

COLLECTIVE BARGAINING AGREEMENT
between
U.S. ENVIRONMENTAL PROTECTION AGENCY
and
THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

The effective date of this agreement is July 10, 2020.

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ARTICLE 1
RECOGNITION AND UNIT DESIGNATION

Section 1. Exclusive Representative

- A. The American Federation of Government Employees Council 238 (the Union) is the exclusive representative of all employees in the bargaining unit as defined in Section 2 of this Article. Pursuant to 5 U.S.C. Section 7114(a)(1), “[the Union] is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.”
- B. For all matters in which the Union is represented under this Agreement and under the federal labor Statute, the Agency is only obligated to deal with one Union representative for each matter. Within 15 days after the effective date of this Agreement, the Union will provide the Agency with a list of designed Union representatives, their contact information and the types of matter(s) for which they will serve as a Union representative. The Union may amend its list by providing written notice to the Agency, but only the Union Council President or designee for that specific purpose will be allowed to make such modifications. If a Union official claims to be a Union representative for a particular matter but is not on the list for that matter, the Agency will notify the Union President, but the Agency will have no duty under this Agreement or the Statute to recognize any individual as a Union representative who is not on the list.

Section 2. Definition of the Unit

The Union is the exclusive representative of employees in the units certified by the Federal Labor Relations Authority (FLRA) in case numbers 22-09130(UC)-001 (non-professional) and 22-09130(UC)-002 (professional), dated January 8, 1980, as amended and all subsequent FLRA certifications and clarifications.

- A. Exclusions: The following are excluded from the Union’s units of exclusive recognition:
 - (1) Management officials and supervisors;
 - (2) Confidential employees, as defined in 5 U.S.C. Section 7103;
 - (3) Employees engaged in personnel work in other than a purely clerical capacity;
 - (4) Employees engaged in administering the Federal Service Labor Management Relations Statute;
 - (5) Employees engaged in intelligence, counterintelligence, investigative or security work which directly affects national security;
 - (6) Employees primarily engaged in investigation or audit functions relating to the work of individuals, employed by the Agency whose duties directly affect the internal

security of the Agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity;

- (7) Employees of the Office of the Inspector General;
- (8) Experts and consultants;
- (9) Intermittent employees;
- (10) Employees hired under the summer employment program and employees under student appointments;
- (11) Employees appointed under fellowship programs;
- (12) Schedule C employees;
- (13) Commissioned officers of the United States Public Health Service;
- (14) Employees on temporary appointments of 90 days or less;
- (15) Other employees excluded by the Statute; and
- (16) Employees in positions that have been excluded under certifications and clarifications issued by the FLRA.

ARTICLE 2 OFFICIAL TIME

Section 1. Official Time

Consistent with the other Sections of this Article:

- A. Union representatives expressly designated by the Union are authorized official time under Section 7131(a) of the Federal Labor Statute for the purpose of negotiating a collective bargaining agreement, including attendance at impasse proceedings. The number of Union representatives for whom official time is authorized shall not exceed the number of individuals designated as representing the Agency for these purposes.
- B. Union representatives are additionally entitled to official time under Section 7131 (c) of the Statute authorizing official time in any phase of proceedings before the Federal Labor Relations Authority.
- C. Bargaining unit employees expressly designated by the union shall be allowed official time as union representatives in accordance with applicable law, rules and regulations. All official time will be used when an employee would otherwise be in duty status. Official time shall be granted in amounts that the Agency and Union agree to be reasonable and necessary and in the public interest.

Section 2. Prohibited Activities on Official Time

- A. Union representatives will not engage in lobbying activities during paid time. Any activities related to internal union business will occur in a non-duty status.
- B. Official time will not be used by Union representatives to prepare or pursue grievances (including arbitration of grievances) brought against the Agency under the negotiated (or administrative) grievance procedure. This provision does not include official time used by employees to act on their own behalf or to appear as a witness in any grievance proceeding.
- C. Official time is not authorized for Union representatives to prepare or pursue cases before the Equal Employment Opportunity Commission or the Merit System Protection Board.

Section 3. Limitations on the Amount of Official Time

- A. Union representatives will spend at least three-quarters (75 percent) of their paid time, each fiscal year (FY), performing Agency business. Agency business includes necessary job-related training. Any Union representatives on 100% official time at the time this Agreement is effective are to return to their position of record. Immediately upon implementation, or earlier, these representatives shall contact their immediate supervisor and/or Human Resources to arrange to discuss their position, expected duties, and any appropriate and necessary training to return the employee to duty.

- B. Official time exceeding one-quarter of the union representative's time in a FY will be counted towards official time for the subsequent FY. For the FY in which this agreement is implemented, this will be applied from the effective date of this Agreement to September 30.

Section 4. Union Time Rate

- A. Union time rate (UTR) means the total amount of duty hours (official time) in the fiscal year that employees in a bargaining unit used. The total Union time rate shall not exceed one hour per year for each bargaining unit employee in the bargaining unit.
- B. The Agency is responsible for tracking a union time rate. The Agency will use the number of bargaining unit employees in the AFGE consolidated bargaining unit identified on the payroll as of October 1 of each FY, and will share this number with Council 238 by October 31 of each FY. The UTR for each FY is to be at one or below each FY for the AFGE consolidated unit, unless an overage is the result of matters covered under 5 U.S.C. Section 7131(a).

Section 5. Misuse of Official Time

- A. Union representatives will not use official time without advance written authorization or for purposes not specifically authorized in this Article. Union representatives who use official time without advance written authorization or for purposes not specifically authorized in this Article will be considered absent without leave and subject to appropriate disciplinary action.

Section 6. Requests for Official Time

- A. Union representatives must request official time in advance using the Agency's Official Time Request form/system, filling in all of the information indicated. Official Time Requests will not be unreasonably denied.
 - (1) In order to be approved, requests for official time for Council 238 must be routed to the Office of Mission Support (OMS)-Labor and Employee Relations Division (LERD) and to the employee's immediate supervisor.
 - (2) Requests for official time for local unions, within Council 238, must be routed to the local designated authorizing official and to the employee's immediate supervisor. If no such designated authorizing official is identified, the local human resources officer shall be considered the authorizing official.
 - (3) Requests must be made sufficiently in advance and with sufficient detail to allow an assessment as to whether the time requested is reasonable and necessary to grant such time to accomplish such task(s). The authorizing official will act on a request within a reasonable time. The authorizing official will also timely notify the union representative and the first-level supervisor of all approved and denied requests.

(4) For continuing or ongoing requests, renewals must be submitted no less than once per pay period.

(5) Supervisors, designated authorizing officials, OMS-LERD representatives, field LER specialists, Human Resources Officers (HROs) and other designated management officials may delegate their approving authority.

B. The designated Official Time Request form or system is also to be used following the use of official time to accurately account for the time, filling in all of the information indicated.

The Agency may develop and implement other procedures and/or mechanisms for requesting and tracking in the future, such as utilizing PeoplePlus or a successor system.

C. The Union will be provided on a bi-weekly basis, reports that will include, at a minimum, the employee name, location, amount of official time used, the date of its use, the purpose of the use of such time, and the approving officials.

Section 7. Union Orientation

A. The Union will be afforded the opportunity to participate in the orientation process for bargaining unit employees, consistent with Article 6.

Section 8. Union Communication

A. The Union shall have the right to communicate with bargaining unit(s) employees consistent with Article 6.

ARTICLE 3 UNION RIGHTS

Section 1. Bargaining unit employees, including employees serving as Union representatives, have the following rights pursuant to 5 U.S.C. Section 7102:

“Section 7102. Employees’ rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right--

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

to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.”

Section 2. The Agency will not interfere with, restrain, or coerce any employees in the legitimate exercise of their rights as designated representatives of the Union. Within the confines of laws, rules and this Agreement, the Union has the right to designate representatives of its own choosing, including non-employees. Non-employee Union representatives have the right to attend all meetings that an employee Union representative has the right to attend. Union representatives who are not employees of the Agency will be allowed access to Agency managed facilities in the same manner as other official visitors.

Section 3. Upon request from the Union, the Agency will provide any non-employee Union representative information from the Agency intranet.

Section 4. Consistent with current FLRA standards, the Agency will furnish to the Union, or its authorized representatives, upon request, and to the extent not prohibited by law, data concerning the Bargaining Unit(s) which:

- A. Is normally maintained by the agency in the regular course of business;
- B. Is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
- C. Does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
- D. Information requested will be provided within a reasonable time.

Through mutual agreement, the Agency and Union may agree to provide data not covered above.

Section 5. Pursuant to 5 U.S.C. 7114(a)(1):

“(a)(1) ... An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.”

Section 6. Formal Discussions

- A. The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.
- B. The Agency will give reasonable notice to the union of formal discussions. Reasonable notice will mean that the notice is normally provided 48 hours prior to the meeting, but for meetings that are urgent or unexpected, notice will be given as soon as practicable.

Section 7. Weingarten Rights

The Union shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the agency in connection with an investigation if: the employee reasonably believes that the examination may result in disciplinary action against the employee; and the employee requests representation.

The Agency shall annually inform its employees of their Weingarten rights.

Section 8. The Union will be afforded the opportunity to participate in the orientation process for bargaining unit employees. Due to the differences in numbers of employees, size and physical locations at various facilities, the local parties are authorized to make local arrangements.

ARTICLE 4 EMPLOYEE RIGHTS

Section 1. General

All agency employees shall be treated with mutual respect, which means a workplace free of discriminatory harassment. The Agency will comply with all laws and Government-wide regulations prohibiting discrimination against employees on the basis of race, color, religion, national origin, sex, union activity, political affiliation, marital status, age, sexual orientation, a qualified person with a disability and genetic information. EPA also will not tolerate harassment of any type. Assignment of work by a supervisor, a difference of opinion, a disagreement on a work-related matter, or any other similar communication that is expressed in a professional manner, are not considered harassment. The Agency will comply with the Privacy Act of 1974. The Agency will comply with employees' rights under the United States Constitution. The Agency will consider impacts on employee morale, as it exercises its right to ensure that its mission is accomplished in an effective and efficient manner.

Section 2. Right to Union Membership

Pursuant to 5 U.S.C. Section 7102:

“Section 7102 Employee rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right--

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

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.”

Employees temporarily assigned to a managerial or supervisory position or a position outside the bargaining unit may not serve as a Union representative and are temporarily outside of the bargaining unit.

Section 3. Right to Private Lives

Employees shall have the right to pursue their private lives, personal welfare and personal beliefs without interference, coercion or discrimination by the Agency if those activities do not conflict with any applicable law, Government-wide regulations, and Agency rules, regulations, policies, directives, guidance and manuals; and if such activities do not conflict with job responsibilities. Prior to making changes to Agency rules, policies, directives, guidance and manuals which constitute negotiable changes in conditions of employment under 5 USC 7103(a)(14) the Agency will provide notice to the Union and negotiate per the Mid Term Negotiations Article of this Agreement (Article 18).

Section 4. Merit Systems Principles

As required by 5 U.S.C. 2301(b) (1) through (9), the Agency's personnel management program will be implemented consistent with the following merit system principles *quoted verbatim*:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be—

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Section 5. Prohibited Personnel Practices

The following personnel practices are prohibited pursuant to 5 U.S.C. 2302(b)(1) through (14) and are *quoted verbatim*:

- (1) *discriminate for or against any employee or applicant for employment—*
 - (A) *on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);*
 - (B) *on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);*
 - (C) *on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));*
 - (D) *on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or*
 - (E) *on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;*

- (2) *solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—*
 - (A) *an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or*
 - (B) *an evaluation of the character, loyalty, or suitability of such individual;*

- (3) *coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;*

- (4) *deceive or willfully obstruct any person with respect to such person’s right to compete for employment;*

- (5) *influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;*

- (6) *grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;*

- (7) *appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section*

3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) any violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs;
or

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

(i) any violation (other than a violation of this section) of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—

(i) with regard to remedying a violation of paragraph (8); or

(ii) other than with regard to remedying a violation of paragraph (8);

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A)(i) or (ii);

(C) cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) refusing to obey an order that would require the individual to violate a law, rule, or regulation;

(10). discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;

(11) (A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;

(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title;

(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling." ; or

(14) access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13). This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

Section 6. Additional Principles

The Union and the Agency further agree to the following principles:

- A. Assign Work and Direct Employees: This Agreement is not to be interpreted or applied by the Union or by an arbitrator to prevent, limit or interfere with management's reserved right to assign work, including determining the method and manner to assign work and direct employees, except as provided by 5 USC 7106(b)(2) and (3).
- B. Working Conditions: This Agreement is not to be interpreted or applied by the Union or by an arbitrator to prevent, limit or interfere with management's reserved right to

determine the day-to-day circumstances under which an employee *performs his or her job*.

- C. Service of a Warrant or Subpoena: If an employee is to be served with a warrant or subpoena, to the extent it is within the Agency's control, the service will be done in private without the knowledge of other employees.
- D. Supervisory Instructions and Orders: Employees are expected to follow all lawful supervisory instructions and orders. The employee may discuss an instruction or order with the employee's supervisor to address conflicting instructions, questions or concerns. The employee is not excused from timely following the instruction or order unless otherwise directed to do so by the supervisor. In the case of an emergency or inability to communicate with the supervisor, the employee is expected to act with appropriate prudence and responsibility.
- E. Personal Belongings and Agency Equipment: The Agency is not responsible for personal belongings brought to the workplace by an employee. Employee's personal belongings may not be searched without reasonable suspicion and notice. All furniture and equipment furnished by the Agency for an employee's use in carrying out the employee's duties is the property of the Federal government and may be: (1) recalled by the Agency at any time without notice; and (2) may be searched by the Agency at any time without notice.
- F. Resign/Retire: An employee may resign or retire at any time, to set the effective date of his/her resignation or retirement, and to have his/her reasons for resigning/retiring entered in his/her official records. An employee may request to withdraw his/her resignation/retirement at any time before it has become effective. The Agency may accept or deny an employee request to withdraw a resignation/retirement before its effective date. An employee will be informed of the reason(s) when a request to withdraw a resignation/retirement is denied. Reasons to deny a request include, but are not limited to, administrative disruption, the hiring or plans to hire a replacement, the acceptance of a VERA/VISP signified by submitting retirement forms to HR, and the presence of an executed settlement agreement.
- G. Methods to Evaluate Employees: This Agreement is not to be interpreted or applied by the Union or by an arbitrator to prevent, limit or interfere with management's reserved right to determine the methods it will use to evaluate employees.
- H. The Agency will make every reasonable effort to continue to provide for the secure storage of personal belongings. When new furniture is installed, the furniture will contain lockable, secure space for storage of personal belongings.
- I. No Recording Protected Union Activity: No recording will be made without mutual consent by the Agency or by the Union or by a unit employee of any conversation involving 5 U.S.C. 7102 protected Union activity.

- J. Recording Other Conversations: No recording will be made without mutual consent by the Agency or by the Union or by a unit employee of any conversation involving any management official involving work related matters, except for Inspector General Investigations, or other law enforcement investigations conducted by the Agency or agencies outside of the Agency. When a transcript is made from a recording, except for Inspector General Investigations, or other law enforcement investigations conducted by the Agency or agencies outside of the Agency, the employee will be given the opportunity to review the transcript for accuracy and the employee will be provided a copy of both the tape and the transcript if any. Information obtained in conflict with this section will not be used as evidence against any employee. This provision does not apply to the video taping of training sessions.

- K. Outside Employment: Employees may work at outside employment only when consistent with applicable law, Government-wide regulations, and Agency rules, regulations, policies, directives, guidance and manuals; and if such activities do not conflict with job responsibilities, and do not raise a real or an apparent conflict of interest. Prior to making changes to Agency rules, policies, directives, guidance and manuals which constitute negotiable changes in conditions of employment under 5 USC 7103(a)(14) the Agency will provide notice to the Union and negotiate per the Mid Term Negotiations Article of this Agreement (Article 18). When Agency approval of outside employment is required, the Agency agrees to approve or disapprove an employee's written request to engage in outside employment within a reasonable timeframe. The Ethics Officer or designee will respond in writing and if the request is denied, the reason for the doing so will be included.

Section 7. Right to Obtain Information

- A. Right to Voice Concerns: An employee may discuss a condition of employment or potential grievance with a Union representative per the procedure in Article 19.

- B. Work Related or Personnel Related Issues: An employee may discuss work related or personnel related issues with the Union, their supervisor the Human Resources Office, the Equal Employment Opportunity Office, and the Payroll Office.

Section 8. Right to Representation

In matters under the negotiated grievance procedure in Article 19, an employee may only be represented by him/her self or by a Union representative. Except as provided by this Agreement and applicable law, Government-wide regulations, and Agency rules, regulations, policies, directives, guidance and manuals, an employee is not entitled to be represented in conversation with any Agency official concerning work-related or personnel related matters. This Section does not prohibit Union representation in matters where all parties agree to such involvement.

Section 9. Right of Access to Documentation

The Agency will maintain and utilize records covered by the Privacy Act of 1974 in accordance with that law. Employees may review and/or copy the records and/or make comments and recommendations on corrections with regard to the records maintained under the Privacy Act of 1974 as provided for in that law. As workload permits, employees shall be granted a reasonable amount of duty time to perform these activities during their regular work hours.

Section 10. Participation in Voluntary Activities

Employees have the right to participate or decline to participate in voluntary activities publicized by the Agency. The Agency will not require or coerce employees to participate in any way in voluntary activities. Employee participation or non-participation in any of voluntary activities will not be a consideration in any work related or personnel related matter.

Section 11. Right to Debt Collection

The Agency will comply with: 5 C.F.R. Part 581 regarding Processing Garnishment Orders for Child Support and/or Alimony, and 5 C.F.R. Part 582 regarding Commercial Garnishment. The Agency agrees to hold in confidence all matters related to this Section. Notice to employees regarding debts will be sent in accordance with applicable law and regulation.

Section 12. Right to Proper Payment

The Agency will comply with applicable Government-wide regulations, including 5 C.F.R. 5584 and Agency regulations and policies regarding: the delivery of employee pay; overpayments; waiver of overpayment and underpayments. When an employee becomes aware of an overpayment, it is the responsibility of that employee to notify the Agency of the overpayment immediately. If an employee notifies the Agency that they have been overpaid, the Agency will explain to the affected employee the circumstances of the overpayment and will explain the process for completing a Request for Waiver of Claim for Erroneous Payment.

Section 13. Right to Notice of Benefits

- A. Notices: The Agency will notify employees using electronic messaging systems designed to send individual notification regarding OPM announcements of the following events:
- (1) Open season for the Thrift Savings Plan;
 - (2) Open season for Federal Employee Health Benefits (FEHB);
 - (3) How to obtain copies of FEHB provider brochures;
 - (4) Discontinued service by an FEHB provider;
 - (5) Open season for Federal Group Life Insurance.

B. FEHB and Non-Pay Status: The Agency will comply with applicable law and Government-wide regulations regarding the coverage under the FEHB when an employee is on a non-pay status.

ARTICLE 5 DUES DEDUCTIONS

Section 1. Eligibility

To be eligible to make a voluntary Union dues allotment, an employee must:

- A. Be an employee in the unit covered by this Agreement;
- B. Be a member in good standing with the Union;
- C. Have a net salary, after other legal and required deductions, sufficient to cover the amount of authorized allotments; and
- D. Submit an SF-1187, Request and Payroll Deduction for Labor Organization Dues, to a designated Union representative.

Section 2. Withholding

As authorized by Title 5 United States Code (U.S.C.) § 7115, employees may have their Union dues withheld through payroll deductions as governed by this Article.

Section 3. Dues Withholding

The Agency's payroll/HR system provider allows for electronic distribution of an employee's allotment to AFGE National (Washington D.C.) the amounts may vary from local to local as well as within a local.

Section 4. Responsibilities of the Union

The Union shall:

- A. Regular Dues: Submit SF-1187 allotment for only those dues which are the regular and periodic dues required by the Union for that employee; Initiation fees, special assessments, back dues, fines, and similar items are not considered dues and shall not be deducted;
- B. Forms: Provide forms SF-1187, Request and Payroll Deduction for Labor Organization Dues, to employees;
- C. SF-1187: State on the SF-1187 the allotment amount to be withheld each bi-weekly pay period;
- D. SF-1187's: Promptly sign and forward properly completed SF-1187 forms to the Human Resources Office for submission to the payroll office;
- E. Authorized Union Officials: Furnish a written statement to the Agency's payroll office, listing the names and titles of local Union officials authorized to sign the form SF-1187;

- F. Notice to Agency of Changes: Provide the Agency's payroll office, via the Human Resources Office, with written notification concerning:
- (1) Changes in the amount of Union allotments at least 60 days before the pay period in which the change is requested. The amount of dues withheld cannot be changed more than once per year.
 - (2) Changes in the Union officials who are authorized to certify and submit SF-1187.
 - (3) Any change in the bank routing number and/or account number used by the Union for the receipt of dues allotments.
 - (4) The name of any employee who has been expelled or ceased to be a member in good standing with the Union within 15 calendar days of the date of final determination.

Section 5. Agency Responsibilities

The Agency agrees to:

- A. Withhold dues on a bi-weekly basis, at no charge to the Union;
- B. Within ten (10) days of the close of each pay period, transmit employee dues withholdings to the bank account designated by the Union.
- C. Promptly forward to the designated Union officials copies of SF-1188s received directly from Union members before processing;
- D. The Agency will neither encourage nor discourage union membership; it will not interfere with employees' right to pay, withhold or revoke union dues

Section 6. Processing Steps to Effect Allotment Withholding

Bargaining unit members, who decide to join the Union, may have their dues, fees and assessments, known collectively as allotments, withheld by payroll deduction by properly completing a form SF-1187 and submitting it to officials designated by the Union. These Union officials will certify the form and include the amount of allotment to be withheld. The Union will forward the certified form SF-1187 to the Agency Human Resources Office for transmittal to the payroll office for processing. Allotments will be withheld by the Agency beginning the first bi-weekly pay period after receipt by the payroll office.

Section 7. Revocation of Allotments

- A. As required by 5 U.S.C. § 7115(a), employees may not revoke their dues withholding for at least one (1) year after the first deduction.
- B. Employees may submit to the Human Resources Office a SF-1188, "Cancellation of

Payroll Deductions For Labor Organization Dues" to cancel dues at any time after their first anniversary date.

- C. "Anniversary date" means the documented date of the first deduction of union dues via payroll deduction. For individuals who were members prior to the effective date of this Agreement, and evidence of an anniversary date was not in the Agency's records, the "anniversary date" is September 18th.
- D. If the employee believes the anniversary date of record is in error and they have such evidence (i.e. earnings and leave statement, etc.), they should attach it to any SF 1188 submitted to the Human Resource Office.

Section 8. Reinstatement of Allotment Withholding

- A. When the employee is temporarily detailed, reassigned or promoted to a position outside the bargaining unit, the Union allotment withholding will restart automatically when the employee returns to their position in the bargaining unit.
- B. When an employee previously on dues allotment returns to pay status from non-pay status, the Agency will automatically reinstate the allotment withholding at the rate in effect at the time the employee returns to pay status. The Agency is not normally responsible for additional dues withholding when/if an employee returns from a non-pay status. The only exception is in the case of a furlough where employees later receive backpay. In that case, the Agency will calculate and retroactively collect any Union dues which would have been paid during the furlough period.

Section 9. Correction of Errors

- A. Under-Withholding - Any substantiated under-withholding errors made by the Agency shall be corrected as soon as practical after the error is discovered by the Agency or after the Agency has received a written notification from the Union's designated representative of the error.
- B. Correcting Under-Withholding - If an under-withholding occurs, the Agency will provide the employee with a written explanation that indicates the additional amount to be withheld each pay period and paid to the Union and the number of pay periods over which the additional amount will be withheld to correct the error.
- C. Over-Withholding - If the Agency, through an administrative error, does not process an approved SF-1188 timely (or otherwise over-collects from the employee), and the Union collects more dues than is authorized, the Union will be responsible for re-payment of the over-collected amount to the employee.

Section 10. Continuation of Existing Agreements-

Employees who have a current dues withholding agreement in effect on the date this Agreement is effective need not execute a new SF 1187 to come under the provisions of this Agreement.

ARTICLE 6 USE OF AGENCY FACILITIES

The purpose of this Article is to provide reasonable facilities to assist the Union in carrying out its legitimate activities as the exclusive representative of the EPA bargaining unit employees covered by the Agreement.

Section 1. Permitted Use of Agency Resources

The Union may make use of the following Agency facilities, services and equipment during non-duty time or during pre-approved official time for union-related activities as specified, and in accordance with applicable Agency policy governing the use of those facilities, services, and equipment as long as such use does not interfere with official Agency business and subject to the availability of funds:

- A. Reasonable use of meeting/conference rooms on a space-available basis;
To reserve a conference room, a Union representative shall follow local procedures.
- B. Reasonable use of scanner, copiers, fax, computers, telephone service and equipment, and bulletin boards;
- C. Reasonable use of Agency internal mail services and electronic mail to Bargaining Unit Employees to communicate announcements, newsletters, educational materials, and other information related to the Union's role as the exclusive representative of Bargaining Unit Employees; and,
- D. An Agency intranet page providing national and local Union officials' contact information and the current Collective Bargaining Agreement as well as one or more electronic links to external Union-hosted websites. All content submitted for posting will be reviewed and approved/disapproved by Agency management.
- E. In each Agency location with an AFGE Local, the Union may use one (1) lockable file cabinet, or small closet, for storage only. This storage cabinet or closet will be provided at no additional cost to the Agency, in otherwise unused Agency space.

Section 2. Other Use of Agency Resources

- A. Except as provided in Section 1. E. of this Article, the Agency will not provide resources for the exclusive use of the Union, to include offices, conference rooms, computers, printers, scanners, mobile devices, office supplies, etc.
- B. To further clarify the appropriate use of Agency resources, the following are examples of practices that are prohibited:
 - (1) Mass mailings (paper or email using Agency-maintained email lists), and mass copying (paper or email using Agency-maintained email lists), without prior explicit approval from management.

- (2) Using Agency mail, fax, or electronic mail for solicitation of membership, electioneering or campaigning for office, debating internal Union policy or organizational matters, or other similar activities.
- (3) Using Agency facilities, services, and equipment to support, promote or report on any partisan political activity.

ARTICLE 7
ALCOHOL AND DRUG-FREE WORKPLACE

Section 1. Purpose

The Agency will administer its Alcohol and Drug-free Workplace program in cooperation with the Union in accordance with this Agreement and all applicable laws, regulations, and rules including Executive Order 12564 dated 9/15/1986, EPA Order 3120.3A dated 3/18/1980, and US EPA Drug-free Workplace Plan (1000) dated 1/16/1998.

Section 2. Agency Responsibilities

It is the responsibility of EPA Management to take disciplinary and/or adverse action when the use of alcoholic beverages and/or drugs impairs an employee's performance, attendance or conduct, when an employee uses federally illegal drugs on or off duty, or when an employee possesses federally illegal drugs on duty or in a federal facility.

Disciplinary action is not required if an employee:

- A. Voluntarily admits his/her drug use before being:
 - (1) identified by other means, or
 - (2) notified to report for a drug test; and
- B. Thereafter, obtains counseling or rehabilitation through EAP or other approved health care provider; and
- C. Thereafter refrains from illegal drug use. To ensure that such employees do refrain from illegal drug use they will be subject to testing on a more frequent basis as stipulated in §X(C) of the US EPA Drug-Free Workplace Plan dated 1/16/98.

It is the responsibility of the Agency to refer any employee who is found to use federally illegal drugs to an Employee Assistance Program for assessment, counselling, and referral for treatment or rehabilitation as appropriate.

EPA shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, prior to successful completion of rehabilitation through the Employee Assistance Program or other approved rehabilitation program. However, as part of a rehabilitation or counselling program, the head of an Executive agency may, in his or her discretion, allow an employee to return to duty in a sensitive position if it is determined that this action would not pose a danger to public health or safety or the national security.

Section 3. Employee Responsibilities

As a condition of continued employment, employees must refrain from the use of federally

illegal drugs, on or off duty, and the possession of federally illegal drugs on duty or in a federal facility. Employees must refrain from the use of alcohol while in a duty status, and/or being under the influence of alcohol while in a duty status. The only exception to this standard is when alcohol consumption is approved by management at an agency-sanctioned event.

Employees who suspect that they have a drug or alcohol problem are encouraged to voluntarily seek information and counselling through the Agency EAP or other approved health care provider on a confidential basis at the earliest opportunity. It is agreed that employees will not be subject to discipline for self-reporting as set forth in Section 2a – c above, unless there has been other misconduct for which discipline would normally be appropriate. An employee's cooperation of availing himself or herself of professional health care assistance may be considered by the Agency when proposing or deciding disciplinary action related to the conduct or performance of the employee due to the use of drugs and/or alcohol.

Section 4. Random Testing of Employees in a Testing-Designated Position

- A. The Agency will designate positions subject to random drug testing referred to as Testing-Designated Positions (TDP). If an employee's position is changed to a TDP, the employee will be notified in writing at least 30-days prior to the change. Such notices will include at a minimum:
 - (1) That the employee is subject to mandatory random testing;
 - (2) The consequences of a positive result or refusal to cooperate, including adverse action;
 - (3) That after any confirmed positive drug test there will be an opportunity for them to submit supplemental medical documentation to support the legitimate use of a specific drug;
 - (4) That drug and alcohol abuse counseling and referral services are available through the employee Assistance Program (EAP). The employee can seek counseling and or treatment voluntarily prior to testing without reprisal. The notice will contain information on how to contact the EAP.
- B. Bargaining unit employees selected for random testing will be selected randomly on the basis of neutral criteria. The basic required random testing program shall not be used to single out any individual employee or group of employees for increased frequency of testing.
- C. An employee who is selected to report for random drug testing shall be notified orally two (2) hours prior to the time he/she is to report. Whenever possible, this oral notification will be confirmed promptly by electronic mail. Oral notification will be made as discretely as possible. The employee will be provided the following information at a minimum:
 - D. That he/she was randomly selected and is not under suspicion of taking illegal drugs;

- (1) Where and when to report for testing;
- (2) The consequences of refusing to report for testing, including possible removal;
- (3) The employee will be required to sign in at the collection site and provide a picture identification.

Section 5. Reasonable Suspicion Testing

- A. Reasonable suspicion testing may be required of:
- (1) Any employee in a testing designated position (TDP) when there is reasonable suspicion that the employee uses federally illegal drugs, whether on or off duty, or
 - (2) Any employee in any position when there is reasonable suspicion of on duty use or on duty impairment.
- B. Prior to directing an employee to testing based on a reasonable suspicion that the employee uses federally illegal drugs, the supervisor ordering such testing will receive concurrence from a higher level official or authorized management official. A written statement will be prepared that will document the concurrence and articulate the reasons for testing.

Section 6. Methods and Procedures for Testing

- A. All drug testing will be conducted in accordance with the HHS scientific and technical guidelines. The methods and equipment used will meet the requirements set forth in the guidelines. The Agency agrees that the following procedure will be utilized to assure drug testing is reliable:
- (1) Affected employees will report to the designated location to be tested;
 - (2) Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided;
 - (3) Laboratory analysis will comply with the HHS technical guidelines in effect at the time of testing;
 - (4) If sufficient volume of urine is not initially able to be provided the Agency will ensure that collection site personnel allow the employee a reasonable amount of time to produce a sufficient volume;
 - (5) The collection, handling and transportation of all specimens will be in accordance with the HHS chain of custody procedures;

- (6) An authorized agent will collect all drug testing specimens.

Section 7. Confidentiality and Safeguarding Information

- A. All samples will be subject to a strict chain of custody in accordance with the HHS technical guidelines.
- B. Employees will be guaranteed confidentiality in all matters relating to drug and alcohol testing as set in Sections XII.A and C of the US EPA Drug-Free Workplace Plan dated 1/16/98.
- C. Employees will be given access to all records relating to his/her drug and/or alcohol test.

Section 8. Counseling and Rehabilitation

- A. Employees whose tests have been confirmed positive will be referred to the Employee Assistance Program, which provides counseling services at no cost to the employee.
- B. When feasible, the services of the EAP will be offered at no cost to family members of employees with substance abuse problems and offered to employees who have family members with substance abuse problems.

ARTICLE 8 HEALTH AND SAFETY

Section 1. It is recognized that the health and safety of the employees is a mutual concern of the Agency and the Union.

- A. The Agency shall furnish to each employee a place of employment which is free from recognized hazards and provide a working environment consistent with appropriate health and safety standards and controlling laws.
- B. To ensure the greatest possible protection for employees in the workplace, Personal Protective Equipment (PPE) shall be provided, maintained, and replaced by the Agency at no-cost to the employee. PPE shall be provided to employees whenever such equipment is determined to be required by a hazard assessment conducted in the workplace through a comprehensive safety and health program, and for protections against exposures to occupational hazards and risks, hazardous chemicals, biologicals or radiologicals which could cause illness or injury, as defined under OSHA, HHS, NRC and other applicable regulations. The Agency shall provide training as appropriate on the use and care of the PPE, maintaining PPE, and periodically evaluate the effectiveness of the PPE program.

Section 2. Employees

- A. Shall comply with OSHA, EPA Occupational Safety and Health Standards, rules, regulations, Orders, and all other applicable Safety and Health regulations
- B. Are responsible to properly wear and use agency provided personal protective equipment (PPE) and other health and safety devices, attend PPE and safety training sessions, provide the proper care and routine cleaning to help maintain the PPE, and inform a supervisor of the need to repair or replace PPE.
- C. Shall follow the procedures, provided or as directed, necessary for their protection;
- D. Shall promptly report any work-related accidents, illnesses and near-misses to management; and
- E. May decline to perform assigned tasks because of reasonable belief that under the circumstances the task poses an imminent risk of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. Such imminent risk may be caused by failure of the employer to provide appropriate protective clothing or equipment.

Section 3. The Agency will take all reports of accidents, illnesses and near misses seriously. All such reports will be kept confidential as much as possible; and the Agency will

not retaliate against employees for reporting safety and health issues.

Section 4. Employees may voluntarily participate in immunization programs when EPA provides or offers such services to employees.

Section 5. The Agency agrees to provide the names and contact information for the Safety, Health and Environmental Management (SHEM) program coordinator at the applicable location and other officials having responsibilities in the Safety and Health program upon request.

Section 6. The Agency agrees upon request to grant the Union access to any Safety Data Sheets (SDS) maintained or prepared by the Agency for chemicals to which bargaining unit employees may be exposed. The Agency agrees to implement the OSHA Hazard Communication Standard.

Section 7. When a formal health and safety inspection is conducted by the Agency or Agency contractors on the Agency's premises, the Union will be notified in advance and, upon request, permitted to accompany the inspection team. This does not include routine inspections done by Facility personnel. For inspections from organizations outside the Agency, the Union will be notified as soon as practicable and permitted to accompany the outside inspection team. Safety precautions will be followed during inspections.

In responding to a specific health and safety concern, e.g., a bed-bug inspection after a report of bed-bugs or a mold inspection after a water leak, the Union will be notified in advance and, upon request, will be provided a briefing on the results of the inspection.

Section 8. When the Agency cannot provide a work space consistent with Section 1.A above, it will make alternative arrangements which may include temporary relocation of employees or telework.

Section 9. Where Union representatives formally join a Field Federal Safety Council, they can request official time to attend and participate in Council meetings during duty hours.

Section 10. It is understood that some employees may be required to undergo an Occupational Medical Surveillance Program (OMSP) examination.

Section 11. The Employer will conduct its Workers' Compensation program according to the requirements of Federal Employees' Compensation Act (FECA) as amended (5 U.S.C. 8101) and Title 20 C.F.R. Employees should report any work-related injury, illness, disease or death immediately to the Agency. These incidents should be reported to management, the local Safety and Health Manager and the Worker's Compensation Program Manager/Worker's Compensation Coordinator. The Employer will assist employees in applying for reimbursement from the Office of Workers Compensation Program (OWCP) for all expenses incurred in obtaining medical treatment, although the responsibility for filing all claims with the Employer resides with the employee.

Section 12. The Agency will notify the Union when indoor air quality testing is being conducted. The Agency shall provide a report to the Union on the testing results and the quality

of air in agency work spaces where bargaining unit employees are located, upon request.

Section 13. Where available under existing public health or wellness programs, the Agency may offer the opportunity for employees not covered by the Occupational Medical Surveillance Program to participate in general physical examinations.

Section 14. Safety and Health Committees

- A. A safety and health committee will be established at the national level. Safety and health committees will also be established at the local levels. These committees shall make recommendations to the appropriate authorities with regard to EPA occupational safety and health, in accordance with 29 C.F.R. Part 1960, Subpart F. Union officials can request official time to attend and participate in Safety and Health Committee activities and meetings.
- B. Each Safety and Health Committee will have at least one (1) Union representative appointed by the Union.
- C. The Parties agree that all confidential information will be protected and treated accordingly. It is understood that such committees are advisory bodies to management on health and safety issues. Union representatives on safety committees shall receive the same training opportunities that other committee members receive as a result of their membership on the committee.

Section 15. Upon request, pursuant to 5 USC 7114 (b)(4), the Agency must provide the Union a copy of testing results and all reports of Safety and Health inspections, accidents, indoor air quality, and occupational illnesses, unless prohibited by the Privacy Act or other applicable law. Any information given to the Union may be further sanitized or redacted by mutual agreement.

ARTICLE 9 LEAVE

Section 1. General Provisions

This Article shall be administered in accordance with Title 5, United States Code (U.S.C.), Chapter 63; and Title 5 Code of Federal Regulations (C.F.R.) Part 630.

- A. Leave Approval: Except in emergency or unanticipated circumstances, all leave must be requested, approved and scheduled before the employee is absent from work. If not requested and approved in advance, the employee must notify the supervisor, or supervisor's designee, of the request by telephone/voicemail, email or text (as designated by the supervisor) as soon as practicable, but not later than the start of the employee's scheduled tour of duty, unless there are extenuating circumstances. Examples of extenuating circumstances include, but are not limited to: hospitalization, incapacitation, inability to communicate, immobilization and/or major transportation or major weather-related issues. In an extenuating circumstance, the employee will contact the supervisor as soon as practicable.

If the employee receives an "out of office" message from the supervisor, the employee will notify the supervisor's designee of any request for leave that has not been approved.

When an employee becomes aware that a situation will require the employee to be absent longer than one day, the employee will indicate the expected return to duty date.

These communications are not substitutes for other time accounting or payroll systems which are still required to show schedules or certify time.

- B. Leave Increments: All leave may be requested and used in 15-minute increments.
- C. Electronic/Calendar Record of Leave: Employees must make their requests for leave, either in advance for planned leave or no later than the day of their return from leave that was not preapproved, in the designated Agency's electronic system, currently PeoplePlus, and/or where applicable through a designated electronic leave calendar.
- D. Office Scheduling Procedures: Employees using leave are required to comply with their office workforce scheduling procedures, including updating electronic and/or hard copy calendars with planned leave. If there are no specific procedures for an employee's office, at a minimum, for planned absences, the employee is expected to indicate leave on the Agency's calendar system (currently Outlook, but any successor system).
- E. Out-of-Office Procedures: Employees are required to comply with their office's out-of-office procedures, including modifying their outgoing voicemail, updating their out-of-office email messages and, if applicable, notifying their customers of their absence(s). If there are no specific procedures for an employee's office, at a minimum, for planned absences, the employee is expected to update outgoing voicemail and email messages with

a brief and professional statement about the employee's absence and expected duration and, where appropriate, who should be contacted in their absence.

Section 2. Sick Leave and Medical Documentation

- A. Government-Wide Regulations Control: Sick leave shall be administered pursuant to 5 C.F.R. Part 630, Subpart D.
- B. Administratively Acceptable Evidence is Required: Per 5 C.F.R. 630.405(a), the Agency will grant sick leave "only when the need for sick leave is supported by administratively acceptable evidence."
- C. Medical Certificate - Per 5 C.F.R 630.201(b), a "medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment." A medical certificate constitutes one form of administratively acceptable evidence referred to in Section 2.B. Medical certificates, at a minimum, must contain a statement that the employee is under the care of a medical professional, the nature of the employee's incapacitation, the impact of the incapacitation on the employee's ability to perform his/her duties, and the expected duration of the incapacitation.
- D. Employee Self-Certification: Per 5 C.F.R. 630.405(a), "an employee's self-certification as to the reason for his or her absence" constitutes another form of administratively acceptable evidence referred to in Section 2.B.
- E. When a Medical Certificate is Required: The supervisor will require a medical certificate for any absence four or more workdays. The supervisor will require a medical certificate for any absence three workdays or less when the supervisor makes the unreviewable management determination that based on any of the following circumstances, a medical certificate is required to support the reason for the absence:
 - (1) Previous leave usage;
 - (2) The length of the absence;
 - (3) A sick leave request made after the employee has been assigned an undesirable work assignment or unwanted overtime, or has been denied annual leave; or,
 - (4) Any other situation surrounding the employee's leave request that raises reasonable questions about the reason for the leave.
- F. When requested by the supervisor (or other Agency official), an employee must provide a medical certificate within 15 calendar days of the date of the request. Per 5 C.F.R. 630.405(b), an employee who does not timely provide the medical certificate "is not entitled to sick leave."

Section 3. Other Types of Leave

All additional types of leave shall be administered consistent with applicable laws, rules, regulations and Agency policy, including Leave Without Pay (LWOP), Advanced Annual or Sick Leave, Family Medical Leave Act (FMLA), Federal Employees Family Friendly Leave Act (FEFFLA), Leave Bank, Leave Transfer, Administrative Leave, Weather and Safety Leave, Military Leave, Court Leave, Funeral Leave, Compensatory Time and Religious Compensatory Time.

ARTICLE 10 AWARDS

Section 1. Introduction

The EPA award program reflects the Agency's commitment to promote continuous improvement in the Agency's performance. It is recognized that the use of both monetary and non-monetary awards has a significant effect on employee morale, motivation and performance. The EPA award program is an incentive program that provides recognition based on employee achievements that contribute to the Agency's mission. The EPA award program is intended to motivate and reward employees to continually strive for excellence. In addition, the program provides for monetary and non-monetary awards for suggestions, inventions and special acts of service or heroism.

Section 2. Authorities

In the administration of all matters covered by this Article, the Union, the Agency and employees shall be governed by 5 C.F.R Parts 451 and 531; EPA Order 3130, this Agreement, and all other applicable policies and procedures.

Section 3. Additional Provisions

Recognition will be granted in accordance with this Agreement, and all other applicable policies and procedures:

- A. EPA Awards Board. The EPA Awards Board shall include representation from AFGE.
- B. If local management elects to establish a local awards board which includes participation of bargaining unit employees, the Union will also be invited to participate and provide input to that board. Management will consider, and may elect to incorporate/accept, the Union's input.
- C. Awards Budgets. At the beginning of each appraisal period or as soon as available, information concerning the amount and allocation of the awards budget will be provided to the union. The Union will also be provided with periodic updates on the expenditure of awards budgets.
- D. Peer Awards. The nominator and nominee must have an established working relationship. The monetary amount will be determined by the recommending/approving official(s).
- E. Employee awards information, including names, award types and dollar amounts will be provided to the National union on a quarterly basis. Such information will be electronically sortable by organization and location. This data will be treated by the

union in a confidential manner. At least annually, each organization will electronically publish the names of award recipients and the types of awards they received.

ARTICLE 11 MERIT PROMOTION

Section 1. Purpose

This Article shall be administered consistent with 5 U.S.C. Chapter 23. This article applies only to competitive service bargaining unit positions that the Agency chooses to fill through merit promotion vacancy announcements.

Section 2. Definitions

- A. Best Qualified Candidates: Those eligible candidates who rank at the top of eligible applicants as evidenced by an assessment score of 90 and above, and who are referred to the selecting official on a Merit Promotion Certificate.
- B. Eligible Candidates: Those who meet the area of consideration and minimum qualification standards and possess all appropriate selective placement factors for a position.
- C. Promotion: The change of an employee to a position at a higher grade or pay level.
- D. Selective Placement Factors: Knowledge, skills, abilities, licensures, or certifications which are absolutely required because a person cannot perform successfully in the position without such qualifications.
- E. Selecting Official: The supervisor/manager who has authority to select an employee for assignment to a position.

Section 3. Posting Vacancy Announcements

- A. Posting: The Agency will post merit promotion vacancy announcements on the Agency's automated hiring system for a minimum of five calendar days, except in the case of positions that consistently produce large applicant pools (i.e. 75 candidates or more) or that are being filled as an urgent need. These positions may be posted for less than five calendar days.
- B. Applications: In order to be considered, applicants must submit a complete online application package, including all required documents as specified in the job announcement, by 11:59 p.m. E.S.T. on the closing date of the job announcement.

Section 4. Ranking and Referral of Candidates

The following is how the Agency will determine the qualified candidates. All candidates will be rated against applicable OPM qualifications as well as the qualifications and job assessment developed by the Agency during the recruitment process. The decision to use a qualification and job assessment and the content of each assessment is at the Agency's discretion and is not part of this negotiated Agreement, but is inserted for informational purposes only.

- A. Determining Best Qualified: Promotion-eligible candidates will be ranked according to

the rating scores assigned to them by the automated hiring system. Promotion-eligible candidates with a score of 90 and above will be referred to the selecting official.

Section 5. Interviews and Selections

- A. Decision to Interview: When the selecting official or interview panel receives a merit promotion certificate from a competitive announcement, the selecting official or the interview panel may interview all, some or none of the referred candidates.
- B. Release of the Selected Employee: For an employee who has been selected for an internal position, the Agency will consider making the effective date no later than:
 - (1) One complete pay period for promotions, following the selectee clearing all requirements for the new position; or
 - (2) Two complete pay periods for reassignments, following the selectee clearing all requirements for the new position.
- C. When an employee is nearing the end of a waiting period for a within-grade pay increase, consideration will be given to releasing the employee at the beginning of a pay period on or after the effective date of the within-grade increase, provided such an action would benefit the employee.

Section 6. Employee Inquiry and Concerns

When an employee has a question or concern about the merit promotion process, the employee may discuss it with an appropriate human resources representative.

ARTICLE 12 CAREER LADDER PROMOTIONS

Section 1. It is the policy of the Agency to provide appropriate opportunities for bargaining unit employees to develop and advance in their careers.

Section 2. Employees in career ladder positions will be given reasonable opportunity to reach the full potential of their assigned career ladders. Upon placing an employee in a career ladder position, the supervisor will discuss the job requirements and expectations for the employee to reach the next higher level. The supervisor will hold these discussions at each level of the employee's progression within the career ladder.

Section 3. The following conditions, prescribed by law and regulation (including 5 C.F.R. § 335.104, eligibility for career ladder promotions) must be satisfied for an employee to be eligible for a career ladder promotion:

- A. The employee's performance demonstrates the ability to perform the duties of the next higher grade level;
- B. The current rating of record is at the "fully successful" level or above;
- C. The employee has completed the minimum waiting period in the lower-graded position (52- week period pursuant to 5 CFR § 300.604); and
- D. Pursuant to 5 CFR § 335.104, no employee may receive a career ladder promotion who has a rating below "Fully Successful" on a critical element that is also critical to performance at the next higher grade of the career ladder.

Section 4. At the time an employee meets time-in-grade and any other legal promotion requirements, the supervisor will make a decision regarding promotion. This decision will be made in a timely manner.

Section 5. The supervisor will periodically provide feedback to the employee about their performance in the career ladder position, but no less frequently than at mid- and end-of-year performance reviews.

Section 6. Employees not meeting the criteria for promotion will be counseled by their supervisor regarding areas needing improvement before the promotion can be effected in accordance with applicable law, rules, or regulation.

ARTICLE 13
POSITION DESCRIPTION AND CLASSIFICATION

Section 1. Position Descriptions

- A. A bargaining unit employee will be provided a current position description reflecting their principal duties and responsibilities, it will normally be uploaded to the employee's eOPF (or successor system) within 30 calendar days of assignment to a position. If the PD has not been uploaded within that timeframe, employees should contact their supervisor for a copy. Employees may discuss with supervisors any perceived substantial differences between the duties assigned or performed, and those contained in the position description. Occasionally, an employee may be required to perform "other duties as assigned" which are incidental to the principal duties and responsibilities of the position, that are impractical to include in the narrative portion of the position description, as well as duties which may be required in emergency situations, consistent with the Agency's mission.
- B. When permanent changes in the duties and responsibilities so warrant, the position description shall be amended or rewritten and submitted for classification in a reasonable time, generally within 30 calendar days.

Section 2. Union Notification

- A. The Agency agrees to inform the Union when, due to reorganization, defined as an effort to transfer, consolidate, authorize, or abolish an organization, the Agency establishes new positions and /or is making significant changes in the duties and responsibilities of positions within the bargaining unit.
- B. The Agency agrees to inform the Union when OPM notifies the Agency of changes in position classification standards. From the time of notification the Union has ten (10) workdays to make recommendations and present supporting evidence thereto. The Agency will consider the Union's recommendations and upon request advise the Union of the results of its review.

ARTICLE 14 PERFORMANCE

Section 1. Overview

The Agency will administer the performance management program in accordance with 5 United States Code (U.S.C.) Chapter 43 and 5 Code of Federal Regulations (C.F.R.) Part 430. The Agency will not prescribe a distribution of levels of ratings for employees covered by this master collective bargaining agreement (MCBA). Each employee's performance will be judged solely against their performance standards.

Section 2. Definitions

Terms used in this article that relate to the performance management system, such as "appraisal," "critical element" or "performance rating" will have the same meaning as in 5 C.F.R. Part 430.

Section 3. Critical Elements and Performance Standards

- A. Per 5 C.F.R. 430.203: "Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.
- B. The Agency will comply with 5 C.F.R. Part 430 when making its reserved management right decision as to the number of levels of performance for each critical element and when determining whether a rating level will have a written performance standard.
- C. Application of all performance standards shall be fair, equitable and consistent with 5 C.F.R. Part 430.

Section 4. Communications

- A. Within the first 30 calendar days of every rating period or within 30 calendar days of employment or reassignment, the supervisor will discuss the performance plan with each employee. The supervisor will present the employee a copy of the draft performance plan, which contains the critical elements and performance standards.
- B. As required by 5 C.F.R. 430.206(b)(1): "Agencies should encourage employee participation in establishing performance plans." However, the employee does not need to agree with the final plan. The supervisor will give the employee a copy of the final performance plan and ask the employee to sign and date to acknowledge receipt.
- C. During the rating period, the supervisor will discuss with the employee any changes in the employee's critical elements or performance standards and annotate them in the performance plan.
- D. Performance discussions:

- (1) A mid-year discussion, a closeout of current appraisal period and an establishment of standards for the new appraisal period discussion must take place each appraisal period.
- (2) Performance discussions should occur throughout the performance appraisal period. Discussions may be initiated by the supervisor or employee and may be held one-on-one or in a work group. Employees are encouraged to seek feedback from their supervisor about their performance throughout the performance appraisal period.
- (3) Performance discussions between the supervisor and the employee will be aimed at improving the work process or product and developing the employee. As appropriate, the discussion will provide the opportunity to assess accomplishments and resolve problems.

Section 5. Procedures

- A. Within 30 days of appointment, reassignment or change in supervision, the employee will be issued a new performance plan.
- B. Employees will receive an annual performance rating for the performance appraisal period. Performance ratings are issued in writing to the employees within 30 days following the end of the rating period.
- C. Employees must be working under a performance plan for a minimum of 90 days before a rating can be given.

Section 6. Addressing Unacceptable Performance

- A. At any time during the rating period, if the supervisor identifies that an employee's performance in one or more critical elements is at the unacceptable level, the supervisor may notify the employee of the critical elements for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance with the issuance of a Performance Improvement Plan (PIP).
- B. The PIP must inform the employee that unless their performance in the specified critical elements improves and is sustained at an acceptable level of performance, the employee may be demoted or removed from employment.
- C. The PIP will afford the employee 30 calendar days to demonstrate acceptable performance under the critical elements at issue, commensurate with the duties and responsibilities of the employee's position.
- D. During the PIP period, the supervisor will offer assistance to the employee to improving the employee's unacceptable performance.

- E. A supervisor can issue an unacceptable rating prior to issuing a PIP when a rating is required to be issued under the employee's performance plan; however, no performance-based action (5 C.F.R. Part 432) will be proposed until the completion of the PIP.
- F. Once the PIP has expired or the supervisor determines that assistance is no longer needed, the supervisor will provide the employee with a written notice of this determination.

ARTICLE 15 DISCIPLINE

Section 1. Statement of Purpose and Policy

The parties agree that employees shall maintain high standards of integrity, conduct and concern for the public interest and that the federal workforce shall be used efficiently and effectively. The purpose of discipline is to correct and improve employee behavior in order to promote the efficiency of the service. Disciplinary actions include reprimands, suspensions, reductions in grade or pay and removals. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation.

Section 2. Discipline

- A. Definition: Discipline covered by this Article is a written reprimand, a suspension, a removal, a reduction in grade or pay, and a furlough of 30 days or less.
- B. Exclusions: Discipline covered by this Article does not include an oral reprimand, an oral admonishment, and does not include a letter or memorandum or letter of warning.

Section 3. Written Reprimand

- A. Definition: A written reprimand is a written letter that specifies the employee's misconduct. The reprimand will be maintained in the employee's electronic Official Personnel Folder for three years.

Section 4. Suspension for 14 Days or Less

- A. Due Process: An employee against whom a suspension for 14 days or less is proposed is entitled to:
 - (1) Advance written notice stating the specific reasons for the proposed action;
 - (2) The right to review the material which is relied on to support the reason(s) for the proposed action;
 - (3) An opportunity to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response;
 - (4) Be represented by an attorney or other representative; and,
 - (5) A written decision and the specific reasons for the decision at the earliest practicable date.

Section 5. Removal, Suspension for More than 14 Days, Reduction in Grade or Pay, and Furlough of 30 Days or Less

- A. Due Process: An employee against whom such an action is proposed is entitled to:

- (1) Advance written notice of 30 calendar days stating the specific reasons for the proposed action;
- (2) The right to review the material which is relied on to support the reason(s) for the proposed action;
- (3) An opportunity to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response;
- (4) Be represented by an attorney or other representative; and
- (5) A written decision and the specific reasons for the decision at the earliest practicable date.

Section 6. Exceptions

- A. “Crime Provision:” In instances where public or employee health, safety, or welfare may be impaired or endangered, or there may be a serious breach of applicable standards of conduct, or it is necessary to invoke the "crime provision" of 5 U.S.C. 7513(b)(1), the Agency reserves the right to take appropriate action immediately and before the procedures in this Article are initiated or exhausted.
- B. Exclusions: The provisions of this Article do not apply to disciplinary actions of probationary, temporary or excepted service employees except where appeal rights to the Merit Systems Protection Board exist under Chapter 75 of Title 5 of the United States Code.

Section 7. Effect of Subsequent Law and Regulation

The parties agree that they will adhere to any applicable law, governmentwide rule or regulation published after the effective date of this agreement, including, but not limited to, any revisions to Chapter 75 of Title 5 of the United States Code, and part 752 of title 5, Code of Federal Regulations.

ARTICLE 16 WORK SCHEDULES

Section 1. Purpose

This Article is designed to maintain and enhance the needs of the Agency, while at the same time, offering scheduling flexibility for individual employees. It reflects the recognition that employees have different personal and professional responsibilities which result in the options employees may request for differing work schedules.

Section 2. Background

Public Law 97-221 permits the establishment of alternative work schedules (AWS) by modifying the premium pay and scheduling provisions of 5 U.S.C. Chapter 61 and the overtime provision of the Fair Labor Standard Act (FLSA). Hours of work for EPA employees shall be in accordance with applicable laws and regulations. If any provision of this Agreement is found to be contrary to law or regulation, the law or regulation will supersede that provision.

Section 3. Definitions

- A. Administrative workweek: The period of seven consecutive calendar days beginning Sunday and ending Saturday. There are two administrative workweeks per pay period.
- B. Alternative work schedules (AWS): Includes Maxiflex and compressed work schedules (5/4/9 and 4/10).
- C. Basic work requirement: The basic work requirement is the number of hours, excluding overtime hours, an employee is required to work, or to account for, by charging leave, credit hours, excused absence, holiday hours, compensatory time off or time off as an award.
- D. Biweekly Pay Period: The two-week period for which an employee is scheduled to perform work, beginning on Sunday and ending on Midnight Saturday, 14 calendar days later.
- E. Compressed work schedule (CWS): 1) In the case of a full-time employee, an 80 hour biweekly basic work requirement that is scheduled by an agency for less than 10 workdays; and 2) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled by an agency for less than 10 workdays and that may require the employee to work more than 8 hours in a day. (5 U.S.C. § 6121(5).)
- F. Core hours: The days and hours all employees must be in a duty status and/or on approved absence. The core hours are 9:30 A.M. to 2:30 P.M., Monday through Friday for Maxiflex work schedules.

- G. Credit hours: The hours an employee elects to work, with supervisory approval, in excess of the basic work requirements under a Maxiflex work schedule.
- H. Regularly Scheduled Administrative Workweek: For a full-time employee, the period within an administrative workweek within which the employee is regularly scheduled to work. For a part-time employee, the officially prescribed days and hours within an administrative workweek during which the employee is scheduled to work.
- I. Work-Related Needs: Work-related needs include office staffing; office personnel not available to perform work; office coverage; work priorities; emergencies; time-sensitive assignments; work assignments; the need for team efforts; the need for meeting in person; and other operational needs that involve the work of the Agency.

Section 4. Responsibilities

A. Supervisors are responsible for:

- (1) Scheduling meetings or events, which require employee attendance. While not required, supervisors may consider scheduling meetings or events during core hours.
- (2) Approving/disapproving, changing, modifying or removing an employee from a specific work schedules in accordance with this Agreement.
- (3) Approving/disapproving an employee's request to earn and/or use credit hours.
- (4) Resolving conflicts in scheduling the regular day off for an employee working a 5-4/9 or 4-10 Compressed Work Schedule or Maxiflex.
- (5) Approving/disapproving adjustments of more than 1 hour (earlier or later) to the arrival and departure times of the approved Maxiflex proposed work schedule.
- (6) Coordinating work schedules among employees in their organization to accomplish the Agency mission.

B. Employees are responsible for:

- (1) Adhering to the procedures and requirements in this Agreement when requesting and participating in an AWS.
- (2) Being present for duty during hours corresponding to approved work schedules.
- (3) Ensuring that their time and attendance submission is submitted, coded for overall accuracy, and timely entered and attested to in the Agency Time and Attendance Recording System.

- (4) Maintaining the quality and quantity of work regardless of which work schedule is approved. Attending required meetings or events even though the meeting or event may be scheduled outside of the core hours.
- (5) Timely request work schedules and changes to approved work schedules in accordance with this Article.
- (6) Will timely submit, in accordance with this article, their *Maxiflex Pay Period Time Sheet*, if on an approved Maxiflex schedule.
- (7) Request prior supervisory approval to be absent from their scheduled hours in accordance with Article 16 of this Agreement.
- (8) Unless provided an exception by the supervisor, employees should maintain their current work schedule on the Agency's electronic calendar to assist coworkers to know their availability for meetings. The employee's free/busy time must be visible to all staff and clients, unless provided an exception by the supervisor.

Section 5. General Provisions and Procedures

A. Requesting an AWS.

Employees must submit the Work Schedule Request Form to their immediate supervisor. For changes to an existing schedule, the request normally must be submitted at least three (3) workdays prior to the end of the pay period immediately preceding the pay period for which the employee requests the change. Supervisors will communicate schedule change request decisions as soon as practicable to the employee. While no requests will unreasonably be denied, requests for AWS may be denied in accordance with this article. No more than four (4) work schedule changes will be approved in a calendar year. By signing a request, the employee agrees to read and comply with the terms and conditions set forth in this Agreement.

B. Meetings and Training.

Employees scheduled for training, travel or other EPA events will arrange their schedules to correspond with the start/stop times and weekdays of the events. Employees will not be excused from attending meetings or other events solely because the employee is on an AWS and the meeting or event is outside of the Agency's core hours. Employees and supervisors should discuss options to make temporary adjustments to an employee's schedule, when necessary. An employee may be required to temporarily revert to a straight eight (8) hour per day schedule due to training, travel, meetings or other Agency needs.

C. Lunch Period.

An unpaid lunch period must be taken for any work schedules of six (6) or more hours per day. The lunch period will not be taken at the beginning or at the end of the actual work time. The lunch period will be a minimum of 30 minutes and a maximum of one hour in length. For employees on a fixed schedule (CWS or Straight 8), the employee

must designate a length of time for the lunch period for each day. The lunch period should normally be taken between 10:00 A.M. and 2:00 P.M.

D. Breaks.

Employees may generally leave their assigned work area for personal reasons (e.g., to obtain coffee; make personal calls; use the restroom; etc.) and take unscheduled breaks as needed, provided they do not interfere with work-related needs. Therefore, there is no entitlement to two (2) scheduled 15-minute breaks. However, unscheduled breaks may not exceed a total of 15 minutes during each four hours of duty. Employees who may not leave their assigned work area for personal reasons are entitled to a 15-minute break during each four hours of duty. For all employees, scheduled or unscheduled breaks may not be taken at the beginning or end of the work day to shorten the work day, or at the beginning or end of the lunch period to extend the lunch period.

E. Overtime and Compensatory Time.

Overtime and compensatory time will be in accordance with applicable laws and regulations.

F. Night Shift Differential.

Employees will not receive night shift differential pay solely because they elect to work credit hours or elect a time of arrival or departure at a time of day when night shift differential is otherwise authorized. 5 USC 6123.

G. Holidays.

Holidays will be administered in accordance with applicable laws and regulations. For employees on Maxiflex, full-time employees relieved from duty on a holiday are entitled to basic pay for 8 hours and part-time employees are entitled to basic pay for the number of hours they were scheduled to work on the holiday (*5 USC § 6124 and 5 C.F.R § 610.405*).

H. Telework and Alternative Work Schedules.

Employees who work an alternative work schedule may utilize telework opportunities consistent with Article 17 of this Agreement. Irrespective of telework schedule or alternative work schedule, employees are expected to report physically to the official worksite and duty station a minimum of three (3) days per week for core hours. Maxiflex scheduled days off, compressed days off and regular telework days will count as a day away from the official worksite for the purpose of this requirement. Holidays, travel, situational telework, or approved leave will not count as a day away from the official worksite.

I. Schedule Disapproval.

If an employee's written request to participate in an AWS is disapproved, or if the supervisor determines that an employee can no longer participate in the AWS program, the supervisor will provide the reason(s) in writing to the employee. Supervisors may discuss other schedule options with an employee prior to disapproving a requested schedule. Supervisors will not remove an employee from AWS in the middle of a pay

period. Further, employees who are removed from an AWS will normally be given at least one (1) administrative work week notice.

J. Removal from an AWS.

The supervisor or management official may remove an employee from AWS when there are documented misconduct or performance issues, when the employee does not comply with the provisions provided in this article, or to meet the organization or unit's specific work-related needs. The default work schedule for the employee in such circumstances is a Straight-8 schedule, but the supervisor or management official has the authority to permit temporary changes to the schedule on rare occasions and due to extenuating circumstances.

(1) For AWS removals resulting from misconduct or performance issues or for the employee's failure to comply with the provisions of this policy, employees may reapply no sooner than six months after termination.

(2) For AWS removals resulting from work-related needs, the employee may reapply if or when any such issues are resolved. If the employee is on Maxiflex, supervisors and employees may discuss whether or not a temporary modification to the Maxiflex Schedule will meet the work-related needs (e.g. using Maxiflex to work a Straight-8), rather than removal from the Maxiflex schedule.

K. Changing work schedules. Changes to work schedules will be effective at the start of a pay period.

Section 6. Schedule Options for Employees

A. Straight 8

(1) This schedule consists of eight (8) hours per day, five (5) days per week, Monday through Friday, with a fixed start time between 6:00 am and 9:30 am and a fixed end time between 2:30 pm - 6:00 pm. These times must be consistent for each workday.

(2) Credit hours are not authorized for employees on this schedule.

B. Compressed Work Schedules (CWS)

(1) These schedules require a fixed start time between 6:00 A.M. and 9:30 A.M. and a fixed end time between 2:30 P.M. and 6:00 P.M. These times must be consistent for each workday. Employees must account for their scheduled tour of duty with work hours and/or approved absence each day.

(2) A 5/4/9 compressed work schedule consists of one (1) five (5) day workweek and one (1) four (4) day workweek, totaling 80 work hours in each biweekly pay period. The work schedule will consist of eight (8) nine (9) hour days, one eight (8) hour day and a designated day off in each pay period. To be established, employees request, and supervisors must preapprove, fixed arrival and departure times and one fixed non-workday each pay period.

- (3) A 4/10 compressed work schedule consists of four (4) ten (10) hour days each week of the bi-weekly pay period totaling 80 hours with a designated day off each week. To be established, employees request, and supervisors must preapprove, fixed arrival and departure times and two fixed non-workdays, one day each week. The fixed non-workdays must be the same day of each administrative work week and must not be consecutive.
- (4) Employees may request to change their compressed day off prior to the commencement of the pay period, subject to supervisory approval. A scheduled compressed day off, as part of the schedule, normally should not be changed once a pay period begins.
- (5) Credit hours are not authorized for employees on these schedules.

C. Maxiflex Schedule

- (1) This schedule allows a flexible duty start time between 6:00 A.M. and 9:30 A.M. and a flexible end time between 2:30 P.M. and 7:00 P.M. Employees have the flexibility to vary the start and end of their workday each day. Employees must account for eighty (80) hours of work and/or approved absence each pay period (and a prorated number of hours for part time employees).
- (2) Employees must work and/or be on approved absence during the designated core hours. Subject to supervisory approval and the provisions of this Article, employees are not required to work a specific number of hours each day beyond the core hours; however, the maximum number of regular work hours an employee may work is 10 hours, not including a lunch break. Subject to the limitations of this Article, employees may request up to 2 credit hours in addition to the 10 regular hour maximum.
- (3) Employees must account for all hours worked using the Agency's Time and Attendance Reporting System.
- (4) All employees on Maxiflex are subject to an advanced scheduling requirement each pay period. Since Maxiflex allows employees to vary their work hours during flexible times for each pay period, employees must electronically submit a proposed work schedule on the *Maxiflex Pay Period Time Sheet* to their supervisors in advance of each pay period. The *Maxiflex Pay Period Time Sheet* is not a substitute for the electronic Agency's Time and Attendance Reporting System. Rather, the *Maxiflex Pay Period Time Sheet* is a tool for an employee to request specific work hours and it serves as a reference to be used when an employee completes the Agency's Time and Attendance Reporting System. Part time and full-time employees follow the same advanced scheduling requirements. The Agency has the unilateral authority to include this process electronically in PeoplePlus or successor electronic time and attendance systems.

- (5) Submitting proposed Maxiflex Pay Period Time Sheet: Unless provided an exception by the supervisor, employees must timely submit their *Maxiflex Pay Period Time Sheet*, pursuant to the supervisor's designated deadline, that documents: a) the planned hours to be worked in the upcoming biweekly pay period with specific days, and starting and ending times, b) the planned requested leave usage of all types; c) the number of credit hours the employee is requesting to earn; and d) the number of credit hours the employee is requesting to use. Exceptions should be rare. Advanced requests for scheduling of the pay period minimizes potential problems in determining an employee's entitlements to pay and leave and best allows for supervisors to be able to plan and assign work.
- (6) Standing Proposed Schedule: Employees who have limited variability in their biweekly proposed schedule may submit a standing proposed schedule for approval/disapproval by their supervisors. However, any standing approved proposed schedule is subject to the requirements of this section (e.g., must seek approval of the supervisor for adjustments of more than one hour). It is solely the responsibility of the employee to submit an updated biweekly proposed schedule when there is any variation in the standing proposed schedule (e.g., a holiday in the next pay period, scheduled leave, training, etc.).
- (7) Failure to Timely Submit the Maxiflex Pay Period Time Sheet: Unless provided a rare exception by the supervisor, employees who fail to submit the Maxiflex Pay Period Time Sheet in advance pursuant to their supervisors' deadline are required to work fixed 8-hour days (either from 8:00 A.M. to 4:30 P.M. or from 9:00 A.M. to 5:30 P.M.) for the affected pay period.
- (8) Completing the Maxiflex Pay Period Time Sheet: Employees must record their time in to work and time out of work daily either by a method directed by the supervisor (e.g., contemporaneous email), or on the *Maxiflex Pay Period Time Sheet* and also in the Agency's Time and Attendance Reporting System.
- (9) One Hour Variations: Once a biweekly Maxiflex work schedule is approved, an employee may adjust the arrival and/or departure times of the approved work schedule by a maximum of one hour without prior supervisory notification or approval, provided the one hour change does not interfere with the established core hours and does not impact already scheduled meetings or work-related needs. Thus, the actual work schedule may vary from the approved work schedule. While the one hour adjustment does not need prior supervisory notification or approval, like all hours worked or used for approved leave or credit hour use, the adjusted hours must be accurately recorded by employees in the Agency's Time and Attendance Reporting System. Adjustments of more than one hour to the arrival and departure times of the approved work schedule requires prior supervisory approval.
- (10) Core Hour Exception for Last Scheduled Day of Tour of Duty: Once an employee has met the minimum reporting requirement of three (3) days per week and subject to

supervisory approval and work-related needs, employees with less than five hours remaining in their 80-hour biweekly requirement may work outside of core hours on their last scheduled day during their normal tour of duty and/or for less than the full 5 hours core hour period. For example, if by the second Thursday of the pay period, an employee has earned 77 regular hours and is scheduled to work only three regular hours on Friday, the employee may work these three hours outside of core hours during their normal tour of duty. On the last scheduled day of the pay period, employees must work for a sufficient duration to perform a reasonable amount of work.

(11) Time and Attendance Reporting: Employees must separately request leave and credit hours to be earned and to be used in the Agency's Time and Attendance Reporting System.

(12) Recording Credit Hours: Employees must record the number of credit hours earned and used each workday. Employees must be aware that at the end of the pay period, hours worked will be counted as credit hours only after the 80-hour bi-weekly requirement is met.

Section 7. Credit Hour Provisions

- A. Credit Hours: Credit hours are those hours within the Maxiflex work schedule that are more than an employee's basic biweekly 80-hour work requirement and that the employee, upon supervisory approval, elects to work. If elected by the employee and preapproved by the supervisor, credit hours may be earned outside of the normal tour of duty (6:00 A.M. – 7:00 P.M.), with supervisory approval.
- B. Requesting Credit Hours: Employees who want to earn credit hours must make a written request to their supervisor (preferably by email). The supervisor may request additional information regarding the nature of the request (e.g., work to be performed, anticipated duration of work, etc.) before deciding on the request.
- C. Earning Credit Hours: Working credit hours must be requested by the employee and preapproved by the supervisor. For an example of credit hours, an employee is scheduled to work 7 hours on Monday. The employee requests and is approved to work 2 additional hours on that day. If the employee works at least 73 more hours during the pay period, the 2 additional hours are considered credit hours because they are more than the scheduled basic 80 hours that the employee is required to work in this particular pay period. However, if at the end of the pay period the employee has not accounted for 80 hours with a combination of approved leave and work, the 2 additional hours are counted towards the 80-hour biweekly work requirement and are not credit hours.
- D. Credit Hour Limits: Employees on Maxiflex can earn up to 2 credit hours per workday and up to 10 credit hours per pay period, subject to prior supervisory approval. Supervisors may grant standing approvals to work credit hours for known or anticipated

workload needs if the credit hours are within the 2 credit hours per workday and within the 10 credit hours per pay period limit. Standing approvals for known or anticipated workload needs must be requested in writing and approved in writing for a designated period with an end date.

- E. Exceptions to the 2/10 Credit Hour Limit: On rare occasions when necessary to meet work-related needs, supervisors may grant more than 2 credit hours per workday or more than 10 credit hours per pay period, on a case-by-case basis. Standing approvals for more than 2 credit hours per workday or more than 10 credit hours per pay period are not permissible.
- F. Weekend Credit Hours. Employees on Maxiflex may elect to earn credit hours on weekends only with prior approval of the supervisor. Requests to earn credit hours on the weekend are subject to heightened review/scrutiny, and should only be approved in rare circumstances. The flexible time bands for employees on Maxiflex who earn credit hours on Saturday or Sunday are 6:00 A.M. to 6:00 P.M. Employees cannot earn credits hours outside of that timeframe on the weekend.
- G. Recording Earned and Used Credit Hours: Credit hours must be recorded on the Maxiflex Pay Period Time Sheet, and in the Agency's Time and Attendance Reporting System each time approved credit hours are earned and/or used, and must be recorded in 15-minute increments.
- H. Fifteen Minute Increments: Credit hours are earned in full 15-minute increments, no rounding is allowed.
- I. Using Credit Hours: The use of earned credit hours is subject to the same approval process as annual, sick or other leave. An employee may substitute earned credit hours for all or part of any approved leave before the leave is used. Credit hours must be earned before they can be used.
- J. Time and Attendance Reporting: Once approved, the employee must account for the approved earning and the approved use of accrued credit hours in the Agency's Time and Attendance Reporting System.
- K. Using Credit Hours Rather Than Use or Lose Annual Leave: If credit hours are used instead of use or lose annual leave and the annual leave is subsequently forfeited, the forfeited leave is ineligible for restoration.
- L. Carrying Over Credit Hours: The statutory limit for credit hour carryover from one pay period to the next is 24 hours for full time employees and 25% of the biweekly work schedule for part time employees. For example, a part time employee who works 64 hours per pay period may carry up to 16 credit hours from one pay period to another. In no instances can an employee carry forward any more credit hours than the statutory limit, even under extenuating circumstances. Employees are accountable for keeping track of their credit hour balances from day to day, week to week, and pay period to pay

period. If an employee erroneously carries forward credit hours more than the allowable number and the credit hours are forfeited, the credit hours cannot be restored or paid to the employee. However, there is no prohibition to earning more than 24 credit hours in one biweekly period, but the employee must use the excess hours over 24 hours in the same pay period, or the excess credit hours will be forfeited.

- M. Credit Hours Do Not Expire: Although there is a statutory limit on the number of credit hours that an employee may carryover from one pay period to the next, there is no time limit for using earned credit hours. Credit hours do not expire. If the employee's credit hour balance does not exceed the statutory limit, those hours will be available for use as long as the employee is on the Agency's Maxiflex program described in this Article. If for any reason – voluntary or involuntary, separation or transfer—an employee leaves the Maxiflex program described in this Article, the employee will be paid for the accumulated credit hours at the employee's current rate of basic pay.
- N. Overtime, Compensatory Time and Credit Hours: If credit hours are approved and overtime is subsequently made available prior to the working of the credit hours, the employee will be afforded the opportunity to elect to work the overtime. Supervisory approval to earn credit hours does not alter an employee's eligibility to earn overtime pay or compensatory time off.

ARTICLE 17 TELEWORK

Section 1. Eligibility

The eligibility of employees to participate in telework is based on: 1) the extent to which their work is portable; and 2) the employee eligibility requirements contained in Sections 8, 9, and 10 of this Article. An employee's participation in telework is voluntary. Teleworkers will receive the same treatment and opportunities as non-teleworkers (e.g., work assignments, awards and recognition, development opportunities, promotions, etc.).

Section 2. Definitions

For the purpose of this Article:

- A. Telework: Work performed away from an office worksite at an approved location.
- B. Alternative Work Location: An approved work location other than the employee's official worksite. A telework alternative work station is a home or an employee's residence, a telecenter or another approved worksite. An alternative work location will normally be within the local commuting area (as that area is defined in 5 C.F.R. 351.203), such as a home or a facility established by state, local or county government or private organizations for use by teleworkers.

Employees are not permitted to conduct regular telework from outside the local commuting area. In limited circumstances, supervisors may approve employee requests to work at an alternative work site outside of the local commuting area in cases of situational telework and medical telework.

- C. Local Commuting Area: As defined in 5 C.F.R. 351.203: "[T]he geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their official worksite."
- D. Portable Work: Work that is normally performed at the employee's official worksite, which can be performed at another location with equal effectiveness with respect to quality, quantity, timeliness, customer service, and other aspects of accomplishing the Agency's mission. Such work must be part of the employee's regular assignments and does not involve a significant change in duties or the way in which assignments are performed.
- E. Official Worksite: As defined in 5 C.F.R. 531.605: "[T]he location of an employee's position of record where the employee regularly performs his or her duties."
- F. Position of Record: An employee's official position as defined by grade, occupational series, employing Agency, law enforcement officer status and any other condition that determines coverage under a pay schedule (other than official worksite), as documented on the employee's most recent Notification of Personnel Action (Standard Form 50 or

equivalent) and current position description, excluding any position to which the employee is temporarily detailed.

- G. Regular Office/Worksite: The office (program, region, lab, HR Shared Service Center) to which the employee reports on a regular and recurring basis, receives direction, and/or returns to if the supervisor recalls the employee or terminates the telework agreement.
- H. Telework-Ready Employee: Any employee who has a Telework Agreement currently in effect, authorizing any type of telework.
- I. Work-Related Needs: Office staffing; office personnel not available to perform work; office coverage; work priorities; emergencies; time-sensitive assignments; work assignments; the need for team efforts; the need for meetings in person with co-workers, Agency officials and clients/customers/the public; and other operational needs that involve the work of the Agency.

Section 3. Supervisor Telework Decisions

- A. Management Responsibilities: Taking into account work-related needs, supervisors are responsible for:
 - (1) Approving or disapproving new or revised written applications to telework. In cases of disapproval, the manager must provide the rationale to the requesting employee, in writing.
 - (2) Recertifying employee telework agreements every 12 months (or earlier if a particular organization's annual recertification time period is sooner, so that all employees can be recertified at the same time).
 - (3) Determining work-related needs and modifying individual telework agreements to meet work-related needs.
 - (4) Maintaining records and information necessary for evaluation of the telework program.
 - (5) Assessing whether teleworkers have complied with all existing security policies and procedures, including IT security, the protection of personally identifiable information and confidential business information.
 - (6) Assessing whether appropriate and accurate telework time reporting codes to document hours teleworked are being used.
 - (7) Evaluating performance consistently regardless of telework status.
 - (8) Determining that all required certifications for telework and appropriate management controls and reporting procedures are in place before employees begin telework assignments.

(9) No requests for telework will be unreasonably denied.

Section 4. Employee Responsibilities

- A. Approval: All employees must obtain written advanced approval for any type of telework.
- B. Telework Agreement: All employees on telework must complete a telework agreement, with the attachments, and submit it to their supervisor for approval prior to teleworking.
- C. Self-Certification Safety Checklist: All employees on telework must perform an assessment of the alternative work location and honestly and accurately answer all of the questions on the Self-Certification Safety Checklist.
- D. Comply with the Telework Policy: All employees on telework must fully comply with this Article, all articles in this Agreement, the Agency telework policy and procedures and the terms and conditions of their approved telework agreement.
- E. Comply with Security Policies: All employees on telework must fully comply with Agency policies and procedures for information technology security, including those relating to Personally Identifiable Information and Confidential Business Information.
- F. Use Government Equipment: All employees on telework comply with EPA policies governing the use of government equipment and materials.
- G. Non-Business Activities: All employees on telework must avoid personal disruptions such as non-business telephone calls and visitors.
- H. Suggesting Modifications: All employees on telework must notify their supervisor if modifications are necessary or potentially necessary to their telework agreement.
- I. Assist in Recertification: All employees on telework must assist their supervisor to recertify their telework agreement.
- J. Work Communications: All employees on telework must be available throughout the workday by telephone, email, Skype, etc. in order to communicate with their supervisor to receive assignments and complete their work in accordance with the supervisor's instructions and to be accessible to co-workers and customers.
- K. Maintain Communications: All employees on telework must maintain communication with their supervisor while teleworking and must work with their supervisor to overcome problems or obstacles as they occur so that their work is accomplished in an effective, efficient and timely manner, as to quality and quantity.
- L. Dependent Care: All employees on telework must arrange for dependent care, if applicable, during the time the employee is working at an alternative work location.

- M. Telework When the Government is Closed: All employees must be prepared to telework in the event that OPM or the Agency announces changes to its operating status, including changes to dismissal and closure procedures.
- N. Anticipate Weather Event: All employees, in case of a forecasted inclement weather event, must plan ahead, including taking any necessary equipment, such as laptops, home prior to the forecasted weather event.
- O. Locality Pay: If the employee does not physically report to the regular office/worksite at least twice each biweekly pay period, the employee's locality pay may be impacted per 5 C.F.R. 531.605.

Section 5. Types of Telework

The following types of telework are available at the Agency based on work-related needs:

- A. Regular Telework: Employees perform their duties at an alternative work location on a regular and recurring basis, on predetermined days each pay period.
 - (1) Regular telework cannot exceed two day per week. Irrespective of telework schedule or alternative work schedule, employees are expected to report physically to the official worksite and duty station a minimum of three (3) days per week. Maxiflex scheduled days off, compressed days off and regular telework days will count as a day away from the official worksite for the purpose of this requirement. Any holiday, day in a paid leave status (e.g., annual, sick, credit hours, etc.), or official travel will not count as a day away from the official worksite for the purpose of this requirement.
 - (2) Employees are not permitted to conduct regular telework from outside their local commuting area, as determined by management.
- B. Situational Telework: Employees perform their duties at an alternative work location on a non-routine, occasional, emergency, or ad hoc basis.
 - (1) Situational telework may be used to complete short-term special assignments or to accommodate special circumstances and must be for a defined, finite period.
 - (2) Situational telework cannot be used in a routine manner which appears to extend an employee's regular telework schedule.
 - (3) An employee must have an approved situational telework agreement in place.
 - (4) Management has the sole authority to approve/disapprove all situational telework requests.
 - (5) An employee must have explicit advanced approval before any telework is worked.

- (6) An employee may be approved for both situational and regular telework, consistent with Section B.2. above.
 - (7) In limited circumstances, supervisors may approve employees to work at an alternative work location that is outside of the employee's local commuting area. This determination must be made by management on a case-by-case basis. The employee must meet all eligibility requirements contained in this Article. If the employee does not physically report to the regular office/worksite at least twice each biweekly pay period, the employee's locality pay may be impacted per 5 C.F.R. 531.605.
- C. Unscheduled Telework: Unscheduled telework is not scheduled in advance. Unscheduled telework is performed when the Agency announces changes to its operating status, including changes to dismissal and closure procedures pursuant to the Agency, OPM and/or Federal Executive Board operating status announcements. Any telework-ready employee must perform unscheduled telework, pursuant to Section 16 of this Article.
- D. Medical Telework: Medical telework allows for the continued accomplishment of the Agency work while an employee has a physician-certified medical condition which does not affect the employee's ability to perform the employee's regular work assignment at an alternative work location.
- (1) Medical telework is not intended to be a permanent arrangement and will normally not exceed 90 calendar days.
 - (2) After 90 calendar days, in rare circumstances, a medical telework agreement may be extended for up to three additional 90-calendar day periods (i.e. nine months) if an additional medical certification justifies each 90-day extension. Employees are not authorized medical telework beyond 12 continuous months. The total maximum allowable time for a medical telework agreement is 12 months within any three year period.
 - (3) In limited circumstances, supervisors may approve employees on medical telework to work at an alternative work location that is outside the local commuting area. This determination must be made by the supervisor on a case-by-case basis. The employee must meet all eligibility requirements contained in this Article. If the employee does not physically report to the regular office/worksite at least twice each biweekly pay period, the employee's locality pay may be impacted per 5 C.F.R. 531.605.
 - (4) Based on the amount of portable work and the employee's ability to perform tasks, the supervisor may grant the employee leave (sick, annual, unpaid) or approve a combination of leave and telework to cover the situation. Employees are not entitled to full-time medical telework if they do not have full-time portable work.
 - (5) Medical telework is appropriate for employees with non-work compensable injuries. Employees with work compensable injuries will be subject to applicable workers' compensation regulations.

- E. Reasonable Accommodation under the Telework Program: Telework can be used as a way to accommodate qualified employees with disabilities under the Agency's reasonable accommodation process.
- (1) Employees seeking to telework as a reasonable accommodation must contact their immediate supervisor and the National and Local Reasonable Accommodation Coordinator.
 - (2) Employees who telework as a reasonable accommodation must follow the general requirements contained in this Article to the extent that such requirements are not inconsistent with the reasonable accommodation.
 - (3) Employees who seek to telework as a reasonable accommodation must submit a signed telework application, completed safety checklist and a training certificate.
 - (4) Employees approved to telework as a reasonable accommodation are required to have a valid, signed telework agreement.
- F. Agency Continuity of Operations Plan (COOP): Telework during a COOP enables employees to work from alternative work locations during emergencies such as a natural disaster, a terrorist attack, disruption to facilities, or a pandemic health crisis.
- (1) Telework as part of a COOP allows the Agency to continue to perform the Agency's mission in the face of an emergency.
 - (2) During a COOP, any employee, with or without a telework agreement, may be required to telework.
 - (3) During any period that the Agency is operating under a COOP, the COOP shall supersede this Article.

Section 6. Work Suitable for Telework

- A. Not All Job Tasks are Portable: Not all aspects of all jobs can be performed effectively at an alternative work location and thus not all aspects of all jobs are portable.
- B. Job Content Controls: Work that is portable and suitable for telework depends on job content, rather than job series or title, type of appointment, or work schedule.
- C. Differentiations: It is possible that within identical or related occupational series, one position or a portion of a position, may be determined to be eligible for telework, and another may not, depending on individual job requirements.
- D. Tasks Generally Suited for Telework: The following tasks and functions are generally suited for telework. These tasks and functions include, but are not limited to:
- (1) Reviewing and writing

- (2) Policy development
 - (3) Report writing
 - (4) Research (when research tools are available at the alternative work location)
 - (5) Analytical work
 - (6) Telephone-intensive tasks
 - (7) Computer technology-oriented tasks (e.g., programming, data entry, data processing, word processing, web page design) when databases, etc. are not equally accessible and functional at an alternate work location
- E. Different Circumstances: Employees may have some duties that are suitable for telework and others that are not. For these employees, supervisors will determine how many days per pay period an employee is eligible to work at an alternative work location as part of regular telework.

Section 7. Positions Ineligible for Telework

- A. Ineligible Positions: Ineligible telework positions are those positions that involve tasks that are not suitable to be performed away from the regular office/worksite.
- B. Examples: Examples of ineligible telework positions include, but are not limited to, positions/tasks that:
 - (1) Require an employee to have daily face-to-face contact with the supervisor, Agency officials, co-workers, clients or the general public in order to perform the employee’s job effectively, and which communications cannot otherwise be achieved via e-mail, telephone, fax or similar electronic means.
 - (2) Require an employee to have daily access to secure or classified information or a secure or classified installation. Secured materials are those materials for which there exists a written policy, at the government, Agency or organizational level, that restricts the use and/or access outside of a specific government installation or area within a government installation, and including sensitive personally identifiable information and confidential business information.
 - (3) Involves the construction, installation, maintenance and/or repair of Agency facilities.
 - (4) Involves the physical protection of Agency facilities or employees.
 - (5) Involves a physical presence and/or is a site-dependent activity (e.g., emissions testing, laboratory trials, etc.).

Section 8. Employee Eligibility Requirements

To be authorized to telework, an employee must meet all of the following requirements:

- A. Portable Work: The employee must have sufficient portable work for the amount of telework requested.
- B. Fully Successful: The employee must be currently performing at the fully successful level or above. If an employee's last rating of record is less than fully successful, the employee must wait until a rating of record of fully successful or above is received.
- C. Effectiveness: The telework arrangement must not create any impediment to the effective accomplishment of the employee's work or the Agency's work-related needs.
- D. Return to Office: The employee must agree to return to the regular office/worksite on a telework day if required to do so by the employee's supervisor. Employees on a regular and recurring telework arrangement are required to report to the official worksite and duty station as needed, as determined by the Agency.
- E. Comply with Agreement: The employee must continue to comply with the terms of the employee's written and approved telework agreement; and,
- F. Dependent Care: Arrangements must be in place for dependent care, if applicable, during the time the employee is working at an alternative work location.

Section 9. Disqualifications from Telework

Employees cannot telework if any of the following occur:

- A. The employee's current rating of record is less than fully successful or the employee is currently performing less than fully successful.
- B. The employee has been officially disciplined for being absent without permission for more than five days in any calendar year.
- C. The employee has any documented performance or conduct deficiencies within the preceding 12 months, including, but not limited to, letters of reprimand, written warnings, counseling, or leave restrictions.
- D. The employee, at the Agency or at another Federal Agency, has ever been disciplined for viewing, downloading, or exchanging pornography, including child pornography, on a federal government computer or while performing official federal government duties.
- E. The employee has been disciplined for misuse of a government computer.
- F. The employee has refused a visit by the supervisor or any other Agency official to the employee's alternative work site.

Section 10. Authorizing Telework for New EPA Employees

- A. New Employees: Employees who have worked at the Agency for less than six months, even if their position or some duties are telework approved, normally do not engage in regular telework.
- B. Need for Experience: New employees should obtain experience in their position, work unit and organization before being approved for regular telework.
- C. Situational Basis: Telework for new employees may be approved on a situational basis; e.g., for a management declared weather event, emergency, or other disruption.
- D. Factors to Consider: In addition to the eligibility requirements for Agency employees in Section 9 of this Article, and the disqualifications in Sections 9 and 11 of this Article, supervisors also must consider, at a minimum, the following factors before authorizing telework for new employees:
 - (1) Previous federal service, if any;
 - (2) Length and nature of previous work experience; and
 - (3) Any previous experience teleworking.

Section 11. Conditions to Being Approved for Telework

All employees who request to telework must meet the following conditions. The failure to comply with any one of the conditions listed below will result in the denial or termination of a telework arrangement:

- A. Prior to Requesting Telework:
 - (1) The employee must complete the required employee telework training;
 - (2) The employee must complete the *Telework/Application Agreement* and the *Employee Self-Certification Safety Checklist*” (which identifies the significant safety standards that must be met at the alternative work location) and must submit the Agreement and the Checklist to their supervisor for approval, along with the Training Certificate;
 - (3) The employee must make all necessary dependent/elder care arrangements and certify that the arrangements will not interfere with the employee’s work performance while working at the alternative work station;
 - (4) The employee must have equipment at the alternative workstation that is available and working properly to ensure compliance with the Agency’s information technology policies and procedures;
 - (5) The employee must agree to telework in case of an emergency; and,

- (6) The employee must agree to leave the alternative work station and return to the regular office/worksite if requested by the employee's supervisor. Employees on a regular and recurring telework arrangement must agree to report to the official worksite and duty station as needed, as determined by the Agency.

B. While Teleworking:

- (1) The teleworking employee must comply with established pay and administration policies on work schedules, consistently use the appropriate telework time reporting codes to document time and attendance on a bi-weekly basis and give a copy of their telework schedule to the office timekeeper.
- (2) The teleworking employee must comply with Article 9 of this Agreement for requesting and using leave.
- (3) The teleworking employee must maintain a current performance level of at least fully successful.
- (4) The teleworking employee must ensure that working from the alternative work station causes no disruption in the efficiency, timelines, quantity and quality of the employee's work.
- (5) The teleworking employee must ensure availability (e.g., by telephone, email, Skype) to the employee's customers, co-workers and supervisors and other Agency officials.
- (6) The teleworking employee cannot be unavailable during regular teleworking hours for calls, meetings or virtual meetings.
- (7) The teleworking employee cannot during regular teleworking hours put "out of office" messages on e-mail, voice mail and electronic calendars indicating that they are unavailable.
- (8) The teleworking employee must utilize call forwarding technology, if available.
- (9) The teleworking employee must maintain organizational requirements regarding communication and accessibility and respond in a timely manner to the employee's team leaders, supervisors, managers, co-workers, Agency customers and the public.
- (10) The teleworking employee must be capable of joining and be available to join teleconference meetings or conference calls while working at the alternative work location.
- (11) The teleworking employee must safeguard Agency equipment (if provided) and use it only for official purposes in accordance with established Agency policies and practices.
- (12) The teleworking employee must participate in the annual recertification process as required by this Article and in any other telework program monitoring and/or

evaluation processes required by the Agency or other authoritative entities (e.g., OPM, Government Accountability Office, Congress).

Section 12. Telework Training

- A. Training is Necessary: An employee must successfully complete the Agency approved training and obtain a certificate of training before participating in telework.
- B. Attachments to the Telework Agreement: The employee's certificate of successful completion of the required training must be attached to the telework agreement.

Section 13. Establishing the Telework Agreement

- A. Regular and Situational Telework: An employee must complete the following actions in order to be approved for a regular or situational telework agreement:
 - (1) The employee must submit a completed application to the employee's immediate supervisor, including the completed safety checklist and the certification of the employee's telework training.
 - (2) The employee and supervisor must discuss the proposed telework agreement and the type of work to be completed by the employee at an alternative work location.
 - (3) Once all requirements are completed, the employee must sign and date the telework agreement.
 - (4) A separate agreement for each telework episode is not necessary if the employee has signed an agreement to telework on a situational basis.
 - (5) For each specific situational request, the employee must identify in writing, generally by email, to the supervisor, with sufficient time for the supervisor to approve or disapprove: the requested date, the portable work to be performed, the alternative work location, and the telephone number if there is no call-forwarding function available. Response to requests must be in writing. Telework may not be performed unless approved in advance.
 - (6) Employees must obtain information and implement all procedures for accessing the secured operations of the regular office/worksite.
 - (7) If the alternative work location is a telework center, arrangements must be made by the employee's organization to cover the cost and to reserve a workstation for the employee.
- B. Medical Telework: To be approved for a medical telework agreement, the employee must submit a physician-certified written statement that:
 - (1) Provides a description of the diagnosis of the medical condition necessitating the telework arrangement.

- (2) Summarizes the prognosis, including the expected return-to-work date, and, as appropriate, discusses medical management, including how the temporary medical condition might interrupt the employee's work schedule.
- (3) Lists restrictions that should be placed on the work performed at the alternative work location, if applicable.
- (4) States that the employee is able to perform the duties of the position at an alternative work location; and,
- (5) Describes the benefit to the employee's medical condition from working at an alternative work location, or the reduction of health risks to other employees, if any, derived from this medical telework arrangement.

Section 14. Telework Agreements

A. Content of a Telework Agreement:

- (1) The telework agreement covers the terms and conditions of the telework arrangement.
- (2) The telework agreement constitutes an agreement by the employee to adhere to the provisions of this Article and Agency policies and procedures that do not conflict with this Article.
- (3) The telework agreement includes items such as: the voluntary nature of the arrangement; duration of the telework agreement; hours and days of duty at each work location; responsibilities for timekeeping; leave approval and requests for overtime and compensatory time; performance requirements; and proper use and safeguards of government property and records.

B. Changes to a Telework Agreement: When any aspect of the telework agreement changes (e.g., position, work assignment, supervisor, alternate work location), the supervisor will reassess the employee's work to determine telework suitability and continued approval.

C. Yearly Renewal: Each individual telework agreement must be renewed every 12 months. Telework employees must be on the same 12-month renewal calendar, even though the first year of a telework agreement must be renewed before 12 months have expired.

D. Essential Employees: Employees who are designated essential for inclement weather or other emergencies and/or are emergency response employees for COOP purposes, must have signed telework agreements in place to facilitate continuity of operations in the event of emergencies.

E. Copies of the Telework Agreement: The supervisor must retain a copy of the signed telework agreement and a copy must be provided to the employee. A copy of the signed telework agreement must also be provided to the program/regional office telework coordinator who is responsible for maintaining telework records in the organization.

Section 15. Time, Attendance and Other Miscellaneous Issues

- A. Recording Telework Hours: Employees must timely and accurately record all telework time (regular, situational, medical and unscheduled) in the Agency's Time and Attendance Reporting System.
- B. Telework Time Reporting Codes: All teleworking employees must use the official Agency time reporting codes to document and certify their work hours. There are separate Time Reporting Codes (TRCs) for regular, situational, medical and unscheduled telework as well as for overtime telework and telework as a reasonable accommodation. The Agency's current official Time Reporting Codes are as follows (should TRCs change in the future, employees will be required to use the updated codes as designated by the Agency):
- (1) **TMREG**: Telework Medical Regular
 - (2) **TOHRW**: Telework Overtime Hours
 - (3) **TWRAC**: Telework for Reasonable Accommodation
 - (4) **TREGW**: Telework Regular Hours
 - (5) **TWCTU**: Telework Comp Time Used
 - (6) **TWCTE**: Telework Comp Time Earned
 - (7) **TWEHR**: Telework Episodic Hours (for Situational Telework)
 - (8) **TWUSH**: Telework – Unscheduled.
- C. Hours of Duty and Work Schedules:
- (1) An employee who teleworks must work the same schedules that the employee would have worked at the regular office/worksite, including compressed or flexible schedules under Article 12 of this Agreement. Eligible work schedules for employees participating in telework are the same as for those employees working at the regular office/worksite.
 - (2) An employee who teleworks may not work non-standard evenings and weekend schedules.
 - (3) Emergency or extreme circumstances may warrant work schedules to be changed with supervisor approval and in accordance with this Article and established Agency policies and procedures that do not conflict with this Agreement.
 - (4) Unstructured arrangements where employees work at the alternative work location without prior supervisory approval are not permitted.

- (5) Employees on flexible schedules may work credit hours at the alternative work location schedule, subject to the same approved process in Article 12 of this Agreement.

D. Overtime During Telework - Eligibility Requirements:

- (1) All overtime must be approved in advance.
- (2) Any overtime work that is not ordered and approved in advance by the supervisor, in writing, will not be compensated. Employees cannot perform unauthorized overtime work while teleworking (i.e., overtime that is not ordered and approved by the supervisor in advance and in writing).
- (3) When an employee working at the employee's alternative work location on a regular or situational telework day is directed by the employee's supervisor to perform work that would require more time than the employee's regularly scheduled number of hours for the day, the supervisor may order overtime for the employee.

E. Leave: Procedures for requesting leave are the same for employees participating in telework and employees working at the regular office/worksites. Employees are responsible for obtaining leave approval in advance as required by Article 9 of this Agreement, and for reporting leave usage appropriately in the Agency's Time and Attendance Reporting System.

F. Workers' Compensation:

- (1) Employees who telework are covered by the Federal Tort Claims Act or the Federal Employees Compensation Act and qualify for continuation of pay for workers' compensation for injuries sustained while performing their official duties.
- (2) The Federal Tort Claims Act and the Federal Employees Compensation Act only apply to injuries sustained while performing official duties when the telework at the alternative work site was approved in advance and adhered to by the employee.
- (3) The supervisor's signature on the request for compensation attests only to whether the event occurred at the regular office/worksites or at an approved alternative work location during official duty. Since supervisors are not present when an employee sustains an injury at an alternative work location, employees must honestly and accurately inform their immediate supervisor of an injury at the earliest time possible, seek appropriate medical attention and file the appropriate workers' compensation claim form.
- (4) Telework arrangements can result in employees who are currently receiving continuation of pay or worker's compensation returning to work, taking them off the workers' compensation rolls. Supervisors may be able to find work that such employees are able to perform at their home alternative work location, or restructure existing work so that some of the work may be completed at home.

G. Requirement to Return to the Regular Office/Worksite on a Scheduled Telework Day:

- (1) Employees on telework will exercise professionalism and attend scheduled meetings in-person at their regular office/work site when appropriate without being instructed by their supervisors.
- (2) Employees on a regular and recurring telework arrangement are required to report to the official worksite and duty station as needed, as determined by the Agency. Employees participating in the telework program must be accessible and available for recall to their regular office/worksite for a variety of reasons such as, but not limited to: meetings; briefings; special assignments; training; travel; unscheduled absence of other employees; emergencies; or other situations deemed necessary by the supervisor to meet work-related needs. Under these circumstances, the following will occur:
 - (a) The supervisor will recall an employee to the regular office/worksite by notifying the employee as soon as practicable. Employee recalls are at the sole discretion of the supervisor.
 - (b) If an employee is unable to telework from the employee's alternative work location due to being required to be at the regular office/worksite on a regularly scheduled telework day, or being on approved leave or travel, the employee is not entitled to another telework day.
 - (c) If an employee is unable to telework from the employee's alternative work location due to being on approved leave or travel, the employee is not entitled to another telework day.

H. Travel: Government-wide regulations, Agency policies and procedures that do not conflict with this Agreement which apply to employees working at the regular office/worksite also apply to employees who telework.

I. Prohibited Uses of Telework:

- (1) Agency officials are prohibited from authorizing regular, situational, or unscheduled telework for employees seeking to engage in activities solely of a personal, non-work-related nature that should otherwise be accommodated through other appropriate processes. Examples include, but are not limited to:
 - a. Substituting telework for dependent/elder care. When the home is the alternative work location, an employee must not use telework as a means to care for the employee's spouse, child, relative, or any other individual.
 - b. Allowing an employee to telework in lieu of leave.
 - c. Accommodating an employee's personal requests that should legitimately be resolved by other appropriate means (e.g., sick leave, annual leave, leave without pay, donated leave, advanced leave, accrued compensatory time, change in work schedule, reassignment).

- d. Including time spent in routine commuting to and from the official worksite.
- (2) There may be circumstances where telework eligible employees utilize leave for a portion of the workday and, with the supervisor's approval, may be permitted to telework at an alternative work station for the remainder of the workday.

J. Monitoring Performance:

- (1) Teleworkers and non-teleworkers will be treated the same for the purposes of monitoring and assessing job performance. However, supervisors may, at their discretion, utilize different mechanisms for communicating with, and monitoring the work of, teleworking employees.
- (2) Employee performance while on telework must be monitored by the supervisor to ensure the timeliness, quality and quantity of the employee's performance and that employees are indeed working and are working efficiently and effectively when scheduled.
- (3) Appropriate management controls and reporting procedures must be in place before employees begin telework assignments. Some approved monitoring techniques which are applicable to telework arrangements, include:
 - a. Supervisory telephone calls or e-mail messages to an employee during times the employee is scheduled to be on duty.
 - b. Visits by the supervisor to the employee's alternative work location.
 - c. Use of performance management systems, including regular workload/accomplishments reports used for teleworking and non-teleworking employees, to determine reasonableness of work output for time spent, project schedules, key milestones, quality of the work performed, and team reviews.

Section 16. Emergencies: Unscheduled Telework, Dismissals, and Closures

A. Unscheduled Telework/Closures:

- (1) In the event of an office closure, telework-ready employees already scheduled to telework that day are required to work telework or take annual or unpaid leave.
- (2) In the event of an office closure, telework-ready employees not scheduled to telework that day, in coordination with their supervisor, must utilize unscheduled telework to the maximum extent possible or take annual or unpaid leave.
- (3) Employees who are required to work during their regular tour of duty on a day when federal offices are closed to the public (or during delayed arrivals or early dismissals) are not entitled to overtime pay, credit hours, or compensatory time off for performing work during their regularly scheduled hours.

- (4) Employees reporting to an alternative work location, other than the employee's primary residence, during the workweek must follow the closure or dismissal procedures of the alternative work location.

B. Late Arrivals/Early Dismissals at the Regular Office/Worksite:

- (1) When the Agency announces early closure or late arrival of the regular office/worksite, telework-ready employees already scheduled to telework that day are required to telework their regularly-scheduled non-overtime hours.
- (2) When the Agency announces early closure or late arrival of the regular office/worksite, telework-ready employees that are not scheduled to telework that day are required, in coordination with their supervisor, to utilize unscheduled telework to the maximum extent possible.
- (3) Early release for a holiday will be granted to those on telework to the same extent as granted to those employees working at the regular office/worksite.

C. Unscheduled Telework Announced: In the event that the regular office/worksite is open, but there is an announcement of the option for unscheduled telework that day, telework-ready employees not otherwise scheduled to telework may come into the regular office/worksite, request approval for unscheduled telework or request approval for annual, credit, or other leave.

D. Other Emergencies or Disruptions to the Regular Office/Worksite: In the event of a disruption to normal office operations (e.g., national or local emergency, emergency event involving inclement weather, or any situation that may result in a disruption to normal office operations), employees approved for regular and situational telework are expected to telework if instructed to telework by their supervisor. Telework may be required in COOP situations.

E. General Provisions:

- (1) Employees must be prepared and plan ahead when conditions indicate severe weather is possible. Teleworking employees must make necessary arrangements to take home necessary equipment and work-related materials (e.g., laptops, documents) prior to a forecasted weather event.
- (2) As with scheduled telework, an employee performing unscheduled telework must have sufficient portable work to perform throughout the workday when teleworking. An employee who does not have enough portable work must report to the regular office/worksite if it is open, contact their supervisor for additional work, or request annual leave, credit time, or other leave.
- (3) When inclement weather or other emergency (such as flooding or a roof collapse) prevents an employee from working safely at the alternative work location, and the

regular office/worksites is closed to employees, a telework-ready employee may, on a situational basis, be granted weather and safety leave for all or part of the workday.

Section 17. Modification and Termination of the Telework Agreement

- A. Agency Must Approve Telework and the Continuation of Telework: Telework is subject to Agency approval and not an employee entitlement. Employees who telework do not have an automatic right to continue teleworking.
- B. Agency Mission Comes First: The operational and work-related needs of the Agency are paramount and take precedence over any employee concerns.
- C. Modification, Adjustments and Termination:
 - (1) Telework agreements may be modified, adjusted or terminated at any time by the Agency based upon an employee's failure to adhere to telework requirements or based upon any other consideration affecting employee eligibility consistent with this Article.
 - (2) Telework agreements may also be modified or adjusted at any time when requested by the employee.
 - (3) The Agency has the unreviewable right at any time to end an employee's use of telework if: the employee's performance falls below the fully successful level; the employee is charged with misconduct; the employee fails to comply with the terms of the employee's telework agreement; or if the telework agreement no longer meets the organization's work-related needs. Participation in telework must be terminated when the employee no longer meets the eligibility criteria.
 - (4) The Agency will provide sufficient notice, when feasible, before modifying or terminating a telework agreement to allow the affected employee to make necessary arrangements. The reason for termination will be documented, signed by an Agency official, and furnished to the employee. Consent or acknowledgement via signature by the affected employee is not required for the termination of telework to take effect.
 - (5) When an aspect of an employee's work changes (e.g., position, work assigned, alternative work location), the supervisor will reassess the portability and suitability of the employee's work for continued telework approval.
 - (6) An employee may withdraw an application for telework or terminate an approved telework agreement at any time and return to the regular office/worksites. The employee must notify the supervisor in writing, and the supervisor will acknowledge the employee's notice in writing, to prevent misunderstandings about work location.

Section 18. Facilities and Equipment

- A. Alternative Work Location Office Space:

- (1) Requirements will vary depending on the nature of the work and the equipment needed to perform the work. At a minimum, employees must be able to easily and reliably communicate by telephone and email with the supervisor, Agency officials, co-workers, clients and the public when working from their alternative work location.
- (2) Employees must ensure and verify that their work areas are always in compliance with health and safety requirements as set forth in the *Employee Self-Certification Safety Checklist*. Home work areas must be clean and free of obstructions, in compliance with all building codes, and free of hazardous materials. An employee's request to telework will be disapproved or rescinded based on safety problems or the presence of hazardous materials.
- (3) A supervisor or other Agency official may inspect the home office or other alternative work location at any time for compliance with the contents of this article and/or compliance with health and safety requirements.

B. Regular Office/Worksite Space Sharing:

The organizational unit to which an employee is assigned has the right to implement space-saving initiatives when employees have approved telework agreements. Space-saving options include shared workstations, smaller workstations or unassigned touchdown/hoteling situations. In the event the employee is no longer on an approved telework agreement, they may still be assigned to such work stations.

C. Government-Furnished and Privately-Owned Equipment:

- (1) The Agency is under no obligation to provide government-furnished equipment to employees solely for the purpose of teleworking. Supervisors, at their unreviewable discretion, and if funding permits, may authorize certain items and services for the individual teleworker, such as computers, printers, and telecommunications equipment and services.
- (2) Employees who have an Agency-issued laptop or mobile phone assigned to them must use that assigned equipment while teleworking and must take reasonable safeguards against theft and damage when they use and transport the equipment while teleworking.
- (3) All Agency-issued equipment and supplies remain the property of the Agency. The Agency is responsible for the service and maintenance of Agency-issued equipment.
- (4) The Agency has no obligation to service or maintain equipment belonging to the employee, even if the employee uses the equipment for Agency work.
- (5) Employees whose office worksite phone lines have a call forwarding function must use this function to forward calls to the office to a phone available to the employee at the employee's alternative work location. Unless the call forwarding function is not available, callers should not be directed by an outgoing message to dial a different number to reach an employee at an alternative work station. An employee cannot be

only accessible by phone by retrieving voicemail messages from the office site phone line.

- (6) If an employee furnishes the employee's own equipment at the alternative work location, the Agency will not reimburse the employee for the purchasing costs of the equipment. The employee is responsible for the maintenance, repair and replacement of privately-owned equipment. The Agency will not reimburse the employee for the maintenance, repair and replacement of privately-owned equipment, including broadband.
- (7) The Agency will not reimburse employees for the utility costs (e.g., heating, air conditioning, lighting and the operation of government-furnished computers) for alternative work locations. Utility costs include the monthly service charges for telephone or specific telephone charges. Teleworking employees making long distance calls to conduct official government business may use Agency issued mobile phones, if available. As with all Agency equipment, Agency issued mobile phones are subject to Agency monitoring to ensure that they are being utilized in connection with Agency business.
- (8) If an employee works at an alternative work location that is outside of the local commuting area, or is on full time medical telework or is on full time telework as a reasonable accommodation, the Agency is responsible for service and maintenance of government furnished equipment. If the government furnished equipment is in need of repair and upgrade, the Agency will make a reasonable effort to initiate repairs and upgrades remotely. However, if on-site assistance is required, employees must either return to their regular office/worksite or make other arrangements with their supervisor to ensure that repairs and upgrades can be made expeditiously. Supervisors will make unreviewable determinations over questions concerning the employee's duty status, appropriate work assignments and potential temporary equipment during the interim period between when repairs and upgrades are required and when they are completed.
- (9) Consistent with the Agency's Records Management Policy, official Agency business must only be accomplished on official Agency information systems. The Federal Records Act prohibits the creation or sending of a federal record using a non-Agency electronic messaging account unless the individual creating or sending the record either: (1) copies their Agency email account at the time of initial creation or transmission of the record, or (2) forwards a complete copy of the record to the individual's Agency email account within 20 days of the original creation or transmission of the record.

Section 19. Information Security

- A. **Security is a Priority:** Employees on telework must strictly adhere to all Agency policies, procedures, directives and other Agency security issuances that protect Agency information and information systems, including when work is done on telework.

Employees on telework must minimize security risks to all Agency information and systems.

- B. **Secure Devices:** The alternative work location and any devices used with Agency information must be configured to ensure all Agency information in any form or format is properly protected at all times and in accordance with all Agency policies, procedures, directives and other Agency security issuances.

Section 20. Records Management

- A. Records Management: When working at an alternative work location, Agency employees must continue to comply with the Agency's records management policy and any other applicable Agency and government-wide policies related to using, creating, maintaining and disposing of records.
- B. Comply with Records Laws: Employees on telework must comply with the Federal Records Act, the Freedom of Information Act, the terms of any litigation hold, discovery in litigation and any requests for records by the Office of the Inspector General.
- C. Property of the Agency: Any record removed from the regular office/worksite for telework assignments remains the property of the Agency and any information generated from telework assignments is the property of the Agency.
- D. Agency Records: Employees on telework are responsible for maintaining the integrity of their records and for producing records on demand. Employees must use Agency equipment when available. Creating, maintaining or modifying Agency records on personal computer equipment may subject the employee to having that equipment analyzed.

ARTICLE 18 MIDTERM NEGOTIATIONS

This Article governs the mid-term bargaining relationship of the parties over matters which are not covered by this agreement. The Agency will fulfill its midterm statutory bargaining obligations. The Agency has no duty to bargain under the Statute nor under this Agreement over matters that fall within the “covered by” doctrine as established and applied by the Federal Labor Relations Authority (FLRA) and the U.S. Court of Appeals for the District of Columbia. The purpose of this Article is to establish a complete and orderly process to improve efficiency and expedite mid-term negotiations in the interests of the Agency, the Union, employees, and Agency stakeholders.

Section 1. Mid-Term Negotiation Parameters

“Necessary Functioning” Doctrine: As set forth in in Article 14 (Duration), the terms of this Agreement shall remain unchanged during its entire term, except as provided by this Agreement or as required by law. The Agency has no pre-implementation duty to bargain midterm under the Federal Labor Statute nor under this Agreement over matters that fall within the “necessary functioning” doctrine as established and applied by the FLRA.

Section 2. Mid-Term Negotiation Procedures

- A. Authorized Representatives: The parties will approach negotiations in good faith with a sincere resolve to efficiently reach an agreement. Only the Union designated representative and Agency representative, as designated by the Director of the Labor and Employee Relations Division (LERD), may negotiate and execute a mid-contract memorandum.
- B. Request to Bargain and Proposals: If a party intends to exercise its bargaining rights regarding a proposed change that creates a statutory duty to bargain, the party must request to bargain and submit timely bargaining proposals in writing. The request must be in accordance with the procedures and time frames in this Article, or the party will be considered to have waived its right to bargain.
- C. Notice: When notice of mid-term bargaining is required, the Agency shall serve its notice of the proposed change to the Union President. The Union, through the Union President, will serve notice to the Agency’s designated representative.

Section 3. Content of Agency Notice of Mid-Term Bargaining

The Agency-written notice for mid-term bargaining shall include:

- A. The known nature and scope of the proposed change;
- B. The planned timing of the change; and,
- C. The Agency’s point of contact.

Section 4. Service of Notices

All notices will be by email.

- A. Union Demand to Bargain: The Union must submit a written demand to bargain no later than three work days after the Agency's notice of the proposed change is served on the Union. The failure of the Union to timely demand to bargain will result in the Union's waiver of its right to negotiate on the matter.
- B. Submission of Proposals: If a briefing is requested, the Union must submit bargaining proposals within five workdays after the briefing. If a briefing is not requested, the Union must submit bargaining proposals within five work days after the Union's written demand to bargain is served. Failure to timely submit proposals will result in the Union's waiver of its right to negotiate on the matter.
- C. Briefing: If a briefing is requested, the briefing will be requested with the demand to bargain and scheduled to occur within five workdays after the Agency receives the Union's demand to bargain/request for briefing (whichever comes first), unless the Agency's subject matter experts (SMEs) are not available within the five workdays. In cases where the Agency cannot provide the Union with a briefing within five workdays, the Agency will schedule the briefing as early as practicable.
- D. Timeframe to Begin Bargaining: Bargaining shall commence as soon as possible, but no later than 10 work days after the Union submits its bargaining proposals.

Section 5. Mid-Term Bargaining Ground Rules

The following ground rules will govern all mid-term bargaining; there will be no further bargaining on additional ground-rules.

- A. Minimize Bargaining Costs: The parties will minimize, to the greatest extent possible, Agency and Union expenditures during negotiations. As such, virtual, telephonic and all other means of low-cost negotiations will be utilized to the greatest extent possible.
- B. Coordinate Bargaining: Where practicable and agreeable, the parties will coordinate negotiation meetings with other scheduled meetings.
- C. Face-to-Face Negotiations: Both parties may consent that face-to-face negotiations are needed:
 - (1) Negotiations will generally take place at an Agency-provided location.
 - (2) Negotiations will be conducted during the regular business hours of operation where the negotiations are taking place. Participant schedules will be adjusted to allow for a full week of bargaining per Section J, and to account for all time spent on official time and for related negotiations travel.
 - (3) The number of Union negotiators representing the Union in bargaining under this

Article who will be authorized official time under section 7131 (a) of the Statute (excluding travel time and preparatory time) for such purposes during the time the employee otherwise would be in regular duty status, shall not exceed the number of Agency negotiators. The Agency will inform the Union of the number of Agency negotiators after the Agency receives the Union's bargaining proposals. In addition to the Union negotiators on official time, the Union may have one additional negotiator who is not on official time.

- D. Consolidate Bargaining: If both parties consent, negotiations on different proposed changes may be consolidated or held concurrently.
- E. Travel and Per Diem: Each party is responsible for the travel and per diem costs of its team associated with negotiations for all phases of negotiations, inclusive of assistance before the Federal Mediation and Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP).
- F. Proposals: Proposals must be negotiable and must be related to the proposed change. Where applicable, if proposals are appropriate arrangements, such proposals must identify the adverse impact upon the employees that the proposals are intended to reduce or remedy. At any point in the bargaining process, the party proposing the change may elect to withdraw any proposed change, in whole or in part. However, nothing considered in this paragraph shall prevent either party from subsequently initiating negotiations over the same subject matter.
- G. Number of Negotiators/Spokesperson Authorities/Alternates: Each party shall be represented at the negotiations at all times by one duly authorized chief negotiator or designee, who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign-off on agreements for their respective party. The parties will exchange the names of their bargaining team members for the specific issues to be negotiated no later than 3 work days prior to the commencement date of the bargaining. Alternates may substitute for team members with advanced notice to the other side. Such alternates will be entrusted with the right to speak for and bind the members for whom they substitute. Inability to have all team members present will not delay negotiations.
- H. Subject Matter Experts (SMEs): Technical advisors and SMEs may be used by each party with a limit of one technical adviser/SME at a time. The requesting party will be responsible for all costs associated with the attendance of technical advisors/SMEs. Technical advisors/SMEs shall be excused once they have served their purpose.
- I. Silent Observers: Either party is authorized up to one silent observer to attend negotiations. Silent observers are not authorized to speak during negotiation sessions. Union silent observers are voluntary, thus they shall not be authorized official time pursuant to Section 5C(3).
- J. Mid-Term Bargaining Schedule:
 - (1) Negotiations will be held on five consecutive work days, Monday through Friday. Participants' work schedules will be adjusted to allow for a full week of bargaining

and to account for all time.

- (2) In-person bargaining sessions will commence at 9:00 a.m. and conclude at 5:30 p.m. at the place where negotiations occur, with thirty (30) minutes allocated for lunch, except that Monday's bargaining session will commence at 1:00 p.m. and Friday's bargaining session will conclude by 12:00 p.m. EST, to allow for travel, when travel is required and when the parties consent to travel.
 - (3) The schedule for bargaining sessions conducted by teleconference or videoconference may be modified to account for the time zone of participants but will generally commence at 10:00 a.m. and conclude at 5:00 p.m. E.S.T., with 30 minutes allocated for lunch.
- K. Caucus: Either team may request a caucus and may leave the negotiating room to caucus at a suitable site provided by the meeting host for 30 minutes, unless otherwise communicated. There is no limit to the number of caucuses which may be held, but each party must make a concerted effort to restrict the number and length of the caucuses. Caucuses cannot be held at the start or end of a negotiating day.
- L. Failure to Reach Agreement: If an agreement is not reached by the end of the third day bargaining (Wednesday), the parties will exchange last and best offers no later than the fourth day (Thursday) no later than 12:00 P.M. E.S.T. By close of business on Thursday, mediation services of the Federal Mediation Conciliation Services (FMCS) will be requested for the fifth day of bargaining (if agreement is not reached on the fourth day on the last best offers. If the services of a mediator are not available for the Friday bargaining session, negotiations will be concluded for the week and a subsequent session will be scheduled by the parties to be held within five work days or as soon as a mediator is available, unless the parties consent otherwise. Virtual meeting methods will be used to the maximum extent possible, unless the parties consent otherwise.
- M. Memorializing Agreement: Agreements will be in the form of memoranda of understanding (MOUs)/memoranda of agreement (MOAs). Upon agreement of each section, the chief negotiator for each party (or designee) will signify temporary agreement on each section of the MOU/MOA by initialing and dating the agreed upon section(s) of the working documents. Upon agreement of the entire MOU/MOA, the chief negotiator for each party will sign and date two copies of the MOU/MOA to signify final agreement.
- (1) All MOUs/MOAs will contain an expiration date. When an agreement is reached, it will be typed in final form and signed by both parties without delay. Such agreements and understandings shall conclude negotiations on such matter(s).
 - (2) All MOUs/MOAs signed by the parties and entered into during the life of the parties' master collective bargaining agreement (MCBA) will be considered an addendum to this agreement and subject to its duration, unless a shorter expiration date has been agreed to in the MOU/MOA.
 - (3) All MOUs/MOSs signed by the Parties are subject to Agency Head Review, consistent with 5 U.S.C. 7114.

N. Official Time: Official time for negotiations under this Section shall be provided by 5 U.S.C. 7131(a).

- (1) Time for preparation will be limited to eight hours of leave without pay for union activities per weekly negotiation session, per union team, unless otherwise requested by the union and approved by the Agency. Such time will be administered in accordance with Article 2.

O. Impasse: Any bargaining impasse not resolved through the FMCS may be submitted by either party to the Federal Services Impasses Panel (FSIP) within three workdays of either party declaring impasse. The Union's failure to submit a bargaining impasse to FSIP within three workdays of declaring impasse constitutes a waiver, and the Agency may unilaterally implement the change without further bargaining obligations.

ARTICLE 19
NEGOTIATED GRIEVANCE PROCEDURE

Section 1. Sole and Exclusive Procedure

The parties agree that this Article establishes the sole and exclusive procedure available to bargaining unit employees and the parties for the processing and settlement of grievances that fall within its coverage, including questions of grievability and arbitrability.

Section 2. Grievance Definition

A grievance means any complaint:

- A. By any bargaining unit employee concerning any matter relating to the employment of the employee;
- B. By the Union concerning any matter relating to the employment of a bargaining unit employee; or
- C. By any bargaining unit employee, the Union or the Agency concerning:
 - (1) The effect or interpretation, or claim of breach of a negotiated agreement; or
 - (2) Any claimed violation, misinterpretation, or misapplication of law, rule, or regulation affecting conditions of employment.

Section 3. Exclusions

- A. Statutory Exclusions: Grievances on the following matters are excluded by Section 7121(c)(1) through (5) of the Statute:
 - (1) Any claimed violation of Subchapter III of Chapter 73 of Title 5 of the U.S. Code (U.S.C.) relating to prohibited political activities;
 - (2) Retirement, life insurance or health insurance;
 - (3) Suspension or removal under Section 7532 for national security reasons;
 - (4) Any examination, certification or appointment; or,
 - (5) The classification of any position which does not result in the reduction in grade or pay of an employee.
- B. Other Exclusions: Grievances on the following matters are also excluded by this Agreement:
 - (1) Written notice of proposed action;

- (2) Letters of counseling/warning/instruction;
- (3) Performance progress reviews (i.e. mid-year reviews);
- (4) Performance improvement plans and the decision to place an employee on a performance improvement plan (this does not preclude grievances on violations of statutory, regulatory or negotiated requirements for PIPs);
- (5) A management decision to make or terminate a temporary promotion, detail or reassignment;
- (6) The adoption or non-adoption of a suggestion;
- (7) The receipt or non-receipt of an honorary or cash award;
- (8) The non-renewal or non-extension of a temporary employee, termination of a temporary appointment due to reduction in force or any other termination of the appointment of a temporary employee;
- (9) Separation of a term or trial employee;
- (10) Non-selection for promotion (this does not preclude grievances pertaining to violations of prohibited personnel practices);
- (11) Removal of a probationary employee during probationary period;
- (12) Removal of an employee pursuant to Title 5, U.S.C., Chapter 75, and the implementing regulations at Part 752 of Title 5, Code of Federal Regulations (C.F.R.);
- (13) Removal of an employee pursuant to Title 5, U.S.C., Chapter 43;
- (14) The content of published Agency-wide policy, except where it conflicts with this Agreement, law, or governmentwide regulations;
- (15) Adverse personnel action (as enumerated in Section 7512 of Chapter 75 of Title 5, United States Code) taken against probationary, trial or temporary employees, except where appeal rights to the Merit Systems Protection Board exist under Chapter 75 or 43 of Title 5, U.S.C.;
- (16) Adjudication of claims the jurisdiction over which is reserved by Statute and/or regulation to another department, such as, but not limited to, Department of Labor determinations on workers compensation;
- (17) Actions taken by the Agency required by lawful court orders (e.g.,

garnishment of wages for indebtedness or child support) or overpayment actions that can be adjudicated in an alternate venue outside the Agency (e.g., the IRS, etc.);

- (18) Reduction in Force (RIF) actions (this does not preclude grievances on violations of statutory, regulatory or negotiated requirements for RIFs);
- (19) Actions taken by the Agency during an emergency, including emergency furloughs;
- (20) Decisions regarding performance awards, on the spot awards or any other types of awards;
- (21) Decisions regarding incentive pay;
- (22) The assignment of performance ratings of record;
- (23) Performance-based actions appealed under another statutory procedure;
- (24) Disciplinary or adverse actions appealed under another statutory procedure;
- (25) Matters already disputed in an employee formal equal employment opportunity (EEO) complaint.

Section 4. Other Applicable Procedures

- A. No Waiver of Rights: Nothing in this Agreement shall constitute a waiver of any appeal or review rights permissible under 5 U.S.C. Chapter 71.
- B. Statutory Option Selection: An employee shall be deemed to have exercised the employee's option under Section 7121(d) and (e)(1) of the Statute when the employee timely initiates an action under the applicable statutory procedure or files a timely grievance in writing under the negotiated grievance procedure in this Article, whichever event occurs first.
- C. Informal EEO Grievance: Employees who have sought informal EEO complaint counseling may still file a grievance, provided that such grievance is filed within 45 calendar days of the event or non-event which caused the grievance to be filed, and no formal EEO complaint has been filed. Per 29 C.F.R. Part 1614, initiating one formal process precludes the use of the other.

Section 5. Designation of Representative

- A. Only the employee or a representative designated by the Union may be the representative in a grievance under this procedure.

- B. Union Representative: If the Union is the grievant's designated representative, the employee will state that in writing at the initial filing of the grievance. Communications under this procedure shall be directed to the representative designated by the Union. Any changes to that designation must be in writing. Each party shall have a representative available to meet grievance filing time frames. Extensions may be granted with the consent of both parties.

Section 6. Filing an Employee Grievance

- A. Time to File: A grievance is one specific action which is described in Section 2. In order to avoid stale litigation, a grievance must be filed within 15 calendar days of the date of the specific action which is the subject of the grievance. If the grievant was prevented from filing the grievance during the 15 calendar day period because of an Agency failure to perform a duty owed to the grievant or because of any concealment by the Agency that prevented discovery of the action during the 15-day period, then the grievance must be filed within 15 calendar days of the grievant's discovery of the action. A step of the grievance procedure can be waived with the consent of both parties.
- B. Extension to File: Requests for extensions to the time limits for filing must be submitted in writing to the other party prior to the expiration of the applicable time limit. Requests for extensions of time limits shall be considered upon receipt of a written request and justification. A written decision will be provided to the requesting party.
- C. Failure to Meet a Time Limit: If either party fails to comply with the time limits at any step of the grievance process, the grievance may be advanced to the next step of the process.
- D. Section 7114(b)(4): The alleged failure of the Agency to comply with Section 7114(b)(4) of the Statute will be decided by the Federal Labor Relations Authority (FLRA) upon the filing of an unfair labor practice charge, or the alleged failure can be raised in a new grievance filed under this Article.

Section 7. Official Time

Official time to prepare for and present grievances will be administered pursuant to Article 2 of this agreement.

Section 8. Employee Grievance Procedure

A. Informal Grievance

- (1) The parties recognize that grievances may arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis.
- (2) At the election of the employee or the employee's representative, an employee dispute with the Agency may be brought to the employee's supervisor or to the appropriate Agency official with authority to resolve the matter informally. The supervisor or appropriate Agency official may provide a written response within five work days of

the matter being brought to their attention under this Section. If a matter is not resolved in this manner, the employee or the employee's representative may file a grievance in accordance with the procedures set forth in this article. At the election of the employee or the employee's representative, this informal process may also be bypassed. An election to pursue resolution informally does not toll the required time frames for filing a formal grievance; however, an extension may be granted under Section 6.B.

- (3) If the dispute cannot be resolved informally, or the employee or the employee's representative chooses to forego the informal meeting described above, the following formal process must be used.

B. Formal Step 1

- (1) Where to File a Grievance: An employee must file the grievance in writing to the employee's immediate supervisor, unless the immediate supervisor does not have the authority over the matter grieved. In the case that the employee's immediate supervisor does not have such authority, the employee must file the grievance with the authorized Agency official at the level having the necessary authority. The Agency has the sole authority to determine the proper Agency official to respond to any union grievance.
- (2) Content of the Grievance: The employee must state specifically that the employee is presenting a grievance. The grievance must include:
 - a. Copies of any existing documentary evidence that supports the employee's grievance;
 - b. The specific personal relief sought;
 - c. The name, organizational unit and location of the aggrieved;
 - d. The name, title, organizational unit and contact information of the Agency official that allegedly took the action that gave rise to the grievance;
 - e. A statement of the law, regulation or agreement alleged to have been violated, citing specific sections, paragraphs and articles; and,
 - f. Designation by name of the Union representative or a statement of self-representation.
- (3) The failure of the grievance to supply this information will render the grievance deficient, and the grievance will be returned. The return of a deficient grievance does not toll the required time frames for filing a formal grievance.
- (4) Consolidation of Grievances: The Agency may consolidate multiple grievances into one grievance for processing and decision making in the event that the grievances

raise the same or similar issue alleging a violation of the same law, rule, or Agreement, Article, and Section.

- (5) Step 1 Decision: Within 15 calendar days after receipt of the grievance, the Step 1 deciding official will issue a written decision. If the grievance is denied, the response will include the name of the Step 2 Agency official who has the authority to resolve the matter. The Agency's failure to respond to the grievance within the specified time frames, or as consented to by the parties, will automatically advance the grievance to the next step.

C. Formal Step 2

- (1) Filing a Step 2 Grievance: If the matter is not satisfactorily resolved following Step 1, and the aggrieved employee and/or representative, if any, wish to continue the grievance process, they must file the matter in writing to the Step 2 Agency official identified in the Step 1 decision within 15 calendar days of notification of denial or the date that a response should have been received. The Step 2 grievance shall include, as attachments, both the Step 1 grievance and the Step 1 grievance response.
- (2) Failure to Raise an Issue: Failure to raise evidence or issues at the Step 1 or Step 2 grievance level shall result in an inability of the grieving party to include or raise the issue at arbitration.
- (3) Step 2 Decision: The Step 2 Agency official shall issue a written decision on the grievance within 30 calendar days of receipt of the grievance. If the grievance is not satisfactorily settled, the Union may refer the matter to arbitration in accordance with the procedures set forth in the Arbitration Article 7.
- (4) Settlement and Withdrawal: If at any time during the processing of a grievance, a settlement agreement is accepted by the employee or the employee's designated representative, the agreement shall be in writing. Execution of the settlement agreement automatically withdraws the grievance in its entirety.

Section 9. Grievance of the Parties

- A. Content of an Institutional Grievance: Should either party have a grievance concerning institutional rights granted by law, regulation or this Agreement, the party shall inform the designated representative of the other party of the specific nature of the complaint in writing, including:
 - (1) The specific evidence, including providing copies of any existing documentary evidence, that supports the grievance;
 - (2) Any provision of law, rule or regulation allegedly violated, citing specific sections, paragraphs and articles;
 - (3) The name, title, organizational unit and contact information of the Agency official that allegedly took the action that gave rise to the grievance; and

- (4) The specific relief sought.
- B. The failure of the grievance to supply this information will render the grievance deficient and the grievance will be returned to the other party for correction. The return of a deficient grievance does not toll the required time frames for filing a formal grievance. The grievance must be signed and dated.
- C. Time Limits of an Institutional Grievance: A grievance of a party is one specific action which is described in Section 2. In order to avoid stale litigation, a grievance of a party must be filed within 30 calendar days of the date of the specific action. If the Union or Agency was prevented from filing the grievance during the 30 calendar day period because of an Agency or Union failure to perform a duty owed to the other party or because of any concealment by the Agency or Union that prevented discovery of the action during the 30 day period; the grievance must be filed within 30 calendar days of the Union's or Agency's discovery of the action.
- D. Failure to Raise an Issue: Failure to raise evidence or issues at the grievance of the parties stage shall result in an inability of the grieving party to include or raise the issue at arbitration.
- E. Where to File: The grieving party will file the grievance with the designated representative of the other party authorized to receive a party grievance:
- (1) A local matter will be filed with the designated local representative of the other party; or,
 - (2) A national matter will be filed with the designated national-level representative.
- F. Decision: Within 30 calendar days after receipt of the written grievance, the receiving party will send a written decision on the grievance. If the matter is not resolved, the grieving party may refer it to arbitration in accordance with Article 7.

Section 10. Alternative Dispute Resolution (ADR)

- G. Resolution of a Grievance: The parties, upon request, will explore resolution of all potential grievances before being filed, individual grievances at steps 1 and 2, and party grievances. Settlements will be in writing and execution of the settlement agreement automatically withdraws the grievance in its entirety. Settlement discussions will not toll the time limits for filing and processing a grievance in this Article; however, the parties may mutually agree to toll the time limits on a case-by-case basis.

ARTICLE 20 ARBITRATION

Section 1. Invocation

- A. **Time Limits to Invoke Arbitration:** A notice to invoke arbitration will be made in writing by electronic mail to the other Party within 30 calendar days of receipt of the written decision rendered in the final step of the grievance procedure. If no written decision has been rendered, the 30 calendar day period begins the day after the written decision was due. Failure to provide a timely notice of an invocation will render the grievance not arbitrable.
- B. **The Parties:** Only the Union or the Agency may refer to arbitration any unresolved grievance after the final step of the negotiated grievance procedure. A referral must be made only by the Union Council President or the Agency Labor Relations Director (or designee). The notice to invoke arbitration filed by the Union must be served on both the alleged responsible management official and on the Headquarters' Labor Relations Director and on any local designated management representative, such as a Labor Relations Officer.

Section 2. Arbitrator Selection and Site/Timing of the Hearing

- A. **Time Limits to Request List of Arbitrators:** Within five calendar days of invoking arbitration, the invoking party will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven impartial qualified persons to act as arbitrators. The invoking party will request that the FMCS serve a copy of the panel list on both parties (Union and management). The invoking party will pay the FMCS fee.
- B. **Site of Hearings:** Hearings will be held within the commuting area of the site of the dispute and the panel list will have a geographic area of arbitrators in that area. For grievances regarding individual employees, the site of the dispute is defined as the location of the grievant's official duty station. An exception to holding the hearing at the grievant's official duty station is, if the majority of witnesses are located outside of the local commuting area; in this circumstance, the site of the dispute is where the majority of witnesses are located. The site of the dispute for grievances designated as national, not an individual employee grievance, is Washington, D.C.
- C. **Travel Expenses and Other Costs:** The Agency will secure a location for the hearing within the Agency's facilities. If this is not possible, the Agency is responsible for securing a location and the parties will share the cost equally. Each party is responsible for any travel-related expenses and per diem associated with travel to the location of the hearing for its advocates and witnesses. Official time for attendance and travel to arbitration hearings, if otherwise in a duty status, is covered under Article 2.
- D. **Selecting the Arbitrator:** After the parties receive the list of arbitrators, they will meet in person, by telephone or by videoconference, within seven calendar days or unless the parties consent to extend this period. The invoking party will arrange the logistics for a

coin toss to determine the order for striking, i.e., whether the Agency or the union strikes first. The logistics will include provision of the coin and securing a mutually agreeable time, date and location for the coin toss. The non-moving party will flip the coin. If the coin lands “heads up,” the union strikes first; if the coin lands “tails up,” the Agency strikes first. If the selection is being done by parties in different locations, the parties may agree to use an electronic audible coin toss or other non-visual mechanism for determining which party goes first. The parties shall each strike one name from the list alternately and then repeat the procedure until only one name remains. The person whose name remains shall be selected as the arbitrator.

- (1) Once a final name is selected the parties will sign the FMCS arbitration form letter and the invoking party will email it back to the FMCS within five calendar days and provide a copy to the other party. If electronic filing is used, the invoking party will submit the selection form to FMCS and provide a copy to the other party. The parties will ensure that the listed names, addresses and phone numbers of the applicable Union and management representatives are correct.
- E. Setting the Hearing Date: Subject to availability, the hearing with the arbitrator will be scheduled to occur within 90 days of the notice to invoke arbitration in Section 1.A. Arbitrators have the authority to dismiss grievances based on staleness.
- (1) Upon selection of an arbitrator, the arbitrator will offer dates for the hearing and then the representatives of the parties will communicate with the arbitrator and one another to select a date for the hearing.
- F. Failure to Comply or Cooperate: Failure by the invoking party to comply with timelines in this section and/or failure to cooperate in the selection of an arbitrator, shall result in the grievance being withdrawn with no right to refile. If the non-invoking party refuses to participate in the selection of an arbitrator than the invoking party is entitled to select the arbitrator from the FMCS list.

Section 3. Fees and Expenses

- A. The cost of the arbitrator's fees and expenses will be shared equally by the parties, including when an arbitration matter has settled. Outside of settlement, if the invoking party withdraws its grievance prior to an arbitrator rendering a decision, the invoking party is responsible for all arbitrator’s fees or expenses incurred.
- B. If a settlement agreement is reached prior to the hearing, the parties agree to notify the arbitrator that the matter has been settled as soon as possible, in order to minimize the costs.

Section 4. Arbitrator’s Limited Jurisdiction

An arbitrator’s jurisdiction is limited to the allegations raised in the grievance at Step 2 or the Grievance of the Parties (for an institutional grievance). The arbitrator shall have no authority to alter, in any way, the terms and conditions of this agreement, any supplemental other

negotiated agreement, any other condition of employment or issue not properly before the arbitrator.

Section 5. Bifurcation

No later than 21 calendar days before a scheduled hearing or anytime before the hearing is scheduled, either party may move to bifurcate into separate jurisdictional and merits proceedings so that all jurisdictional issues shall be decided prior to a hearing on the merits of the grievance. Jurisdictional issues include, but are not limited to, questions of timeliness, compliance with the grievance procedures in Article 6, staleness, standing, election of remedies and arbitrator authority. The parties may submit documentation to the Arbitrator in support of their positions on jurisdictional matters. In the event no questions of fact exist regarding the jurisdictional issues, the parties may, with both parties' consent, forego a formal hearing on jurisdiction and present written submissions directly to the arbitrator. The arbitrator is empowered to make a decision based upon the submissions. If the parties do not agree on whether questions of fact exist to warrant a formal hearing, either party may request that the arbitrator make this determination and the arbitrator is empowered to do so. A hearing on the merits will only be scheduled after the arbitrator has rendered a decision on all jurisdictional issues. Bifurcation hearings will be held virtually, unless mutually agreed to by the parties.

Section 6. Pre-Hearing Procedures

- A. Pre-Hearing Exchange: No later than 5:00 pm five (5) work days prior to the arbitration, the parties will identify their statement of the issue(s) and the witnesses and documents they intend to present at the hearing. The list of witnesses shall include a brief one or two sentence summary of each witness' expected testimony. If the other party is unclear on a document or does not have a copy, it will be provided within 24 hours of receipt of request. Rebuttal witnesses and rebuttal evidence not previously identified may be presented to the arbitrator; the arbitrator has the authority to determine whether that information should have been previously identified and, if so, whether it shall be allowed into evidence and/or whether the other party shall be permitted a delay to present sur-rebuttal evidence.
- B. In the event of a known disagreement over the parties' proposed witnesses or evidence, the parties may initiate a conference call with the arbitrator at least three work days prior to the hearing to seek a ruling on the contested witnesses and/or evidence. Not having done so does not preclude either party from making objections to witnesses or evidence at the hearing. However, if not having raised the issue in advance has resulted in a challenged witness traveling to the hearing from outside the local commuting area, arbitrators are empowered to take that into account in determining whether a witness should be permitted to testify. If evidence or information becomes available to a party prior to the start of or during the proceeding, which has not been made available to the other party and it intends to enter that evidence or information in the arbitration, the other party will be provided that evidence or information immediately. If the information or evidence is substantial, the other party may seek a postponement of the arbitration for one work day or until the arbitrator's next available date.

- C. The parties will attempt to reach agreement on joint exhibits.
- D. The above exchanges may be done in person or through email.

Section 7. Stipulations

Prior to the hearing, the parties will attempt to stipulate the issue(s) to be arbitrated and any factual matters which would expedite the arbitration. In the event no questions of fact exist, the parties may, by both parties' consent, forego a formal hearing and present the grievance directly to the arbitrator by written submission. The arbitrator is empowered to make a finding and award based on those submissions. If the parties do not agree on whether questions of fact exist to warrant a formal hearing, either party may request that the arbitrator make this determination and the arbitrator is empowered to do so. If the parties are unable to agree on a joint stipulation of the issue(s), each party shall submit its statement of the issue(s) to the arbitrator at the opening of the hearing. In that situation, the arbitrator is empowered to articulate the issue(s).

Section 8. Hearing Procedures

- A. **Hearing Location and Official Time:** As provided by Section 2, the Agency will secure a location for the hearing within the Agency's facilities. If this is not possible, the Agency is responsible for securing a location and the parties will share the cost equally. The hearing will be held during the regularly scheduled workweek. Employees (e.g., witnesses and grievants) in a duty status will be granted official time necessary to participate in the arbitration proceedings. Official time for Union representatives will be granted pursuant to Article 2 of this Agreement.
- B. **Number of Representatives:** The Union and the Agency shall each be allowed up to two representatives to present its case; additional representatives may be permitted only by the consent of the parties.
- C. **Closed Hearings:** Arbitration hearings are not open to the public and, except by the consent of both Parties, may not be attended by anyone other than the party representatives and the grievant(s).
- D. **Hearings Not Held in the Local Commuting Area:** In arbitration hearings involving a single named grievant or multiple named grievants from a single duty station, if the hearing is not held at the official duty station of the grievant(s), the Agency shall pay travel expenses and per diem, as authorized by law and regulations, for:
 - (1) The single named grievant or a representative grievant if there are multiple grievants.
 - (2) Witnesses, whose official duty stations are not in the local commuting area of the hearing location will participate via videoconference or teleconference and the arbitrator will accept this testimony as if given in person.

Section 9. Case Presentation and Burden of Proof

- A. Order of Presentation: The Agency will make its presentation first in disciplinary and adverse action cases. In all other issues, the party invoking arbitration will make its presentation first in the hearing and that party has the burden to prove its case by a preponderance of the evidence. In bifurcated cases, the party requesting bifurcation will make its presentation first in the jurisdictional hearing. For disputes presented only via briefs, rather than at a hearing, the party invoking arbitration files first, with the other party responding within a time period set by the arbitrator.
- B. Section 7114(b)(4) Information Requests: The alleged failure of the Agency to comply with section 7114(b) of the Statute will be decided by the Federal Labor Relations Authority (FLRA) by the filing of an unfair labor practice charge by the Union or the alleged failure can be raised in a new grievance filed under this Article.
- C. Post-Hearing Briefs: Each party is entitled to file a post hearing brief by email within the time frame decided by the arbitrator at the hearing. Each party shall serve the other party with its brief by email on the next business day after briefs filed with the arbitrator or by other arrangement made with the arbitrator.

Section 10. Decisions

- A. Issuance of Arbitration Decision: The arbitrator will render a decision as quickly as possible but in any event not later than 30 days after the conclusion of the hearing or closing of the hearing record, including submission of briefs, unless the parties consent to extend the time limit. When the parties both consent to an expedited arbitration, the arbitrator may render a decision at the close of the proceedings.
- B. Finality of Arbitration Award: An arbitrator's decision, once final under FLRA precedent, is binding on the parties as to the specific facts and circumstances of the grievance.
- C. Standards for an Arbitration Award: Arbitrators will ensure that their award, as required by Section 7121(a)(1) of the Statute, is consistent with law, Executive Orders, government-wide rules and regulations in effect at the time of the effective date of this Agreement, and Agency rules and regulations; and that the award, as required by Section 7121 of the Statute, is not contrary to grounds similar to those applied by federal courts in private sector labor-management relations.

Section 11. Exceptions

- A. Filing Exceptions and Finality: Either party may file exceptions to the arbitration award with the FLRA under regulations prescribed by the Authority. Pursuant to the Statute, an arbitration award is final when no timely exceptions have been filed with the FLRA or when timely filed exceptions have been decided by the FLRA.
- B. Post-Award Jurisdiction: Once an arbitration award is issued, the arbitrator is "functus officio" and no longer has jurisdiction. If either party claims that the other party has not

complied with an arbitrator's award, the claiming party may file an unfair labor practice with the FLRA, Office of the General Counsel.

ARTICLE 21 DURATION

Section 1. Force and Effect of Agreement

- A. Agreement: The Agency and the Union agree that for the full term of the Agreement (as set forth in Section B of this Article and, as may be applicable, in Section C of this Article) the provisions of this Agreement shall remain in full force and effect and unchanged unless the parties consent to a change in the Agreement, or as required by applicable law.
- B. Supersedes Previous Agreements: This Agreement supersedes and replaces any and all negotiated agreements, written or oral, at all levels and facilities of the Agency, that were in effect prior to the effective date of this Agreement. Conditions of employment that are inconsistent with this Agreement or which are “covered by” the Agreement as that doctrine has been established and applied by the Federal Labor Relations Authority (FLRA) and the U.S. Court of Appeals for the District of Columbia are no longer in effect as of the effective date of the Agreement.
- C. Inconsistent Past Practices: If, after the effective date of this Agreement, a condition of employment is established through a past practice under FLRA case law which is inconsistent with this Agreement, either party may require the other party to follow this Agreement rather than the past practice, upon notice to the other Party.
- D. Duration of Memorandum of Understanding (MOU)/Memorandum of Agreement (MOA): MOUs/MOAs negotiated under the terms of this agreement shall be considered part of this agreement and shall have duration concurrent with the agreement, unless otherwise specified in the MOU/MOA.

Section 2. Duration of Agreement

- A. This Agreement shall remain in effect for five (5) years from the effective date of this Agreement.
- B. Either party may serve the other party with written notice, not more than sixty (60) calendar days nor less than thirty (30) calendar days prior to the start of the 24th full month that this Agreement has been in effect, of its desire to modify or renegotiate up to two (2) existing or new Articles, for a potential total of four (4) Articles if both parties choose to open two (2). If this provision is exercised, negotiations will be commenced within thirty (30) calendar days after such notice or as may be otherwise mutually agreed upon by the parties.
- C. In addition, at any time 24 to 48 months after this Agreement has been in effect, either party may reopen Article 5-Dues Deduction one (1) time, if there is a change in law or guidance that union members may submit SF-1188s at any time after their first anniversary.

- D. In the event that one of the parties notices the other to modify this Agreement as provided in Section 2. B. or C., the parties agree to follow the ground rules in Section 5 of Article 5, Mid-term Negotiations, for those negotiations.

Section 3. Notice to Renegotiate the Expired Agreement

- A. Renewal and Termination: This Agreement shall automatically be renewed from year to year unless one party gives the other written notice of its intention to renegotiate this Agreement no less than 60 or more than 90 calendar days prior to this Agreement's expiration date. If notice to renegotiate is given, the Agreement shall be extended for one year or until a new agreement become effective, whichever is earlier. If there is no agreement at the end of the one-year extension, this Agreement terminates.

Section 4. Negotiation Procedures for a Subsequent Agreement

- A. For a subsequent agreement, the parties shall exchange bargaining team members and agree to a bargaining schedule within six (6) weeks after notice is provided or as may be otherwise mutually agreed upon by the parties.