COLLECTIVE BARGAINING AGREEMENT

between

U.S. ENVIRONMENTAL PROTECTION AGENCY

and

THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

The effective date of this agreement is June 14, 2024.

Preamble

AFGE Council 238 (Union) and the U.S. Environmental Protection Agency (Agency) enter into this MCBA to reflect our mutual values and commitment in a manner that safeguards the rights of EPA bargaining unit employees and supports the EPA mission to protect human health and the environment. Through this contract, the Parties seek to establish a clear mutual understanding of the Parties' rights and obligations concerning conditions of employment, to establish mutual respect, and to strengthen our ability to meet the EPA's mission. EPA's employees are its most valuable resource, and the Parties recognize the inherent dignity of every EPA employee. The Agency and the Union affirm that the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate the successful accomplishment of the mission of EPA. This contract supports the Agency, the Union, and employees in fostering long-term careers at EPA. This contract memorializes Agency, Union and employee rights and obligations.

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Article 1: Recognition and Unit Description

Section 1. Parties to the Agreement

This Agreement is entered into between the American Federation of Government Employees, Council 238 (hereafter referred to as "the Union" or "AFGE") and the Environmental Protection Agency (hereafter referred to as "the Agency" or "EPA"), and collectively referred to as "the Parties". This Agreement shall be clearly identified as an Agreement between the Parties.

Section 2. Applicability

The provisions of this Agreement are applicable solely to employees and positions in the units of exclusive recognition by AFGE as certified by the Federal Labor Relations Authority 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**/**or clarifications, which are included herein by reference.

Section 3.

The Parties shall maintain copies of current applicable Federal Labor Relations Authority AFGE/EPA bargaining unit certifications.

Section 4.

EPA shall post a current list of AFGE Council 238 national bargaining units as certified by the FLRA on the Agency's intranet site.

Section 5.

Annually no later than October 1st, the AFGE Council 238 President and Agency National Labor and Employee Relations Director shall provide a list of representatives for the Council and the Agency. The lists will identify representatives at each Region/Office as well as at the AFGE Council and Local levels. The Parties further agree to provide ongoing updates as positions change throughout the year.

Article 2: Scientific Integrity

Purpose:

The goal of this Article is to empower Agency management and staff to prevent inappropriate interference in scientific work. A culture of scientific integrity supports the use of sound science in Agency decision making. This Article in conjunction with the Agency's Scientific Integrity Policy will be effective in promoting sound science, be good for morale, help with recruitment and retention, and protect staff while accomplishing the mission of the Agency.

This Article covers any employee who collects, generates, uses, or evaluates scientific data, analyses, or products.

Section 1. Reporting Scientific Integrity Concerns

A. Employees may report scientific misconduct or a suspected violation of the Scientific Integrity Policy to the appropriate EPA official or legal forum (e.g., OSC). Any conduct related to waste, fraud or abuse regarding an allegation of compromised scientific integrity should be reported to OIG. Employees who make good faith reports under this Section shall not be subject to retribution, reprisal, or retaliation by the Agency.

Section 2. Definitions

The Agency's forthcoming Scientific Integrity Policy is expected to include a customized list of definitions to its Scientific Integrity Policy as appropriate to its mission and scope. Changes in these definitions from current Agency policy will be subject to negotiation as required by law, regulation, and this Agreement.

Section 3. Communications/Outside Activities

A. When an employee attends or otherwise participates in an external event, outside activity or meeting, whether in their official or personal capacity, they must comply with all federal ethics requirements.

B. Denials for attendance at scientific conferences/meetings during duty time will be provided in writing to the employee upon request.

C. As part of assigned duties, employees may submit manuscripts for publication in their official capacity consistent with Agency review procedures.

D. Employees engaged in an outside activity may generally participate in the free flow of scientific information by discussing their work at conferences, meetings, and with the press, provided that they do not misuse their federal positions by inappropriately using their official titles, sharing nonpublic information, or implying that the Agency or the

United States government sanctions their opinion. The employees must make clear that they are speaking or participating in their personal capacity only.

E. When an employee is teaching, speaking, or writing in their personal capacity on a subject that relates to EPA's programs, policies, or operations, then they must abide by 5 CFR 2635.807(b)(1) and applicable EPA Ethics regulations.

Article 3: Union Rights

Section 1. General Provisions

A. Employees shall be protected from restraint, interference, or coercion, in the legitimate exercise of their rights and responsibilities as designated representatives of the Union.

B. Within the confines of laws, rules, and this Master Collective Bargaining Agreement (MCBA), the Union has the right to designate representatives of its own choosing.

C. No Recording Protected Union Activity: Except as provided in this MCBA, no recording will be made without mutual consent of any conversation involving Union activity.

D. Bargaining unit employees, including employees serving as Union representatives, have the following rights:

1. 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;
2. 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
3. to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

E. The Union has the right and obligation to represent all employees in the unit. The Union has the right to present its views to the Agency regarding grievances, working conditions, and conditions of employment, either orally or in writing. The Agency will advise employees of their right to representation consistent with this MCBA.

F. New Employee Onboarding

1. The Union will be given an opportunity to address new employees at an independent session (which may be a part of the local session) for up to thirty
(30) minutes. No Agency representatives will be present during the time the Union representative(s) meet with the employees.

2. The Union may provide employees with union-related materials either in hard copy or electronically.

3. The Agency will provide the Union a point of contact for each local to coordinate onboarding. The Union will be provided information electronically regarding onboarding employees including, at a minimum, names, organizations, and official duty stations. The information provided will be sanitized to conform to the requirements of the Privacy Act.

4. The Agency will designate a point of contact to coordinate updates and changes to the national EPA intranet site, including the following:

    a. The Agency will maintain an up-to-date link to the current AFGE/EPA CBA, relevant AFGE contacts, a link to the SF 1187 and SF 1188, and a link to a website designated by the Union.
    b. The Agency will post AFGE/EPA National MOUs and local MOUs upon forwarding of such MOUs by the Union.

5. The Agency will notify the Union of any employee being hired into or transferring into a bargaining unit office, or any employee being removed from the bargaining unit list (Labor Movement Report). This information will be provided electronically on a biweekly basis and include a list of the names of all new or transferred employees including:

    a. Their positions, work locations, divisions, email address, phone number, and supervisor;
    b. Whether the employee is on a full time, part-time, seasonal, or intermittent work schedule;
    c. Whether the employee is serving on a term, temporary, career, career- conditional, or excepted appointment;
    d. The geographic locality of each employee that is used to determine the appropriate locality pay;
    e. The grade and step and pay structure;
    f. For employees being removed from the bargaining unit list, the reason for their removal; and
    g. For employees leaving the Agency, whether the employee was retired or separated from the Agency.

Section 2. 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 of their representation concerning any grievance or any personnel policy or practices or other general conditions of employment in accordance with the limits articulated below.

B. Union Participation in Formal Discussions Pertaining to Settlements:

1. Formal EEO Cases:

    a. If sufficient indicia of formality are met, any settlement discussion at the formal stage of an EEO complaint where a bargaining unit employee is present is considered a formal discussion. The Union is entitled to notice regarding the discussion and may attend.
    b. If an employee who is a complainant requests that the Union not attend a formal discussion involving settlement of a formal EEO complaint, the Union will not attend the discussion.
    c. The parties agree that all EEO complaint and settlement information must be kept confidential, according to applicable authorities.
    d. When a Union representative attends an EEO settlement discussion they will be entitled to review and comment on any proposed settlement terms, consistent with the Union's right to be represented at formal discussions.

2. MSPB Cases

    a. If sufficient indicia of formality are met, any settlement discussion involving an MSPB appeal where a bargaining unit employee is present is considered a formal discussion. The Union is entitled to notice regarding the discussion and may attend.
    b. The parties agree that all MSPB appeal and settlement information must be kept confidential, according to applicable authorities.
    c. When a Union representative attends an MSPB settlement discussion they will be entitled to review and comment on any proposed settlement terms, consistent with the Union's right to be represented at formal discussions.

3. Adverse Action and Performance based Reduction in Grade or Removal Action Cases

    a. If sufficient indicia of formality are met, any settlement discussion involving an adverse action or Performance based Reduction in Grade or Removal Action where a bargaining unit employee is present is considered a formal discussion. The Union is entitled to notice regarding the discussion and may attend.
    b. The parties agree that all adverse action or Performance based

Reduction in Grade or Removal Actions and settlement information must be kept confidential, according to applicable authorities.

c. When a Union representative attends an Adverse Action and Performance based Reduction in Grade or Removal Action settlement discussion they will be entitled to review and comment on any proposed settlement terms, consistent with the Union's right to be represented at formal discussions.
d. When the Union attends a settlement discussion in accordance with B. and is not the employee's representative, its participation is limited to commenting on whether proposed settlement terms are consistent with the CBA.

C. Advance notice:

1. For formal discussions, the Union will be provided with reasonable advance notice (i.e., generally not less than two (2) workdays), but for meetings that are urgent or unexpected, notice will be given as soon as practicable.
2. The Union and management representatives are encouraged to discuss possible ways to resolve scheduling conflicts.

D. Notice to the Union of a formal discussion will be sufficient if provided to the designated Union point of contact (in accordance with the Recognition and Unit Description article) and includes the general subject of the discussion and the location and time of the discussion.

E. The AFGE Representative may introduce themselves as a Union representative and provide contact information. The representative may ask relevant questions and may make statements, including the Union's position with respect to the subject of the discussion as long as the representative does not take charge of, usurp, or disrupt the meeting.

F. Any presentation documents prepared by the Agency for formal discussion meetings and shared with bargaining unit employees will be provided to the Local president who received the notice. "Presentation documents" do not include settlement agreements for EEO cases, MSPB cases, or Disciplinary/adverse actions.

Section 3. Agency/Union Annual Meeting

The Agency shall annually brief the National Labor Management Forum (or successor group) participants on its budget.

Section 4. Surveys

Prior to surveying bargaining unit employees regarding conditions of employment, the

Agency will provide the Union with a copy of the survey document generally three (3) business days in advance and allow the Union an opportunity to comment on it. The Union will, upon request, receive a copy of any survey results (i.e., generally a compilation of responses so the Union can understand how employees responded as a group) obtained unless there are privacy concerns.

In the event there are privacy concerns, the Agency will, upon request, provide the Union with an explanation of those concerns and discuss how best to share the results.

Section 5. Communication, Information Sharing, and Information Requests

A. The Union shall have the right to communicate with Bargaining Unit employees. In accordance with GSA and Agency facilities and cybersecurity rules, regulations, and policies, the Union may use Agency email systems, physical and electronic bulletin boards, desk drops, phones, signage etc., to communicate with employees.

B. The Agency shall annually inform the employees of their right to Union representation. The Union has a right to inform employees of their right to Union representation.

C. Information Requests

    1. Union information requests must be sent to Agency representatives (or their designees) according to the contacts identified in the Recognition and Unit Description Article.
    2. If the Agency disputes whether the Union has articulated a particularized need for an information request, the Agency will state this to the Union in writing.
    3. Upon request by either party, the parties will meet at a mutually agreed upon date to discuss the status of the request. This meeting will generally occur within seven (7) workdays from receipt of the information request.
    4. The parties will discuss at the meeting as applicable:
        a. The option of the Agency to provide staggered partial responses;
        b. Known challenges or concerns the Agency has with providing the information; and
        c. The Union limiting its request to facilitate a response.
    5. The Agency will comply with its statutory obligation to respond to requests in a reasonable amount of time.
    6. Nothing in this section shall be construed to limit the Union's statutory rights to information under 7114(b)(4) or employees' rights to privacy as provided by law.
    7. The Agency will respond to information requests in a similar manner to the numbering or subject matter designations used in the original request.

D. Upon request, the Agency will provide AFGE with existing current electronic

organizational charts for each organizational unit showing the chain of command. This request should be made according to the points of contact identified in the Recognition and Unit Description Article.

Section 6. Official Time

The Parties share the responsibility to ensure that official time is used effectively, efficiently, and is appropriately accounted for. Subject to this MCBA, the use of approved time by a Union Representative in the conduct of their representational duties shall be charged to official time.

A. Whenever the term "Representative" is used in this Article, it shall include those identified per the Recognition and Unit Description Article, including any retirees designated by the Union. Retirees are subject to all security policies and procedures applicable to non-EPA employees entering Agency workspace.

B. The Union may designate Representatives to act on its behalf. Nothing in this Article prevents a Union representative from requesting official time for a matter involving a geographical location different from their Official Work Location.

C. In accordance with 5 USC 7131(d), Union Representatives may be eligible for official time as reasonable, necessary, and in the public interest. This includes requests for training at the local and national levels.

D. Notwithstanding any other provision in this Agreement, any activities performed by Union Representatives relating to the internal business of the Union shall be performed during the time the Representatives are in nonduty status.

E. The AFGE Council 238 President and the Executive Vice President

    1. When employees are newly elected or appointed to the position of President or Executive Vice President of Council 238, the Union will notify the Agency.
    2. When a President or Executive Vice President leaves office, they will have a right to return to work in their position of record.
    3. In the event the position of record no longer exists, they shall be assigned to a comparable position at the Agency in the same locality and commuting area to the extent possible.

F. Use of Official Time:

    1. When it is necessary for a Union representative to use official time for representational purposes, the Union representative will inform their immediate supervisor of the dates and times, and general purpose of the official time. In the event that a pressing job-related need precludes the immediate excusal of the Union representative, the supervisor will inform the

Union representative of the earliest time they will be permitted to use official time. The Union representative will report to the supervisor upon the end of their use of official time.

2. Union representatives will not use official time for internal union business including solicitation for membership or collection of dues.

G. The parties agree 100% official time for the following representatives is reasonable, necessary, and in the public interest:

3. Council President;
4. Executive Vice President;
5. Local 704 (R5) President;
6. Local 3347 President; and
7. Five (5) AFGE representatives in Local 3331 (HQs).

H. At the end of each pay period each Union representative will record their official time in the Agency's official time keeping system (currently People Plus) using the correct time keeping code(s).

I. Overtime and Compensatory Time: Employees serving as Union Representatives may not earn compensatory time or overtime for representational activities. Union Representatives can work overtime or compensatory time to perform Agency work per the Work Schedules and Overtime Articles.

J. Telework and Remote Work. Union Representatives, who otherwise meet the criteria set forth in the Telework and Remote Work Articles of this MCBA, may perform Union activities while at their Alternate Work Location and/or their Remote Work Location.

Section 7. Union Training

A. The use of official time for attending local union-sponsored training by Union Representatives is an appropriate matter for local level consideration. The use of official time for attending national union-sponsored training by Union Representatives is an appropriate matter for national level consideration.

Section 8. Union Travel and Per Diem

A. The parties jointly commit to the following principles as the foundation for a productive and cost-effective labor management relationship:
   1. When the parties agree, the Agency will pay for Union travel and per diem.
   2. Consistent with this MCBA, the Parties will schedule meetings as efficiently as possible, including consolidating meetings when appropriate and holding certain meetings virtually.
   3. The parties are committed to reducing the amount of travel used for

representational activities.

Section 9. Agency Commitments

A. On the second Thursday of October each year, the Parties will meet to discuss issues for which training of Agency managers, Union Officers and bargaining unit employees, could be beneficial. Upon agreement of the Parties, the Parties will jointly provide this training. The Parties may also discuss Unfair Labor Practice, Grievance, 4711 complaint and EEO claim trends identified by either Party.

Section 10. Union Officials and Telework/Remote Work

A. <u>100% Official Time Union Representatives</u>

1. With the exception of those prohibited from teleworking under 5 U.S.C. Section 6502(a)(2), those who have not completed telework training as required under Section 6503 and/or where there are issues raised by the safety checklist, AFGE- represented employees, certified by the parties as a Union representatives, authorized for 100% official time, are considered eligible by the Parties for either a Remote Work or a Telework arrangement without subjection to an analysis of their position of record (POR) with the Agency.

2. For the duration of their incumbency in the 100% Union representative position, they may perform representational duties, while on official time, consistent with law and regulation from remote or alternate work locations, under either a signed Remote Work or Telework Agreement.

3. Once no longer in a 100% official time union representative status, the Remote Work or Telework Agreement is cancelled and any Remote Work or Telework must be reapplied for under the negotiated article unless a Remote Work or Telework agreement was in place for the employee's position of record prior to 100% official time. In those cases, the employee's previous agreement will generally be reinstated unless, per the parties' agreement, relevant changes have occurred. Further, for an employee returning to their position of record after being on 100% official time, if other employees in their work group were asked to recertify their agreements while the employee was on 100% official time then, upon an employee's return to their work group former 100% official time officials may be asked to recertify their agreements at the discretion of their supervisors.

B. <u>Less Than 100% Union Representatives</u>

1. AFGE bargaining unit employees who serve as Union representatives on other than a 100% basis may apply for Remote Work or Telework under the negotiated articles and their eligibility will be based on their Agency position of

record.

2. For the duration of their incumbency in the Union representative position, employees may perform representational duties, consistent with law and regulation while on official time, from remote or alternate work locations under either a signed Remote Work or Telework Agreement.

C. General

1. All Union representatives desiring Remote Work or Telework arrangements are required to submit to their supervisor as provided in the Remote Work or Telework Articles a completed application for Remote or Telework, which must include: a completed Remote Work or Telework Application/Agreement; a completed Employee Self-Certification Safety Checklist for the remote work/telework location; an attached copy of Employee's Approved Schedule; and a copy of evidence of Remote Work/Telework Training taken by the employee.

2. Unless herein stated otherwise, the rules and regulations governing Remote Work and Telework and contained in the Parties' Telework and Remote Work Articles continue to apply to all Union representatives performing representational duties from Remote or Alternate Work Locations. This includes, for example, changes in AWL or RWL

3. Commuting Expenses to Official Agency Worksite:

    a. For a Union representative who has become a remote worker or a teleworker when traveling to their assigned official agency worksite for Union representational responsibilities, the Agency will pay/reimburse employees for transit benefits for that employee to the extent transit benefits are available for similarly situated employees.
    b. For a Union representative who has become a remote worker or teleworker and normally does not use transit benefits and whose RWL or AWL is outside the local commuting area, travel to their assigned official agency worksite solely for Union representational responsibilities will not be paid/reimbursed by the Agency unless the Agency initiates the request.
    c. A Union representative who has become a remote worker or teleworker who travels to the Official Agency Worksite at the Agency's request will be reimbursed the cost of travel available for similarly situated employees.
    d. For an Agency employee recalled due to Agency needs arising from the employee's position of record, nothing in this agreement supersedes the parties' Telework or Remote Work agreements and any Agency obligation to pay for/reimburse employee travel.

4. If management determines a Remote Work Union official who relinquishes their elected/appointed Union position is ineligible for remote work, the Agency is not obligated to pay relocation costs.

5. AFGE Council 238 Executive Board officials who are remote workers are not entitled to
office space at official agency worksites. AFGE Council 238 Executive Board officials should follow standard procedures to obtain conference room space when they choose to come
into the building.

Section 11. Savings Clause

Nothing in this Agreement waives employee rights under 5 U.S.C. 7102 of the Statute or the Union's rights under Title 5 Chapter 71 of the U.S. Code.

Article 4: Diversity, Equity, Inclusion and Accessibility

Section 1. Introduction

1) The principles set forth in this Article will be integrated across and deep throughout the Agency. The Agency and Union affirm the importance of advancing equity, civil rights, racial justice, and equal opportunity for all employees, while maximizing the diverse talents, skills, and experiences of the EPA community to achieve EPA's mission to protect human health and the environment through a sustained, equitable, and inclusive culture.

2) The parties will treat each other and employees with dignity and respect. Accordingly, the Agency will endeavor to strengthen its ability to recruit, hire, develop, and retain our Agency's talent, and to remove barriers to equal opportunity. The Agency will work toward a workforce that reflects the diversity of the American people, while adhering to Merit System Principles. A growing body of evidence demonstrates that diverse, equitable, inclusive, and accessible workplaces yield higher-performing organizations.

3) The Agency's recruitment efforts will include a focus on creating diverse applicant pools. The Agency will conduct outreach efforts which may include but are not limited to:

    i. Reaching out to underrepresented and underserved communities; including minority-serving institutions (HBCUs, HSIs, etc.);
    ii. Conducting outreach and recruitment efforts to members of underrepresented and diverse communities; The Agency will support applicants' accessibility needs through the Reasonable Accommodation process.
    iii. Leveraging special hiring authorities, such as Federal internship programs, including Pathways Internship Program, to provide entry-level career development opportunities to students and recent graduates and Schedule A Hiring Authority for persons with disabilities.
    iv. Special Emphasis Program Managers and Union representatives are encouraged to set up automatic USAJobs notifications of recruitment and hiring activities.

4) The Agency will follow Merit System Principles and practice equitable hiring, meaning:

    i. 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.
    ii. 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.

iii. If interviews occur, hiring managers are encouraged to use structured interviews and consider unconscious bias in the development of interview questions.

Section 2. Pilot Projects

A. Pilot Project #1: The Agency will solicit from NPMs/Regions information on what resume redaction practices are currently underway across the Agency. The Union may make recommendations on what information is solicited. The Agency will solicit information, at a minimum, regarding the efficiency, feasibility and effectiveness of such practices and share such information with the Union. The Agency and the Union will review the information collected. The Union may make a recommendation. After considering the Union's recommendation, the Agency will make a decision whether to expand, continue, or end resume redaction practices based on cost, feasibility, efficiency, and effectiveness.

B. Pilot Project # 2. The Agency and Union will develop a 4-person joint workgroup to review the Interview Question guidance document provided to selecting officials. The workgroup will develop recommendations within 3 months of the effective date of this Agreement to update the Interview Question guidance. After considering the Workgroup's recommendations, the Agency will update the Interview Question guidance document.

Section 3.

The Agency will publish its DEIA Strategic Plan on the intranet.

A. Annually, the Agency agrees to provide a briefing on applicant flow data to the Union.

B. The Agency will provide an equitable, accessible, and inclusive environment for employees with disabilities. The Agency will implement the Federal Government's initiatives to provide people with disabilities equal employment opportunities and take affirmative actions within the Agency to ensure full compliance with applicable laws including Sections 501, 504, and 508 of the Rehabilitation Act of 1973, as amended (29
U.S.C. 791, 794, 794d).

C. The Agency will not tolerate discrimination based on protected class.

D. Employees will not be subject to discrimination based on their sexual orientation, gender identity or gender expression. The Agency will foster a workplace that is an inclusive and respectful environment that invites participation from all people. There

will be no tolerance of discrimination, including harassment, based on sex (including pregnancy, sex stereotyping, gender identity, gender expression or transgender status) or sexual orientation. The Agency will foster an environment that recognizes the inherent worth and dignity of every person and group, and embraces diversity, understanding, and mutual respect.

E. Where current space allows for designation of a restroom as gender-neutral (i.e., adding a sign) and where such designation would not adversely impact employees' access to restrooms if they have disabilities, the Agency will designate a gender neutral restroom. As there are changes in office buildings, the Agency will continue to explore options for providing and designating additional gender-neutral restrooms.

Section 4. DEIA Reporting and Accountability.

A. Reporting. The Agency will continue to collect all information to support the operation of the EPA Diversity Dashboard (and any successor) and applicant flow data. The Agency will update the Diversity Dashboard monthly. Access to the Diversity Dashboard will be available to all employees.

B. The Agency agrees to provide AFGE Council 238 and the local Presidents the following:

1. Annually, the Agency will provide the Union a copy of the MD-715 report and a briefing explaining the report. To the extent the OCR state of EEO presentation includes local data/information, OCR will share this as part of this briefing to the Union.

C. The Agency is planning to create a Chief Diversity Office (CDO), per the government-wide DEIA strategic plan and the Agency's DEIA Strategic Plan. The CDO will be responsible for implementing the Agency Plan's strategic actions.

D. Once the CDO is in place, the Agency will notify the Union and initiate discussions regarding union membership on an applicable DEIA Executive Committee.

Section 5. Training.

A. The Agency will maintain DEIA self-paced trainings and webinars in its learning management system that are available to all staff (e.g., workplace harassment, conflict resolution, understanding of implicit and unconscious bias).

B. The Agency will survey the AAships and Regions and review Fed Talent offerings to compile existing interactive DEIA learning activities. The Agency will then produce a list of interactive training addressing DEIA topics to be shared with Agency employees.

Section 6. Pay Equity.

A. The Agency will follow OPM pay administration. The implementation of Government-wide regulations and guidance to address pay inequities and advance equal pay among agency employees may be subject to negotiations in accordance with the Midterm Article.

Article 5: Labor/Management Relations

Section 1.

Nothing in this Agreement is intended to prevent or discourage the Parties from communicating with each other through their duly appointed representatives at all levels. The Parties encourage a continuing dialogue by their representatives to resolve conflict.

Section 2.

Local levels may establish labor relations committees or provisions for periodic meeting between the Parties. The procedures and processes for such activities are a matter for local level agreement.

Section 3.

At the National and Local levels, the designated representatives will maintain open lines of communication in the day-to-day activities involving the Parties' relationship. Where the Parties believe face to face meetings would be appropriate, they may meet to discuss issues of mutual concern. The mechanics and procedures for such meetings will be decided by the representatives based on the circumstances at the time.

Section 4.

Union participation on committees which are not management decision process orientated will be as described in the appropriate subject matter article in this MCBA.

Section 5.

The Agency agrees to provide for reasonable accommodation(s) to qualified disabled employees who participate in labor-management relations activities, either as employees or Union representatives. This is not intended to apply to internal union business or off-site union- sponsored training.

Article 6: Use of Agency Facilities

The Union's use of Agency facilities, including email systems, physical and electronic bulletin boards, desk drops, telephones, and signage, must be in accordance with GSA and Agency rules, regulations, and policies and this Article. The parties acknowledge the use of Agency systems must comply with the Hatch Act.

Section 1. Local Office Space

A. Consistent with the terms of this Article, the provision of any Agency controlled facilities for Union use is a matter for local level negotiations.

B. In locations where AFGE locals currently have exclusive use of an office and/or conference room, the Agency will continue to provide such exclusive use, subject to C, below.

C. Should a location be undergoing space reduction, the parties understand the Union may also be asked to reduce space, which is a matter for local negotiation.

D. Local negotiations are limited to the extent that local facilities are within the control of local agency management and not within a secured or restricted area. Such facilities include office space, email boxes, telephones, bulletin boards, meeting rooms, and office equipment.

Section 2. Council Office Space

If the Council Union President and/or the Council Union Executive Vice President are not Remote or Teleworkers (more than 50%), the Agency will provide a dedicated workspace. This is a matter for negotiations in the location where the Council President and Executive Vice President are located.

Section 3. Conference/Meeting Room Space

AFGE will follow local procedures for reserving meeting/conference rooms.

Section 4. Bulletin Boards

Use of Agency provided physical and/or electronic Bulletin Boards by the Union is a matter for local level bargaining.

Section 5. Mail Room

The Union may use the interoffice mail (physical mail) distribution system for representational correspondence with employees, representatives, the Agency, bargaining unit employees, and

grievants. It is understood that the interoffice mail distribution system will not be used for mass mailings of any kind.

Section 6. Email
AFGE Council 238 and AFGE Locals may use Agency e-mail to communicate with the bargaining unit and management as needed except for internal Union business as defined by 7131(b). The Union may communicate with its entire bargaining unit but may not send mass mailers to the entire agency.

Section 7. Union Publications

Official publications of the Union may not be distributed by designated Union representatives while such representatives are on duty time.

Article 7: Employee Counseling and Assistance Program

Section 1. General

A. The Agency and the Union recognize the importance of maintaining an Employee Counseling and Assistance Program (ECAP) for employees with personal or work-related concerns. The ECAP (also known as Employee Assistance Program (EAP)) should be designed at assisting and supporting employees who are experiencing health or personal concerns. Counseling through ECAP may help address issues including alcohol or drug abuse, bereavement, crisis intervention, stress, health, family and marital crises, work-life balance, financial issues, and other situations.

B. The fact that an employee is receiving assistance through the ECAP or from a private provider will not have a negative impact on employee performance evaluations. Participation in the ECAP shall be voluntary.

Section 2. Relationship to Performance and Conduct

It is understood that the employee has the responsibility to maintain acceptable performance and conduct. When an employee who requests assistance through the ECAP and discloses, they are receiving such assistance or discloses they are receiving assistance from a private provider, the Agency will consider this fact in determining any appropriate disciplinary and/or adverse actions based on the employee's performance or conduct. To the extent the employee wants the Agency to consider ECAP or other assistance during a disciplinary or performance matter, they should follow the procedures outlined in the Articles on Discipline and Performance.

Section 3. Counselors

The ECAP may include services provided by a provider contracted by the Agency, at no charge to the employee, or referral to an outside professional treatment and assistance source in the local community.

Section 4. Notification

The Agency shall maintain contact information regarding the ECAP program on its intranet. In addition, the Agency will notify employees of the ECAP on an annual basis. Should the Agency fail, to notify employees on a given year, the Union will raise this matter via e-mail with the designated labor relations management official, who will have one month to correct, prior to filing any grievance.

Not including de minimis changes, if the Agency must discontinue or modify services provided under the ECAP due to staffing or funding limitations, it will notify the Union at least 30 days prior to discontinuation or modification.

Section 5. Confidentiality

Unless otherwise required by law or regulation, participation in the ECAP and the content of the employee's discussions with ECAP providers shall be treated by the Parties as private and confidential.

Section 6. Leave

A. Employees may request appropriate leave under the leave article, Agency policy, governmentwide guidance, regulation, or law.

B. Employees may request and the Agency may grant periods of administrative leave to an employee for participation in the Agency's Employee Assistance Program (EAP) for problem identification and referral to an outside resource and for general employee orientation or education activities.

C. The Agency may require verification of attendance at ECAP sessions when Administrative Leave is being granted for that time.

D. No ECAP participation disclosure to the supervisor is required if the employee elects and is approved to use sick, annual leave, or credit hours for all ECAP visits.

Article 8: Worker's Compensation

Section 1.

The Parties agree that employee(s) or witness(es) should report any occupational on the job injury, disease or death immediately or as soon as possible to the Agency.

Section 2.

The Agency will provide the employee and/or another person, including the Agency on the employee's behalf, the following information regarding the Department of Labor, Office of Worker's Compensation Program as cited in 20 C.F.R. Part 10:

A. Information on the right to file claims, including the right to use compensation benefits in lieu of sick or annual leave;

B. Information on the types of benefits available, including the receipt of forty-five (45) days of continuation of pay following a traumatic injury;

C. The procedures and correct forms for filing claims.

Section 3.

When an on-the-job injury is reported, the Agency will provide emergency or appropriate medical treatment for any such injury or illness suffered by an employee while on the job.

Section 4.

The Agency will counsel an injured employee, and/or another person on the employee's behalf, on options, compensation benefits, and/or types of leave when the injury or illness causes an absence of more than three (3) days.

Section 5.

The Agency will counsel a disabled employee on all aspects of disability retirement, if appropriate, when a compensation claim is pending. Before removing an employee, who has been on Worker's Compensation benefits (LWOP) for over a year, with no anticipated return to full duty, the Agency will provide him/her with possible job options, such as continued long- term

worker's compensation, disability retirement, resignation. There will be no effort to urge the employee to choose on option over another regarding claims for benefits.

Article 9: Medical Examinations

Section 1.

In directing employees to undergo medical examinations, the Agency agrees to follow 5 C.F.R. Part 339, Medical Qualification Determinations.

Section 2.

All records pertaining to the employee's examination and, as applicable, any subsequent personal information included with an application for disability retirement are confidential and may be disclosed only to those with an administrative need to know or as specifically authorized by the subject employee in writing.

Article 10: Employee Pantry/Kitchenette Facilities

Section 1. General

The Parties agree that the Agency shall provide pantry/kitchenette facilities generally at a ratio of 1 employee lounge (aka kitchenette) per floor or 1 per 200 employees. Any changes to kitchenettes at facilities with less than 50 Agency employees will be negotiated. Pantry/ kitchenettes for employees will meet applicable safety standards, have ample lighting, comply with the Rehab Act with regards to accessibility requirements (i.e., when major renovations of a kitchenette occur, affected aspects of the facility will be brought into compliance with Rehab Act accessibility standards), and have signs providing contact information for maintenance, supplies, or accessibility issues. These areas shall be equipped with Agency provided microwave oven(s). These areas shall also be equipped with Agency provided full-sized refrigerator(s) for every kitchenette of at least 250 square feet and appropriately sized refrigerators in all smaller kitchenettes, where practicable. Where possible, a table and chairs will be provided. Employees shall follow the health and safety procedures as provided or directed by the Agency necessary for their protection.

Section 2. Vending Machines

The Agency will work with GSA and/or relevant contractors to provide contact information on vending machines for obtaining reimbursement for money lost and for reporting malfunctions during work hours.

Section 3. Additional Provisions

Local Parties are authorized to negotiate or participate in pre-decisional involvement for additional provisions beyond these minimum requirements.

Article 11: Overtime

Section 1.

When the Agency decides to assign overtime to employee(s) who possess the requisite skills and abilities for the assignment, in the same organizational unit performing the same type of duties, the assignment(s) will be fair and equitable among qualified employees.

Section 2.

Overtime shall not be worked unless authorized by the Agency. The Parties agree that assignment of overtime will neither be distributed nor withheld as a penalty or reward.

Section 3.

The Agency will consider its need versus the needs of the employee(s) when requests are made to be excused from overtime and may seek qualified substitutes for the assignment(s).

Section 4.

If practicable, the Agency will provide at least forty-eight hours advance notice to employees when a decision is made to assign overtime, or as much notice as the Supervisor is given, minus time to contact the employee.

Section 5.

Compensation for overtime work will be made in accordance with applicable laws and regulations. When allowable under controlling laws, regulations, and Agency policies employees may request compensatory time in lieu of overtime pay.

Section 6.

Unless Maxiflex or compressed work schedules apply, the basic workday for full- time employees shall be eight (8) hours each day.

Section 7.

Travel by bargaining unit employee(s) outside regularly scheduled duty hours is not compensable through overtime or compensatory time unless such travel has

been officially ordered and approved and meets one of the criteria cited below:

A. It involves the performance of work while traveling;

B. It is incident to travel that involves the performance of work while traveling;

C. It is carried out under arduous conditions; or

D. It results from an event which could not be scheduled or controlled administratively.

To the maximum extent practicable, time spent in travel status away from the employee's official duty station will be scheduled by the Agency within the normal working hours.

Section 8.

Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for the employee will be administered in accordance with 5 USC 5542.

Section 9.

Employees required to remain in standby status will be paid in accordance with applicable law or regulation.

Article 12: Leave

Section 1. General Provisions

This Article shall be administered in compliance 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 Requests:

1. Normally all leave must be requested in the Agency's time keeping system (currently People Plus) before the employee is absent from work.

2. Tardiness and Brief Absence: Tardiness of less than one (1) hour may be excused at the discretion of the supervisor. If annual leave is charged, the employee will not be required to perform work until leave time charged has been applied. Tardiness and other brief absences from duty (for less than one hour) may be handled administratively in any of the following ways:

    (1) by excusing employees for adequate reasons;
    (2) by requiring additional worktime equivalent to the period of absence or tardiness;
    (3) by charge (in fifteen (15) minute increments) against an available category of leave; or
    (4) by recording the absence as leave without pay (LWOP) or absence without leave (AWOL).

3. In emergency, unanticipated, or extenuating circumstances 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 normally not later than the start of the employee's scheduled tour of duty. Examples of unanticipated or extenuating circumstances include, but are not limited to: hospitalization, incapacitation, inability to communicate, immobilization and/or major transportation or major weather-related issues precluding communication. In an extenuating circumstance, the employee will contact the supervisor as soon as practicable.

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

5. 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.

B. Leave Approval:

1. Supervisors will approve or deny employee requests for absence and leave in a reasonable amount of time considering the circumstances.

2. Employees may reach out to their supervisor about unresponded-to leave requests.

C. Leave Increments: All leave may be requested and used in fifteen (15) minute increments.

D. Record of Leave: Employees must make their requests for leave in the designated Agency's electronic system (currently People Plus), either in advance for planned leave or normally no later than the day of their return from unanticipated leave that was not preapproved. When an employee is unable to submit a leave request without the supervisor first cancelling an existing leave request, the employee will request the cancellation in the system, normally no later than the day of their return from unanticipated leave.

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, providing notification 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. Use of accrued sick leave shall be granted to employees in the following circumstances:

1. To receive medical, dental, or optical examination or treatment;
2. Are incapacitated for the performance of their duties by physical or mental illness, injury, pregnancy, or childbirth;
3. Provide care for a family member –
   a. Who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
   b. With a serious health condition; or

c. Who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease.

4. For purposes relating to their adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
5. Bereavement and Funeral Leave: An employee may use sick leave for making arrangements required by the death of a family member or attending the funeral of a family member, subject to limitations referenced in this Article.

C. Each employee is entitled to use up to 104 hours (13 days) of sick leave each leave year for the purpose of providing care for a family member or bereavement as set forth above. For a part time employee, the entitlement to sick leave for these purposes is the number of sick leave hours they would accrue in a leave year.

D. An employee is entitled to use sick leave for travel time to obtain medical care or treatment for either the employee or a family member (subject to 104-hour limitation for family member related purposes described above). In the event that it is necessary to travel longer distances, including out of state, to obtain medical care or treatment, accrued sick leave shall be granted to cover necessary travel time, subject to limitations described above. If the employee has exhausted accrued sick leave, the employee may request other appropriate leave.

E. Advanced Sick Leave:

1. At its discretion, the Agency may advance sick leave to an employee, when required by the exigencies of the situation, subject to the limitations described below.
2. Advance sick leave is not available when it is known (or reasonably expected) that the employee will not return to duty, e.g., when the employee has applied for disability retirement.
3. The Agency may advance up to 240 hours (30 days) of unearned sick leave to a full-time employee:
    a. Who is incapacitated for the performance of their duties by physical or mental illness, injury, pregnancy, or childbirth;
    b. For a serious health condition of the employee or a family member;
    c. When the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by their presence on the job because of exposure to a communicable disease;
    d. For purposes relating to the adoption of a child; or
    e. For the care of a covered servicemember with a serious injury or illness, provided the employee is exercising their entitlement to FMLA leave to care for a covered service member.

4. The Agency may advance up to 104 hours (13 days) of sick leave to a full-time employee -
    a. When they receive medical, dental or optical examination or treatment;
    b. To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;
    c. To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or
    d. To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.
5. For a part-time employee (or an employee on an uncommon tour of duty), the number of hours above, are prorated.

F. Funeral Leave for Combat-Related Death of an Immediate Relative: Employees, subject to applicable limitations, may be entitled to up to 3 workdays of funeral leave to make arrangements for or to attend the funeral of an immediate relative who dies as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone.

G. Administratively Acceptable Evidence: The Agency may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence.

1. The Agency may consider an employee's self-certification as to the reason for their absence as administratively acceptable evidence.
2. The Agency may also require a medical certificate or other administratively acceptable evidence as to the reason for a sick leave absence in excess of three (3) workdays, or for a lesser period when the Agency determines it is necessary as provided below in paragraph H of this Section.
3. 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."

H. When a Medical Certificate is Required: The supervisor may 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. The length of the absence;
    2. 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

3. Any other situation surrounding the employee's leave request or pattern of leave usage that raises reasonable questions about the reason for the leave request.

I. Sick Leave Letter of Requirement:

1. In the event of suspected sick leave abuse, the employee will be issued a Sick Leave Letter of Requirement. A Sick Leave Letter of Requirement will require the employee to provide a medical certificate for any length of absence. A Sick Leave Letter of Requirement will not be counted as a "prior offense" for determining a penalty for discipline. A Sick Leave Letter of Requirement may be referenced in future actions for purposes of proving notice.
2. When the Agency makes a determination to issue a Sick Leave Letter of Requirement to the employee:
   a. The Agency, prior to issuance of the Sick Leave Letter of Requirement, will counsel the employee. The counseling will identify the relevant sick leave rule(s) to the employee.
   b. If improvement does not occur within a reasonable period of time after counseling, an employee may be issued a Sick Leave Letter of Requirement.
   c. If an employee has sick leave as part of an approved reasonable accommodation (known to the supervisor), the employee will be given the opportunity to provide an explanation before the Agency issues a sick leave letter of requirement. This may occur during the counseling meeting described above.
   d. A Sick Leave Letter of Requirement may be withdrawn by the supervisor at any time. The supervisor must review the need for the Sick Leave Letter of Requirement no later than six (6) months after the issuance to determine if the letter should be withdrawn.

J. When requested by the supervisor (or other Agency official), an employee must provide a medical certificate within fifteen (15) calendar days of the date of the request. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within fifteen (15) calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than thirty (30) calendar days after the date the agency requests such documentation. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

Section 3. Other Types of Leave

A. Court Duty: Jury duty and witness appearances shall be administered in accordance with 5 USC 6322.

B. Compensatory Time: Compensatory time off is time off with pay in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work consistent with statute, regulation, and the Overtime Article of this agreement.

C. Religious Compensatory Time: Employees may request and supervisors will approve appropriate religious compensatory time requests in accordance with law, regulation, and EPA policy, HR Bulletin Number 21-002B.

D. Credit Hours Used: Credit hours are managed in accordance with the Work Schedules Article of the CBA.

E. Administrative Leave: Administrative Leave is administratively authorized absence from duty without loss of pay or charge to leave. Administrative leave should be used sparingly. Where not prohibited by law, the Agency may, but is not required, to approve administrative leave in one or more of the following circumstances:
    1. absences directly related to the Agency's mission;
    2. absences officially sponsored or sanctioned by the head of the Agency;
    3. absences that clearly enhance the professional development or skills of the employee in their current position; and
    4. where the absence is as brief as possible under the circumstances and is determined to be in the interest of the Agency.

F. Weather and Safety Leave:

    1. Administrative leave may be granted when it is determined employees cannot safely travel to or from work, or perform work at their normal worksite, a telework/remote work site, or other approved location because of severe weather or other emergency situation.
    2. When Weather and Safety Leave is granted due to closure of an Official Agency Worksite, the Agency will make a reasonable effort to notify the Union and the employees on duty as soon as possible.
    3. Weather and Safety Leave will not be granted, in most circumstances, to an employee who is a teleworker or remote worker and who is able to safely perform work at the employee's approved telework/remote work location. Exceptions are:
        a. the severe weather or emergency was unexpected and the employee could not prepare in advance for telework; or
        b. when the employee's telework/remote work site is impacted by severe weather or an emergency in such a way work cannot be

safely performed.

4. Where local, state or federal authorities have issued a state of emergency affecting an employee's worksite (i.e., office, AWL, RWL), use of leave and telework will be considered.

G. Early release for a holiday will be granted to those on telework/remote work to the same extent as granted to those employees working at the regular office.

H. If there is a new law or program allowing the Agency to grant administrative leave, AFGE will contact the Agency, and the Parties will work together to meet and discuss within seven (7) days of AFGE's request. Following the discussion, once the Agency determines whether or not it will implement the program, it will issue a Mass Mailer regarding the law or program. If there is an administrative delay preventing the Agency from implementing an Administrative Leave program it has determined to implement, either Party may request a meeting to discuss any available appropriate options for establishing a temporary method to allow leave to be taken in a timely manner.

I. Leave for Blood Donation: Employees who volunteer to serve as blood donors without monetary compensation should request administrative leave in advance and if requested may be excused for up to four (4) consecutive hours total including the time period the employee donates blood, travel to/from the donation location and recovery time. If the donor location is the work site, the excused time for donation and recuperation/recovery will not include travel transit time.

J. Leave for Voting:

1. Employees will request in advance and supervisors should approve up to four (4) hours of administrative leave to vote in federal, state, local, tribal, and territorial elections either on the day of the election or for early voting, subject to the following limitations:
    a. If an election simultaneously involves more than one level, it is considered to be a single election event.
    b. Scheduling of administrative leave for the above-described purposes is subject to a determination by the supervisor that the employee can be relieved of duty during the specific period of time requested by the employee.
    c. Supervisors should strive to accommodate employee leave requests for voting by making necessary operational adjustments.
    d. If an employee needs to spend less than four (4) hours to vote, only the needed amount of administrative leave should be granted.
2. In addition, employees may also use up to four (4) hours of administrative leave per year to serve as non-partisan poll workers or participate in non-

partisan observer activities at the federal, state, local, Tribal, and territorial level. If an employee needs to spend less than four (4) hours to vote, only the needed amount of leave should be granted.

3. Employees may request appropriate leave for such additional time as may be needed to enable them to vote or serve as non-partisan poll workers or observers. Upon receipt of such request for leave, the supervisor will approve or deny the request as soon as practicable after the leave is requested in order to facilitate the employee voting or serving as a non-partisan poll worker or observer. Employees and supervisors will work together on leave arrangements.
4. Scheduling of administrative leave for the above-described purposes is subject to a determination by the supervisor that the employee can be relieved of duty during the specific period of time requested by the employee without significantly impairing mission essential operations.
5. Supervisors should strive to accommodate employee leave requests for the above-described purposes by making necessary operational adjustments.
6. If an employee needs to spend less than 4 hours to serve as a non-partisan poll workers or participate as a non-partisan observer, only the needed amount of administrative leave should be granted.

K. Leave without Pay: Leave without pay may be granted to employees, subject to management's approval, and in accordance with applicable law, policies, rules and regulations.

L. Family & Medical Leave (FMLA)

1. Full time Employees who meet the eligibility requirements for FMLA in accordance with 5 CFR 630.1201 may take a total of twelve (12) administrative work weeks of unpaid leave during any twelve (12) month period for the following family and medical needs:
    a. Birth of and care for a child;
    b. Placement of a child with the employee for adoption or foster care;
    c. Care of a spouse, child, or parent of the employee who has a serious health condition; or
    d. Serious health condition of the employee that makes the employee unable to perform any one or more essential functions of their position.
2. Notice for FMLA: Employees must provide appropriate notice when invoking FMLA. Where the need for FMLA leave is foreseeable, the employee will provide notice to their immediate supervisor of the intention to invoke FMLA not less than thirty (30) calendar days before the date the leave is to begin. If an employee learns of their need for leave less than thirty (30) days in advance, they must give notice as soon as possible (generally either the day they learn of the need or the next workday). When the employee has no

reasonable excuse for not providing at least thirty (30) days advance notice, the Agency may delay the FMLA leave until thirty (30) days after the date notice is provided. When the employee could not have provided thirty (30) days advance notice but has no reasonable excuse for not providing a shorter period of advance notice, the Agency may delay the FMLA leave by whatever amount of time the employee delayed in notifying the Agency. If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond their control, to provide notice of their need for leave, the leave may not be delayed or denied.

3. FMLA leave substitution: Employees who are approved for Leave Without Pay under the FMLA, may substitute appropriate paid leave they have earned or accrued.

M. Paid Parental Leave, Subpart Q: The Federal Employee Paid Leave Act expands Family & Medical Leave Act entitlements to provide 12 weeks of paid parental leave to eligible employees in connection with a birth or placement (i.e., adoption or foster care) of an employee's child arriving on or after October 1, 2020. Employees eligible for FMLA may substitute FEPLA paid parental leave rather than take unpaid leave or use other accrued leave.

N. Family and Medical Leave Qualifying Exigency Leave: Under the Family and Medical Leave Act of 1993 (FMLA), employees are entitled to a total of up to twelve (12) workweeks of unpaid leave during any twelve (12) month period for qualifying exigencies, consistent with current laws and the U.S. Office of Personnel Management's regulations governing use.

1. Qualifying exigencies arise when the spouse, child, or parent of an employee is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty.
2. Covered active duty includes duty of a member of a regular component of the Armed Forces during deployment to a foreign country, and duty of a member of a reserve component of the Armed Forces during deployment to a foreign country under a call or order to active duty in support of specified contingency operations.
3. Qualifying exigency leave under the FMLA helps employees manage family affairs when their family members are called to or on covered active duty. Qualifying exigency leave arises when the spouse, child, or parent of an employee is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty. Covered active duty includes duty of a member of a regular component of the Armed Forces during deployment to a foreign country, and duty of a member of a reserve component of the Armed Forces during deployment to a foreign country under a call or order to active duty in support of specified contingency operations. Qualifying exigency leave under the FMLA helps employees manage family affairs when their family members are called to or on covered

active duty.

4. An employee may elect to substitute annual leave for unpaid FMLA leave for qualifying exigency purposes, consistent with current laws and the U.S. Office of Personnel Management's regulations governing use of annual leave. An employee must notify the agency of their intent to substitute annual leave for FMLA leave without pay prior to the date the leave commences. An employee may not retroactively substitute annual leave for previously-taken FMLA leave without pay.

O. Brief LWOP: This type of LWOP is normally requested and taken for short periods, usually in hours for part of a workday, for an entire workday, or for several consecutive workdays. Employees may request in advance and supervisors may approve up to 24 hours of LWOP per year for any of the following purposes:
    1. Participation in a child's school-related activities directly related to the educational advancement of a child;
    2. Family medical needs or personal illness; and
    3. Care of elderly parents or relatives.

P. Leave without Pay while awaiting Worker's Compensation or Disability Retirement Determination. Leave without pay may be granted to employees, subject to Agency approval, and in accordance with applicable policies, law, rules and regulation, in lieu of sick leave or annual leave for employees who have filed a claim for worker's compensation or disability retirement.

Q. All types of leave shall be administered consistent with applicable laws, rules, and regulations.

R. Emergency Leave Transfer Program:
    a. When OPM notifies the Agency of the establishment of an ELTP for a specific disaster or emergency the Agency will:
        a) Determine whether, and how much donated annual leave is needed by affected employees;
        b) Approve emergency leave donors and/or emergency leave recipients within the Agency, as appropriate;
        c) Facilitate the distribution of donated annual leave from approved emergency leave donors to approved emergency leave recipients within the agency; and
        d) Determine the period of time for which donated annual leave may be accepted for distribution to approved emergency leave recipients.
    b. Leave Bank ELTP Donation: In accordance with 5 USC 6391, as an alternative or in addition to the leave donation process described above, the EPA leave bank may donate annual leave to the ELTP. If the Agency draws leave from the Leave Bank in lieu of or in addition to implementing an ELTP, the Agency

will provide an e-mail Mass Mailer notifying employees of that decision.

c. An employee may apply for leave through the ELTP if they have been adversely affected by the specific disaster or emergency. An employee or a family member is considered to be adversely affected if the disaster or emergency has caused them severe hardship to such a degree that their absence from work is required. An emergency leave recipient may use donated annual leave to assist an affected family member, provided that the family member has no reasonable access to other forms of assistance.
d. Once an ELTP is established, an employee who wants to be an emergency leave donor must complete OPM Form 1638, Request to Donate Annual Leave Under the Emergency Leave Transfer Program and submit to the regional leave bank coordinator or the National Leave Program Managers within OHR as appropriate.
e. An employee who wants to apply to be an emergency leave recipient must complete OPM Form 1637, Application to Become a Leave Recipient under the Emergency Leave Transfer Program and submit to their supervisor. Normally the Agency will approve or disapprove the employee's application within ten (10) calendar days or the Agency will share an alternate deadline for the specific ELTP.
f. Employees may donate specified amounts of accrued annual leave (no less than 1 hour, no more than 104 hours) to be transferred from their annual leave account to the ELTP.

S. Military Leave
   a. In accordance with law and regulation, full time employees whose appointment is not limited to one (1) year who are members of the National Guard or the Armed Forces Reserves are entitled to fifteen (15) calendar days of regular military leave in a fiscal year for active-duty training.
   b. Military leave under 5 U.S.C. 6323(a) is prorated for part-time career employees and employees on an uncommon tour of duty.
   c. Employees who do not use the entire fifteen (15) days can carry any unused military leave (not to exceed fifteen (15) days) over to the next fiscal year. Military leave may never exceed thirty (30) calendar days in any one fiscal year.
   d. Military leave is charged in increments of one (1) hour and is charged only for those hours in which the employee would otherwise be in duty status.
   e. When possible and requested, management will arrange schedules to allow such employees to have scheduled days off immediately preceding and/or following the required military leave if so, requested by the employee.

T. Use or Lose Leave: The Agency will issue an annual notice to employees regarding Use or Lose leave. In accordance with 5 CFR 630.308, employees may not be considered for leave restoration unless their annual leave was scheduled in writing before the start of the third bi-weekly pay period prior to the end of the leave year.

When an employee's leave is cancelled due to an exigency of the public business, supervisors will notify the employee as early as possible. Once an employee is notified of leave cancellation, if the employee has time remaining in the leave year to reschedule the cancelled use or lose leave, the employee must do so.

Section 4. Corrections

A. The Agency agrees that some errors in leave may be beyond an employee's control. It is the responsibility of the employees to review their earnings and leave statements and leave system (currently People Plus) and report any errors if discovered.

B. The Agency will take appropriate action to resolve/correct errors.

C. When an administrative error is discovered by the servicing HR Shared Service Center, the employee will be informed and if appropriate provided direction to rectify.

D. If the employee has been overpaid as a result of the error, the Agency or payroll provider will provide the employee a debt letter explaining 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. The Parties recognize that smaller debts to the government (e.g., overpayment of $50 or less) may not result in a debt letter.

Article 13: Career Ladder Promotions

Section 1. Career Ladder Promotions

A. The Agency will provide appropriate opportunities for employees to develop and advance in their careers.

B. Employees in career ladder positions will be given adequate opportunity to reach the full potential of their assigned career ladders. Management will provide work assignments, and/or training appropriate for employee development and experience. Conditions prescribed by law and regulation (including 5 CFR § 335.104, eligibility for career ladder promotions) must be satisfied for an employee to be eligible for a career ladder promotion. Upon placing an employee in a career ladder position, the supervisor and employee will discuss the job requirements and expectations for the employee to reach the next higher level. Where there are eligibility concerns, these discussions should include requirements for next career ladder level, potential training, different behavior the supervisor expects from the employee, or taking on a particular project(s). The supervisor will hold these discussions at each level of the employee's progression and at mid and end of year performance reviews within the career ladder.

C. Lack of availability of work at the higher grade level may not prevent a career ladder promotion.

D. The following conditions must be satisfied for an employee to be eligible for a career ladder promotion:
    1. The employee's performance demonstrates the ability to perform the duties of the next higher grade level;
    2. The employee has completed the minimum waiting period in the lower-graded position (52-week period pursuant to 5 CFR § 300.604); and
    3. Pursuant to 5 CFR § 335.104, no employee shall receive a career ladder promotion unless their current rating of record under part 430 of this chapter is "Effective" or higher. In addition, no employee may receive a career ladder promotion who has a rating below "Effective" on a critical element that is also critical to performance at the next higher grade of the career ladder.

E. Supervisors are encouraged to discuss performance concerns as they arise throughout the year that may impact career ladder promotion eligibility. If the supervisor decides not to promote the employee, the supervisor will communicate that decision to the employee in writing no later than the employee's career ladder eligibility date. The supervisor must explain why they determined the employee is not entitled to the

promotion and how the employee must improve their performance in order to be granted the career ladder promotion.

F. If the supervisor determines to promote the employee, the supervisor will submit the necessary personnel action early enough to process the promotion within the first pay period of the employee meeting time in grade requirements. Employees eligible for a career ladder promotion who do not receive their career ladder promotion timely are entitled, upon an administrative determination of an authorized official that the delay was unjustified or unwarranted (i.e., the employee otherwise met eligibility requirements of this Article), to retroactive promotion. Such retroactive promotion will be computed back to the first day of the pay period immediately following the employee's eligibility date. Back pay will be computed as in accordance with 5 U.S.C. 5596, beginning on the first day of the pay period immediately following the employee's eligibility date, and interest will end on the day the personnel action is completed.

Section 2. Developmental Details

A. Agency leadership recognizes that details enhancing professional growth and development may be beneficial for employees, especially those employees with full promotion potential up to the GS-12 level. The purpose of Developmental Details is to provide flexible cross training, improved networking and collaboration, skills development, and knowledge-sharing opportunities for employees through temporary assignments while accomplishing Agency work.

B. Definition: A Developmental Detail is a detail that includes a developmental component for permanent employees up to the GS-12 full performance level. They include voluntary opportunities posted on Talent Hub where interested employees can apply for short-term developmental assignments, special projects, or shadowing. Developmental Details may also be arranged outside of talent hub. Skills Marketplace is another way for employees to develop new skillsets.

C. Timing:
    1. Developmental Details can be up to 120 days and may be extended.
    2. Developmental Details are normally limited to one per employee per year.
    3. Specifics regarding the duration, location, and duties may vary depending upon the employee, the project, and Agency needs and resources.
    4. Participants must not be on a Performance Improvement Plan to be eligible for a Developmental Detail.

D. Developmental Details support employees in developing skills based on their career

development needs and goals. These Developmental Details may promote diversity and inclusion across the Agency and provide knowledge/skills transfer.

E. The Agency will encourage supervisors to support Developmental Details.

F. Employees may explore and discuss possible Developmental Detail opportunities with other employees and supervisors, while maintaining communication with their supervisors and ensuring it does not disrupt their assigned work. Both the home and host offices must approve a Developmental Detail. If a supervisor disapproves a Developmental Detail, the employee may raise this matter to the second level supervisor without fear of retribution. If a grievance is filed regarding the disapproval, having raised the matter to the second level supervisor does not affect the Step 1 grievance official identification.

Article 14: Reassignment

Section 1.

The provisions of the Article apply solely to reassignments within the bargaining unit(s).

Section 2.

An employee who is reassigned will be given a reasonable period of time to learn and satisfactorily perform the functions of his/her new position in accordance with the Agency's approved Performance Management System as incorporated into this Agreement.

Section 3.

Reassignments to positions with promotion potential higher than the employee's current position are processed under the provisions of the Merit Promotion Article of this Agreement.

Article 15: Details

Section 1.

The provisions of this article apply solely to the assignment of bargaining unit employees within the unit. A detail is the temporary assignment of an employee to a different position or set of duties for a specified period of time. There is no formal position change, officially, the employee continues to hold the position from which detailed and keeps the same status and pay; with the employee normally returning to his/her regular duties at the end of the detail.

Section 2.

Details shall be rotated equitably among those employees who have been determined by management to have the capacity and requisite skills for assuming the responsibilities of the assignment unless competitive procedures are used.

Section 3.

The Agency will provide a memorandum to the employee documenting official details to higher level classified positions of more than ten (10) consecutive work days. Official details in excess of thirty (30) calendar days will be recorded on an SF-52 "Request for Personnel Action."

Section 4.

An employee temporarily assigned to a classified position at a higher level for more than thirty (30) calendar days will receive a temporary promotion as soon as practicable, but no later than the thirty-first (31st) day of the assignment. The employee must meet any qualification and eligibility requirements to be promoted.

Temporary promotions in excess of 120 calendar days shall be filled through competitive procedures. Temporary promotions of less than 120 calendar days may be rotated equitably among those employees who have been determined by management to have the capacity and requisite skills for assuming the responsibilities of the assignment unless competitive procedures are used.

Section 5.

Details to a lower classified position shall not affect the employee's classification or salary.

Section 6.

Details to less physical, stressful or other demanding positions may be used for

employees undergoing or completing medical treatment.

Section 7.

Length of details will be in accordance with OPM regulations.

Section 8.

Management will keep details within the shortest practicable time so that they will not promote any compromise of the open competitive principles of the Merit Promotion System.

Article 16: Reasonable Accommodation Procedures

Section 1. General

A. The Agency is committed to providing reasonable accommodation consistent with the law in order to ensure that individuals with disabilities enjoy full access to equal employment opportunities at EPA.

B. The Agency endeavors to be a model employer for people with disabilities, and to recruit and hire employees with disabilities, in accordance with controlling law and regulation.

C. The Parties should work together to make employees aware of their rights and work within the reasonable accommodation procedures to process requests for reasonable accommodations in a confidential manner recognizing the importance of timeliness.

Section 2. Procedures

A. Making a request for reasonable accommodation:

1. A request for reasonable accommodation is an employee or applicant expressing the need for an adjustment or change at work, for a reason related to a medical condition.

2. Employees may request a reasonable accommodation, either orally or in writing, from their supervisor (who will be the decision-maker in most circumstances), another supervisor in their immediate chain of command, or the National Reasonable Accommodation Coordinator (NRAC), or, if applicable, the Local Reasonable Accommodation Coordinator (LORAC).

3. A family member, health professional, or authorized representative may request an accommodation on behalf of an applicant or EPA employee. When a request for accommodation is made by a third party on behalf of an applicant or employee, the Agency official (for applicants) or the supervisor for the employee, Senior NRAC, NRAC, and LORAC who are processing the request may confirm the individual's authority to represent the applicant or employee with a disability.

4. At the time of making an initial request, employees may, but are not required to, identify a specific accommodation. The NRAC (or LORAC) is available to provide employees with ideas or resources to help identify potential accommodations.

B. Time frames for processing a request:

1. The Agency will process requests for reasonable accommodation and provide accommodations in as short a time frame as is reasonably possible. The time necessary to process a request may depend on the nature of the accommodation requested, the number of requests relative to staffing levels, and whether it is necessary to obtain supporting information.

2. When a disability and/or need for reasonable accommodation is not previously documented or the disability is not obvious to the decision-maker, employees may be required to provide medical information (including follow up requests for additional information) within a reasonable period (generally, up to 45 business days). Failure to timely supply medical information may result in a denial of the requested accommodation.
    a. In accordance with EEOC guidance, the Agency may request medical documentation in order to make an informed decision about a reasonable accommodation.
    b. An employee's medical information related to a reasonable accommodation will be submitted by employees to the NRAC/ LORAC in accordance with agency policy.
    c. Employees may request, and the Agency may grant for good cause shown, extensions to deadlines for medical requests.
    d. Medical information and documentation will be maintained as confidential records by the Agency and shared consistent with Agency Policy, law, and regulation.

3. Some accommodations may require coordination with other federal agencies, for example, facility access or modification to the building, or other circumstances beyond the Agency's control, such as delays in a vendor's supply chains. When such circumstances arise, the Agency will endeavor to provide periodic updates to the employee.

C. Processing requests for reasonable accommodation:

1. Once an employee makes a request, the employee, NRAC or LORAC and/or supervisor will work together to document the request in writing if the request was made verbally. This may be done on an Agency form (Appendix B) or by email. This written documentation is to be sent to the NRAC or LORAC if the NRAC and LORAC were not already notified of the request.

2. The Agency will review the medical documentation (if medical documentation is requested) and issue a Determination of Disability (DOD) Letter. The DOD Letter will state if the person is an individual with a disability, and if so, the request will continue with the interactive process.

D. Interactive Process

1. At the time of making an initial request, employees may, but are not required to, identify a specific accommodation.
2. Employees and management are expected to engage in ongoing, cooperative communications (a flexible interactive process) regarding the request and in identifying and implementing effective reasonable accommodation(s). This is especially important when the specific limitation, problem, or workplace barrier is unclear. An employee may ask for and/or the Agency may offer an interim reasonable accommodation during the interactive process.

3. The employee requesting the reasonable accommodation may have a Union representative participate in interactive process meetings (i.e., meetings between the LORAC/NRAC, decisionmaker, and the employee). The agency may have the NRAC/LORAC, decisionmaker, and LER in interactive process meetings. If the Agency determines a subject matter expert is a necessary participant in the interactive process, the Agency will provide the rationale for a Subject Matter Expert (SME) to the employee and their representative (if there is one) in advance of the meeting. All attendees, including SMEs are expected to treat the interactive process in accordance with controlling confidentiality law and regulation.

4. Consistent with the law, it may be appropriate for the Agency to revisit accommodations or request updated medical information to support an employee's reasonable accommodation.

E. Reassignment: A reassignment per a reasonable accommodation will be consistent with law and regulation

1. Voluntary Reassignment
    a. The Agency and the employee may mutually agree to explore a voluntary reassignment outside the scope of the Agency's Reasonable Accommodation Procedure even though all RAs have not been considered or fully implemented. Exploration of a voluntary reassignment does not foreclose an accommodation within the current position. The employee must qualify for any positions discussed and the positions must be vacant.

2. Reassignment as Last Resort
    a. Reassignment is considered if a non-probationary employee with a disability can no longer perform the essential functions of their current job and management has determined through the interactive process that:
        i. there are no effective reasonable accommodations that will

enable the employee to perform the essential functions of their current position, or

ii. other reasonable accommodations would impose an undue hardship.

b. If reassignment is offered, employees who elect to participate in a reassignment search must submit identifying parameters for the search (such as geographic location).

F. Decisions on Accommodation Requests

1. Approval or denial of reasonable accommodation requests will be made in writing and provided to the employee. For approved reasonable accommodations which are ongoing episodic, and/or irregular in nature, which do not include a notification process, the Decision Maker will determine the notification process with input from the employee.

Article 17: Performance

Section 1. Overview

The Agency will administer the performance management program to comply with 5 U.S.C. Chapter 43, 5 U.S.C. Chapter 75, 5 CFR Part 430, 5 CFR Part 432 and 5 CFR Part 752, In compliance with 5 CFR 430.208(c) the Agency will not establish a forced distribution of summary levels. Each employee's performance appraisal will be based on the supervisor's evaluation of the employee's performance measured against the employee's performance standards (including critical elements and, as applicable, non-critical elements).

Section 2. Definitions

The definitions contained in 5 CFR Part 430 will apply to terms used in this Article.

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. Such elements shall be used to measure performance only at the individual level."
B. The Agency will comply with 5 CFR Part 430 when making its decision as to the number of rating levels for each critical element, when determining individual employees' performance ratings, and when determining whether a rating level will have a written performance standard.

C. Application of all performance standards must comply with 5 CFR Part 430.

Section 4. Communications

A. Within the first thirty (30) calendar days of every rating period or within thirty (30) calendar days of employment or reassignment, the supervisor will verbally discuss the performance plan with each employee. The supervisor will notify the employee when and where a draft performance plan is available for review.

B. As required by 5 CFR 430.206(b)(1): "Agencies shall 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 the final performance plan and ask the employee to sign and date to acknowledge receipt. Though the rating cycle begins October 1, the date the employee signs the plan, or declines to sign, is the beginning date of the minimum period of performance. If the employee declines to sign the plan, then the supervisor notes the disagreement and the date in the Agency's

performance management system. Employees and supervisors may add additional comments and concerns to the notes sections of the Agency's performance management system.

1. Once a performance plan is final, 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. Such changes initiating a discussion will include but are not limited to:
    a. change in the work unit's goals or objectives;
    b. change in assignments;
    c. change in the work processes of the unit; or
    d. an employee is detailed for more than ninety (90) days.

C. Performance discussions:
    1. For each appraisal period there will be a progress review (also called a "midyear review"), generally occurring in April of the appraisal year.
    2. Frequent informal reviews and discussion of performance throughout the appraisal period may be requested by the employee or supervisor at any time.
    3. Progress reviews shall be scheduled at least one week or more in advance of the review in order to allow the employee to provide advance input (self-assessment) at the option of the employee.
    4. Progress reviews shall be conducted in a manner that protects the privacy of the employee. The employee may request that a Union representative be present at a progress review.
    5. The purpose of any performance review and discussion between the supervisor and the employee is to:
        a. evaluate the employee against established critical elements and standards;
        b. improve work processes or products;
        c. discuss employee development including training opportunities which may include on the job training;
        d. assess accomplishments; and resolve problems.

D. Interim Ratings
    1. Interim ratings must be prepared for employees in the Agency's performance management system who have been under a performance plan for the minimum period of performance (90 days) when the employee:
        a. completes a detail of ninety (90) days or more;
        b. is reassigned to another EPA organization;
        c. transfers to another Agency; or
        d. has a supervisor who departs from that supervisory position.

2. In preparing the rating of record, interim ratings must be given consideration proportional to the amount of the appraisal period the employee and departing supervisor occupied each position. If the appraisal period is less than the minimum period of performance, only performance highlights will be provided. Performance highlights will be similar in scope as the progress reviews described above.
3. The supervisor must indicate all sources of input considered in preparing the interim rating.

E. Timing of the Appraisal
    1. Annual performance appraisals (ratings of record) will be scheduled within thirty (30) days after the close of the appraisal period.
    2. Appraisals may deviate from the schedule above in the following circumstances:
        a. The employee was on leave for an extended period during the performance cycle inhibiting a complete and accurate performance appraisal;
        b. The employee's PARS is issued with fewer than ninety (90) days prior to the completion of the rating period; or
        c. The employee receives notice of Unacceptable performance (either through the issuance of a PIP or other notification). In that case, the rating period is extended, if needed, until the PIP period has ended.
        d. In the event the supervisor leaves the position without providing an evaluation and the employee has otherwise met the requirements to receive a rating of record, then the Agency will rate the employee based on appropriate sources of input. In such situations, appropriate sources of input for the rating typically include current and past members of the employee's supervisory chain.

F. Reduction in Force (RIF)
    1. In the event of a Reduction-In-Force (RIF), employee performance ratings will be evaluated in accordance with applicable law, rule, and regulation.
    2. For employees with no rating (such as 100% official time, active-duty leave, etc.) 5 C.F.R. § 351.504 shall apply for the period of service.

G. Appraising Disabled Veterans
    The Agency will comply with Executive Order 5396 from July 17, 1930, regarding a disabled veteran's efficiency rating who properly requested leave.

H. Appraising Employees Called to Active Duty or Volunteering for Emergency Work
    1. A supervisor's appraisal of the performance of an employee in the Armed Forces Reserve or National Guard who is called to active duty, shall not be adversely impacted due to the employee's absence from work. These

employees will not receive a rating from the Agency based on the time period of their service.

2. A supervisor's appraisal of the performance of an employee who has volunteered to assist in an emergency declared by a local, state or federal governmental Agency, department or entity, and sanctioned by the Federal government or the Agency, shall not be adversely impacted due to the employee's absence from work. These employees will not receive a rating from the Agency based on the time period of their work on that emergency.
3. Appraisal periods may be extended in accordance with the "timing of the appraisal" provision above.

I. Protected Union Activities
   1. There is no performance rating for union activities. Performance evaluations will be based only on Agency work performed.
   2. A union representative's work on authorized official time will not negatively impact their performance evaluation. These employees will not receive a rating from the Agency based on the time period of their authorized official time.
   3. There will be no negative impact on employee performance evaluations because of participation in union functions.

J. Sources of Appraisal Input
   1. The supervisor will ensure that input used in the appraisal process is related to the employee's critical elements. The input used will be factual and relevant.
   2. Employees and Supervisors will discuss during performance appraisal meetings the sources of input considered in formulating performance evaluations. Employees are encouraged to raise any concerns regarding their performance rating, including any information overlooked or concerns regarding the sources of input. Nothing in this agreement prohibits supervisors from adjusting employees' ratings based on performance discussions with employees. Nothing in the agreement prohibits employees from adding notes to the Agency's performance management system.
   3. Supervisors will communicate areas of improvement and performance issues as soon as practicable in an effort to allow the employee sufficient time to improve their performance prior to the performance evaluation.
   4. Standards of performance will make allowances for factors over which an employee has little, if any, control, but which might exert a significant impact on the employee's performance or ability to achieve an objective. It is understood that employees cannot be held accountable on critical elements for factors outside their control. If a supervisor determines, in consultation with an employee, that an employee cannot be held accountable on a certain critical element (for instance, if no work was assigned under that CE), the supervisor shall remove that critical element from the employee's

performance plan.

K. Employee Self-Assessment
    1. Employees are encouraged but not required to provide their supervisor with a written self-assessment (e.g., list of accomplishments) at the middle and end of the appraisal period. The supervisor will consider an employee's self-assessment(s) (if they are provided) and other appraisal input when assigning a rating to each critical element at the end of the performance cycle.

L. Annual Rating of Record
    1. Employees will be appraised at least once a year and given a rating of record. The rating period will be indicated in USA Performance. The rating will normally be completed within thirty (30) days after the end of the rating period unless the rating period is extended or the employee is otherwise not rated.
    2. It is understood that employees will only be evaluated on work they were assigned and for which they have been provided EPA-specific training necessary to perform their job functions (e.g., national data systems, required OJT). Employees may be evaluated based on knowledge, skills, and abilities they were required to possess to obtain their position. The supervisor must provide a narrative description for the summary rating.
    3. Assigning the Summary Rating. Once all of the critical elements (except for those which have been removed as explained above) have been rated, the supervisor will assign the summary level (rating) as follows:
        a. Distinguished: more than one half of the critical elements are rated Distinguished, and none of the critical elements are rated Unacceptable.
        b. Effective: one half or more of the critical elements are rated Effective and none of the critical elements are rated Unacceptable;
        c. Unacceptable: one or more critical element is rated Unacceptable.
    4. Approving the Rating of Record:
        a. If the summary level is Effective, or Distinguished, the supervisor must sign and date the form to approve the rating of the record.
        b. Summary ratings of Unacceptable require a higher-level management review and approval.

Section 5. Performance Improvement Plan (PIP)

A. At any time during the rating period, if the supervisor identifies an employee's (as defined by 5 U.S.C. § 7511(a)(1)) performance as Unacceptable, as referred to above in one or more critical elements, the supervisor may notify the employee of their Unacceptable performance as described below. It is in the parties' best interests to address performance issues as soon as they are discovered. Prior to the issuance of

a PIP, the supervisor will meet with the employee to communicate areas of potential improvement. This meeting will provide an opportunity for the employee and the supervisor to discuss the specific performance requirement(s) not being met, disclose the need for a Reasonable Accommodation, if applicable, and to raise potential causes of the problem. Nothing in this Article prevents an employee and their supervisor from having conversations regarding the employee's performance at any time during the rating period.

B. The employee may request a union representative at any time during the process.

C. When the supervisor determines based upon documentation that the employee's performance is unacceptable in one or more critical elements, the supervisor shall develop a draft written PIP, which will include a description of the basis for the PIP and provide it to the employee. Upon request of the employee or the employee's representative, the Agency will provide a copy of any supporting documentation referred to in the draft PIP.

D. The draft PIP will inform 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 to demonstrate acceptable performance under the PIP.

E. The employee and their union representative (if the employee requests one) may submit written feedback on the draft PIP within two (2) days of receipt of the draft PIP.

F. After the expiration of the two (2) day period, the supervisor may issue the PIP. Once the supervisor issues the PIP, the supervisor will meet with the employee and discuss the approved PIP. The employee may invite a Union representative to be present at this PIP meeting. The goal of the PIP is to afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position.
    1. Timing. The employee's performance rating must be based on at least ninety (90) days under the assigned critical elements.

G. A supervisor may 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 CFR Part 432) will be proposed until the completion of the PIP.

H. A PIP will be in writing from the employee's supervisor to the employee. The time period for a PIP will generally last ninety (90) calendar days but will be no less than 60 days. The PIP will afford the employee sufficient time to demonstrate acceptable performance under the critical elements at issue, commensurate with the duties and

responsibilities of the employee's position. The time period for the PIP may be shortened from 90 calendar days by mutual agreement of the parties or written justification from the supervisor. Under no circumstances shall the PIP time period be less than 60 calendar days. A specified beginning and ending date should be included, though extensions may be necessary. At any time during the PIP period the supervisor may conclude that improvement is no longer necessary based on the employee's improved performance. The supervisor will notify the employee in writing of this determination.

I. Each PIP should be geared to the needs and circumstances of the situation. The following information should be included:
    1. The employee's name, position title, series, grade, and organization location;
    2. A description of the requirements that must be met, in terms of quality, quantity, timeliness, or manner of performance, for work to be rated "Effective".
    3. A written narrative explanation of what will be considered Effective performance;
    4. A description of the assistance the employee will receive from the supervisor;
    5. Provision for regular meetings with the employee to discuss progress and deficiencies.
    6. A list of assignments with due dates, or completion dates, if appropriate;
    7. A statement that the employee is expected to maintain Effective performance on the remainder of the critical elements;
    8. Examples of ways the employee can improve performance;
    9. A description of the assistance the employee will receive from the supervisor/Agency, such as a schedule of periodic performance reviews that will be held during the performance improvement period and appropriate training opportunities that are available; and
    10. Notification that failure to improve performance to Effective may result in a change to a lower grade, reassignment, or removal.

J. If the employee's performance improves to Effective and remains at that level for one year from the beginning of the PIP period in accordance with 5 CFR 432.107 (b) it will not be used as the basis for a Chapter 43 removal action and the PIP will be removed from USA Performance (or any successor system).

K. The Agency will not place any PIP documentation (including the PIP itself) in the EOPF. This does not include any SF-50 (or successor form) that may result from the failure of a PIP.

L. A PIP may be terminated or extended in situations such as those described below. If the PIP is terminated because of demonstrated Effective performance, the PIP memorandum will be removed from the USA Performance system (or any successor system) after the employee's performance has continued to be Effective for one year.

M. A PIP will be terminated if the employee moves to a different position at the same or different grade. The PIP is not continued in effect in the new position.

N. A PIP may be terminated if the employee's performance improves to Effective prior to the expiration of the PIP.

O. A PIP may be extended at any time by the supervisor with notice to the employee and their representative. The reason for the extension will be set forth in writing to the employee and their representative.

P. Notwithstanding the existence of an ongoing PIP, an employee may request a reassignment to another position as a means of resolving the performance issue, if agreed to by the Agency. An employee shall not be forced to successfully complete the PIP before moving on to another position.

Q. Expiration of a PIP. If a PIP is not extended or terminated by the designated expiration date, the supervisor must notify the employee and their designated representative in writing of the status of their performance. If the employee's performance has improved to Effective, the supervisor must prepare a new rating of record if the opportunity period was triggered by an annual performance rating of unacceptable. The new rating will be updated in the Agency's performance management system. Once the employee has been rated Effective, all relevant performance-related personnel actions will be processed accordingly.

R. When there is a PIP issued to an employee, the employee's performance period for that year is extended through the duration of the PIP if necessary.

S. Change of Supervisors while on a PIP. In the event that the employee's supervisor leaves the unit either temporarily or permanently, the employee and new supervisor, along with the employee's representative, shall meet within 7 days of the new supervisor's arrival to discuss the PIP and the employee's progress in meeting the PIP's requirements. If the meeting does not occur within 7 days, the PIP may be extended by the number of days beyond 7 that the meeting occurs.

T. Part-Time Employees. The Supervisor will give due consideration to the achievability of a PIP for a part-time employee. Assignments and deliverables should be commensurate with a part-time schedule.

Section 6. Documentation for Performance Based Adverse Action

Before taking an adverse action based on an employee's failure to demonstrate acceptable performance, the Agency shall provide to the employee and their representative (if one has been selected) in writing:

A. the results of the PIP; and

B. any other material relied upon in formulating the adverse action.

Section 7. Performance Based Actions

A. Should an employee's performance be determined to be unacceptable based on the results of the PIP, the Agency will consider the following possible personnel actions:
   1. reassignment of the employee;
   2. demotion to a position at a lower grade in accordance with 5 CFR 432; and
   3. removal of the employee from Federal service in accordance with 5 CFR 432.

B. An employee whose reduction-in-grade or removal is proposed for unacceptable performance is-entitled to:
   1. A thirty (30) calendar day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of that performance;
   2. A representative. The employee may file a written statement with the deciding official indicating the name, title (if any) and address of their representative(s);
   3. A reasonable time, but not less than 7 calendar days, to answer orally and/or in writing;
4. Use a reasonable amount of duty time to prepare an answer; and
5. A written decision which specifies the instances of unacceptable performance on which the reduction in grade or removal is based. The decision shall be issued within 30 calendar days after expiration of the advance notice period. The deciding official generally shall be at a higher level than the proposing official. The written decision shall be issued to the employee at or before the time the action will be effective. The decision shall inform the employee of any applicable appeal and/or grievance rights.
6. By written agreement in advance of the deadlines, the parties may mutually agree to an extension of these time frames.

Section 8. Employee Objections

A. Performance Plans. The final determination of an employee's critical elements and standards are not grievable under the negotiated grievance procedure. If an employee believes that a decision or other action taken or not taken under this performance management program resulted from a prohibited personnel practice as defined in 5U.S.C. 2302 or an act of discrimination, the employee may: (1) file a grievance under the negotiated grievance procedure or file a charge of discrimination with the Equal Employment Opportunity Commission and/or (2) file a complaint with the Office of Special Counsel.

B. Rating of Record. An employee who disagrees with their final rating of record may file a grievance under the provisions of the Negotiated Grievance Procedures Article of this MCBA. An employee may file an allegation with the Office of Special Counsel if the employee believes the rating decision or other action taken or not taken based on the rating of record, constitutes a prohibited personnel practice as defined in 5 U.S.C. 2302 or file an equal employment opportunity (EEO) complaint.

Section 9. Reopener

A. The Parties agree that the Agency has the right to modify the substance of the Performance Appraisal and Recognition System in accordance with 5 USC 7106. Should that occur, the Union will have the right to negotiate subject to this Agreement's Midterm Article.

Article 18: Reduction in Force and Transfer of Function

Section 1. Scope.

This Article governs Reduction in Force (RIF) and Transfer of Function (TOF) actions as provided in applicable laws and regulations. For purposes of this Article, the following terms are defined in law and are included for informational purposes:

A. Reduction in Force (RIF): When the Agency releases a competing employee from his or her competitive level by furlough for more than thirty (30) days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within sixty (60) days or within thirty (30) days in emergency situations.

B. Transfer of Function (TOF): The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive areas in which the function is performed to another commuting area.

C. Function: All or a clearly identifiable segment of any agency's mission (including all integral parts of that mission, regardless of how it is performed).

D. Competitive Area: The Agency will define the competitive area for a RIF or TOF action. The competitive area may consist of all or parts of the Agency. The competitive area will be defined solely in terms of EPA's organizational unit(s) and geographical location and will include all employees within the competitive area so defined.

E. Competitive Level: Positions in the competitive area that are in the same grade (or occupational level) and classification series that are so alike in qualification requirements, duties, responsibilities, pay schedule, and working conditions that the incumbent of one position can successfully perform the critical elements of any other position in the level upon assignment to it, without loss of productivity or undue interruption.

F. Commuting Area: The 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 like and can reasonably be expected to travel back and forth daily to their usual employment.

G. Undue Interruption: A degree of interruption that would prevent the completion of required work by the employee ninety (90) days after the employee has been placed in a different position under a RIF action. However, a work program would generally not by unduly interrupted even if an employee needed more than ninety (90) days after the RIF to perform the optimum quality or quantity of work. The ninety (90) day standard may be extended if placement is made to a low priority program or to a vacant position.

Section 2. Statement of Principle.

A. The Agency and the Union recognize that employees may be seriously and adversely affected by a Reduction in Force (RIF) or Transfer of Function (TOF) action. Before implementing a RIF or TOF affecting bargaining unit employees, the Agency will attempt to minimize adverse effects through such appropriate means as attrition, reassignment, furlough, hiring freeze, and early retirement. The Agency considers a RIF to be an action of last resort.

B. Before taking a final decision in the matter, the Agency will meet with the appropriate Local for the affected location(s) as soon as possible to discuss any alternatives that could alleviate adverse effects on employees.

Section 3. Notice to the Union.

A. When the Agency reaches a final decision to take a RIF or TOF action, the Council President and the affected Local will be notified in writing at the earliest possible date, but no later than ninety (90) days prior to the effective date. Notice will include the reason for the RIF or TOF, approximate number and types of positions to be affected, geographic location, and anticipated date of the planned actions.

Section 4. Retention Registers.

A. The Agency will make current its retention registers before giving notice to affected employees. Upon request, the Agency will provide the Union with a copy of the updated retention register(s) and will meet with the Union to discuss any questions the Union has regarding the register(s). Employees will be permitted to review retention registers with the employee's name, and other

retention registers for other positions that could affect the composition of the employee's competitive level and/or the determination of the employee's assignment rights.

Section 5. Notice Timing.

Consistent with 5 C.F.R. § 351, after notice to the Union, the Agency will provide notice of RIF or TOF action to affected employees of no less than sixty (60) full days. Individual RIF or TOF notices must include the following information:

A. The action to be taken, the reason for the action, and its effective date;

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

C. The place where the employee may inspect the regulations and records pertinent to this case;

D. The reasons why any lower standing employees in the same competitive area are being retained;

E. Grade and Pay retention information applicable to the employee receiving the notice;

F. Information on reemployment rights;

G. The employee's right to grieve the action under Article 38, Negotiated Grievance Procedure.

H. The option to either grieve the action under Article 38, Negotiated Grievance Procedure or to the Merit Systems Protection Board if the employee alleges the RIF action is a Prohibited Personnel Practice under 5 U.S.C. § 2302.

Section 6. Offer of Position.

A. The Agency shall, in accordance with 5 C.F.R. § 351, if possible, offer an assignment to each employee adversely affected through the implementation of a RIF or TOF. Consistent with 5 C.F.R. § 351.701 the offer, if made, shall be of a position as close as possible to, but not higher than, the current grade of the affected employee, and the position shall be in the same competitive area. Employees adversely affected by a RIF or

TOF may request, in writing, that they be assigned to a particular continuing position meeting the provisions in the previous sentence. An employee is restricted to making such a request only one time; the request can be made only after the retention registers have been completed. Such an employee request will be answered within ten (10) days. These employee requests will not be grievable under the Negotiated Grievance Procedure if the request is rejected by the Agency.

B. Employees will respond in writing to a best offer of employment to another position within fifteen (15) calendar days of receipt of a written offer. Failure to respond within fifteen (15) days will be considered a rejection of the offer.

Section 7. Potential Waiver of Conditions.

In accordance with applicable RIF and TOF regulations and to the extent feasible, if the Agency is unable to offer an assignment to an affected employee, the Agency will waive some qualifications for a vacant position which it intends to fill, which does not contain selective placement factors, provided the a) employee meets any minimum education requirement for the position; b) Agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

Section 8. Use of Vacancies.

Use of Vacancies. To the extent possible, the Agency will not fill a vacant bargaining unit position within the organizational unit in which the RIF is taking place until it has considered all reasonable alternatives to reduce the adverse effects on bargaining unit employees who are to be displaced as a result of the RIF. In considering these alternatives, the Agency will review the possibility and feasibility of redesigning vacant positions.

Section 9. Relocation.

A. Employees who are relocated by the Agency as a result of action covered by this Article will receive relocation expenses and authorized absence as provided by law and regulations.

B. Employees reassigned to a different commuting area who relocate will be allowed a period of time, as appropriate on a case-by-case basis, to complete the move and report to work at the new work location.

C. The employee will be provided administrative time to research relocation matters such as area housing and schools in the new geographic location, disposition of their current homes, and to handle any other matters related to the move, to the extent allowable under appropriate laws and regulations.

Section 10. Placement Services.

A. The Agency will utilize all resources available under applicable law and regulation in efforts to place employees who are separated or reduced in grade in a RIF. This will include the Agency's Reemployment Priority List and OPM's Career Transition Assistance Program. Employees separated in a RIF will receive priority consideration to fill vacant positions at the activity where they worked for which they are qualified for in accordance with eligibility and employment restrictions per 5 C.F.R. § 330.

B. Whenever technological changes cause abolishment of some jobs and the establishment of other, the Agency agrees, when feasible, to utilize the abilities and skills of the displaced employees through established re-training programs designed to qualify these employees for other jobs:

(1) when feasible and applicable by law and regulation, and (2) consistent with the abilities of the employees.

C. Repromotion:

(1) for a period of two (2) years, an affected employee demoted by an action covered by this Article will be repromoted to vacancies the Agency determines to fill as they occur according to the following criteria:

(a) A satisfactory performance rating on his/her most recent rating which is documented in his/her official personnel file and meets other eligibility requirements of 5 C.F.R. § 330.

(b) The employee has the requisite skills and abilities for the position without undue interruption.

(2) If more than one employee meets the criteria of subsection 1 and is not subject to the criteria in subsection 2, the employee who has the higher retention standing will be promoted.

(3) An employee who was previously demoted without personal cause, misconduct or inefficiency, and who meets all other eligibility criteria in 5 C.F.R. §330, will receive special consideration for repromotion.

Section 11. Excepted Service.

In reduction in force and transfer of function actions, the Agency will apply the same procedures in this Article for both competitive and excepted service employees only as provided by applicable laws and regulations; however, excepted service employees will compete only with other excepted service employees in the same appointing authority and in the same competitive area. In no case will excepted and competitive service employees compete with each other for retention or placement.

Section 12. Unemployment Compensation.

The Agency will counsel employees who are to be separated in a RIF in their eligibility and procedures for applying for unemployment compensation. Expert assistance from the relevant state will be obtained if the employee requests.

Section 13. Furloughs.

A. Employees who are furloughed during a lapse in appropriations will be retroactively paid and otherwise compensated to the extent provided by law and regulation.

B. Employees will be allowed to request a specific schedule for the furlough time. An employee's request will be honored unless management determines that mission and workload prevents approval of the request. Should an employee request be denied, the employee will be provided written reasons for the denial.

C. The Agency will have a liberal leave without pay (LWOP) policy during periods of furloughs but will not coerce any employee into using LWOP during a furlough. The Agency will inform employees of any differences in eligibility for unemployment compensation if the employee is placed on furlough of LWOP.

Section 14. Reemployment.

Reemployment. In accordance with applicable laws and regulations, terminated employees as a result of RIF action will be notified of Agency vacancies for which they are qualified and will receive priority consideration over non-Agency employees for a two (2) year period.

Article 19: Contracting Out

The Agency will follow and comply with Office of Managment and Budget Circular No. A-76, Revised, dated May 29, 2003, or its successor.

Article 20: Equal Employment Opportunity

Section 1. General

A. In accordance with applicable law and Merit System Principles, the Agency will treat employees fairly regardless of the employee's race, color, religion, national origin, sex, gender identity, gender expression, sexual orientation, age, Union affiliation, lawful political affiliation, marital status, or qualifying handicapping condition. No employee will be discriminated against on the basis of a legally protected class. Both Parties support the realization of a representative workforce within the unit at all levels.

B. The Parties hereby affirm their support of affirmative action.

C. Employees are encouraged to discuss EEO allegations with an EEO counselor. Discussions between an employee and an EEO Counselor do not preclude an employee from opting to select the negotiated grievance procedure.

Section 2. Agency Committees or Councils

A. When the Agency, at the local level utilizes an EEO committee or council, the Union will be given the opportunity to have at least one representative participate as a committee member on matters affecting unit employees.

B. The Union will designate an authorized representative for the Agency to deal with on all EEO matters which are beyond local scope and impact.

Section 3. Counselors

A. The Union may submit the names of bargaining unit employees who are interested in serving as EEO counselors to the appropriate management official. Upon request, the Union will be kept apprised of the current list of EEO Counselors. This list may be requested bi-annually.

B. Employees who meet the criteria for an EEO Counselor and are selected by the Agency will receive appropriate training in accordance with the applicable policies and regulations.

C. No Union representative who handles employee representation functions for the union may ser as an EEO Counselor nor may an EEO Counselor serve in a representative capacity for any employee.

Section 4. EEO Complaints

A. A bargaining unit employee may file either an EEO complaint or a grievance under the Negotiated Grievance Procedure, but not both. An employee filing a formal EEO complaint under the Agency's procedure is entitled to a representative of personal choice subject to Agency policies and regulations. An employee filing a grievance under the Negotiated Grievance Procedure may be represented only by an authorized Union representative.

B. An employee shall be deemed to have exercised their option in filing an EEO complaint at such time as the employee timely initiates a formal written EEO complaint/notice of appeal under the statutory procedures or timely files a Step 1 grievance in accordance with the Grievance Article.

Section 5. Statistics

The Agency will publish the Agency's MD-715 report and No Fear Act data report. Annually, the Agency will provide the Union a copy of the MD-715 report and a briefing explaining the report. To the extent the OCR state of EEO presentation includes local data/information, OCR will share this as part of this briefing to the Union.

Article 21: Discipline

Section 1.

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. Disciplinary actions generally will be initiated in a timely manner, as circumstances warrant. The parties agree to the principle of progressive discipline except when not warranted by the nature of the misconduct. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation. Progressive Discipline means the agency will consider the employee's past disciplinary record as one factor among the Douglas Factors when determining an appropriate penalty.

Section 2. Informal Actions.

A. Informal actions in response to employee misconduct are non-punitive and can be:

1. closer supervision;
2. an oral admonishment (which may be memorialized in an email communication);
3. a written warning or
4. counseling.

B. Any written informal action should identify the misconduct and include an outline of positive corrective steps and/or expectations going forward, if necessary.

C. Prior to determining whether to issue an informal action, it may be appropriate for a management official made aware of potential employee misconduct, who did not directly observe the infraction or who otherwise may not have sufficient information, to make an inquiry of the employee and to provide an opportunity for the employee to explain their side of the situation. Nothing in this provision waives an employee's Weingarten Rights.

D. After an informal action is issued, employees may consult with their union representative and may respond to explain their side of the story.

E. The Agency will not cite any records regarding an informal action, beyond eighteen (18) months in any subsequent formal disciplinary action except:

1. to establish the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question; or
2. a like offense has been identified during the eighteen (18) month period following the initial informal disciplinary action.

F. Nothing in this section shall preclude an employee from requesting a meeting with management and a union representative to discuss an informal disciplinary action.

Section 3. Formal Disciplinary Actions.

A. Written Letter of Reprimand

1. Prior to issuing a Letter of Reprimand, the Agency will provide an employee an opportunity (verbally or in writing) to explain their side of the situation. The Letter of Reprimand will not be issued until at least two (2) workdays after the employee's explanation, if any.
2. The employee will be given five (5) workdays to provide a written response to the Letter of Reprimand. The employee shall be authorized a reasonable amount of official time to prepare a response. If requested in writing, the response will be included in the employee's eOPF with the Letter of Reprimand as one document.
3. A Letter of Reprimand and the employee response thereto, if any, will be maintained in an employee's eOPF for up to two (2) years.
4. Letters of Reprimand will be issued for just and sufficient cause.

B. Adverse Actions (Suspensions, Removals, Reductions in Grade or Pay, or Furloughs for thirty (30) Days or Less)
   1. Any suspension (except for D and E below):
      a. Will be preceded by advance written notice of at least thirty (30) calendar days before the action is effective.
      b. The employee will be given fifteen (15) calendar days to provide the deciding official a response either orally, in writing, or both.
      c. The employee shall be authorized a reasonable amount of official time to prepare a response.
   2. Advance notices will specify the deciding official to whom the employee should provide any reply.
   3. The notice will state the employee's right to be represented by an attorney or other representative, including the Union.
   4. Adverse actions will be taken to promote the efficiency of the service.

C. Thirty (30) days advanced notice is required in all cases except when the Agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension, including indefinite suspension.

D. An advance written notice and opportunities to respond are not necessary for furlough without pay due to unforeseeable circumstances, such as acts of God, or sudden emergencies requiring immediate curtailing of activities. Management

agrees that such furloughs will be an act of last resort. When management has the authority to do so, excused absence may be granted.

E. Records. The employee will be electronically provided the material relied on to support the Agency's proposed action, except where the sharing of such materials would violate agency policies or the law.

F. The Agency notice of proposed action supplied to the employee will contain language explaining that an employee has the right to be represented by an attorney or other representative, including the Union. The notice of proposed action will also state that the employee may share the attached material with their representative.

G. When an employee does not have access to Agency systems the Agency may effectuate delivery via a known personal email address or via hard copy to the employee's last address on file with the Agency.

Section 4 Exceptions.

A. The provisions of this Article do not apply to the removal including termination or non-conversion of probationary or trial period employees. Probationary and trial period employees retain their appeal rights to the Merit Systems Protection Board existing under Chapter 75 of Title 5 of the United States Code.

Section 5. Decisions on proposed suspensions and disciplinary removals.

A. The decision will be provided in writing to the employee and will specify the charges sustained and the penalty imposed. The decision will include the rights of appeal available to the employee and will notify them of the right to designate a representative, including the Union.

B. The Agency will consider the Douglas Factors when making a decision on a proposed action. The proposing and deciding official (normally a higher-level manager than the proposing official) must review each case individually and consider those Douglas Factors that are relevant. The Douglas Factors may or may not weigh in the employee's favor.

Section 6. Duty Status Pending a Decision.

A. Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed will remain in a duty status in their regular position during the advance notice period. In those rare

circumstances where the Agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests,
the Agency may elect one or a combination of the following alternatives:

1. Assigning the employee to duties where they are no longer a threat to safety, the Agency mission, or to Government property;
2. Allowing the employee to take leave, or carrying them in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented themself from the worksite without requesting leave;
3. Curtailing the notice period when the Agency can invoke the provisions of 5 CFR 752.404(d)(1); or
4. Placing the employee in a paid, nonduty status for such time as is necessary to effect the action.

Section 7. Grievance/Appeal.

A. Employees may grieve a disciplinary action through the Negotiated Grievance Procedure (NGP) Article of this MCBA.

B. Grievances of disciplinary actions may only be processed through the Negotiated Grievance Procedure (NGP). Employees may appeal Suspensions of 15 days or more, Removals, Reductions in Grade or Pay, or Furloughs for 30 Days or Less to the Merit Systems Protection Board (MSPB) or file a grievance under the NGP Article of this MCBA but may not do both. Once an employee has elected to file an MSPB appeal or a written grievance under the NGP, the employee may not change subsequently to the other procedure.

C. To the extent not prohibited by law, arbitrators will apply a preponderance of the evidence standard to letters of reprimand and adverse actions. This standard does not apply to performance actions under Chapter 43 of the United States Code, which is covered by the performance article.

D. The Agency has the burden of proof for all actions taken under this Article.

Section 8. Settlements.

In lieu of rendering a decision on a proposed action, a deciding official may choose to offer an employee a settlement agreement, or access to Alternate Dispute Resolution (ADR) if locally established pursuant to this CBA. The Union may grieve any settlement agreement inconsistent with this CBA.

Article 22: Negotiated Grievance Procedure

Section 1.

The Parties agree that this Article establishes the sole and exclusive procedure available to bargaining unit employees and the Parties for processing and settlement of grievances that fall within its coverage, including questions of grievability and arbitrability. The Parties recognize and endorse the importance of bringing to light and resolving grievances in a prompt manner. The Parties agree that the expeditious resolution of grievances is in the public interest. Inasmuch as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability.

Section 2.

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 the Union or the Agency concerning:

    1. The effect or interpretation, or claim of breach of this Agreement, Supplemental Agreements or Memoranda of Understanding; or
    2. Any claimed violation, misinterpretation, or misapplication of law, rule, or regulation affecting conditions of employment.

Section 3.

In addition to any other exclusions contained in this Agreement, the grievance procedure will not apply to:

A. Any claimed violation of Subchapter III of Chapter 73 of Title 5, U.S.C. (relating to prohibited political activities);

B. Retirement (5 C.F.R. 831), life insurance (5 C.F.R. 870, 871, 872 and 873) or health insurance (5 C.F.R. 890);

C. Any examination or certification (5 C.F.R. 332 and 337), or appointment, e.g., the separation of an employee during a probationary period (5 C.F.R.

2, 3, and 8);

D. A suspension or removal under Section 7532 of Title 5 U.S.C. (Relating to national security matters);

E. The classification of any position which does not result in a reduction in grade or pay of an employee (5 C.F.R. 511);

F. A management decision to make or terminate a temporary promotion, detail, or reassignment;

G. The adoption or non-adoption of a suggestion or the receipt or non-receipt of an honorary or cash award in accordance with the terms of this agreement;

H. The mere non-renewal or extension of a temporary employee, termination of a temporary appointment due to reduction in force, and any other termination of the appointment of a temporary employee in accordance with applicable policy, law and this Agreement;

I. Separation of a term or trial employee in accordance with applicable policy, regulation, law, or this Agreement.

Section 4. Other Applicable Procedures

A. The following actions may be filed either under the appropriate statutory procedure or under the procedure outlined in this Article, but not both:

1. Actions based on unsatisfactory performance (5 U.S.C. 4303);
2. Adverse Actions (5 U.S.C. 7512);
3. Prohibited Personnel Practices (5 U.S.C. 2302 (b) (1));
4. A formal EEO complaint (29 C.F.R. 1614).

B. Nothing in this Agreement shall constitute a waiver of any further appeal or review rights permissible under 5 U.S.C. Chapter 71.

C. An employee shall be deemed to have exercised his/her option under this section when they timely initiate an action under the applicable statutory procedure or files a timely grievance in writing under the negotiated grievance procedure in this Article, whichever occurs first.

D. Employees who have sought informal EEO complaint counseling may still file a grievance, provided that such grievance is initiated within forty-five

(45) 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.

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

A. If an employee chooses to represent themself, the Agency will: (1) provide the Union with a copy of the grievance within one workday of receiving the grievance; (2) provide the Union with advance notice of each meeting between the grievant and the Agency; (3) afford the Union the right to be present at all stages of the process; and (4) provide the Union with copies of Agency written grievance responses and/or settlement agreements/written resolution**.** Any resolution of the grievance must comply with the terms and conditions of this Agreement, including any applicable supplements, amendments, or Memoranda of Understanding.

B. If the Union is the grievant's designated representative, the employee will so state 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 also will be in writing. Each Party shall have a representative available to meet referenced grievance filing time frames. Extensions may be granted by mutual agreement of the Parties.

Section 6.

A. A grievance must be filed initially within thirty (30) days of the date of the matter, incident or issue out of which the grievance arose or thirty (30) days after the date the grieving party or person should have been aware of the matter, incident or issue. The use of the word "day(s)" will be interpreted as calendar days. A step of the grievance procedure can be waived by mutual agreement of the Parties.

B. 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. If the Agency 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.

C. The Agency will provide timely and appropriate responses to information requests from the Union consistent with 5 U.S.C. Section 7114**.**

Section 7.

A reasonable amount of official time during work hours will be allowed for employees and Union representatives to discuss, prepare for, and present grievances including attendance at meetings with Agency officials concerning the grievance.

Section 8. Employee Grievance Procedure

Informal Grievance:

The Parties recognize that grievances may arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis.

At the election of the employee or his/her representative, an employee complaint may be brought to the supervisor or appropriate management official with authority to resolve the matter in an attempt to resolve the matter informally. The supervisor or appropriate Agency official will provide a written response within five (5) 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 his/her representative, may file a grievance in accordance with the procedures set forth herein. At the election of the employee or his/her representative, this informal process may 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 by mutual agreement of the Parties.

If the dispute cannot be resolved informally or the employee or his/her representative chooses to forego the informal meeting described above, the following formal process must be used:

Formal Step 1

A. An employee will present his/her grievance in writing to the immediate supervisor, unless the immediate supervisor does not have the authority over the matter grieved. In that case, the employee will present his/her grievance to the Agency official at the level having the necessary authority.

B. The employee must state specifically that they are presenting a grievance; the personal relief sought; the name, organizational unit and location of the aggrieved; a statement of the items, regulations or agreement alleged to have been violated, citing specific paragraphs or articles; designation by name of the Union representative or statement of self-representation. The

grievance must be signed and dated.

C. Within fifteen (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 mutually agreed to by the Parties, will automatically advance the grievance to the next step.

Step 2

A. If the matter is not satisfactorily settled following Step 1, the aggrieved employee and/or his/her representative, if any, may, within fifteen (15) calendar days of notification of denial or the date that a response should have been received, present the matter in writing to the Step 2 Agency official identified in the Step 1 decision. The grievance will contain the information submitted in Step 1 plus the Agency response at Step 1.

B. The Step 2 Agency official shall issue a written decision on the grievance within thirty (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.

C. If at any time during the processing of a grievance a settlement agreement is accepted by the employee or his/her designated representative, the agreement shall be in writing and the grievance shall be withdrawn in its entirety upon execution of the settlement agreement.

Section 9. Grievance of the Parties

A. Should either Party have a grievance concerning institutional rights granted by law, regulation or this Agreement, it shall inform the designated representative of the other Party of the specific nature of the complaint in writing, as well as any provision of law, rule, or regulation allegedly violated, and the relief sought, within thirty (30) days of the date of the matter, incident or issue being grieved, or the date the Party reasonably should have been aware of the matter, incident or issue. The grieving Party will file the grievance with the designated representative of the other party at the level of recognition.

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.

B. Within thirty (30) calendar days after receipt of the written grievance, the receiving party will send a written response stating its position regarding the grievance. If the matter is not resolved, the grieving party may refer it to arbitration in accordance with the Arbitration Article.

Section 10. Alternative Dispute Resolution (ADR)

A. Alternative Dispute Resolution (ADR) may be used to promote principles and practices that will contribute to an improved working relationship either before or during the processing of a grievance. The ADR process demonstrates a commitment to a positive approach and joint ownership of concerns and solutions. It is intended to resolve disputes quickly and informally.

B. The ADR program will be guided by the following principles:

1. The employee grievant or his/her representative may opt to use the ADR process at any time during the grievance procedure prior to the Step 2 decision**.**
2. Any request for ADR must be filed to the Agency's designated representative in writing prior to the expiration of any controlling time frame in the grievance process.
3. If a matter is not resolved through ADR, the grievance will continue through the grievance process, beginning at the step where the Party first made a request for ADR. (If the grievant already filed a step 2 grievance and was waiting a reply, the process resumes where it left off.)
4. This process does not take away statutory rights.
5. ADR is purely voluntary on the part of the Employee. Participation is open to all aggrieved Parties, i.e., employees, Union and Agency.
6. ADR is confidential according to applicable authorities. The Parties to the ADR process will be advised that the contents of the mediation discussion are confidential. All notes will be destroyed at the close of mediation.
7. All ADR Settlement Agreements signed by the Parties to the ADR are binding on the Parties and will be recorded. Each Party will be provided a copy of the ADR Settlement Agreement. Copies of agreement with original signatures will be maintained by both Parties**.**
8. Any issue subject to the grievance procedure may be considered for ADR.
9. The Parties agree to educate employees on the ADR process.
10. If ADR is requested, time frames of the grievance process are tolled until the ADR process is completed.

11. The ADR process will be completed within 30 (thirty) days.

C. This section establishes general procedures and determinations for expenses and choice of mediators for national and local level ADR.

1. Choice of Mediators:

    a. ADR will be mediated by a mediator provided through the Federal Mediation and Conciliation Service or via another neutral mediation service if otherwise agreed to in writing by the Parties. Mediation procedures shall include signing the FMCS confidentiality agreement or equivalent prior to the beginning of the mediation session. Confidentiality will apply to the contents of mediation discussions and the grievant's personal information, according to applicable authorities. The Parties agree that ADR is confidential and will adhere to the Procedures in Section 10.B.(6) of the NGP Article.
    b. Employee requests for ADR must be emailed to the Agency's designated representative in writing prior to the expiration of any controlling time frame in the grievance process.
    c. Requests for ADR related to a Grievance of the Parties must be emailed to the other Party's designated representative in writing prior to the expiration of any controlling time frame in the grievance process.
    d. Within three business days of initiating ADR, the Parties will coordinate available timeframes for mediation. Either Party can extend the timeline to five business days by written notice. Once the Parties agree to timeframes for mediation, the Agency will submit a request for an impartial qualified mediator within one business day and copy the Union. If the Agency fails to request a mediator timely, the Union will remind the Agency of its obligation.
    e. FMCS or a neutral mediation service mutually agreed upon by the Parties, will provide the name of an available mediator. Both Parties agree to schedule with the first available mediator, and the Parties agree to coordinate available dates and times for mediation within three business days of being provided the name of the mediator. If either Party has a concern with the first available mediator, an alternate mediator may be requested in accordance with applicable procedures.

2. Procedures:

    a. In accordance with CBA NGP Article, Section 5, the Union is afforded the right to be present at all stages of the grievance process, regardless of whether the grievant is represented by the Union. The Parties may each have two people at the table by default. For the Union, that means the grievant plus a representative of the Union. For the Agency,

that means a deciding official or official with delegated decision-making authority and another person (e.g., Human Resources professional, subject matter expert, witness, additional representative). Either Party—including the grievant if they are not represented by the Union—may unilaterally have one additional person at the table upon written notification to the other.

b. Either Party may have more than three people at the table upon written agreement by both Parties. Mediation will normally be conducted at the Official Agency Worksite of the employee who filed the grievance or virtually as agreed by the Parties. For remote employees and Grievances of the Parties, the mediation will be conducted virtually.
c. Virtual participation in mediation is allowed for any participant in the mediation including a Party, Party representative, the grievant, or the mediator. Mediation schedule, breakout sessions, and break schedules will accommodate both the in-person and virtual participants. Caucuses and breakout sessions will generally be limited to 30 minutes unless Parties agree to a longer period.
d. The Parties will express their joint preference to the mediator that the Party invoking ADR will make its presentation first at the first mediation. If necessary, following the first mediation session and every subsequent mediation session, the Parties will jointly communicate with the mediator and each other to select a mutually agreeable date and duration for the next mediation session.
e. The 30-day period for ADR identified in the NGP Article Section 10(B)(11) shall begin on the day of the first mediation session and will be counted as day one of the 30-day period.

f. If the Parties have not selected and met with a mediator and 30 calendar days have elapsed since the Agency submitted a request for an impartial mediator, either Party may withdraw from these procedures and the grievance/arbitration process will recommence from the time when it was suspended to pursue ADR.

3. Obligation to Participate: In accordance with 10.B of the NGP, ADR is a voluntary process on the part of the employee. Once the Parties enter into ADR, each Party has an obligation to put forth an earnest effort to participate and attempt to achieve resolution.

4. Expenses:

a. Both Parties are of the understanding that the FMCS mediation process is free of charge; however, if there are any costs for an

FMCS mediator or other agreed-upon neutral, the Parties agree to split the expense.

b. The Agency will not pay travel costs for the Union, its representatives, the bargaining unit grievant, or other participants.

Article 23: Arbitration

Section 1. Invocation

A. A notice to invoke arbitration will be made in writing by email to the other Party within thirty (30) calendar days of receipt of the written decision issued in the final step of the grievance procedure. If no written decision has been issued, the 30-day period begins the day after the written decision was due, unless the parties agree to an extension. Failure to provide a timely notice of an invocation will render the grievance not arbitrable.

B. 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 appropriate Union representative, or designee as identified in the Union Rights Article, or the Agency Labor Relations Director (or designee). The notice to invoke arbitration filed by the Union must be served on the Headquarters' Labor Relations Director or on any local designated management representative, such as a Labor Relations Officer, as appropriate. The notice to invoke arbitration filed by the Agency must be served on the appropriate Union representative.

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

A. Within six (6) months of invoking arbitration, the invoking party will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial qualified persons to act as arbitrators. The invoking party will request a preference to FMCS that the arbitrators on the list are based within 125 miles of the location in which the hearing will be held. The arbitrator shall be selected from a Washington D.C. area FMCS list based within sixty (60) miles for national arbitrations. 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. If either Party refuses to participate in the selection of an arbitrator, then the other Party may select the arbitrator.

B. The Parties agree that virtual arbitration hearings are the default unless otherwise determined by the arbitrator or both Parties agree an in-person arbitration is appropriate. In-person hearings will be held within the commuting area of the site of the dispute. For grievances regarding individual employees, the site of the dispute is defined as the location of the Official Agency Worksite to which the grievant reports. An exception to holding the hearing at the Official Agency Worksite 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.

C. If the parties agree or an arbitrator determines a hearing is in person, 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. Agency employees travelling to and from in-person hearings will adhere to relevant travel regulations.

D. Once an arbitrator is selected the parties will sign the FMCS arbitration form letter and the invoking party will mail or email it back to the FMCS within five (5) calendar days and provide a copy to the other party. The parties will ensure that the listed names, addresses, emails and phone numbers of the applicable Union and management representatives are correct.

E. Subject to arbitrator availability, the hearing with the arbitrator will normally be scheduled and held within sixty (60) days of the notice to invoke arbitration. 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 by the invoking party to comply with timelines in this section shall result in the arbitration proceeding being withdrawn with no right to refile. If the non-invoking party refuses to participate in the selection of an arbitrator, then 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. Transcripts will be used in conventional arbitration cases unless the Parties mutually agree otherwise. The transcript will be made by an authorized court reporter. The arbitrator and each of the Parties will be provided with a copy. All costs of the transcript and court reporter will be paid by the Agency. Outside of settlement, if the invoking party withdraws its invocation of arbitration prior to an arbitrator rendering a decision, the invoking party is responsible for all arbitrator's fees and expenses incurred unless otherwise agreed to by the parties. The parties may mutually agree not to have a court reporter or transcript.

B. If a settlement agreement is reached prior to the hearing, the parties agree to notify the arbitrator as soon as possible that the matter has been settled, to minimize the costs.

Section 4. Arbitrator's Limited Jurisdiction.

A. The arbitrator shall have no authority to alter, in any way, the terms and conditions of this agreement, any supplemental or other negotiated agreement, or any other condition of employment or issue not properly before the arbitrator. Issues and charges raised before the arbitrator shall only be those raised at the last stage of the applicable grievance procedure.

Section 5. Pre-Hearing Procedures

A. These procedures apply to all arbitrations under this article (i.e., conventional or expedited)

except as otherwise specifically noted.

B. No later than 5:00 pm, five (5) workdays prior to the arbitration, the parties will identify and exchange their statement of the issue(s) and documents they intend to introduce into evidence as well as their list of witnesses. The list of witnesses shall include a brief (one or two sentences) summary of each witness' expected testimony. In addition, the parties should discuss any potential time constraints the witnesses, advocates, or others may have with regard to the hearing. 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 surrebuttal evidence.

C. If one of the parties intends to object to a proposed witness or document that party may initiate a conference call with the arbitrator at least three workdays prior to the hearing to seek a ruling on the contested witnesses and/or evidence.

D. The parties will attempt to reach agreement on joint exhibits.

E. The above exchanges may be done in person or through email.

Section 6. Stipulations.

A. 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 mutual agreement, forego a formal hearing and present the grievances 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 7. Hearing Procedures.

A. Arbitration hearings will normally be held virtually or on the Agency's premises by mutual agreement, or at a mutually agreeable site which will minimize the costs of the hearing for both Parties. The hearing will be held during the regularly scheduled.

B. Employees (e.g., grievants, union witnesses, union technical representatives and union representatives) otherwise in a duty status will be afforded reasonable and necessary official time to prepare for and participate in the arbitration proceedings.

C. Each party has the responsibility and obligation to produce its witnesses on the day(s) of the hearing, as appropriate.

D. The Union and the Agency shall each be allowed up to two representatives to present its case; additional representatives such as a technical assistant may be permitted only by the consent of the parties. The grievant shall have the right to attend the hearing after their testimony is introduced and concluded.

E. If the arbitration hearing is not virtual and involves a single named grievant or multiple named grievants from a single duty station, and 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 the single named grievant or a representative grievant if there are multiple grievants.

F. If the arbitration hearing is not virtual, witnesses, whose official duty stations are not in the local commuting area of the hearing location will generally participate via videoconference and the arbitrator will accept this testimony as if given in person. If a party wishes a witness to testify in person, the parties will attempt to reach agreement as to that witness. If the parties cannot agree, the Arbitrator will decide whether the witness shall testify in person. By mutual agreement witnesses shall be permitted to testify audio- only.

G. **Arbitrability and Grievability Determinations** - The Arbitrator shall have the authority to make all arbitrability and/or grievability determinations. The arbitrator shall make grievability and/or arbitrability determinations prior to addressing the merits of the original grievance.

H. If the arbitrator cannot issue a decision in a case due to incapacitation or death, or six (6) months has elapsed since the last day of the hearing and the arbitrator is unresponsive over thirty (30) days to efforts to contact, the invoking party may reinvoke arbitration without prejudice. The Parties may mutually agree at any time that it is appropriate for either party to re-invoke arbitration.

I. **Witnesses** - It is the Agency's responsibility to ensure all management witnesses approved by the arbitrator and who are currently employed by the Agency are informed of the arbitration hearing date and location. The Union may agree to a proposal by the Agency to submit an affidavit in place of the direct testimony of a management employee.

Section 8. Expedited Arbitration

A. The parties agree that grievances that present simple and straightforward issues, such as those arising solely from the following subject matters, may be appropriate for Expedited Arbitration:

1. Travel issues (denial of claims and/or hardship requests as a result of proposed Permanent Change of Station/Temporary Duty)
2. Denials of Leave
3. Dues Withholding
4. Denials of requests for Official Time;
5. Bulletin Board postings and literature distribution; and
6. Denials of requests to use credit hours.

B. Expedited arbitration may be requested at any time prior to invoking arbitration.

C. Either party may opt out of this procedure. At the meeting to select the arbitrator or prior, the parties must confirm in writing whether the expedited process will or will not be used.

D. Procedures for Expedited Arbitration. In an effort to reduce the time and expense of some grievance arbitrations, expedited procedures shall be used to streamline processes and shorten deadlines, as follows:

1. The arbitrator must contact the parties within seven (7) calendar days.
2. The parties and the arbitrator must attempt to schedule a hearing within 30 days of the appointment date.
3. Either Party has the right to submit relevant precedential and non-precedential decisions to the arbitrator provided they were exchanged at the pre-hearing meeting.
4. Absent mutual agreement, all hearings will be concluded within one day.
5. No transcripts of the proceedings will be made, and the filing of post-hearing briefs will not be allowed.
6. All awards must be completed within seven (7) working days from the hearing.
7. These awards are expected to be brief and concise, and to not require extensive written opinion or research time.
8. When the parties agree, the arbitrator may render a decision at the close of the proceedings.

E. The same procedures identified earlier in this Article will be used for selecting the Arbitrator from a list of arbitrators.

F. By mutual agreement, the Parties may arrange for a pre-hearing conference with or without the arbitrator, to consider means of expediting the hearing. For example, by reducing the issue(s) to writing, stipulating facts, exchanging lists of proposed witnesses, and/or authenticating proposed exhibits.

Section 9. Case Presentation and Burden of Proof

A. The Agency will make its presentation first in disciplinary cases. In all other cases, the party invoking arbitration will make its presentation first. 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. Each party is entitled to file a post-hearing brief by email within the time frame decided by the arbitrator at the hearing. During virtual or in-person arbitration hearings, the Parties shall submit their briefs simultaneously to the arbitrator. Each party shall serve the other party with its brief by email on the next business day after briefs are filed with the arbitrator.

Section 10. Decisions

A. Except as otherwise noted in this article, the arbitrator will render a decision as quickly as possible but not later than 30 days after the conclusion of the hearing or closing of the hearing record, including submission of briefs, unless the parties agree to extend the time limit. When the parties agree, the arbitrator may render a decision at the close of the proceedings.

B. An arbitrator's decision, once final under FLRA procedures, is binding on the parties as to the specific facts and circumstances of the grievance. The arbitrator is authorized to make an aggrieved employee whole to the extent such remedy is not limited by law, rule, or regulation, including the authority to award back pay and interest, reinstate, promote and/or promote retroactively, and to issue an order to expunge the record of all references to a disciplinary, adverse, or unacceptable performance action.

C. Arbitrators will ensure that their award is consistent with law, Executive Orders, government-wide rules and regulations, and Agency rules and regulations; and that the award is not contrary to grounds similar to those applied by federal courts in private sector labor-management relations.

Section 11. Exceptions

A. Either Party may file exceptions with the Federal Labor Relations Authority under regulations prescribed by the Authority. The filing of exceptions to the Authority will serve to automatically stay the implementation of the award. 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. Once an arbitrator issues an award, the arbitrator may retain jurisdiction to oversee the implementation of remedies.

C. If the Agency contends it is not possible to implement the arbitrator's award, the Agency must inform the arbitrator and the Union as soon as possible but no later than the date the arbitrator relinquishes jurisdiction of the case. Nothing in this section limits the parties' rights to file exceptions.

Section 12. Time limits

The parties may mutually agree to extend the time limits in this Article at any time. Any request for an extension(s) must be in writing, specifically identifying which time frame in this Article the requested extension is for and the reason. A denial or agreement from the opposite Party must be in writing. These requests become part of the grievance file.

Article 24: Human Resources Development

Section 1.

The purpose of training and career development is to enable employees to increase the knowledge, proficiency, ability, skill and qualification in the performance of their official duties. It is understood that the choice of subject matter, areas for training, selection, and assignment of training is a function of management and the program will be administered in accordance with applicable laws, regulations and agency policies.

Section 2.

Self-development requires the dedication of an individual's personal time and resources. The Parties jointly recognize that responsibility and encourage employees to make such personal commitments. The Agency will not bear the cost of any self- development training that has not been approved in advance as required by EPA policy.

Section 3.

The Parties encourage employees to review their FedTalent record (or its successor) to assure that training is recorded and up to date.

Section 4.

When the Agency, at a local level, uses a committee process to formulate and recommend training policies and practices affecting employees in the unit, the Union will be given the opportunity to have at least one (1) representative at the local level to participate as a committee member.

Section 5.

When the employee so requests, the reason(s) for disapproval of a training request submitted in writing will be given to the employee in writing.

Section 6.

Employees may use workplace flexibilities offered under the Work Schedules Article of this CBA for educational purposes with appropriate approval.

Section 7.

If the Agency reaches an agreement with another union to pay professional organization, certification, or license fees for a group of its bargaining unit employees,

then the Agency agrees to reopen this section to consider extending similar benefits to a comparable group of the Union's bargaining unit employees without such reopener counting against any cap on either Party's reopened articles under the Duration Article of this CBA.

Section 8. Student Loan Repayment Plan

A. Reporting: Once a year the Agency will provide the AFGE Council 238 President the following upon request:
    1. number of employees who were offered and selected to receive student loan benefits (if any);
    2. name and job classification of the employees selected to receive benefits; and
    3. the amount of benefit received by each employee.

Article 25: Employee Rights

Section 1. Right to Union Membership

A. Pursuant to 5 U.S.C. Section 7102, 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.

B. 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 2. Right to Private Lives

A. Subject to applicable law, rule, regulation, and Agency policy employees have the right to direct and/or fully pursue their private lives, personal welfare and personal beliefs without harassment or bullying (as defined by Order 4711) by the Agency so long as such activities do not conflict with job responsibilities.

B. Generally, managers are expected to keep confidential the basis for which leave is requested and/or used. Employee information shared with managers for which the employee has requested confidentiality will be kept in confidence and only shared with individuals with a "need to know."

C. The Right to Private Lives includes but is not limited to the following:
   1. Employees generally have a 1st Amendment Right to Freedom of expression on social media platforms while not on duty time or Agency equipment so long as it does not violate law, rule, regulation, Agency policy, or otherwise interfere with their job duties.

   2. Unless there is a reasonable business-related concern, the Agency and its representatives, in their official capacity, will not monitor a bargaining unit employee's activity while the employee is not on duty time or Agency equipment.

   3. In their private lives employees generally have a freedom of association, right to protest and/or march so long as it does not violate law, rule, regulation, Agency policy, or otherwise interfere with their job duties.

   4. Supervisors may request electronic monitoring such as PIV entrance/exit time frames or log-in/log-out time frames with a written justification to and concurrence from the applicable PMO/HRO.

5. The Agency may, at its discretion, inspect packages, briefcases and other containers in the immediate possession of employees arriving on, working at, visiting, or departing from Federal property.

6. Except for limited circumstances such as employees who have reached the federal pay cap where a waiver is not permitted or for identified essential personnel during a lapse in appropriations employees will not be required to work for no compensation.

Section 3. Merit Systems Principles

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

A. *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.*

B. *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.*

C. *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.*

D. *All employees should maintain high standards of integrity, conduct, and concern for the public interest.*

E. *The federal workforce should be used efficiently and effectively.*

F. *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.*

G. *Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.*

H. *Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.*

I. *Employees should be—*
(1) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
(2) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for election.

J. *Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—*

1. a violation of any law, rule, or regulation, or
2. *mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.*

Section 4. 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 5. 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) unless otherwise negotiated.

1. 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.

2. Orders and instructions.

    a. Employees should discuss conflicting orders with their immediate supervisor to resolve the conflict.
    b. Employees recognize their responsibility to timely comply with all legal orders and instructions from their supervisors.

c. If an employee reasonably believes that an order or instruction violates or is inconsistent with any law, rule, regulation, or Agency policy, they should state their beliefs to their supervisor.
d. Supervisors recognize their responsibility to ensure that all orders and instructions are consistent with law, rule, regulation, or Agency policy.
e. The employee may document their belief that the order or instruction violated or was inconsistent with one or more laws, rules, regulations, or Agency policies.
f. Employees may refuse a specific work assignment if performing the work assignment would violate law, rule, or regulation.
g. It is a Prohibited Personnel Practice to take a personnel action against any employee for refusing to obey an order that would require the individual to violate a law, rule, or regulation.
h. If an employee follows a supervisor's order(s)or instruction(s) which is not consistent with law, rule, regulation, or Agency policy such employee may raise lack of knowledge as a mitigating factor in response to any proposed discipline

B. Working Conditions: The Union recognizes the Agency's right to assign work.

1. Employees, in the legitimate exercise of their rights and responsibilities as designated representatives of the Union, will be protected from Agency actions that would constitute unlawful:

a. interference;
b. retaliation;
c. discrimination;
d. harassment;
e. restraint; or
f. coercion.

2. Manager Accountability

a. In cases where the Council 238 or a local Union president is concerned about a trend of complaints, the Agency agrees to meet with the Union to identify potential corrective measures to address the issue(s). Corrective measures may include, but are not limited to training, 360 reviews, other potential actions.

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. Personal Belongings and Agency Equipment: The Agency will continue to make reasonable

efforts to provide for the secure storage of personal belongings in existing workspaces. When new furniture is being contemplated as part of a space update, this is a matter appropriate for local negotiation. The Agency is not responsible for personal belongings brought to the workplace by an employee. 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, in compliance with applicable law, rule and regulation. Employee's personal belongings may be searched when reasonable for the circumstances and in compliance with applicable law, rule and regulation.

E. Resign/Retire: An employee may resign or retire at any time and may set the effective date of their resignation or retirement. An employee may request to withdraw their 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.

F. When an employee is faced with the prospect of Agency-initiated action such as termination or removal, the employee has the right not to resign or, if the employee chooses, to make a resignation effective at any time prior to the effective date of the Agency's action.

G. The employee may designate a representative to attend meetings when the employee is faced with the prospect of an Agency-initiated action such as termination or removal; in such cases where the Union has been designated as the employee's representative, the employee and the Union have the right to review documents relied on to support the reasons for action given in the notice.

H. Meetings where the employee is faced with the prospect of an Agency-initiated action such as termination or removal, the employee shall have the right to review documents relied on to support the reasons for action given in the notice.

I. Resignations shall not be secured by unlawfully coercive or deceptive means. The employee may designate a representative for any agreement between the Agency and the employee when the employee is resigning in lieu of Agency initiated action, such as termination or removal.

J. 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.

K. Recording Other Conversations: No recording of any conversation or meeting between a BUE and a management official will be made without mutual consent except for Inspector General Investigations, or other law enforcement investigations. When a transcript is made by the Agency from a recording, except for Inspector General Investigations, or other law enforcement investigations, the employee will be given the opportunity to review the transcript for accuracy and the employee will be provided a copy of both the recording 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 training sessions and all-hands meetings or otherwise agreed by the parties. Employees will be given notice in the meeting invitation whenever a meeting or training may be recorded.

L. Outside Employment: Employees may work at outside employment only when consistent with applicable law, Government-wide regulations, and Agency regulations and policies. and after seeking prior approval of outside activity as required by the Agency's Supplemental Standards of Ethical Conduct for Employees of the Environmental Protection Agency, 5 C.F.R. Part 6401. When prior 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 twenty-one (21) business days, provided the request meets all the regulatory requirements. The Deputy Ethics Official or designee will respond in writing and, if the request is denied, the reason for doing so will be included.

Section 6. Right to Obtain Information

A. Right to Voice Concerns: If the employee wishes to discuss a condition of employment, working conditions or potential grievance with a Union representative, the employee shall have the right to contact and meet with their Union representative as reasonable and necessary on official time.

B. Employees shall also have access to management officials on duty time and in accordance with this Section. Employees have the right to communicate with the following:

1. A supervisor or management official of a higher rank than the employee's immediate supervisor;
2. The Human Resources Office;
3. An Equal Employment Opportunity Specialist or Officer and/or an Equal Employment Opportunity Counselor; and
4. The Financial Management Officer or designee on matters directly affecting the employee.

Section 7. Employee Examinations

A. If prior to or during any examination of an employee in the unit by a representative of the Agency in connection with an investigation there is reasonable belief by the employee that the examination may result in disciplinary action against the employee, and the employee requests Union representation, the employee has the right to Union representation.

B. If an employee requests Union representation under this Article and a Union representative is not available, the examination will be rescheduled as soon as practicable in order to secure a Union representative.

C. Weingarten Rights. Agency shall notify employees each year by May 1st of their Weingarten Rights via email. This notice shall include:

    1. A bargaining unit employee has the right to union representation at any examination of the employee by a representative of the agency in connection with an investigation if:

        i. The employee reasonably believes the examination may result in disciplinary action against the employee; and
        ii. The employee requests representation.

D. If a matter being investigated concerns potential criminal misconduct, warnings (Garrity or Kalkines) will be provided to interviewed employees, as appropriate.

    1. Garrity Warning: At the commencement of, or as soon as it might become applicable during the course of, a voluntary investigatory interview, the Agency will provide an employee a warning regarding the employee's constitutional privilege against self-incrimination, which may be invoked when the employee reasonably believes their statements may be used against them in a criminal proceeding. An employee's refusal to respond based on a proper invocation of the privilege against self-incrimination may not be used as the sole basis for administrative disciplinary or adverse action. Evidentiary value of an employee's silence may be considered in administrative proceedings as part of the facts surrounding an investigation. Any statement provided by the employee may be used as evidence in criminal and/or administrative proceedings.
    2. Kalkines Warning: At the commencement of a compelled investigatory interview, where prosecution has been declined by the appropriate authority, the Agency will provide an employee a warning that the employee's statements concerning the allegations during the interview cannot and will not be used against them in a

subsequent criminal proceeding, unless the employee provides false statements or information; in which case, criminal proceedings may be instituted against the employee for falsifications. Refusal to answer or failure to respond truthfully to any questions may result in administrative disciplinary action.

E. When employees are given a Garrity or Kalkines warning by the Agency (excluding the OIG), they shall be given a "Statement of Rights and Obligations." Employees will acknowledge on the statement the receipt of the above warning. Employees shall be given a copy of the statement for their records.

When an employee being interviewed is accompanied by a Union representative, the role of the representative includes:

1. Requesting that the interviewer clarify questions;
2. Clarifying responses provided by the employee;
3. Assisting the employee in providing favorable extenuating facts;
4. Suggesting other employees who may have knowledge of relevant facts;
5. Advising and/or conferring privately with the employee during the course of the meeting; and
6. Not unduly disrupting the examination.

At the conclusion of the interview, the Union representative and employee may meet to determine if there are additional facts the employee would like to bring to the interviewer's attention for correction and clarification.

F. All rights and privileges apply whether the employee examination is in person or virtual or by other means.

Section 8. Rights

A. Whistleblower Rights. The Agency or the Agency's Office of Inspector General shall annually inform the employees of their rights under the Whistleblower Protection Act, the Dr. Chris Kirkpatrick Whistleblower Protection Act, the U.S. Office of Special Counsel's Reauthorization Act of 2017, and the Follow the Rules Act of 2017 and their rights to be protected from retaliation and prohibited personnel practices.

B. Whistleblowing is defined as the disclosure of information an employee reasonably believes evidences:

1. A violation of any law, rule or regulation;
2. Gross mismanagement;
3. Gross waste of funds;
4. An abuse of authority;

5. A substantial and specific danger to public health or safety; or
6. Censorship related to scientific research if censorship meets one of the above-listed categories.

C. An employee may choose at any time to go to the Office of Special Counsel (OSC)[1] or the Agency's Inspector General (IG). Whistleblowers or employees engaging in whistleblowing activity may request Union Representation.

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. Employees may request information in accordance with the Privacy Act at EPA.gov/privacy (or its successor site). In coordination with their supervisor, 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. Participation or non-participation in itself will not be used to advantage or disadvantage employees.

Section 11. Right to Debt Collection Protection

A. It is recognized that all employees are expected to pay promptly all just financial obligations. Employee garnishments will be processed in accordance with the provisions of 5 C.F.R. Parts 581 and 582. The Agency agrees to hold in confidence any and all debt notices and in the event of a dispute between an employee and a private individual or firm with respect to an alleged debt or financial obligation, where the debt is not acknowledged by the employee or reduced to a judgment, the Agency will not act as an arbitrator nor will the Agency take any action against the employee which is not directly related to the debt. This provision does not apply to debts against the United States of America which are considered a just obligation upon presentation to the employee, or to debts incurred on credit cards issued to the employee for use in Official Government business.

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[1] The OSC is an independent agency protecting federal employees from prohibited personnel practices, including whistleblower retaliation and unlawful hiring practices. OSC provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies.

The Agency or payroll provider will initiate debt against the United States collections in accordance with 5 CFR 550.1104(e) and 40 CFR 13.22. The parties recognize that smaller debts to the government (e.g., overpayment of $50 or less) may not result in a debt letter. The Agency or payroll provider will provide notice in debt letters to the employee of the employee's rights as outlined in appropriate 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 polices 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 or payroll provider will provide the employee a debt letter explaining 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. The parties recognize that smaller debts to the government (e.g., overpayment of $50 or less) may not result in a debt letter. The Agency agrees that employees are entitled to their proper pay or reimbursement at the proper time in the proper amount.

In the case of overpayment or underpayment of net pay due to the error of the Agency, the Agency will expeditiously correct the overpayment, and in the case of underpayment, reimburse the employee any interest and penalties incurred by the employee as a result of the overpayment, to the extent authorized by law, rule and regulation.

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 payroll related 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. Timely notice of discontinued service by an FEHB provider; and
    5. Open season for Federal Group Life Insurance, and
    6. Opportunity to convert from an existing pension system to a new pension system (e.g., CSRS to FERS).

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 in a non-pay status.

Section 14. Disclosure of Personal Identifiable Information (PII) by the Agency

If an employee's Personal Identifiable Information (PII) is disclosed to an unauthorized party by the Agency or their agent, the Agency will implement appropriate remedial actions in accordance with law, regulation, and Agency policy, including potentially offering the employee identity theft protection.

Section 15. Religious Accommodations

The Agency will not discriminate based on religion as detailed under Title VII of the Civil Rights Act of 1964. The Agency will grant requests for Religious Accommodations for employees with a sincerely held religious belief, practice, or observance upon request, as provided by federal laws and regulations where they do not provide a hardship to the Agency. An employee's religious accommodation will be treated as confidential and shared only with those who have a need to know. If the Decision Maker is not the first line supervisor, the employee will be notified in writing of the identity of the Decision Maker.

Article 26: Dues Deductions

Section 1. 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 2. 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 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.

A sortable labor movement report of employees whose allotments are terminated or temporarily suspended citing Nature of Action Code shall be provided to the Union bi-weekly.

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 form 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: Pursuant to the Recognition and Unit Description Article of this Agreement, AFGE will identify the Union officials authorized to sign the form SF-1187 on the AFGE Council 238 President's submittal to the Agency listing representatives for the Council. Updates to the authorized Union officials will be provided throughout the year as necessary.

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) Any change in the bank routing number and/or account number used by the Union for the receipt of dues allotments.

(3) 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

E. Changes in the amount of Union allotments will be made by the Agency no later than 60 days from receipt of request to change.

F. For each transmittal of dues withholdings, the Agency will provide a dues withholding report that contains a sortable listing of employees, the

allotment withheld from each employee, and the total allotment and total number of employees that had dues withheld.

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 sign the form and include the amount of allotment to be withheld. The Union will forward the signed 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.

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 27: 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

A. 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.

B. Employees who suspect that they have a drug or alcohol problem are encouraged to voluntarily seek information and counselling though 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 themselves 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 thirty (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.

Section 9. Marijuana and Cannabis

A. The Parties acknowledge that marijuana is a federally illegal drug as of the signing of this MCBA.

B. As federal law, regulation and/or guidance changes with regard to the use of marijuana and/or cannabis, this Article will be interpreted consistent with these changes.

Article 28: Health, Safety, and Wellness

Section 1. General Agency Locations, Buildings, and Worksites

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 controlling health and safety regulations and laws.

B. When the Agency cannot provide a safe and healthful workspace consistent with Section 1A. above, it will make alternative arrangements which may include temporary relocation of employee(s) or telework/remote work in accordance with those Articles.

Section 2. Employee Training and Safety Equipment

A. Personal Protective Equipment (PPE) for on duty employees at assigned workplaces/worksites shall be provided, maintained, and replaced by the Agency at no-cost to the employee. PPE (including safety footwear) shall be provided to employees whenever such equipment is determined to be required by a hazard assessment 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.

1. In order to reduce wear and tear in safety gear, employees will only wear their safety footwear in the field and/or where required for the duties assigned.
2. Safety footwear provided by the Agency will meet the specifications required by hazard assessments for the duties assigned.
3. Employees with a disability who are seeking non-standard safety footwear may initiate such a request under the Reasonable Accommodation process.
4. Employees needing to replace Agency provided safety footwear before the normal replacement schedule may consult with the local Safety, Health, and Environmental Management (SHEM) for appropriate replacement.

B. The Agency will provide wearing apparel to employees consistent with EPA Order 1440.1 and EPA Order 4800.1A1.

C. The Agency will continue to provide training as appropriate on the use, care, and maintenance of PPE, and periodically evaluate the effectiveness of the PPE program. Employees will attend such training during duty time.

D. The Agency shall provide fit testing for employees required to wear respirators with a

negative or positive pressure tight-fitting facepiece. Fit testing will be done annually, and whenever the employee reports changes in the employee's physical condition that could affect respirator fit, or when respiratory protection PPE has changed in accordance with OSHA 1910.134.

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

A. Supervisors and employees are encouraged to discuss anticipated safety risks associated with tasks and or travel.

B. If an employee encounters hostile or harassing behavior while in the field, they are encouraged to contact their supervisor (or higher-level management official) for guidance.

Section 4. Radiation Monitoring

A. Special or unusual situations can occur in which it will be necessary to permit workers to exceed the Administrative Control Limit (ACL) (500 mrem) in order to accomplish certain categories of work: 1) when a critical work situation or emergency exists; 2) activities necessary to accomplish the critical work, or abate the emergency, which cannot be performed under conditions where normal radiation exposure control measures can be applied; and/or 3) in a situation of imminent danger. When this occurs, management shall secure waivers from employees who voluntarily agree to enter into the wavier either before or as soon as possible after the work is completed. Employees will not be disciplined for refusing to receive exposures above the ACL. If the dosage received exceeds the ACL, it must be considered the single lifetime occurrence emergency radiation dose, and the employee must not be allowed another wavier. The dose received under the wavier will be added to the employee's lifetime cumulative exposure record but shall not be included in the dosage calculation for the twelve (12) month ACL period. The wavier will be secured in the manner described in SHEM Guideline 38 and requires concurrence by one of the following persons: the senior EPA official onsite, the Incident Commander, the Health and Safety Officer, or the Radiation Safety Officer. The Agency shall prepare and provide the employee a report as soon as practicable after the incident, documenting they were granted a waiver. The report shall identify to the employee why the employee was exposed to radiation and what their radiation doses were.

    1. When the Agency grants a waiver as described above, the Agency will

notify the laboratory that the Agency is requesting expedited results be received within five (5) days. In the event the Agency is unable to receive results in five (5) days due to circumstances outside the Agency's control, the Agency will keep the employee informed as to the status of the pending results.

B. The results of the quarterly analysis of badges shall be made available to employees within thirty (30) calendar days of the Agency receiving the results.

Section 5. Medical Surveillance and Testing

A. If a direct evaluation of the employee's aerobic, cardiovascular fitness, muscular flexibility, similar physical fitness tests of physical endurance (e.g., pushups, sit-ups, running) or employee's age, weight or height is imposed as a new condition of employment, the Agency will:

1. Notify employees at least thirty (30) days prior to the imposition of the new requirement(s); and

2. Update the employee's position description generally within thirty (30) from the imposition of any such new requirement(s).

B. Agency shall provide employees copies of their own medical records that exist and are available within the legally mandated amount of time, upon request.

C. The Agency agrees to provide the names and contact information for the SHEM program coordinator at the applicable location upon request.

Section 6. Safety and Health Committees

A. A safety and health committee will be established at the national and local levels for the functions described in 29 C.F.R. Part 1960.37.

B. Union Committee Members:

1. The National Safety and Health Committee will have one (1) AFGE representative appointed by AFGE Council 238.

2. Each local Safety and Health Committee will have at least one (1) AFGE representative appointed by the AFGE Local President at that location.

C. Any AFGE representative participating on a national or local Safety and Health

Committee will be provided official time to attend meetings and will receive the same training opportunities afforded to other committee members.

D. The Parties agree that all confidential information will be protected and treated according to applicable authorities.

E. Each Local Safety and Health Committee shall meet at least quarterly.

F. The principal function of the national level committee shall be to consult and provide policy advice on, and monitor the performance of, the agency-wide safety and health program. The AFGE representative will be provided official time for participation on the national safety and health committee.

G. The principal function of the local committees is to monitor and assist in the execution of the agency's safety and health policies and program at the workplaces within their jurisdiction. The AFGE representative will be provided official time for participation on local safety and health committees.

Section 7. Communications on Safety and Health Inspections, Tests, Hazards, and Incidents

A. When a formal safety and health inspection is conducted by the Agency or Agency contractors of any Agency facility in which bargaining unit members are stationed, the Local AFGE will be notified in advance (or, for unanticipated inspections, as soon as practicable) and, upon request, be permitted to accompany the inspection team (if practicable). If AFGE is denied an opportunity to attend such an inspection, the Agency will provide a written explanation to AFGE. This does not include routine inspections done by Facility and SHEM personnel unless otherwise agreed by the local parties on a case-by-case basis. For inspections by organizations outside the Agency, the Local AFGE will be notified in advance (or as soon as practicable) and permitted to accompany the outside inspection team (if practicable). Safety precautions will be followed during these inspections.

B. In conducting an inspection responding to a specific and serious safety and health concern (e.g., bed bugs, mold), the Agency shall notify the Local AFGE in advance (or, for unanticipated inspections, as soon as practicable) and, upon request Local AFGE may be permitted to accompany the inspection team (if practicable). If AFGE is denied an opportunity to attend such an inspection, the Agency will provide a written explanation to AFGE. Upon request, the Agency will provide a briefing on the results and/or a copy of the written report with personal information redacted as necessary.

C. The Agency shall timely notify all employees in an impacted area of an Official Agency Worksite facility of serious health and safety incidents (e.g., whooping cough outbreak, bed bugs) occurring at that worksite.

D. The Agency shall provide guidance to employees on the Agency's intranet site on how to report any work-related health and safety incidents and concerns relating to but not limited to accidents, illnesses, near-misses, and threatening incidents.

E. The Agency will investigate, take appropriate action and maintain records consistent with 29 CFR 1904 and 1960. All such reports will be kept confidential in accordance with law and regulation.

F. The Agency will not retaliate against employees for reporting safety and health issues in good faith.

G. Upon request, the Agency will provide to 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 while on duty at the Official Agency Worksite.

Section 8. Indoor Air Quality

A. The Agency will notify the Local Union when indoor air quality testing and monitoring is being conducted in locations in which bargaining unit employees are stationed. The Agency will provide to the Local Union reports on testing results and air quality in locations in which bargaining unit employees are located upon request.

B. In buildings that have continuous air monitoring (i.e., RTP), the Agency will provide information regarding results of such monitoring upon request.

Section 9. Driving and Travel

A. The Agency will only require employees to drive consistent with EPA Guideline 31: EPA Driving Guidelines.

B. Changing EPA Guideline 31: EPA Driving Guidelines in a way that is more than *de minimis* may trigger bargaining obligations.

Section 10. Employee Safety and Health During National Incident Management System (NIMS) Disaster Deployment

A. The Agency will provide the safety plan briefing for the deployment under NIMS for the specific incident to deployed employees.

B. The Agency will provide hazard duty pay in accordance with law and regulation.

Article 29: 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 Council President and local union presidents 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 30: Merit Promotion

Section 1. Purpose

A. The Parties will comply 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 unless explicitly noted. As required by 5 U.S.C. 2301(b) (1) through (9), the Merit System Principles apply to all bargaining unit employees.

This Article shall be interpreted and applied in a manner consistent with the provisions of the most recent EPA Merit Promotion Plan, Order 3115, as well as with law, rule, and regulations. The Parties agree that changes to Order 3115 will be negotiated to the extent required by law. All procedures and regulations contained in the Agency's Merit Promotion Order 3115 which are not covered in this Article will apply to the extent they are not inconsistent with this Article.

Section 2. Coverage. This Program applies to all competitive service AFGE bargaining unit positions.

A. Competitive Actions. The following placement actions can be taken only by applying the competitive procedures discussed in the Agency's Merit Promotion Order 3115:

1. A permanent promotion or transfer to a higher graded position or to a position with higher promotion potential than previously held on a permanent basis in the competitive service.
2. A time-limited promotion for more than 120 calendar days to a higher graded position.
3. A detail of more than 120 calendar days to a higher graded position or to a position with higher promotion potential.
4. A selection for training as part of an authorized training agreement, part of a promotion program or required before an employee may be considered for a promotion;
5. A reassignment or change to a lower grade, to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted by RIF regulations).
6. A transfer to a position at a higher grade or with more promotion potential than in a position previously held on a permanent basis; in the competitive service.
   A reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.

B. Non-Competitive Actions. The following non-competitive placement actions can be

taken without using the competitive procedures described in the Agency's Merit Promotion Order 3115:

1. Career Ladder Promotions. Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e., the position has a documented career ladder and promotion potential). Career ladder promotions are not automatic, and all qualifications and eligibility must be met prior to making the action effective.
2. Promotion Based on Reclassification When:
    a. No significant change occurs in the duties or responsibilities and the position is upgraded due to issuance of a new classification standard, an updated Agency-wide classification policy or the correction of a classification error; or
    b. The position is upgraded due to accretion of additional duties and responsibilities and all of the following provisions are met:
        i. The employee continues to perform the same basic functions in the same organization, working for the same supervisor (the duties of the former position are administratively absorbed into the new position, and the former position is abolished);
        ii. The new position has no known (i.e., career ladder) promotion potential beyond the grade of the proposed non-competitive promotion (i.e., accretion action);
        iii. The additional duties and responsibilities assigned to or accrued by the incumbent do not adversely affect or impact the grade-controlling duties and responsibilities of other positions in the unit; and
        iv. The accretion is supported by a written analysis of the position (which may involve an audit with the employee and/or employee's supervisor, or other fact-gathering method).
3. A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the job announcement stated the temporary promotion could lead to a permanent position.
4. Temporary Promotion of an employee for 120 days or less, or for more than 120 days to a grade level held previously on a permanent basis in the competitive service or in another merit system which OPM has an interchange agreement, and the employee was separated or demoted for reasons other than performance or conduct.
5. Placement as the result of Priority Consideration as a remedy for candidates not given proper consideration in a competitive promotion action;
6. In accordance with 5 CFR 351 and the RIF Article of this MCBA, Reduction in

Force Placements which result in an employee receiving a position with higher promotion potential;

7. Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having No Greater Promotion Potential than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement) and did not lose because of performance or conduct reasons.
8. Promotion resulting from successful completion of a Training Program for which the employee was competitively selected;
9. Selection from the Re-employment Priority List at the same or lower grade level than the position from which selected;
10. Reinstatement to any Position of a career or career-conditional employee who served under a career SES appointment consistent with 5 CFR 335.103(c)(3);
11. Promotion as a Legal Remedy as ordered or agreed upon in a legal or administrative proceeding; and
12. Details to a position with the same promotion potential.

C. Area of Consideration (AOC). Since the AOC targets the group of candidates who will be considered for competitive selection, it is important that it be sufficiently broad to uphold the basic merit principles of open competition, including that 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. When establishing the AOC, selecting officials shall consider appropriate sources which are likely to help the Agency meet its mission. The minimum area of consideration is the organizational unit, no less than a Division or Office, which may produce at least two minimally qualified candidates for consideration. Applicants from outside of the area of consideration are ineligible for referral under the job announcement. This includes current agency employees who are outside the advertised area of consideration. When the stated area of consideration yields less than two minimally qualified candidates, the area of consideration may be extended, and the vacancy may be re-announced.

    1. Selecting Officials have the option of establishing an AOC larger than the minimum described above, especially if experience shows that those minimum areas fail to provide enough qualified candidates
    2. An AOC will be established for each vacancy;
    3. In accordance with 5 USC 3327, OPM must be notified of job opportunities in the competitive service.

D. Posting Vacancy Announcements
    1. The announcement will be posted on USAJOBS for a minimum of ten (10) calendar days.

2. Applications submitted electronically on or before the closing date will be accepted.
3. At a minimum, the vacancy announcement will contain:
    a. Title, series and grade(s) of the positions advertised and job announcement number;
    b. Geographic and organizational locations;
    c. Summary statement of the major duties and responsibilities;
    d. Minimum OPM qualification requirements plus any Quality-ranking factors and selective factors, if applicable;
    e. Knowledge, skills and abilities and/or competencies required. Vacancy Questions included in vacancy announcements will be based on the position. It is understood that vacancy questions and any relevant weighting factors will be developed and identified prior to announcing the vacancy.
    f. A Human Resources representative;
    g. Application procedures (where, how, and what to submit);
    h. Opening and closing dates, including any cut-off conditions;
    i. Promotion potential of the positions;
    j. A statement of EEO;
    k. Evaluation method for rating applicants;
    l. Special conditions of employment (e.g., frequent travel or geographic mobility requirements);.
    m. Area of consideration;
    n. Whether the position is eligible for telework and/or an alternative work schedule;
    o. If the position location is advertised as “remote” the job announcement will indicate so under the location section of the job announcement; and
    p. Number of positions expected to be filled at the time if more than one.

E. Methods of Locating Merit Promotion Candidates. All recruitments where the agency chooses to use the Merit Promotion hiring authority will be posted at a minimum on USAJOBS.
F. Priority Consideration involves the referral of individuals who must be considered before other candidates. If the priority consideration candidate is not selected, upon request the Agency will inform the person why they were not selected. Types of Priority Consideration include:

    1. Repromotion Consideration Eligibles. Employees demoted in the Agency without personal cause or given grade/pay retention are entitled to priority consideration for any vacancies for which they qualify where the planned area of consideration includes their local commuting area. Repromotion eligibles are entitled to priority

consideration for 2 years unless they attained the grade from which they were demoted or decline a position of equal grade, whichever occurs first. Candidates may receive consideration only at the grade level in which consideration was lost and having no higher promotion potential than the position previously held.

2. Candidates Who Did Not Receive Proper Consideration In A Previous Merit Promotion Action Due To A Procedural, Regulatory Or Program Violation. These candidates will receive priority consideration for the next appropriate vacancy in the geographic location where proper consideration was denied. The following conditions must be met before priority consideration under this provision may be granted:
    a. It is a similar type position in the same pay system as the position for which the employee failed to receive proper consideration;
    b. The employee is qualified for and would have been in the best qualified group; and
    c. The vacancy is at the same grade level with no higher potential than the position for which consideration was lost.
3. Employees Who Receive Priority Consideration Based on An EEO Complaint. These employees must be given priority consideration if it is either the agreed upon resolution to settle the complaint or the remedial action ordered in the final decision of a discrimination complaint.
4. Displaced Applicants. The Agency will provide special selection priority to eligible displaced applicants who are determined to be well-qualified, in accordance with the regulatory requirements (i.e., under the Career Transition Assistance Plan or the Interagency Career Assistance Program).

Section 3. Application Procedures

A. Employees who wish to apply to jobs posted on USAJOBS should follow the instructions in the USAJOBS vacancy announcement.

B. Accepting Applications.

1. Unless otherwise specified, applications must be submitted to USAJOBS by all candidates by the closing date and time specified in the vacancy announcement. For assistance in applying for a vacancy, applicants may contact the human resources representative listed on the vacancy announcement. EPA will provide reasonable accommodation to applicants with disabilities. Employees who require reasonable accommodation for any part of the application process, should follow the instructions in the vacancy announcement for requesting an accommodation.

Section 4. Eligibility Requirements

A. General. Applicants must meet all requirements of the vacancy announcement, including OPM qualification requirements and any selective factors. Selective factors are knowledge, skills and abilities in addition to the minimum qualification standards set by OPM and constitute part of the minimum eligibility requirements for the vacancy. Selective factors are determined by appropriate management officials. Selective factors must be clearly stated in the vacancy announcement. Time-in-grade requirements must be clearly set forth in the vacancy announcement. Applicants responding to open continuous announcements must meet the eligibility requirements as stated in the open continuous vacancy announcement.

B. Minimum Qualification Requirements. Minimum qualification requirements (for example, educational, medical, experience, etc.) are determined by OPM for each occupational series. Qualification standards are available on the OPM website.

C. Distinguishing Between Candidates. Candidates who meet eligibility requirements will be divided into two categories:

    1. Promotion Eligibles - those applicants who must compete in order to be placed in the position (applicants in the promotion eligible category will be evaluated in accordance with the provisions below); and
    2. Noncompetitive Eligibles - those applicants with or without competitive status who are eligible for reinstatement, reassignment, change to lower grade, special appointing authority (e.g., persons with disabilities, disabled veterans, etc.) or other action where competition is not required for placement in the position. Noncompetitive eligibles will be referred alphabetically without being rated and ranked. Such referrals may be made up until the time that the certificate of eligibles is sent to the selecting official.

D. Evaluation of Candidates

    1. Applications may be evaluated by an SME, a rating panel or a human resources representative. Regardless of the evaluator, ratings must be based solely on the application material submitted by the applicant. If an automated staffing system is used to qualify, rate and/or rank applicants, then an HR representative will conduct a quality review before the rating is finalized. When a quality review is conducted for an automated rating, an adjustment will only be made in the event that an applicant's answer(s) to the automated question(s) are not consistent with the applicant's resume or other documentation provided in the promotion package.

2. All candidates who meet the minimum (basic) qualification requirements must be evaluated on job-related criteria (e.g., work experience, education and training).

   Evaluation methods must include an analysis of the job to determine pertinent knowledge, skills and abilities (KSA's) or competencies that are important for successful job performance. Based on the job analysis, the KSA's/competencies to be used as Mandatory KSA's/competencies and rating factors for the vacancy announcement will be identified. In an automated staffing system, the identified KSA's/competencies will be elicited in the form of questions or requests for information that the applicant must answer.
3. A rating plan must be developed by the subject matter expert or human resources representative. The rating plan is the list of questions which are derived from the KSAs that an applicant will answer. The application of the rating plan will provide a self-assessment of each applicant.
4. All candidates meeting the minimum qualifications for the position will be rated and ranked, regardless of the number of applicants.
5. Contents of rating and ranking worksheets of candidates, deliberations concerning the candidates, and the numerical scores assigned to the candidates from the hiring process are confidential and only provided to those with a need to know.

E. Ranking and Referral of Candidates.

1. In those cases where the Agency finds that the review of qualifications would benefit from direct involvement of subject matter experts (SMEs), one or more SMEs may be utilized to help to evaluate the candidates. Normally the SMEs will be from the same Office/Region as the vacancy.
2. Responses by candidates to the questionnaire may be verified with information contained in the applicant's resume and the applicant's submitted documentation by Human Resources or one or more subject matter experts (SMEs).
3. The assessment of each candidate by SMEs will be based solely on the documentation before the SMEs and not on the personal knowledge about the candidate.
4. The SMEs will be of the same or higher grade than the position to be filled. In exceptional circumstances, the SME may be of a lower grade than the position to be filled.
5. Determining Best-Qualified. Promotion eligible candidates will be rated against the questions set forth in the rating plan. Candidates will be identified as either "best-qualified" or "qualified" based on the scores received in the evaluation process. Candidates are given a numeric rating based on self-assessment and the HR Specialist evaluates each applicant's background to determine the degree to which they meet the qualifications of the position. Based on this review, an overall rating is ultimately assigned to each applicant.

6. When there are ten (10) or fewer qualified candidates for a vacancy, candidates who meet basic eligibility requirements may be referred to the selecting official.
7. All referred candidates will be listed alphabetically on a certificate to the selecting official, except on VRA and Schedule A certificates where they are referred in preference order.

   Duration of Merit Promotion Certificate. Normally, certificates are issued with a thirty (30) day due date and a ninety (90) day expiration date. Certificates may be extended for a total of 180 days with a written request from the selecting official to the servicing HRO.
8. Use of Certificates for Additional Positions. Certificates may be used to fill additional vacancies for similar positions up to 180 days. A similar position is one that is located in the same commuting area, has the same title, series and grade (and promotion potential, if applicable,) and requires the same KSA's or competencies.
9. When ranking candidates for vacancies at multiple grades, each candidate will be ranked separately by each grade for which the candidate applied.

F. Interviews and Selections

1. Interviews may be conducted at the discretion of the selecting official or interview panel.
2. If the selecting official chooses to interview and/or convene an interview panel, the selecting official/interview panel should select interview candidates based on (at a minimum), a review of the applicants' resumes. Other appropriate sources for the review may include: the employment application, reference checks, performance appraisal, work samples, etc. When choosing to interview some of the candidates, the selecting official and/or interview panel will offer interviews to at least the top three candidates (if there are three) as determined from the review above.
3. Selecting officials should select the best candidate for their position(s) based on information obtained from appropriate source(s): employment application, resume, reference checks, interviews, performance appraisal, work samples, etc.
4. The Agency provides selecting officials with training and guidance on interviewing and DEIA**,** which supports unbiased interviewing and hiring.

G. Release and Notification of Applicants.

1. The human resources representative will work with program officials to establish mutually agreeable release dates based on mission and program requirements. Normally, an employee will be released no later than one complete pay period for promotion, following the selectee clearing all

requirements for the new position. When local workforce and program conditions permit, an employee will be released no later than two complete pay periods for reassignments, following the selectee clearing all requirements for the new position. When an employee is nearing the end of a within-grade increase waiting period, consideration should be given to releasing an 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.

All internal EPA interviewees (first and second interviews) will be notified of the outcome of the vacancy including the name of the person who was appointed to the position. If this does not occur, candidates have the option to contact the selecting official or their local HRO/PMO to receive the name of the appointee.

H. Disclosure of Information

1. The Agency's merit promotion plan will be posted on the intranet.
2. Applicants will be notified of:
   a. Whether they were found eligible;
   b. Whether they were referred to the selecting official;
   c. Whether or not they were selected; and
   d. Upon request to the selecting official, who was selected.

3. In addition, applicants may request and receive information concerning:
   e. Whether the vacancy announcement was canceled;
   f. Areas, if any, in which they should improve to increase their chance for future promotion; and
   g. The applicant's own rating assigned in the ranking process.

I. The fact that an employee is the subject of a conduct investigation will not prevent or delay their proper consideration for promotion, unless the Agency determines that such is necessary to protect the integrity of the Agency.

J. An employee's accumulation or balance of annual or sick leave may not be considered by ranking officials and/or selection officials as a basis for selection or non-selection. However, this does not preclude the consideration of leave balances if there is abuse of leave or resultant effect on the employee's dependability or work performance.

K. Employees may be entitled to retroactive pay in connection with improper personnel actions in accordance with laws and regulations.

L. In the event that two (2) or more employees are entitled to priority consideration for the

same vacancy, the name of all such employees shall be submitted on a Certificate of Eligibles for priority consideration to the selecting official in alphabetical order.

Section 5. Within Grade Increases

A. An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for
    a. the grade in which their position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of:
    b. each 52 calendar weeks of service in pay rates 1, 2, and 3;
    c. each 104 calendar weeks of service in pay rates 4, 5, and 6; or
    d. each 156 calendar weeks of service in pay rates 7, 8, and 9;

B. Subject to the following conditions:
    a. the employee did not receive an equivalent increase in pay from any cause during that period; and
    b. the work of the employee is of an acceptable level of competence.

C. Supervisors are responsible for keeping employees informed of the acceptability of their work on a regular basis as it pertains to within grade increases.

D. Employees may be entitled to retroactive pay in connection with delayed within grade increases subject to laws and regulations.

E. An acceptable level of competence shall be based on a current rating of record of "Effective" or its equivalent or higher. If an employee has been reduced in
    a. grade because of unacceptable performance and has served in one position at the lower grade for at least 90 days, a rating of record at the lower grade shall be used as the basis for an acceptable level of competence determination.

F. An acceptable level of competence determination shall be delayed when either of the following applies:
    a. An employee has not had the minimum period of 90 days on their PARS and
        i. the employee has not been given a performance rating in any position before the end of the waiting period; or
    b. An employee is reduced in grade because of unacceptable performance to a position in which they are eligible for a within-grade increase or will become eligible within a 90-day period.

G. Where employees have been assigned to their present supervisor for less than ninety
    a. (90) days, the supervisor shall secure the views of the employee's previous supervisor or appropriate sources of input. In such situations, appropriate sources of input for the rating typically include current and past members who

were part of the employee's supervisory chain during the rating period before making a determination.

H. Denial of Within-Grade Increase. When it is determined that an employee's performance is not at an acceptable level of competence (effective), within five days of indicating unacceptable performance to the Shared Service Center (SCC), the negative determination shall be communicated to the employee in writing. This communication shall set forth the reasons for any negative determination and the respects in which the employee must improve their performance in order to be granted a within-grade increase.

I. Employee Complaints: Employees wishing to raise a complaint of discrimination regarding non-selection in a particular promotion action may do so through either the Agency's discrimination complaint process or the negotiated grievance procedure. Employees must follow appropriate time frames provided for in the negotiated grievance procedure or the discrimination complaint process. Employees may not file a grievance based solely on non-selection.

J. Appeal of Denial of Within-Grade Increase. An employee may request reconsideration of a denial of a within-grade increase by filing, with their supervisor, not more than fifteen (15) calendar days after receiving notice of determination, a written response to the denial. This request for reconsideration shall set forth the reasons that the employee is requesting reconsideration. Upon request, the employee may meet with the supervisor. The employee may have a Union representative present for this meeting.

K. The Agency shall provide the employee with a written decision within fifteen (15) workdays of receipt of the request for reconsideration. Where an employee is denied their request for reconsideration, the letter transmitting the decision shall include a statement which informs the employee about their right to appeal the decision through the grievance procedure.

Section 6. Non-Supervisory Attorney Promotion Process to the GS-15 level. The parties agree that this section applies to AFGE bargaining unit attorney positions, which are in the excepted service.

A. Excepted service positions are excepted from competitive rules, but are subject to Merit System Principles, including the principle that advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition. Except for desk audits, classification appeals, non-competitive promotion to the next higher grade within an established career ladder, honors fellows/law clerks, settlements, and judgments, management will advertise permanent non-supervisory

GS-15 attorney promotions under any method (e.g., USAJobs, TalentHub, email solicitation).

1. Management reserves its right not to fill vacant positions and its right to reassign attorneys to vacant positions.

B. Procedures. When management advertises a vacant permanent non-supervisory AFGE bargaining unit GS-15 attorney promotion position the posting will include:
    1. A description of the job duties.
    2. Who is eligible to apply;
    3. Instructions for applying;
    4. How long applications will be accepted;
    5. The area of consideration (AOC) (e.g., within the region only, or to include other EPA legal offices);
    6. How long the announcement will be open (no less than ten (10) calendar days);
    7. An explanation of what documents need to be submitted as part of the application (e.g., resume, writing sample, summary of experience,) and in what format;
    8. Whether the position is subject to background investigation or security clearance (only for postings on USAJobs); and
    9. Other requirements mandated by law (only for postings on USAJobs).

C. Assessment criteria used to evaluate candidates must be fair, job-related and applied in accordance with merit system principles.

D. Amended USAJobs announcements will identify changes that were made to the original announcement.

E. If an announcement is cancelled, applicants shall be notified.

F. When an employee applies for more than one announced position, the employee will receive full consideration for each position for which they have applied and for which they meet the required qualifications.

G. After the announcement closes:
    1. If the selecting official chooses to interview and/or convene an interview panel, the selecting official/interview panel should select interview candidates based on (at a minimum), a review of the applicants' resumes. Other appropriate sources for the review may include: the employment application, reference checks, performance appraisal, work samples, etc. When choosing to interview some of the candidates, the selecting official

and/or interview panel will offer interviews to at least the top three candidates (if there are three) as determined from the review above.

2. Selecting officials should select the best candidate for their position(s) based on information obtained from appropriate source(s): employment applications, resumes, reference checks, interviews, performance appraisal, work samples, etc.
3. The Selecting Official has the right to select or not select any of the applicants recommended by a panel.

H. Setting the Effective Promotion Date: Management will work with the appropriate Shared Service Center to establish a mutually agreeable promotion date based on mission and program requirements. When a selectee is nearing the end of a waiting period for a within-grade increase, consideration should be given to effectuating the promotion 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.

Article 31: 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 thirty (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 thirty (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.

C. Nothing in the Article inhibits an employee's right to request a desk audit under 5 CFR 511. Employees are encouraged to review the "Employee Guide to Desk Audits" to prepare for the audit. Employees have access to this information on the Agency's website, http://www.opm.gov, or they may contact the EPA Classification Branch.

Article 32: Work Schedules

Section 1. Purpose

A. This Article is designed to maintain and enhance the needs of the Agency, while at the same time, offering scheduling flexibility for individual employees. The Parties recognize that the use of alternative work schedules has the potential to improve productivity and morale while providing the highest quality service to the public. The Alternate Work Schedules (AWS) program is designed to help employees balance work and life responsibilities and to improve employee satisfaction and retention while increasing productivity through scheduling flexibilities.

B. Nothing in this article relieves the EPA of its responsibility to provide reasonable accommodation to employees who are eligible for such reasonable accommodations, per the Rehabilitation Act of 1973 and EPA Order 3110.21, Providing Reasonable Accommodations for EPA Employees. Reasonable accommodation may include work schedules and arrangements other than those contained in this article. The work schedule options agreed to in this article are not intended to limit the range of work schedule options available as a form of reasonable accommodation.

C. Work schedules can be leveraged as a tool to attract, retain and engage a diverse workforce and assist employees with work/life balance to advance the Agency mission.

D. This Article is applicable to all AFGE bargaining unit employees regardless of full or part-time status.

Section 2. Background

A. Public Law 97-221 permits the establishment of 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.

B. No employee, including supervisors and managers, is permitted to directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce*, any other employee for the
purpose of interfering with another employee's choice of type of work schedule, to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime.

*The term "intimidate, threaten, or coerce" includes, but is not limited to, promising to confer or

conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to affect any reprisal (such as deprivation of appointment, promotion, or compensation).

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. For a full-time employee the basic work requirement is eighty (80) non-overtime hours in biweekly pay period.

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, fourteen (14) calendar days later.

E. **Compressed work schedule (CWS):** 1) In the case of a full-time employee, an eighty (80) hour biweekly basic work requirement that is scheduled by an agency for less than ten (10) workdays; and 2) in the case of a part-time employee, a biweekly basic work requirement of less than eighty (80) hours that is scheduled by an agency for less than ten (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 Maxiflex employees must be in a duty status and/or on approved absence. The core hours are 11:00 A.M. to 2:00 P.M., Tuesday through Thursday for Maxiflex work schedules.

G. **Credit hours:** The non-overtime hours an employee elects to work, with supervisory approval, in excess of the basic work requirements under a Maxiflex work schedule.

H. **Maxiflex Schedule:** Refer to Section 6C of this Article for definition.

I. **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 parttime employee, the officially prescribed days and hours within an administrative workweek during which the employee is scheduled to work.

J. **Regular Work Schedule (Straight 8s):** Consists of an 8-hour workday, 5 days per week Monday-Friday with a fixed start and end time.

K. **Workday:** the period, including the unpaid break, an employee is normally scheduled to be at work.

L. **Work-Life Balance:** Work-life balance is the practice of creating a flexible, supportive environment to engage employees and maximize organizational performance. Work-life balance includes considerations for workplace flexibilities and recognition of employee responsibilities outside of the workplace.

M. **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.

N. **Tour of Duty:** A work schedule includes the hours of a day and the days of a workweek that an employee is required to work. In the Federal Government, the work schedule is sometimes called a "tour of duty."

Section 4. Responsibilities

These work schedule options are generally designed to provide work-life balance for employees while still accomplishing all mission-related needs. The responsibility for successful implementation of these work schedule options must be shared by management, the Union, and employees.

A. **Supervisors** are responsible for:

1. Ensuring that employees participating in the program are made aware of their responsibility to follow time and attendance and leave procedures.

2. Ensuring that there is adequate staffing each workday within the work unit, including designating an acting supervisor or manager, as appropriate to accomplish the Agency mission while considering employee work/life balance.

3. Ensuring that work schedules support mission accomplishment and do not interfere with current activities or projects of the work unit. Ensure work schedules fall within the parameters of this article before approving, disapproving, or accepting.

4. Considering work schedules of the attendees when scheduling meetings or events where employee attendance is required (including virtual participation).

5. Coordinating schedules among teleworking employees to use workspace and space sharing effectively, in accordance with applicable agreements.

6. Timely approving/disapproving/accepting, changing, modifying or removing an employee from a specific type of work schedules in accordance with this Article.

7. Approving/disapproving an employee's request to earn and/or use credit hours.

8. Approving/disapproving adjustments of more than 1 hour (earlier or later) to the arrival and departure times of the approved Maxiflex work schedule, and any other changes to the approved Maxiflex work schedule in accordance with this Article.

9. Coordinating work schedules among employees in their organization.

10. Disapproving or raising concerns over schedule submissions that do not conform with this Article or do not meet work related needs.

11. Reviewing and maintaining the employee's time and attendance submissions to ensure they are properly completed and properly coded for overall accuracy.

12. Communicating regarding time and attendance inaccuracies and require the employee to submit corrections as appropriate.

B. **Employees** are responsible for:

1. Selecting a type of work schedule and any changes to the type of work schedule and seeking approval from their supervisor. Adhering to the procedures and requirements in this Article.

2. Be in work status during hours corresponding to the approved work schedule

posted in the Agency Time and Attendance Recording System or, in the case of an employee on a Maxiflex schedule, that was approved or accepted by the employee's supervisor per the Maxiflex section of this Article (except for the one-hour variation).

3. Submitting any corrections to work schedules and time and attendance submittals in a timely manner in accordance with this Article.

4. Ensuring that their time and attendance is submitted, coded for overall accuracy, and timely entered and attested to in the Agency Time and Attendance Recording System.

5. Requesting leave in accordance with applicable agency policies and the Leave Article of the
MCBA.

   Maintaining the quality and quantity of work regardless of which work schedule is approved. Management will consider employees' current approved or accepted schedules when scheduling meetings or events, even though the meetings or events may be scheduled outside of the core hours. It is within a manager's sole discretion and authority to direct employees to attend events or meetings.

6. Timely requesting work schedules, responding to disapprovals on submitted schedule and changing work schedules in accordance with supervisory direction and this Article.

7. Timely submitting, in accordance with this Article, their *Maxiflex Pay Period Time Sheet* or posting a screenshot of the Agency Time and Attendance Recording System if on an approved Maxiflex schedule.

8. Unless provided an exception by the supervisor, employees should maintain their work
schedule on the Agency's electronic calendar to assist co-workers to know their availability for meetings.

9. The employee's daily agenda (free/busy time) must be visible to all staff and clients on the Agency's electronic calendar., unless provided an exception by the supervisor.

10. Proposing adjustments of more than 1 hour (earlier or later) to the arrival and departure times of the approved Maxiflex work schedule and proposing any other changes to the approved Maxiflex work schedule in accordance with the provisions of this Article.

Section 5. General Provisions and Procedures

A. **Requesting and Changing an AWS:**

1. Employees must submit the EPA Employee Schedule Request through the Agency Time and Attendance Recording System (currently PeoplePlus) 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.

2. Supervisors will accept or reject the request so there is sufficient notification to the employee for the change to be effective for the next pay period. Supervisors will communicate schedule decisions in writing as soon as practicable to the employee if not sent automatically.

3. Employees should make a good faith attempt to contact their supervisor to ensure requests are timely considered.

4. No request will be unreasonably denied.

5. Normally, no more than four (4) employee driven work schedule changes will be approved in a calendar year.

6. By signing a request, the employee agrees to read and comply with the terms and conditions set forth in this Article.

B. **Meetings and Training:** Employees scheduled for training, travel or other EPA events may need to 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 and make adjustments, only if necessary.

C. **Lunch Period:** An unpaid lunch period must be taken for employees on any work

schedule who work 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 may not occur in the first or last hour of an employee's tour of duty. The lunch period may not be skipped in order to accrue credit hours or provide entitlement to overtime or compensatory time. The lunch period will be a minimum of 30 minutes. Employees on a fixed schedule may take lunch for a maximum of one hour. All employees must designate a length of time for the lunch period for each day.

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 workday to shorten the workday, or at the beginning or end of the lunch period to extend the lunch period.

E. **Overtime and Compensatory Time:** Overtime and compensatory time are not the same and should not be confused with credit hours. Employees may earn overtime or compensatory time or both in accordance with applicable laws and regulations. Overtime work is also controlled by the provisions of MCBA Article 11, Overtime (or its equivalent or successor agreements in a new MCBA).

F. **Holidays:** Holidays will be administered in accordance with applicable laws and regulations, and per OPM Guidance available here. 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*).

1. If a federal holiday falls on an employee's eight-hour workday, it will be recorded as eight hours. For employees on a compressed schedule (but not those on a Maxiflex schedule mimicking compressed), if the holiday falls on a nine or ten-hour workday, it will be recorded as nine or ten hours respectively.

2. If the holiday falls on an employee's non-work day, the holiday will be charged as follows:
    a. If the holiday falls on a non-work Sunday, the employee will get the next regularly scheduled workday off (e.g., if the employee's compressed day

off is Monday, Tuesday will be observed as the "in- lieu-of holiday").

b. If the holiday falls on any other day, the employee will get the preceding regularly scheduled workday off (e.g., if the employee's compressed day off is a Monday and the holiday falls on Monday, the preceding Friday would be the "in- lieu-of'
holiday").

G. **Telework and AWS:** Employees who work an AWS may utilize telework opportunities consistent with Article 33 of this Agreement.

H. **Changing Work Schedules:** Changes to work schedules will be effective at the start of a pay period.

I. **Cannot Combine:** Each schedule is distinct and stands alone. No employee may combine schedules.

J. **Accountability:** Employees are required to record their work hours, including starting and ending times for each workday in the Agency Time and Attendance Recording System.

K. **Leave Restriction:** Employees with documented time and attendance issues may be placed on a leave restriction where a supervisor may add safeguards to an employee's schedule to ensure employee compliance with time and attendance laws, regulations, rules, this Article, and Agency policies.

L. **Unavailability of Time and Attendance Recording System:** If the Agency Time and Attendance Recording System is not available to an employee for use, an employee will be granted sufficient time to update their timesheet once the system is available during the employee's working hours.

M. **Tardiness and Brief Absence:** Tardiness of less than one (1) hour may be excused at the discretion of the supervisor, However, if annual leave is charged, the employee will not be required to perform work until leave time charged has been applied. Tardiness and other brief absences from duty (for less than one hour) may be handled administratively in any of the following ways: (l) by excusing employees for adequate reasons; (2) by requiring additional worktime equivalent to the period of absence or tardiness; (3) by charge (in fifteen (15) minute increments) against an available category of leave; or (4) by recording the absence as leave without pay (LWOP) or absence without leave (AWOL). Participation in civic, patriotic, or community activities which are infrequent and of limited duration, such as viewing a parade, welcoming

visiting dignitaries, dedication ceremonies, and emergency actions to save a life or property, are ordinarily adequate justification for excusing an employee's brief absence. (Article 12, Leave (or its equivalent or successor agreements in a new MCBA); Chapter 9 Excused Absence of the U.S. EPA Leave Manual (Manual 3165, July 7, 1997)

N. **Work While on Field Operations or Temporary Duty Travel (TDY):** It is understood that employees work requirements while on TDY may require a different work schedule from their default or proposed work schedule. Employees on TDY may maintain their regular schedule as long as the work allows it. Calling in from field operations or TDY will not be required to prove work start and stop times unless the employee is on a leave restriction. Employees on a Maxiflex schedule are still obligated to follow the provisions of this Article.

O. **Night Differential Pay:** Night differential pay will not be paid when an employee on a flexible work schedule elects to work credit hours or elects a time of arrival or departure at a time of day when night differential is otherwise authorized. However, if an employee who is ordinarily entitled to night differential pay is required to work outside the hours of 6:00 am to 6:00 pm, he/she is entitled to night differential.

Section 6. Schedule Options for Employees

Employees may work a Regular, Compressed or Flexible Work Schedule.

A. **Regular Schedule (Straight 8s)**

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.

3. Accountability: Employees are required to record their work hours, including starting and ending times for each workday in the Agency Time and Attendance Recording System via the employee's approved standing schedule. The employee's timecard in the Agency Time and Attendance Recording System shall serve as their official attestation of their work hours. No signing in and out to prove start and stop times shall be required.

B. **Compressed Work Schedules (CWS)**

1. **CWS 5/4-9 Option:** This option is a fixed schedule with the same fixed start time between 6:00 am and 9:30 am and the same fixed end time between 2:30 pm - 6:00 pm including eight 9-hour days, one eight-hour day (though the 8- hour day start, or end time may vary from the 9-hour days) and one non- workday within a biweekly pay period. It is available for full-time employees. Employees may vary their compressed day off each pay period as described in (5) below. Full-time employees must work or otherwise account for eighty (80) hours each pay period. No credit hours may be worked or accumulated under this schedule.

2. **CWS 4-10 Option:** This option is a fixed schedule with the same fixed start time between 6:00 am and 7:30 am and the same fixed end time between 4:30 pm - 6:00 pm including four 10-hour workdays and one non-workday each week in a pay period. Full-time employees must work or otherwise account for eighty (80) hours each pay period. No credit hours may be worked or accumulated under this schedule.

3. Employees request, and supervisors must preapprove, fixed arrival and departure times and the same fixed non-workday(s) each pay period.

4. **Accountability:** Employees are required to record their work hours, in the Agency Time and Attendance Recording System. The employee's timecard in the Agency Time and Attendance Recording System shall serve as their official attestation of their work hours. No signing in and out to prove start and stop times shall be required unless the employee is placed on a leave restriction due to documented issues with time and attendance.

5. 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.

6. Credit hours are not authorized for employees on compressed schedules.

C. **Maxiflex Schedule**

1. Under this schedule, an employee is allowed to vary the number of hours worked on any workday and the number of hours in each work week to

complete their basic work requirement, subject to supervisory approval. Employees may vary their arrival/departure times within the given flexible hours on a daily basis and may work up to eleven (11) hours in any one day, excluding lunch break, credit hours, overtime and compensatory time worked. The core hours are 11:00 A.M. to 2:00 P.M., Tuesday through Thursday. Employees must work and/or be on approved absence during the designated core hours.

2. An employee electing a Maxiflex schedule must account for all hours worked each pay period. Employees working under Maxiflex are required to provide their supervisor, in advance of the upcoming workweek, their proposed biweekly work schedule in one of three ways:

    i. in a screenshot of the Agency Time and Attendance Recording System attached to an email;
    ii. on the Maxiflex Pay Period Timesheet (MPPTS); or
    iii. have a standing schedule with no bi-weekly reapproval required.

3. Employees utilizing options (a) or (b) must include the following information on the MPPTS or screenshot of the Agency Time and Attendance Recording System:

    a. the hours worked in the biweekly pay period with specific days, and starting and ending times;
    b. the requested leave usage of all types;
    c. the number of credit hours the employee earned; and
    d. the number of credit hours the employee is using.

4. Supervisors may allow employees the discretion in the manner in which schedules are submitted unless the high number of a section's employees on Maxiflex require a uniform method of reporting. The supervisor may require that the deadline for the employee to submit their proposed biweekly work schedule be as early as close of business on the Wednesday before the new pay period. However, an employee may make changes to the proposed work schedule during the workweek and will document changes for actual hours worked in the Agency Time and Attendance Recording System and submit changes to their supervisor in advance for approval (except for the one-hour variation).

5. This schedule a flexible duty start time as early as 5:00 A.M. and an end time as late as 8:00 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).

6. 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 eleven (11) hours, not including a lunch break.

7. Employees must account for all hours worked using the Agency's Time and Attendance Reporting System (currently PeoplePlus).

8. All employees on Maxiflex must request changes to work hours in a manner identified by the supervisor in accordance with this Article, when seeking to work hours not reflected in the employee's approved schedule beyond the one-hour variation at the beginning and end of the day (though flexed hours should be noted in the employee's Maxiflex Worksheet or in an email to the supervisor).

9. All employees on Maxiflex are subject to an advanced scheduling requirement each pay period as described in Section 2 above. The MPPTS is not a substitute for the electronic Agency's Time and Attendance Reporting System. Rather, the MPPTS 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.

10. Once submitted, the proposed work schedule (including any proposed credit hours) becomes the work schedule for the pay period unless disapproved by the supervisor. The employee and the supervisor should work together to make modifications and gain supervisory approval. The Employee must keep careful track of work schedule adjustments made during the pay period to ensure the basic work requirements for the biweekly pay period are met.

11. **Changes to work schedules and earning credit hours:** Except in emergency or unanticipated circumstances and the one-hour variance, all changes to approved or accepted work schedules and requests to work/use credit hours must be requested, approved, and scheduled before the change is scheduled to occur. If not requested and approved in advance, the employee must discuss with the supervisor, or supervisor's designee, 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 requested change, unless there are extenuating circumstances. 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 schedule changes that have not been approved. These communications are not substitutes for other time accounting or payroll systems which are still required to show schedules or certify time.

12. If an employee does not have an approved standing schedule, fails to timely submit their MPPTS or send an email with a screenshot of their schedule from PeoplePlus, or if a schedule is disapproved by a supervisor, then unless provided a rare exception by the supervisor, employees are required to work fixed 8-hour days (either from 8:00A.M. to 4:30 P.M. or from 9:00 A.M. to 5:30 P.M.) for the affected pay period. If a supervisor fails to approve a timely and properly submitted schedule in accordance with the supervisor's articulated deadline, an employee may assume approval.

13. Employees on a Maxiflex schedule may vary the time of arrival and/or departure on a daily basis in accordance with this Article.

14. Maxiflex is available to full-time and part-time employees.

15. Employees must record their time in to work and time out of work daily by a method consistent with the method used to propose their schedule pursuant to Section C(2) of this Section.

16. For full-time employees on a Maxiflex schedule, overtime work is controlled by the provisions of MCBA Article 11, Overtime.

17. Employees who have limited variability in their biweekly proposed schedule may submit a standing proposed schedule to their supervisors. Any approved standing schedule is subject to the requirements of this section. An employee who updates their biweekly schedule beyond the one-hour variation must get it approved by their supervisor when there is variation in the standing schedule in accordance with this Article.

18. **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 require prior supervisory approval.

19. **Credit Hour Provisions:** Credit Hours Earned Under a Maxiflex Schedule.

    a. Credit hours earned are hours that an employee elects to work in excess of the basic work requirement with prior supervisory approval and in accordance with this Article.
    b. **Recording Earned Credit Hours:** Employees must record the number of credit hours worked and used in the Agency Time and Attendance System (currently PeoplePlus). Employees must be aware that at the end of the pay period, hours worked will be counted as credit hours only after the eighty (80) hour bi-weekly requirement is met. Credit hours must be recorded on the Maxiflex Pay Period Time Sheet or noted in a written communication to the supervisor (generally an email). Credit hours are earned in full fifteen (15) minute increments. No rounding is allowed.
    c. Earning Credit Hours: Earning 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 seven (7) hours on Monday. The employee requests and is approved to work three (3) additional hours on that day. If the employee works at least seventy-three (73) more hours during the pay period, the three (3) additional hours are considered credit hours because they are more than the scheduled basic eighty (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 eighty (80) hours with a combination of approved leave and work, the three (3) additional hours are counted towards the eighty (80) hour bi-weekly work requirement and are not credit hours.
    d. All hours used to meet the first eighty (80) hour requirement are recorded as work hours or leave hours. For part-time employees, credit hours are not earned or recorded until the employee's part-time work

requirement is met.

e. 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.
f. Credit hours are distinguished from overtime/compensatory time-off hours in that credit hours are at the election of the employee. The accumulated balance of credit hours for a full- time employee that may be carried over into the next pay period may not exceed twenty-four (24) hours.
g. 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.
h. If an employee has elected to work credit hours and overtime/compensatory time is subsequently authorized, the employee will be afforded the opportunity to elect to work the overtime/compensatory time rather than accumulate additional credit hours.
i. Subject to existing law, regulations, employer policies and this Agreement, credit hours either alone or in combination with annual, sick, leave without pay, or compensatory leave may be used for a full day of absence.
j. Union representatives and members on official time for representational duties may accrue credit hours subject to the terms of this article.
k. A Maxiflex work schedule may be supplemented by credit hours.
l. Employees on Maxiflex work schedules can schedule up to three (3) credit hours per workday and earn up to twelve (12) credit hours per pay period. For full-time employees, twenty- four (24) credit hours can be carried over to the next pay period. Any credit hours beyond twenty-four (24) must be used in the same pay period or forfeited. Twenty-five percent (25%) of the biweekly work scheduled hours may be carried over for part-time employees. For example, a part time employee who works sixty-four (64) hours per pay period may carry up to sixteen (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. Earning and using credit hours requires supervisory approval per the provisions of this Article.
m. **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 additional review/scrutiny. Employees may earn credit hours on Saturday or Sunday between 6:00 A.M. to 6:00 P.M. Employees cannot earn credits hours outside of this timeframe on the weekend.

n. **Exceptions to the 3/12 Credit Hour Limit:** On rare occasions when necessary to meet work-related needs, supervisors may grant more than three (3) credit hours per workday or more than twelve (12) credit hours per pay period, on a case-by-case basis. Standing approvals for more than three (3) credit hours per workday or more than twelve (12) credit hours per pay period are not permissible.
o. Supervisors may grant standing approvals to work credit hours for known or anticipated workload needs if the credit hours are within the three (3) credit hours per workday and within the twelve (12) 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.
p. **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.
q. Credit hours must be earned in advance of their use. When an employee uses credit hours, such hours are to be counted as a part of the "basic work requirement" to which they are applied. An employee is entitled to his or her rate of basic pay for credit hours.
r. Employees shall not be subject to any mandatory time period for using credit hours.
s. Employees are not required to use credit hours for medical or dental appointments or other personal matters in place of leave.
t. Employees are not required to use credit hours in lieu of compensatory time off.
u. Credit hours do not expire for as long as the employee is on the Agency's Maxiflex program described in this Article.
v. Employees are accountable for keeping track of their credit hour balances and to record them accurately in the Agency Time and Attendance Recording System (currently PeoplePlus).

Section 7. Non-Compliance and Removal from an AWS

A. **Removal from an AWS:** The supervisor or management official may remove an employee from AWS when there are documented misconduct or performance issues

the supervisor determines are related to their ability to work effectively on an AWS, 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 or a modified Maxiflex 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.

B. For AWS removals resulting from misconduct or performance issues related to their ability to work effectively on an AWS or for the employee's failure to comply with the provisions of this Article, employees may reapply no sooner than six months after termination.

C. For AWS removals resulting from work-related needs, the employee may reapply in the Agency's Official Time and Attendance System if or when any such issues are resolved. It is presumed the employee may return to their previous work schedule.

D. For minor issues of non-compliance, the supervisor may counsel an employee when they do not comply with the provisions of the AWS work schedules program. For face-to-face counseling (including virtual) employees are entitled to be accompanied by a union representative for any counseling and will be provided reasonable notice to obtain union representation, if requested. The supervisor must make clear that they are counseling the employee, and that the supervisor is concerned about whether or not the employee is following this Article. Counseling will consist of identifying the problem and what the employee must do or stop doing going forward. Nothing in this paragraph will prohibit management from multiple counseling sessions with an employee.

E. Supervisors are expected to use reasonable judgment and understanding that an employee may on rare occasions fail to comply with the many Maxiflex rules.

F. Before a decision to remove an employee from an AWS, the employee will be notified in writing of the reason for her or his removal and may provide a response within one work day. The employee may request to return to AWS after six (6) months.

Section 8. Implementation

The parties agree to establish an Implementation Team with equal numbers of Union and Management representatives. The Team shall have the following responsibilities:

A. **Joint Training:** Prepare and offer training provided jointly by the Agency and the Union

for all employees and supervisors on the requirements and provisions of this Article.

1. Training shall be required for all supervisors and all timekeepers, for new employees or employees new to AWS, and those electing to work Maxiflex or CWS work schedules for the first time. Employees on existing AWS schedules, while not required to take training, are required to sign a statement that they are aware of and agree to abide by all guidance and rules.
2. Training sessions will be offered at least four times initially. A training package will be established within three (3) months of Agency Head review of this Article is completed for employees opting to work AWS after the initial training sessions have been conducted. Training materials, including Q&As based on questions received during the training, will be posted on the Agency intranet and notices of the availability of these materials will be sent to all employees at least twice a year, at the April mid-year evaluation and the October end-of-year evaluation.

Article 33: Telework

Section 1. Purpose

The Telework Enhancement Act of 2010 requires the head of each executive agency to establish a telework policy for eligible employees, and the current Administration has directed federal agencies in their evaluation of the Future of Work to evaluate how telework can be a beneficial tool for agency operations and the workforce. A successful long-term telework program can yield many benefits, including cost savings, protection of environmental quality by reducing commutes and in turn reducing traffic congestion and vehicle emissions, reduction in the agency's carbon footprint, increased productivity and performance, enhanced recruitment and retention, heightened employee morale, increased work/life balance, enhanced health and safety (reduced viral transmission), additional time for focused work, and improved emergency preparedness. Use of maximum telework by EPA has enabled the Agency to continue most of its operations remotely without interruption throughout the COVID-19 pandemic. Telework and remote work can be leveraged as a tool to enhance talent recruitment and retention, and advancing diversity, equity, inclusion, and accessibility in the EPA workforce.

Section 2. Scope

A. This Article addresses regular, situational, and medical telework for AFGE bargaining unit employees. It also addresses, but does not limit, telework when used to accommodate AFGE-represented employees with disabilities under the agency's reasonable accommodation process. Generally, employees covered by this Article are expected to report to the Official Agency Worksite at least twice in a biweekly pay period.

B. This Article also addresses full-time telework used on a temporary basis (such as medical telework) and telework as a reasonable accommodation (telework as a fulltime accommodation is considered in the Remote Work Article and under the EPA's separate reasonable accommodation process.). With the exception of these arrangements, arrangements where the employee is not expected to report to the Official Agency Worksite on a regular and recurring basis two times per biweekly pay period are addressed in the Remote Work Article.

C. When the Agency's policies and this collective bargaining agreement conflict, the CBA shall govern unless the parties mutually agree otherwise.

Section 3. Policy

A. The EPA supports the use of telework for the benefit of the environment, agency operations, cost savings and work/life balance of its workforce. The extensive and successful use of telework agencywide during the COVID-19 pandemic has made telework one of the principal operating modes for the Agency and use of telework has

been shown to be appropriate for a broader range of types of work than the Agency had previously used. Telework and remote work can improve the Agency's ability to recruit and retain a highly qualified and diverse workforce.

B. The Agency's telework program has become a routine way of doing business at EPA. The eligibility of individual employees to participate in telework is based on:

    1. The extent they have sufficient portable work to support a requested telework schedule; and

    2. The employee eligibility requirements outlined in this article. Telework eligibility shall be based on job functions and not managerial preference.

Because telework requires collaboration between management and employees, both parties have responsibilities in its successful implementation and operation. An employee's participation in the Agency's telework program is voluntary. Teleworkers will receive the same treatment and opportunities as non-teleworkers (e.g., work assignments, awards and recognition, development opportunities, promotions, etc.) and are expected to perform and accomplish all assignments and tasks associated with their position, whether in the Official Agency Worksite or at an approved alternative work location.

Section 4. Definitions

A. **Telework** – An arrangement where eligible employees perform the duties and responsibilities of their position during regular, paid hours from an approved worksite (e.g., residence, telework center) other than the Official Agency Worksite.

B. **Alternative Work Location (AWL) or Alternative Worksite** – An AWL is an approved work location other than the employee's Official Agency Worksite. An AWL will generally be a single location (e.g., a residence), a group of locations (e.g., a campus, industrial park), or other approved worksite (such as a facility established by state, local or county government or private organization for use by teleworkers) and will generally be within the local commuting area. Employee requests to work at an AWL outside of the local commuting area may be approved by the appropriate approving official as noted in section VI. An employee may have more than one approved AWL.

C. **Local Commuting Area** – As defined in 5 CFR 351.203, the Local Commuting Area is the geographic area usually constituting one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities where people live and can reasonably be expected to travel back and forth daily to their Official Agency Worksite.

D. **Portable Work** – Work that can be performed with equal effectiveness with respect to quality, quantity, timeliness, and other aspects of accomplishing the EPA's mission at the

employee's Official Agency Worksite or at an AWL. Portable work is part of the employee's regular assignments and does not involve a change in duties or the way the assignments are performed without supervisory approval.

E. **Official Worksite** – The official location of an employee's position of record as determined under 5 CFR 531.605. Official worksite is the "official duty station" as the term is used in Title 5, United States Code, Section 5305(i).

F. **Position of Record** – An employee's official position defined by grade, occupational series, employing agency, law enforcement officer status and any other condition determining 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 where the employee is temporarily detailed.

G. **Official Agency Worksite** – The EPA office (program, region, lab, HR Shared Service Center) where the employee reports on a regular and recurring basis, receives direction, 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.

Section 5. Roles and Responsibilities

A. **EPA Telework Managing Officer:** The Assistant Administrator for the Office of Mission Support (or designated representative) shall serve as the TMO. The TMO serves as the primary telework point of contact between the agency and the Office of Personnel Management. The TMO is responsible for overall policy development and implementation of the Agency's telework policy and programs and serves as an advisor for agency leadership on the full range of telework issues as well as a resource for managers and employees.

B. **Agency Telework Coordinator:** The Office of Human Resources in the Office of Mission Support executes the duties of the agency telework coordinator, who is responsible for overseeing the agency telework program. The coordinator may periodically review telework approvals and disapprovals to ensure consistency of application, direct changes as necessary, and ensure any necessary training is provided as required. To the extent that the Agency Telework Coordinator prepares a report to OPM regarding approvals and disapprovals of OPM, the Agency will share such a report with AFGE, and the Agency commits to providing participation data to AFGE including documented approvals and disapprovals to allow monitoring of the program when such data is compiled.

C. **Assistant Administrators, the Chief Financial Officer, the Chief of Staff to the Administrator, the General Counsel, and Regional Administrators or their equivalents or designated representatives:** These executives are responsible for selecting program/regional office telework coordinators and may assign and locate telework coordinator duties anywhere in their respective organizations. However, if a manager does not designate a telework program coordinator, they must ensure the telework program coordinator's responsibilities are appropriately delegated to and performed by one person who will serve as a point of contact for the Agency's telework coordinator.

D. **Supervisors and Managers:** Supervisors and managers are responsible for the overall management of teleworking within their work units, including:

1. Working with their regional human resources officer, HR SSC, and program management officer to identify positions eligible for telework and ensuring such designations are identified on position descriptions and in job announcements;

2. Taking into account position eligibility for telework, work-related needs, approving or disapproving new or revised requests to telework (up to and including requests for telework wherein an employee seeks an arrangement where they report to their assigned EPA worksite at least twice in a biweekly pay period) within a reasonable timeframe (i.e., normally within 7 calendar days), and, in cases of disapproval, providing written justification to the employee;

3. Reviewing and, when necessary, recertifying employee telework agreements:

    a. When there is a change in AWL or in-person work requirements;
    b. Every 12 months (or less frequently, at the discretion of management); or

    c. To synchronize annual recertifications if a particular organization's annual recertification time period is sooner than 12 months, so all employees can be recertified at the same time;

4. The supervisor shall provide the employee with a signed copy of the Telework Agreement;

5. Ensuring teleworking employees are provided the equipment necessary to successfully telework, including laptop computers and communications technology needed to communicate with supervisors and colleagues. The Agency agrees to examine the expansion of communications technology to facilitate communication with the public and will involve AFGE in that process;

6. Overseeing day-to-day telework operations; modifying individual telework agreements to meet mission needs, accomplish workload, in response to

employee requests, or due to changing circumstances; and maintaining records and information necessary for evaluation of the program;

7. Ensuring teleworkers agree to comply with all existing security policies and procedures, regarding IT security, personally identifiable information and proprietary/confidential business information;

8. Ensuring proper use of appropriate telework time reporting codes to document hours teleworked; and

9. Monitoring performance by ensuring appropriate management controls and reporting procedures are in place before employees begin telework assignments. Teleworkers and non-teleworkers are treated identically for the purposes of monitoring and assessing job performance; however, supervisors and managers may need to utilize different mechanisms for communicating with teleworking employees.

10. Requests under this Article will not be unreasonably denied.

E. **Employees:** Employees are responsible for the following:

1. Completing a telework agreement and waiting for approval from their supervisor prior to teleworking;

2. Performing an assessment of the AWL and answering the required questions on the Self Certification Safety Checklist;

3. Adhering to the terms and conditions of the applicable telework policy, procedures, terms and conditions of the approved telework agreement;

4. Complying with EPA policies for information technology security and use of government equipment/materials;

5. Informing their supervisor if any terms under the telework agreement have changed, such as AWL, changes to answers in the safety checklist, and portability of work;

    a. Notifying their supervisor if modifications are necessary to their telework agreement;

    b. Reviewing and when necessary, recertifying employee Telework Work Agreements:

        i. When there is a change in AWL;
        ii. Every 12 months (or less frequently, at the discretion of management);

and

iii. To synchronize annual recertifications if a particular organization's annual recertification time period is sooner than 12 months, so all employees can be recertified at the same time.

c. Being available during scheduled work hours by telephone, email, and other applicable agency-approved technology and communication methods (e.g., Teams, 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 as they would be in the Official Agency Worksite;

d. Maintaining communication with the supervisor while teleworking and working with the supervisor to overcome problems or obstacles as they occur so the work of the organization is accomplished in an effective and timely manner;

e. Complying with all existing agency security policies and procedures, including those relating to personally identifiable information and proprietary/confidential business information;

f. When conditions set forth in 5 CFR § 630.1603 can be reasonably anticipated or the agency provides reasonable notice regarding changes to its operating status, taking reasonable steps within the employee's control to have necessary equipment and work-related materials (e.g., laptops, documents) available to allow them to telework from their AWL per 5 CFR § 630.1605; and

g. Arranging for dependent or elder care, if caregiving activities would otherwise interfere with the employee's work duties during the time the employee is working at an AWL and/or requesting leave or work schedule adjustments for periods when the employee is not able to work due to dependent or elder care responsibilities.

Section 6. Types of Telework

Supervisors and managers may authorize the following types of telework based on position eligibility for telework and work-related needs:

A. **Regular/Routine Telework:** Regular/routine telework is the type of telework the employees may request approval for to perform their duties at an AWL on a regular and recurring basis, on predetermined days each pay period. Regular telework may range from one day per pay period up to and including employees scheduled to report at least twice each biweekly pay period on a regular and recurring basis to the Official Agency Worksite. Any holiday, day in 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. Regular telework will typically be on the same days each pay period; however, managers may authorize adjustments to this type of telework when requested.

1. As noted in section IV, AWLs are typically located within the LCA. However, supervisors or managers may approve regular telework for employees outside the LCA if:

    a. there is a reasonable expectation the distance from the Official Agency Worksite will not hinder the employee's ability to report to their Official Agency Worksite at least 2 times per biweekly pay period;

    b. there is a reasonable expectation the distance from the Official Agency Worksite will not hinder the employee's ability to report to the Official Agency Worksite should they be recalled on a scheduled telework day or (3) the employee is doing temporary situational telework or medical telework (see below);

    c. Employees may be recalled to their Official Agency Worksite with fewer than 24 hours' notice when recall is essential for the agency to meet its mission. Where conditions outside of an employee's control prevent an employee from commuting to their Official Agency Worksite, the employee may be asked to request leave or perform portable work.

    d. Example: An employee working at EPA headquarters in Washington, D.C. has a residence in Richmond, Virginia, and asks to perform regular telework at the residence as the AWL. Richmond is outside the Washington, D.C. locality area but the employee regularly reports to their Official Agency Worksite according to their work schedule with no documented issues. It is reasonable for the supervisor to approve the Richmond residence as the AWL. If an employee requests to regularly telework from an AWL in Juneau, Alaska, but the Official Agency Worksite is Washington, D.C., this would be an unreasonable request because the distance and ability to recall the employee are impacted by the proposed location of the regular telework AWL. Depending on the circumstances, the employee's situation may involve Temporary Situational Telework Under Special Circumstances (see below) or Remote Work (see Remote Work Article).

B. **Situational Telework:** This type of telework is appropriate for work or assignments of specific limited duration on a non-routine, occasional, emergency, or ad hoc basis, as opposed to a regular telework schedule as defined above.

1. Situational telework may be used to accommodate work/life balance needs

(e.g., medical appointments, parent/teacher conferences, etc.) when commuting to the Official Agency Worksite before or after such events is impractical.

2. Situational telework can be used to extend an employee's regular telework schedule for a limited duration where appropriate, such as during pandemic health crises (e.g., COVID-19) and prolonged weather events (e.g., unhealthy air due to wildfires).

3. An employee must have an approved situational telework agreement in place and, except in Limited Exceptions to Preapproval Requirements as discussed below, receive approval in advance each time they wish to telework.

4. An employee may be approved for both situational and regular telework.

C. **Temporary Situational Telework Under Special Circumstances (Retention of Locality Pay):** Supervisors or managers may approve situational telework arrangements at an AWL within or outside of the local commuting area where the employee is not expected to report to the Official Agency Worksite two times per biweekly pay period for a discrete time period.

1. This arrangement may be approved by the supervisor or manager on a case-by-case basis, provided the employee meets all eligibility requirements contained in this Article.
2. Temporary telework arrangements generally should not exceed 6 months (exception noted in the bullet below), and approvals for extension of these arrangements must be renewed by the supervisor or manager at least each thirty (30) days.

3. Employees needing temporary telework arrangements for extended periods should work with their manager or supervisor to determine if their situation may warrant telework as a reasonable accommodation or consider applying for remote work.

4. The situational telework exception allowing telework from an AWL outside of the LCA should generally be used in cases where:

    a. the employee is expected to return to work in the LCA in the near future; or
    b. the employee is expected to continue teleworking but is able to report to the regular worksite at least two (2) times per biweekly pay period.

5. The intent of this special circumstance is to address situations where the employee retains a residence in the commuting area but is temporarily unable to report to the Official Agency Worksite for reasons beyond the employee's

control. The agency will determine a telework employee's official worksite on a case-by-case basis. Such determinations are within the sole and exclusive discretion of the authorized agency official (generally the employee's supervisor), subject only to OPM review and oversight. 5 CFR § 531.605(d)(4).

6. Unreasonable denials can be grieved through the process detailed in the Grievance Article of the MCBA. Examples of appropriate temporary situations include:

    a. Emergency situations preventing the employee from regularly commuting to the Official Agency Worksite, such as a severe weather emergency or a pandemic health crisis.
    b. The employee is on personal travel outside the local commuting area and is available to telework at an approved AWL (e.g., a second home, the host residence) (approval of situation telework in these special circumstances will usually not exceed sixty (60) days in any twelve (12) month period).
    c. When needed to allow the employees to provide care for family members.

7. Other circumstances not involving situational telework where an employee is not reporting twice per pay period to the Official Agency Worksite but may maintain their locality pay include:

    a. When an employee is temporarily detailed to work at a location other than a location covered by a telework agreement.
    b. An extended period of approved absence from work (e.g., leave).
    c. When the employee is in temporary duty travel status away from the Official Agency Worksite.

8. **Limited Exceptions to Preapproval Requirement:**
    a. Employees should make every reasonable effort to request situational telework in advance and generally should not perform unscheduled telework without preapproval.
    b. In rare situations, where an employee is prepared to telework and has sufficient
    portable work, an employee may request approval for unscheduled telework by the time they begin work if the employee is unable to connect with their supervisor in advance after good faith efforts. Such rare instances may include, but are not limited to the following:
        i. A significant disruption in mass transit service.
        ii. Hazardous conditions (e.g., freezing rain, wildfire smoke, or extremely low wind chills) exist or are forecasted for the commuting area.
        iii. A dependent is home due to mild illness or school closure (see

Caregiving section for further discussion).

iv. The employee has a mild illness (e.g., common cold) that does not interfere with working from an AWL.

c. In rare situations, a supervisor may decline an employee's situational telework request after the employee has begun working. The employee will be credited for the time they have already worked if they had sufficient portable work to perform. An employee may either come into their Official Agency Worksite or request leave if their situational telework is denied in these circumstances.

d. If a supervisor documents an employee's abuse of this provision or an employee has insufficient portable work, then a supervisor, at their sole discretion, may prohibit an employee from utilizing situational telework without preapproval.

D. **Unscheduled Telework:** This type of telework is not scheduled in advance but is performed when the Agency announces changes to its operating status, including changes to dismissal and closure procedures pursuant to OPM or local management operating status announcements. Any telework- ready employee that is able to safely travel to and work at their approved AWL must perform unscheduled telework as provided in 5 CFR 630.1605, except as provided for in 5 CFR 630.1605(a)(2), or request leave as appropriate.

E. **Medical Telework:** Medical telework allows for the continued accomplishment of Agency work while an employee has a medical condition not affecting the employee's ability to perform their regular work assignment at an AWL.

1. Medical documentation certified by a licensed physician or other licensed health practitioner justifying the need for medical telework must be provided to the supervisor unless waived by the supervisor, as provided in Section 11 below.

2. This type of telework may be the equivalent of full-time, but it is a temporary telework arrangement and generally may not exceed twelve (12) months in duration within any three-year period for any individual condition.

3. A telework agreement and a safety checklist must be submitted and approved by the supervisor prior to the start of the arrangement.

4. Supervisors will endeavor to approve medical telework requests on an expedited basis to allow the employee to continue working from an AWL.

5. The initial telework arrangement is valid for up to ninety (90) calendar days (depending on the medical documentation) and may be extended in ninety (90) calendar day increments if the medical certification justifies such at each

extension (i.e., medical documentation must be submitted every ninety (90) calendar days if warranted). The total maximum allowable time for a medical telework agreement generally is twelve (12) months within any three (3) year period for any individual condition.

6. Exceptions to these limits will not be unreasonably denied where there is more than one medical issue giving rise to the request.

7. Employees with medical conditions lasting more than a year should contact the local or national reasonable accommodation coordinator to determine if their situation may warrant telework as a reasonable accommodation rather than extension of medical telework or may consider applying for remote work.

8. Please note, medical telework is not the same as telework as a reasonable accommodation. Medical telework is a temporary arrangement whereas telework as a reasonable accommodation is not subject to time limits if the condition justifying the arrangement persists. Please see the section on reasonable accommodation below.

9. If there is sufficient justification (e.g., location of a medical provider, location of family to assist in care) for medical telework to be conducted at a location outside the LCA, supervisors may approve an employee to work at an AWL outside the LCA.

    a. This determination will be made by the supervisor on a case-by-case basis, provided the employee meets all eligibility requirements contained in this CBA.
    b. The agency will determine a telework employee's official worksite for locality pay purposes on a case-by- case basis. Such determinations are within the sole and exclusive discretion of the authorized agency official (generally the employee's supervisor), subject only to OPM review and oversight. 5 CFR § 531.605(d)(4).).

10. Unreasonable denials can be grieved through the process detailed in the Grievance Article of the MCBA.

11. Based on the employee's condition, the supervisor may grant medical telework, leave or a combination of leave and telework to cover the situation.

12. Medical telework is appropriate for employees with non-work-compensable injuries. Employees with work compensable injuries will be managed under applicable workers' compensation regulations.

F. **Remote Work:** Remote work is a special type of alternative work arrangement by which an employee is scheduled to perform work within or outside the local commuting area of an agency worksite and is not expected to report to an agency worksite on a regular and recurring basis. Remote work does not include temporary telework arrangements as explained above. The Remote Work Article is a separate article in the MCBA. Please refer to OPM Guidance on Telework and Guidance on Remote Work for further information.

G. **Other Issues Affecting Telework**

1. **Official Worksite for Pay Purposes:** Generally, if the employee does not physically report to the Official Agency Worksite at least twice each biweekly pay period, their duty station may change to the AWL and locality pay may be impacted. (5 CFR 531.605). An authorized Agency official (generally the employee's supervisor) may make an exception to a locality pay adjustment pursuant to 5 CFR 531.605(d)(2) and as discussed above for temporary situational telework arrangements or medical telework. Not all temporary telework or medical telework situations are appropriate circumstance for this exception unless approved by the supervisor.

2. **Caregiving, including Dependent and Elder Care:** Telework may be used as a flexibility to help employees with caregiving responsibilities including dependent or elder care responsibilities to meet their family obligations and work responsibilities. However, it is not appropriate to use telework if the employee is unable to work due to caregiving responsibilities. If caregiving responsibilities would otherwise interfere with the employee's work duties during the time the employee is working at an AWL, they must arrange for other care or request leave or work schedule adjustments for those periods when the employee is not able to work due to caregiving responsibilities. Where appropriate, employees may also consider requesting a Maxiflex work schedule to meet their biweekly work hour requirement. Work schedules are separate from telework, and employees should consult the Work Schedules Article of the CBA for more information on available schedules.
    a. Example 1: An employee has children in the home on a regular or situational telework day due to a school closure. Other than general oversight and occasional brief breaks to tend to family matters, the employee is able to complete work assignments during the daily tour of duty. Leave or work schedule adjustments in this example are not necessary.

    b. Example 2: An employee has children in the home on a regular or situational telework day due to a school closure. One child needs more than minimal assistance with a school assignment during the employee's tour of duty. The employee will need to request leave or adjust their work schedule for the time they are unable to work.

c. Example 3: An employee requests a temporary AWL at their parents' residence so they can help their father provide assistance to their mother post-surgery. The employee may telework when not providing care for their mother and must request leave or adjust their work schedule when taking her to doctor appointments or caring for her when the father must run errands or needs a break during the employee's scheduled work hours.

d. Example 4: An employee has an adult family member in the home who is recovering from a serious illness. The employee may telework when not providing care and must request leave or adjust their work schedule for times they are unable to work such as when taking the family member to medical appointments.

3. **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. Employees seeking to telework as a reasonable accommodation should contact their immediate supervisor or the national or local reasonable accommodation coordinator. Employees teleworking as a reasonable accommodation will follow the general requirements contained in this Article to the extent such requirements are consistent with the reasonable accommodation. Employees must, at a minimum, submit a telework application, record of completion of training, and safety checklist; however, the Agency shall not be constrained in accommodating persons with disabilities by the provisions contained in this Article. Employees approved to telework as a reasonable accommodation are required to have a valid, signed telework agreement.

4. **EPA Continuity of Operations Plan:** Telework is an important part of the Agency's COOP. As was demonstrated during the COOP for COVID-19, telework enables EPA employees to continue to work from AWLs during emergencies, such as a natural disaster, a terrorist attack, disruption to facilities or a pandemic health crisis, and telework proved to be a key tool in continuing the Agency's vital role in the federal government in the face of an emergency. During a declared COOP, any employee—with or without a telework agreement—may be required to telework. During any period, the EPA is operating under a COOP, the COOP may supersede relevant elements of the EPA-AFGE MCBA Telework and Remote Articles. 5 USC 7106(a)(2)(D).

Section 7. Portable Work: Designating and Notifying Employees

A. Although most positions may be suitable for telework, not all aspects of all jobs can be performed as effectively at an AWL and therefore be considered portable. Also, the

portability of an employee's work can change over time due to project or mission needs.

B. Supervisors must use the notification memorandum to notify employees of their ineligibility to telework, if applicable. No notification is required if the employee is eligible to participate in telework.

C. **Work Suitable for Telework:**

1. Work that is suitable for telework is Portable Work that can be performed at a location other than the Official Agency Worksite with equal effectiveness with respect to quality, quantity, timeliness, customer/client services, and other aspects of accomplishing the EPA's mission.

2. Work suitable for telework depends on job content, rather than job series or title, type of appointment, or work schedule.

3. It is possible within identical or related occupational series, one position or portion thereof may be determined to be eligible for telework and another may not, depending on individual job requirements.

4. Work that is generally suited for telework includes, but is not limited to:

    a. Reviewing and writing
    b. Policy development
    c. Report writing
    d. Research
    e. Analytical work
    f. Telephone-intensive tasks and virtual meetings
    g. Computer technology-oriented tasks
    h. Online training

D. **Duties Not Suitable for Telework:**

1. Work that is not suitable for telework is work that cannot be performed at a location other than the Official Agency Worksite with equal effectiveness.

2. As with portable work, it is possible within identical or related occupational series one position or portion thereof may be determined to be eligible for telework, and another may not, depending on individual job requirements.

3. Examples of duties not suitable to be performed away from their Official Agency Worksite include, but are not limited to, the following duties:
    a. Requiring face-to-face contact with the supervisor, colleagues, clients, or

the general public that cannot otherwise be achieved as effectively by e-mail, telephone, video calls, collaboration technology, or other means;
b. Accessing classified information or a classified installation;
c. Involving the construction, installation, maintenance or repair of EPA facilities;
d. Involving the physical protection of EPA facilities or employees; or
e. Involving other physical presence/site-dependent activity (e.g., emissions testing, laboratory trials).

E. Employees may have some duties suitable for telework and others not suitable. For these employees, supervisors will need to work with employees to determine how many days per pay period an employee may work at an AWL as part of a regular telework arrangement.

Section 8. Employee Eligibility Requirements

A. **Basic Eligibility Requirements:** An employee may be authorized to telework if:

1. The employee has sufficient portable work for the amount of telework requested;

2. The telework arrangement does not create any impediment to the effective accomplishment of the employee's and their organization's work;

3. The employee agrees to return to their Official Agency Worksite on a telework day if required to do so by their supervisor. Generally, at least twenty-four (24) hours' notice, though less notice may be available;

4. The employee continues to comply with the terms of their written and approved telework agreement; and

5. Arrangements are in place for caregiving duties, if those duties would otherwise interfere with the employee's work duties during the time the employee is working at an AWL.

B. **An Employee shall not telework if:**

1. The employee has any documented performance or conduct deficiencies within the preceding 12 months that was related to the employee's telework status including, but not limited to, letters of reprimand, written warnings, or leave restrictions;

2. The employee has been officially disciplined for being absent without leave for more than five days in any calendar year;

3. The employee has been officially disciplined for viewing, downloading, or

exchanging pornography, including child pornography, on a federal government computer or while performing official federal government duties; or

4. The employee has been disciplined for misuse of a government computer that the supervisor determined was related to the employee's telework status, within the prior five years. The suspension from telework will be based on the severity of the offense and may not exceed five years.

Section 9. Preparing for the Telework Arrangement

A. **Eligible Employees**: All eligible agency employees who wish to telework must meet the following conditions. Failure to comply with any one of the conditions listed below may result in the denial or termination of a telework arrangement:

1. Complete the required employee telework training prior to applying for the telework program;

2. Submit the "EPA Telework Application/Agreement" and the "Employee Self-Certification Safety Checklist" to their supervisor for approval;
3. Ensure all necessary dependent/elder care arrangements are maintained and do not interfere with the employee's work performance while working at the AWL;

4. Ensure compliance with the EPA's information technology policies and procedures;

5. Comply with EPA policies and the CBA regarding pay, work schedules, time reporting code requirements, leave requests, and other administrative requirements in the same manner as employees working in their Official Agency Worksite;

6. Ensure working from the AWL causes no disruption in the efficiency of work and appears seamless. The employee should be as available to their clients/customers, co-workers and supervisors or managers as they would be at the Official Agency Worksite. This means, for example, the teleworking employees cannot designate their regular teleworking hours unavailable for calls, meetings or virtual meetings in their electronic calendars any differently than they would at their Official Agency Worksite or put "out of office" messages on e-mail and voice mail systems indicating they are unavailable;

7. Utilize call forwarding technology;

8. Maintain organizational requirements regarding communication and accessibility and respond in a timely manner to their team leaders, supervisors or managers, co- workers, agency customers, clients, and the public;

9. Be capable of joining and be available to join virtual meetings or conference calls while working at the AWL;

10. Safeguard agency equipment (if provided) and use it only for official purposes in accordance with established policies;

11. In the event agency equipment is not functioning, properly and promptly seek remote assistance. If remote assistance is ineffectual, the employee should take the steps necessary to obtain functioning equipment.

12. Be willing to telework in case of an emergency;

13. Be willing and able to leave the AWL and return to the Official Agency Worksite if requested after reasonable notice (e.g., generally at least 24 hours, though less notice may be available) by their supervisor;

14. Agree to report to the Official Agency Worksite as needed, as determined by the agency; and

15. Participate in the annual recertification process and in any other required telework program monitoring or evaluation processes required by the agency or other authoritative entities (e.g., OPM, Government Accountability Office, Congress.

B. **Telework Agreement:** Each new telework agreement will be reviewed on an individual basis. Decisions will be made based on eligibility criteria outlined in this Article. The process for application and re-certification will also follow those processes outlined in this Article.

Section 10. Telework Training

Training sessions on the basics of telework will ensure a common understanding of its requirements. Participating employees must complete the agency-approved training and obtain a record of completion of training before participation. The employee's record of the required training must be attached to the telework agreement. These documents should be maintained by both employees and supervisors. Supervisors or managers of those teleworking must also complete agency-approved telework training and obtain a certificate of training regardless of whether they themselves telework. Refresher training may be required on occasion by the agency.

Section 11. Establishing the Telework Agreement

A. **Regular and Situational Telework**: The following actions are to be taken when establishing a regular or situational telework agreement:

1. The employee submits a completed application (Appendix A) (https://work.epa.gov/sites/default/files/2021-12/Telework-Appendix-A-EPA-Form-3181- 2.pdf) to their immediate supervisor;
2. The employee and supervisor discuss the proposed telework agreement and the type of work to be completed by the employee at an AWL;

3. If a suitable arrangement is reached, the employee finalizes the application/agreement, safety checklist (Appendix B)(https://work.epa.gov/sites/default/files/2022-04/Telework- Appendix-B-EPA-Form-3181-3.pdf) and the required training. Once all requirements are completed, the telework agreement is signed and dated by the employee and supervisor;

4. A separate Telework agreement for each situational telework event is not necessary if the employee has signed an agreement to telework on a situational basis;

5. A request for Situational Telework may be approved verbally but must be followed up with written approval via email or through a request to adjust the employee's schedule (e.g., screenshot of the employee's People Plus) detailing the day(s) and time(s) an employee is requesting to telework.

6. Employees may request more than one alternative work location. Employees requesting to work at an AWL not previously approved must update the telework agreement and submit a checklist for the new location to the supervisor for approval.

7. Employees are to obtain information and implement all procedures for accessing the secured operations of their Official Agency Worksite; and

8. If the employee receives approval for an AWL at a telework center, arrangements must be made by the employee's organization to cover costs of using the center and to reserve a workstation for the employee.

B. **Medical Telework**: When establishing a medical telework agreement, the employee must submit a written statement as defined by 5 CFR § 339.104 from a licensed physician or other licensed health practitioner unless waived by the supervisor, generally including the following information (Appendix C may be used by AFGE employees seeking medical telework):

1. The diagnosis of the medical condition necessitating the telework arrangement;

2. How the medical condition might interrupt the employee's ability to go to

the Official Agency Worksite and might interrupt the employee's work schedule;

3. Providing either the expected date when medical telework should no longer be necessary and the employee should be able to resume work at the Official Agency Worksite, or the expected timeframe for treatment and how that might impact the telework status;

4. Listing restrictions necessary for work performed at the AWL, if applicable;

5. Stating the employee is able to perform the duties of the position at an AWL (the duties relayed to the medical provider should also be shared with the employee's supervisor); and

6. Describing the benefit to the employee's medical condition from working at an AWL, or the reduction of health risks to other employees, if any, derived from medical telework.

Section 12. Telework Agreements

A. The telework agreement covers the terms and conditions of the telework arrangement for the individual employee and constitutes an agreement by the employee and manager to adhere to applicable guidelines and policies. The telework agreement includes items such as:

1. The voluntary nature of the arrangement;

2. Duration of the telework agreement;

3. Schedule of duty at each work location;

4. Leave approval and requests for overtime and compensatory time;

5. Performance requirements; and

6. Proper use and safeguards of government property and records.

B. When any aspect of the work agreement changes (e.g., position, work assignment, supervisor, alternate work location, etc.), the employee and supervisor will reassess the employee's work to determine telework suitability and continued approval, however this may not require a new telework agreement.

C. Employees who are designated essential for inclement weather or other emergencies 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. Employees designated for COOP purposes may be required to telework, irrespective of telework status/agreement.

D. The supervisor must retain a copy of the signed telework agreement including the record of training and a copy must be provided to the employee. The supervisor must also provide a copy of the signed telework agreement to the program/regional office telework coordinator who is responsible for maintaining telework records in the organization, if any.

Section 13. Time, Attendance and Other Miscellaneous Issues

A. **Recording Telework Hours and Control of Time and Attendance:** Proper recording, monitoring and certification of employee work time are critical to the success of the program. Employees are responsible for recording all telework time into the time and attendance system using the appropriate telework time reporting codes.

B. **Hours of Duty and Work Schedules**: Employees who telework will maintain a single type of schedule (e.g., compressed, flexible work schedule) whether at the Official Agency Worksite or the AWL. Unstructured arrangements where employees work at the AWL without prior supervisory approval are not permitted. Employees should refer to the Parties' Work Schedules Article for more information.

C. **Overtime during Telework - Eligibility Requirements**: Just as at the Official Agency Worksite, overtime work conducted at an AWL must be approved in advance; overtime work not ordered and approved in advance by the supervisor, in writing, will not be compensated. Detailed information on overtime can be found in the EPA Pay Administration Manual (EPA Order 3155) and CBA Article.

D. **Leave:** Procedures for requesting leave are the same for employees when participating in telework and when working at the Official Agency Worksite. See CBA Leave Article the EPA Leave Manual (EPA Order 3165) for details.

E. **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. For this reason, it is vital a specific AWL be approved in advance and adhered to by the employee.

2. The supervisor's signature on the request for compensation attests only to what the supervisor can reasonably know, specifically whether the event occurred at the Official Agency Worksite or at an AWL during official duty. Typically,

supervisors or managers are not present when an employee sustains an injury. Employees, in all situations, bear responsibility for informing their immediate supervisor of an injury at the earliest time possible, seeking appropriate medical attention and filing the appropriate workers' compensation claim form.

3. Telework arrangements can also result in employees who are currently receiving continuation of pay or worker's compensation returning to work, thus taking them off the workers' compensation rolls. Supervisors may be able to find work such employees are able to perform at AWL or restructure existing work so some of it may be completed at an AWL.

F. **Requirement to Return to the Official Agency Worksite on a Scheduled Telework Day:** Teleworking employees working at an AWL may be recalled to the Official Agency Worksite to meet mission, staffing, and workload requirements. Under these circumstances, the following should occur:

1. Supervisors should notify employees as soon as possible if they are subject to a recall to the Official Agency Worksite in an effort to provide the employee sufficient time to make necessary arrangements. A supervisor may recall an employee to the Official Agency Worksite by notifying them generally at least 24-hours in advance. A supervisor may recall an employee to their Official Agency Worksite with fewer than 24 hours when recall is essential for the agency to meet its mission. Where conditions outside of an employee's control prevent an employee from commuting to their Official Agency Worksite, the employee may be asked to request leave or perform portable work.

2. If an employee is unable to telework from their AWL due to being required to be at the Official Agency Worksite on a regularly scheduled telework day, or being on approved leave, the employee is not entitled to another telework day. Likewise, the employee is not prohibited from requesting another telework day. At their discretion, the supervisor may approve another telework day within the same workweek or pay period.

G. **Travel:** The travel provisions applicable to employees working at the Official Agency Worksite also apply to employees when teleworking. If an employee is unable to telework from their AWL due to being on approved travel, the employee may request another telework day, and the supervisor may approve another telework day within the same work week or pay period at the supervisor's discretion.

H. **Monitoring Performance**: GAO guidelines require agencies to establish a method providing the supervisor with reasonable assurance employees are working when scheduled. Appropriate management controls and reporting procedures must be in place before employees begin telework assignments. Teleworkers and non-teleworkers should be treated identically for the purposes of monitoring and assessing job

performance, but different modes of communication may be appropriate for those teleworking. Some approved techniques, potentially applicable to telework arrangements, include:

1. Supervisory telephone/video calls or e-mail messages to an employee;

2. Supervisory video meetings with an employee during times the employee is scheduled to be on duty and be available;

3. The need for a scheduled site visit by the supervisor to the employee's AWL during work hours may occur only in very rare circumstances where an employee's performance raises reasonable concerns substantiating the need, and only after the supervisor receives concurrence from the servicing LER specialist or other human resources official; and

4. Use of performance management systems, including regular workload/accomplishments reports 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 14. Emergencies: Unscheduled Telework/Dismissals/Closures

A. **Unscheduled Telework/Closures**:
   1. In the event of a closure at the Official Agency Worksite, telework-ready employees already scheduled to telework on the closure day are required to do so except as provided for in 5 CFR 630.1605(a)(2). Telework-ready employees not scheduled to telework on the closure day are required, in coordination with their supervisor, to utilize unscheduled telework to the maximum extent possible, subject to available portable work and suitability of the AWL. If there is insufficient portable work as determined by the supervisor or the AWL is impacted as provided for in 5 CFR 630.1605(a)(2), the employee may be granted an appropriate category of administrative leave (e.g., weather and safety leave) to cover all or a portion of the scheduled workday.

   2. 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. Employees reporting to an AWL other than the employee's primary residence during the workweek will follow the closure or dismissal procedures of that AWL.

B. **Late Arrivals/Early Dismissals at the Official Agency Worksite**: When the agency announces early closure of or late arrival to the Official Agency Worksite, telework- ready

employees already scheduled to telework on the early closure or late arrival day are required to telework their regularly scheduled non-overtime hours. Telework-ready employees not scheduled to telework on the early closure or late arrival day will be required, in coordination with their supervisor, to utilize unscheduled telework to the maximum extent possible, subject to available portable work as determined by the supervisor. If there is insufficient portable work as determined by the supervisor, the employee may be granted an appropriate category of administrative leave (e.g., weather and safety leave) for their regularly scheduled non-overtime hours when the Official Agency Worksite is closed. Early release for holidays or other like situations must be granted to those on telework to the same extent as granted to those employees working at the Official Agency Worksite.

C. **Unscheduled Telework Announced**: In the event the Official Agency Worksite is open, but there is an announcement of the option for unscheduled telework, telework-ready employees not otherwise scheduled to telework may come into the Official Agency Worksite or request approval from the supervisor for unscheduled telework or the use of annual, credit, or other leave.

D. **Other Emergencies or Disruptions to the Official Agency 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 with the potential to disrupt normal office operations), employees approved for regular and situational telework are expected to telework if instructed by the supervisor to do so except in the case of situations where the emergency could not be reasonably anticipated and the employee could not make the necessary preparations, as provided for in 5 CFR 630.1605(a)(2). In COOP situations, telework may be required.

E. **General Provisions:**

1. It is recommended supervisors and employees coordinate in advance if there is an anticipated event with the potential to disrupt normal office operations to ensure employees have portable work and the necessary equipment to perform telework during an Official Agency Worksite closure to the extent possible.

2. As with scheduled telework, an employee performing unscheduled telework must have sufficient portable work to perform throughout the workday when teleworking.

3. An employee who does not have enough portable work must report to their Official Agency Worksite if it is open, contact their supervisor for additional work, request appropriate leave, or adjust their work schedule (if applicable).

4. When severe weather or other circumstances prevent work from the AWL

(e.g., loss of electricity, employee must evacuate, infrastructure/connectivity and child/elder care issues) or there is a lack of portable work as determined by the supervisor, and the Official Agency Worksite is closed to employees, a telework-ready employee may be granted an appropriate category of administrative leave (e.g., weather and safety leave) by their supervisor.

Section 15. Modification and Termination of the Telework Agreement

A. Employees who telework do not have an automatic right to continue teleworking.

B. Determination of telework eligibility should be based on job functions, and not managerial preference.

C. Telework eligibility should be based on equitable, function-based criteria.

D. Telework agreements may be modified, adjusted, or terminated by management based upon an employee's failure to adhere to telework requirements or based upon any other consideration affecting employee eligibility. Telework agreements may also be modified, adjusted, or terminated at any time when requested by the employee.

E. Management has the right at any time in accordance with this agreement to end an employee's use of telework. Participation in telework will be terminated when the employee no longer meets the eligibility criteria.

F. Management shall provide sufficient notice when feasible, before terminating a telework agreement in an effort to allow the affected employee to make necessary arrangements.

    1. Typically, sufficient notice will be three pay periods; however, individual circumstances may warrant more time to allow the affected employee to make arrangements or if the situation involves work exigencies or documented misconduct the supervisor believes is related to telework then the notice period is at management's discretion.

    2. Leave in these instances should be granted liberally. The reason for termination will be documented, signed by the supervisor, and furnished to the affected employee.

    3. Consent or acknowledgement via signature by the affected employee is not required for the termination of telework to take effect.

G. When any significant aspect of an employee's work changes (e.g., position, work assigned, AWL), the supervisor will reassess the portability and suitability of employee's work for continued telework approval.

H. An employee may withdraw an application for telework, or terminate an approved telework agreement, at any time without prejudice, and return to the Official Agency Worksite. The employee must notify the supervisor in writing, and the supervisor must in turn acknowledge the employee's notice in writing, to prevent misunderstandings about work location and official workstations per applicable agreements and policy.

Section 16. Facilities and Equipment

A. Alternative Work Location Office Space: Requirements will vary depending on the nature of the employee's work and the equipment needed to perform that work.

1. At a minimum, employees are responsible for the AWL having adequate internet speed in order to easily access the intranet, agency systems, communicate by telephone, email and established collaboration tools (currently Microsoft O365 suite) with the supervisor, coworkers, and the public when working from their AWL.

2. In addition, employees are responsible for verifying and ensuring their work areas comply with health and safety requirements (see the "*Employee Self-Certification Safety Checklist"*).

3. Home work areas must be clean and free of obstructions, in compliance with all building codes, and free of hazardous materials.

4. An employee's request to telework may be disapproved or rescinded based on safety problems or the presence of hazardous materials. A supervisor or designated safety official may inspect the AWL for compliance with health and safety requirements in the very rare circumstance that this may be deemed appropriate. The need for a scheduled site visit by the supervisor or designated safety official to the employee's AWL during work hours may occur only in very rare circumstances where an employee's compliance with health and safety requirements raises reasonable concerns substantiating the need, and only after the supervisor receives concurrence from the servicing LER specialist or other human resources official.

B. Worksite Space Saving:

a. If management seeks to implement space-saving initiatives related to Remote Work and telework, management will notify the union at both the National and relevant local levels prior to implementing space-saving plans.
    i. Management and unions will participate in pre-decisional involvement (PDI) for the development and implementation of space-saving plans.
    ii. Wider telework participation may provide the Agency an opportunity to

reduce environmental impact of office space and save substantial taxpayer money in reducing workspace. To that end, the Parties reached ground rules (Appendix D) for pre-decisional involvement and local level negotiations should the Agency seek to implement any space-saving initiatives specifically based on telework levels.

iii. The parties agree local level negotiations are appropriate because of the unique circumstances of each location.

b. Space-saving initiatives must first be considered for those conducting Remote Work before those on Telework.
c. Space-saving options will become effective only after bargaining obligations have been met per the ground rules, attached as Appendix D.
d. The parties agree, space-saving initiatives do not alleviate the Agency's responsibility to provide workspace, computer equipment (if appropriate) and telephones for employees required to report to the office at various times.
e. When an employee is working under an approved regular telework agreement and the employee routinely works at the Official Agency Worksite five times per pay period or fewer, employees should be aware that on this basis in particular the Agency may utilize space-saving options for the employee's workspace to be negotiated at the local level as described above.

C. Government-Furnished Equipment:

a. All employees with an approved telework agreement who require a laptop to conduct Agency work or to communicate with supervisors will receive a government-issued laptop at a minimum.
b. Supervisors may authorize additional GFE for the individual teleworkers as necessary to meet mission needs if budget permits.
c. Agency will use excess property to the greatest extent practicable for AWLs.
d. Employees who have an agency-issued laptop or mobile phone assigned to them may use such equipment while teleworking and shall take reasonable safeguards against theft and damage when they do so.
e. All agency-issued equipment and supplies remain the property of the agency, and the EPA remains responsible for service and maintenance of the equipment. Government issued equipment may be monitored to ensure they are being utilized in connection with Agency business.
f. If an employee furnishes their own equipment/workstation at the AWL, the government will not reimburse the employee for the purchasing costs of the equipment/workstation and the equipment remains the employee's. The EPA is under no obligation to service or maintain equipment belonging to the employee even if the employee uses it for Agency work.
g. The EPA may not reimburse employees for the utility costs (e.g., heating, air conditioning, lighting, and the operation of government-furnished computers) for AWLs. Utility costs include the monthly service charges for telephone or

specific telephone charges. The Agency will not reimburse the employee for privately supplied costs, including broadband.

h. Teleworking employees should use Agency meeting and conferencing tools, communication options like EC-500, or government-issued mobile phones to conduct official government business in other locations.
i. Employees requiring pens, paper, paper clips, notebooks, and other supplies may use those provided by the Official Agency Worksite.
j. For employees working at an AWL outside of the LCA, the Agency is responsible for service and maintenance of GFE. In cases where GFE needs repair and upgrade, the Agency will make reasonable and timely efforts to initiate repairs and upgrades remotely. However, should on-site assistance be required, employees must either return to their Official Agency Worksite or make other arrangements with their supervisor to ensure repairs and upgrades can be made expeditiously.
k. In consultation with the employee, supervisors or managers will make determinations over questions such as 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.

Section 17. Information Security

A. The EPA CIO issues and maintains information security directives for protecting EPA information and information systems to include when users are teleworking and accessing systems remotely. These directives outline the responsibilities of each program office, region or other organization, and users in protecting EPA systems and information. Other pertinent supporting information security directives may be issued by users' program offices, regions or other organizations.

B. Users agree their responsibilities, described in the agency's information security directives, apply while on telework status. Teleworkers must minimize security risks to all agency information and systems.

C. The AWL workplace and workstation and other 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 directives.

Section 18. Records Management

When working at an AWL, agency employees must continue to comply with the agency's records management policy and any other applicable policies related to using, creating, maintaining, and disposing of records. Employees shall also comply with the Federal Records Act, 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. Any record removed from the Official Agency Worksite for telework

assignments remains the property of the agency and any information generated from telework assignments is the property of the agency. Employees are responsible for maintaining the integrity of their records and for producing records on demand.

Article 34: Remote Work

Section 1. Purpose

In looking toward the Future of Work at EPA, the Parties recognize that Remote Work has been and can continue to be beneficial for Agency operations, the workforce, and the environment. A successful Remote Work program can yield many benefits, including protection of environmental quality by reducing commutes and in turn reducing traffic congestion and vehicle emissions, reduction in the agency's carbon footprint, increased productivity and performance, enhanced recruitment and retention of a diverse workforce from areas of the country for which Federal employment has traditionally required relocation, retain talent and institutional knowledge, heightened employee morale, increased work/life balance, enhanced health and safety (reduced viral transmission), cost savings, appropriate workspace for focused work, and improved emergency preparedness.

Use of Remote Work by the EPA throughout the COVID-19 pandemic has enabled the Agency to continue most of its operations without interruption. Continuing to incorporate Remote Work as a routine mode of work at EPA can enhance workforce retention and talent recruitment, and advance diversity, equity, inclusion, and accessibility at the Agency.

Remote Work may be approved for an employee on a temporary or permanent basis as part of a strategic analysis of EPA's mission needs or to meet the personal needs of an employee. Remote Work eligibility must be based on job functions and not managerial preference.

Section 2. Scope

This Article establishes the procedures for Remote Work applicable to AFGE-represented bargaining unit employees. Where this Article and any EPA remote work policy conflict, this Article shall govern unless the parties mutually agree otherwise.

Section 3. Definitions

A. **Domestic Employee Teleworking Overseas.** A Domestic Employee Teleworking Overseas is an overseas remote work arrangement wherein an EPA employee temporarily performs the work requirements and duties their domestic position from an approved overseas location via a DETO Agreement. Please refer to the Agency's Order 3110.32 XVII for further information.

B. **Directed Remote Work (Management-initiated Remote Work)**. Remote Work in this situation is voluntary. However, a program or region may have a mission need for a position or employee to remote work from a specific location (e.g., to be closer to inspection sites). In this Article, such arrangements will be referred to as "Directed Remote Work" or "Management-initiated Remote Work." Such Directed Remote Work arrangements are not solely for the convenience or at the request of the employee.

Management needs to consider the voluntary nature of Remote Work before implementing a directed Remote Work arrangement. Directed Remote Work obligates the Agency to suitably equip the employee to perform the work associated with the Remote Work location. A Remote Work agreement must be completed for a Directed Remote Work arrangement. Please refer to the Agency's Order 3110.32 for further information.

C. **Remote Work**. Remote Work is a type of alternative work arrangement by which an employee is scheduled to perform work within or outside the local commuting area of an agency worksite and is not expected to report to an agency worksite on a regular and recurring basis. *Remote Work Location* (RWL). The Remote Work Location (RWL) is an approved work location other than the Official Agency Worksite. An RWL will generally be a single location (e.g., a residence), a group of locations (e.g., a campus, industrial park), or other approved worksite, and may or may not be within the LCA (as that area is defined in 5 CFR 351.203) of the Official Agency Worksite. An employee may maintain other approved alternative work locations (AWLs) in addition to the RWL. For the purposes of this Article, the RWL is the employee's Official Worksite.

D. **Official Worksite***:* When conducting Remote Work, the Official Worksite for location-based pay purposes is where the employee is performing their position of record as determined under 5 CFR 531.605.

E. **Official worksite** is the "official duty station" as that term is used in 5 USC 5305(i).

F. **Position of Record**. An employee's official position 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. **Remote Work-Ready Employee***.* Any employee who is Telework-Ready, has entirely portable work that does not routinely require in-person activities at their Official Agency Worksite, is generally not expected to report to the Official Agency Worksite, and has a Remote Work Agreement currently in effect.

Section 4. Guidelines and Operating Principles

A. Remote Work arrangements may be initiated by an employee requesting to work remotely or by the agency posting the position as one that will be performed remotely. An employee may request arrangements to conduct work as Remote Work at any time. Remote Work is when an employee is scheduled to perform telework work within or outside the local commuting area of the Official Agency Worksite and is not expected to report to the agency worksite on a regular and recurring basis (also known as full-time

telework).

B. The governing rules, regulations and policies regarding time and attendance, overtime, leave, flexible and compressed work schedules, including all requirements for supervisory approvals, are unchanged by participation in Remote Work.

C. Injuries that arise in the performance of duty at the RWL are subject to the Federal Employees' Compensation Act.

D. All employees with Remote Work agreements may be required to continue work from their RWL or from an approved AWL when EPA offices are closed subject to Section 6, except as provided for in 5 CFR 630.1605(a)(2).

E. Employees must ensure that, when working from the RWL, the employee is reasonably available to colleagues, supervisors, and the public to the same extent as if they were at an Official Agency Worksite.

F. Employees working from an RWL must work with their supervisor to overcome problems or obstacles as they occur - including interruptions in communications caused by the failure of Agency equipment/technology and internet or telephone outages - so that the work of the Agency can be accomplished in an effective and timely manner.

G. If the employee is unable to work at the RWL due to circumstances beyond their control, the employee should contact their supervisor to request the appropriate leave, including weather and safety leave or administrative leave, where applicable. Contact shall be made in a timely manner, where possible, within thirty (30) minutes of such an inability, absent extenuating circumstances.

H. Remote Workers will receive the same treatment and opportunities as non-Remote Workers (e.g., work assignments, awards and recognition, development opportunities, promotions). Where assignments, development opportunities, etc, can more effectively be performed at the official Agency worksite, it is the employees' and supervisors' shared responsibility to discuss whether the employee wants to be considered for such opportunities even when it may mean ceasing remote work status, as described below. Employees are expected to perform and accomplish all assignments and tasks associated with their position of record, whether in the office or at an approved remote or alternative work location.

I. Remote Work employees should be available to be recalled to the Official Agency Worksite with reasonable notice. Remote Work Within Commuting Area employees may be recalled to the Official Agency Worksite generally with no less than 24 hours advance notice. The Agency may recall Remote Work Within Commuting Area employees with less than twenty-four (24) hours' notice when recall is essential for the Agency to meet its mission. Where logistical issues or matters of the employee's health and safety mean

the employee is unable to come to their Official Agency Worksite, the employee may be asked to request leave or conduct assigned portable work. Remote Work Outside Commuting Area employees may be recalled to the Official Agency Worksite with ample time to make travel arrangements and obtain approvals. The Agency may recall Remote Work Outside Commuting Area employees with shorter notice when recall is essential for the Agency to meet its mission and the employee has ample time to make travel arrangements and obtain approvals.

J. Employees approved for Remote Work may request temporary change in work status (e.g., reporting to the office on a regular basis) to support a temporary shift in work or a special project to be approved at the direct supervisor level. Upon completion of this temporary shift or project, the employee will return to their Remote Work status.

Section 5. Change in Operating Status

Early dismissals at the Official Agency Worksite when the Agency announces early release for holidays and special events, shall be granted to those working at a RWL to the same extent as granted to those employees reporting to the Official Agency Worksite in person. Special events do not include disruption to normal office operations (e.g., national or local emergency, emergency event involving inclement weather, or any situation with the potential to disrupt normal office operations).

Section 6. General Provisions

It is recommended that supervisors and employees coordinate in advance if there is an anticipated severe weather event that is anticipated to impact the RWL. If an employee working from an RWL also has an AWL that is accessible, that employee and their supervisor should coordinate to ensure that the employee can perform portable work and has the necessary equipment to work from the AWL to the extent possible. When severe weather or other circumstances prevent work from the RWL and the AWL a Remote Workers may be granted administrative leave by their supervisor or manager pursuant to 5 CFR 630.1605(a)(2).

Section 7. Responsibilities

A. **Supervisors** are responsible for the overall management of Remote Work within their work units, including:

1. Receiving Remote Work requests from employees, identifying any missing items in the request, reviewing the request, and determining whether to forward it for consideration by the deciding official within a reasonable timeframe (i.e., normally within 7 calendar days).

2. Coordinating with the employee so the local HR office and the SSC have relevant information to timely implement appropriate locality adjustments (if any) for the

RWL.

3. **Monitoring Performance.** Appropriate management controls and reporting procedures must be in place before employees begin remote work assignments. Remote workers, teleworkers, and non-teleworkers must be treated the same for the purposes of monitoring and assessing job performance; however, supervisors may need to utilize different mechanisms for communicating with remote working employees.

4. Ensuring Remote Work employees are provided the equipment necessary to successfully telework, including laptop computers and communications technology (such as Microsoft Teams or a successor program) needed to communicate with supervisors and colleagues.

B. **Employees** are responsible for:

1. Application Process:

   a. Submitting a completed Remote Work Agreement (Appendix A) to their supervisor clearly explaining:
      i. How the employee can perform all their duties as effectively from the RWL as from the Official Agency Worksite; and
      ii. An explanation of how approval of the request will not diminish the agency's ability to accomplish its mission and meet its operational goals.
   b. Performing an assessment of the RWL and answering the required questions on the Safety Checklist (Appendix B); and
   c. Coordinating with their supervisor, local HR office, and HR SSC to determine the appropriate locality pay for the Remote Work Location.

2. While working remotely:

   a. Informing their supervisor in advance of any anticipated change in their remote work location and submitting request for change to Remote Work Agreement;
   b. Recertifying employee telework agreements, if directed.
      i. When there is a change in RWL;
      ii. Every 12 months (or less frequently, at the discretion of management); or
      iii. To synchronize annual recertifications if a particular organization's annual recertification time period is sooner than 12 months, so all employees can be recertified at the same time;
   c. Communicating as needed with their supervisor to receive assignments and complete work in accordance with supervisors' instructions;

d. Adhering to the terms and conditions of the applicable, approved Remote Work Agreement;
e. Maintaining communication with the supervisor while working remotely;
f. Working with the supervisor to overcome problems or obstacles as they occur so the work of the organization is accomplished in an effective and timely manner;
g. Complying with EPA/Regional/Office policies for information technology security and use of government equipment/materials;
h. Working to the extent feasible in the event the Agency announces changes to its operating status, including changes to dismissal and closure procedures; and
i. Being available to report to the Official Agency Worksite on a non-routine basis following adequate notice as defined above.

C. **Deciding Officials (or their designees)** are responsible for:

1. Approving or denying Remote Work Agreements in a timely manner (generally not to exceed 7 days); and

2. If disapproved, the Deciding Official (or their designee) must respond to the employee in writing with the reasons the request was denied.

Section 8. Eligibility

A. Employees and their supervisors should work together to determine if and when a Remote Work arrangement is appropriate based on eligibility, based on equitable, function-based criteria, including job functions and not managerial preference. Employees may be authorized to use Remote Work if:

1. All of the employee's work is portable;
2. Tasks or work assignments can be performed at least equally effectively at the remote work location (RWL);
3. Approving the RWL would not require reassignment of current work or tasks to other staff;
4. Employee's work rarely requires access to in-office resources;
5. There will be no foreseen disruption to communication with internal or external clients/customers (e.g., public, state and local entities, stakeholders) customer service with any agency customers or stakeholders (e.g., public, states, industry);
6. The employee's position does not require in-person interface with management officials or other colleagues on any routine basis;
7. The employee has a demonstrated track record of meeting performance plan objectives and working without close in-person supervision (including conduct of work during the COVID19 pandemic);
8. Technology needed to perform duties is available and fully functional; and

9. The employee continues to comply with the terms of his or her written and approved Remote Work Agreement.

B. **Remote Work for Newly Hired Employees**: The approval of remote work for new employees is based on job functions as well as at management's discretion. The basic telework and remote work eligibility criteria must be met, required training and forms completed and appropriate senior management approvals obtained prior to the commencement of remote work. At a minimum, management should consider the employee's:

1. Previous federal service, if any;
2. Length and nature of previous work experience; and
3. Any previous experience teleworking.

Portable work for the purpose of Remote Work is the same as defined in the Telework Article.

Section 9. Certification

By signing the Remote Work application, the employee is certifying all eligibility criteria set forth above is met.

Section 10. Management Consideration

A. **Requests for Remote Work.** Requests for Remote Work must be submitted through the employee's supervisor to the deciding official (or their designee) as explained above. Requests for remote work will not be unreasonably denied.

B. The supervisor and approving official must evaluate and document the following when assessing requests for Remote Work. The Parties agree certain costs to the Agency may be *de minimis* for those Remote Workers Within the Local Commuting Area.
1. Employee eligibility;
2. The employee's current and likely future duties;
3. Whether or not the employee is likely to retain remote work eligibility in the future;
4. Working with the Federal Employee Relocation Center Office of the Chief Financial Officer to determine relocation costs, if applicable;
5. The costs associated with any anticipated recall to the Official Agency Worksite;

6. How accessible a RWL is to an Official EPA facility for government furnished equipment servicing and repair; and
7. The employee's work assignments are independent and require minimal in-person collaboration or review.

Section 11. Records Management

A. When working at an RWL, employees must continue to comply with EPA's Records Management Policy and any other applicable policies on using, creating, maintaining and disposing of records.

B. Employees must also comply with the Federal Records Act, the Freedom of Information Act (FOIA), the terms of litigation holds, discovery in litigation, and any requests for records by the Office of Inspector General. Any record removed from an official agency worksite for Remote Work assignments remains the property of EPA and any information generated from Remote Work assignments is the property of EPA. Employees are responsible for maintaining the integrity of their records and for producing records on demand.

C. Agency work maintained on an employee's personal computer or on any portable media (e.g., disks, flash drives) may be subject to litigation discovery or FOIA even if it is not considered a record under the Federal Records Act.

Section 12. Equipment, Facilities, and Travel from RWL

F. All employees with an approved Remote Work agreement will be provided Government Funded Equipment (GFE) as provided in Section XVII, Telework Article. Supervisors may authorize additional GFE for the individual remote worker as necessary to meet mission needs if budget permits.

G. Any equipment or other items provided by the government remain the property of the government and must be managed and handled in accordance with Government-wide and agency-specific policies and guidance. Employees who have an Agency-issued laptop or mobile phone assigned to them may use such equipment at a RWL and shall take reasonable safeguards against theft and damage when they do so. All Agency-issued equipment and supplies remain the property of the Agency, and EPA remains responsible for service and maintenance of that equipment.

H. If the position being conducted remotely was posted or determined to be one for which work would be performed remotely, the Agency shall provide the employee with equipment needed to effectively perform the duties of the position, including an agency-supplied laptop computer. The Agency will provide necessary office supplies that are regularly available at the Agency (such as paper, pens, drives, envelopes, tape, staples, etc.) that can be obtained at the employee's Official EPA Worksite. Employees may be supplied with additional equipment through the established Reasonable Accommodations process.

I. If an employee furnishes their own equipment/workstation at the AWL, the government will not reimburse the employee for the purchasing costs of the equipment/workstation.

The EPA is under no obligation to service or maintain equipment belonging to the employee, even if the employee uses it for Agency work. The employee is responsible for the maintenance, repair and replacement of privately-owned equipment.

J. **Reimbursement for RWL expenses**. EPA will not reimburse employees for any operating costs, home maintenance, utility costs or other residential costs, or for any telephone or internet service.

K. The Agency remains responsible for service and maintenance of Agency equipment. For employee's outside of the Local Commuting Area where Agency equipment is in need of repair and upgrade, the Agency will make all reasonable efforts to initiate repairs and upgrades remotely. However, should in-person assistance be required, managers and employees will work together to make arrangements to ensure that repairs and upgrades can be made expeditiously; this may include providing temporary equipment and enabling shipping of inoperable and repaired equipment. In consultation with the employee, supervisors will make determinations over questions such as 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. Employees within the Local Commuting Area may be required to report to the Official Agency Worksite for service and maintenance of Agency equipment.

L. **Travel.** Official travel to the Official Agency Worksite will not be reimbursed unless recalled, directed, or approved by the supervisor. The Agency will reimburse the employee for travel costs when the employee is recalled, directed, or approved to report to the Official Agency Worksite or other work locations (such as inspection sites) when the travel is for the benefit of the Agency.

Section 13. Process and Procedures for Remote Work Agreement

A. Employees who wish to remote work, must complete training prior to submitting their request. The Parties agree to utilize documentation of Telework Training until the Agency develops specific Remote Work training.

B. The Remote Work Agreement shall cover the terms and conditions of the remote work arrangement, including but not limited to schedule, adherence to all applicable guidelines, policies for timekeeping and leave, and responsibilities for government equipment and records.

C. The supervisor must review the proposed Remote Work Agreement on an individual basis and determine whether to forward the agreement to the deciding official (or their designee). This review should generally be completed within 7 calendar days. If the supervisor determines not to forward, the supervisor shall inform the employee of the reason(s) in writing. If forwarded to the authorizing official, the supervisor shall inform the employee. All approvals and disapprovals of requests for Remote Work must be in

writing by the deciding official (or their designee). All approvals will include a statement that an employee meets all required criteria described in this Article. All disapprovals will include a statement regarding the basis for disapproval, including cost considerations if applicable. The supervisor shall provide the employee with a signed copy of the Remote Work Agreement.

Section 14. Work Schedules and Time Accounting

A. **Work Schedules:** Employees will maintain reasonable hours for the timezone of their Official Agency Worksite. Eligible work schedules for employees working remotely are the same as those for employees working at the official worksite. Work schedules may also include fixed times during the day for supervisor/employee conversations via telephone or video conference to ensure ongoing communication.

B. Time worked at a RWL should be accounted for as: RWHME: Remote Work Home or any successive coding in the Agency's Time Reporting System (People Plus).

Section 15. Reasonable Accommodations through Remote Work

Remote Work can be used as a way to accommodate qualified employees with disabilities under the Agency's reasonable accommodation process. Employees seeking to Remote Work as a reasonable accommodation should contact their immediate supervisor or the national or local reasonable accommodation coordinator. Employees Remote Working as a reasonable accommodation will follow the general requirements contained in this Article to the extent such requirements are consistent with the reasonable accommodation. Employees must, at a minimum, submit a Remote Work application, record of completion of training, and safety checklist. Employees approved to Remote Work as a reasonable accommodation are required to have a valid, signed Remote Work agreement.

Section 16. Changes, Review and Termination of Remote Work Agreements.

A. By the Employee

    1. Employees may request to modify or adjust Remote Work arrangements.
    2. Employees may withdraw an application for Remote Work or terminate an approved Remote Work Agreement without prejudice at any time and return to the Official Agency Worksite. To ensure clarity, the employee must notify the supervisor in writing and identify the expected date of change and the supervisor should confirm receipt of the notice in writing.
    3. If an employee terminates a Remote Work agreement, the employee is responsible for all costs associated with returning to the commuting area of the Official Agency Worksite.

B. By the Agency

1. Remote Work arrangements may be modified, adjusted, or terminated by management in the following circumstances:
    a. The employee no longer meets the eligibility criteria;
    b. The employee engages in misconduct related to working from an RWL (including statutory telework restrictions);
    c. The employee fails to comply with this Article or with the terms of the employee's Remote Work agreement; or
    d. If the employee's work changes in a more than *de minimis* manner (*e.g.*, position, position description, work assigned, RWL), the supervisor and employee may revisit the Remote Work Agreement.
2. Process for terminating a Remote Work Agreement:
    a. The reason for Remote Work termination will be documented, signed by the deciding official (often the employee's supervisor), and furnished to the affected employee.
    b. Remote Work Termination Notice:
        i. If related to a directed change in position or work assignments, management will generally provide a minimum of 45 calendar day notice, depending on work exigencies.
        ii. If related to the following, management will generally provide a minimum of one pay period notice:
            (a) Significant documented failures to comply with the terms of the Remote Work Agreement or this Article; or
            (b) Repeated documented failures to comply with the terms of the Remote Work Agreement or this Article.
3. Immediate Termination of a Remote Work Agreement may result from any of the conduct described below:
    a. The employee has any documented performance or conduct deficiencies within the preceding 12 months that was related to the employee's Remote Work status including, but not limited to, letters of reprimand, written warnings, or leave restrictions;
    b. The employee has been officially disciplined for being absent without leave for more than five days in any calendar year;
    c. The employee has been officially disciplined for viewing, downloading, or exchanging pornography, including child pornography, on a federal government computer or while performing official federal government duties; or
    d. The employee has been disciplined for misuse of a government computer that the
    supervisor determined was related to the employee's Remote Work status, within the prior five years. The suspension from Remote Work will be based on the severity of the offense and may not exceed five years.

4. Employees will be permitted liberal leave to attend to any arrangements if their remote work agreements are terminated.

Article 35: Childcare Facilities

Section 1.

The Parties agree that childcare facilities are beneficial to employees and the Agency.

Section 2.

Provisions for childcare facilities is a matter for local level negotiations subject to applicable law and regulations.

Article 36: Fitness and Wellness

Section 1.

The Agency, within budgetary limitations, agrees to provide a wellness/fitness program. This is a matter for local level bargaining. The Parties recognize that some of the activities of the Program developed and implemented pursuant to this Article may involve, in part or in whole, employee financial contributions as well as use of non-duty hours for participation. The Parties mutually agree that employee wellness/fitness is ultimately the individual responsibility of each employee.

Section 2.

Employees who are required by the Agency to maintain a high level of physical fitness for the performance of their duties may be granted a reasonable amount of time for exercise, up to three (3) hours per week. This matter is delegated to the local level for bargaining consistent with Section I of this Article.

Article 37: Midterm Bargaining

The Parties agree that there are circumstances when negotiations are appropriate during the life and term of this Agreement. Only new issues or issues not covered by this MCBA are subject to midterm negotiations. The purpose of this Article is to establish a complete and orderly process to improve efficiency and expedite midterm negotiations in the interests of the Agency, the Union, and employees. When the Agency, at any level, proposes a negotiable change, including but not limited to a personnel policy, practice, working condition, condition of employment, and procedures and appropriate arrangements associated with the exercise of a management right, the Union may demand to bargain.

Section 1. 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), or its successor division, may negotiate and execute a mid-contract memorandum.
B. **Demand to Bargain and Proposals:** If a party intends to exercise its bargaining rights regarding a proposed change, the party must demand 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. It is understood the Agency is not required to negotiate its decisions that do not adversely affect the bargaining unit.

C. Notice of proposed changes will be provided to the Council President. In matters exclusive to a local union or geographic location (e.g., reorganizations or office moves) notice of proposed changes will be provided to the Local President of the affected bargaining unit. AFGE is responsible for keeping the Agency apprised of which Local Presidents represent which bargaining units through written notice to the Agency's Labor and Employee Relations Director or successor office.

Section 2. Content of Agency Notice

A. The Agency-written notice must include:
    1. The nature and scope of the proposed change;
    2. The proposed date of implementation or planned timing of the change;
    3. Potential impact on bargaining unit employees; and
    4. The Agency's point of contact.
B. The Agency may include a pre-scheduled briefing date and time, in which case the timeline in Section 4.B. will apply. If the Agency pre-schedules a briefing it will occur within six (6) working days of the notice.

C. Written Notice will be provided through email. The Agency will provide Written Notice no later than fifteen (15) days prior to implementation of the proposed change, if possible.
D. Before implementing any negotiable proposed change, the Agency will meet its obligations under the law to provide notice. Barring applicable exceptions, the Agency will meet its obligation to bargain, which generally means negotiating to an agreement with the Union before implementation or proceeding to impasse procedures.

Section 3. Communications and Timeframes

A. All notices and written communications will be by email.
    1. If the Union demands to bargain, it shall inform the Agency within seven (7) working days from receipt of Written Notice.
    2. Within ten (10) working days from receipt of Written Notice, the Union shall submit written proposals unless a briefing has been requested.
    3. If the Union requests a briefing, such request must be within three (3) workdays from receipt of Written Notice.
    4. If a briefing is requested, the Agency will schedule the briefing to occur within three (3) workdays of the Union's request.
    5. If the Union requests a briefing, the Union's written proposals shall be due within four (4) working days of the briefing.
B. Timeframe to Begin Bargaining: Bargaining shall commence as soon as possible, but no later than five (5) workdays after the Union submits its proposals. The Agency will propose its counter at the initial bargaining meeting.
C. By written agreement in advance of the deadlines, the parties may mutually agree to an extension of these time frames.

Section 4. Re-opening this MCBA

The Parties agree that there may be circumstances under which reopening this MCBA is beneficial. Reopening of this MCBA is covered in the Duration Article of this Agreement.

Section 5. Local Bargaining

There are circumstances where local bargaining is appropriate. Local negotiations will follow the Mid-Term Ground Rules below.

Section 6. Mandatory and Permissive Subjects

The Parties agree that, where appropriate, topics covered by 5 USC 7106(b)(1) will be bargained pursuant to this Article.

Section 7. Mid-Term Bargaining Ground Rules

The following ground rules will govern all mid-term bargaining. Upon mutual agreement of the parties these ground rules may be further negotiated.

A. Minimize Bargaining Costs: The parties will minimize Agency and Union expenditures during negotiations.

B. All negotiations will be virtual unless otherwise agreed by the Parties.

C. Face-to-Face Negotiations will occur by mutual agreement as follows:

1. Negotiations will generally take place at an Agency-provided location at the geographical location of the Region/Office. The location for national negotiations will be determined by the Parties.
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 and to account for all time spent on official time and for related negotiations travel.

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, including 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. At any point in the bargaining process, the party proposing the change may elect to withdraw any proposed change, in whole or in part. Negotiability of proposals can be submitted for mediation and arbitration if necessary.

G. Number of Negotiators/Spokesperson Authorities/Alternates:
1. Each party will be represented at 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.
2. The number of negotiators for either Party shall not exceed three (3) plus the notetaker for each Party.
3. Each party will designate its own representatives. The parties will exchange the names of their bargaining team members for the specific issues to be negotiated no later than 3 workdays prior to the commencement date of bargaining.

4. Alternates:
    i. Alternates may substitute for team members with advanced notice to the other side.
    ii. Such alternates will be entrusted with the right to speak for and bind the members for whom they substitute.
5. Inability to have all team members present will not delay negotiations.

H. Mid-Term Bargaining Schedule:

1. Negotiations will normally be held Tuesday through Thursday. Participants' work schedules may be adjusted to allow for an eight (8) hour day, five (5) day work week, full week of bargaining and to account for all time.
2. Bargaining sessions will normally commence at 10:00 a.m. and conclude no later than 5:00 p.m. local time, with thirty (30) minutes allocated for lunch and two (2) fifteen (15) minute breaks.

I. Caucus: Either team may request a caucus and may leave the negotiating room to caucus. The time needed for caucus will be communicated by the requesting Party and agreed upon by all Parties prior to leaving the negotiating room. 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.

J. If no agreement is reached by the parties on a particular issue after either Party has presented their "last and best offer" either party may involve an FMCS mediator and mediation sessions will be scheduled as soon as practicable. The Parties will remain in mediation until such time the mediator releases the Parties or fourteen (14) calendar days from commencement of mediation, whichever is earlier.

Any issues to which agreement cannot be reached after fourteen (14) calendar days from the commencement of mediation with the FMCS mediator may be submitted by either or both parties to the FSIP.

K. Memorializing Agreement: Agreements will generally be entitled Memoranda of Understanding (MOUs)/Memoranda of Agreement (MOAs). Upon agreement, the chief negotiator for each Party will electronically sign and date the MOU/MOA. The Parties will ensure both Parties have a copy of the fully signed final agreement.
    1. All MOUs/MOAs signed by the parties and entered into during the life of the parties' MCBA will be considered an addendum to this agreement and subject to its duration unless otherwise agreed by the Parties.
    2. An electronic copy of all local MOUs/MOAs will be provided to Agency's LER Director and the AFGE Council 238 President or their designees.
    3. All MOUs/MOAs signed by the Parties are subject to Agency Head

Review, consistent with 5 U.S.C. 7114.

L. Official Time: Official time for negotiations under this Section shall be provided pursuant to 5 U.S.C. 7131

1. The union negotiators will be allowed reasonable and necessary official time for midterm bargaining, including for attendance at related mediation and impasse proceedings. Such time will be administered in accordance with the Union Rights and Duties Article of this MCBA.
2. Time for preparation, research, negotiations and bargaining for an issue subject to midterm bargaining will be up to eight hours per day for up to two union officials who are not already in a 100% official time status, unless otherwise requested by the Union and approved by the Agency. Such time will be administered in accordance with the Union Rights and Duties Article of this MCBA. The Parties further agree the use of subject matter experts (SME)s is beneficial for negotiations and related preparation such SMEs will participate on duty status.

M. Impasse: Any bargaining impasse not resolved through the FMCS may be submitted by either party to the Federal Services Impasses Panel (FSIP).

N. Observers.

1. For negotiations at the Local level, each party may have up to five (5) observers during each bargaining session. For negotiations at the national level, each party may have up to five (5) observers during each bargaining session.
2. The parties will exchange a list of observers, including the date, the portion of the day the observer will attend, and association (e.g., EPA employee, AFGE members, or AFGE representative) by no later than one (1) hour prior to the beginning of the negotiations
3. Observers are not entitled to official time and the agency will incur no costs due to observers.
4. Observers may include only EPA employees, EPA retirees and AFGE representatives unless approved by both parties. All observers are obligated to introduce themselves by name and position upon request or they may be removed from the meeting by either party.
5. Observers may only observe via Teams or in-person. If in-person observers are limited by available space, then observers may observe via a hybrid option (Teams). Observers will not participate directly in these negotiations, including talking or utilizing the chat feature in MS Teams.
6. No recordings of negotiations may be made by observers, negotiators, or notetakers.

Article 38: Supplemental Agreements

The following supplemental agreements will run concurrently with this CBA or by their own terms if they are of a shorter or limited duration. Any supplemental agreements not explicitly articulated below will not continue in effect beyond the effective date of this CBA, unless mutually agreed in writing at the level of agreement of that MOU/MOA. Agreements involving an individual Grievant or when an individual BUE was a party are not considered to be supplemental agreements subject to this article.
The parties agree that any MOUs entered into and/or effective after this article is tentatively agreed to but before the effective date of this CBA, will continue based on their own terms or concurrent with the new CBA, whichever time period is shorter. These MOUs will include language reading, "This MOU is incorporated by reference into the Supplemental Article of the 2024 CBA. If any provision of this MOU is found to be in conflict with the CBA, the CBA will control." The parties' lead negotiators of the CBA will make reasonable efforts to communicate about agreements being negotiated or reached during this period.

Supplemental Agreements:

1. Between EPA Region 7 and AFGE Local 907 and NTEU Chapter 294 regarding Job Swap Program Guidance, dated October 29, 2013.

2. Between EPA and AFGE Council 238, NTEU, ESC, NAGE R1-240, R12-135, R5-55, and NAIL
   regarding Leave Bank (except that the "Whereas" clause is considered deleted as between EPA and AFGE), dated August 25, 2021.

3. Between EPA and AFGE Council 238 regarding EIF/IIJA, dated June 6, 2022. The Parties agree this MOU will expire on December 31, 2024.

4. Between EPA and AFGE Council 238 regarding EPA Attorney Bar Certification, dated April 4, 2024.

5. Between EPA and AFGE Council 238 regarding Remote Work Hiring Pilot, dated September 12, 2022.

6. Between EPA Region 4 and AFGE Local 534 regarding Reentry, dated April 4, 2024.

7. Between EPA and AFGE Council 238 regarding ASHRAE, dated February 7, 2024.

8. Between EPA Region 10 and AFGE Local 1110 regarding IT Provisioning, dated January 10, 2024.

9. Between EPA and AFGE Council 238 regarding Volunteer Grant Reviewers, dated May 23, 202

10. Between EPA and AFGE Council 238 regarding Contingency Planning, dated December 22, 2023.

11. Between EPA Region 5 and Local 704 regarding Westlake Security Matter, dated September 20, 2023.

12. Between EPA Region 5 and Local 704 regarding LCARD move, dated January 31, 2024.

13. Between EPA and AFGE Council 238 regarding Houston Lab Consolidation and Ada Lab Construction, dated March 29, 2024.

Seating:

14. Between EPA Headquarters and AFGE Local 3331 dated January 20, 2020.

15. Between EPA Headquarters and AFGE Local 3347 dated April 10, 2024.

16. Between EPA Region 1 and AFGE Local 3428 dated March 3, 2016/February 4, 2009.

17. Between EPA Region 2 and AFGE Local 3911 dated February 8, 2017.

18. Between EPA Region 3 and AFGE Local 3631 dated March 6, 2021.

19. Between EPA Region 7 and AFGE Local 907 dated April 11, 2012.

20. Between EPA Region 7 and AFGE Local 907 dated January 10, 2012.

21. Between EPA Region 8 and AFGE Local 3607 dated August 17, 2021.

22. Between EPA Region 10 and AFGE Local 1110, amendment dated November 17, 2011.

23. Between EPA Region 10 and AFGE Local 1110 dated October 1, 2019.

24. Between EPA Region 10 and AFGE Local 1110, Interim dated July 6, 2023/January 11,
2024, extension.

25. Between EPA (Ann Arbor) and AFGE Local 3907 dated October 24, 2022.

Space Savings:

26. Between EPA Region 3 and AFGE Local 363 dated March 16, 2022.

27. Between EPA Region 4 and AFGE Local 534 dated November 15, 2023.

28. Between EPA Region 5 and AFGE Local 704 dated August 8, 2023.

29. Between EPA Region 7 and AFGE Local 907 dated February 2, 2023.

30. Between EPA and AFGE Council 238 dated January 26, 2022.

Union Office Space:

31. Between EPA Region 10 and AFGE Local 1110 dated February 2, 2006.

Reorganizations:

32. Between EPA Region 10 and AFGE Local 1110 (Relocation of Maternal Wellness Room) dated December 20, 2022.

33. Between EPA Region 5 and AFGE Local 704 (July 28, 2023, reorganization) dated October 3,
2023.

34. Between EPA Region 6 and AFGE Local 1003 (ECAD and EJ, and ORA) dated February 15, 2024.

35. Between EPA Region 10 and AFGE Local 1110 dated February 27, 2024.

36. Between EPA and AFGE Council 238 (Office of Air and Radiation) dated March 1, 2024.

37. Between EPA Region 1 and AFGE Local 3428 (Environmental Justice Division) dated March 15, 2024.

Article 39: Duration

Section 1. General

A. This CBA shall remain in full force and effect until June 30, 2028. This Agreement may be extended in one (1) year increments thereafter by mutual agreement of the Parties.

B. If either Party desires to renegotiate this Agreement upon expiration, it will notify the other Party in writing between May 1, 2028, and May 31, 2028. The written notice may be accompanied by proposed ground rules.

Section 2. Mid-Term Reopener

A. Either party may serve the other party with written notice between March 1, 2026, and March 31, 2026, of its desire to reopen this CBA.

B. The Parties may reopen no more than three (3) existing Articles each, for a potential total of six (6) Articles if each party chooses to reopen three (3).

C. If this provision is exercised, negotiations will commence within thirty (30) calendar days after such notice or as may be otherwise mutually agreed upon by the parties and will follow the ground rules (Section 8, except Paragraphs F.) in this CBA's Midterm Article.

Section 3. Distribution and Publication of this CBA

A. The Agency will ensure that the CBA is placed on the Agency intranet site pursuant to the Union Rights article of the Parties' CBA. The Parties understand a reasonable amount of time will be needed for the Agency to ensure the agreement is administratively compliant (e.g., 508 compliance, formatting) before its publication.

B. All superseded CBAs will be removed or clearly marked as superseded. The Union will note to the Agency when any superseded agreements are discovered, including their locations.