

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

**THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON FIELD OFFICE**

MATTHEW FOGG, et al.,)	
Class Agents,)	
)	EEOC No. 570-2016-00501X
)	Agency No. M-94-6376
v.)	
)	
MERRICK GARLAND,)	
ATTORNEY GENERAL,)	
DEPARTMENT OF JUSTICE,)	
Agency.)	

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter, “Agreement” or “Settlement”) is entered into by and between Matthew Fogg and Class Agents (hereinafter, “Class Agents”), on behalf of themselves and a class of individuals they represent (hereinafter, “Class Members”), in the above-captioned matter (hereinafter, “Litigation”), and Merrick Garland, Attorney General for the U.S. Department of Justice (hereinafter, “DOJ”) in his official capacity, and the United States Marshals Service (“USMS” or the “Agency”), a component agency of DOJ (hereinafter, “Agency” as described below) (together with Class Agents, collectively “Parties”), with the approval of the U.S. Equal Employment Opportunity Commission (hereinafter, “EEOC” or “Commission”).

I. INTRODUCTION AND RELEASE

The Parties acknowledge that in this Litigation, the Class Agents filed a Second Amended Charge with the EEOC, asserting discrimination claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (hereinafter, “Title VII”) on behalf of current and former African American Deputy U.S. Marshals (hereinafter, “DUSMs”), and African American applicants for DUSM positions.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

USMS denies that it has violated Title VII and asserts that it has provided equal employment opportunities for African American Deputy United States Marshals and applicants for DUSM positions. Nonetheless, the Parties and the Director of the USMS have expressed a commitment to work together to resolve the allegations in the Second Amended Charge in this protracted Litigation.

This Litigation was vigorously prosecuted and defended by the Parties with extensive discovery, including the production of approximately 3.6 million pages of documents, the taking of numerous depositions, and the filing of numerous motions and appeals in the course of its over two-decade history in an effort to resolve the Class Agents' claims before the EEOC. On November 12, 2021, the Agency requested that the EEOC Administrative Judge (hereinafter, "AJ") transmit a decision to the DOJ Complaint Adjudication Office (hereinafter, "CAO") in conformity with 29 C.F.R. § 1614.204, to pursue the Agency's asserted appeal rights regarding the acceptance of the Class Agents' amended administrative class complaint. The EEOC made no final rulings, findings of fact, or conclusions of law on the discrimination claims or issues litigated by the Parties.

USMS and the Class Agents, desiring that this action be resolved by an appropriate Settlement Agreement and in the interests of avoiding further appeals, expense, delay, and the burden of further litigation of the issues raised in this Administrative Class Complaint, engaged in fair and honest negotiations to reach this Settlement Agreement by their respective counsel. Counsel for both Parties believe the Settlement Agreement to be fair, adequate, and reasonable for the class as a whole.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

This Settlement Agreement is binding upon the Parties. Class Members who do not complete a Claim Form, as defined in Section II.H below, and thereby waive their right to participate in the monetary and/or equitable relief provided herein, are also bound by the terms of this Settlement Agreement. Class Members, their representatives, agents, heirs, assigns, executors, administrators, and successors acting on Class Members' behalf shall hold harmless the Agency, DOJ, USMS, its agents, contractors, servants, and employees, in their official and individual capacities, for any and all claims, demands, actions, distribution disputes, judgments, damages, expenses, liabilities, grievances, and complaints, or other obligations arising out of the Class Complaint or this Settlement Agreement. Class Members agree that the provisions of this Settlement Agreement shall resolve finally and forever bar any and all claims arising from Class Claims of the Class Agents and Class Members, which any of them, their representatives, agents, heirs, assigns, executors, administrators, or successors, may have, may have had, or in the future may have against the Agency, DOJ, USMS, its agents, contractors, servants, and employees, in their official and individual capacities, including any alleged continuing violations after Date of Notice of Resolution insofar as any claims arise from or relate to events that occurred prior to the Date of Notice of Resolution.

Class Members release the United States, DOJ, USMS, its agents, contractors, servants, and employees, in both their official and individual capacities, from any and all liability, claims, causes of action, appeals, grievances and complaints, pending or potential, which arise from the Class Claim through the Date of Notice of Resolution (as defined below). This Settlement Agreement constitutes a release from all claims and actions in any forum arising out of the Class Claim that have or could have been brought, as grievances, EEO complaints, or other causes of action within the USMS, DOJ, the EEOC, the Merit Systems Protection Board, the Office of Special Counsel, or

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

any United States District Court or Court of Appeals. This Settlement Agreement is a complete accord and satisfaction of any and all Class Claims that occurred before Date of Notice of Resolution (as defined below), including, but not limited to, equitable and legal relief, backpay, front pay, attorneys' fees and costs, and compensatory and punitive damages. This Settlement Agreement does not change or modify any tax requirements of the Internal Revenue Code, and the recipient of any payment hereto shall be liable for any such required payments. The Class Members shall further be barred from submitting evidence concerning any Class Claim in any proceeding, other than a submitted Claim Form under this Agreement, in support of any claim, action, grievance, complaint, or appeal. Nothing in this Section shall bar the Class Members from seeking to enforce the terms of this Settlement Agreement pursuant to Section VIII, or from communicating with, filing a charge or complaint with, or cooperating or participating in any investigation or proceeding by any governmental agency. The Settlement Agreement may be pled as a full and complete defense to any subsequent litigation, other than pursuant to the Claims Process, involving any person or party that arises out of the claims released and discharged here.

Class Agents, on behalf of all Class Members, shall withdraw the Administrative Class Complaint within thirty (30) days of the Effective Date of the Settlement Agreement.

In reliance on the representations, mutual promises, covenants, and obligations set out in this Settlement Agreement, and for good and valuable consideration also set out in this Settlement Agreement, the Parties, through their respective undersigned counsel, hereby stipulate and agree as follows:

II. DEFINITIONS AND PARTIES

The following terms, as they are used in this Settlement Agreement and its attachments, shall have the meanings defined below:

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

A. Administrative Class Complaint or Class Complaint

The terms “Administrative Class Complaint” or “Class Complaint” refer collectively to the following: (1) Class Action Complaint of African American Discrimination against the DOJ filed by Matthew Fogg on July 12, 1994; (2) Amended Class Charge filed against the DOJ, as accepted by Supervisory Administrative Judge Sharon E. Debbage Alexander on February 24, 2017; and (3) Second Amended Class Charge filed against the DOJ, as accepted by AJ Kurt Hodges on August 13, 2021. The Administrative Class Complaint is pending before the EEOC’s Washington Field Office as Case No. 570-2016-00501X.

B. Attorneys’ Fees and Expenses

“Attorneys’ Fees and Expenses” shall mean the attorneys’ fees, costs (including fees and costs charged or incurred by retained experts or consultants), and expenses incurred by Class Counsel in connection with this Class Complaint and resulting Settlement. Attorneys’ Fees for Class Counsel will be 33% of the Settlement Fund. Expenses advanced by Class Counsel will be reimbursed from the Settlement Fund after the allocation of Attorneys’ Fees.

C. The Agency

The United States Marshals Service (hereinafter, “USMS”), a component agency of the DOJ. USMS and “Agency” are interchangeable terms used throughout this Settlement Agreement.

D. Claimant

Any Class Member who submits a Claim Form seeking individual relief as provided in Sections IV and V of this Settlement Agreement. The Parties understand that a Claimant may be deemed eligible for some forms of relief but deemed ineligible for others. Those Claimants who are deemed eligible for the particular relief will be referred to as “Eligible Claimants.” Those Claimants who are deemed not eligible for the particular relief will be referred to as “Ineligible

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

Claimants.” All Claim Forms and accompanying materials submitted by Class Members shall be submitted under the penalty of perjury. Claimants must also acknowledge and agree to the non-liability terms and conditions as set forth in the Claim Form, attached as Exhibit A (Claim Form). Following the review and administration of Claims Forms, Class Counsel or their Claims Administrator shall provide the Agency with a list of Claimants (“Claimant List). The Claimant List shall contain identification information to include name, date of birth, contact information, denote whether the Claimants received monetary relief and the amount of the monetary relief. For those Claimants who receive monetary relief, the Claimant List shall specify whether the Claimant received monetary relief for Merit Promotion, Recruitment, and/or Hiring, along with the reason they received monetary relief.

E. Claims Administrator and Claims Allocator

1. If Class Counsel so designates, the Claims Administrator is a person or entity engaged by Class Counsel to assist in the administration and distribution of monetary relief to be made pursuant to this Settlement Agreement. The Claims Administrator serves as trustee of the Settlement Fund to safeguard funds. All fees charged by the Claims Administrator shall be paid out of the Settlement Fund.
2. If Class Counsel so designates, the Claims Allocator is a person or entity engaged by Class Counsel to assist in the allocation of monetary relief to be made pursuant to this Settlement Agreement. All fees charged by the Claims Allocator shall be paid out of the Settlement Fund.

F. Class Agents

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

Matthew Fogg, Antonio Gause, Regina Holsey, Thomas Hedgepeth, Charles Fonseca, Ivan Baptiste, Tracey Bryce, Damon Adams, Dwayne Epps, Sheldon Martin, Miriam Rodgers, Kerry Sims, Jeffrey Whitehead, Zachary Thomas, and Paul Darby.

G. Class Member

All current and former African American DUSMs who were subjected to USMS policies and practices consistent with the Class Claim referenced in Section II K., regarding promotions under the Merit Promotion Process, Management Directed Reassignments, and Headquarter Division assignments, and all African American current and former DUSMs, Detention Enforcement Officers, and applicants never employed who were subjected to USMS policies and practices consistent with the Class Claim referenced in Section II K., for hiring and recruitment of DUSM positions from January 23, 1994 to the date on which the Notice of Resolution is sent to Class Members (hereinafter, “Date of Notice of Resolution”). This definition is inclusive of Class Agents.

H. Claim Form

“Claim Form” means the blank form that is attached to this Settlement Agreement as Exhibit A. All Claim Forms, including attachments or supporting materials thereto, must be executed under the penalty of perjury (hereinafter “Executed Claim Forms”).

I. Date of Notice of Resolution

The Agency shall provide Notice of Resolution through various forms including individualized notice as well as public notice as set forth in Section III(F) and Exhibit B (Notice of Resolution) to this Settlement Agreement. Individualized Notice will be issued either by electronic mail and/or mailing via U.S. Mail if the Agency has a valid electronic mail or mailing address. The final form of notice will be public notice. To ensure sufficient time for filing

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

objections, the Date of Notice of Resolution will be deemed to be the sixtieth (60th) day following the Notice Start Date, [insert date], subject to the provisions of II(Y), as confirmed by the USMS in writing to the notice vendor and Class Counsel per the vendor contract.

J. African American

The term “African American” includes any person who: (1) has ever identified as African American or Black in any of the National Finance Center (NFC) fields that relate to an employee’s race, including those individuals who identified as “BLACK” within “2ORMORE” races at any point between January 23, 1994 to the Date of Notice of Resolution; (2) has identified as African American or Black through the EEO complaint process; or (3) self-reports as African American or Black in the Executed Claim Form.

K. Class Claim and the Agency’s Denial of Liability

As referenced in the Second Amended Charge, Class Agents asserted claims on behalf of current and former African American DUSMs who allege they were subjected to disparate treatment, disparate impact, and/or intentional racially discriminatory USMS policies and practices regarding promotions under the Merit Promotion Process, Management Directed Reassignments, and Headquarters Division assignments, and all African American current and former DUSMs, Detention Enforcement Officers, and applicants never employed at USMS who were allegedly subjected to racially discriminatory USMS policies and practices for hiring and recruitment of DUSM positions from January 23, 1994 to the Date of Notice of Resolution.

The Class Claim includes any individual Class Member or class-wide actual or potential race discrimination claim, administrative charge, demand, grievance, complaint, right and cause of action of any kind, known or unknown, by a Class Member or the Class Agents against the USMS or the DOJ, its agents and employees, for monetary, injunctive or equitable relief and/or

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

for attorneys' fees, arising from any alleged events, acts, omissions, policies, practices, procedures, conditions or occurrences identified in the Second Amended Class Charge, including alleged race discrimination claims of disparate treatment and disparate impact in employment concerning current and former African American DUSMs, as prohibited under Title VII, or any other federal, state, or local statute, regulation, rule, order, ordinance or other authority, from January 23, 1994 until the Date of Notice of Resolution.

As set forth above, the Agency expressly denies that it has violated Title VII and denies any wrongdoing or liability whatsoever. This Settlement Agreement represents the compromise of disputed claims. It reflects the Parties' recognition that litigation of these claims would severely burden all concerned and require a massive commitment of time, resources, and money. The Settlement Agreement does not constitute and shall not under any circumstances be deemed to constitute, an admission by either party as to the merits, validity, or accuracy, or lack thereof, of any of the claims in this case. No final ruling was ever made on the merits of the claims or allegations of the Class.

The Parties agree that this Settlement Agreement may not be introduced, used, or admitted in any other judicial, arbitral, administrative, investigative or other proceeding of any kind or nature whatsoever as evidence of discrimination, retaliation, or any violation of Title VII, the United States Constitution, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

In the event that Final Approval of the Settlement Agreement is not obtained or the Settlement Agreement is deemed null and void, nothing herein shall be deemed to waive any Class claims or the Agency's objections and defenses, and neither this Settlement Agreement nor the

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

EEOC AJ's preliminary or final approval hereof shall be admissible in any court regarding the propriety of class certification or regarding any other issue or subject of this case. If the AJ does not approve the Settlement, the Parties shall nonetheless work in good faith to reach a revised Settlement Agreement to submit to the AJ.

L. Class Members With EEO Complaints Filed from January 23, 1994 to Date of Notice of Resolution

All pending EEO complaints filed from January 23, 1994 to the Date of Notice of Resolution, asserting Class Claims are subsumed by this Agreement. Any Class Members whose EEO complaints asserting Class Claims that reached a final disposition prior to the date of the Notice are not eligible to recover any remedies for those Claims under this Settlement.

M. Class Counsel

David Sanford, Saba Bireda, Christine Dunn, Kate Muetting, James Hannaway, and other attorneys of the law firm of Sanford Heisler Sharp, LLP, 700 Pennsylvania Avenue SE, Suite 300, Washington, D.C. 20003.

N. Agency Counsel

Lisa Dickinson, General Counsel, USMS, counsel representing the USMS, David Fortney of Fortney & Scott LLC, 1909 K St NW #330, Washington, DC 20006, and other counsel of record for USMS.

O. USMS' Chief Diversity Officer

USMS' Chief Diversity Officer (hereinafter, "CDO") is an official under the Office of the Director, USMS, so designated by the Director to lead the USMS' efforts on diversity, equity, and inclusion (hereinafter "DEI"). The CDO may play a role in facilitating the equitable relief outlined for African American employees in Section V of this Settlement Agreement.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

P. Diversity, Equity, and Inclusion

The diversity or DEI efforts referenced in this Agreement are limited to only those necessary to provide equitable relief and remedial remedies to Class Members.

Q. Director

The Presidentially-appointed and Senate-confirmed Director of the USMS.

R. Effective Date & Agreement Term

“Effective Date” shall mean (a) the date upon which the applicable period to appeal the Final Approval Order and Judgment has expired, if no appeal is taken during such period; or (b) if, during the appeals period, an appeal is taken from such Final Approval Order and Judgment, the date upon which all appeals as provided for in 29 C.F.R. Part 1614, Subpart D, and any proceedings resulting therefrom, have been finally disposed of, or the date upon which the applicable period to initiate such further petitions or proceedings has expired. The Parties shall agree in writing when the Effective Date has occurred, and any dispute shall be resolved by the AJ. It is expressly agreed by the Parties and their counsel that no Party intends this provision or any other part of this Settlement Agreement to establish or acknowledge that anyone is entitled to or has the right to appeal from the Final Approval Order and Judgment, except as provided in 29 C.F.R. Part 1614, Subpart D. The term of the Settlement Agreement shall be two (2) years from the Effective Date.

S. Fee and Expense Application

The “Fee and Expense Application” shall mean the petition to be filed by Class Counsel seeking approval of an award of Attorneys’ Fees and Expenses and Service Awards for Class Agents and some Class Members. Class Counsel agrees not to file a Fee and Expense Application

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

seeking additional financial remedies or payments from the Agency in excess of the Settlement Fund.

T. Final Approval

The entry by the EEOC AJ of the Order granting final approval of this Settlement Agreement as fair, reasonable, and adequate to the Class as a whole pursuant to 29 C.F.R. § 1614.204(g).

U. Mandatory Joinder Claim

Subject to Section II(L), any Class Claim by a Class Member.

V. Notice

“Notice” shall mean the Notice of Resolution to be sent to the Class Members as agreed to by the Parties and as outlined in Section III(F) of this Settlement Agreement. The Agency is responsible for providing the Notice of Resolution and the corresponding costs as to Notice. The Agency shall not be responsible for any costs beyond those associated with the Notice requirements set forth in Section III(F).

W. Settlement

“Settlement” shall mean the compromise and resolution embodied in this Agreement.

X. Settlement Fund

The total settlement amount to be paid by the Agency to resolve this matter is Fifteen Million Dollars (\$15,000,000.00) (hereinafter, “Settlement Fund”). The Settlement Fund is the qualified settlement fund created by the payment of the total settlement amount by the Agency, the purpose and administration of which are governed by Section IV of this Settlement Agreement. In addition to the distribution to Class Members pursuant to Section IV(D), the Settlement Fund shall be used to pay the Attorneys’ Fees and Expenses, any Service Awards, any expenses incurred

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

by the Claims Administrator, and Taxes and Tax-Related Costs, including the Agency's employment tax obligations. No portion of the Settlement Fund shall revert or be repaid to the Agency after the Effective Date.

Y. Deadlines and Performance

The parties agree that, to the extent a deadline falls on a Saturday, Sunday, or federal holiday, the deadline will roll to the next business day. To the extent practicable, the deadlines set forth in this Settlement Agreement are reflected in the Chronology, attached at Exhibit C (Chronology). The deadlines and performance of any provisions in this Settlement Agreement (including monetary and non-monetary relief) are subject to infeasibility and any stay or order of continuance issued by the Commission. Infeasibility includes, but is not limited to, a lapse in appropriations (e.g., a government shutdown), relief requiring legislative, contractual or procurement approvals beyond DOJ or Agency control or authority, changes in statutory or regulatory law, Executive Orders, DOJ or Agency policies, guidance, and directives, as well as events beyond DOJ or Agency control such as natural disasters (e.g., hurricanes, tornadoes, and earthquakes, as well as human actions), armed conflict, and public health emergencies (e.g., a pandemic or man-made diseases). No performance under this Settlement Agreement shall be required for the duration of infeasibility, as defined herein. The Agency will notify the Commission if infeasibility impacts the date of the Fairness Hearing and the requirements for notice or a stay of the proceedings is necessary.

III. NOTICE AND APPROVAL PROCESS

A. Preliminary Approval. The Parties agree to file a motion for Preliminary Approval of this Settlement Agreement with the EEOC. The Parties agree to request a status conference to

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

discuss issuing notice and scheduling a Fairness Hearing. After the status conference, the Parties agree to request that the AJ issue an Order of Preliminary Approval.

B. Notice of Resolution. In accordance with 29 C.F.R. § 1614.204(g)(4), Notice of Resolution is being provided to all Class Members in the matter set forth in Section III(F).

C. Objection Period. No later than the date set forth in the Notice of Resolution, any Class Member may petition the AJ to vacate the resolution because it benefits only the class agent, or is otherwise not fair, adequate and reasonable to the class as a whole. The period for filing objections is referred to as the “Objection Period.” The Parties agree that the Objection Period shall be no shorter than 30 days from the Date of Notice of Resolution, as defined in Section II(I).

1. Objections must be submitted to Supervisory Administrative Judge Sharon E. Debbage Alexander by mailing: EEOC Washington Field Office, 131 M Street, N.E. Suite 4NW02F, Washington, DC 20507 or emailing FoggClassAction@eeoc.gov, with a copy submitted to counsel for the Agency and Class Counsel at the addresses included in the Notice of Resolution.
2. Each objection must expressly state that it is expressing an objection in *Fogg v. Garland* matter and include the following information to be valid: (1) objector’s name, address, e-mail address (if available), and telephone number (if available); (2) reasons for the objection; and (3) whether the objector wants to speak at a hearing.

D. Fairness Hearing. The Fairness Hearing may be scheduled in the AJ’s discretion and shall be held at the Administrative Judge’s convenience, but the Parties will jointly request that it be scheduled no earlier than one-hundred and five (105) days after the Date of the Notice

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

of Resolution. If the AJ does not schedule a Fairness Hearing, the Parties shall meet and confer in good faith and propose deadlines for all subsequent actions.

E. Final Order from AJ. The Parties will jointly request that the AJ issue a final decision and transmit it to the Parties.

1. **Effect of Non-Approval.** If the AJ does not approve the Settlement, the Settlement Agreement is null and void, though the Parties shall work in good faith to reach a revised Settlement Agreement to submit to the AJ. Nothing in this Settlement Agreement shall be construed as an admission or determination in this case, and nothing in the Settlement Agreement may be offered into evidence in any subsequent proceeding. The Parties reserve their rights to prosecute, defend, and appeal this case, and the Parties shall bear their own costs incurred as a result of the Settlement Agreement.
2. **Effect of Approval.** If the AJ issues a final order approving the Settlement Agreement, the Settlement Agreement shall be binding on all Class Members.

F. Notice of Resolution. The Agency is responsible for providing Notice of Resolution through (1) Mail and/or Email Notice to potential Class Members for whom the Agency has contact information; and (2) Public notice methods aimed at reaching a majority of the potential Class Members through efforts that are reasonably calculated to maximize notice to the Targeted Demographic, which is defined as: Current and former African American law enforcement officers, and African Americans currently or formerly interested in law enforcement careers (hereinafter, “Targeted Demographic”).

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

1. Mail and/or Email Notice Procedures.

- a. Notice of Resolution will be issued via electronic mail to known and potential Class Members who were previously notified via email and/or for whom the Agency has a valid appearing email address.
- b. Notice of Resolution will be issued via U.S. Postal Service (hereinafter, “USPS”), First Class Mail, to all known and potential Class Members who were previously notified via USPS, and/or for whom the Agency does not have valid appearing email address but does have a physical mailing address.
- c. The Agency shall provide the Notice attached hereto as Exhibit B, and as approved by the AJ, in accordance with the following deadlines to be calculated from the Notice Start Date as defined in the vendor contract:
 - i. Thirty (30) days for notification via email; and
 - ii. Forty-five (45) days for notification via United States first class mail.
- d. Before sending the Notice of Resolution via First Class mail, the Agency shall run the addresses through the United States Postal Service’s National Change of Address database. This obligation does not apply to any individuals who received individualized notice via electronic mail provided that a delivery failure notice was not received.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- e. The Agency is not required to run addresses of individuals with unknown race data through the USPS National Change of Address database as they are not known Class Members.
- f. If Notices are returned with forwarding addresses, the Agency shall re-mail the Notice to the new address within five (5) business days.
- g. The Agency, or its vendor, shall provide to Class Counsel seven (7) business days following the provision of Notice as set forth in Section III(F)(1):
 - i. A list of all invalid emails or emails for which a delivery failure or related notice was received and, from that list, the names of individuals for whom the Agency does not have a mailing address; and
 - ii. A list of the names of all mailed notices returned without a forwarding address.
- h. In the event the AJ schedules a Fairness Hearing, the Agency or its vendor shall each provide the AJ, at least seven (7) days prior to the Fairness Hearing, a declaration describing:
 - i. The steps taken to ensure notice was delivered to recipients for whom an email address was provided, including steps taken to avoid spam or other bulk filters;
 - ii. The total number of individuals to whom e-mail notice was sent;

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- iii. The number of invalid emails for which a delivery failure or related notice was received and, from that list, the number who were able to be sent notice via USPS;
 - iv. The steps taken to ensure notice was delivered to recipients via USPS;
 - v. The total number of individuals to whom notice was sent via USPS;
 - vi. The number of notices returned that contained a forwarding address;
 - vii. The number of individuals to whom notice was sent via USPS using a forwarding address; and
 - viii. The number of notices returned without a forwarding address.
- i. With regard to email and mailing notice, the Agency shall only bear the costs of issuing the initial Notice of Resolution including costs related to emailing and/or mailing the Notice, running addresses through the USPS database, and remailing any Notices that are returned with a forwarding address.

2. Additional Notice Procedures

- a. The Agency agrees to provide Additional Notice, which shall include a combination of Notice on the Agency's website, in publications, internet advertising, and mailings to relevant African American membership organizations.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- b. The Parties agree that notice will be reasonably calculated to reach a majority of the potential class members and that, for the purpose of attempting to reach a majority of the potential Class Members, the Agency's notice vendor will engage in notice activities that are reasonably calculated to maximize notice to the Targeted Demographic.
- c. As soon as practicable but no later than sixty (60) days after the Notice Start Date, as defined in the vendor contract, the Agency shall:
 - i. Publish a summary of the Notice, to include a link to the full Notice of Resolution, in print publications. The Notice of Resolution is attached as Exhibit B. The summary of the Notice of Resolution is attached as Exhibit D (Summary of Notice).
 - ii. Publish a summary of the Notice or, if necessary, as determined by the USMS vendor, a modified version of the summary, through internet advertisement. The summary is attached as Exhibit D.
 - iii. Email a summary of the Notice attached hereto as Exhibit D to relevant African American membership organizations.
- d. The Agency shall provide the AJ, at least seven (7) days prior to the Fairness Hearing (if a Fairness Hearing is scheduled), a declaration describing:

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- i. The steps taken to facilitate Additional Notice;
 - ii. The methods of internet advertising;
 - iii. The membership organizations to whom the Agency sent a summary of the Notice of Resolution and the number of members;
 - iv. The publications that circulated a summary of the Notice of Resolution;
 - v. When the publications circulated a summary of the Notice of Resolution;
 - vi. The estimated number of individuals in the targeted demographic reached through each means of Additional Notice of Resolution; and
 - vii. How its efforts are reasonably calculated to maximize notice to the Targeted Demographic.
- e. The Agency shall bear the costs of Additional Notice to the Class and may, in its discretion, hire a third party to undertake all actions described in this section. Additional Notice costs borne by the Agency includes only the actions described in Section III(F)(2), above.

IV. MONETARY RELIEF

- A. Settlement Fund Creation.** Under the Settlement Agreement, the Agency shall wire the sum of fifteen million dollars (\$15,000,000) to the Claims Administrator for the Settlement Fund as soon as practicable and no later than ninety (90) days after the later of the Effective

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

Date or the submission of required information to allow for the electronic transfer of funds, whichever is later. The Claims Administrator shall establish a Qualified Settlement Fund (QSF) and obtain a unique Employer Identification Number (EIN) for the QSF.

B. Settlement Fund: Class Counsel agrees that the account is intended to be, and will be, an interest-bearing Qualified Settlement Fund withing the meaning of 26 C.F.R. §1.468B-1. Interest earned on the Settlement Fund amount shall be applied to the expenses of claims administration, if any, or otherwise shall accrue for the benefit of the Class Members. The Claims Administrator is responsible for the administration and distribution of the Settlement Fund as detailed in Section IV(G)(1). The Settlement Fund shall be established by the Claims Administrator as a qualified settlement fund under the Internal Revenue Code, 26 C.F.R. § 1.468B and the Claims Administrator shall provide the relevant bank identification number, routing and account information to the Agency to permit the electronic funds transfer of the settlement monies into the Settlement Fund. The Agency shall comply with 26 C.F.R. § 1.468B-3(e), no later than February 15th of the year following each calendar year in which it made a transfer to the Settlement Fund. Such statement shall include: (a) a legend “§ 1.468B-3 Statement” at the top of the first page, (b) the Agency’s name, address, and employer identification number (EIN), (c) the Settlement Fund’s name, address, and EIN, (d) the date of each transfer to the Settlement Fund, (e) the amount of cash transferred, and (f) a description of any property, if any, transferred and its fair market value on the date of the transfer.

C. Settlement Fund Allocation. The identification of Class Members to receive monetary relief and distribution of such monetary relief is the exclusive responsibility of Class Counsel, Claims Administrator, and Claims Allocator, acting on behalf of the Class. The

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

Agency shall not be held responsible or liable for providing information or data used to distribute monetary relief, determining the distribution methodology, the determination of monetary relief to be accorded each individual, or other aspects of the monetary awards process. The individual awards owed to Class Members, including Class Agents, is not enforceable against the Agency. The Settlement Fund shall be apportioned as follows, subject to the Final Order approving this Settlement Agreement:

1. Up to \$4,950,000, representing thirty-three percent (33%) of the Settlement Fund, may be allocated for Class Counsel's attorney's fees, subject to Section IV.H of this Agreement and approval by the AJ;
2. Class Counsel's actual costs;
3. Service Awards to Class Agents, as approved by the AJ;
4. Actual costs of the Claims Administrator for processing Claim Forms for monetary relief; and
5. Actual costs of the Claims Allocator for developing and applying criteria by which individual class members will obtain monetary relief; but
6. Subtracting the amounts allocated in Sections IV(C)(1)-(5), the remainder of the Settlement Fund will be allocated to individual awards for Class Members.

D. Methodology for Individual Awards. Monetary relief for Class Members shall be distributed in accordance with the methodology set forth in Exhibit E (Methodology) and the provisions of this Settlement Agreement. Calculation and distribution of the amount due each Class Member shall be the responsibility of Class Counsel, the Claims Administrator, and the Claims Allocator. The Agency is not responsible for any aspects of

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

the calculation and distribution and shall not be held liable for any aspects of the calculation and distribution of individual awards.

E. Claim Form Process. In order to be eligible for Monetary Relief, a Claimant must submit an Executed Claim Form, signed under penalty of perjury, with the Claims Administrator, no later than the date set forth in the AJ’s approved Notice of Resolution (hereinafter, “Claim Form Submission Period”). The Parties agree that the Claim Form Submission Period shall be no earlier than 60 days after the Date of Notice of Resolution. The Claim Form is attached as Exhibit A. The Claims Administrator and Claims Allocator may consider an Executed Claim Form and Release filed after the close of the Claim Form Submission Period if the Claimant demonstrates good cause for the late filing and the Executed Claim Form is submitted before the Effective Date. A Claimant may still file an Executed Claim Form if the Claimant has also filed an Objection to the Settlement Agreement.

F. Eligibility for Monetary Relief. A Claimant shall be deemed ineligible for Monetary Relief if the Class Member (1) submits an Executed Claim Form and a copy of a government-issued documentation verifying identity after the close of the Claim Form Submission Period without good cause shown; (2) was ineligible for hire at the time they applied for a relevant position due to failure to meet a minimum qualification such as age, citizenship, or the ability to obtain a security clearance at the time they applied for the position, and other factors as determined by the Allocator; (3) released their Class Claims on an individual basis through a settlement agreement; (4) had their Class Claims finally adjudicated on an individual basis by the Commission or a court of competent jurisdiction; or (5) was unable to produce documentation required by the Claims Allocator, including

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

the government documentation verifying identity - required to be submitted with the Claim Form.

G. Claims Administrator's and Claims Allocator's Duties.

1. The Claims Administrator shall, as a neutral third party, (a) receive Executed Claim Forms for Monetary Relief; (b) send Executed Claim Forms to the Claims Allocator; (c) no later than 45 days from the date the Agency wires the Settlement Fund monies, distribute the Service Awards; (d) no later than 45 days from the date the Agency wires the Settlement Fund monies, distribute amounts approved by the AJ as Attorneys' Fees to Class Counsel; (e) no later than 90 days from the date the Agency wires the Settlement Fund monies and after each Class Member's monetary relief is finalized, provide all payments to Class Members; and (f) perform any other duties necessary to carry out its responsibilities described in this Agreement, including reporting any tax obligations to the IRS.
2. The Claims Allocator shall, as a neutral third party and in their discretion, (a) consistent with this Settlement Agreement, finalize the criteria by which Class Members will receive Individual Awards; (b) after receiving Executed Claim Forms from the Claims Administrator, apply the criteria by which Class Members will receive Individual Awards for each Executed Claim Form and approve distribution amounts; and (c) safeguard and serve as trustee of the Settlement Fund.
3. The Claims Allocator shall not be held liable for determining the distribution methodology, the determination of relief to be accorded each Class Member, or any other aspect of the Monetary Relief process.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

4. If a Fairness Hearing is scheduled, at least fifteen (15) days prior to the Fairness Hearing, the Claims Administrator and Claims Allocator shall provide Class Counsel and Agency Counsel with a statement detailing their costs of administration, which Class Counsel shall file with the AJ. Class Counsel shall bear the administrative costs of the Claims Administrator and Claims Allocator.
5. For a period of five (5) years following the Effective Date of this Settlement Agreement, Agency counsel shall have access to all documents in the possession of the Claims Administrator and Claims Allocator as is necessary for the Agency to decide Equitable Relief under Section V, or to defend any future suits or claims.

H. Attorneys' Fees, Expenses and Costs

1. At least seven (7) days in advance of the Fairness Hearing, Class Counsel shall petition the AJ for an award of attorneys' fees of Four Million and Nine Hundred Fifty Thousand Dollars (\$4,950,000), expenses and costs that shall compensate Class Counsel for the attorneys' fees, expenses, and litigation costs incurred at any time in connection with the Action. Should the AJ award a lesser amount of fees, expenses, or costs, the difference between this amount and the amount awarded for fees, expenses, and costs will be added to the portion of the Settlement Fund allocable to Class Members.
2. The Agency agrees that Class Agents are entitled to an award of reasonable attorneys' fees, expenses, and costs in the Action, and that Class Counsel is entitled to Attorneys' fees equal to 33% of the Settlement Fund. The Parties agree that the full amount of the attorneys' fees, expenses, and costs awarded in this action will be paid from the Settlement Fund.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

3. Any proceedings or AJ's decisions related to Class Counsel's application for attorneys' fees, costs and expenses, shall not terminate or cancel this Agreement, affect the finality of the AJ's Approval Order, affect the release of claims by Class Members, or otherwise affect the settlement or dismissal of the Litigation. The Parties acknowledge that the Settlement Fund is capped at \$15 million.
- I. Tax Treatment.** Payments treated as W-2 wages pursuant to Exhibit E shall be made net of all applicable employment taxes, including, without limitation, federal, state, and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Internal Revenue Service (hereinafter, "IRS") and the payee under the payee's name and social security number on an IRS Form W-2. Payments for any Service Award made pursuant to Section IV(J), compensatory damages pursuant to Exhibit E, and interest shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee's name and social security number on an IRS Form 1099.
- J. Class Agent Service Awards Distribution**
1. At least seven (7) days in advance of the Fairness Hearing, Class Counsel will seek approval for Service Awards to be awarded to Class Agents and individual Class Members who have materially advanced Class Counsel's prosecution of class claims. Distribution of Service Awards are as follows:
 - a. For service as Class Agents, \$20,000 plus an additional \$2,000 for each year since the Class Agent has been or has sought to be a Class Agent;
 - b. For any non-Class Agents who assisted with Class Counsel's investigation via more than one conversation with Class Counsel

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

as determined by Class Counsel's records but did not file a declaration or affirmative witness statement or serve as a deposition witness, an award of \$2,000;

- c. For filing a declaration, \$3,000;
- d. For assistance in responding to interrogatories, \$3,000;
- e. For serving as a deposition witness, \$10,000;
- f. For being interviewed by the press in the twelve (12) months prior to January 23, 2022, \$5,000;
- g. Should the AJ award a lesser amount for any Class Agent or Class Member, the difference between this amount sought and the amount awarded for Service Awards will be added to the portion of the Settlement Fund allocable to Class Members.

2. The Service Award and the requirements for obtaining such payment are separate and apart from, and in addition to, Class Agents' and Class Members' recovery from the portion of the Settlement Fund allocable to Class Members.
3. If a Class Agent who is entitled to a Service Award under this Settlement Agreement is deceased at the time of such distribution, the amount payable to such deceased Class Agent may be paid to their estate, as determined by the Claims Allocator, and as recognized by a court of competent jurisdiction. Otherwise, if any Class Agent has been removed as Class Agent by order of the Commission before the Effective Date, the Class Agent shall not be entitled to a Class Agent Service Award.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

4. Any proceedings or AJ's decisions related to Class Counsel's application for the Service Award, shall not terminate or cancel this Agreement, affect the finality of the AJ's Approval Order, affect the release of claims by Class Members, or otherwise affect the settlement or dismissal of the Litigation.

V. NON-MONETARY RELIEF

The Agency agrees to provide non-monetary relief, which includes remedial and prospective relief, as identified below. If there are any material deviations from the non-monetary relief provisions below that require alternative methods and means of relief or extensions of time due to infeasibility, USMS shall notify Class Counsel and provide written justification of its need to make material alterations from the terms outlined below and the Parties shall seek to reach agreement on the alternative method and means through the dispute resolution procedures set forth in Section VIII of this Settlement Agreement. Infeasibility includes, but is not limited to a lapse in appropriations (e.g., a government shutdown), relief requiring legislative, contractual or procurement approvals beyond DOJ or Agency control or authority, changes in statutory or regulatory law, Executive Orders, DOJ or Agency policies, guidance, and directives, as well as events beyond DOJ or Agency control such as natural disasters (e.g., hurricanes, tornadoes, and earthquakes, as well as human actions), armed conflict, and public health emergencies (e.g., a pandemic or man-made diseases).

The Agency shall be responsible for the administration and implementation of the non-monetary relief provided herein, except for any expenses related to the Claims Administrator and Claims Allocator. The class of individuals covered by this Settlement are limited to and specifically enumerated in Section II(D), (F), and (G) as Class Agents, Class Members or

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

Claimants. Accordingly, all remedies referenced are limited to the class of individuals covered by this Settlement.

A. Agency's DEI Analysis

The Agency will assess the current state of DEI within the USMS workforce, examine existing USMS policies, procedures, and practices, identify areas to improve DEI, develop strategic plans to identify changes in the merit promotion, hiring and recruitment processes deemed necessary by USMS to ensure transparency, equity, access, and uniformity. The Agency's DEI analysis is subject to Section II(P).

The Agency will promote a data driven approach which may include using benchmarks or indicators consistent with DOJ guidance to improve the effectiveness of DEI in USMS' programs, policies, and practices. The Agency will monitor and report the success of various DEI initiatives to USMS leadership during the time period of this Settlement Agreement, to include: evaluating the diversity of the Career Board; recommending modifications, as necessary, to ensure recommending and selecting officials are utilizing decision-making processes that are uniform and consistent to promote fairness and equity; and measuring by race the participation and completion rate of DUSMs in the Deputy Development Program (hereinafter, "DDP"), a voluntary program.

B. Merit Promotion Process: Priority Consideration Program

1. Basic Eligibility for Consideration and Disqualification

A Claimant who applied for either (a) a promotion in any District/Division, or (b) a lateral reassignment into IOD or TOD through a Merit Promotion Announcement (hereinafter, "MPA"), for which a white DUSM was selected, between January 23,1994 to the Date of Notice of Resolution (hereinafter, a "Covered MPA") is considered a "Merit Promotion Eligible Claimant," subject to the exclusions identified in V(B)(3) below, for Merit Promotion Remedial Relief in the

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

form of one (1) Priority Consideration provided by the Director for MPAs or the Assistant Director for a Voluntary Reassignment Opportunity (hereinafter, “VRO”) The Merit Promotion Eligible Claimant may exercise one priority consideration for either an MPA or VRO but not both. Eligibility is determined based on MPA records and NFC data, or if Agency records are not available, through the Claimant’s Executed Claim Form.

2. Director’s Decision-Making Process

The Director’s decision-making solely with respect to the Priority Consideration identified herein shall not be reviewable by any court or any other quasi-judicial or administrative body, nor shall it serve as the basis for engaging in the dispute resolution procedures in Section VIII of this Settlement Agreement, filing any grievance, administrative complaint, or claim of discrimination or retaliation in any forum, judicial, quasi-judicial or administrative, as it relates to any Merit Promotion Eligible Claimant who exercises any options provided herein. Notwithstanding the foregoing, this waiver does not apply if a Merit Promotion Eligible Claimant is not selected through the full MPP.

3. The Following Claimants are Ineligible for Priority Consideration:

Any Claimant who is deemed ineligible based on subsections (a)-(g) below may utilize the dispute resolution procedures set forth in Section VIII of this Settlement Agreement. Ineligibility determinations based on subsections (h)-(i) are not subject to the dispute resolution procedures in Section VIII of this Settlement Agreement.

- a. Claimant is not currently employed by USMS;
- b. If eligibility is based on seeking a promotion via an MPA as defined in Section V(B)(4) below and the Claimant has already achieved the grade that they were seeking through the Covered MPA;

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- c. If eligibility is based on seeking a lateral position via an MPA in IOD or TOD and the Claimant obtained a position in IOD or TOD since the date of the Covered MPA;
- d. Claimant was ineligible for the Covered MPA based on the Agency's records at the time of the Covered MPA (e.g., failure to complete all required application paperwork, failure to meet Quality Ranking Factors/Selective Placement Factors, failure to meet area of consideration);
- e. Claimant withdrew from consideration prior to the selection for the Covered MPA;
- f. For Claimants whose eligibility is based on a Covered MPA issued in or before August 2017, Claimant had a score that was below the lowest score to qualify for any Best Qualified (hereinafter, "BQ") List during the same Career Board(s) as Claimant's Covered MPA(s);
- g. For Claimants whose eligibility is based on a Covered MPA issued after August 2017, Claimant did not make the BQ List for the Covered MPA;
- h. Claimant does not meet USMS' Integrity Check Criteria (e.g., engaged in act of misconduct as determined by a USMS Proposing Official) at either the time of Priority Consideration, or the time of the Covered MPA. Claimants exercising Priority Consideration are subject to integrity checks by using the same method as that used in the merit promotion process (evaluation by the Proposing Official related to open investigation and/or pending discipline); and/or

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- i. Any Claimant the Agency deems an Ineligible Claimant, who chooses not to pursue dispute resolution procedures as set forth in Section VIII below.

4. Notice of Priority Consideration for the MPP and Voluntary Reassignment Opportunity process

Class Members will be informed of this equitable remedy through the Notice of Resolution, which will include a link to the proposed Settlement Agreement and Claim Form. The Claim Form submission deadline is set forth in Exhibit C. Within sixty (60) days of the expiration of Claim Form submission deadline, Class Counsel shall provide a singular submission package containing Executed Claim Forms and supporting documentation relevant to Merit Promotion/VRO equitable relief. Along with the Executed Claim Forms and supporting documentation, Class Counsel shall provide USMS Counsel with a cover page and list of Class Member Names included in the submission.

Executed Claim Forms submitted in support of a claim of eligibility for Priority Consideration must include competent and/or objective evidence (data or otherwise) that sufficiently demonstrates that the Claimant applied for an MPA for which a white candidate was selected. This information may include, but is not limited to: (1) MPA Number; (2) Year; (3) Position or Title applied for; (4) Position Location; (5) Position Grade; (6) Employee's Grade at time of MPA Decision; (7) the name of the white Candidate Selected; (8) Current Grade/Position; and (9) any contemporaneous records, correspondence, or documentation evidencing the Claimant's application for an MPA to include application(s) submitted, emails referencing application, resume, etc.

The Agency will assess eligibility for Priority Consideration based on the sufficiency of the contents of the Claimant's Executed Claim Form and supporting documentation, along with

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

any other relevant Agency records. Within thirty (30) days after the Effective Date, the Agency will notify Class Counsel whether the Class Member is a Merit Promotion Eligible Claimant or Ineligible Claimant, and the reason for determining that any Claimants are not eligible. Such notice will include Agency records, if applicable, demonstrating the Claimants' ineligibility. In the event that this deadline falls during a Career Board cycle, the Agency's deadline will be automatically extended until one (1) month after the close of the Career Board.

The Parties agree that the invocation of the dispute resolution procedures relating to Priority Consideration eligibility, or the exercise of priority consideration, does not obligate the Agency to terminate, suspend, or alter its merit promotion or VRO processes.

5. Scope of Remedy

The Agency will exhaust its MPP Priority Consideration remedial relief requirements at the termination of this Settlement Agreement or when twenty-six (26) Merit Promotion Eligible Claimants (in Section V(B)(1)) or other Class Members are selected for any MPA or into any VRO into IOD or TOD during the term of this Agreement, whichever occurs first. The scope of this remedy addresses the alleged merit promotion selection shortfall as calculated by the Agency.

The Agency will notify Class Counsel when the twenty-sixth (26th) Merit Promotion Eligible Claimant or other Class Member has been selected, which will terminate relief obligations under this provision.

Class Counsel will be responsible for notifying Merit Promotion Eligible Claimants that the remedy has been exhausted.

6. Process for Priority Consideration through the MPP

a. Eligibility To Exercise Priority Consideration

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

In order for Merit Promotion Eligible Claimants, as defined in Section V(B)(1), above, to exercise participation in the Priority Consideration process for the MPP described below, a Merit Promotion Eligible Claimant must: (1) apply to a MPA for which they are interested; (2) make the BQ List; (3) meet the Selective Placement Factors (SPFs), if any, for the MPA; and (4) be the first Class Member to submit a request to merit.promotion@usdoj.gov to exercise Priority Consideration for the MPA in accordance with Section V(B)(6)(b)(ii).

Subject to the scope of remedy set forth in Section V(B)(5), Merit Promotion Eligible Claimants who meet the eligibility requirements outlined in Section V(B)(1) and meet the MPP Priority Consideration pre-requisites contained in this Section, will be able to exercise one (1) Priority Consideration during the term of this Settlement Agreement for any position announced via the MPP at the appropriate grade.

b. Eligible Claimant Promotion Procedures for Grade 14 and 15 Positions

All Merit Promotion Eligible Claimants have access to their merit promotion scores through the National Register posted on the Merit Promotion Agency webpage, under the National Register link. The Agency will notify Merit Promotion Eligible Claimants of the cut-off score for each Merit Promotion Announcement via publication of the cut-off score, located on the USMS HRD-MP webpage, under the Merit Promotion Announcement link.

All Merit Promotion Eligible Claimants shall adhere to the procedures set forth in subsections (i)-(ii) below to request to exercise Priority Consideration.

Any Claimant who is notified of ineligibility based on subsections (iii)-(v) below may utilize the dispute resolution procedures in Section VIII of this Settlement Agreement. The Parties agree that the invocation of the dispute resolution procedures relating to the exercise of priority

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

consideration does not obligate the Agency to terminate, suspend, or alter its merit promotion or VRO processes.

- i. The Merit Promotion Eligible Claimant must determine whether they made the best qualified (BQ) certificate by identifying whether their score is within one point of, equal to, or greater than the cut-off score, except when the merit promotion announcement contains a Special Placement Factor (SPF) or Quality Ranking Factor (QRF). In such case when the announcement contains a SPF or QRF, the Merit Promotion Eligible Claimant must contact HRD-MP at merit.promotion@usdoj.gov to determine whether they made the BQ certificate.
- ii. The Merit Promotion Eligible Claimants who make the BQ certificate and choose to request to exercise their Priority Consideration shall send a Memorandum, identifying the MPA number, position and grade, to the Human Resources Division (HRD) Merit Promotion (MP) staff at merit.promotion@usdoj.gov to notify the Agency that they are requesting to exercise their Priority Consideration option no later than ten (10) business days prior to the calendared Career Board meeting. The Memorandum is attached to this Settlement Agreement as Exhibit F (MP Priority Consideration Memorandum). Scheduled Career Board

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

meetings can be found on the HRD Merit Promotion website under “Administrative Guidance.”

- iii. If multiple Class Members request Priority Consideration for the same MPA, only the Class Member who meets all requirements that submits a request first, as determined by the date and time of the emailed request, will be granted Priority Consideration for that MPA. Other Class Members requesting Priority Consideration for that MPA will be notified that they are ineligible for Priority Consideration for that particular MPA.
- iv. A Merit Promotion Eligible Claimant who makes the BQ list and files for Priority Consideration but fails to comply with the procedures described above shall be notified of their ineligibility to use Priority Consideration for the particular MPA. The notification shall include the specific procedure articulated in V(B)(6)(b)(i)-(ii) that was not followed.
- v. A Merit Promotion Eligible Claimant who does not make the BQ list but nevertheless sends the Priority Consideration memorandum to exercise the option shall be notified by the Agency of their ineligibility to use Priority Consideration for the particular MPA.

7. Priority Consideration Promotion Process for Grade 14 and 15 Positions

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

When Priority Consideration is exercised, the Merit Promotion Eligible Claimant's MPP packet will be forwarded directly to the Director for consideration separate from, and before, all other non-Priority Consideration applicants for the position. At that time, the Director may select the Merit Promotion Eligible Claimant for the MPA. If the Director determines that the Merit Promotion Eligible Claimant will not be preferentially selected for that position, after reviewing the applicant's package, Merit Promotion Eligible Claimant's package will be considered again along with the other BQ applicants for that position through the traditional MPP.

8. Priority Consideration Process for Grade 13 Voluntary Reassignment Opportunity (VRO) to IOD/TOD

In order for Merit Promotion Eligible Claimants, as defined in Section V(B)(1) above, to exercise participation in the Priority Consideration process for VRO described below, a Merit Promotion Eligible Claimant must: (1) apply to a Grade 13 VRO in TOD or IOD for which they are interested; (2) meet eligibility requirements as specified in the VRO announcement and (3) be the first Class Member to submit a request to Voluntary.Reassignments@usdoj.gov to exercise Priority Consideration for the VRO in accordance with Section V(B)(9)(a).

Merit Promotion Eligible Claimants who meet the eligibility requirements outlined in Section V(B)(1) and meet the VRO Priority Consideration pre-requisites contained in this Section V(B)(9)(a) will be able to exercise their one (1) priority consideration for any position announced in TOD or IOD via the VRO process at the Grade 13, during the Term of the Settlement Agreement.

9. Merit Promotion Eligible Claimant Procedures for Grade 13 Positions through VRO to IOD/TOD

All Merit Promotion Eligible Claimants shall adhere to the procedure set forth in subsections (a)-(b) below to exercise Priority Consideration in the VRO process. Any Claimant

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

who is notified of ineligibility based on subsection (b) below may utilize the dispute resolution procedures in Section VIII of this Settlement Agreement. The Parties agree that the invocation of the dispute resolution procedures relating to the exercise of priority consideration does not obligate the Agency to terminate, suspend, or alter its merit promotion or VRO processes.

- a. The Merit Promotion Eligible Claimants who apply for a Grade 13 VRO in TOD or IOD and choose to request to exercise the Priority Consideration shall send their application package, along with a Memorandum, identifying the VRO announcement number, position, and grade, to the HRD MP staff at Voluntary.Reassignments@usdoj.gov to notify the Agency that they are requesting to exercise their Priority Consideration option no later than the closing date of the VRO announcement. The Memorandum is attached to this Settlement Agreement as Exhibit G (VRO Priority Consideration Memorandum).
- b. If multiple Class Members request Priority Consideration for the same VRO, only the first Class Member who meets all requirements and submits a request, as determined by the date and time of the emailed request, will be granted Priority Consideration. Other Class Members requesting Priority Consideration for that VRO will be notified that they are ineligible for Priority Consideration for that particular VRO.
- c. A Merit Promotion Eligible Claimant who meets eligibility requirements and files for Priority Consideration but fails to comply with the procedures described above shall be notified of their ineligibility to use Priority

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

Consideration for the particular VRO. The notification shall include the specific procedure articulated in V(B)(9)(a). that was not followed.

10. Priority Consideration Process for Grade 13 VRO Positions to TOD/IOD

When Priority Consideration is exercised, Merit Promotion Eligible Claimant's VRO application package will be forwarded directly to the Assistant Director of TOD or IOD, as appropriate, for consideration separate from, and before, all other non-Priority Consideration applicants for the position. At that time, the Assistant Director may select the Merit Promotion Eligible Claimant for the VRO. If the Assistant Director determines that the Merit Promotion Eligible Claimant will not be preferentially selected for that position, after reviewing the applicant's package, Merit Promotion Eligible Claimant's package will be considered again along with the other applicants for that position through the traditional VRO process.

C. Promotion: Job-Related Criteria for Recommending Official and Career Board

Within nine (9) months of the Effective Date, the Agency shall develop job-related criteria for use by the Recommending Officials to evaluate and recommend candidates in the MPP. Job-related criteria may include competencies that were identified by the most recent merit promotion job analyses completed by the Agency and developed in accordance with the Uniform Guidelines for Employee Selection Procedures (hereinafter, "Uniform Guidelines").

The Agency shall revise the Merit Promotion application process to require that candidates demonstrate relevant experience concerning the job-related criteria, as defined above, in their resume. In addition, the Agency shall maintain its requirement that candidates address SPFs and/or QRFs, if applicable. The Agency shall require that the Recommending Official evaluate the relevant experience concerning the job-related criteria as reflected in the resume and provide a written justification for their recommendation. The Career Board will conduct an independent

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

review to ensure that the relevant experience concerning job-related criteria, SPFs, and QRFs are sufficiently assessed. To the extent the Agency has developed such job-related criteria prior to the Effective Date, the Agency shall be deemed to have satisfied this requirement.

D. Transparency in the Merit Promotion Process: Forms and Policy Statements

Within nine (9) months from the Effective Date, the Agency will take the following actions to improve transparency in the MPP, subject to Section II(P):

1. Evaluate its MPP to improve DEI in the promotion of African Americans.
2. Modify the Merit Promotion Policy to clearly state that the Recommending Officials and Career Board are required to evaluate candidates for each position based on relevant experience concerning the job-related criteria, to include QRFs and SPFs as applicable.
3. Modify its recommending forms to ensure that the Recommending Official and Career Board provide a justification for the recommendation of a candidate during the MPP. The written record for each specific recommendation shall reference the job-related criteria, SPF, or QRF considered and how they were applied in making the recommendation.
4. Modify its Merit Promotion Policy to include that the Recommending Officials document any material that was considered outside of a candidate's resume, to include interviews with the candidates and formal reference checks.
5. Modify its policies to prohibit the use of Management Directed Reassignments to fill an MPA vacancy unless for one of the following reasons and only for a lateral transfer: (1) Disciplinary action; or (2) In response to administrative, operational or personnel issues determined by the Director or Director's designee, HRD, OPR or

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

EEO. The Parties agree that this modification to the MDR policy is not intended to prohibit the Agency from using an MDR in response to an order of a court or administrative judge.

6. Evaluate the circumstances and frequency with which MPAs are cancelled and determine whether policy and/or procedural changes are necessary to eliminate any barriers, to the extent they exist, for African American DUSMs.
7. To the extent the Agency has evaluated and modified its policies prior to the Effective Date, the Agency shall be deemed to have satisfied the requirements in Section D.

E. Tactical Operations Division (TOD) and Investigative Operations Division (IOD) Headquarters Assignments

The Agency will evaluate whether barriers exist in the assignment of African Americans to TOD and IOD and determine whether remedial measures should be taken to eliminate any discriminatory barriers that may exist.

F. Equal Employment Opportunity Policy Statements Regarding the Deputy Development Program (DDP) and Management Directed Reassignments (MDR)

The Agency will incorporate EEO Policy Statements in its policy directives regarding the Deputy Development Program and Personnel Authority and Actions which provide (in sum and substance) the following: access to assignments in the DDP shall not be used as a mechanism to discriminate on the basis of race, color, religion, national origin, sex, gender identity, age, disability (physical or mental), genetic information, status as a parent, sexual orientation, marital status, political affiliation, or reprisal for protected activity. The Agency's referenced EEO Policy Statements will also require that Management Directed Reassignments shall only be used in circumstances referenced in Section V(D)(5) and shall not be used to circumvent the Merit

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

Promotion Process as a mechanism to discriminate on the basis of race, color, religion, national origin, sex, gender identity, age, disability (physical or mental), genetic information, status as a parent, sexual orientation, marital status, political affiliation, or reprisal for protected activity. To the extent the Agency has incorporated or modified its EEO policy statements, as referenced above, the Agency shall be deemed to have satisfied this requirement.

G. Diversity, Equity, and Inclusion Training

The Agency will mandate annual DEI training as it relates to the recruitment, hiring and promotion of DUSMs for Chief Deputy U.S. Marshals, identified Executive Staff, Assistant Directors, Deputy Assistant Directors, Career Board members, operational hiring and recruitment supervisory officials, and identified operational training/professional development supervisory officials subject to Section II(P). If the foregoing is not feasible due to changes in DOJ or USMS directives or policies, the Agency will mandate annual review of any DEI materials it can provide for such individuals. The Agency will continue to offer implicit bias training for its workforce. Implicit bias, unconscious bias, anti-bias, diversity, or DEI efforts and training are coterminous terms, as referenced herein.

H. Hiring Assessment Validation

The Agency agrees to comply with the terms of the Uniform Guidelines for the Deputy hiring assessments developed and utilized during the term of the Settlement Agreement. The Agency agrees to conduct a new job analysis in response to material changes in the Deputy position and, if required under the Uniform Guidelines, conduct a validation study, subject to administrative, operational, and budgetary considerations.

I. 2012 Hiring Exam

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

The Agency agrees that the 2012 hiring exam will not be reinstated. Further, the Agency represents that all hiring from the 2012 register has concluded, the certificates are closed, and the Agency can no longer hire from the 2012 register.

J. Structured Hiring Interview and Training

1. The Agency agrees to use a structured interview as part of the assessment process to determine who receives a tentative offer for the term of the Settlement Agreement. The Agency will not use an unstructured interview as part of that assessment process for the term of the Settlement Agreement.
2. The Agency will provide the Structured Interviewers a copy of the Agency's EEO statement and notification regarding their obligations to notify the USMS Office of Professional Responsibility of any misconduct during the structured hiring interview process. The Agency will provide a copy of the Agency's annual EEO Statement. Additionally, the Agency will provide a copy of the notification language to Class Counsel after it has been finalized.
3. The Agency agrees to mandate implicit bias training for the Structured Interviewers during the term of the Settlement Agreement. Anyone who serves as a Structured Interviewer during the term of the Settlement Agreement will receive the training.

K. Transparency in the Hiring Process and Training

1. The Agency agrees to modify its website to provide more specific information regarding each step in the external DUSM hiring process. To the extent the Agency has modified its website to provide more specific information regarding the steps in the external DUSM hiring process prior to the Effective Date, the Agency shall be deemed to have satisfied these requirements.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

2. The Agency agrees that it will provide contact information to DUSM applicants in the hiring process and will respond to reasonable, periodic inquiries about an applicant's status in the process.
3. The Agency agrees that it will maintain a list of the competencies required for performance of the DUSM position as identified in the Agency's job announcement. DUSM qualifications will be based on the competencies identified in the Agency's job announcement and relevant job-related experience. The Parties acknowledge that all individuals placed on a certificate of eligibles have been fully assessed and deemed to meet the position competencies for hiring.
4. The Agency agrees to modify its procedures regarding the DUSM hiring process to include the use of hiring selection forms which document the Agency's justification for its final selection decisions. In the hiring selection forms, the Agency shall document its justification for how it filled each DUSM training class at the Federal Law Enforcement Training Center (FLETC), to include business related justifications such as veteran's preference, geographic preference, candidate matching with available geographic locations, organizational, operational and/or administrative considerations. Only non-discriminatory criteria, justifications or considerations may be considered in making a final selection.
5. The designated decision maker will be instructed on the criteria that may be considered in making a final selection as detailed in Section V(K)(4) above. Further, the designated decision maker will be instructed on how to properly fill out the hiring selection form and justify the final selection.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

6. The Agency will mandate DEI and/or implicit bias training for the United States Marshals or designated decisionmakers making selection decisions during the term of the Settlement Agreement.
7. The Agency agrees to maintain the final selection documentation during the term of the Settlement Agreement.

L. Recruitment Efforts and Training

1. The Agency will, subject to the availability of Agency data or records, develop a strategic plan to identify African American pools of applicants as a part of its recruitment and outreach efforts during the term of the Settlement Agreement.
2. If feasible, and subject to the availability of Agency data or records, the Agency will conduct a barrier analysis utilizing applicable DOJ guidelines for DEI recruitment efforts in its comprehensive plan during the term of the Settlement Agreement.
3. The Agency agrees to mandate implicit bias training for District Recruiting Officers (DROs) during the term of the Settlement Agreement.
4. To the extent the Agency has developed a strategic plan and analysis under DOJ guidelines prior to the Effective Date, the Agency shall be deemed to have satisfied the requirements in Section V(L)(1)-(2) above.

M. DEO to DUSM Hiring Equitable Remedy

1. Basic Eligibility for Consideration and Disqualification

“Internal Hiring Eligible Claimant” is defined as a Class Member who applied to an internal DUSM merit promotion announcement posted from 2012 to 2021 and meets the below requirements:

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- a. Was determined by HRD to have met the minimum qualifications at the time of the posting;
- b. Did not previously fail FLETC;
- c. Did not withdraw from the hiring process;
- d. Is still employed by USMS as a DEO;
- e. Passed all assessments, including the structured interview;
- f. Received a tentative offer letter; and
- g. Passed background investigation, USMS' Integrity Check Criteria, medical and FIT assessments (if provided prior to creation of the certificate of eligibles).

2. Process for Obtaining Equitable Relief

In order for an Internal Hiring Eligible Claimant, as defined in Section V(M)(1), to participate in this equitable remedy, an Internal Hiring Eligible Member must provide an Executed Claim Form along with supporting documentation that establishes that they meet each of the requirements set forth in Section V(M)(1) with the submission of their Claim Form. Within sixty (60) days of the Claim Form Submission Deadline, Class Counsel shall provide to USMS Counsel a singular submission containing any Executed Claim Forms and supporting documentation relevant to Hiring equitable relief. Along with the Executed Claim Forms and supporting documentation, Class Counsel shall provide USMS Counsel with a cover page and list of Class Member Names included in the submission.

The Agency will assess eligibility based on the sufficiency of the contents of the Executed Claim Forms and supporting documentation, along with any relevant Agency records. Within thirty (30) days after the Effective Date, the Agency will notify Class Counsel whether the Class Member is an Internal Hiring Eligible Claimant or Ineligible Claimant, and the reason for

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

determining that any Claimants are not eligible. Such notice will include Agency records, if applicable, demonstrating the Claimants' ineligibility.

Disputes concerning eligibility as set forth in Section V(M)(1) are subject to the dispute resolution procedures set forth in Section VIII of this Agreement, except disputes relating to Section V(M)(1)(a) and (1)(g) are not subject to dispute resolution procedures. The Parties acknowledge that the invocation of the dispute resolution procedures relating to eligibility, or the identification of the preferred district(s), does not obligate the Agency to terminate, suspend, or alter its internal hiring processes.

3. Equitable Remedy

Internal Hiring Eligible Claimants will be guaranteed that they will be placed on a certificate of eligibles for up to four (4) of their preferred districts if they either (1) are currently in the selection process for the 2021 IMP or (2) apply to an internal-only posting for the DUSM position through the term of this Agreement and meet the following criteria:

- a. Meet the minimum qualifications;
- b. Pass all assessments as determined by HRD;
- c. Receive a tentative offer letter; and
- d. Pass the background investigation, medical, and FIT requirements.

Internal Hiring Eligible Claimants shall be allowed to choose up to four (4) preferred districts from a list of districts that have been authorized a seat at FLETC and be placed on the certificate of eligible for the identified district(s) for possible selection by the U.S. Marshal or designated decisionmaker. This equitable relief does not guarantee selection at a preferred district. The Internal Hiring Eligible Claimant must meet all requirements for attending FLETC.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

The Parties agree that the Agency's determinations made under V(M)(3) are not subject to the Dispute Resolution procedures set forth in Section VIII.

4. Exhaustion

This remedy will be deemed exhausted and the Agency will have satisfied its equitable relief requirements upon (1) all Internal Hiring Eligible Claimants being selected from a certificate of eligibles; (2) all Internal Hiring Eligible Claimants being placed on four (4) certificates of eligibles; or (3) the expiration of the term of this Agreement, whichever occurs first.

VI. DATA COLLECTION & ANALYSIS REQUIREMENTS

A. Data Collection

During the term of the Settlement Agreement, the Agency will collect and maintain the following information, subject to Section II(P):

1. Merit Promotion Process

- a. Applicant pool, best qualified, and selection data of all African American and White operational applicants that have applied through the Merit Promotion process.

2. Headquarters

- a. Applicant pool, best qualified, and selection data of all African American and White operational applicants that have applied through the Merit Promotion process to vacancies in IOD and TOD.

3. Management Directed Reassignments

- a. All MDR Memorandums and race data for African American and White operational employees who have been issued an MDR.

4. DUSM Hiring

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- a. Anonymized and aggregate applicant pool and selection data for all African American and White applicants to entry-level DUSM positions announced after the Effective Date by the Office of Personnel Management if that data is made available to the Agency. The Agency will request and use best efforts to obtain such data from the Office of Personnel Management.

B. Data Analysis

In accordance with Section VI(A), the Agency agrees to conduct the following analyses on an annual basis over the term of the Settlement Agreement:

1. Merit Promotion Process

- a. Conduct a selections analysis on the Merit Promotion data, to be analyzed by Career Board, between African Americans and Whites.
- b. Conduct a selections analysis on the Merit Promotion data, to be analyzed by Career Board, of operational personnel for positions in IOD and TOD between African Americans and Whites.

2. Hiring

- a. The Agency shall conduct selection analyses comparing qualified African American applicants to the number of selections in accordance with the Uniform Guidelines, subject to availability of sufficient data. Such analyses will be conducted on new certificates opened after the Effective Date once all selections have been made, the certificate is closed, and OPM has completed the audit process. The Agency's compliance with these terms is subject to administrative, contractual, and budgetary considerations.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- b. Should the results of the statistical analysis indicate adverse impact, the Agency will conduct a review of the selection decisions. If deemed necessary following that review, the Agency will consider alternatives to address the adverse impact. The Agency agrees to comply with the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. § 1607 et seq.

VII. REPORTING

A. Creation of Compliance Monitor and Reports

No later than thirty (30) days after the Effective Date of this Settlement, the Agency will appoint an existing employee or hire a new employee (referred to herein as “Compliance Monitor”), who will be charged with overall responsibility for monitoring compliance with the terms of this Settlement Agreement. In the event that the Compliance Monitor ceases to function in that role, the Agency will appoint or hire a replacement Compliance Monitor as soon as practicable.

No later than one hundred and eighty (180) days after the Effective Date, the Compliance Monitor will report to Class Counsel on compliance with the programmatic relief provisions of this Settlement Agreement. The Compliance Monitor will prepare a second report no later than one hundred eighty (180) days after the first report. Finally, the Compliance Monitor will prepare a third report no later than one hundred eighty (180) days before the end of the term of this Settlement Agreement.

B. Content of Reports

The Compliance Monitor’s reports shall include non-privileged information regarding the following during the relevant time-periods preceding the report:

1. Merit Promotion Equitable Relief:

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- a. The number of class members who were eligible to use Priority Consideration for a Merit Promotion Announcement (hereinafter, “MPA”) and Grade 13 VROs after accounting for the exclusions following the procedures set forth above in Section V(B)(3);
 - b. The number of class members who were excluded from consideration solely pursuant to the requirements set forth in this Settlement Agreement; and
 - c. The number of Class Members who were considered for a Priority Consideration for an MPA or VRO pursuant to Section V(B)(7) or (B)(10), and the number of Class Members who received a promotion or Grade 13 VRO promotion as set forth in Section V(B)(5).
- 2. Training:**
- a. The date the Agency made DEI training available as it relates to the recruitment, hiring and promotion of DUSMs.
 - b. The date the Agency made DEI training available for Chief Deputy U.S. Marshals, identified Executive Staff, Assistant Directors, Deputy Assistant Directors, Career Board members, identified operational hiring and recruitment supervisory officials, and identified operational training/professional development supervisory officials subject to Section II(P).
- 3. Merit Promotion Programmatic Remedies:**
- a. The date the Agency implemented job-related criteria used by the Recommending Officials to evaluate and recommend Merit Promotion applicants, as described in Section V(C), evidenced by a declaration from the Agency or other records evidencing the date of implementation.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- b. The date the Agency modified the Merit Promotion, Management Directed Reassignment, and Deputy Development Policies, as described in Sections V(D)(2), (4)-(5) and V(F), evidenced by a declaration from the Agency or other records evidencing the date of modification.
- c. The date the Agency implemented the modified recommending forms, as described in Section V(D)(3), evidenced by a declaration from the Agency or other records evidencing the date of implementation.

4. Hiring Process Programmatic Relief:

- a. The status of the Hiring Assessment Validation process, as described in Section V(H), if applicable.
- b. A copy of the Agency's EEO Statement and notice to Structured Interviewers regarding their obligation to notify the USMS Office of Professional Responsibility of any misconduct during the structured hiring interview process, as described in Section V(J)(2).
- c. The status of implementation of mandatory implicit bias trainings, as described in Section V(J)(3).
- d. The status of efforts to ensure transparency in the hiring process described in Section V(K)(1)-(2).
- e. The status of implementation of the requirements of Section V(K)(3)-(7), evidenced by a declaration from the Agency or other records evidencing the date of implementation.

5. Recruitment Efforts and Training:

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

- a. The status of efforts to increase recruitment of African American applicants, as described in Section V(L).

6. Data Analysis Results:

- a. The results of the analyses described in Section VI(B).

C. Confidentiality of Reports

Subject to the Protective Order issued on May 25, 2017, Class Counsel may share copies of the Compliance Monitor's reports and underlying data with experts only for the purpose of determining compliance with the Agreement, and Class Counsel will inform those experts of the non-dissemination of that content and provide Agency Counsel with an acknowledgement form signed by those experts attesting to their non-dissemination obligations. Any breach of confidentiality by experts retained by Class Counsel will be imputed to Class Counsel. Class Counsel are expressly prohibited from sharing copies of the Compliance Monitor's reports with anyone other than their experts, except as necessary to enforce this Settlement Agreement. In the event that the Compliance Monitor reports are relevant to a filing with the AJ, Class Counsel shall meet and confer with the Agency in good faith to determine the appropriate scope of disclosure to the AJ.

The Compliance Monitor's reports shall be used only to assess compliance with the Settlement Agreement, shall not create an independent cause of action unrelated to the enforcement of this Settlement Agreement, or independent access to the reports by any individual, organization or party under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *Touhy* regulations, 28 C.F.R. § 16.21, et seq., or under federal law.

D. Agency Record Retention Obligations

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

The Agency shall retain any documents and data that were necessary for the development of the Compliance Monitor Reports required in Section VII(B) for the duration of this Settlement Agreement or as required by federal law or applicable document retention policies, whichever is longer. This record retention obligation does not create a right by Class Counsel to request production or inspection of the documents and/or data, or any individual, organization or party the right to obtain the production or inspection of the documents and/or data under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *Touhy* regulations, 28 C.F.R. § 16.21, et seq., or under federal law, absent a court order. Further, Class Counsel shall not be entitled to review any documents protected by the attorney-client privilege or attorney work product doctrine.

VIII. DISPUTE RESOLUTION

Through the provisions set forth below, the Parties agree to initially engage in an informal dispute resolution process prior to proceeding through the regulatory process in accordance with 29 C.F.R. § 1614.504. These Dispute Resolution procedures shall only apply after the Effective Date and extend through the Term of the Settlement Agreement.

A. Scope of Dispute Resolution Provisions:

The following dispute resolution procedures are limited to addressing disputes regarding whether the Agency has failed to comply with the non-discretionary terms of this Settlement Agreement.

The Parties have agreed that the Agency's determinations as to each of the following sections of this Settlement Agreement are discretionary and shall not be subject to any form of dispute resolution:

1. Director's selections or non-selections during Priority Consideration (Section V(B)(2));

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

2. Agency's determination of whether or not Merit Promotion Eligible Claimant makes BQ list when attempting to exercise MPP Priority Consideration, Section V(B)(6)(a), or makes the VRO Referral List, Section V(B)(8);
3. Agency's determinations made under Section V(M)(1)(a) and (g) and V(M)(3).
4. Agency's method of monitoring and evaluating, training, and data collection and analysis, as referenced in Sections V and VI.

Nothing in this Section shall be read to interfere with Class Counsel's or a Class Member's right to pursue compliance with the Settlement Agreement pursuant to 29 C.F.R. § 1614.504. If the Agency has failed to implement or substantially perform its obligations under the above-referenced terms of this Agreement, Class Counsel or a Class Member may invoke the Informal Dispute Resolution Process described in Section VIII(B). Further, nothing in this Agreement shall be interpreted to constitute a waiver of any rights or claims independent from this Agreement that a party may have that may accrue or arise after the Effective Date.

B. Informal Dispute Resolution Process

If any Party has a dispute related to performance required under the non-discretionary terms of the Settlement Agreement (hereinafter, "Disputing Party"), the Disputing Party shall notify opposing counsel, in writing, within fifteen (15) days of when the Disputing Party knew or should have known of the alleged noncompliance. The written notification shall describe with particularity: the subject matter and substance of the dispute, any supporting documentation, the relevant provision of the Settlement Agreement, and requested corrective action, if applicable.

Within thirty (30) days after receipt of the notification of the dispute, the Parties shall attempt good faith efforts to resolve the issue, to include a meet and confer if mutually agreeable. The Disputing Party is required to make themselves available for a meet and confer if the

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

Responding Party requests a meet and confer. The Parties agree to combine any meet and confers that relate to the same subject matter, as follows:

1. Agency's determination of eligibility for MPP and VRO Priority Consideration as set forth in Section V(B)(1);
2. Agency's determination of eligibility for DEO to Deputy Hiring Equitable Relief as set forth in Section V(M)(1);
3. Agency's completion of any terms and conditions that occurred prior to Effective Date, as set forth in Sections V(C), V(D)(7), V(F), V(K)(1), V(L)(4), and V(M)(4).;

Within sixty (60) days of receipt of written dispute, the Responding Party shall provide a written response to the Disputing Party.

In the event that the matter is not resolved, Disputing Party has the burden of notifying the Responding Party that an impasse has been reached within five (5) days after receiving the written response of Responding Party.

Upon receipt of the written response by the Responding Party, the Responding Party's decision shall be deemed final and the Disputing Party may pursue the enforcement process set forth at 29 C.F.R. § 1614.504, without any waiver of the Responding Party's right to assert jurisdictional challenges or any other defense. If a Class Member believes that the Agency has failed to comply with the terms of this Agreement, they must, pursuant to 29 C.F.R. §1614.504, notify the Director of Equal Employment Opportunity Staff, Justice Management Division, U.S. Department of Justice, at eeoboxjmd@usdoj.gov, in writing within thirty (30) days of when the Class Member knew or should have known of the alleged noncompliance, requesting either that the terms of this Agreement be specifically implemented, or that the claims be reinstated for further processing from the point the processing of their complaint of discrimination ceased.

DRAFT, OFFER OF RESOLUTION AND SETTLEMENT
PURSUANT TO 29 C.F.R §1614.603

For the purposes of the timeliness of a dispute under 29 C.F.R. § 1614.504(a), the Parties agree that the date of the Responding Party's written response to the dispute shall be considered the date the Disputing Party knew or should have known of the alleged noncompliance.

IX. MISCELLANEOUS

- A.** The EEOC shall retain jurisdiction over this Settlement Agreement.
- B.** If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected and all other provisions shall remain in full force and effect.
- C.** If there is any conflict between this Settlement Agreement and the requirements of any federal, state or local law or regulation, federal law shall control.
- D.** This Settlement Agreement, including Exhibits A-G attached hereto, comprise the completed and exclusive agreement between the parties with respect to the matters contained herein and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein. No representations or inducements to compromise this action, other than those recited in this Settlement Agreement, have been made, and no statements other than those recited herein are binding upon the parties with respect to the disposition of this matter.