MEMORANDUM OF AGREEMENT FOR TERMS OF A SUCCESSOR COLLECTIVE BARGAINING BETWEEN THE MASSACHUSETTS DEPARTMENTOF TRANSPORTATION AND COALITION OF MASSDOT UNIONS FOR THE TERM July 1, 2014 to June 30, 2017

UNIT B

This Memorandum of Agreement ("MOA") is entered this 29th day of October 2014 by and between the Massachusetts Department of Transportation ("MassDOT or "Employer") and the Coalition of MassDOT Unions for Bargaining Unit B ("Union" or the "CMU"), which is composed of AFSCME Council 93, Local 1009 ("AFSCME"), SEIU Local 188 ("SEIU"), Teamsters Local 127 ("Local 127") and USW Local 5696 ("USW").

1. Conforming Modifications

The parties agree to amend the provisions of the current collective bargaining agreement to conform all nomenclature to reflect the substitution of the Massachusetts Department of Transportation for the Commonwealth of Massachusetts Secretary of Administration and Finance as the Employer for all purposes under G.L. c. 150E and to otherwise conform current provisions to the legal, organizational and/or administrative structure of MassDOT. The parties shall continue to negotiate in good faith over other language changes ~~set forth in the proposals exchanged by the parties during negotiations for this Agreement~~ that relate to arguably obsolete or outdated contract provisions, or other similar provisions. In addition, the parties acknowledge that due to the timing of these negotiations and the complexity of certain proposals under discussion, they were unable to fully resolve all issues and have agreed to continued discussions as outlined below.

2. Memoranda of Understanding and Side Letters of Agreements

Upon the Employer's request, the Union and Employer shall meet to review and determine whether any Supplemental Agreement, Memoranda of Understanding, Side Letter or other agreements negotiated by the Commonwealth of Massachusetts and the Union or any constituent, in effect prior to November 1, 2009 applicable to statewide bargaining unit ~~6~~ 2should be terminated or otherwise modified. No changes or modification of any kind shall be effective unless agreed in writing by the parties.

3. Bargaining History

The parties acknowledge that during the negotiations leading to the execution of this MOA they have met informally in "off the record" discussions in an attempt to conclude negotiations **so as to obtain Legislative approval prior to December 31, 2014** ~~by or before June 30, 2014~~. Statements made by any participant during these meetings shall not be introduced in any proceeding between the parties for any purpose. The parties

acknowledge that during these discussions that proposals and counterproposals were advanced, modified or withdrawn without prejudice and shall not be introduced in any proceeding to establish a bargaining history adverse to the other party.

4. Article 17 – Classification and Reclassification

The parties agree to ~~continue to~~ negotiate the proposal advanced by the Employer during main table successor collective bargaining negotiations **with CMU Unit C**.

5. Article 24A – Performance Evaluation

The parties agree to ~~continue to~~ negotiate the proposal advanced by the Employer during main table successor collective bargaining negotiations with **CMU Unit C**.

6. The parties agree to the following modifications to the Collective Bargaining Agreement between the Massachusetts Department of Transportation and the Coalition of MassDOT Unions for Unit B for July 1, 2013 through June 30, 2014. Except as modified herein, the terms of the current agreement, including all supplemental and side agreements including the Master Labor Integration Agreement dated December 28, 2010 shall remain in effect.

PREAMBLE

This collective bargaining agreement is entered this ~~17th day of January 2013~~ 29th day **of October 2014** by the Massachusetts Department of Transportation, acting through the Secretary/Chief Executive Officer and his/her labor designee hereinafter referred to as the "Employer", or MassDOT and by the Coalition of MassDOT Unions, hereinafter referred to as the "Union" or "CMU," which is composed of the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, and its affiliate Council 93 and the Service Employees International Union (SEIU), AFL-CIO and its affiliates Locals 888 and Teamsters Local 127, ~~Teamsters Local 25~~, and the United Steelworkers Local 5696, and has as its purpose the promotion of harmonious relations between the Union and the Employer.

ARTICLE 1 – RECOGNITION

Section 1
MassDOT recognizes the Union as the exclusive collective bargaining representative of employees in job titles assigned to Bargaining Unit B, as set forth in Appendix A. **The parties acknowledge that any job title that was in existence on the effective date of this Agreement not appearing on addendum A has been intentionally excluded.**

The Union recognizes that the Secretary/Chief Executive Officer of MassDOT or his/her labor designee shall have sole authority to make commitments or

agreements with respect to wages, hours, standards of productivity, performance and any other terms and conditions of employment.

Section 2. D The Employer may hire temporary employees from November 1 to April 15 each year to supplement staffing levels during snow and ice operations. Temporary employees shall not be used as substitutes for bargaining unit employees, except in instances where all bargaining unit employees who are willing to work the snow and ice operation have first been offered the opportunity. Temporary employees will not be covered by any term or condition of the collective bargaining agreement but may be required to pay an administrative fee to the Union. -

ARTICLE 5 – UNION BUSINESS

Section 2. Paid Leave for Union Business
Amend the first sentence of the section as follows:

Union officials, including but not limited to stewards, shall be permitted to have **reasonable** time off without loss of pay (paid union leave) for the following purposes, and requests for such time off shall not be unreasonably denied:

Section 2, paragraph 10.
Amend this section as follows:

Grievants shall be permitted to have **reasonable** time off without loss of pay for attendance at grievance hearings through the contractual grievance procedure, except that for class action grievances no more than three (3) grievants shall be granted such leave.

Section 2, paragraph 11.
Amend this section as follows:

All leave granted under this section shall require prior approval of the ~~Human Resources Division~~ **Director of the office of Labor Relations and Employment Law or his/her designee**. Requests for release time for the purpose of attending Union conventions must be made at least seven (7) calendar days in advance of such convention.

Section 3, paragraph D.
Amend this section as follows:

Witnesses called by the Union to testify at a step III~~I~~ hearing or in an arbitration proceeding (Step III~~V~~) shall be granted time off without loss of benefits or other privileges (not including wages).

Section 3, paragraph E.
Amend this section as follows:

All leaves granted under this Section shall require prior approval of the ~~Human Resources Division~~ **Director of the Office of Labor Relations and Employment Law or his/her designee.** Requests for unpaid leaves of absence (as provided in section 3B above) for the purpose of attending Union conventions must be made at least twenty-one (21) days in advance of such conventions.

Section 6, paragraph C.
Strike this paragraph in its entirety and replace it with the following:

The Employer shall continue to provide the Union with the same or similar information concerning members of the bargaining unit as it currently provides. In the event the Commonwealth discontinues providing the Union any of the information it currently provides concerning members of the bargaining unit, the Employer will meet with the Union to discuss the availability of alternative methods of providing the same or similar information.

ARTICLE 6 – ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION

Section 1.
Amend this section as follows:

The Employer and the Union agree not to discriminate in any way against employees covered by this Agreement on account of race, religion, creed, color, national origin, gender, sex, sexual orientation, age, **ethnicity**, mental or physical disability, union activity, **gender identity**, **gender expression**, **military** or veteran status.

Section 2.
Amend this section as follows:

The Union and the Employer agree that when the effects of employment practices, regardless of their intent, discriminate against any group of people on the basis of race, religion, creed, color, age, sex, national origin, or mental or physical **disability** ~~handicap~~, or being a Vietnam Era Veteran, specific positive and aggressive measures must be taken to redress the effects of past discrimination, to eliminate present and future discrimination, and to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation and in-service or apprenticeship training programs. Therefore the parties acknowledge the need for positive and aggressive affirmative action.

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ARTICLE 7 – WORKWEEK AND WORK SCHEDULES

Section 2, paragraph D, subparagraph 2.
Amend this Section as follows:

However, an employee who uses sick leave during the same work week in which he/she works mandatory overtime shall have the opportunity to replace up to three (3) shifts per fiscal year of sick leave with his/her available personal leave, vacation leave, accrued compensatory time or holiday compensatory time. ~~Furthermore, up to two (2) days of sick leave may be counted toward such overtime calculation if the employee submits medical evidence pursuant to Article 8, Section 1 of this Agreement.~~

Add new Section 2.K:

Upon the request of an employee, the Employer may grant at its discretion compensatory time in lieu of payment for overtime at a rate not less than one and one-half hours for each hour of employment for which overtime compensation would be required under this Article. Such compensatory time shall not be accumulated in excess of one hundred and twenty hours and maybe used in one half-hour increments. The Employer shall permit the use of compensatory time at the employee's request, provided the use of compensatory time does not unduly disrupt the operation of a department or agency. Upon termination an employee shall be paid for all unused compensatory time at the final regular rate of pay.

Section 4. Rest Periods and Clean Up Time

Section 4, paragraph 1 is amended as follows:

Employees **shall** ~~may~~ be **allowed** ~~granted~~ **two (2)** ~~a~~ rest periods of up to fifteen (15) minutes per work day. ~~Employees covered by recently expired contracts shall continue to enjoy the same rest period benefits provided for in such contracts~~.

Add the following new Section:

Section 4A. Timekeeping

The Employer may require all employees to record daily arrival and departure times and the start and end time of all breaks and meal periods in a form and manner it determines, which to the extent practicable shall be uniform for similarly situated employees.

Section 5. Call Back Pay
The first paragraph of Section 5 is amended as follows:

An employee who has left his/her place of employment after having completed work on his/her regular shift, and who is called back to a workplace prior to the commencement of his/her scheduled shift shall receive a minimum of four (4) hours pay at his/her regular hourly overtime rate. This Section shall not apply to an employee who is called in to start his/her shift early and who continues to work that shift. **An employee who is called back must remain available for, and respond to any subsequent call during the four hour period. If the employee is called back during the same four hour period, s/he shall not receive additional compensation above the four (4) hours of pay, unless the subsequent call extends beyond the initial four hours, in which case s/he shall be paid for the additional time worked on an hour for hour basis at the overtime rate. An employee who refuses or fails to respond to a second or subsequent call during the four hour period, shall not be paid the four (4) hour minimum, unless it is unreasonable under the circumstances to require s/he to respond. The Union may submit a grievance alleging that a second or subsequent call was unreasonable to expedited arbitration.**

The second paragraph of Section 5 is amended as follows:

An employee who is called back to work as outlined above but is not called back to a work place shall receive a minimum of two (2) hours pay at his/her regular overtime rate. For the purpose of this section a "workplace" is defined as any place other than the employees home to which he/she is required to report to fulfill the assignment. **Where an employee fulfills his/her call back assignment through the use of an electronic communication device such as a telephone or "networked" computer, the employee shall receive a minimum of one hour (1) for assignments received before 11:00 p.m. and two (2) hours for assignments received on or after 11:00 p.m.**

Section 7. Stand-by Duty

Section 7, paragraph C is amended as follows:

C. Stand-by duty shall mean that a department head has ordered any employee to be immediately available for duty upon receipt of a message to report to work. If any employee assigned to stand-by duty is not **immediately** available to report to duty when contacted, no stand-by pay shall be paid to the employee for the period. **An employee who fails to report for duty within one (1) hour of being called shall not be considered immediately available. The Employer shall make reasonable allowances for travel distance and conditions. For purposes of this section distance shall be measured from the employee's home.**

ARTICLE 8 – LEAVE

Effective on or about November 1, 2015, MassDOT will transition from monthly accruals for sick and vacation benefits to biweekly accruals. [1]

Section 8.1 Sick Leave

Amend Section 8.1 as follows:

A. A full-time employee shall accumulate sick leave with pay credits at the following rate for each **bi-weekly pay period** ~~full calendar month~~ of employment:

Scheduled Hours ~~Per Week~~	Sick Leave Accrued
~~40.0~~ **80.0** hours **bi-weekly** ~~per week~~	~~10.000~~ **4.61544** hours

An employee on any leave with pay or industrial accident leave shall accumulate sick leave credits. There shall be no limit to the number of unused sick leave credits which an employee may accumulate.

B. A regular part-time employee shall ~~be granted~~ **accumulate** sick leave credits in the same proportion that his/her part-time service bears to full-time service.

C. Sick leave shall be granted, at the discretion of the **Employer** ~~Appointing Authority~~, to an employee only under the following conditions:

8. An employee may use up to ten (10) days of accrued sick leave per calendar year for necessary preparations and/or legal proceedings related to foster care of DSS children, such as foster care reviews, court hearings and MAPS training for pre-adoptive parents. ~~HRD~~ **The Employer** may approve a waiver of the ten (10) day limit if needed for difficult placements. In addition, an employee may use the one (1) day per month of paid leave available to employees for volunteer work under the Commonwealth's School Volunteer or Mentoring programs for the above cited foster care activities.

D. A full-time employee shall not accrue **full** sick leave credit for any **biweekly pay period** ~~month~~ in which he/she was on leave without pay. ~~or absent without pay for a total of more than one day.~~ **Instead the employee shall accrue sick leave credits based on the hours paid within the bi-weekly pay period.**

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[1] **All provisions of the collective bargaining agreement for the term July 1, 2011 to June 30, 2014 that relate to the monthly accrual of paid sick leave shall remain in effect until bi-weekly leave accrual is implemented as provided in this Agreement.**

E. Upon return to work following a sick leave in excess of five (5) consecutive work days, **or when the Employer ~~Appointing Authority~~ has reason to suspect that an employee is unfit for duty**, an employee may be required to undergo a medical examination by an Employer appointed physician to determine his/her fitness for work. **If the examination by the Physician reveals that the employee is fit for duty, the employee will immediately return to duty without loss of wages or leave. If the examination by the Physician reveals that the employee is unfit for duty, the employee's own leave time will run from the time the employee left the work location. The employee, if found unfit for duty and if he/she desires, may then receive an examination by a physician of his/her own choice and at his/her expense. If the employee's physician finds that the employee is fit to return to work, the employee shall not be returned to work unless and until a third physician appointed by a panel agreed by the Union and Employer examines the employee and determines that the employee is fit for duty. The Eemployer will bear the costs of the employee's initial examinations and the examination by the physician appointed from the panel under this paragraph E.**

F. Sick leave must be charged against unused sick leave credits in units of **fifteen minutes** ~~one-half hour or full hours~~, but in no event may the sick leave credits used be less than the actual time off.

G. Any employee having no sick leave credits, who is absent due to illness **or injury** ~~shall~~ **may,** ~~at the employee's discretion~~, **upon the Employer's approval which will not be unreasonably withheld,** be placed on ~~leave without pay unless said employee requests the use of other available leave time which is subsequently approved.~~ available vacation leave under Article 9. **Additionally, the Employer ~~Appointing Authority~~ may grant such employee a leave of absence without pay or an extension of a leave of absence without pay upon the written request of the employee.**

Such written request shall include a detailed statement of the reason for the absence or requested leave and shall be accompanied by substantiating proof of such an illness or injury. No leave of absence granted pursuant to this paragraph shall be for a period longer than three (3) months.

H. An employee who is reinstated or reemployed after an absence of less than three (3) years shall be credited with his/her sick leave credits at the termination of his/her prior employment. An employee who is reinstated or reemployed after a period of three years or more shall receive prior sick leave credits, if approved by the ~~Chief Human Resources Officer~~ **Director of Human Resources**, where such absence was caused by:

1. Illness of said employee;

2. Dismissal through no fault or delinquency attributable solely to said employee; or

3. Injury while in the employment of ~~the Commonwealth~~ **MassDOT** in the line of duty, and for which said employee would be entitled to receive Workers' Compensation benefits.

I. A regular part-time employee shall not accrue sick leave credit for any **biweekly pay period** ~~month~~ in which he/she was on leave without pay or absent without pay in the same proportion that his/her service bears to one day of service of a full-time employee.

Delete Article 8, Section 1, paragraph J in its entirety and replace with the following:

J. **Employees requesting sick leave under this Article must notify the Employer's designated representative at least one (1) hour before the start of his/her work shift on each day of absence. In single-shift agencies, employees requesting sick leave under this Article must notify the designated representative not later than fifteen (15) minutes ~~after~~ before the start of the work day on each day of absence. Failure to provide proper notification may result in the denial of sick leave. Such notice must include the general nature of the condition and the estimated period of time for which the employee will be absent. Where circumstances warrant, the Employer or designee shall reasonably excuse the employee from such daily notification.**

Delete Article 8, Section1, paragraph K in its entirety and replace it with the following:

Where the Employer has reason to believe that sick leave is being abused, or when an employee uses three (3) or more sick days on non-consecutive calendar days during any 60 day period, or uses seven and one half (7.5) days within three (3) months, the Employer may require satisfactory medical evidence from the employee for such absence and for future sick leave usage for a period of up to three (3) months from the date of the most recent absence. This request shall be reduced to writing and shall cite specific reasons for the request. When medical evidence is requested, such request shall be made as promptly as possible. To the extent practicable, the employee shall receive prior notice that the Employer believes he/she is abusing sick leave and that he/she may be required to produce medical evidence for future use of sick leave.

L. Where the Employer, or the designated person in charge, has sufficient reason to believe that an employee has a mental or physical incapacity rendering him/her unfit to perform his/her job or which jeopardizes workplace safety or stability, the Employer or the designated person in charge may authorize the removal of such employee from the workplace. It is understood that the employee might not recognize or acknowledge such unfitness. Notification shall be made to the Union as soon as possible, by the Employer or his/her designee when an employee is removed from the workplace in accordance with this paragraph.

Prior to returning to work, ~~T~~the employee shall be required to undergo a medical examination to determine his/her fitness for work. The employee, if he/she so

desires, may be examined by a physician of his or her own choice, in which case such examination and related cost shall be the responsibility of the employee. However, the Employer shall reserve the right to obtain a second opinion from a MassDOT designated physician to determine fitness for work. Such cost shall be borne by the Employer. If the employee's physician determines that the employee is fit to work and the Employer designated physician disagrees, the employee will not be returned to work until a physician appointed from a panel agreed by the Employer and MassDOT as provided in Article 8 E above, examines the employee and determines that he/she is fit to work. The cost of the panel physician shall be borne by the Employer.

Delete Article 8, Section 1, paragraph P in its entirety.

~~**P.An employee who while in the performance of his/her duty receives bodily injuries resulting from acts of violence of patients or prisoners in his/her custody, and who as a result of such injury would be entitled to benefits under Chapter 152 of the General Laws, shall, if entitled under Chapter 30, Section 58 of the General Laws, be paid the difference between the weekly cash benefits to which he/she would be entitled under said Chapter 152 and his/her regular salary without such absence being charged against available sick leave credits, even if such absence may be for less than six (6) calendar days duration.**~~

Amend Article 8, Section 2 is as follows:

Section 2. Domestic Violence Leave
An employee may use up to a maximum of fifteen (15) paid days per calendar year for the purpose of arranging for the care of him/herself, his/her spouse or his/her child(ren) or for attending to necessary legal proceedings or activities in instances where the employee, his/her spouse or his/her child(ren) is a victim of domestic abuse, **domestic violence, sexual assault or stalking** and where the employee is not the perpetrator. Said fifteen (15) paid days are in addition to any other paid leave, which the employee may accrue under the provisions of this Agreement.

If the employee has accrued sick leave, personal leave, compensatory leave or vacation leave credits at the completion of his/her domestic violence leave, that employee may use such leave credits for which he/she may be eligible under the sick leave, personal leave or vacation leave provisions of this Agreement.

Article 8, Section 3, paragraph A is amended as follows:

Section 3. Paid Personal Leave

A. Full-time employees **hired after June 1, 2012** ~~on the payroll as of that date~~ will be credited annually **during the first pay period in January** with paid personal leave credits at the following rate:

Scheduled Hours per Week	Personal Leave Credits
37.5 hours per week	22.500 hours
40.0 hours per week	24.000 hours

B. Full-time employees hired **as of** June 1, 2012 will be credited annually **during the first full pay period in January** with paid personal leave credits at the following rate:

Scheduled Hours per Week	Personal Leave Credits
37.5 hours per week	37.5 hours per week
40.0 hours per week	40.000 hours

Such personal leave may be taken during the following twelve (12) months at a time or times requested by the employee and approved by the **Employer**. Full-time employees hired or promoted into the bargaining unit after January 1 of each year will be credited with personal leave days in accordance with the following schedule:

Date of Hire or Promotion	**Scheduled Hours Per Week**	**Personal Leave Credited**
January 1 – March 31	40.0	24.000 hours
	37.5	22.00 hours
April 1 – June 30	40.0	16.000 hours
	37.5	15.00 hours
July 1 – September 30	40.0	8.000 hours
	37.5	7.500 hours
October 1 – December 31	40.0	0.000hours
	37.5	0.000hours

Except as provided for herein, any personal leave not taken by ~~December 31~~ **the last Saturday prior to the first full pay period in January** will be forfeited by the employee. Personal leave days for regular part-time employees will be granted on a pro-rata basis. Employees' personal leave balances shall be charged for time used on a one-half hour-for-one-half hour basis, e.g. one-half hour charged for one-half hour used, and may be used in conjunction with vacation leave. Charges to personal leave may be allowed in units of not less than one-half hour. An employee who cannot utilize his/her personal leave in the months of November and December, due to the operational needs of the Department/Agency, shall be permitted to carry-over one day of personal leave credit not utilized, to the next calendar year.

C. Nothing in this section shall be construed as giving more than three (3) days personal leave in a given year to employees hired after (insert ratification date), or more than five (5) personal days in a given year to employees on the payroll as of (insert ratification date.)

Article 8, Section 4 is amended as follows:

Section 4. Bereavement Leave

A. Upon evidence satisfactory to the ~~Appointing Authority~~ **Employer** of the death of a spouse or child, an employee shall be entitled to a maximum of seven (7) days of leave without loss of pay to be used at the option of the employee within thirty (30) calendar days from the date of ~~said~~ **the** death **of a child and within ninety (90) calendars days of the death of the employee's spouse**.

B. Upon evidence satisfactory to the ~~Appointing Authority~~ **Employer** of the death of a foster child, step child, parent, step parent, brother, sister, grandparent, grandchild, person for whom the employee is legal guardian, **spouse of a child**, parent or child of spouse or person living in household, an employee shall be entitled to a maximum of four **(4)** days of leave without loss of pay to be used at the option of the employee within thirty (30) calendar days from the date of said death.

C. Upon evidence satisfactory to the ~~Appointing Authority~~ **Employer**, an employee shall be granted one (1) day of leave without loss of pay to attend the funeral of the brother, **brother-in-law,** sister, **sister-in-law**, grandparent or grandchild of ~~a~~ **the employee's** spouse.

Article 8, Section 8 is amended as follows:

Section 8. Family and Medical Leave

A. Family Leave

1. ~~An Appointing Authority~~ **The Employer** shall grant to a full time or part time employee who has completed his/her probationary period, or if there is no such probationary period, has been employed for at least three consecutive months, an unpaid leave of absence for up to twenty-six (26) weeks in conjunction with the birth, adoption or placement of a child as long as the leave concludes within twelve (12) months following the birth or placement. **The ability to take leave ceases when a foster placement ceases unless the need for the additional leave is directly connected to the previous placement.**

7. During family leave taken in conjunction with the birth, adoption or placement of a child, an employee shall receive his/her salary for ten (10) days of said leave, at a time requested by the employee. **In the case of multiple births, such as twins or triplets, paid leave will not exceed (10) ten days. For cases of**

foster placement, if the placement is for less than 10 days, the number of paid days shall equal the number of work days that fall within the placement time period. The ten (10) days of paid family leave granted under this section may be used on an intermittent basis over the twelve (12) months following the birth of adoption, except that this leave may not be charged in increments of less than one (1) day. In addition, if the employee has accrued sick leave, vacation leave or personal leave credits available, the employee may use such credits for which he/she may otherwise be eligible under the sick leave, personal leave, or vacation leave provisions of this Agreement. **The ten (10) days of paid leave granted under this Section shall be prorated for regular part-time employees.**

B. Medical Leave

1. ~~An Appointing Authority~~ **The Employer** shall grant to any employee who has completed his/her probationary period or, if there is no probationary period, who has been employed at least three (3) consecutive months, an unpaid leave of absence for up to twenty-six (26) weeks to care for a spouse, child or parent who has a serious health condition or for a serious health condition which prevents the employee from being able to perform the functions of his/her position. **For this accompanying regulations, 29 C.F.R. Part 825, the Employer will request medical certification at the time the employee gives notice of the need for the leave or within five business days thereafter, or in the case of the unforeseen leave, within five business days after the leave commences. In the event of an unanticipated illness, an employee who returns to work within eight (8) working days of the beginning of their absence will not be required to return form D1 to his/her employer.**

3. At least thirty (30) days in advance, the employee shall submit a written notice of his/her intent to take such leave and the dates and expected duration of such leave. If thirty (30) day notice is not possible, the employee shall give notice as soon as practicable. The employee shall provide, upon request by the ~~Appointing Authority~~ **Employer**, satisfactory medical evidence. Satisfactory medical evidence is defined under Section 1.K.2 of this Article. **Under FMLA Law, i**~~If~~ the ~~Appointing Authority has reason to doubt the validity of the medical evidence,~~ ~~it~~ may obtain a second opinion at its own expense.

In the event there is a conflict between the second opinion and the original medical opinion, the **Employer** ~~Appointing Authority~~ and the employee may resolve the conflict by obtaining the opinion of a third medical provider, who is approved jointly by the **Employer** ~~Appointing Authority~~ and the employee, at the **Employer's** ~~Appointing Authority's~~ expense.

4. Intermittent leave usage and modified work schedules may be granted where a spouse, child or parent has a serious **health** ~~medical~~ condition and is dependent upon the employee for care, **or for the serious health condition which prevents**

the employee from being able to perform the functions of his/her position. ~~Where intermittent or a modified work schedule is medically necessary, the employee and appointing Authority shall attempt to work out a schedule which meets the employee's needs without unduly disrupting the operations of the workplace.~~

Effective October 1, 2014 for new requests of intermittent FMLA and effective January 1, 2015 for employees currently on FMLA, employees who provide satisfactory medical documentation to support an intermittent FMLA may utilize up to 60 days of their FMLA allotment provided for in Section 8 (B) (1) for intermittent absences.

Where an intermittent or a modified work schedule is medically necessary, the employee and Employer shall attempt to work out a schedule which meets the employee's needs without unduly disrupting the operations of the workplace. Such modified work schedules may include full time continuous leave, a change in job responsibilities, an alternative work option or a continuation of the intermittent leave beyond the sixty (60) days if operations allow provided the employee has not exhausted the 26 weeks of FMLA leave allowed within the previous 52 week period.

At the expiration of the intermittent medical leave, modified work schedule, or job assignment that was agreed upon, the employee shall be returned to the same or equivalent position with the same status, pay and length of service credit as of the date of his/her leave.

In the event that no alternative work option is agreed upon and if the employer believes that operations are being unduly disrupted, the employer will give written notice to the Union and employee of the intent to terminate the intermittent leave.

In such an event, no employee who then requests full time continuous leave and who is otherwise eligible shall be denied such leave as long as they provide medical documentation supporting an FMLA qualifying illness. Such leaves will be limited to the remainder of the 26 weeks of available FMLA leave and based upon their intermittent determination shall not be eligible for the catastrophic leave extension.

The Employer shall maintain the ability to transfer an employee to an alternative position with no reduction of pay or benefits in order to avoid disruption of operations so as long as the transfer is reasonable and not meant to discourage the use of intermittent leave. Wherever practicable an employee who transfers pursuant to this paragraph shall be given 10 days' notice of such transfer

In the event that the employer gives notice of its intent to terminate the intermittent leave, and the affected employee does not wish to access any remaining full-time leave benefits as described above, the Union may

request expedited impartial review by an arbitrator to determine whether the Employer has made a reasonable attempt to accommodate the need of the employee's intermittent leave beyond the sixty (60) days and whether or not the leave unduly disrupts operations. Said review must be requested within 10 calendar days of the notification that the leave will be terminated. The status quo ante shall be preserved pending the decision of the arbitrator, unless the proceedings are unreasonably delayed due to the part of the Union or the Employee.

The parties shall meet upon execution of the agreement to establish the review/arbitration process noted above. Such proceedings shall be informal in accordance with the rules to be agreed upon by the parties. The parties shall develop a form to be used as notice to the Union and employee of the intent to terminate intermittent leave.

Section 11. For the purposes of ARTICLE 8-LEAVE, ARTICLE 9-VACATIONS, and ARTICLE 10-HOLIDAYS, the term "day" with respect to employees who work an irregular workday or whose regular workday is longer than the normal seven and one-half or eight hour workday shall mean seven and one-half or eight hours, whichever is appropriate, and for the purpose of ARTICLE 9-VACATIONS, the term "week" with respect to such employees shall mean thirty-seven and one-half (37.5) or forty (40) hours, whichever is appropriate. **For the purposes of ARTICLE 8-LEAVE, ARTICLE 9-VACATIONS, and ARTICLE 10-HOLIDAYS, all paid leave time shall be prorated for regular part-time employees.**

ARTICLE 9 -VACATIONS[2]

Article 9, Section 1 is amended as follows:

Section I.
The vacation year shall be the period from ~~January 1, to December 31st, inclusive~~ **the first full pay period in January through the last full pay period inclusive of December 31st of the same calendar year**.

Article 9, Section 1 is amended as follows:

Section 2.
A. Vacation leave with pay shall be credited to full-time employees employed by ~~the Commonwealth~~ **MassDOT** ~~on the last day of each full month worked based on work performed during that month as follows:~~ **at the end of each pay period as**

[2] **All provisions of the collective bargaining agreement for the term July 1, 2011 to June 30, 2014 that relate to the monthly accrual of vacation leave shall remain in effect until bi-weekly leave accrual is implemented as provided in this Agreement.**

follows:

Total Years of Service	Scheduled Hours Biweekly	Accrued Credit Biweekly
Less than 4.5	80.00	3.07696 hours
	75.00	2.88465 hours
4.5 years but less than 9.5	80.00	4.61544 hours
	75.00	4.326975 hours
9.5 years but less than 19.5	80.00	6.15392 hours
	75.00	5.7693 hours
19.5 years or more	80.00	7.692232 hours
	75.00	7.21153 hours

B. For determining vacation status under this Article, ~~"credible service" only~~ **total years of service** shall be used. **All service beginning on the first working day in** MassDOT ~~**the state agency where rendered,**~~ **and all service thereafter** shall be included in "total years of service" ~~becomes "creditable service"~~ **provided there has not been any break of three years or more in such service as referred to in Section 12 of this Article.** Employees who were transferred to MassDOT effective November 1, 2009 shall have all continuous service in the transferor agency or authority included in total years of service. **Employees** whose service commences during the middle of a mid bi-weekly pay period shall have vacation credits prorated accordingly.

Article 9, Section 3 is amended as follows:

Section 3.
A full-time employee on leave without pay and/or absent without pay during the pay period ~~for twenty (20) or more cumulative days in any vacation year~~ shall **earn vacation leave credits** ~~have his/her vacation leave credits earned that year reduced by the percent determined by dividing the days without pay by the scheduled work days in the vacation year~~ **based on the hours paid within the bi-weekly pay period.**

~~In addition, any such leave or absence without pay for twenty (20) or more cumulative days in any vacation year shall result in the permanent loss of one year of continuous service for the purpose of vacation credit, unless such leave or absence is attributable to one of the following reasons:~~

- ~~serious illness requiring hospitalization for all or a portion of the period of absence~~
- ~~industrial accident~~
- ~~maternity/adoptive leave~~
- ~~FMLA/Non-FMLA~~
- ~~military leave~~
- ~~educational leave~~
- ~~civic duty leave,~~

~~in which case "continuous service" for purposes of vacation credit shall not be affected.~~

Article 9, Section 4 is amended as follows:

Section 4.
Employees will be credited with the next higher level accrual status during the pay period that includes July 1 of the fiscal year in which the employee reaches the higher accrual status. ~~Vacation leave earned during any vacation year in which an employee achieves the next higher vacation accrual status shall be credited at the rate at which the employee began the current vacation year. Adjustments necessary to reflect the higher vacation accrual status shall be credited on the last day of the vacation year.~~

Article 9, Section 5 is amended as follows:

Section 5.
A regular part-time employee shall ~~be granted~~ **accumulate** vacation leave in the same proportion that his/her part-time service bears to full-time service.

Article 9, Section 6 is amended as follows:

Section 6.
A regular part-time employee ~~who is absent without pay and/or~~ on leave without pay **and/or absent without pay during the pay period shall earn vacation leave credits based on the hours paid within the bi-weekly pay period.** ~~that number of hours that his/her service bears to twenty (20) days of service of a full-time employee shall have his/her vacation leave earned that year reduced by the percent determined by dividing the hours without pay by the total number of scheduled hours of work in his/her vacation year. In addition, any such leave or absence without pay for twenty (20) or more cumulative days in any vacation year shall result in the permanent loss of one year of continuous service for the purpose of vacation credit unless such leave or absence is attributable to one of the following reasons:~~

- ~~Serious illness requiring hospitalization for all or a portion of the period of absence~~
- ~~industrial accident~~
- ~~maternity/adoptive leave~~
- ~~FMLA/Non-FMLA~~
- ~~military leave~~
- ~~educational leave~~
- ~~civic duty leave,~~

~~in which case "continuous service" for purpose of vacation credit shall not be affected.~~

Article 9, Section 8 is amended as follows:

Section 8.
The **Employer** ~~Appointing Authority~~ shall grant vacation leave in the vacation year in which it becomes available, unless in his/her opinion it is impossible or impracticable to do so because of work schedules or emergencies. In cases where the vacation requests by employees in the same title conflict, preference, subject to the operational needs of the **Employer** ~~Department/Agency~~, shall be given to employees on the basis of years of **service** ~~employment~~ with **MassDOT** ~~the Commonwealth~~.

Unused vacation leave earned during the previous two (2) vacation years can be carried over **to the new calendar year beginning with the first full pay period in** January ~~1~~ for use during the following vacation year. Annual earned vacation leave credit not used by **the last full pay period inclusive of** December 31 of the second year it was earned will be forfeited.

Article 9, Section 9 is deleted.

~~**Section 9.**~~
~~Absences on account of sickness in excess of the authorized sick leave provided in the Agreement (or for personal reasons not provided for under said sick leave provisions), may be charged to vacation leave upon request of the employee and subsequent approval by the Appointing Authority.~~

Article 9, Section 10 is renumbered and amended as follows:

Section 9~~10~~
Employee's vacation leave balances shall be charged on an hour-for-hour basis; e.g., one hour charged for one hour used. Charges to vacation leave may be allowed in units of not less than ~~one-half hour.~~ **Fifteen (15) minute increments.**

Article 9, Section 11 is renumbered and amended as follows:

Section 10~~1~~
Employees who are eligible for vacation under this Article whose services are terminated shall be paid an amount equal to the vacation leave which has been credited but not used by the employee up to the time of separation, provided that no monetary or other allowance has already been made therefore.

Upon the death of an employee who is eligible for vacation credit under this Agreement, the **Director of Human Resources** ~~Chief Human Resources Officer may, upon request of the Appointing Authority of the deceased person,~~ authorize the payment of such compensation in the following order of precedence:

First: To the surviving beneficiary or beneficiaries, if any, lawfully designated by the employee under the state employees' retirement system, and

Second: If there be no such designated beneficiary, to the estate of the deceased.

Article 9, Section 15 is amended as follows:

Section 15.
If an employee is on industrial accident leave and has available vacation credits which have not been used, and who, because of the provision of Section 8 of this Article would lose such vacation credits, the Employer ~~Appointing Authority of such employee~~ shall convert such vacation credits to sick leave credits **in the new calendar year beginning with the first full pay period in January**. ~~on December 31 of the year in which such vacation credits would be lost if not taken.~~

Section 16 : Deleted in its entirety and replaced with the following:

For the purposes of ARTICLE 8-LEAVE, ARTICLE 9-VACATIONS, and ARTICLE 10-HOLIDAYS, the term "day" with respect to employees who work an irregular workday or whose regular workday is longer than the normal seven and one-half (7.5) or eight (8.0) hour workday shall mean seven and one-half (7.5) or eight (8.0) hours, whichever is appropriate, and for the purpose of ARTICLE 9-VACATIONS, the term "week" with respect to such employees shall mean thirty-seven and one-half (37.5) or forty (40) hours, whichever is appropriate. For the purposes of ARTICLE 8-LEAVE, ARTICLE 9-VACATIONS, and ARTICLE 10-HOLIDAYS, all paid leave time shall be prorated for regular part-time employees.

ARTICLE 10 -HOLIDAYS

Article 10 is amended by adding new Section 11.

For the purposes of ARTICLE 8-LEAVE, ARTICLE 9-VACATIONS, and ARTICLE 10-HOLIDAYS, the term "day" with respect to employees who work an irregular workday or whose regular workday is longer than the normal seven and one-half (7.5) or eight (8.0) hour workday shall mean seven and one-half (7.5) or eight (8.0) hours, whichever is appropriate, and for the purpose of ARTICLE 9-VACATIONS, the term "week" with respect to such employees shall mean thirty-seven and one-half (37.5) or forty (40) hours, whichever is appropriate. For the purposes of ARTICLE 8-LEAVE, ARTICLE 9-VACATIONS, and ARTICLE 10-HOLIDAYS, all paid leave time shall be prorated for regular part-time employees.

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ARTICLE 11 - EMPLOYEE EXPENSES

Article 11, Section 1, paragraph C is amended as follows:

C. Employees shall not be reimbursed for commuting between their home and office or other regular work location. With the approval of the **Director of Human Resources** ~~Chief Human Resources Officer~~, an employee's home may be designated as his/her regular office by his/her ~~Appointing Authority~~, for the purposes of allowed transportation expenses in cases where the employee has no regular office or other regular work location.

Article 11, Section 3 is amended as follows:

Section 3.
Employees who work three (3) or more **consecutive** hours of authorized overtime, exclusive of meal times, in addition to their regular hours of employment, or employees who work three (3) or more **consecutive** hours, exclusive of meal times, on a day other than their regular work day, shall be reimbursed for expenses incurred for authorized meals, including tips, not to exceed the following amounts and in accordance with the following time periods:

Breakfast	3:01 a.m. to 9:00 a.m.	$2.75
Lunch	9:01 a.m. to 3:00 p.m.	$3.75
Dinner	3:01 p.m. to 9:00 p.m.	$5.75
Midnight Snack	9:01 p.m. to 3:00 a.m.	$2.75

ARTICLE 12 -SALARY RATES

Article 12, Section 1 is deleted in its entirety and replaced with the following:

Section 1
The following shall apply to full-time employees:

A. Effective January 11, 2015, employees within the salary range who meet the eligibility criteria provided in Section 3 of this Article shall receive either an increase to the base wage of one thousand seven hundred dollars ($1,700) or a three percent (3%) increase in salary rate whichever is greater. Employees who are outside the salary range who meet the eligibility criteria provided in Section 3 of this

Article shall receive a one-time bonus payment of one thousand five hundred ($1,500.00).

B. Effective October 4, 2015, employees within the salary range who meet the eligibility criteria provided in Section 3 of this Article shall receive either an increase to the base wage of one thousand seven hundred dollars ($1,700) or a three percent (3%) increase in salary rate whichever is greater. Employees who are outside the salary range who meet the eligibility criteria provided in Section 3 of this Article shall receive a one-time bonus payment of seven hundred and fifty dollars ($750.00) and a base wage increase of seven hundred and fifty dollars ($750.00)

C. Effective July 10, 2016 employees within the salary range who meet the eligibility criteria provided in Section 3 of this Article shall receive a three percent (3%) increase in salary rate. Employees who are outside the salary range who meet the eligibility criteria provided in Section 3 of this Article shall receive a base wage increase one thousand five hundred dollars ($1,500.00).

Section 2.
In addition to the wage increases provided above the Employer shall make available the following:

A. In FY 2015 an amount equal to .025 of the total base wage payroll for the bargaining unit as of June 30, 2014 to fund benefits, other than across the board base wage increases, as agreed by the Employer and Union. An amount sufficient to fund the cost of the $1,700 base wage "floor" increase provided in Section 1, paragraph A shall be allotted from these funds.

B. In FY 2016 an amount equal to .025 of the total base wage payroll for the bargaining unit as of June 30, 2014 to fund benefits, other than across the board base wage increases, as agreed by the Employer and Union. An amount sufficient to fund the $1,700 base wage "floor" increase provided in Section 1, paragraph B shall be allotted from these funds.

C. In FY 2017 an amount equal to .025 of the total base wage payroll for the bargaining unit as of June 30, 2014 to fund benefits, other than across the board base wage increases, as agreed by the Employer and Union.

The Employer and Union shall meet as soon as practicable after ratification of the Agreement to negotiate the application and use of the funds made available under this Section.

Renumber Section 2 to Section 3 and all other sections accordingly.

ARTICLE 13A - HEALTH AND WELFARE

Article 13A, Section 1 is amended as follows:

Section 1. The **Commonwealth of Massachusetts and Alliance/AFSCME-SEIU** ~~parties~~ have ~~agreed to~~ established a Health and Welfare Fund under a Declaration of Trust **dated** _____. ~~drafted by the Employer and executed by the Union and the Employer.~~ Such Agreement and Declaration of Trust (the "Trust" hereinafter referred to as the "trust agreement") **which provides certain health and welfare benefits to employees of the Commonwealth and their dependents.** ~~**provides for a Board of Trustees composed of an equal number of representatives of the Employer and the Union.**~~ **MassDOT and the Union agree that to the extent permitted by the Trust, bargaining unit employees shall be provided benefits under the Trust.**

The parties agree that t~~T~~he Board of Trustees of the Health and Welfare Fund shall determine in their discretion and within the terms of ~~this Agreement and the Agreement and Declaration of~~ **the** Trust such health and welfare benefits to be extended by the Health and Welfare Fund to employees and/or their dependents.

The Employer shall not be required to maintain the existing level of dental insurance benefits and pay schedule provided to any former employee of the Massachusetts Turnpike Authority or Massachusetts Port Authority pursuant to the Master Labor Integration Agreement who leaves the bargaining unit to which they were assigned as of November 1, 2009.

ARTICLE 14
SENIORITY, TRANSFERS, PROMOTIONS, REASSIGNMENTS, FILLING OF VACANCIES AND NEW POSITIONS

Article 14, Section 1 is amended as follows:

Add the following language at the end of the second paragraph:

Where the Union files a grievance over the non-selection of an employee(s), the Union shall be limited to advancing to arbitration the grievance of one (1) non-selected employee per vacancy or class action. The Union shall identify such grievant in writing at the time of filing its demand for arbitration. The Arbitrator shall not have the authority to select the successful candidate for the position but shall be limited to an order re-posting the position and re-considering candidates from the original pool of applicants, except if the Employer re-selects the original successful candidate following an order to repost the position and the arbitrator finds a new violation of Article 14 . If a redetermination of the selection process is ordered, it shall be limited to the original pool of applicants.

ARTICLE 15 - CONTRACTING OUT

Modify Following Provision from the Master Labor Integration Agreement:

Absent an emergency **or other substantial unexpected occurrence requiring** ~~demanding~~ otherwise, MassDOT shall not**,** outsource bargaining unit work beyond the scope of any such work that it was out sourcing as of November 1, 2009, except in cases where employees of MassDOT are unable or **unwilling** to perform such services owing to lack of expertise **or proper licensure/certification,** or other inability to perform such services on the schedule or in the manner required by MassDOT, **or under other circumstances where MassDOT reasonably determines that the public safety requires or that the public convenience would be unduly disrupted** ~~requires.~~ Nothing in this provision shall limit the application of G.L. c. 29, sec. 29A to the extent that such provisions are applicable to MassDOT.

ARTICLE 19A
TECHNOLOGICAL CHANGE

Article 19A, Section 1 is amended by adding the following new section C:

C. **The Union recognizes that MassDOT's payroll and human resources information systems are provided by the Commonwealth through its Human Resources/Compensation Management system (HR/CMS). To ensure that any of the changes required by HR/CMS are introduced and implemented in the most effective manner, the Union agrees to support MassDOT's implementation and accepts such changes to business practices, procedures, and functions as are necessary to achieve such implementation (e.g. the change from a weekly to bi-weekly payroll system). Upon request MassDOT and the Union will meet to discuss any issues of impact to the bargaining unit arising from the implementation of changes to HR/CMS.**

ARTICLE 23
ARBITRATION OF DISCIPLINARY ACTION

Article 23, Section 2 is amended as follows:

Section 2.
~~In the event that an employee is not given a departmental hearing prior to the imposition of discipline or discharge, then A~~a grievance alleging a violation of Section 1 of this Article shall be submitted in writing by the aggrieved employee**/Union** to ~~his/her agency~~

~~head~~ **the Director of the Office of Labor Relations and Employment Law** within ten (10) working days of the date such action was taken. The grievance shall be treated as a Step II grievance and ARTICLE 23 - GRIEVANCE PROCEDURE, shall apply.

Delete Article 23, Section 3 in its entirety.

Amend Article 23, Section 4 as follows:

Section 4. An employee wishing to appeal a disciplinary action taken pursuant to Article 23 of this Agreement, must sign and submit to the Employer, on a form prepared by the Employer, a confirmation that the employee has not appealed said disciplinary action to ~~any other forum, including but not limited to~~ the Civil Service Commission. ~~Massachusetts commission Against Discrimination and the Equal Employment Opportunity Commission.~~

In the event that the employee has already filed such appeal, the employee shall have the option of withdrawing the appeal to the outside forum in favor of preserving the grievance within ten (10) calendar days of being notified of the conflict by the **Employer.** ~~Appointing authority or Human Resources Division.~~

In the event that the employee does pursue a grievance under these provisions, and subsequently files an appeal of the disciplinary action to **the Civil Service Commission** ~~any other forum~~ the grievance shall be considered withdrawn. However the employee may preserve the grievance by withdrawing the appeal to the outside forum in favor of preserving the grievance within ten (10) calendar days of being notified of the conflict by the ~~Appointing authority or Human Resources Division~~**Employer.**

If an employee files a charge of discrimination covered by Article 6 with a state or federal agency or state or federal court arising from termination of employment, the Employer and the Union agree that the union waives its right to arbitrate any grievance based on a claim of a violation of Article 6 relating to the same claim of discrimination. If the employee withdraws his or her charge with prejudice, other than in the case of a mutually agreeable settlement, the grievance shall be arbitrable if otherwise timely and appropriate. This waiver provision shall not apply to claims filed pursuant to MGL c. 150E or claims relating to the FMLA.

ARTICLE 23A
GRIEVANCE PROCEDURE

Amend Article 23A, Section 2 as follows:

The grievance procedure shall be as follows:

Step I An employee and/or the Union shall submit a grievance in writing, on the grievance form included in appendix F of this Agreement to the person designated by the **Employer** ~~agency head~~ for such purpose not later than twenty-one (21) calendar days after the date on which the alleged act or omission giving rise to the grievance occurred or after the date on which there was a reasonable basis for knowledge of the occurrence. Such grievance shall identify the Article(s) believed to have been violated, state how and when the Article(s) was violated and state the remedy sought. The person so designated by the agency head shall reply in writing by the end of seven (7) calendar days following the date of submission, or if a meeting is held to review the grievance by the end of twenty-one (21) calendar days following the date of the submission.

Step II A. In the event the employee or the Union wishes to appeal an unsatisfactory decision at Step I, the appeal shall be presented in writing, on the grievance form included in appendix F of this Agreement to the **Director of the Office of Labor Relations and Employment Law** ~~person designated by the agency head for such purpose~~ within ten (10) calendar days following the receipt of the Step I decision.

B. Disciplinary grievances filed at Step II ~~or Step III of the grievance procedure,~~ must also contain the "confirmation of Forum" form (as outlined in Article 23, Section 4). Grievances not containing the signed waiver by the date of the scheduled conference or the rendering of a decision shall be considered denied.

C. the agency head or his/her designee may meet with the employee and/or the Union for review of the grievance, and if a conference is held, shall issue a written decision of findings supported by the information gathered at the conference to the employee and/or the Union within fourteen (14) calendar days following the day on which the conference was held. If no conference was held, the Agency head or designee shall respond to the grievance within twenty-eight (28) calendar days from the date upon which the grievance was filed. The Agency Head's designee at Step II shall have the authority to sustain, vacate or modify a decision or action taken at the lower level.

~~Step III~~ ~~In the event the employee or the Union wishes to appeal an unsatisfactory decision at Step II, the appeal must be presented, on the grievance form included in Appendix E of this Agreement, to HRD within ten (10) calendar days of the receipt of the unsatisfactory decision at Step II and notice shall be given to the agency involved. Such grievance shall identify the Article(s) believed to have been violated, state how and when the Article(s) was violated and state the remedy sought. HRD shall issue a written reply by the end of the thirty (30) calendar days following the day on which the appeal was filed or if a conference is held by the end of the twenty-one (21) calendar days following the close of the conference. HRD, at Step III, shall have the authority to sustain, vacate or modify a decision or action taken at the lower level.~~

Step III~~V~~ Grievances unresolved at Step III may be brought to arbitration solely by the Union by filing a completed Request for Arbitration form with the **Director of Labor Relations and Employment Law** ~~Human Resources Division~~**.** Such form must be filed within thirty (30) calendar days of the receipt of an unsatisfactory Step III ~~-~~response~~.~~ **Grievances that are not filed for arbitration within the thirty (30) days as provided above shall be considered waived.**

Amend Article 23A, Section 5 as follows:

Section 5.

A. The parties will attempt to agree on an Arbitrator on a case-by-case basis. Failing such agreement within thirty (30) days of **the Director of Labor Relations and Employment Law's** ~~HRD's~~ receipt of the Request for Arbitration (as outlined above), the Union may file said Request for Arbitration with the American Arbitration Association under its Voluntary Labor Arbitration Rules.

B. Delete this section in its entirety.

Amend Article 23A, Section 7 as follows:

Section 7.
All fees and expenses of the arbitrator, if any, which may be involved in the arbitration proceeding shall be divided equally between the Union and **Employer** ~~HRD~~. Each party shall bear the cost of preparing and presenting its own case.

Amend Article 23A, Section 9 as follows:

Section 9.
If a decision satisfactory to the Union at any level of the grievance procedure other than Step III~~V~~ is not implemented within a reasonable time, the Union may re-institute the original grievance at the next step of the grievance procedure. A resolution of a grievance at either Step I or II shall not constitute a precedent.

Amend Article 23A, Section 10 as follows:

Section 10.
If the Employer exceeds any time limit prescribed at any step in the grievance procedure, the grievant and/or the Union may assume that the grievance is denied and invoke the next step of the procedure, except, however, that only the Union may request impartial arbitration under Step **III~~V~~**. However, no deadline shall be binding on the grievant and/or the Union until a required response is given.

Amend Article 23A, Section 15 as follows:

Section 15.

Upon the agreement of the parties, any grievance may be submitted to Alternate Dispute Resolution.

~~A. A sub-committee of the Commonwealth's Joint Labor-Management Committee, consisting of four (4) people designated by the NAGE and four (4) people designated by the Commonwealth, shall meet and develop mutually agreed upon policies and implementation procedures for an Alternative Dispute Resolution Program which may include an option for mediation or a binding tri-partite panel at the Step III grievance level.~~

~~B. Furthermore, the committee shall meet bi-monthly to review the Commonwealth's grievance procedure, review training needs related to the grievance procedure and to review individual labor-management proposals jointly submitted by the agency and union representatives regarding alternative dispute resolution pilot programs, training needs and possible improvements to the efficiency of the grievance procedure.~~

~~C. At, or following, the Step III stage of the grievance procedure and in certain designated agencies, Alternative Dispute Resolution (ADR) pilot programs shall be developed with a goal for initial implementation within six (6) months from the signing of the agreement. ADR programs may include, but shall not be limited to, mediation, an oral Step I grievance and review conferences.~~

~~Section 23.16 Alternative Dispute Resolution (ADR) Funding~~
~~The Commonwealth shall pay for all costs incurred in compensating neutrals under the alternative dispute resolution obligation of this Article and the side letter between the~~

~~parties dated September 25, 2001. The parties agree that this obligation shall extend to an average of one day per month for the life of this agreement.~~

Add the following New Article 25A:

ARTICLE 25A
MASSDOT WIDE POLICY IMPLEMENTATION COMMITTEE

There shall be a Policy Implementation Committee comprised of an equal number of Employer and collective bargaining representatives from each of the MassDOT bargaining units. Upon request by the Employer, the Committee shall meet to discuss the implementation of MassDOT Policies and Procedures. This Article is not intended to alter the existing rights or obligations of either the Employer or collective bargaining representatives.

Amend Article 29 as follows:

ARTICLE 29
SAVING CLAUSE

In the event that any Article, Section or portion of this Agreement is found to be invalid or shall have the effect of loss to **MassDOT or** the Commonwealth of funds made available through federal law, rule or regulation, then such specific Article, Section or portion shall be amended to the extent necessary to conform with such law, rule or regulation, but the remainder of this Agreement shall continue in full force and effect. Disputes arising under this Article shall be discussed with the **Employer** ~~Human Resources Division (HRD)~~ and may be submitted by the Union to expedited arbitration.

ARTICLE 30
RE-OPENER

Strike Article 30 in its entirety.

ARTICLE 31
DURATION

Renumber Article 31 as Article 30 and amend it as follows:

This Agreement shall be for the three-year period from July 1, 201~~409~~ to June 30, 2012~~7~~ and terms contained herein shall become effective on ~~July 1, 2009~~ **execution** unless otherwise specified. Should a successor Agreement not be executed by June 30, 2017~~2~~ this Agreement shall remain in full force and effect until a successor Agreement is

executed or an impasse in negotiations is reached. At the written request of either party, and upon mutual agreement, negotiations for a subsequent Agreement will be commenced on or after January 1, 2017~~2~~.

Agreement signed this October 29, 2014 ~~day of~~

Massachusetts Department of Transportation

By: _____
Julian Tynes, Director
Office of Labor Relations and Employment Law

By: _____
Maria C. Rota, Deputy Director
Office of Labor Relations and Employment Law

Coalition of MassDOT Unions for Bargaining Unit B

By: _____
Robert Cullinane, Secretary-Treasurer/Principal Executive Officer, Teamsters Local 127 and as Agent for Teamsters Local 25

massDOT
Massachusetts Department of Transportation

DRUG AND ALCOHOL TESTING POLICY

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Introduction

In accordance with the provisions of the United States Drug-Free Workplace Act of 1988, MassDOT is required to provide a safe and drug-free workplace for all of its employees. Additionally, the Omnibus Transportation Employee Testing Act of 1991 mandates the issuance of federal regulations to combat prohibited drug use and alcohol misuse in the transportation industry.

The US Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA), have enacted regulations to aid in the prevention of drug use and alcohol misuse by those employees performing "safety sensitive functions" as defined in Exhibit A attached hereto. In 1994, the DOT implemented regulations that combine education and testing to form a comprehensive anti-drug and alcohol misuse program. Specifically, these regulations require safety-sensitive employees to complete drug and alcohol awareness training and to participate in a drug and alcohol testing program.

Because MassDOT possesses a firm commitment to the health and safety of all our employees, we have elected to go beyond the requirements of DOT and FMCSA regulations. Section I of this Policy covers tests required by the DOT/FMCSA regulations ("DOT tests"). Section II of this policy covers drug and alcohol testing which MassDOT is undertaking under its own authority ("non-DOT tests").

This policy applies to the Highway Division, the Aeronautics Division, the Registry of Motor Vehicles Division, the Shared Services Division, and the Rail and Transit Division excluding the MBTA, and supersedes all previous drug and alcohol testing policies applicable to those divisions, including but not limited to the Massachusetts Turnpike Authority policy as well as the MassHighway policy.

MassDOT reserves the right to modify, revoke, suspend, or terminate this policy, in whole or in part, at any time, consistent with changing law or as needed, consistent with any obligations under M.G.L. c. 150E, if any. MassDOT will give ninety (90) days advanced written notice to all employees who will be subject to random testing under Section II of this policy, before such random testing will begin.

Employees who are currently subject to random testing will continue to be subject thereto.

SECTION I

DOT TESTING

Authority

49 CFR Parts 40 & 382
Omnibus Transportation and Testing Act of 1991

Please note that all federal testing requirements and procedures apply even if they are not expressly referenced in this Policy. Likewise, this policy is not intended to define or otherwise explain every matter included in the federal regulations. Please refer to the Federal Code of Regulations, Title 49, Parts 40 and 382 which can be accessed through the U.S. Government Printing Office website at http://www.ecfr.gov/cgi-bin/ECFR?page=browse.
An electronic copy of the regulations will be available for review through Transnet.

Applicability

The federal provisions contained herein apply to all full-time, part-time, seasonal, temporary or intermittent employees working in safety-sensitive positions. Specifically, all MassDOT employees who possess and use a commercial driver's license (CDL) in the performance of their job duties are subject to DOT testing.

Prohibited Use of Alcohol

Employees subject to this Section I are prohibited from engaging in the following:

- Reporting for, or remaining on duty, requiring the performance of safety-sensitive functions, while having an alcohol concentration of 0.02 or greater;
- Consuming alcohol while performing safety-sensitive functions;
- Performing safety-sensitive functions within four (4) hours after consuming alcohol;
- Consuming alcohol within eight (8) hours after an accident or until the required test is administered, whichever occurs first, and;

No supervisor/manager having knowledge that a driver is in violation of any of these prohibited uses of alcohol, shall permit the driver/employee to perform or continue to perform safety-sensitive functions and shall take appropriate action

consistent with the terms of this policy, including referral for a Reasonable Suspicion test where applicable.

Prohibited Use of Controlled Substances

No employee subject to this Section I shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the employee that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle or perform or continue to perform safety-sensitive functions.

No MassDOT supervisor/manager who has actual knowledge that an employee has used a controlled substance shall permit the employee to drive or to perform or continue to perform safety-sensitive functions.

Controlled Substances Tested

Tests will be conducted for the following controlled substances:

- Marijuana
- Cocaine
- Amphetamines
- Phenecyclidine (PCP)
- Opiates

If a DHHS or a DOT agency updates the controlled substances being tested or changes the cutoff confirmation levels in either the initial or the confirmatory test, MassDOT will adjust its policy to conform to the those requirements, subject to its obligations under Chapter 150E, if any. Updates will be distributed to all employees, and employees will be required to sign acknowledgements of receipt for each update.

Prescription medications are not exempt from this policy. Employees must inform the MBTA Clinic of their use of any prescription medication or Over The Counter medication, and any alternative supplements (such as "natural or herbal remedies") that individually or in combination could reasonably be expected to impair the employee's ability to perform his/her job. Failure to disclose such medications will be subject to disciplinary action. MassDOT will maintain the confidentiality of any such information provided to it and will allow access thereto strictly on a need to know basis.

Testing Methods

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability using techniques, equipment and laboratory facilities which have been approved by DHHS and NHTSA. All testing will be conducted consistent with the procedures in 49 CFR Part 40, as amended. Part 40 is a DOT-wide regulation that states how to conduct testing and how to return employees to safety-sensitive functions after they violate a DOT drug and alcohol regulation. Part 40 applies to all DOT-required testing.

Controlled substances testing will be done using urine specimens. The urine specimens will be collected by an outside contractor or the MBTA clinic as determined solely by MassDOT that is compliant with applicable DHHS requirements. The specimens will be split into primary and secondary containers. The primary specimen will be sent to an approved U.S. Department of Health and Human Services (DHHS) laboratory for analysis with the results reviewed by a Medical Review Officer (MRO). Should an employee challenge the primary specimen test result, he/she may within seventy-two (72) hours of receiving notice of the primary specimen test result, request that the secondary specimen be tested. This request must be made to the MRO within seventy-two hours following notification to an employee of a positive test result from the primary specimen. Upon receipt of such notice, the MRO will forthwith cause the secondary specimen to be tested in the same manner as the primary specimen was tested. Employees will assume all expenses associated with secondary specimen testing, provided that if the secondary specimen test is negative for controlled substances regulated by this policy MassDOT will pay for all such expenses. Cut-off Levels, used to determine a "positive" test result for both initial and confirmation DOT tests are listed in Appendix 1.

Alcohol testing will be performed by a certified Breath Alcohol Technician (BAT) using an Evidential Breath Testing (EBT) machine. An alcohol test with a result of greater than 0.02 shall be considered a positive test result.

Categories of Tests:

The following DOT alcohol and controlled substance testing will be conducted under the following circumstances:

Pre-Employment (Applicants)

Applicants for any safety-sensitive position will be given a controlled substances test and an alcohol test to be administered consistent with the DOT procedures. An applicant must receive a negative result for controlled substances and an alcohol result of less than .02 or will not be hired by MassDOT.

Pre-Employment (Existing Employees)

Any employee seeking a promotion, transfer, or demotion from a non-safety sensitive position into a safety-sensitive position must submit to a pre-employment controlled substances test and an alcohol test. The employee must receive a negative result for controlled substances and an alcohol result of less than .02 or will be denied the promotion, transfer, or demotion. Furthermore, any employees who are out of the random testing pool thirty (30) consecutive calendar days or longer must take a pre-employment drug test and receive a verified negative result before resuming any safety-sensitive functions. If the employee fails to receive a verified negative result, the employee will be subject to disciplinary action in accordance with the terms of this Policy.

Post-Accident – Alcohol

As soon as practicable, following an accident involving a commercial motor vehicle MassDOT shall test for alcohol for each covered employee who was performing safety-sensitive functions with respect to the vehicle,

(1) if the accident involved the loss of human life; or

(2) if the employee receives a citation within thirty-two (32) hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved:

(a) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(b) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Post Accident – Controlled Substances

As soon as practicable, following an accident involving a CMV MassDOT shall test for controlled substances for each covered employee who was performing safety-sensitive functions with respect to the vehicle,

(1) if the accident involved the loss of human life; or

(2) if the employee receives a citation within thirty-two (32) hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved:

(a) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(b) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be

transported away from the scene by a tow truck or other motor vehicle.

The following table may be used as a guide in determining if an FMCSA post-accident is required:

Type of accident involved	Was Citation issued to the CMV driver?	Test must be performed by employer
Human fatality	Yes	Yes
	No	Yes
Bodily injury with immediate medical treatment away from the scene	Yes	Yes
	No	No
Disabling damage to any motor vehicle requiring towing away from the scene	Yes	Yes
	No	No

Random

Each DOT Agency sets the minimum random testing rates for drug and alcohol testing in the industry it regulates. If a DOT agency changes the required percentages in the future, the Employer will automatically adjust its testing rates to conform to the DOT requirements. The current DOT Agency random testing rates are 10% of covered employees for alcohol and 50% of covered employees for controlled substances. Employees will be randomly selected for testing pursuant to a scientifically valid, computer based random number generator. There shall be no discretion on the part of management or those administering the program in the selection and notification of individuals for testing. All covered employees have an equal chance of being selected for random testing.

Because of the random nature of the selection method, an employee may be called upon for testing multiple times during a single year or not at all. Random testing is spaced reasonably throughout the year and occurs during all shifts, and on all days and hours of operation when safety-sensitive functions are being or could be performed, including nights, weekends and holidays. Testing dates/times are unannounced and occur with an unpredictable pattern of frequency.

Randomly selected employees and supervisors will be notified on the test day that they must take a test for controlled substances drugs and/or alcohol.

Once an employee is notified that he/she has been selected for testing, that employee must proceed or be transported by MassDOT immediately and directly to the testing/collection site. If the employee is performing a safety-sensitive function at the time of the notification, the supervisor shall ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing/collection site immediately.

"Immediately" means that after notification, all the employee's actions must lead to an immediate urine specimen collection. Examples of actions that are not allowed include, but are not limited to, the following:

- Going home to change clothes;
- Going home to get your own vehicle;
- Going to a friend or relative's house or other location to get a ride to the testing site;
- Stopping for food or drink en route to the testing site;
- Attending to child care needs; Employees are on notice that they may be subject to a random drug and/or alcohol test that could occur at the "end of shift" and if, they have child care responsibilities at "the end of shift," they must pre-arrange emergency child care for the possibility of a random "end of shift" test. The supervisor or OHS personnel will permit reasonable time (5 to 10 minutes) for appropriate phone calls. Employees will not be excused from the random due to child care responsibilities, but MassDOT will make a reasonable effort to avoid scheduling tests that may reasonably be expected to extend beyond the employee's regular workday.
- Carrying out personal errands of any kind; or
- Stopping to talk with co-workers or friends.

Supervisors when appropriate shall escort selected employees to their lockers or work stations after notification and shall establish an expected arrival time at the testing/collection site. If an employee is notified of a random test while working "off-site" or "on the road", and the employee is part of a crew, his/her supervisor shall coordinate with the foreperson/inspector to arrange for that employee to be transported immediately and directly to the collection site. Failure to report to the collection site at the appointed time will be considered a refusal to test, absent documented and verifiable evidence that the failure was beyond the employee's control.

Reasonable Suspicion

Conducted when a trained supervisor observes behavior, such as abnormal appearance, speech, awareness, or motor skills exhibited by an employee, that is characteristic of drug or alcohol misuse. Such supervisor

must have received at least 60 minutes of training on alcohol misuse and received at least an additional 60 minutes of training on controlled substances use, which shall include training in the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. This shall be conducted by two (2) supervisors when reasonably available. A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the MassDOT supervisor or official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

Return To Duty

Return to Duty tests are conducted pursuant to 49 CFR Part 40, Subpart O when an individual who has violated the Federal alcohol or drug regulations returns to duty performing safety-sensitive functions. All Return to Duty tests will be performed under direct observation as required by federal regulations.

Follow – Up

Follow-Up testing will be conducted in accordance with the plan developed by the Substance Abuse Professional (SAP). A minimum of six (6) unannounced observed follow-up tests must be conducted in the first twelve (12) months after an individual returns to duty pursuant to 49 CFR Part 40, Subpart O. A greater number of tests may be required and may be extended for up to sixty (60) months at the discretion of the SAP. All Federally required follow-up tests will be performed under direct observation.

If an employee that is required to complete a follow-up testing program is absent from work for thirty (30) calendar days or more, the length of the absence will be added to the testing program to ensure compliance with the original testing plan submitted by the SAP.

Sanctions for Violation of Policy

The following Sanctions apply to any violation(s) of this policy whether arising under Section I "DOT tests" or Section II "non DOT tests.

The number of offenses can be any combination of DOT tests conducted pursuant to Section I of this Policy and "Non-DOT" tests conducted pursuant to Section II of this Policy.

PENALTY	VIOLATION
5 Work Day Suspension, If the employee has no violation within the past 10 years	• alcohol test result of greater than .02 but less than .04; • positive marijuana test if the employee does not appear to be impaired
30 calendar day suspension	• first positive test for marijuana within ten years if the employee appears to be impaired • second alcohol test result of greater than .02 but less than .04 within ten years; •second positive marijuana test within 10 years with or without impartment • first alcohol test greater than .04 within 10 years • first positive test for any controlled substance other than marijuana within 10 years

PENALTY	VIOLATION
60 calendar day suspension	• third alcohol test result of greater than .02 but less than .04 if this test was within ten years of any prior policy violation; • second positive marijuana test if this test was within ten years of any prior policy violation if the employee appeared to be impaired and tested positive on the first test; • third positive marijuana test if this test was within 10 years of any prior policy violation; • second alcohol test greater than .04 if this test was within 10 years of any prior policy violation; • second positive test for any controlled substance other than marijuana if this test was within ten years
Termination	• fourth alcohol test result of greater than .02 but less than .04 within ten years of any prior policy violation; • third positive marijuana test within ten years of any prior policy violation if the employee appeared to be impaired and tested positive on the first test within ten years of any prior policy violation; • fourth positive marijuana test within 10 years of any prior policy violation; • third alcohol test greater than .04 within 10 years of any prior policy violation; • third positive test for any controlled substance other than marijuana if this test was within ten years

Post - Accident

Any employee who produces a positive test result on a controlled substances test or an alcohol test result greater than .02 on a post-accident test, shall be terminated from employment.

Refusal to Test

Any employee who refuses to submit to either a controlled substances or alcohol test shall be terminated from their employment.

For purposes of this section, refusal to test shall be defined as follows:

(1) Fail to appear for any test (except an applicant pre-employment test) within a reasonable time, as determined by MassDOT after being notified of the test, absent documented and verifiable evidence that the failure was beyond the employee's control;

(2) Fail to remain at the collection site until the testing process is complete, (exception an applicant pre-employment test prior to the commencement of testing absent documented and verifiable evidence that the failure was beyond the employee's control;

(3) Fail to provide a urine specimen for any drug test required by this policy or federal regulations, (exception an applicant pre-employment test prior to the commencement of testing) absent documented and verifiable evidence that the failure was beyond the employee's control, absent documented and verifiable evidence that the failure was beyond the employee's control;

(4) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;

(5) Fail to permit the observation or monitoring of the specimen collection, as required for a directly observed or monitored collection;

(6) Fail to provide a sufficient amount of urine when directed and determination through a required medical evaluation, that there was no adequate medical explanation for the failure;

(7) Fail or declined to take a second test as directed by a collector or MassDOT/MBTA supervisory personnel;

(8) Failed to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process. In the case of a pre-employment drug test, the employee/applicant is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;

(9) Fail~~ed~~ to cooperate with any part of the testing process (e.g., refused to empty pockets when so directed by the collector, behaved in a

confrontational way that disrupted the collection process, fail to sign certification of Step 2 of the Alcohol Test Form);

(10) Is reported by the MRO as having a verified adulterated or substituted test result;

(11) Failed to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to check for any type of prosthetic or other device that could be used to interfere with the collection process during a directly observed collection;

(12) Possesses or wears a prosthetic or other device that could be used to interfere with the collection process;

(13) Admits to a collector or MRO that he or she has adulterated or substituted the specimen before submitting to the required testing.

Failure to Disclose Rx, OTC Medications

Any employee who fails to disclose to MassDOT, prior to submitting to a controlled substances test, regardless of the type, that they are using any controlled substance pursuant to the instructions of a license medical practitioner, and subsequently tests positive for any prohibited substance shall be terminated from employment unless he/she provides a copy of a prescription for such controlled substance, written by an authorized medical provider prior to the test, within a reasonable time frame after being notified of a positive test result. If such a prescription is provided in a timely fashion, the test shall be deemed negative.

No employee who is suspended for violation of this policy will be allowed to return to work until he/she has served his/her suspension, completed the SAP process, and passed a return-to duty test. If an employee has served the suspension, but has yet to complete the SAP process and passed the Return to Duty Test, he/she will be allowed to utilize his/her accrued leave balances, provided that he/she is actively engaged in the SAP process and in compliance with all SAP recommendations.

Substance Abuse Professional (SAP) Evaluation

Federal regulations require that any individual who has violated DOT Drug and Alcohol regulations cannot perform any DOT safety-sensitive functions for any DOT employer until and unless the employee has completed the Substance Abuse Professional evaluation, referral, education/treatment and the Return to Duty process required by the DOT. MassDOT shall provide employees with a list of qualified DOT SAPs acceptable to MassDOT. MassDOT will endeavor to qualify additional SAPs throughout the Commonwealth of Massachusetts.

Initial SAP Evaluation

The initial SAP evaluation shall include a comprehensive face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use. The Employer will not be responsible for any cost incurred for the SAP evaluation and any subsequent education and treatment. Employees may obtain an SAP evaluation through the MassDOT EAP at no cost to the employee. Such EAP SAP evaluation does not include any subsequent education and treatment.

Referral for Education and Treatment

The SAP is required to refer the employee to the appropriate education and treatment program. The Employer will not be responsible for any cost incurred for the SAP evaluation and any subsequent education and treatment. The employee must demonstrate successful compliance acceptable to the SAP prior to returning to a DOT safety-sensitive duty. MassDOT will continue paying its share of premium for any health insurance plan in place at the time of any positive test under this policy until such time as an employee subject to the SAP evaluation process has been returned to his former position or another position within MassDOT and the employee shall be responsible for paying his/her share of such premium. After serving any suspension imposed under this policy, the employee can apply available sick or vacation time provided he/she is actively treating in accordance with the recommendations of the SAP.

Return to Duty Evaluation

The SAP must conduct a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and treatment programs and has demonstrated successful compliance with the education and treatment referral. The SAP is required to forward all findings to the Designated Employer Representative (DER) or DAPM in a timely manner. Employees can determine the identity of the DEP or DAPM by consulting with their supervisor, Human Resources, or the MBTA Clinic.

Follow-Up Education/Treatment and Testing Plan

The SAP must provide the employee and the DER/DAPM with recommendations for continuing education and/or treatment, as well as a Follow-Up drug and/or alcohol testing plan. Federal DOT regulations require a minimum of six (6) unannounced observed Follow-Up tests in the first twelve (12) months following the employee's return to safety-sensitive functions. A greater number of observed tests may be required and may be extended for up to sixty (60) months following the resumption of safety-sensitive functions, at the discretion of the SAP. All Federally required Follow-Up tests will be performed under direct observation.

SECTION II

NON-DOT TESTS

Introduction

In addition to the federal DOT-mandated testing outlined in Section I, MassDOT, under its own authority, requires the tests contained in this section. Tests will be conducted as "non-DOT" tests but will be consistent with all the requirements of 49 CFR Part 40, except and to the extent that they may be specifically modified under this Section II of the policy. When an employee tests positive in violation of this policy, that employee must comply with all provisions of this policy. That employee also cannot work again until successfully completing all return to duty/ work requirements as directed by the SAP/EAP and as outlined in this policy, including resolving any discipline.

Applicability

Section II of the Policy shall apply to all full-time, part-time, seasonal, or temporary employees, including those subject to DOT testing under Section I of this Policy.

Prohibited Use of Alcohol

Employees are prohibited from engaging in the following:

- Consuming alcohol within four (4) hours prior to reporting to work;
- Consuming alcohol while being compensated on a stand-by basis;
- Reporting for, or remaining on duty while having an alcohol concentration of 0.02 or greater;
- Consuming or possessing alcohol while on duty, (including breaks) or on the Employer's premises or worksites;
- Consuming prescription or over-the-counter medication containing alcohol which individually or in combination could reasonably be expected to impair the employee's ability to perform his/her job.
- Consuming alcohol within eight (8) hours after an accident or until tested, whichever comes first.

MassDOT employees are prohibited from consuming alcohol, when there is a reasonable expectation that an employee will be required to report to work outside

of their normal work schedule and within fewer than four (4) hours from the time of consumption (e.g. anticipated snow and ice operations requiring their participation, scheduled overtime) Any MassDOT employee who is not expected to be available for overtime, yet is called for duty, shall have the opportunity to acknowledge the use of alcohol and the inability to perform his or her safety-sensitive function or high risk function. If the MassDOT employee has acknowledged the use of alcohol, but claims the ability to perform his/her safety-sensitive function or high risk function, that employee is required to take and pass an alcohol test prior to performing any safety-sensitive functions or high risk functions. This test will be administered only if there is sufficient time within the work schedule for that day to complete any and all work activities without additional expenditure to the Employer. If the work cannot be completed due to the delay in testing the employee will not be allowed to work and the next person on the on-call list shall be contacted and the process repeated.

No manager or supervisor having actual knowledge that an employee has misused alcohol in violation of this policy shall permit the employee to operate or continue to operate any motor vehicle or equipment. The employee shall be sent for a Reasonable Suspicion test under this section.

Drug Free Workplace

In addition to the DOT testing and Non-DOT Testing addressed below, MassDOT has established itself as a drug-free workplace in accordance with the provisions of the United State Drug-Free Workplace Act of 1988. MassDOT prohibits the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance by any employee while in the workplace. In this case, a controlled substance is defined as a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) for which an employee does not have a valid prescription from an authorized medical provider. Any employee who violates these prohibitions may be subject to discipline up to and including immediate termination from employment in accordance with this policy. Any employee who violates these prohibitions may be subject to discipline up to and including immediate termination from employment in accordance with this policy. Additionally, any employee who is convicted of a drug related violation within the workplace must report the conviction in writing to the employer within five (5) calendar days.

Controlled Substances Tested

The following substances will be tested under this section (See Appendix II for testing cutoff concentrations)

- Marijuana
- Cocaine
- Amphetamines
- Phenecyclidine (PCP)
- Expanded Opiates (Ex: Oxycodone, Oxymorphone)
- Benzodiazepines (Ex: Xanax, Valium,)
- Methadone
- Barbituates ("Ludes")
- Methaqualone
- Propoxphene

Testing Methods

The testing methods will be the same as the testing methods set forth in Section I of this policy.

Type of Tests

Pre-employment

MassDOT, under its own authority, requires that its candidates for employment successfully complete alcohol and controlled substances testing and a pre-employment physical as a condition of employment. Additionally, MassDOT under its own authority will also conduct pre-employment alcohol and controlled substances testing for any employee who wishes to transfer/promote/demote from a non-safety sensitive position into a safety sensitive position.

Random

Any employee in a high risk position or performing high risk functions shall be subject to random alcohol and/or drug testing. As used in this section, high risk positions include all of those positions that involve performance of work that by its nature poses a substantial and serious risk of harm to the employee or to others, or involves public safety or the safety of others, including without limitation work that involves:

a) use of hazardous tools or equipment or electrical work of any description;
b) work in confined spaces, or on equipment or structures at heights greater than three feet;
c) underwater work or the operation of a watercraft;
d) operation or maintenance of a moveable bridge;
f) application or use of pesticides or other dangerous chemicals;
g) administration of motor vehicle road tests;
h) work in or adjacent to live traffic lanes;
i) use of hoisting devices;
j) operation of a motor vehicle in the course of employment.

Probable Cause

Any employee who demonstrates probable cause suggesting that he/she has used a prohibited drug and/or engaged in alcohol misuse shall be subject to alcohol and/or drug testing. Probable cause is based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee that in combination reliably permit a fair likelihood that the employee is impaired from the use of a controlled substance or alcohol. The observations may include indications of chronic use and withdrawal effects of controlled substances. The required observations for Probable Cause testing shall be made a supervisor or MassDOT official who is trained in detection of the symptoms of possible drug use and/or alcohol misuse. This shall be conducted by two (2) supervisors when reasonably available. A written record shall be made of the observations leading to an alcohol or controlled substances probable cause test, and signed by the MassDOT supervisor or official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

Follow-Up

MassDOT will conduct Follow-Up drug and/or alcohol testing for any employee in accordance with a plan developed by SAP after a non-federal violation of this policy. The Follow-Up testing plan will require a minimum of six (6) tests the first twelve (12) months after the employee returns to work and may be extended at the direction of SAP.

Post-Accident

Any employee who has been involved in any on-duty motor vehicle or equipment accident, whenever probable cause exists, whether the employee is operating a MassDOT-owned/leased vehicle, or a personal vehicle in the course of performing their job duties shall be subject to alcohol and/or drug testing.

Return-to-Work

Any employee who has violated this policy shall be subject to return-to-work alcohol and/or controlled substances testing before the employee will be allowed to return to work. Return-to-Work tests shall be conducted consistent with the provisions of 49 CFR Part 40.

Sanctions for Violation of Policy

The following Sanctions apply to any violation(s) of this policy whether arising under Section I "DOT tests" or Section II "non DOT tests.

The number of offenses can be any combination of DOT tests conducted pursuant to Section I of this Policy and "Non-DOT" tests conducted pursuant to Section II of this Policy.

PENALTY	VIOLATION
5 Work Day Suspension, If the employee has no violation within the past 10 years	• alcohol test result of greater than .02 but less than .04; • positive marijuana test if the employee does not appear to be impaired
30 calendar day suspension	• first positive test for marijuana within ten years if the employee appears to be impaired • second alcohol test result of greater than .02 but less than .04 within ten years; •second positive marijuana test within 10 years with or without impartment • first alcohol test greater than .04 within 10 years • first positive test for any controlled substance other than marijuana within 10 years

PENALTY	VIOLATION
60 calendar day suspension	• third alcohol test result of greater than .02 but less than .04 if this test was within ten years of any prior policy violation; • second positive marijuana test if this test was within ten years of any prior policy violation if the employee appeared to be impaired and tested positive on the first test; • third positive marijuana test if this test was within 10 years of any prior policy violation; • second alcohol test greater than .04 if this test was within 10 years of any prior policy violation; • second positive test for any controlled substance other than marijuana if this test was within ten years of any prior policy violation
Termination	• fourth alcohol test result of greater than .02 but less than .04 if this test was within ten years of any prior policy violation; • third positive marijuana test if the employee appeared to be impaired and tested positive on the first test if this test was within ten years of any prior policy violation; • fourth positive marijuana test if this test was within 10 years of any prior policy violation; • third alcohol test greater than .04 if this test was within 10 years of any prior policy violation; • third positive test for any controlled substance other than marijuana if this test was within ten years

Post - Accident

Any employee who produces a positive test result on a controlled substances test or an alcohol test result greater than .02 on a post-accident test, shall be subject to discipline up to and including termination from employment.

Refusal to Test

Any employee who refuses to submit to either a controlled substances or alcohol test shall be terminated from their employment.

For purposes of this section, refusal to test shall be defined as follows:

(1) Fail to appear for any test (except an applicant pre-employment test) within a reasonable time, as determined by MassDOT after being notified of the test, absent documented and verifiable evidence that the failure was beyond the employee's control;

(2) Fail to remain at the collection site until the testing process is complete, (exception an applicant pre-employment test prior to the commencement of testing absent documented and verifiable evidence that the failure was beyond the employee's control;

(3) Fail to provide a urine specimen for any drug test required by this policy or federal regulations, (exception an applicant pre-employment test prior to the commencement of testing) absent documented and verifiable evidence that the failure was beyond the employee's control;

(4) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;

(5) Fail to permit the observation or monitoring of the specimen collection, as required for a directly observed or monitored collection;

(6) Fail to provide a sufficient amount of urine when directed and determination through a required medical evaluation, that there was no adequate medical explanation for the failure;

(7) Fail or declined to take a second test as directed by a collector or MassDOT/MBTA supervisory personnel;

(8) Failed to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, ~~or as directed by *the Employer*~~. In the case of a pre-employment drug test, the employee/applicant is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;

(9) Failed to cooperate with any part of the testing process (e.g., refused to empty pockets when so directed by the collector, behaved in a confrontational way that disrupted the collection process, fail to sign certification of Step 2 of the Alcohol Test Form);
(10) Is reported by the MRO as having a verified adulterated or substituted test result;
(11) Failed to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to check for any type of prosthetic or other device that could be used to interfere with the collection process during a directly observed collection;
(12) Possesses or wears a prosthetic or other device that could be used to interfere with the collection process;
(13) Admits to a collector or MRO that he or she has adulterated or substituted the specimen before submitting to the required testing.

Failure to Disclose Rx, OTC Medications

Any employee who fails to disclose to MassDOT, prior to submitting to a controlled substances test, regardless of the type, that they are using any controlled substance pursuant to the instructions of a license medical practitioner, and subsequently tests positive for any prohibited substance shall be terminated from employment unless he/she provides a copy of a prescription for such controlled substance, written by an authorized medical provider prior to the test, within a reasonable time frame after being notified of a positive test result. If such a prescription is provided in a timely fashion, the test shall be deemed negative.

No employee who is suspended for violation of this policy will be allowed to return to work until he/she has served his/her suspension, completed the SAP process, and passed a return-to duty test. If an employee has served the suspension, but has yet to complete the SAP process and passed the Return to Duty Test, he/she will be allowed to utilize his/her accrued leave balances, provided that he/she is actively engaged in the SAP process and in compliance with all SAP recommendations.

Substance Abuse Professional Evaluation

Any employee who tests positive on a "Non-DOT" test shall be subject to the substance abuse professional requirements set forth in Section I.

APPENDIX I

Department of Transportation Prohibited Drugs and Testing Cutoff Levels

Initial Test Analyte	Initial Test Cutoff Concentration	Confirmatory Test Analyte	Confirmatory Test Cutoff Concentration
Marijuana metabolites	50 ng/mL	THCA[1]	15 ng/mL.
Cocaine metabolites	150 ng/mL	Benzoylecgonine	100 ng/mL.
Opiate metabolites			
Codeine/Morphine[2]	2000 ng/mL	Codeine	2000 ng/mL
		Morphine	2000 ng/mL
6–Acetylmorphine	10 ng/mL	6–Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamines[3]			
AMP/MAMP[4]	500 ng/mL	Amphetamine	250 ng/mL.
		Methamphetamines[5]	250 ng/mL
MDMA[6]	500 ng/mL	MDMA	250 ng/mL.
		MDA[7]	250 ng/mL.
		MDEA[8]	250 ng/mL.

1 Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA).
2 Morphine is the target analyte for codeine/morphine testing.
3 Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff.
4 Methamphetamine is the target analyte for amphetamine/methamphetamine testing.
5 To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL.
6 Methylenedioxymethamphetamine (MDMA).
7 Methylenedioxyamphetamine (MDA).

8 Methylenedioxyethylamphetamine (MDEA).

APPENDIX II

MassDOT Prohibited Drugs and Testing Cutoff Levels

Initial Test Analyte	Initial Test Cutoff Concentration	Confirmatory Test Analyte	Confirmatory Test Cutoff Concentration
Marijuana metabolites	50 ng/mL	THCA1	15 ng/mL.
Cocaine metabolites	150 ng/mL	Benzoylecgonine	100 ng/mL.
Opiate metabolites			
Codeine/Morphine2	2000 ng/mL	Codeine	2000 ng/mL
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL
		Morphine	2000 ng/mL
		Hydromorphone	100ng/mL
		Hydrocodone	100ng/mL
Oxycodones			
Oxymorphone	100ng/mL	Oxymorphone	100ng/mL
Oxycodone	100ng/mL	Oxycodone	100ng/mL
Buprenorphine and or Metab	5ng/mL		
		Buprenorphine	2ng.mL
		Buprenorphine Metabolite	2ng.mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamines3			
AMP/MAMP4	500 ng/mL	Amphetamine	250 ng/mL.
		Methamphetamine5	250 ng/mL
MDMA6	500 ng/mL	MDMA	250 ng/mL.
		MDA7	250 ng/mL.
		MDEA8	250 ng/mL.
Methadone	*300* ng/mL		*200* ng/mL
Methaqualone	*300* ng/mL		*200* ng/mL
Propoxyphene	*300* ng/mL		*200* ng/mL
Barbiturates	*300* ng/mL		*200* ng/mL
Benzodiazepines	*300* ng/mL		*200* ng/mL

1 Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA).
2 Morphine is the target analyte for codeine/morphine testing.
3 Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff.
4 Methamphetamine is the target analyte for amphetamine/methamphetamine testing.
5 To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL.
6 Methylenedioxymethamphetamine (MDMA).
7 Methylenedioxyamphetamine (MDA).
8 Methylenedioxyethylamphetamine (MDEA).

EXHIBIT A

DEFINITION OF SAFETY SENSITIVE FUNCTIONS

Safety-sensitive functions shall include the following performed at any time from the time an employee subject to SECTION I – DOT TESTING begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work:

(1) All time spent at the driving controls of a commercial motor vehicle in operation;

(2) All time, other than driving time, in or upon any commercial motor;

(3) All time inspecting, servicing, or conditioning any commercial motor vehicle or part thereof at any time;

(4) All time at an employer or destination plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Employees who perform "safety sensitive functions" ARE referred to as "safety sensitive employees", and their jobs are sometimes referred to as "safety sensitive positions" in SECTION I – DOT TESTING.