two (2) years of grade and pay retention in accordance with 5 CFR 536.

Section 12. Grievances

An employee who has been adversely affected by a RIF may submit a grievance under Article 34 (Grievance Procedures) if he or she believes any law, rule, regulation, or this Agreement has not been followed.

Section 13. Placement Procedures

If a RIF occurs, the Employer shall:

(a) insure that all affected employees are given an opportunity to apply for vacant positions for which they qualify that management decides to fill using merit promotion procedures;

(b) shall also insure those who apply shall receive consideration for those positions;

(c) give the affected employees requested assistance in obtaining other employment to the extent practicable;

(d) give careful consideration to providing affected employees retraining for Employer positions to avoid separations during RIFs insofar as resources, law, and regulations of higher authority permit;

(e) to the extent possible, assist employees separated through RIF in finding other employment in the local commuting area. Employees for whom no positions are found may be counseled by a representative of Human Resources on benefits to which they would be entitled;

(f) contact the appropriate State Employment Service to obtain available information of training programs for which affected employees may be eligible, and inform them of how to apply; and

(g) explain to eligible affected employees the program for early retirement.

Section 14. Assistance

The Employer shall inform all employees affected by a RIF of the Department of Justice Re-employment Priority List. Employees will be considered pursuant to the Department of Justice Re-employment Priority List requirements. Additionally, at a minimum, the Employer shall assist employees as follows:

(a) Re-promotion. Following the RIF, the Employer to the extent practicable shall assist downgraded employees in finding positions in the Department at the grade they held before the downgrade.

(b) Qualification waivers. Before a vacancy in the Department is advertised, the Human Resources Division shall contact the appropriate manager to determine if he or she will consider downgraded employees who are not currently qualified for the position but can become so with training and/or on-the-job experience. If the manager agrees, the Human Resources Director shall provide a list of such employees for his consideration. Employees must, however, meet the basic educational requirements for this position.

Article 21
Furloughs

Section 1. Employer's Rights and Obligations

Pursuant to all applicable law, regulations, and this Agreement, the Employer retains its statutory right to determine when a furlough will be conducted and what positions will be affected. When conducting furloughs, the Employer will fulfill all requirements of applicable law, regulations, as well as the terms of this Agreement.

Section 2. Union and Employee Rights

Pursuant to 5 USC 7114 (a) (2) (A), the Union shall be given the opportunity to be present at any formal discussion between one or more representatives of the Employer and one or more employees in the unit concerning furloughs.

Section 3. General Principles

(a) When the Employer becomes aware of the necessity to conduct a furlough, it shall consider appropriate means to minimize the adverse effect on employees such as reassignment, attrition, hiring freezes, freezes of recruitment for targeted positions, positive placement efforts, reductions in training and/or travel; and/or reductions in contracting out.

(b) Furloughs shall not be used to punish or disadvantage any employee.

(c) The Employer shall not institute any furlough in lieu of disciplinary measures or performance-based adverse actions against any employee or group of employees. Nor shall a furlough be instituted for purposes of circumventing merit promotion principles.

Section 4. Notification

(a) Except in cases of emergency furloughs, the Employer will provide the Union with any draft furlough notice prior to its distribution to employees. Prior to distributing such notice to employees, the Employer will consider any comments the Union might make concerning the draft. Should the Union request a meeting to discuss the draft notice; the Employer will meet with the Union prior to the notice's distribution.

(b) The notice period to employees and the Union regarding furloughs of more than thirty (30) consecutive calendar days shall be consistent with the terms of Article 20 (Reductions in Force).

(c) In the event that an emergency furlough is necessary, all affected employees will be given as much advance notice as possible. If, due to emergency, management cannot provide employees with notice prior to the shutdown, affected employees will be provided with or mailed a written notification as soon as possible, but in no case more than two (2) workdays following implementation of such emergency furlough. In such emergency furloughs, where the length of the furlough becomes known only after its implementation, the Employer will notify affected employees of the anticipated length as expeditiously as possible once such information becomes known.

(d) The notice shall contain the following information:

(1) the action the Employer intends to take;

(2) the reason for the furlough;

(3) the effective date of the furlough;

(4) for non-emergency furloughs, the maximum length of the furlough;

(5) grievance and/or appeal rights, as applicable, along with the time limits for filing such action; and

(6) the place where the employee and their representative may inspect pertinent regulations and records releasable under applicable law.

(e) When some but not all employees at the same competitive level within the same competitive area are being furloughed, the notice must also state the basis for selecting a particular employee, or group of employees, as well as the reason for such furlough.

(f) Along with a copy of the final furlough notice distributed to employees, the Union will be furnished with a list of all employees who will be excepted from the furlough (including those identified to work on shutdown procedures, if applicable) and those being furloughed. The Union will be furnished with the list on or before the date that the furlough notices are being issued to employees. Such list will also identify the number of employees to be furloughed by program area, geographical location, position title, series, grade, and computation date, as well as the employees' retention standing.

Section 5. General Furlough Procedures

(a) Except as otherwise provided in this Article and in Article 20 (Reduction in Force), the Employer shall establish competitive levels, competitive areas, and retention registers in accordance with applicable laws, rules and regulations.

(1) When some, but not all, employees at the same competitive level are being furloughed, employees will be selected for furlough on the basis of reverse retention standing.

(2) During the furlough employees will be furloughed on their regularly scheduled workdays.

(3) Employees who are required to report to duty during the furlough will be compensated in accordance with applicable law, rule, and regulation.

(4) Barring any conflict of interest issues, affected employees may accept outside employment during their furlough days.

(5) To the greatest extent possible the Employer shall provide affected employees with information regarding contact points for unemployment compensation and other benefits to which employees being placed on furlough may be entitled.

(6) Performance requirements and expectations shall be adjusted to take into account the effect of the furlough period on employee performance.

(7) To the greatest extent possible, for the length of the furlough, Union officers, officials, and Council 26 and International staff shall be allowed access to their Union office and equipment in order to meet and fulfill their obligations under the terms of this Agreement and 5 USC Chapter 71.

(8) When some but not all employees at the same competitive level are recalled from the furlough, they shall be recalled in order of their retention standing, beginning with the highest standing employee.

Section 6. Procedures for furloughs of more than thirty (30) calendar days

(a) Except as otherwise provided for in this Article and in Article 20 (Reduction in Force), furloughs of more than thirty (30) consecutive calendar days shall be administered pursuant to 5 CFR 351 and all other applicable laws, rules, regulations, and this Agreement.

(b) Prior to initiating any furlough of more than thirty (30) calendar days, the Employer will first ask employees to volunteer to be placed in leave without pay (LWOP) status. Such request for volunteers will be distributed to employees along with the initial furlough notice. If there are more than enough volunteers to obviate the need for the furlough, volunteers will be placed in LWOP status in order of their retention standing. The savings from voluntary LWOP shall be used to reduce the number of employees subject to furlough. However, the Employer reserves the right to deny such placement for mission critical reasons.

(c) To the extent that it is possible to do so, employees shall be given the option of choosing whether their furlough days shall run consecutively or discontinuously.

Section 7. Procedures for furloughs of thirty (30) calendar days or less

(a) Except as otherwise provided for in this Article, furloughs of thirty (30) consecutive calendar days or less, shall be administered pursuant to 5 CFR 752 and all other applicable laws, rules, regulations, and this Agreement.

(b) Furloughs of thirty (30) consecutive calendar days or less (including emergency furloughs due to lapsed appropriations), will be implemented in accordance with 5 CFR 752, as well as any other applicable laws, rules, and regulations and settlement agreements pertaining to adverse actions, and the terms of this Agreement.

Section 8. Restored Pay

To the extent permitted by law and regulation, employees placed on emergency furlough due to a lapse in appropriations will be retroactively paid and otherwise compensated once appropriations have been approved. Absence without leave or loss of pay equal to the time lost shall be retroactively granted barring statutory prohibition (e.g., actions that would be in violation of the Anti-Deficiency Act, 31 USC), or direction by higher authority.

Section 9. Hours of Duty

During non-continuous furloughs, furlough days for full time employees will be based on eight (8) hours each day and forty (40) hours per week. Part-time employees will be furloughed in the same proportion as full time employees. For example, a part-time employee who works twenty (20) hours a week will be furloughed for fifty (50) percent of the number of hours that a full-time employee is furloughed.

Section10. Absence and leave

(a) A furloughed employee will not receive annual and sick leave accruals during any pay period in which he/she accumulates eighty (80) hours of LWOP.

(b) Employees may not use any type of paid leave on scheduled furlough days.

(c) Furlough days shall not be counted against scheduled paid leave absences taken under Family Medical Leave.

(d) If an employee is unable to use their scheduled "use or lose" annual leave due to furlough, and if they are unable to reschedule it during the rest of the year, such annual leave will be carried over into the next leave year, when permitted by regulation.

(e) In accordance with Department of Labor regulations, employees in continuation of pay (COP) status will remain in such status for the length of the furlough.

(f) When an emergency furlough is required, employees on approved annual or sick leave on the effective date of the furlough will have their leave canceled and will be permitted to remain absent from work for the duration of the furlough. Upon the furlough's expiration, employees who were on approved annual leave that did not extend beyond the end of the furlough will be required to report back to duty. Employees who have had their annual leave canceled because of the furlough will be given every opportunity to reschedule that leave. Employees who were on scheduled sick leave at the beginning of the furlough will report back to work upon the furlough's expiration, unless their medical status precludes them from doing so. When an employee's medical status precludes them from reporting back to work, the employee must request sick leave in accordance with applicable procedures and the terms of this Agreement.

Section 11. Time-in-grade, Within-grade increases, and probationary periods

(a) Furlough days shall be counted toward an employee's time-in-grade.

(b) Within-grade increases shall not be delayed due to furlough, unless the employee's non-pay status during the furlough exceeds the step-related thresholds and is not covered by the exceptions contained in 5 CFR 531.406.

(c) Aggregate non-pay status not to exceed twenty-two (22) workdays will count toward the completion of an employee's probationary period.

Section 12. Retirement Benefits

For purposes of determining length of service for retirement benefits, credit is allowed for periods in LWOP or furlough for periods that do not exceed six (6) months in aggregate during any calendar year.

Section 13. Health and Life Insurance

(a) Health insurance benefits will continue for up to three hundred sixty-five (365) calendar days in non-pay status. During such period the Government shall continue to pay the Employer's share of the employee's health insurance premium. The Government is also responsible for advancing from salary the employee's payment share as well. The employee shall elect whether to pay his/her share of the premium on a current basis, or whether to have the premiums accumulate and be withheld from his/her pay until such time as the employee returns to duty. Upon the employee's return to duty, the repayment of the employee's indebtedness may be prorated at the employee's election. Such repayment can be staggered through reasonable accommodations that are consistent with regulation.

(b) Life insurance shall continue for up to three hundred sixty-five (365) calendar days in non-pay status at no cost to the employee.

Article 22
Consultants, Experts, and Contracting Out

Section 1. General

(a) Many JMD offices are truly blended workplaces with government and non-government staff working side-by-side. The Employer will try to be aware of the effect of non-government staff on employees and try to reduce any conflicts.

(b) The Employer has an obligation to evaluate the use of non- government staff when determining the most efficient and cost-effective way to get work done. However, the Employer will conform to all Federal Regulations, regulations in the Department of Justice, Agency orders, and the U.S. Code governing the use of consultants, experts, and contractors.

(c) The Employer agrees to comply with OMB Circular A-76 and all other applicable laws and regulations concerning studies on using outside staff, and implementation of any subsequent contracting out.

Section 2. Information studies and contracting out procedures

(a) The Employer will notify the Union in writing no less than twenty (20) workdays before the issuance of any Request for Proposals (RFP) for any contract which will directly affect JMD personnel policies, practices, or bargaining unit members' conditions of employment in more than a minimal way. Specifically, this notice will apply to contracting out bargaining unit positions.

(b) Pursuant to the FAIR Act, the employer will continue to maintain online its inventory of commercial and inherently governmental activities.

(c) Should the Union require additional information regarding such matters, it may request to meet with the Employer for further discussion.

(d) Notwithstanding the provisions of this Section, and pursuant to 5 USC 7114, the Union reserves its right to file information requests regarding the above matters.

Section 3. Bargaining

When the Employer determines that bargaining unit employees will be affected by its decision to contract out Employer work, the Union shall be given the opportunity to bargain over matters not already covered by the terms of this Agreement. Should the Union elect to negotiate, bargaining shall proceed under the provisions of Article 36 (Midterm and Implementation Negotiations).

Section 4. Arrangements and Procedures

(a) Except as provided for in this Article, arrangements and procedures for the placement of bargaining unit employees displaced by the Employer's decision to contract out shall by governed by the terms of Article 20 (Reduction in Force).

(b) In instances when the Employer has been granted authority to offer VERA early outs or VSIP opportunities to bargaining unit employees, employees who will be displaced by the Employer's decision to contract out, and who occupy positions included in OPM's VERA and/or VSIP authorization, shall be given preference regarding VERA and VSIP elections.

(c) Disputes over compliance with the Circular A-76 and its Supplement are not grievable under the negotiated grievance procedure and should be pursued under the Circular A-76 appeal process. Employees may, however, grieve alleged violations of this Agreement.

Article 23
Leave

Section 1. General

(a) Approval. Leave may be approved only by the immediate supervisor or an employee authorized to act in the absence of the immediate supervisor. Emergency leave shall not be denied solely on the basis that there is no one present with the authority to approve it.

(b) Definitions related to the use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer:

(1) "Family member" and "Immediate relative" mean an individual with any of the following relationships to the employee:
Spouse, and parents thereof;
Sons and daughters, and spouses thereof;
Parents, and spouses thereof;
Brothers and sisters, and spouses thereof;
Grandparents and grandchildren, and spouses thereof;
Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and
Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(2) Parent means:

A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;

A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

A person who stands in *loco parentis* to the employee or stood in *loco parentis* to the employee when the employee was a minor or required someone to stand in *loco parentis*.

A parent (as described in the above subparagraphs) of an employee's spouse or domestic partner.

(3) Son or daughter means:

A biological, adopted, step, or foster son or daughter of the employee;

A person who is a legal ward or was a legal ward of the employee when that

Individual was a minor or required a legal guardian;

A person for whom the employee stands in *loco parentis* or stood in *loco parentis* when that individual was a minor or required someone to stand in *loco parentis*; or

A son or daughter (as described in 1-3) of an employee's spouse or domestic partner.

(4) Domestic partner means an adult in a committed relationship with another adult, including both same sex and opposite-sex relationships. Committed relationship means one in which the employee, and the domestic partner of the

employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

(5) “Health care provider” and "serious health condition" as defined in 5 CFR 630.1202.

(6) For applicable definitions of terms related to Family and Medical Leave, see Article 24 (Family and Medical Leave).

Section 2. Annual Leave

(a) The taking of annual leave is a right of the employee contingent upon the right of supervisors to establish the time when leave may be taken. To the greatest extent possible annual leave will be approved in such fashion as to satisfy employee preference and to provide equity among employees. Therefore, leave schedules shall be arranged so that each employee has an opportunity to use annual leave with full consideration for his or her wishes, subject to the Employer’s right to approve annual leave. Except in emergencies, employees shall obtain approval of annual leave before taking the leave. In the event a supervisor must deny an annual leave request, the supervisor shall work with the employee to try to arrive at a mutually acceptable alternative time for the use of such leave.

(b) Requests for annual leave shall be made to the immediate supervisor in writing at least a week or more in advance of the date the annual leave is to begin. The Employer shall make reasonable efforts to accommodate employee requests to take one extended vacation of two (2) weeks or more during the year. An employee desiring to take such an extended vacation must request it sufficiently far in advance to permit a supervisor the opportunity to accommodate the request and meet work requirements.

(c) In the event of a conflict of scheduling annual leave that cannot be resolved by the usual informal "give-and-take" efforts of the supervisor and the concerned employees, the supervisor shall give prime consideration to the work needs and secondary consideration to whether one of the employees was afforded an opportunity to take leave during the period(s) in question during the previous year. In the event of similar past usage records, and in the absence of any determinable personal hardship, length of government service shall be used to resolve leave scheduling conflicts.

(d) In extraordinary cases which involve operational efficiency, management has the right to reschedule annual leave in accordance with business needs. Normally, the employee will be notified no less than three (3) workdays in advance of the beginning of the scheduled leave period.

(e) In an emergency the morning of a workday, the employee must contact the immediate supervisor or designee to obtain permission to be on leave for the desired number of hours or the whole day. All emergency requests for leave shall be submitted at or before the beginning of the employee’s regular scheduled tour of duty. Extenuating circumstances of a highly unusual nature may prevent timely notification and management shall carefully consider such circumstances when evaluating emergency leave requests. Unless unusual circumstances

pertain, employees shall personally submit emergency annual leave requests for each day that the personal emergency continues unless their supervisors have approved other arrangements. Until such notification is given, supervisors cannot grant annual leave and employees may be considered as absent without leave (AWOL) until such time as they give proper notification and are granted annual leave by their supervisors. As a condition of granting emergency annual leave, approving officials may require employees to submit documentation in support of their requests for leave.

(f) Advanced annual leave may be granted to an employee up to the number of annual leave days the employee would earn through the end of the current leave year. Unless otherwise provided for by applicable law, rule, regulation, or by the terms of the Agreement, advance annual leave shall be granted at the discretion of the employer.

Section 3. Sick Leave

(a) Sick leave is authorized as set forth in 5 C.F.R. Part 630, Subpart D. An employee may use sick leave when he or she:

(1) receives mental, dental, or optical examination or treatment;

(2) is incapacitated for the performance of his/her duties by physical or mental illness, injury, pregnancy, or childbirth

(3) provides care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth;

(4) provides care for a family member who is undergoing a medical, dental, or optical examination or treatment for same;

(5) provides care for a family member who has a serious health condition, as defined in 5 CFR 630.1202;

(6) makes arrangements necessitated by the death of a family member or attend the funeral of a family member;

(7) would, as determined by a health care provider, jeopardize the health of others by his or her presence on the job because of any resultant exposure to a communicable disease. In such cases, the employee shall furnish a statement from health authorities or other qualified medical practitioner having jurisdiction over the employee's place of residence, that the disease requires a quarantine, isolation or restriction of movement; or

(8) needs such time for purposes related to the adoption of a child.

(b) The amount of sick leave granted to an employee during any leave year for purposes described in subsections 3(a)(3) and 3(a)(6) above may not exceed a total of one hundred and four (104) hours.

(c) The amount of sick leave granted to an employee during any leave year for purposes described in subsection 3(a)(5) may not exceed four hundred and eighty (480) hours.

(d) All emergency requests for sick leave shall be received at or before the beginning of the regular scheduled tour of duty. The employee shall contact the immediate supervisor or designee to obtain permission unless incapacitated. There shall be, at all times during core or normal duty hours, a management official available who is authorized to approve such leave requests. Employees shall be notified of who this official is and be given the necessary contact information for purposes of gaining such authorization.

(e) Sick leave may not be used merely for rest or in lieu of, or to supplement, annual leave.

(f) Supervisors shall not approve sick leave for any use other than permitted by this Agreement, or by applicable law, rule or regulation. Supervisors may require a medical certificate or other administratively acceptable evidence for use of sick leave in excess of three (3) workdays. Administratively acceptable evidence as to the reason for the absence may be considered regardless of the duration of the absence. However, a supervisor may require additional evidence on certain requests for sick leave when, in his or her judgment, the employee's leave record, or circumstances of the leave request, justify it. This would include a requirement for a medical certificate for absences of three (3) workdays or less when an employee is a chronic user of short periods of sick leave, when there is reasonable doubt as to the validity of the claim, and in other special circumstances.

Section 4. Advanced Sick Leave

(a) A full-time employee may be granted up to two-hundred and forty (240) hours of advanced sick leave:

(1) when incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;

(2) for a serious health condition of the employee or a family member;

(3) when the employee would , as determined by health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job through exposure to a communicable disease;

(4) for purposes related to the adoption of a child; or

(5) for the care of a covered service member with a serious injury or illness, provided the employee is exercising his or her entitlement under 5 USC 6382(a)(3).

(b) A full-time employee may be granted up to one hundred and four (104) hours:

(1) when he or she receives medical, dental or optical examination or treatment;

(2) to provide for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental or optical examination or treatment;

(3) to provide care for a family member who would , as determined by health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community through exposure to a communicable disease; or

(4) to make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

(c) Part-time employees working on a regular schedule (or employees working an uncommon tour of duty) may be granted an amount of advanced sick leave which is prorated according to the number of hours in the employee’s regularly scheduled workweek.

(d) All such applications for advanced sick leave must be in writing and supported by a medical certificate from a practicing physician.

(e) Two-hundred and forty (240) hours is the maximum amount of advanced sick leave an employee may have to his or her credit at any one time.

(f) Notwithstanding the above provisions, advanced sick leave shall, not be granted when it is unlikely that an employee will accumulate sufficient future sick leave to repay the advance such as when an employee has filed or indicated an intent to file for disability retirement .

Section 5. Family Leave

Family related leave shall be governed by the guidelines established by 5 C.F.R. Part 630, Subparts D & L, and the terms of this Article and of Article 24 (Family Medical Leave).

Section 6. Other Leave

(a) Court. Employees shall be granted paid time off without charge to leave or loss of pay for required jury duty or for appearing in court as a summoned witness when the U.S., D.C., state, or local government is a party. In instances where the above jurisdictions are not a party to the proceedings, the employee may request use of his or her own accrued leave or LWOP. An employee who is summoned as a witness in an official capacity on behalf of the Federal Government shall be considered to be on official duty, not court leave. The employee should provide a copy of the subpoena or summons to their supervisor upon receipt. Employees attending jury or witness service should return to duty once dismissed, unless their return to their duty station would be at the end of their scheduled workday. Instead of returning to work, employees may request annual leave, credit hours, compensatory time, or LWOP for the balance of the workday. Employees must reimburse to the Employer any fees paid for service as a juror or witness. However, monies paid to jurors or witnesses which are in the nature of expenses, such as transportation, need not be reimbursed.

(b) Voting. Generally, where the polls are not open at least three (3) hours either before or after an employee's regular work hours, employees may be granted excused absence that will permit the employee to report for work three (3) hours after the polls open or leave from work three (3) hours before the polls close, whichever requires the lesser amount of time off. An employee's "regular work hours" should be determined by reference to the time of day the employee normally arrives at and departs from work. For example, if an employee is scheduled to work from 8:00 a.m. to 4:30 p.m. and the employee's polling place is open from 7:00 a.m. to 8:00 p.m., the employee should not be granted excused absence for voting, since the employee would still have at least three (3) hours after the end of his or her work schedule to vote. However, if an employee is scheduled to work from 8:00 a.m. to 4:30 p.m. and the employee's polling place is open from 7:00 a.m. to 7:00 p.m., the employee may be granted ½ hour of excused absence from 4:00 p.m. to 4:30 p.m., if requested. In instances where the employee's voting place is beyond normal commuting distance and a vote by absentee ballot is not permitted, the Employer will consider granting excused absence (not to exceed one (1) day) to allow the employee to make the trip to the voting place to cast a ballot. If more than one (1) day is needed, the employee may request annual leave or leave without pay for the additional period of absence.

(c) Administrative. Occasional unavoidable or necessary absence from duty of less than one (1) hour may be handled administratively in one of the following ways:

(1) by excusing the employee for adequate reasons;

(2) by requiring work time equivalent to the period of absence; and

(3) by charging (in 15-minute increments) against any leave time the employee may have to his or her credit.

(d) Religious. The Employer supports flexibility when personal religious beliefs require an employee's absence from work during certain periods of the workday or workweek. Normally, these can be addressed through flexible work schedule options. For purposes of attending or participating in a religious holiday, employees will be permitted to use annual leave, credit hours, compensatory time, or LWOP, so long as such absence will not significantly interfere with the accomplishment of the Employer's mission. An employee may request to work compensatory overtime for the purpose of taking off without charge to leave for such purposes. Any employee who works compensatory overtime as provided for in this section, shall be granted an equal amount of compensatory time off from his or her scheduled tour of duty. The employee may work such compensatory overtime before or after the granting of compensatory time off. While normally such requests shall be approved, the Employer reserves the right to disapprove requests when the requests interfere with the efficient accomplishment of the Employer's mission.

(e) Military. Military Leave shall be granted, used, and recompensed in accordance with 5 U.S.C. 6323.

(f) Blood Donation. Upon advance request by the employee to the supervisor, an employee donating blood without compensation will be granted administrative leave of up to four (4) hours for such donation. The employee is not permitted to go home after the donation unless they feel sick and request additional leave (i.e. sick, annual, LWOP, compensatory time, or credit hours). An employee who is not accepted for donating blood shall only be entitled to travel time to and from the donation site and the time needed to make such determination. The supervisor may request that the employee supply him or her with appropriate documentation from the donation site.

(g) Bone Marrow. Pursuant to 5 U.S.C. 6327, an employee may use up to seven (7) calendar days of paid leave each calendar year to serve as a bone marrow donor. An employee may also use up to thirty (30) calendar days of paid leave each calendar year to serve as an organ donor.

Section 7. Absence without Leave (AWOL)

(a) While an isolated instance of an unapproved absence of short duration (e.g., tardiness) may normally be handled as provided in section 5, unapproved absences that are recurring and/or lengthy may be charged as AWOL.

(b) In accordance with Article 33 (Disciplinary and Adverse Actions) procedures, unapproved absences, even of short duration, may be a basis for disciplinary action.

Section 8. Leave without Pay (LWOP)

(a) Except as otherwise provided for by law, executive order or regulation, and this Agreement, leave without payment is granted at the discretion of the Employer. However, refusal to grant LWOP shall be justified in writing, if requested.

(b) Normally, LWOP is granted for short periods of time on an occasional basis. Longer periods of LWOP are granted only when required through procedures where approval is directed through law or regulation, such as under the Family and Medical Leave Act (see Article 24).

(c) Employees requesting LWOP should review the OPM fact sheet on LWOP's impact on various benefits. http://www.opm.gov/oca/leave/html/LWOP_eff.asp

Section 9. Privacy

Leave records shall not be publicized by posting or unnecessary distribution. Supervisors or other Employer officials shall respect the confidentiality of such records and shall not discuss these records with any unauthorized officials or employees. Access should be limited to those whose official duties require such access.

Section 10. Inclement Weather and Emergencies

(a) Employees who are working in Washington, D.C. will follow the OPM policy. This policy applies to situations that prevent significant numbers of Federal employees in the Washington, DC, area from reporting for work on time or which require agencies to close all or part of their activities, including major disasters and other emergency situations, adverse weather conditions, natural disasters, and other incidents causing disruptions of Government operations.

(b) When there are disruptions of Government operations, the U.S. Office of Personnel Management (OPM) will make announcements to the media as to whether Federal agencies in the Washington, D.C. area are open or closed, or operating under an unscheduled leave policy, a delayed arrival policy, or an early dismissal policy. The announcements are defined in the OPM website. Operating Status notifications can be viewed at the OPM website: http://www.opm.gov/status.

(c) The above does not apply to employees designated as “Emergency/Weather Essential”. Such employees will be designated as emergency employees in writing. The employees shall be informed of the general situations that will make them essential. “Emergency/Weather Essential” will then be required to report for duty in such emergency situations.

(d) Employees in a travel status, or are teleworking, or assigned to a worksite not impacted by an emergency, will normally be expected to work as scheduled during an emergency /weather situation.

Article 24
Family and Medical Leave Act (FMLA)

Section 1. General

(a) The Employer will fully consider requests made by employees that fall under provisions of the FMLA and this Article.

(b) Full-time employees must have more than one year of federal service to request FMLA consideration. Part-time employees are eligible for use of FMLA, except that the hours available under Section 2 below shall be in direct proportion to the number of hours in the employee's regularly scheduled bi-weekly work hours.

(c) Unless noted otherwise below, eligible employees may use up to twelve (12) workweeks of unpaid leave (Leave without Pay [LWOP]) during any 12-month period.

(d) Under certain conditions, an employee may use the twelve (12) weeks of FMLA leave intermittently.

Section 2. Employee Eligibility

(a) The standard amount (twelve (12) administrative workweeks of FMLA leave during any 12-month period) of FMLA leave may be requested for:

(1) the serious health condition of the employee that makes the employee unable to perform the essential functions of his or her positions.

(2) the birth of a son or daughter of the employee and the care of such son or daughter;

(3) the placement of a son or daughter with the employee for adoption or foster care;

(4) the care of a spouse, son, daughter, or parent of the employee who has a serious health condition; or

(5) for any qualifying exigency arising out of the spouse, son, daughter, or parent of the employee being on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces (See Section 9 for more information).

(b) Military Family Care FMLA is a special category. It allows a twenty-six (26)-week entitlement for family members to care for a covered service member undergoing medical treatment, recuperation, or therapy, for a qualifying serious injury or illness. See Section 10 for more information.

(c) Employee eligibility for each FMLA-qualifying reason is determined at the time of the employee's initial leave request. The eligibility shall extend for the length of the applicable twelve (12)-month period or the documented end of the condition giving eligibility. All FMLA absences for the same qualifying reason are covered by the initial FMLA approval. A new FMLA request does not need to be submitted, but intermittent use does require a leave form documenting leave usage for each period of absence.

Section 3. Employer Notice Requirements

The Employer shall post and keep posted in conspicuous places on its premises a notice, explaining FMLA provisions and providing information concerning applicable complaint and/or grievance procedures. The notice shall be posted prominently where it can be readily seen by employees. For such purposes, electronic posting is acceptable as long as it is accessible to all employees.

Section 4. Employee Requests for FMLA

(a) An employee must provide the employer with at least thirty (30) calendar days advance notice before taking leave under the provisions of this Article, when the need for such leave is foreseeable. If such notice is not practicable, notice should be given to the Employer as soon as is practicable.

(b) Normally, requests should be made in writing as described in Section 5 (Request Forms). When requesting FMLA leave, an employee shall provide notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave. Such notice shall include the anticipated timing and duration of the leave.

(c) Notwithstanding Section 4(b) above, when an employee is requesting FMLA leave for the first time, he or she need not invoke their FMLA rights or even mention FMLA. In those instances where the employee does not invoke their FMLA rights, but the Employer knows that an employee's leave request may be for FMLA-qualifying reasons, the Employer must notify the employee of their eligibility to request FMLA leave within five (5) work days of receipt of the employee's request, absent extenuating circumstances.

(d) A request need only be given once for each qualifying condition. However, the employee shall advise the Employer, as soon as is practicable, if the dates for which the leave has been scheduled need to be changed or were unknown in the first place.

(e) Employee eligibility for each FMLA-qualifying reason is determined at the time of the employee's initial leave request and shall extend for the length of the applicable 12-month period.

(f) However, separate FMLA requests must be submitted for each unrelated instance/medical condition. FMLA absences for multiple instances/medical conditions are combined and cumulatively count against the one (1) year limits.

Section 5. Employee Request Forms

(a) Except as provided above in Section 4, requests must be in writing. The use of DOL FMLA request forms are encouraged. A different format may also be provided, however, all the required information covered by the DOL form must be included.

(b) To request leave for an employee's own medical issues, use DOL Certification of Health Care Provider for Employee's Serious Health Condition. (WH-380-E http://www.dol.gov/whd/forms/WH-380-E.pdf) or the equivalent. Employees should have a doctor/medical provider complete this form.

(c) To request leave for an employee to care for a family member, the employee should use WH 380-F (Certification of Health Care Provider for Family Member's Serious Health Condition) http://www.dol.gov/whd/forms/WH-380-F.pdf or the equivalent. The request must meet three tests; that the family member of the employee:

(1) requires psychological comfort and/or physical care;

(2) needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs and

(3) would benefit from the employee's care or presence.

(d) To request leave for an employee to help in a family member's military deployment, an employee should use Certification of Qualifying Exigency for Military Family Leave (WH-384). http://www.dol.gov/whd/forms/WH-384.pdf or the equivalent.

(e) To request leave for an employee to care for an injured military family member, an employee should use Certification for Serious Injury or Illness of Covered Service member -- for Military Family Leave (WH-385) http://www.dol.gov/whd/forms/WH-385.pdf or the equivalent.

Section 6. Medical Certification

(a) Pursuant to 5 CFR 630.1207, the Employer may request additional medical information from the employee, should there be good reason to clarify the need for, or duration of, the requested leave.

(b) Pursuant to 5 CFR 630.1207 (d), the Employer may question the validity of the medical information and request additional medical opinions. Medical visits resulting from such a request shall be at the Employer's expense. Any health care provider designated or approved by the Employer shall not be employed by the Department of Justice or be under the Department's administrative oversight.

(c) Should the Employer ask for additional medical information, the employee shall furnish such information within fifteen (15) calendar days of the receipt of the Employer's request. In situations where such timely certification cannot be returned despite the employee's diligent, good faith efforts, an additional fifteen (15) calendar days shall be given to the employee. Absent extraordinary circumstances, in cases where acceptable medical documentation is not provided within thirty (30) calendar days, the employer shall deny the FMLA request.

Section 7. Approval/Disapproval

(a) The supervisor must approve, disapprove, or request additional medical information within fifteen (15) workdays after submission of a complete FMLA request.

(b) As a supervisor is not a medical or FMLA expert, if there is any doubt that a serious medical conditions has been shown, or if any FMLA exigency exists, he/she should consult with HR Employee Relations staff to determine if more information is needed, or if the request should be disapproved.

(c) In cases where the Employer does not have sufficient information to determine whether FMLA leave should be granted, the Employer should inquire further of the employee or, if applicable, their designated representative about the reason why the employee should be given FMLA leave.

(d) Approvals or disapprovals will be in writing. If the request is approved, it will cite the condition(s) and/or circumstance(s) approved for use of FMLA. If the request is disapproved, it will state at least one reason why the employee is not eligible to use FMLA leave.

Section 8. Serious Medical Condition

(a) As defined in 5 CFR 630.1202, the definition of a serious health condition includes such conditions as:

(1) cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth;

(2) chronic, ongoing, or episodic types of incapacity; and

(3) any illness, injury, impairment, or physical or mental condition that involves continuing treatment by a health care provider as defined in 5 CFR 630.1202.

(b) The term serious health condition is not intended to cover short-term conditions for which treatment and recovery are very brief. The common cold, influenza, earaches, upset stomach, headaches (other than migraines), routine dental or orthodontia problems, etc., are not serious health conditions unless complications arise.

Section 9. Qualifying Military Family Covered Active Duty-related Exigencies

(a) Short-notice deployment. Issues arising from a military member being notified of an impending call or order to covered active duty seven (7) or fewer calendar days prior to the date of deployment.

(b) Military events and related activities. These include official ceremonies related to the covered active duty. These include family support or assistance programs.

(c) Childcare and school activities. These include arranging for alternative school placement or childcare when the covered active duty or call to covered active duty status necessitates a change in the existing childcare arrangement for a child. Direct childcare on an urgent, immediate need basis may be covered.

(d) Financial and legal arrangements. These include making financial or legal arrangements to address the military member’s absence while on covered active duty.

(e) To act as the military member’s representative before a Federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty and for a period of ninety (90) calendar days following the termination of the military member’s covered active duty status.

(f) Counseling. To attend counseling provided by someone other than a health care provider for oneself; for the military member; or for a child. In all cases, the need for counseling must arise from the covered active duty.

(g) Rest and recuperation. This includes spending time with a military member who is on short-term, temporary, rest and recuperation leave during the period of deployment.

(h) Post-deployment activities. These include arrival ceremonies, reintegration briefings and other official activities for a period of ninety (90) calendar days following the termination of the military member’s covered active duty status.

(i) Addressing issues that arise from the death of a military member, such as meeting and recovering the body of the military member and making funeral arrangements.

(j) Additional activities. Events which arise out of the military member’s covered active duty or call to covered active duty status not listed above. The supervisor, HR Employee Relations staff, and employee must agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

Section 10. Military Family Care FMLA

(a) The twenty-six (26)-week entitlement is for employee family members to care for a covered servicemember. Servicemember includes spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) of a covered servicemember with a serious injury or illness and (2) provides care for such servicemember.

(b) Servicemember Eligibility 1- In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), "serious injury or illness" means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

(c) Servicemember Eligibility 2- In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period 5 years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy, "serious injury or illness" means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

(d) Other than the greater yearly amount (26-week entitlement), this operates the same as standard FMLA. However, the normal leave year limitations on the use of sick leave to care for a family member do not apply; an employee may substitute annual or sick leave for any part of the 26-week period of unpaid FMLA leave to care for a covered servicemember. Like regular FMLA any use counts cumulatively toward FMLA yearly limits.

Section 11. Substitution of Paid Leave for LWOP

(a) An employee may elect to substitute annual leave and/or sick leave for the default LWOP. This substitution must be consistent with current laws and OPM's regulations for using annual and sick leave.

(b) No employee may be required to substitute paid leave in lieu of LWOP for purposes of Family Medical Leave.

(c) The Employer shall not deny an employee's request to substitute paid leave as defined in subsection (a) above, when such request is consistent with the provisions of FMLA and this Agreement.

(d) Normally, the amount of sick leave that may be used to care for a family member is limited as provided for in this subsection. Employees shall normally be limited to substituting no more than thirteen (13) calendar days of sick leave for LWOP when used to care for a family member. However, employees may substitute up to twelve (12) work weeks of sick leave for the care of a family member with a serious health condition

Section 12. Further FMLA Benefits and Protections

(a) Upon return from FMLA, an employee must be returned to the same position they held previous to their leave use; or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(b) An employee who takes FMLA leave is entitled to maintain their health benefits coverage. An employee on unpaid FMLA leave may either pay their employee share of the premiums on a current basis or pay the accrued amount upon their return to work.

Article 25
Work-life / Dependent Care

Section 1. General

Maintaining a balance between work and personal/family responsibility is a mutual goal of the Parties. As a service to employees, the Employer has undertaken, as resources permit, several initiatives to provide information and support. The Parties are committed to working together to maximize the use of these services by bargaining unit employees.

Section 2. Labor Management Committee

(a) The Parties agree to establish a joint Labor Management Committee. This committee shall:

(1) investigate the possibility of obtaining tuition assistance from both within and outside of the Department.

(2) enable greater bargaining unit participation in DOJ dependent care programs.

(3) evaluate and propose changes to the Work Life Initiatives listed in Section C of this Article.

(b) The Labor Management Committee shall be composed of up to three (3) representatives each from the Union and from the Employer; and shall meet no less than twice each year. Committee members shall be granted a reasonable amount of official time for participation in the Committee's activities. The Committee shall be established within sixty (60) calendar days of the signing of this Agreement and shall periodically make recommendations as it sees fit to JMD management.

Section 3. Work-life Initiatives

Department directly or indirectly supported initiatives include:

(a) Lifecare http://www.Lifecare.com
(b) Cafeteria at Main Justice
(c) JOHO exercise facility
(d) Justice Federal Credit Union

Section 4. Union Notification

Continuation of these initiatives is subject to funding and policy determinations. Notwithstanding such limitations, the Employer will notify the Union in advance of any changes to listed programs or any new programs, and shall afford the Union the opportunity to bargain to the full extent of the law over such changes.

Article 26
Hours of Work /Alternative Work Schedules (AWS)

Section 1. Purpose

The Parties agree that alternative work schedules contribute to a positive work relationship, improved employee morale, and good labor-management relations. This Article facilitates those goals in accordance with DOJ and legislative requirements to establish and implement policies which ensure flexibilities for the Employer and employees.

Section 2. Policy

All employees are eligible to participate in features of the Employer's Flexible Work Schedule Program (FWSP) except where the nature of the employee's assignment or the mission of the work unit is incompatible with one or more FWSP option as deemed by management. Participation in one or more of the features of the FWSP is voluntary and shall be permitted at the discretion of management and in accordance with this Article and Agreement. In cases where the Employer finds that a particular FWSP schedule has had an adverse impact on Employer operations, it reserves the right to suspend such schedule(s) in order to accomplish mission objectives. Pursuant to Article 36 (Mid-term Negotiations), the Union will be notified of such proposed program/option changes and given the opportunity to meet, discuss, and bargain over them.

Section 3. Definitions

(a) Basic Work Requirement. The number of hours, excluding overtime hours, an employee is required to work, or to account for, by charging leave, excused absence, holiday hours, compensatory time off, or time off as an award.

(b) Hours of Operation. The official hours of operation for JMD employees not on a fixed schedule are 6:00 a.m. to 6:00 p.m., Monday through Friday.

(c) Core Hours. Established duty hours within a specified tour of duty that an employee is required to be at work or on approved leave. The core hours for JMD employees not on a fixed schedule are 10:00 a.m. to 2:30 p.m. as defined in Section 3 g.

(d) Credit Hours. Any work hours within a flexible schedule established under 5 U.S.C. 5121 (4), that exceed an employee's basic work requirement and that the employee elects to work; so as to vary the length of a workweek or a workday. Full-time employees may carry no more than twenty-four (24) credit hours between pay periods. Part-time employees are further limited in the number of hours that may be carried forward proportionate to their work hours. Employees approved for one of the schedules in Section 4 is eligible to earn credit hours with supervisory approval. Each supervisor may determine their procedure for requesting, approving and documenting credit hours. The procedure for requesting/notifying may vary, so long as the decision is in writing and supplied to the employee.

(e) Default Standard Schedule. Employees not on a fixed schedule or approved Flexible Option are on a default standard schedule of 9:00 a.m. to 5:30 p.m.

(f) Fixed Schedule. This is a tour scheduled by the Employer for a shift other than in the standard hours of operation. Affected employees and the Union shall be notified in writing as soon as is possible, (normally no less than two (2) weeks prior to the implementation of such a schedule).

(1) The Employer will solicit qualified volunteers for such a change;

(2) Qualified volunteers will be assigned to open time slots in order of seniority;

(3) In the absence of any volunteers, time slots will be assigned to qualified employees in order of reverse seniority.

(g) Flexible Hours (or Flexible Time Bands). These are the hours, or period of time, during the workday that surround the core hours, and are the hours during which employees may select their times of arrival to and departure from the work site. The flexible time band periods for JMD are 6:00 a.m. to 10:00 a.m. (for arrival) and 2:30 p.m. to 6:00 p.m. (for departure).

(h) Lunch. The lunch period shall be considered free time allotted outside the established tour of duty. This shall be a thirty (30)-minute period. This lunch-time must be taken unless specifically ordered otherwise by the Employer; or unless the scheduled work day minus authorized leave is less than seven (7) hours. An employee may request waiving the mandatory lunch if their time worked is seven (7) hours or less due to use of leave or credit hours. A lunch break longer than thirty (30) minutes shall be available when approved. The lunch period of 30 minutes to two (2) hours must be scheduled between 11:00 a.m. and 2:00 p.m. Lunch periods for those on fixed schedules will take place as designated, subject to the provisions of this Section.

Section 4. Flexible Options

(a) Flexible Work Schedule (FWS) – An FWS consists of workdays with designated core hours and flexible hours (or flexible time bands). The JMD FWS policy includes the following three types of work schedules:

(1) Gliding Schedule" means a type of flexible work schedule where the employee works eight (8) hours a day for five days each week. The employee selects a starting and stopping time each day. Starting times are between 6:00 and 10:00am and stopping times between 3:00 and 6:00pm. An employee may change starting and stopping times daily within the established flexible time bands. A minimum1/2 hour non-duty lunch period is taken between 11:00am and 2:00pm. The non-duty lunch period may be extended to up to two hours so long as eight (8) work hours are completed by 6:00 pm.

(2) "Flexi-Tour" means a type of flexible work schedule in which an employee is allowed to fulfill his/her eighty (80)-hour biweekly basic work requirement of eight (8) hours a day, forty (40) hours a week by selecting a starting and stopping time within the flexible time bands. Once the work schedule has been established, these hours are unchangeable until the supervisor provides an opportunity for the employee to select a different work schedule. However, employees may vary their selected start/stop time by fifteen (15)-minutes without prior approval provided the work hours can be extended within the time flexible time bands and without going into core hours. A minimum1/2 hour non-duty lunch period is scheduled between 11:00am and 2:00pm. The non-duty lunch period may be scheduled to up to two (2) hours so long as the tour is completed by 6:00 pm.

(3) "Maxi-Flex Tour" means a type of flexible work schedule that contains core hours less than ten (10) workdays in the biweekly pay period. The employee schedules the number of hours worked on a given workday and start/stop times within the limits established for a basic Flexi-tour or Gliding Schedule. Changes to a schedule must be approved before the start of any biweekly pay period. There are two options in JMD:

(i) The "JMD Maxi-Flex Tour Option One" shall require employees to be scheduled on an eighty (80)-hour biweekly work schedule split into nine (9)-hour days for eight (8) days, and an eight (8)-hour day for one (1) day, and one (1) day off.

(ii)The "JMD Maxi-Flex Tour Option Two" shall require employees to be scheduled on a forty (40)-hour weekly work schedule split into four ten (10)-hour days and one (1) day off.

(b) Holidays for those on a Maxi-Flex Tour or Flexi-Tour. When a holiday falls on a scheduled nine (9)-hour or ten (10)-hour workday, the employee must use an earned credit hour or an hour of other leave. When a holiday falls on a scheduled non-workday, the employee will be given an "in-lieu of" holiday on the preceding scheduled workday or otherwise in accordance with OPM guidance.

(c) Compressed Work Schedule (CWS). Compressed work schedules are management-designated fixed tours in which a full-time employee has a basic work requirement of eighty (80) hours for the biweekly pay period. Those eighty (80) hours are fulfilled in fewer than ten (10) days. This is not an employee-initiated option. It will only be established in work units where the Employer has determined there is a need for two (2) more employees to be on the same fixed shift of more than eight (8) work hours in a day. The Employer will notify the Union prior to implementation and will specify any opt-in/opt-out provisions.

(d) Job-Sharing. Two (2) employees sharing a full-time position each working a part-time schedule. A request for this option must be voluntarily initiated by two employees in writing. The Employer may approve or disapprove such a request.

(e) Part-Time - Work schedule of 16 to 32 hours per week.

Section 5. Responsibilities

(a) The Employer shall ensure that the Flexible Work Schedule Program is established, maintained, and evaluated as set forth in this Agreement.

(b) Managers and supervisors shall:

(1) review and act upon employee requests for flexible work options within ten (10) workdays of submission of completed Flexible Work Options form. Exceptions to this provision will only be granted when a manager is on leave or training and requires additional time to consider the request. In no case shall the response time exceed twenty (20) workdays.

(2) ensure effectiveness of flexible work options relative to employee performance, program requirements, and mission objectives;

(3) cancel a FWSP when it is determined to interfere with the productivity of the organization;

(4) maintain a record of all FWSP requests for one (1) year after the end of the employee's participation in the flexible work option or one (1) year after the request to participate is denied; and

(5) track FWSP participation and the number of approvals and denials.

(c) Employees shall:

(1) complete the necessary forms which, depending on the nature of the request, include the Department of Justice (DOJ) Flexible Work Options Request form (appendix C) before requested start date;

(2) observe agreed-upon hours of work in accordance with approved FWSP request;

(3) observe policies for requesting leave when leave is to be taken;

(4) ensure that work information in both hard copy and electronic form has been adequately secured;

(5) maintain a fully successful or equivalent performance rating or higher as a condition of obtaining and continuing on a FWSP arrangement; and

(6) complete the Flexible Work Options Request form (appendix C), with the block "cancellation" checked to end participation. Employees may cancel at any time**.**

(d) JMD HR Staff shall:

(1) review and implement the FWSP;

(2) advise managers and employees on use of FWSP options, in accordance with this Agreement;

(3) collect management reports annually on the implementation of the FWSP and supply such information to the Union within one month of the completion of such reports.

Section 6. Procedures

(a) Application for Alternative Work Schedules. Employees must submit a completed DOJ Flexible Work Options Request form to apply for an alternative work schedule.

(b) Supervisors shall have the discretion to determine appropriate use of work schedules authorized by this Agreement. Employees who have documented performance deficiencies or are on leave counseling and/or leave restriction letters shall not be eligible for flexible schedules, unless management deems such schedules would facilitate improvement in the employee's performance or attendance.

(c) Response Time. Managers shall review and approve or disapprove FWSP requests in accordance with Section 5 (b) 1.

(d) Approved Form. The form approving an FWSP option establishes details concerning the hours, days, and/or location and the expectations of the Parties.

(e) Time and Attendance.

(1) Hours of Duty - The Flexible Work Options Request form shall document the hours of duty in conformance with regulatory guidelines.

(2) Leave – Employees electing to use FWSP options remain subject to all office and Department leave policies.

(3) Certification and control of time and attendance - Supervisors continue to be responsible for certifying the accuracy of time, attendance, and leave data.

(f) Temporary Suspensions. FWSP options will be suspended during pay periods of travel, training, and other work requirements that have a less flexible schedule. Exceptions may be requested and shall be approved on a case-by-case basis. The supervisor and employee should discuss these limits before the event.

(g) Grievances. Employees and managers are strongly encouraged to develop "win-win" solutions to requests for flexibility. If a mutually acceptable solution is not established, employees may file a grievance in accordance with Article 34 (Grievance Procedure).

Article 27
Overtime and Compensatory Time

Section 1. General Provisions

(a) Whenever workloads and priorities require the scheduling of overtime, every qualified employee within the applicable organizational unit shall be considered for participation in such work assignments consistent with the work needs of the office. Supervisors shall attempt to provide notice of nonemergency overtime assignments at least one workday in advance. The personal preferences of a supervisor shall not be a consideration in assigning overtime. Overtime assignments will be distributed and rotated equitably in order of seniority among qualified volunteers and in accordance with qualifications needed for the work to be done. When there are fewer volunteers than there are overtime assignments, these "involuntary" assignments will be rotated equitably among qualified employees in reverse order of seniority.

(b) The Parties agree that Overtime and Compensatory Time shall be administered in accordance with applicable law, government-wide regulation, and Departmental Order.

(c) This article shall not apply to extra work time that is covered under Article 26 (Hours of Work) on Alternative Work Schedules (AWS). Employees approved for an AWS under Article 26 shall not use time earned as credit hours or as time that is part of the AWS basic work week for overtime or compensatory time.

Section 2. Work Hours

The Employer, before requiring or expecting an employee to work overtime outside of standard business hours, shall give consideration to the employee's access to safe and available transportation for his or her commute home. In this regard, a supervisor shall grant an employee reimbursement for taxicab fares when funds are available; the transportation is between office and a mutually agreed safe location; the employee is requested or required to work overtime; the employee is dependent on public transportation for such travel, and it occurs during hours of infrequently scheduled public transportation and darkness. The employee shall raise any possible need for reimbursement of taxicab fares at the time the overtime is requested or ordered by the supervisor. Use of such funds is subject to Comptroller General Guidelines.

Section 3. Key Terms

(a) For purposes of this Article, the term –

(1) "basic workweek" means for full-time employees, the 40-hour workweek established by the employee and his or her supervisor;

(2) "compensatory time off" means time off granted instead of payment for an equal amount of irregular or occasional overtime work;

(3) "FLSA exempt employee" means an employee who is not covered by the minimum wage and overtime provisions of Fair Labor Standards Act (FLSA) of 1938, as amended (29 U.S.C. 201 *et seq.*); and

(4) "FLSA nonexempt employee" means an employee who is covered by the minimum wage and overtime provisions of the FLSA.

Section 4. Entitlement to Overtime or Compensatory Time

(a) Overtime work shall be directed or authorized in writing by an employee's supervisor or another manager in advance of the work performed.

(b) An FLSA nonexempt employee shall be entitled to overtime compensation for all work in excess of forty (40) hours in a week which management permits to be performed.

(c) When the Employer permits a FLSA nonexempt employee to work overtime, it shall, when the employee is required to stay more than fifteen (15) minutes after his or her departure time, seek to assure that at least one (1) hour of overtime work is offered to the employee.

(d) When requested, and when sufficient work exists, the Employer shall seek to assure at least two (2) hours of overtime work to an employee who is required to return to the office after duty hours or on weekends for overtime work.

(e) Employees may be requested to carry cell phones, pagers, or other communication devices. Carrying or answering such devices does not constitute work or imply eligibility for overtime. An employee required to do significant work (e.g. fifteen (15) minutes or more) as a result of a call or page may be entitled to overtime, but is not a guaranteed a minimum amount of work/overtime. However, if the employee is called back to work or other duty location, section 4(d) procedures will apply.

(f) Employees cannot work overtime/compensatory time to perform regular duties if they have used leave during the week preceding the requested date to work overtime.

(g) When conference attendance is offered to employees as an optional opportunity, overtime/compensatory time shall not be approved for attendance on non-workdays.

Section 5. Compensatory Time

(a) GS employees in either FLSA exempt or nonexempt positions may request compensatory time off in lieu of pay for irregular or occasional overtime work.

(b) GS employees in either FLSA exempt or nonexempt positions on flexible work schedules may request compensatory time off in lieu of pay for regularly scheduled, as well as, irregular or occasional overtime work. A nonexempt employee who requests to earn compensatory time off in lieu of overtime pay shall make the request in writing.

(c) GS employees in FLSA exempt positions whose pay exceeds the maximum rate for a GS-10 may be directed to earn compensatory time off in lieu of pay for irregular or occasional overtime work.

(d) A FLSA exempt employee who makes a timely request, but fails to use compensatory time because of an exigency of the service beyond his or her control, shall be paid for the overtime work at the rate in effect for the work period in which it was earned, unless the Department's Assistant Attorney General for Administration extends the time period in which the employee can use the compensatory time earned.

(e) A FLSA nonexempt employee who fails to use compensatory time by the end of the leave year following that in which it was earned shall be paid for the overtime work at the rate in effect for the work period in which it was earned.

(f) An employee who has unused compensatory time to his/her credit at the time of his/her transfer or separation from the Department of Justice shall be paid for the time at the rate in effect at the time it was earned.

Article 28
Telework

Section 1. General Provisions

(a) Telework is mutually advantageous to the Employer and to employees by allowing the organization to accomplish its work while also providing employees with the opportunity to reduce commuting time and expenses, promote high morale, and increase time with family. The Parties agree that approved Telework arrangements must result in accomplishment of the assigned duties and responsibilities, while not adversely impacting the accomplishment of those duties and responsibilities. The Parties further agree that all provisions of this Article shall be administered fairly and equitably.

(b) Telework will be managed in accordance with this Article; the OPM Guide to Telework in the Federal Government; DOJ Order 1200.1, Part 6; DOJ Policy Statement 1200.01, Telework; the Telework Enhancement Act of 2010; and other applicable laws and regulations.

(c) Telework is voluntary, and an employee can end his or her participation at any time. While the Parties understand telework is not an individual entitlement, the Employer agrees that it will allow and encourage reasonable participation in the program.

(d) Participation in Telework is subject to technology availability and limitations.

(e)) The work needs of the organization shall be paramount in supervisory decisions to approve, disapprove or modify individual requests for Telework arrangements. The Employer shall consider approval of Telework applications based upon position compatibility with Telework; and employee eligibility for Telework.

Section 2. Definitions

(a) Telework (also known as flexiplace, flexible workplace or telecommuting) - A work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work for an agreed upon portion of the work week. Telework arrangements may be of short or long term duration. The types of Telework arrangements which may be approved are as follows:

(1) Routine/Regular/Recurring Telework. The employee teleworks on a specific day (or days) each biweekly period, or month under an established work schedule. The Telework arrangement's duration shall be outlined in writing and shall continue subject to the conditions outlined in the signed agreement.

(2) Situational/Ad hoc/Intermittent Telework. The employee teleworks on a specific project or task(s) deemed by the Employer to be portable. Specific dates and times shall be outlined in advance. Approval of Telework on a short term basis shall be used for positions whose overall functions would not otherwise be portable and for which a regular, recurring Telework arrangement is not feasible. As provided for by OPM guidelines, situational Telework includes work-at-home specifically requested during OPM-approved adverse weather events, and other emergencies, as well as special events impacting employees' commutes.

(3) Telework for medical reasons. A Telework arrangement approved for medical reasons when the employee has a medical condition or the employee requests to be allowed to telecommute because of the medical condition of a family member. The employee shall submit adequate medical documentation which provides a diagnosis/prognosis pertaining to the employee or family member, along with any work-related medical restrictions. In the case of a family member's medical condition requiring the employee's presence, the employee shall outline how he or she will be able to accomplish the functions of the position under a Telework arrangement. Short-term (generally four months or less) work at home situations due to temporary medical situations are considered ad hoc telework and shall follow the provisions of this Article. Longer work at home arrangements should be treated as reasonable accommodations, and as such are covered by the Americans with Disabilities Act, as well as other applicable law, rules, and regulations and terms of this Agreement.

(b) Designated Work Area - An area which is set aside for the performance of the employee's official duties. The designated work area must be free from interruptions, and must provide the necessary level of security and protection of Government property.

(c) Duty Time – Telework is duty time and is just like work accomplished in a traditional office. Although Telework may offer some employees more time for their family responsibilities (e.g., through reduced commuting time), in compliance with guidelines from the Office of Personnel Management and the Department of Justice, Telework arrangements cannot be used as a substitute for child care or other dependent care. Employees may not use duty time for any purpose other than official duties.

(d) Official Duty Station: the official duty station of an employee participating in the Telework Program is the employee's JMD designated office. However, when scheduled Telework is close to 100% (the employee is not scheduled to report to the traditional worksite at least twice each biweekly pay period), then the Telework site may be required to be the Duty Station. This is type of Telework is called "Remote Work" which is an arrangement in which the employee resides and works at a location beyond the local commuting area of the organization's worksite under a continuing telework arrangement.

(e) Work Schedule - The established guidance on hours of duty (Article 26) apply to employees under Telework. Telework employees may work fixed or alternate work schedules, (such as flexitime, or maxiflex schedules). The employee's tour of duty will be addressed in the Telework Agreement. Employees are expected to perform their duties at the alternate worksite during regular business hours, on the approved work schedule, and to be accessible during those hours to supervisors, customers, and others as needed. Telework employees shall not work overtime or compensatory time unless ordered and approved in advance by his or her supervisor. Because of the requirements for premium pay, Telework schedules may not be available between the hours of 6 p.m. and 6 a.m. or on Sundays and Federal holidays.

(f) Mobile Work: -Work that is accomplished away from the office, but is not Telework. It is characterized by routine and regular travel to conduct work in customer or other worksites as opposed to a single authorized alternative worksite. Examples include site audits, site inspections, investigations, property management, and work performed while commuting, traveling between worksites, or on Temporary Duty (TDY). Such work is not covered by this Article.

Section 3. Determining Position Compatibility

(a) Decisions shall be made on a position by position basis. The supervisor shall determine if the position's regular duties can be performed as efficiently and effectively at an alternate work site, without disruption of office operations; adding to Employer costs; adding to the work of other employees; or hampering the efficiency of other positions with whom the incumbent of the position interacts with or provides support, either within or outside the office. In particular, the supervisor will examine:

(1) the portability of the job functions. Examples of portable work include, but are not necessarily limited to: reading reports; analyzing documents and studies; preparing written letters, memoranda, reports, and other work correspondence; setting up and/or participating in work-related conference calls; and similar tasks which do not necessarily require an employee's presence at the worksite;

(2) the ability to measure the outcome(s) or results of the work performed; and

(3) the impact on the organization of the an employee's absence from the duty site, including office coverage, and the size of the organizational unit.

(b) Determinations shall be made as to the positions compatibility and positions shall be placed in four broad categories:

(1) Regular scheduled telework on 1 or more days per pay period;

(2) Regular scheduled telework once per month;

(3) Telework on an occasional, episodic, ad hoc, or short-term basis; or

(4) Position not compatible with telework.

(c) The Employer is responsible for the final review and approval of position eligibility.

Section 4. Determining Employee Eligibility

(a) The Employer shall consider:

(1)The employee's work history for the characteristics associated with successful performance of work in the absence of direct supervision. The employee shall have a rating of record indicating at least successful performance of his/her duties, and should not be under a performance improvement plan (PIP).

(2) Whether the employee is organized, highly disciplined, and a conscientious self-starter, who has demonstrated dependability in accomplishing work assignments without close supervision, and good time management skills.

(3) If the employee is ineligible based on being officially disciplined for any reason within the past year.

(4) If the employee is ineligible based on being officially disciplined for being absent without permission for more than five (5) workdays in any calendar year.

(5) If the employee is ineligible based on having been disciplined for reviewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties

(b) Other factors may be considered in determining temporary limits on Telework and/or number of days approved. Such factors may include:

(1) training or introduction of new work procedures; and/or

(2) a new employee (or new assignment for a current employee) who needs initial OJT and closer supervision.

(c) The Employer is responsible for the final review and approval of participant eligibility.

Section 5. Employee and Union Notice

(a) An employee shall be informed of the position determination made under Section 3 above:

(1) within twenty (20) workdays of entering a new position; or

(2) within twenty (20) workdays of a change in Telework compatibility status of a position.

(b) An employee shall be informed of their personal eligibility for Telework made under Section 4 above within twenty (20) workdays of entering a new position.

(c) The Union shall be given a list of bargaining unit position determinations under Section 3 (b) above on an annual basis.

Section 6. Employee Requests

(a) Employees who are interested in Telework; and who are in compatible positions (Section 3 above) and are eligible for Telework (Section 4 above); should discuss their interest to Telework with their supervisor. The goal to reach consensus on items such as the number of days and other details found in the DOJ Telework Agreement form.

(b) Employees who reach an oral agreement with their supervisor shall submit the agreed terms in a formal request/agreement to Telework. The request shall be made on a DOJ Telework Agreement form.

(c) If an oral agreement can't be reached on an employee request to telework, he/she may complete and submit a DOJ Telework Agreement form. The supervisor shall mark the form as "recommended for Disapproval", provide a justification, and return to the employee. The employee may grieve this decision under the process in Article 34 (Grievance Procedures).

Section 7. Agreement and Approval Criteria

(a) Alternate worksites shall be within a reasonable commuting distance that allows telecommuters to report to the official duty station upon request and at least two (2) days during a pay period except as a change in duty location is approved and enacted in accordance with DOJ policy and Section 2 (d) above

(b) The supervisor shall establish standards that address time frames by which the employee must respond to telephone calls or e-mails to ensure that the employee's work is accomplished in such a way under the Telework arrangement as to appear no different to the customer and to other JMD staff from how the work is accomplished at the official duty location.

(c) Teleworkers shall be appraised and rated in a manner consistent with the terms of and procedures provided for in Article 13 (Performance Rating and Standards). Performance standards and criteria for teleworkers shall be the same as for similarly-situated non-teleworkers.

(d) For ad hoc Telework, the supervisor shall determine whatever means of status reporting may be required (e.g., informal updates, periodic status reports, etc.).

(e) Employees proposing an alternate worksite, shall certify compliance of the designated work area with all appropriate safety requirements.

(f) Employees should verify the availability of appropriate equipment to do the job at their telework site, e.g., a computer with appropriate processing capability and associated communications hardware and software that are fully compatible with the equipment in use in their office, or any other equipment that is necessary for the performance of their duties. Depending upon the type of work to be performed, the employee may be required to have high-speed Internet access that will accommodate the Employer's remote access system to provide secure access to the Employer's network. Normally, the Employer shall not expend funds for telecommunications or any other additional costs that arise from an employee's use of a home as an alternate work site. However, expenditures may be authorized when requested/approved in advance for necessary expenses such as a phone card for making long-distance calls.

(g) Notwithstanding subsection (e) above, in some circumstances, appropriate government equipment may be provided to employees for authorized telework purposes. The use of government equipment shall be dependent upon:

(1) budgetary constraints;

(2) the nature and type of work being performed;

(3) the availability of such equipment;

(4) other pending higher priority requests for such equipment; and

(5) the Employer's determination that the assignment of such equipment for Telework will best meet the work needs of the organization. Such loans may be made on a temporary, short term basis, or for longer durations of time, depending upon the nature of the applicable Telework Agreement and upon the Employer's operational needs.

(h) The Employer shall consider the amount of work that is portable, office coverage (e.g., employees on alternate work schedules and the number of employee's telecommuting within the organization on each day), and organizational/mission needs in determining the days an individual may telecommute.

(i) When a choice between two otherwise equally eligible employees must be made, the employee with the longest U.S. Government service shall have preference in schedules, based on the employee's service computation date.

Section 8. Approving Requests

(a) Response Time. Managers shall review and approve or disapprove Telework requests within fifteen (15) workdays of submission of the completed form. Exceptions to this provision will only be granted when a manager is on leave or training and requires additional time to consider the request. In no case should the response time exceed twenty-five (25) workdays.

(b) Telework schedules must be accurately encoded into the NFC system.

Section 9. Protection of Government Records

Employees under Telework arrangements are responsible for ensuring that all Government records used at an alternate work site are safeguarded against unauthorized disclosure or damage, and shall comply with all laws, rules, and regulations governing classified, law enforcement sensitive, and privacy act protected information.

Section 10. Termination of Telework Arrangements

(a) An employee may terminate his/her participation in such an agreement at any time, after proper notification to the supervisor.

(b) Management has the right to end a Telework arrangement at any time prior to the conclusion of an agreement period if the employee's performance declines; if the employee does not conform to the agreed upon arrangements; if the employee's off site work adversely affects the work of staff remaining in the office; or if the arrangement fails to meet organizational needs.

(c) Normally, employees shall be given two weeks advance written notice before management's termination of a Telework agreement. Such notice shall include the reasons for the decision. The notice shall also inform the employee of his/her right to grieve such termination under the terms of Article 34 (Grievance Procedure) of this Agreement.

(d) Telework arrangements may be temporarily suspended by the supervisor for the reasons cited below, normally after the two (2) week written notification provided for in subsection (c) above unless the exigency of the public business does not allow sufficient time to notify the employee in writing. Telework may be temporarily suspended for the following reasons:

(1) to fulfill official travel requirements;

(2) to fulfill training requirements;

(3) to enable the employee to substitute as an acting supervisor;

(4) to attend essential meetings, conferences, etc.;

(5) to fulfill critical project requirements that require the individual's presence at the official duty station or alternative duty station;

(6) to cover for absences during heavy vacation periods; and

(7) for other mission critical office needs.

(e) Written notices to suspend telework arrangements under the terms of subsection (d) will provide the employee with the reasons necessitating the temporary suspension.

Section 11. Training

(a) Pursuant to DOJ Policy Statement 1200.01 (Telework), JMD Human Resources will develop and provide interested employees with an interactive telework training program. Such training will be equivalent in nature to the online telework training offered by OPM. In the absence of any available Departmental telework training program, the Employer shall post notice on its Intranet, and/or on the Internet, of the availability of OPM’s online training course. The posting shall also include a hot link to the applicable online training site.

(b) Employees shall be given administrative time of up to four (4) hours to participate in OPM’s online telework training course or in such equivalent training as the Employer is able to provide.

(c) Employees must have completed such training prior to signing their Telework agreement.

Section 12. Operational Issues

(a) If an employee is unable to perform his or her official duties at the alternate work site because of equipment failure or malfunction or for other reasons beyond the employee's control

that result in computer equipment or telephones being inoperable (such as power or telephone service outages), the employee shall notify the appropriate supervisory official immediately upon discovery of the problem. An employee unable to perform his or her official duties at an alternate work site, may be required to take leave or report to the official duty station to fulfill required duty hours for that day. In such a case, the supervisory official may treat the employee's transportation time to the official duty station as official time.

(b) Supervisors may cancel an employee's Telework day for a pay period. When there is holiday or other reason why a Telework day is not granted, an alternate day is not automatic. An alternate Telework day may be granted for that pay period only with written supervisory approval.

(c) Employees shall report to the office on a scheduled Telework day, if the supervisor so directs it, based on the work needs of the office.

(d) Employees who are scheduled to Telework on a day the traditional worksite is closed or subject to an early closure or delayed arrival, shall work their full schedule. An exception would be a power outage or other event that would prevent the employee from working as scheduled.

(e) The employee shall permit the Employer to inspect the alternative work site during the employee's normal working hours. The purpose of such inspections is to ensure conformance with key provisions of the Telework Agreement, especially the implementation of accepted safety standards, care of any government equipment, and/or the provisions of Section 9 (Protection of Government Records) above. The necessity of such inspections shall be determined by management on a case-by-case basis. Employees shall normally receive no less than forty-eight (48) hours advance notice. When such inspections are to be held, the employee may request that a Union representative be present. The Parties understand that, except under exceptional circumstances, inspections will be done by officials with the appropriate qualifications to certify compliance with recognized requirements.

Section 13. Employer's Rights

The Parties recognize and agree that the Employer has the sole discretion and authority to determine which occupational series are eligible for Telework arrangements.

Section 14. Employee's Rights

With regard to the terms of this Article, employees retain all grievance and complaint rights as provided for in Articles 34 (Grievance Procedures) and 11 (Equal Employment Opportunity). While the Parties acknowledge that the Employer retains all of its rights to approve or disapprove employee participation in Telework, they also acknowledge that employees may grieve or file a complaint regarding any procedural violations of this Agreement, or of applicable law, policy or regulation regarding the Employee's administration of its Telework program.

Article 29
Travel

Section 1. General Principles

When feasible, official travel shall be scheduled so as to take place during an employee's duty hours. If employees are required by the Employer to perform official travel outside of duty time, they have the right to such overtime or compensatory time that is allowed by rule or regulation. The Employer agrees to reimburse the employee consistent with law, rule, or regulation for any approved, official travel performed as soon as is possible. This article supplements the statute, the Federal Travel Regulations, and Department of Justice policies and procedures by providing the Employer's guidelines on travel (DOJ Travel Regulations DOJ 2200.11H).

Section 2. Conferences

If an employee is required by the Employer to attend a meeting or conference, and obtaining a membership is a required condition of the employee's attendance, the Employer agrees to pay the necessary membership dues.

Section 3. Travel Authorizations

(a) All travel authorizations shall be approved by a supervisor and funds designated by the Budget Officer prior to a trip.

(b) To initiate the approval process, all staff shall complete a travel authorization request form and submit the form to the Executive Office with a copy of the travel itinerary. The travel authorization request form shall include cost of the flight and hotel, and all modes of travel.

(c) All rates for hotels shall be within the per diem allowances. If lodging within the per diem rate is unavailable within a reasonable proximity, a request to exceed the per diem rate (actual subsistence) shall be submitted to a supervisor for approval. If actual subsistence is not approved prior to a trip, the traveler shall pay all charges exceeding the maximum rates allowed.

(d) All travelers shall leave a travel itinerary with their supervisors by fax, email or hard copy.

(e) The Department of Justice requires the use of contract Travel Management Centers (TMC) for official travel reservations.

Section 4. Travel Arrangements

(a) Determining Which Airlines and Airport to Use. Travelers shall use the most economical contract airfares available at the Washington, D.C. area airports. However, pursuant to 41 CFR 301-10, more expensive accommodations may be made when:

(1) no coach-class accommodations are reasonably available;

(2) use of non-coach class is necessary to accommodate a certified medical disability or other need; or

(3) such accommodations are necessary for security reasons. They shall check the availability of government contract airfares at all area airports, compare fares, and use the least expensive. If the cost comparison determines the contract airfares are within $100

of each other, they may be considered substantially the same and any of them may be used.

(4) The only exceptions to this requirement are if the additional cost for transportation to the airport (i.e., mileage, airport shuttle service) and parking that would be incurred to depart from the airport with the least expensive fare would exceed the savings; and if the travel time to one of the airports exceeds 1.25 hours. The traveler may then choose to travel from the closest airport, regardless of cost. The travel authorization shall include a justification describing these circumstances.

(c) Use of "Super Saver" or Other "Penalty" Airfares. If a contract airfare is replaced with a non-contract airfare for personal reasons, and the non-contract airfare carries penalties for changes or refunds, the Government shall not reimburse the traveler for those penalties if changes occur. Reimbursement is not allowed even if the changes are beyond the employee's control, because there are no penalties associated with contract airfares.

(d) Use of Frequent Traveler Benefits. The Federal Travel Regulation allows Federal employees to accumulate promotional and frequent travel benefits during each flight which on official government business. Employees may also earn frequent flyer miles or other promotional benefits, for example, through rental cars or hotels. These promotional benefits may generally be retained for personal use and exchanged for upgraded seating, free travel, discounted travel, travel-related services, or other services or benefits.

(e) Use of Government Vehicles. Employees may use the Employer's government vehicle for driving trips. If a government vehicle is unavailable, the traveler may request authorization to rent a vehicle.

(f) Use of Privately Owned Vehicles. Privately owned vehicles may be used for driving trips, if the government vehicle is unavailable or the use of the POV is to the advantage of the government. The traveler shall request authorization to drive their privately owned vehicle. Privately owned vehicle mileage rates set by the Federal government are maintained in the Executive Office.

Section 5. Use of the Government Travel Charge Card

(a) All employees who will be performing travel of more than one day shall be required to apply for a Government Travel Charge Card (Travel Card). For infrequent travelers, the Travel Card may be kept centrally between travel dates.

(b) The Government Travel Charge Card (Travel Card) may only be used for approved official travel related expenses. This includes (1) air, rail, and bus tickets, (2) taxis and other forms of ground transportation, (3) meals, (4) lodging, and (5) authorized miscellaneous expenses. The travel card must be used when making airline reservations to obtain the government contract fare.

(c) The ATM feature of the card allows the traveler to obtain cash to pay for official expenses that cannot be charged using the card. The ATM cash advances are in lieu of the Government-issued cash advance. The traveler may withdraw up to $40 per day times the number of days on travel.

(d) The travel card shall not be used at an employee's permanent duty station except to withdraw funds from an ATM (no more than three (3) calendar days prior to travel) if the cash advance is absolutely necessary and never after returning to your duty station. The card is not to be used to pay for local taxis, tolls to and from the permanent duty station, etc.

(e) The cardholder is liable for all valid charges to the account. An employee shall voucher for reimbursement promptly upon return from travel and the Department of Justice is responsible for reimbursing the employee in a timely manner. Failure to pay the travel card company in full and on time can lead to suspension and cancellation of the travel card. A cardholder whose card is canceled due to delinquency shall be reported to a national credit bureau.

Section 6. Travel Card Payment Options

(a) If the traveler does not designate another option, the travel reimbursement shall be paid by electronic funds transfer to the traveler's payroll bank account.

(b) The traveler may request that travel payments be deposited in a secondary bank account. This is an option that many frequent travelers use to segregate their official travel expenses from their personal accounts. A request form may be obtained from a designated Travel Coordinator.

(c) The traveler may elect to have the travel reimbursement go directly to the travel card. If the reimbursement is not sufficient to pay the charges on the monthly statement, the traveler must pay the difference. If the reimbursement is greater than the amount of the charges on the card, the traveler's account will show a credit balance. The traveler may elect to apply the credit balance toward future travel, or the traveler may request a refund check for the balance.

Section 7. Travel Voucher Claims

Upon completion of official travel, a travel claim worksheet shall be prepared and submitted to the travel coordinator in the Executive Office within three (3) workdays. Receipts for hotels, car rentals, etc. must be attached to the worksheet.

Section 8. Local Travel

(a) Ordinary home-to-work commuting is the personal responsibility and personal expense of the employee. When an employee is assigned to duty elsewhere in the local commuting area, an employee may be reimbursed for the difference between the cost of commuting to the duty site and the cost of reporting to the temporary duty site. Employees must use the most economical means of transportation to a temporary duty site.

(b) When traveling a radius of 50 miles or less, reimbursement shall be claimed using an SF-1164. Mileage or metro fare costs shall only be submitted for the amount excess of their daily commuting costs. For example, if the mileage of the driving trip from the employee's residence to a training session, etc. is 30 miles and the mileage of the daily commute from their residence to the office is 15 miles, the employee shall only receive reimbursement for the extra 15 miles driven. If the employee takes the metro to work, but pays an additional fare to attend a training session, etc., the employee shall only receive reimbursement for the additional metro fare paid. If the employee takes the metro to work, but drives his/her privately owned vehicle to temporary duty site, the employee shall only receive reimbursement for the excess of their daily commuting costs. If the employee normally drives to work, and has a choice of taking the metro to the temporary duty site or driving the government vehicle or personal vehicle to the temporary duty site where parking is free, the employee must choose the most economical method of travel. Requests for reimbursement of metro fares and parking fees shall not be approved.

Section 9. Compensatory Time Off for Travel

(a) Compensatory time off for time spent by an employee in a travel status away from the employee's official duty station is available to employees if: (a) they are required to travel away from the official duty station outside the scheduled tour of duty; and (b) the travel time is not otherwise compensable hours of work under another legal authority.

(b) Travel Status. Time in travel status includes the time an employee actually spends traveling between the official duty station and a temporary duty station, and the usual waiting time that precedes or interrupts such travel.

(c) Creditable Travel Status Time.

(1) Actual travel time (air, rail, or road) between the official duty station and a temporary duty station or between two temporary duty stations.

(2) The usual waiting time at a transportation terminal – one hour for domestic travel, or two hours for international travel.

(3) Time traveling between a worksite and a transportation terminal outside regular working hours.

(d) Not Creditable as Time on Travel Status.

(1) Time spent at a temporary duty station between arrival and departure is not time in a travel status.

(2) Time traveling between home and a transportation terminal (airport or train station) outside regular working hours is considered commuting time.

(3) Bona fide meal periods during actual travel time or waiting time.

(4) Extended waiting time between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes.

(5) Normal home-to-work or work-to-home commuting time.

(6) Travel time outside regular working hours to or from the terminal is considered to be equivalent to commuting time.

(e) Requesting Approval for Compensatory Time. All requests to accrue compensatory time off for travel must be made by the employee within fifteen (15) calendar days from the time he/she returns from travel status and must be approved by the supervisor in writing within thirty (30) calendar days from the time the employee returns from travel status. A copy of the approved travel authorization and voucher must be attached to the request. Credit shall be granted in terms of one-quarter hour increments (15 minutes).

(f) An OPM Form-71, Application for Leave must be submitted for all requests to use accrued compensatory time off. Accrued compensatory time off for travel shall be used by the end of pay period 26 in the year it was credited. All unused compensatory time off shall be forfeited.

Article 30
Transit Subsidy

Section 1. General Provisions

(a) The Employer shall provide a commuting subsidy in an amount authorized by government-wide law, rule, regulation or order to each eligible employee. If an employee's actual cost of eligible commuting (not including the cost for parking or for any other related commuting expenses) is less than the authorized amount, s/he shall only receive a transit subsidy equal to the actual cost of the commute.

(b) Purpose- Transit Benefits are provided within current authorized limits to facilitate and encourage employees to use public transportation. All such benefits are pending availability of funds.

(c) Should the Transit Benefits Program have to be terminated or modified due to fiscal emergency, or should its termination or modification be mandated by direction of higher authority or changes in law, rule, or regulation; the Union will be given notice and the opportunity to negotiate to the full extent of the law pursuant to the provisions of Article 36 (Midterm and Implementation Negotiations).

Section 2. Eligibility

(a) An employee is eligible for a transit benefit if the employee is on the paid employment rolls during the period for which s/he is seeking a subsidy. He/she will remain on the Employer's rolls for a sufficient period of time during that month to meet the usage criteria outlined below. In addition, an eligible employee must use mass transportation or a commuter highway vehicle for regular daily commuting in accordance with the provisions outlined below and who does not receive other commuting benefits from any Federal agency.

(b) Employees authorized to have a work place motor vehicle parking permit, including employees listed as a member of car pools and van pools that park in spaces subsidized by the Employer or any other Federal entity, shall withdraw their membership in that car pool or van pool to be eligible to participate in this program. The Employer may communicate with other Federal Parking Coordinators to monitor participation in car pools.

(c) In order for an employee to receive a transit subsidy, he/she must use an eligible mass transportation system or a commuter highway vehicle (including eligible van pools) for all or a significant portion of at least an average of 50 percent of the available workdays in that month for all or a significant portion of his/her total commute.

(d) To become and remain eligible for a transit subsidy, employees shall complete a request form to receive approval. He/she shall keep the application information current and complete.

Section 3. How to Obtain the Transit Subsidy

(a) Employees complete and sign the DOJ Transit Subsidy application. This consists of the DOJ Application for Transit Benefit plus required attachments (i.e. Transit Expense Worksheet, and Statement on Use of Transportation Subsidy.)

(b) Then their first-line supervisor shall review, and sign the application. An office manager shall turn the application in to the appropriate transit coordinator. He/she shall let each employee know the status of the application, and the amount and effective date, if approved.

(c) New forms for recertification of the benefit shall be required whenever there is a change in commuting method, residence, or other factor that will change the prior agreement.

(d) Annual recertification applications shall be completed at least once as requested, usually in January.

(e) New employees shall receive benefits upon approval of the application by the transit coordinator.

Section 4. Distribution of Benefits

(a) All employees who use transit systems which have adopted the SmarTrip® fare payment system shall only receive transit benefits via the SmarTrip® card.

(b) Purchase of a SmarTrip® card in order to receive transit benefits is the responsibility of the employee. Replacement of a SmarTrip® card is the responsibility of the employee.

(c) Download of benefits onto a SmarTrip® card will normally be on or after the first day of the month in accordance with the transit provider's procedures.

(d) All employees who use approved transit systems which have not adopted the SmarTrip® fare payment system shall still be eligible to receive transit benefits. Payments will be available in the format provided by WMATA. These shall be available to be used by the first of each month.

(e) Employees who need Benefits prior to the 1st of the month may request early disbursement.

Section 5. Restrictions on Use

(a) Transit benefits and any other media to which they are converted (such as SmarTrip® card or vouchers), may not be transferred from the recipient to any other individual, including family members.

(b) Such benefits may only be used for commuting to and from work on an eligible mass transportation system; not for personal trips and not to pay for parking or other costs associated with commuting.

Section 6. Conditions of Termination of Employee Participation

Failure to comply with program requirements can result in termination of the benefit, and/or disciplinary action, up to and including removal. The making of a false, fictitious or fraudulent certification may render the maker subject to criminal prosecution.

Section 7. Grievances

Nothing in this Article shall be construed as precluding an employee or the Union from exercising their rights under Article 11 (Equal Employment Opportunity) or Article 34 (Grievance Procedure) with respect to the administration and application of the Transit Subsidy Program.

Article 31
Parking

Section 1. General

(a) The use and assignment of Employer parking facilities shall be governed by Employer policy, to the extent that the policy is not inconsistent with this Agreement. The Employer's parking policy and procedures provide for the assignment and reassignment of parking spaces in the building. The Employer's parking policy and reassignments of parking privileges shall be reviewed annually in consultation with the Union. Parkers are ineligible for Transit Subsidy.

(b) The Employer provides parking spaces for a limited number of employees not as a personnel benefit or entitlement, but for the purpose of ensuring the orderly and efficient operations of an important governmental function. Parking space permits, therefore, are the property of the Employer and not the employee. Factors to be considered in granting parking privileges are type of appointment, job assignment, unusual work requirements, employee handicaps, and length of service.

Section 2. Eligibility

(a) Parking permits shall be used while the employee is present for duty, and shall not be used for overnight or long-term storage of a vehicle that is not used for daily commuting. An exception to this rule is recognized for employees who must report for duty to depart from and return to the office on official travel. Permits assigned to specific individuals shall not be transferred.

(b) Parking Categories. Parking assignments will be made including the following categories, which are defined below: Handicap, Carpool, Unusual Hours, Employee-owned Vehicle and Regular Parking.

(1) Handicapped Parking. Employees who have been certified by their local licensing jurisdiction as handicapped shall be given parking priority over other categories of employees.

(2) Carpool/Vanpool Parking. A group of two or more JMD employees may qualify for parking as a carpool if they regularly and substantially commute to and from work as a carpool. For purposes of this category, "regularly and substantially" means at least fifteen (15) days in each month. The provisions of DOJ Notice 2540 will govern Carpool and Vanpool parking. Copies of the notice are available in the Executive office.

(3) Unusual Hours Parking. Employees, who must be available for duty at unusual hours, or because of frequent travel; and/or who may be required to leave their vehicle in the garage while using a government vehicle.

(4) Employee-owned Vehicle Parking. Employees driving their own vehicles that are regularly used for Government business at least twelve (12) days per month and that qualify for reimbursement of mileage and travel expenses under Government travel regulations will be assigned parking.

(5) Individual Parking. Parking assignments for employees who are not in one of the foregoing categories shall be made on the basis of length of service with the Federal

government, determined by the employee's service computation date. Former employees of the District of Columbia are credited with federal service if their employment began before October 1, 1987. If their employment with the DC government began after 1987, only federal service counts in the length-of-service computation. In addition to length of service, full-time-permanent employees shall have priority over other than full-time permanent employees.

Section 3. Ineligibility for Parking

Parking privileges may be rescinded for several reasons. For example, an employee parking under the unusual hours provision, may become ineligible for parking if he/she is transferred to a new position that does not require an unusual hour work schedule. The hiring of a high seniority (based on length of service as set forth in Section 2 b 5) employee or the designation of another employee as handicapped may result in the loss of a parking space for an employee who ranks low on the seniority list for individual parking and does not otherwise qualify for a parking preference in one of the other categories. The employer shall notify employees affected by this provision no less than two (2) weeks earlier than any action is taken.

Article 32
Office Attire

Section 1. General

Proper dress attire is essential to the professional image of the Department of Justice. Friday is casual attire day for all employees except those who are representing the Employer at meetings, conferences, hearings, or other business-related event. To ensure that every employee adheres to the same dress code expectations, the following guidelines are set forth in Sections 2 and 3.

Section 2. Not appropriate at anytime for everyone during regular duty hours

Halter Tops

Sweat Suit/Jogging Suit	Shorts	Micro-Mini Skirts
Spandex Pants	Sundresses	Tank Tops
Flip-flops	Tee Shirts	

Clothing that is inappropriate, unclean, untidy, torn, patched, or shows excessive wear.
Clothing that is provocative (too tight, too low cut, too short, too sheer).

Section 3. Uniforms

If determined to be appropriate by the Employer, a uniform shall be provided and maintained at no cost to the employee.

Article 33
Disciplinary and Adverse Actions

Section 1. General Principles

(a) The Employer acknowledges that under some circumstances informally counseling employees about work-related problems may address the problems without the need for discipline.

(b) The Employer's investigation of employee alleged misconduct shall be conducted so as not to be inconsistent with governing Department of Justice Orders, this Agreement, and applicable laws. In processing disciplinary or adverse actions the Employer shall comply with all procedural requirements and this Agreement.

(c) Unless otherwise provided for within this Article, disciplinary and adverse actions shall be administered in as timely a manner as possible.

(d) When there are on- going alleged misbehaviors, the supervisor should discuss the alleged pattern of conduct in a timely fashion with the employee. It is the goal to clarify the alleged misconduct(s), explain the appropriate office rules, and, if necessary, help correct employee behavior. This discussion is to be held prior to proposing any disciplinary action, but it is not in lieu of disciplinary action, nor does it necessarily preclude taking such action.

(e) Except as otherwise provided for in this Article, furloughs of thirty (30) calendar days or less, shall be administered in accordance with 5 CFR 752 and Article 21 (Furloughs).

Section 2. Definitions; Coverage of Article

(a) For purposes of this Article, the term

(1) “disciplinary action” means a letter of reprimand, or a suspension of fourteen (14) calendar days or less;

(2) “adverse action” means a suspension for more than fourteen (14) calendar days, removal, furlough of thirty (30) calendar days or less, involuntary reduction in grade, or involuntary reduction in pay;

(3) A suspension is defined as the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay; and

(4) A reprimand is defined as a written document describing the inappropriate conduct or other deficiency (e.g., failure to obtain prior approval for outside employment) giving rise to the reprimand, and provides official notice that a failure to correct the inappropriate conduct or deficiency, or future misconduct, may result in more severe action.

(b) Employees serving on temporary appointments of one year or less, or who have not completed a probationary or trial period, are not covered by the procedural requirements of this Article.

(c) Removals or reductions in grade for unacceptable performance as specified in the Civil Service Reform Act and OPM regulations are not covered by this Article but are governed by Article 13 (Performance). For other actions excluded by law or regulation from the provisions of this Article, see Title 5 of CFR Part 752.

Section 3. Standard for Action

(a) No employee will be disciplined or subject to adverse actions except for such cause as will promote the efficiency of the Service.

(b) The Employer shall not commit a prohibited personnel practice (as defined in 5 U.S.C. 2302) when investigating or taking any disciplinary action, or taking any adverse action against an employee.

(c) The Employer agrees that any disciplinary or adverse action taken will be appropriate to the specific offense and in accordance with applicable law, case law, rules, government-wide regulations, as well as with this Agreement. In establishing the appropriate penalties for employee discipline, the employer will apply the applicable Douglas factors before proposing or deciding on a particular penalty, the Employer should consider all the pertinent factors, including:

(1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

(2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

(3) the employee's past disciplinary record;

(4) the employee's past work record, including length of service, performance on t he job, ability to get along with fellow workers, and dependability;

(5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;

(6) the consistency of the penalty with regard to those imposed upon other employees for the same or similar offenses;

(7) the notoriety of the offense or its impact upon the reputation of the Employer;

(8) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

(9) the potential for the employee's rehabilitation;

(10) the mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and

(11) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Section 4. Reprimands

Reprimands shall be maintained in the employee's Official Personnel Folder (OPF) for a period up to three (3) years, depending on the severity of the offense. This time period will be stated in the letter of reprimand. The period of retention may subsequently be reduced when the employee's supervisor determines that circumstances warrant a shorter period. Such determination may be made in response to an employee's request to remove the reprimand from

the employee's OPF. Such reprimands which have been overturned as a result of grievance or other authority shall be immediately removed from the OPF.

Section 5. Suspensions of Fourteen (14) Calendar Days or Less

(a) Notice of Proposed Suspension: An employee who receives a proposal of suspension of fourteen (14) calendar days or less shall be provided, in writing, with the following information:

(1) the nature of the proposed action;

(2) the specific reason(s) for the proposed action;

(3) his or her right to review the evidence that that has been relied upon to support the charges;

(4) the right to be represented by the Union or by another representative of his or her choice;

(5) the right to make an oral and/or written reply within fourteen (14) calendar days from the receipt of the proposed action; and

(6) the name and office location of the reply officer to whom such reply should be made.

Section 6. Suspensions of More than Fourteen (14) Calendar Days, Reductions in Grade, Furloughs of Thirty (30) Calendar Days or Less, and Removals

(a) Notice of Proposed Adverse Action: Unless otherwise provided for by 5 USC 7513(b), an employee who receives a proposal for an adverse action is entitled to at least thirty (30) calendar days advance written notice.

(b) The contents of the notice and the timeframes and contents of the decision shall follow those of Section 5 above.

Section 7. Information

(a) The notice of a proposed disciplinary action or adverse action shall advise the employee of his or her right to receive a copy of the material relied on to support the proposed action.

(b) In any disciplinary or adverse action, the employee will be furnished with a copy of the material relied upon by the Employer to take the action, at the time of the notice of proposal of such action. Documents or records (including supervisory records, notes or diaries) shall not be used to support any disciplinary or adverse action against the employee, unless the employee has been provided a copy of such document(s) or record(s) prior to, or the time of, the notice of proposed action.

(c) All written documents in the custody of the Employer which are favorable to the employee shall be furnished to the employee. If such an action is referred to an arbitrator, and if the Union alleges that favorable information provided for above has not been furnished by the Employer, all such information shall ordinarily be furnished to the arbitrator for an [in camera] inspection.

(d) The Employer may withhold such information from the employee or the arbitrator pursuant to its authority under the Privacy Act or the Freedom of Information Act. Ordinarily, such information shall be withheld only for law enforcement purposes. With regard to

information withheld from the employee under this provision, material provided to the arbitrator by the Employer shall be furnished to the Union at the same time it is provided to the arbitrator.

(e) To the extent that the information and the data exists, the Employer will provide to the Union, on an annual basis, with the following statistical information: (1) the number of proposed adverse and disciplinary actions in the previous year; and (2) the number of adverse and disciplinary actions taken in the previous year.

Section 8. Employee Reply Rights in Disciplinary and Adverse Actions (Suspensions, Reductions in Grade, and Removals)

(a) Employee reply: An employee may exercise his or her reply rights either orally or in writing. The Employer must give the employee a sufficient amount of time to: review all material relevant to his or her case; prepare his or her oral or written reply; consult with his or her representatives with regard to his or her case; and, if applicable, secure any pertinent affidavits.

(b) Should the employee wish the Employer to consider any medical condition which may have contributed to his or her situation, the Employer must allow the employee a reasonable amount of time to retrieve such information.

Section 9. Action by Deciding Official in Disciplinary and Adverse Actions (Suspensions, Reductions in Grade, and Removals)

(a) Except as provided for below, an employee with a pending proposed removal or suspension will remain in duty status in his or her regular position during the advance notice period. However, in those rare circumstances where the Employer has determined that the employee's continued presence in the workplace might pose a threat to the employee or to others, or otherwise jeopardize legitimate Employer or Government interests, the Employer may elect to:

(1) assign the employee to other duties;

(2) allow the employee to take leave, or carry him or her in an appropriate leave status (i.e. annual, sick, LWOP, or absence without leave) if he or she has absented him or herself from the worksite without requesting leave;

(3) pursuant to 5 USC 7513(b), curtail the employee's notice period when it has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or

(4) place the employee in a paid, non-duty status for such time as is necessary to effect the proposed action.

(b) The Employer shall normally issue a final decision within fifteen (15) workdays after receipt of the written and/or oral reply, or the termination of the fourteen (14) calendar day notice period whichever comes last. Any need to extend the decision period will be communicated to the Union and employee with justification for the extension.

(c) In arriving at its decision, the Employer will consider only those reasons specified in the notice of proposed action, as well as any reply made by the employee and/or their representative. After careful consideration of the proposed action, the evidence of record, and the employee’s response, if any, including any mitigating factors, the deciding official shall decide whether: (1) to institute the proposed action; (2) to propose an alternative decision; (3) to institute a lesser action; or (4) to withdraw the proposed action.

(d) The deciding official must be a higher-ranking official than the official proposing the action, if one exists within the organization.

(e) The final decision notice shall state which reason(s) and specification(s) have been sustained. The notice will address factual disputes, if any, raised by the employee's reply by stating the reasons why each factual dispute has been has been accepted or rejected. The notice shall also advise the employee that they may grieve the decision through the provisions of Article 34 (Grievance Procedure) or appeal the decision to the Merit Systems Protection Board (MSPB), as applicable. Such notice shall be delivered to the employee on or before the effective date of the decision.

Section 10. Grievances and Appeals

(a) Final decisions on all disciplinary actions (as defined in Section 2 above) may be grieved and, if the employee so opts, taken to arbitration in accordance with the provisions of Article 34 (Grievance Procedure) and Article 35 (Arbitration).

(b) Final decisions on adverse actions (Section 2 above) may be appealed to the Merit Systems Protection Board; or grieved and appealed under the provisions of the Grievance and Arbitration Articles; but not both. An employee shall be deemed to have elected his or her remedy only at such time as he or she has timely filed a grievance or filed a notice of appeal under the applicable MSPB procedures.

(c) Employees may elect to forego the reply rights provided for in Section 8 of this Article. Should an employee elect not to exercise their reply rights, he or she may file a grievance at Step 1 of the Grievance procedure. However, employees who have elected to exercise their Section 8 reply rights, but remain dissatisfied with the Deciding Official's decision, must file at Step 2 of the Grievance procedure.

Section 11. Union Representation

Each employee has the right to be represented by the Union at any Management-initiated meeting being held in connection with an investigation, when an employee reasonably believes that the meeting may result in disciplinary action being taken against him or her. In such instances the employee shall, upon his or her request, be given an opportunity to obtain representation. To that effect, Management is encouraged to notify each employee of his or her right to Union representation prior to, and no later than, the onset of any Management-initiated meeting that may result in a disciplinary action. Management is required to notify each employee at least twenty-four (24) hours in advance of any Management-initiated investigative meeting unless there is an immediate need to hold such meeting, or unless otherwise agreed to by the Parties.

Section 12. Time Limit Extensions

Any of the time limits set forth in this Article may be extended by mutual agreement of the Parties.

Section 13. Alternative Discipline Agreements

(a) The deciding official (or grievance official) may propose lesser or different penalties in return for certain employee concessions. One such alternative is a "Last Chance agreement"

where the employee agrees to terms regarding the resumption of traditional disciplinary procedures should he or she violate any terms of the Last Chance agreement.

(b) Employees have the right to have a representative present at any meeting or discussion concerning a proposed alternative discipline such as a Last Chance agreement. Any such agreement entered into between an employee and the Employer will not be valid unless the employee has been given the opportunity to consult with his or her representative concerning the matter and unless, if the employee has so elected, that representative is present at meetings or discussions concerning such agreement.

(c) At a minimum, the terms of any agreement offered to an employee for signature shall contain provisions stipulating the following:

(1) the period of time for the probationary period after which the agreement will expire. In no case shall such time exceed one (1) year; and

(2) that upon its signing, the agreement shall be placed in the employee's Official Personnel Folder (OPF) until its terms and conditions have been successfully fulfilled, or for two (2) years, whichever is shorter.

Section 14. Stays

The Employer shall stay taking any disciplinary or adverse action pending the Employer's final decision regarding a grievance timely filed under the provisions of Section 10 (Grievances and Appeals) of this Article and of Article 34 (Grievance Procedures). The stay will be not for more than forty (40) workdays after the delivery of the decision letter, or until completion of the grievance procedure, whichever comes later; unless such time frames have been extended by mutual agreement of the Parties.

Article 34
Grievance Procedures

Section 1. Grievance

An employee, a group of employees, the Union and/or the Employer may file a grievance under this Article. A grievance is any complaint about any matter concerning:

(1) a condition of employment;

(2) the effect or interpretation of this Agreement;

(3) a claim of a breach of this Agreement; or

(4) a breach, violation, misinterpretation, or misapplication of any applicable law, rule, or regulation, including Title I of the Civil Service Reform Act of 1978; except as provided in Section 2 of this Article.

Section 2. Matters not grievable

The following matters shall not be grievable:

(1) any claimed violation concerning prohibited political activities; retirement, life insurance, or health insurance; a suspension or removal under the national security laws; any examination, certification, or appointment; or the classification of any position that does not result in the reduction in grade or pay of an employee;

(2) termination of probationary and temporary employees;

(3) non-selection for promotion, reassignment, or detail from a group of properly ranked and certified candidates, unless it is alleged that the provisions of law, rule, or regulation, or the terms of this Agreement have not been followed properly;

(4) non-adoption of a suggestion, disapprovals of quality step increases, performance awards, or other kinds of honorary or discretionary awards; and

(5) appeal of performance work plans; or performance standards per se, unless it is alleged that the provisions of law, rule, or regulation, or the terms of this Agreement have not been followed properly.

Section 3. Exclusive procedure

Except as provided in Section 4, the grievance procedure set forth in this Article shall be the exclusive process available to employees, the Union, and the Employer for resolving grievances.

Section 4. Election of Remedies

An employee who feels the basis of their grievance includes discrimination on the basis of race, creed, color, sex, religion, national origin, age, physical or mental disability, marital or parental status, sexual orientation, genetic information, or political affiliation may raise the matter under the appropriate statutory procedure described in Article 11 (Equal Employment Opportunity) or this negotiated grievance procedure, but not both. An employee alleging discrimination makes such an election when, pursuant to Article 11, within fifteen (15) calendar days of notice of the

conclusion of the EEO informal counseling stage he/she either: (1) files a formal written complaint of discrimination; or (2) files a grievance under the provisions of this Article.

Section 5. Retaliation prohibited

No employee shall be in any manner harassed, penalized, or adversely affected for initiating a grievance, nor shall any employee's loyalty to the Employer in any way be questioned for having initiated a grievance.

Section 6. Self-Representation

(a) An employee presenting a grievance under this Article may be represented by the Union or represent himself or herself.

(b) If an employee acts without representation, the Union shall be given an opportunity to be present at any grievance-related meeting and must be given copies of all grievance-related documents and correspondence.

Section 7. Early settlement of a grievance

The Employer and the Union shall make all reasonable efforts to settle all grievances at the earliest stage of discussion. The Employer shall make available the responsible management officials to meet with the grievant and his or her representative as often as is productive to settle disputed matters. In the interest of informally settling grievances whenever possible, the Parties may mutually agree to extend the time limits set out in this Article. Such agreement must be in writing and signed by the Parties.

Section 8. Time to prepare

The grievant shall be granted a reasonable amount of duty time to prepare and present the grievance. The amount of time shall depend on the nature of the issue and shall be approved in advance by the grievant's supervisor. The grievant(s) representative shall be granted Official Time in accordance with the terms and provisions of Article 5 (Official Time and Union Representation).

Section 9. Grievance Procedure

(a) The grievance process has two steps.

(1) Step 1. Within fifteen (15) workdays after the occurrence or after the date the employee becomes aware of the occurrence of the event leading to the grievance, the employee and Union representative, if any, shall present the grievance to their immediate supervisor. The grievance may be presented orally or in writing. A written grievance must be submitted on the Grievance Form set forth in Appendix B. Should the supervisor not have the authority to grant or effectively recommend the resolution proposed in the grievance, he/she will notify the employee and refer the grievance to the lowest-ranking management official with such authority. The supervisor or management official will make whatever investigation is appropriate and will meet with the grievant(s) and/or their representative, if necessary, in an attempt to resolve the grievance. The supervisor or management official will give his or her response to the grievant as soon as possible, but not later than fifteen (15) workdays after the receipt of the grievance.

(2) Step 2. A formal grievance must be in writing and submitted on the Grievance Form set forth in Appendix B. A grievant who believes that he or she has not received a satisfactory resolution at Step 1 may present the grievance to the employee's JMD Staff director or designee(s) in writing no later than twenty (20) workdays after receipt of the Step 1 grievance's reply. The written grievance shall cite the specific subject of the grievance, the date and place of the grieved action or event, who took the action (if known), the applicable section or sections of this Agreement (if known) or applicable law, rule, or regulation, and the specific remedy sought. The deciding official shall make whatever additional investigation is appropriate and must consult with Human Resources /Employee Relations staff. He/she will meet with the grievant(s) and/or representative, as necessary. The deciding official shall render a grievance decision within twenty (20) workdays after receiving the written grievance. The official's response shall rule upon all of the issues raised in the grievance. The response will also include the justification of the decision. At any time after the official's response the grievant may request a clarification of the response.

Section 10. Documents relevant to grievance

Upon initiating a formal grievance, the grievant, upon request, shall receive a complete copy of all papers, statements, notes, records, and other evidence of any kind that are necessary to the presentation of his or her grievance. When a request for additional information is filed, the time limits stipulated in this Article will be extended until such time as the information request has been fully met or denied.

Section 11. Union and Employer grievances

(a) Union grievances shall be submitted in a written memo by the Union President directly to the DAAG HRA or his/her designee(s). The DAAG HRA or his/her designee(s), and the Union President, or his/her designee(s), shall meet as soon as possible but, in all cases within fifteen (15) workdays after receipt to discuss the grievance. A written response shall be issued within fifteen (15) workdays after this meeting.

(b) Management grievances shall be submitted in a written memo by the DAAG HRA or his/her designee(s) directly to the Union President. The DAAG HRA, or his/her designee, shall meet with the Union President or his/her designee(s), as soon as possible but in all cases within fifteen (15) workdays after receipt to discuss the grievance. The Union President shall issue a written response within fifteen (15) workdays after this meeting.

(c) If a grievance submitted under this section is not settled by the above methods, the grievant may invoke the arbitration procedures of this Agreement within thirty (30) calendar days.

Section 12. Time Limits

(a) Except as otherwise provided for in Section 9 above and subsection (c) of this section, all time limits herein may be extended by mutual agreement of the Union representative and the Employer.

(b) Once a grievance has been timely filed, failure of either party to observe time limits provided for in this Article will serve to advance the grievance to the next Step.

(c) Absence of the grievant, his/her representative, or the deciding official from the workplace on leave or official absence shall constitute an automatic extension of the time limits provided for in this Article. Such extension shall be for the amount of time the grievant, representative or official was absent.

Section 13. Retaliation prohibited

No employee shall be in any manner harassed, penalized, or adversely affected for initiating a grievance.

Article 35
Arbitration

Section 1. Right to arbitration

Should a grievance filed under Article 34 (Grievance Procedure) remain unresolved, only the Union or the Employer may refer the matter to arbitration upon written request.

Section 2. Invoking arbitration

The request to refer an issue to arbitration must be signed by the Assistant Attorney General for Administration (or his/her designee) or by the Union President, and submitted to the other Party within thirty (30) calendar days of receipt of the unresolved grievance.

Section 3. Request

Within five (5) workdays from the date of the request for arbitration the Parties shall jointly request from the Federal Mediation and Conciliation Service a list of five impartial persons qualified to act as arbitrators.

Section 4. Selection

The Parties shall confer within ten (10) workdays after receiving the list of names from the Federal Mediation and Conciliation Service and select one of the listed arbitrators. If they cannot mutually agree upon a selection, the Parties will alternately eliminate one name from the list, with the Party acting first determined by coin toss. The remaining person shall be the duly selected arbitrator.

Section 5. Cost

The arbitrator's fee and all expenses shall be borne by the losing party. Where the arbitrator deems circumstances warrant, he/she shall determine the losing party and may assess the parties a different percentage of the fees and expenses.

Section 6. Hearing schedule; time to participate in hearing

(a)The arbitration hearing shall be held, if possible, on the Employer's premises during regular business hours -- Monday through Friday.

(b)Any employee determined by the arbitrator to be a necessary witness shall be excused from duty to the extent necessary to participate in the official proceedings. However, in emergency situations, where the witness cannot be excused from duty, the hearing shall be rescheduled. Should rescheduling result, the party requesting that the hearing be rescheduled will bear any extra costs incurred.

(c)The grievant(s) shall be granted a reasonable amount of duty time to prepare for the hearing. The grievant(s) shall be granted all necessary time to attend the hearing.

Section 7. Arbitrator’s Decision

The arbitrator shall submit all findings in writing and will decide all issues raised by any Party, including arbitrability. The arbitrator shall have no power to add to, subtract from, or modify the terms of this Agreement.
The arbitrator's decision shall be binding upon all Parties. However, exceptions to a decision may be filed with the Federal Labor Relations Authority or the appropriate court under regulations prescribed by the Civil Service Reform Act, the Federal Labor Relations Authority, 5 U.S.C. §7122, or other applicable law, regulations, or order.

Section 8. Transcript Cost

Should either Party request a verbatim transcript of the hearing, that Party shall bear all costs associated with the transcript.

Article 36
Midterm and Implementation Negotiations

Section 1. General

The procedures of this Article shall constitute the ground rules for midterm negotiations, unless the Parties mutually agree to negotiate additional procedures.

Section 2. Purpose

With the exception of changes mandated by law, rule, regulation, or by direction from higher authority; or changes flowing from the introduction of new technology; all matters covered by this Agreement will not be subject to change during the term of the agreement, absent mutual consent of the Parties. When because of mandated changes as defined below in Section 4 or the introduction of new technology, there is a need to reopen existing articles or add new articles the procedures in this article will be followed. The procedures in this article will also be used when there is a change in working conditions (non-mandated changes) when there is not a specific process included in another article. Neither the Union nor Management shall waive any statutory rights during this process.

Section 3. Predecisional Consultation

When practicable, prior to the decision to implement any changes which might affect bargaining unit employees, the Employer will consult with the Union concerning any such anticipated action. Consultations regarding such changes will include soliciting and considering the Union's comments and recommendations. Management shall consider timely comments and recommendations, but is free to accept or not accept the Union's input. Predecisional actions and decisions to not accept Union input are not grievable. The Union's participation in such consultations shall not in any way be construed as a waiver of bargaining rights.

Section 4. Mandated Changes

In the event that either Party determines that portions of this Agreement need to be modified in order to conform to changes in law, rule, regulation, or Directive from higher authority, it will notify the other Party. Such notifications should be given as soon as possible after such determination, usually at least fifteen (15) workdays in advance of any proposed implementation date. Except as provided for below in Section 6 of this Article or in instances where either Party declines to bargain, the notified Party will have fifteen (15) workdays after receipt of such notification to request negotiations. The Parties will commence negotiations within twenty (20) workdays, or upon such time as when the Union's pending information request has been, either filled or denied. Bargaining over mandated changes will proceed in accordance with Sections 8 through 11 of this Article, except that the Parties may agree to expedite the bargaining process in order to reach agreement as quickly as practicable.

Section 5. Notice of Non-Mandated Changes

(a)The Union has the right to be informed when the Employer proposes changes in matters affecting personnel policies, practices or conditions of employment and shall be given the opportunity to negotiate to the extent provided by 5 USC Chapter 71 and the terms of this

Agreement. The proposed changes shall be submitted in writing to the Union. Unless otherwise provided for in the Agreement, such notice shall include, at a minimum:

(1) a description of the proposed change(s);

(2) an explanation of how the change(s) will be implemented;

(3) the reason for such change(s);

(4) the proposed implementation date;

(5) a list of affected organizational units and bargaining unit members, and

(6) the designated Employer contact person with respect to any correspondence regarding negotiations.

(b) Such notifications should be given as soon as possible, usually at least ten (10) workdays in advance of any proposed implementation date.

Section 6. Notice of Intent to Bargain

Should the Union wish to bargain over the proposed change(s) it will inform the Employer in writing of its intention to bargain within fifteen (15) workdays of its receipt of such notice as provided for in Sections 4 and 5 above.

Section 7. Information Requests

The Union's notice of intent may also include a request for additional information, or for a briefing. The Employer will respond to the Union's information request within fifteen (15) workdays of receipt of the request. Delays in providing information may serve as a basis for extending time frames/deadlines.

Section 8. Bargaining Procedures

(a) Pending the filling or denial of any outstanding information request(s) from the Union, negotiations shall take place as soon as practicable at a mutually agreeable date and site provided by the Employer.

(b) Negotiations shall take place during regular duty hours unless otherwise agreed to by the Parties.

(c) Prior to the initiation of negotiations proper, the Parties shall meet to discuss the bargaining schedule, as well as any facilities and equipment needs which the Union might have.

(d) Throughout negotiations, the Union will be authorized to have the same number of representatives as the Employer, but in any case no less than two (2) representatives. The Union will inform the Employer, in writing, of the names of its bargaining team members and their organizational units no later than five (5) workdays before negotiations are scheduled to commence.

(e) Bargaining team members will be granted Official Time to attend all bargaining sessions and a reasonable amount of Official Time for bargaining preparation, bargaining team meetings, as well as proposal writing, review and analysis. Such time shall be granted unless the team member(s) absence from their duty station would significantly interfere with the completion of the Employer's day-to-day operations or the performance of its overall mission.

(f) Either Party may also bring a technical consultant to the negotiation session(s) including a non-DOJ employee who has special knowledge which would contribute to the

success of the negotiations. Generally, only one such consultant representing each party would be expected to be present at any one session. The Chief Negotiator will notify the other Chief Negotiator when this will occur.

Section 9. Extension of Time Frames

The Parties may mutually agree to extend any or all of the above time frames.

Section 10. Negotiability

(a) Prior to raising any negotiability issue, the Employer agrees to discuss its negotiability concerns with the Union. In the event that the Parties remain unable to informally resolve remaining negotiability disputes, at the Union's request, the Employer will formally allege non-negotiability in writing. The time period for the Union's submission of its petition for review shall be triggered only after such formal allegation has been tendered in response to the Union's request. In any case, formal measures concerning negotiability will not be taken up to and including the conclusion of Federal Mediation and Conciliation Service (FMCS) proceedings.

(b) Where the Employer has formally alleged negotiability issues pursuant to subsection (a) above, and the Union has filed a negotiability appeal with the Federal Labor Relations Authority (FLRA), any proposal(s) under dispute will be severed from the remaining provisions, unless the proposal(s) under dispute and the remaining provisions are interdependent. Should the Parties reach agreement on provisions not subject to negotiability appeal, the agreed-upon provisions shall be implemented independently of any negotiability proceedings.

Section 11. Mediation and Impasse

(a) Should the Parties be unable to reach agreement within twenty (20) workdays of the first bargaining session, either Party may seek mediation assistance from the FMCS, but only after affording the other Party the opportunity to jointly seek such assistance. Upon mutual agreement of the Parties, bargaining may continue while mediation is being scheduled.

(b) Should agreement still not be reached and the Parties are declared at impasse by the mediator, the Parties will, pursuant to 5 USC 7119, jointly request assistance from the Federal Service Impasses Panel (FSIP).

(c) Should the FSIP refer the matter to interest arbitration, the Employer shall bear the cost of such procedures.

Section 12. Implementation

Except in cases of unforeseen emergencies which require the Employer's immediate action in order to meet its critical needs and/or to protect safety and the well being of its employees, after affording the Union notice and an opportunity to bargain under the provisions of this Article, the Employer may implement the proposed change(s) only upon agreement of the Parties or award by the FSIP or by an interest arbitrator.

Section 13. Past Practices

This Agreement constitutes the sum of all written agreements between the Parties. Previous memorandums of understanding are no longer in effect. However the Parties agree to continue, unless changed through this Agreement, any common employee benefits, practices, and

understandings mutually acknowledged by the Parties and not specifically inconsistent with this Agreement.

Article 37
Duration and Scope of Agreement

Section 1. Effective date; effect on other agreements and practices

This Agreement shall take effect thirty-one (31) calendar days after the Parties execute this Agreement, unless disapproved under the provisions of 5 U.S.C. §7114, and shall supersede all agreements and past practices between the Parties in effect before the effective date.

Section 2. Duration of Agreement

This Agreement shall remain in effect for three (3) years from the effective date except as otherwise provided for below in Section 3.

Section 3. Renewal of Agreement

(a) This Agreement shall automatically be renewed for one (1) year unless a Party gives written notice to the other Party requesting negotiations to modify the Agreement. Such notice shall be given at least sixty (60), but not more than one-hundred and twenty (120) calendar days, before the Agreement expires. There shall be no more than three (3) automatic renewals of this Agreement.

(b) A notice under Section 3 (a) shall set forth the modifications to the Agreement sought by the Party giving notice. Ground Rule Negotiations on a new Agreement concerning Contract renegotiations shall start within sixty (60) calendar days from the date of the receipt of the notice.

(c) Should Contract Renegotiations be initiated under the provisions of this section, each party may reopen up to six (6) articles and offer new articles on matters not covered in this Agreement.

(d) If this Agreement is not automatically renewed or a new Agreement has not been entered into by the expiration date of this Agreement, this Agreement shall continue in effect until a new Agreement takes effect, except for provisions in conflict with applicable law, rule, or regulation.

Section 4. Interpretation of Agreement

In the interpretation of all matters covered by this Agreement, the Parties shall rely upon existing and future laws; applicable rules, regulations and policies; as well as upon all applicable terms of this Agreement and contract bargaining history.

Section 5. Renegotiation of part of Agreement

(a) Except as otherwise provided in this Agreement, during the duration of this Agreement no Article in this Agreement may be reopened unless the Parties consent.

(b) If the Parties consent to reopen a part of this Agreement, Union officials shall be authorized official time for negotiations and preparation as agreed to by the Parties. The number of Union officials for whom official time is authorized shall equal the number of individuals designated as representing the Employer for such negotiations.

Section 6. Orders or instructions in conflict with Agreement

Except as otherwise provided in this Agreement, to the extent that there is a conflict between this Agreement and a provision of Department of Justice Orders or the Employer's Instructions issued after the effective date of this Agreement, the provisions of this Agreement shall govern.

Section 7. Union’s Rights

Nothing in this Agreement shall be construed as having constituted a waiver of its right to bargain to the full extent of law over matters not covered in this Agreement.

Article 38
Copies of the Agreement

The Employer shall post a copy of this Agreement on the Employer's Intranet. The Employer shall provide to the employee at the new employee orientation the URL or hypertext link for accessing a copy of this Agreement.

Signatures

By affixing their signatures, the undersigned agree this document is a full, complete, and accurate statement of the negotiated language achieved during the negotiations between JMD management representatives and representatives of AFSCME Local 3097.

James Higgins
Chief Negotiator, Local 3097

Richard Souser
Chief Negotiator, JMD

Scott Fennimore
President, Local 3097

Roger Beasley
Bargaining Team, JMD

Arnetta Palmer
Bargaining Team, Local 3097

Cassaundra Britton
Bargaining Team, JMD

Glynnis Shane
Bargaining Team, Local 3097

Melinda Morgan
Bargaining Team, JMD

Peter Inman
AFSCME Council 26

Effective Date: September 12, 2012

Appendix A

REQUEST FOR OFFICIAL TIME FOR REPRESENTATIONAL PURPOSES - JMD

Union Representative: _____ Organization: AFSCME Local 3097

Part A: Request for Time (Includes preparation time and/or travel off-site as appropriate for the purposes listed in >a= through >e=)

I hereby request use of official time on ____/____/____ from _____ *am/pm* to _____ *am/pm*.
(This is an estimate of the official time required.)

Purpose of official time: (Check one)

____ a. General labor relations, meetings, and discussions (37)*

____ b. Training (37)*

____ c. Grievances, appeals, and third party proceedings (38)*

____ d. Contract negotiations (35)*

____ e. Mid-Term/Implementation (impact and appropriate arrangements) bargaining (36)*

**Transaction Codes for timekeeping purposes*

Location: (Complete only if leaving the work site.)

_____ _____
Building and Room Number Telephone Number

_____
Date of Request

___ Approval of Authorizing Official

___ Disapproval of Authorizing Official: Due to work requirements, this request must be denied.

_____
Signature/Date

Part B: Record of Time Actually Used (*The Union representative is responsible for returning to work as soon possible and for promptly completing Part B.)*

I used _____hours and _____minutes of official time from _____*am/pm* to _____*am/pm* for representational duties.

_____
Signature / Date

Original copy of the completed form should be sent to the authorizing official and/or timekeeper.

Appendix B

U.S. Department of Justice JMD/AFSCME Local 3097

Grievance Presentation - Negotiated Procedure

1. NAME OF GRIEVANT(S):	*2. NAME OF IMMEDIATE SUPERVISOR:*
3. ORGANIZATION (Division/Office):	
5. GRIEVANCE RELATES TO MATTERS COVERED BY THE FOLLOWING ARTICLES/PROVISIONS OF THE NEGOTIATED AGREEMENT:	
6A. DETAILS OF THE GRIEVANCE: (State in detail the incident(s) on which this grievance is based, providing names and dates. Also, describe how the incident violates the cited section(s) of the negotiated agreement. If necessary, attach additional sheets. The same grievance must be presented at each step of the procedure. No additional issues may be raised.)	*6B. DATE OF INCIDENT:*
7. STATE SPECIFIC PERSONAL RELIEF SOUGHT.	
8. IF FILING STEP TWO GRIEVANCE, ATTACH STEP ONE DECISION.	
9. STEP ONE	*STEP TWO*
10. SIGNATURE OF REPRESENTATIVE: (if none, write Anone@) *DATE:* *MEETING REQUESTED: Y/N*	*SIGNATURE OF REPRESENTATIVE: (if none, write Anone@)* *DATE:* *MEETING REQUESTED: Y/N*
11A. SIGNATURE OF GRIEVANT: *DATE:*	*11B. SIGNATURE OF ADDITIONAL GRIEVANT (if any):* *DATE:*