# Collective Bargaining Agreement

Between

American Federation of State, County, and Municipal Employees

Local 3925


and

Farm Service Agency (FSA)

Risk Management Agency (RMA)

Farm Production and Conservation Business Center (FPAC BC)

Effective: September 19, 2024

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# PREAMBLE

**Section A.**

The Parties agree to mutually establish and maintain a work environment that ensures the integrity of the Federal service, promotes the most effective and efficient delivery of Agency programs and services, protects the interests of American taxpayers, promotes good workmanship and the principles of good management, protects human dignity, ensures equal and fair treatment of Employees, and to the extent practicable provides a work experience for all Employees that is personally challenging, rewarding, and that provides equal opportunity for professional growth and success.

**Section B.**

Employees and managers shall conduct themselves in a professional and business-like manner, characterized by mutual courtesy and consideration in their day-to-day working relationship.

**Section C.**

The Parties, especially Union representatives and first-line supervisors, are encouraged to meet as necessary to informally discuss and attempt resolution of matters or problems of concern to either party, including, but not limited to, Employees' concerns or dissatisfactions and problems of Agreement interpretation and administration.

**Section D.**

The Parties intend to establish procedures to accommodate the Union's legitimate need to perform representational activities specified in this Agreement and as permitted by law while accommodating the Employer's legitimate interest in ensuring no unreasonable disruption of the Employer's ability to carry out its critical day-to-day operations and perform its overall mission.

**Section E.**

The Parties agree that most grievances and complaints should be resolved in an orderly, prompt, and equitable manner that will maintain the self-respect of the Employee and be consistent with the principles of good management and public interest.

**Section F.**

The definitions of all terms in this Agreement shall be consistent with definitions of identical terms at 5 United States Code (U.S.C.) 7103, or other relevant provision of law, as applicable, unless otherwise specified in this Agreement.

## ARTICLE 1: PARTIES TO THE AGREEMENT, RECOGNITION, AND DEFINITION OF BARGAINING UNIT

### Section A. Parties to the Agreement

The Parties to this Agreement are the U.S. Department of Agriculture (USDA), Farm Production and Conservation Business Center (FPAC-BC), Farm Service Agency (FSA), Risk Management Agency (RMA) in the Washington, D.C. Metropolitan Area, hereinafter known as "Employer," or "Agency," and the American Federation of State, County and Municipal Employees (AFSCME), District Council 20, Local 3925, hereinafter known as the "Union."

### Section B. Unit of Recognition

The unit of recognition covered by this Agreement is that unit certified by the Federal Labor Relations Authority in Case No. WA-RP-23-0008. The Employer recognizes the American Federation of State, County and Municipal Employees, District Council 20, Local 3925, as the exclusive representative of all Employees (hereinafter sometimes referred to as "Employees" or "Bargaining Unit Employees" [BUEs]) in the bargaining unit as defined below. A copy of the certification is attached as Appendix 1.

### Section C. Bargaining Unit Coverage

Included: All professional and nonprofessional employees employed by the U.S. Department of Agriculture, Farm Production and Conservation Business Center, Farm Service Agency, and Risk Management Agency in the Washington, D.C. metropolitan area. The Washington, DC Metropolitan Area for this bargaining unit is defined as locations in the locality pay area (Washington – Baltimore – Arlington, DC-MD-VA-WV-PA) as established by the Office of Personnel Management.

Excluded: All Management officials, supervisors and employees described in 5 U.S.C. 7112(b)(2),(3),(4),(6) and (7). Any Farm Service Agency State Office and County Office level employees in Maryland, Virginia, Pennsylvania, or any other States. Any Risk Management Agency Regional Office and Compliance Office level employees in Maryland, Virginia, Pennsylvania, or any other States.

## ARTICLE 2: EMPLOYEE RIGHTS

### Section A.

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

1. to act for the Union in the capacity of a representative and the right, in that capacity, to present the views of the Union to heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities;

2. to engage in collective bargaining with respect to conditions of employment through representatives chosen by Employees.

### Section B.

Each Employee has the right to be represented by the Union at any meeting when the Employee has a complaint concerning conditions of employment.

### Section C.

Employees will be provided annual notification of the right to have Union representation at any investigative meeting that may result in disciplinary action. See sample letter in Appendix 2.

### Section D.

1. Each Employee has the right to be represented by the Union at any Management-initiated investigative meeting that may result in disciplinary action, or that the Employee believes may result in disciplinary action and shall be given the opportunity to obtain such representation, upon request.

2. Each Employee will be notified of their right to Union representation prior to, and no later than, the onset of any investigative meeting that may result in disciplinary action.

**Section E.**

An Employee may be represented by a representative of the Employee's own choosing, in any employment-related appeal action not under the negotiated grievance procedure. The Employee may exercise grievance or appellate rights established by laws, rules, or regulations. When exercising these rights and the rights under the negotiated Agreement, Employees will be granted a reasonable amount of official time for initiating, reviewing, preparing, presenting, and participating in the grievance process, in accordance with Articles 43.

**Section F.**

Employees covered by this Agreement may, without fear of penalty or reprisal, engage in the disclosure of information which the Employee reasonably believes evidences a violation of laws, rules, or regulations; or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health or safety, in accordance with applicable laws and regulations.

**Section G.**

Each Employee has the right to file a complaint or grievance, act as a witness, and exercise any appeal or other right granted by laws, rules, regulations or this Agreement without fear of restraint, coercion, discrimination, or reprisal.

**Section H.**

Employees shall have the right to conduct their private lives as they see fit, and to engage in outside activities and employment of their own choosing, in accordance with applicable laws and government wide regulations.

**Section I.**

Copies of the rules, regulations, and policies under which Employees are obligated to work will be available at each building in which Employees regularly work.

**Section J.**

Employee counseling or cautions on conduct or unacceptable performance, or verbal warnings will be conducted in a setting that protects the Employee's confidentiality.

**Section K.**

In accordance with applicable laws, an Employee may review any and all records about themselves upon request, and will be given copies of the records upon request. Records maintained on an Employee that are not maintained on a permanent basis, will be removed from official records in accordance with the Government's retention schedule unless otherwise specified in this Agreement. Records that exceed the applicable retention schedule will not be used to initiate disciplinary or other adverse action. The removed records will be destroyed or given to the Employee upon the Employee's request.

**Section L.**

Employees have the right to use official time to meet with their Union representative for the purposes of and under the procedures established in Article 43 of this Agreement.

**Section M.**

Each Employee has the right to choose whether to participate in federally-sanctioned charitable and/or investment activities including, but not limited to, CFC, Savings Bond drives, and the like, freely, without coercion, and without fear of reprisal. Each Employee also has the right to have their choices made and held in confidence.

**Section N.**

Equal Employment Opportunity - See Article 27 for additional information on Employee rights.

**Section O.**

In dealings between Management and Employees, both Parties shall treat each other with dignity and respect. For example, there should be no verbal abuse. In addition, Employees will be dealt with in a fair and equitable manner. When the Agency wishes to discuss matters of misconduct or of a sensitive nature with an Employee, it should be done in private, away from other Employees. In accordance with this Agreement, the Employee shall have the right to exercise the option to request a Union representative.

**Section P.**

Each Employee has the right to an office environment free from all forms of harassment (including bullying) to include any form of unwelcome conduct, pervasive, persistent, and unsolicited verbal, non-verbal, written, or physical conduct that is offensive and could alter the affected Employee's terms and conditions of employment.

## ARTICLE 3: UNION RIGHTS AND RESPONSIBILITIES

### Section A.

The Union is the exclusive representative of the Employees in the bargaining unit and is entitled to act for and negotiate collective bargaining agreements covering these Employees. The Union is responsible for representing the interests of all Employees in the bargaining unit without discrimination and without regard to Union membership, in accordance with the Federal Labor Management Relations Act (FLMRA) and interpretive case law.

### Section B.

For the purpose of administering this Agreement, the Employer agrees to recognize representatives of the Union, AFSCME District Council 20, AFSCME International and/or AFSCME designated or recognized private counsel.

### Section C.

The Union has the right to represent an Employee or group of Employees at any formal discussion between one or more representatives of the Agency and one or more Employees in the bargaining unit or their representatives concerning any personnel policy or practices or other condition of employment; or any examination of an Employee in the unit by a representative of the Agency in connection with an investigation if: 1) the Employee reasonably believes that the examination may result in disciplinary action against the Employee, and 2) the Employee requests Union representation.

### Section D.

The Union has exclusive right to represent Employees under the negotiated grievance procedure in this Agreement. An Employee or group of Employees may present a grievance or complaint without representation by the Union, provided that the Union is a party to all formal discussions and grievance proceedings. For written grievances, the Union will be given all grievance-related written documents within one business day after they are received or written by the Agency. The Union will be given copies of all decisions within one business day after the Agency signs the decisions. See Article 38 for additional information on Union Rights in this area.

**Section E.**

Reasonable Notice: The Union will be given reasonable notice of formal discussions concerning any grievance, personnel policy or practice, or other conditions of employment.

**Section F.**

Restraint: Union officials and representatives performing duties in consonance with this Agreement and the FLMRA will not be the subject to restraint, coercion, or reprisal, or discrimination as the result of performing such duties.

**Section G.**

Equal Employment Opportunity: See EEO Article 27, for additional information on Union Rights in this area.

## ARTICLE 4: MANAGEMENT RIGHTS AND RESPONSIBILITIES

A. Subject to § 7106(b) the Employer retains the right:

1. To determine the mission, budget, organization, number of Employees, and internal security practices of the Agency;

2. And in accordance with applicable laws --

a. To hire, assign, direct, layoff, and retain Employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against Employees;

b. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Employer's operations shall be conducted;

c. With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or from any other appropriate source; and

d. To take whatever actions may be necessary to carry out the Agency’s mission during emergencies.

## ARTICLE 5: DUES WITHHOLDING

### Section A. Authorization and Eligibility

Bargaining Unit Employees are authorized to effect voluntary allotment for the payment of dues subject to 5 United States Code (U.S.C.) 7115. Such dues will be deducted from an Employee's pay each pay period and remittances will be made each pay period to AFSCME District Council 20 in accordance with the procedures set forth in this Article.

### Section B. Procedures

If there should be a change in the dues structure or amount, the authorized Union official shall notify the appropriate Agency human resources official. The Agency human resources official shall add the AFSCME code (47) and promptly forward the new certification to the National Finance Center (NFC).

### Section C. Dues Withholding

In order to initiate dues withholding an Employee must complete and sign a SF1187, "Request for Payroll Deductions for Labor Organization Dues" (Appendix 3). This form must be submitted to the designated Union representative for signature, who will then forward the completed form to the appropriate HR Office via the Employee Care Center Portal (ECCP), or successor system) for processing. Dues will normally be withheld within two pay periods following receipt of Standard Form 1187 at the NFC.

1. The Agency shall certify the Employee's eligibility for dues withholding, insert the Union code (47), and process through the appropriate system.

2. Deductions will be made each pay period and remittances will be made on the Agency's pay day to the payee designated by the Union. A grace period of seven days will be permitted in unusual circumstances. The Agency will ensure that the NFC promptly forward to AFSCME District Council 20, a listing of dues withheld for the Union, which may be transmitted in a mutually-agreeable electronic format. The listing shall be specific to the Union and shall show the name of each member Employee from whose pay dues were withheld, the last four numbers of the Employee's Social Security number, the amount withheld, the code of the employing Agency, and the number of the local to which the

Employee belongs. The listing will be in alphabetical order of the Employee's last name. The listing shall be summarized to show the number of members for whom dues were withheld, total amount withheld, and amount due to the Union. The list will also include the name of each Employee member for the Union who previously made an allotment for whom no deduction was made that pay period, whether due to leave without pay or other cause. Such Employees shall be designated with an appropriate explanatory term.

**Section D. Termination and Revocation**

1. After an Employee has been on payroll deduction of Union dues for one year the Employee may voluntarily revoke an allotment for the payment of dues by completing a SF-1188, and submitting it to the appropriate HR Office via the ECCP. HR shall process the revocation with NFC.

2. Upon receipt of an SF-1188, appropriate HR Office will provide the Union with a copy of the SF-1188. Only HR can send the SF-1188 to Payroll for the NFC to process this action.

**Section E. Administrative Errors**

Human Resources and Employee members have a mutual responsibility to assure timely revocation of an Employee's allotment for Union dues when the Employee is promoted or assigned to a position not included in the bargaining unit. If the dues allotments continue and the Employee fails to notify the Agency, the Agency may consider waiving erroneous payment to the Union in accordance with 5 United States Code (U.S.C.) 5584. The Agency will notify the Union of any erroneous payments and the reason for the error once the error is detected.

**Section F. Disputes**

The Parties recognize that problems may occur in the administration of this Agreement regarding the dues withholding program. The Parties agree to exchange names, addresses, and telephone numbers of responsible officials and/or technicians of the Union and Agency to facilitate resolution of problems. These individuals shall cooperate fully in an effort to resolve any issue relating to dues withholding under the terms of this Article. This does not constitute a waiver of any legal, regulatory, or contractual right. Grievances or other appeals concerning this Article will be filed with or against the Parties at the level of recognition.

## ARTICLE 6: WORK SCHEDULES/TOURS OF DUTY

### Section A. General

1. Employees and managers work to carry out the overall mission of the Agency, by providing professional, technical, and clerical services to internal and external customers. This article has been developed to give recognition to the mutual need for coverage and flexibility and to address issues and concerns that have arisen and, to the extent foreseeable, will arise as Employees and managers continue working together to accomplish the work of the Agency.

2. Employees may request authorization to work one of the four schedules established in this Article.

### Section B. Definitions

1. Agency Business Hours: The official business hours of the Agency are 8:15 a.m. to 4:45 p.m., Monday through Friday.

2. Core Hours: The core hours of the Agency are 9:30 a.m. to 3:00 p.m. Core hours are the hours for which each Employee is required to account on scheduled workdays by being on duty, scheduling some form of approved leave, or use of credit hours, or compensatory time off.

3. Credit Hours: Credit Hours are hours that an Employee works in excess of their basic required work hours so as to vary the length of a workday or workweek. Only Employees on a maxiflex or variable work schedule may earn credit hours.

4. Compressed Work Schedule (CWS): CWS is a fixed work schedule that enables a full-time Employee to complete the 80-hour biweekly work requirement in less than 10 workdays.

5. Gliding Schedule: A type of flexible work schedule in which a full-time Employee has a basic work requirement of eight hours in each day and 40 hours in each week, may select a starting and stopping time each day, and may change starting and stopping times daily within the established flexible hours.

6. Maxiflex Work Schedule: A type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time Employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an Employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.

7. Variable Day Schedule: A type of flexible work schedule containing core hours on each workday in the week and in which a full-time Employee has a basic work requirement of 40 hours in each week of the biweekly pay period, but in which an Employee may vary the number of hours worked on a given workday within the week within the limits established for the Agency.

8. Regular Workday:

    a. For Employees on a fixed schedule (Compressed Work Schedule 5/4/9 or 4/10): 6:00 a.m. to 6:00 p.m.

    b. For Employees on a flexible work schedule (Maxiflex or Variable Day Schedule): 6:00 a.m. to 6:30 p.m.

    c. Employees shall begin work each day no earlier than 6:00 a.m. but no later than 9:30 a.m. Employees must have completed their tour of duty no later than 6:00 p.m. or 6:30 p.m., as applicable. Any time worked before 6:00 a.m. or after 6:00 p.m. or 6:30 p.m., as applicable, must be approved overtime or compensatory time, unless approved as a special situation under procedures in Section G in this Article.

9. Standard Work Schedule: In the absence of any other approved work schedule, the standard work schedule will be 8:15 a.m. - 4:45 p.m. daily.

10. Workday Continuity: Unless otherwise approved, the workday must be completed in one shift.

11. Lunch Band: 11:00 a.m. to 2:00 p.m.

12. Flexilunch: Employees on a Maxiflex or Variable Day Schedule may, with advance supervisory approval, expand their lunch break within the lunch band

on any given day, provided arrival and/or departure times are adjusted an equivalent amount on that day.

13. Temporary Schedule Change: A temporary work schedule change, as used in this Article, means two pay periods or less time, except as noted in Section G.

14. Permanent Schedule Change: A permanent work schedule change, as used in this Article, means a time period that exceeds two pay periods.

**Section C. Alternative Work Schedules**

**Note:** See summary chart of available work schedules at the end of this Section.

1. The alternative work schedules for full-time and part-time Employees, except as noted, are as follows:

    a. Compressed Work Schedule (CWS): Employee works a fixed schedule which is established by the Employee and approved by the supervisor. Employees must work an 80-hour pay period of fewer than 10 workdays per pay period (Monday-Friday). Workdays must begin no later than 9:00 a.m. and must end no later than 6:00 p.m. Starting and ending times once established are fixed and do not change. Student temporary Employees (restricted to 20 hours per week), summer aides, and intermittent personnel are not eligible for CWS. Employees shall establish a schedule according to one of the following:

        (1) 5/4/9: Employee establishes a schedule to work eight 9-hour days, one 8-hour day, and designates one fixed compressed day off.

        (2) 4/10: Employee establishes a schedule to work eight 10- hour days and designates two fixed compressed days off.

    b. Maxiflex: Employee must work an 80-hour pay period of 10 or fewer workdays per pay period (Monday - Friday). An Employee on a Maxiflex schedule may take two days off in the same week. Workdays must be 6 to10 hours in length and must include all core hours on days scheduled to work, except for the last day of the schedule once the 80-hour requirement has been met. Employee requests to establish a schedule according to Section D below and may request to change the

schedule as often as each pay period, choosing the time they will arrive each day no earlier than 6:00 a.m. and no later than 9:30 a.m. Once a schedule is approved, Employee must account for hours in the schedule, except that arrival time may be flexed earlier or later up to ~~sixty (~~60 minutes on any given day, provided departure time is flexed an equivalent amount of that day. Actual arrival time under this 60-minute glide may only occur from 6:00 a.m. to 9:30 a.m. and the actual departure time must occur between 3:30 p.m. and 6:30 p.m.

c. Variable Day: Employee works a flexible schedule. The Employee, in consultation with the supervisor, may vary the length of the workday daily. An Employee must work at least six hours and no more than 10 hours on a given day. Employee must work 10 days per pay period (Monday - Friday). Employee must work 40 hours each work week, and 80 hours per pay period. Employee must account for core time (9:30 a.m. - 3:00 p.m.) on each workday, except for the last day of the week once the 40-hour work requirement has been met. The supervisor may require an Employee to work a particular schedule on the next or some subsequent day in light of circumstances in D.7.a. below.

2. Permanent schedules under this Section shall not be approved that cause more than one-quarter of a work unit's Employees (rounded up to the next whole number) to be scheduled for the same day off. Supervisors and non-bargaining unit Employees are NOT included in determining the number of Employees in the work unit for purposes of this Section. Employees are encouraged to consider requesting days off other than Mondays and Fridays.

3. Work schedules may not be combined to create an option not explicitly approved under the contract.

4. Employees shall not be approved to change from a flexible work schedule (Maxiflex or Variable Day) to a fixed work schedule (Compressed Work Schedule), or vice versa, more than one time per calendar year, except under special circumstances as approved by the supervisor

5. Work Schedules Available

| Standard Work Schedule (Fixed Tour) | |
|---|---|
| Tour: 8:15 a.m. - 4:45 p.m. daily, **if not designated** | |
| Works 8-hour days | |
| Nonworkday: | Ineligible |
| Glide: | Ineligible |
| Credit Hours: | Ineligible Flexilunch: Ineligible |
| Holiday Pay: | 8 hours |

| Compressed Work Schedule (Fixed Tour) | |
|---|---|
| Tour: | **Works** eight 9-hour days or four 10-hour days |
| Nonworkday: | 5/4/9: 1 day as established |
| 4/10: | 2 days as established |
| Glide: | Ineligible |
| Credit Hours: | Ineligible |
| Flexilunch: | Ineligible |
| Holiday Pay: | 5/4/9: 8 hours on short day<br>9 hours on long day<br>4/10: 10 hours |

| Maxiflex (Flexible Tour) | |
|---|---|
| Tour: | **Works** 6- to 10-hour days |
| Nonworkday: | 1 or more **as scheduled** |
| Glide: | 60 minutes |
| Credit Hours: | Yes, up to 2 hours per day |
| Flexilunch: | Yes |
| Holiday Pay: | 8 hours |

| Variable Day (Flexible Tour) | |
|---|---|
| Tour: | Varies daily with 6 to 10-hour days |
| Nonworkday: | Ineligible |
| Glide: | 3-1/2 hours (6:00 a.m. - 9:30 a.m.) |
| Credit Hours: | Yes, up to 2 hours per day |

| | |
|---|---|
| Flexilunch: | Yes |
| Holiday Pay: | 8 hours |

**Section D. Procedures for Requesting Work Schedules**

1. Employees who want to establish or make a permanent change to an alternative work schedule shall request their preferred work schedule from the available options listed in Section C in this Article by submitting the appropriate form to their supervisors no later than close of business on the Tuesday before the pay period for which they wish to the schedule to be effective. Employees who want to make a temporary change to an alternative work schedule must submit the appropriate form to their supervisors no later than the close of business five days prior to the day for which they with the schedule to be effective.

2. Employees on Maxiflex Schedules may request a temporary schedule change for any pay period in which a Federal holiday or in-lieu-of-holiday as defined in Section F.2. in this Article falls on a day that, in the absence of the Federal holiday, would have been the otherwise scheduled as a 9- or 10-hour workday so that only 8 hours are scheduled on the holiday or in-lieu-of-holiday.

3. Supervisor will approve or disapprove requested schedule no later than close of business Wednesday before the pay period for which the Employee wishes the schedule to be effective. It is the Employee's responsibility to ensure the supervisor's actual, timely receipt of the request. If a work schedule request is disapproved, the specific reasons for such disapproval must be provided in writing to the Employee. Schedule requests submitted more than one pay period in advance may be approved on a first-come, first-served basis provided all other requirements of this Section and Section C in this Article are met.

4. If no request is submitted by the Employee by the close of business on Tuesday before a pay period begins, the previous pay period's schedule will remain in effect.

5. A Supervisor may deny an Employee's specific request for an alternative work schedule (AWS) if:

    a. The Employee would be unable to complete the requirements of the position;

b. the office would have inadequate coverage during established Agency business hours;

c. the work unit's business operations would be unduly delayed or interrupted; or

d. a critical mission of the Agency would not be accomplished or would be unduly delayed or interrupted.

6. Employees promoted, detailed, transferred, or reassigned from one work unit to another must submit a new request to their new supervisor. Unless necessitated by essential work requirements, neither an Employee hired, promoted, detailed, transferred, or reassigned into a different work unit, nor an Employee seeking to change their work schedule within the same unit, may cause another Employee in the work unit to be bumped involuntarily off their approved work schedule. This is irrespective of the provisions of Section D.7. below.

7. Schedule Request Conflicts

   a. If two or more Employees' work schedule requests conflict so that to approve both/all the requests would result in inadequate office coverage during the workday, or undue delays or interruptions to the Agency business operations, or the failure, delay, or interruption in completing a critical mission of the Agency, the supervisor should meet with the affected Employees and return the form to each Employee with the request that the Employees reach agreement among themselves, if possible.

   b. If the Employees are unable to reach agreement by noon on the Thursday before the pay period in which the Employees wish the requested schedules to be effective, the supervisor by the close of business on Thursday will approve or disapprove the work schedules by giving priority to the Employee with seniority based on the service computation date of leave.

8. Temporary Work-Related Schedule Changes

a. A supervisor may after giving timely notice to affected Employees, make a temporary change to the Employee's work schedule (including scheduled days off) for any work-related exigency – including, but not limited to, ensure required attendance at meetings, training, travel; to alleviate inadequate office coverage during the established workday; to provide required services to internal or external customers; to compensate for temporary staffing shortages or changes; or to fulfill special needs of the Agency.

b. An Employee may request a temporary change to the work schedule (including scheduled days off) for any work-related exigency – including, but not limited to, ensuring required attendance at meetings, training, travel; providing required services to internal or external customers; or fulfilling special needs of the Agency. Such request for change must be submitted on the appropriate form and approved by the supervisor in advance.

c. Timely notice as used in this paragraph, is defined to mean as soon as is practicable after the supervisor has determined a change in the work schedule is required for the current or any subsequent workday for any of the reasons noted in Section D.8.a. above or similar requirements. It is understood by the Parties that the amount of notice practicable in each instance will vary according to the circumstances. Supervisors will consider the affected Employees' need to make corresponding changes in their personal affairs to accommodate the Employer.

d. For supervisory initiated changes according to Section D.8.a., an Employee who is required to work on their scheduled day(s) of will, if possible, be permitted to schedule alternative day(s) off during the pay period. If this is not possible, the Employee will be paid overtime or permitted to accrue compensatory time for future uses.

9. Permanent Work-Related Work Schedule Changes

a. Subject to Subsection 9.b. below, a supervisor may direct a permanent work schedule change for an Employee, work unit, or part of a work unit when:

(1) an Employee would be unable to complete the requirements of the position;

(2) the office would have inadequate coverage during established Agency business hours;

(3) the work unit's business operations would be unduly delayed or interrupted; or

(4) a critical mission of the Agency would not be accomplished or would be unduly delayed or interrupted.

b. For Agency directed permanent work schedule changes, except in Emergency situations, a change to an Employee's schedule may not be implemented without first giving the Employee and the Union at least two weeks' notice prior to the change. In particular circumstances, the Union may waive its right to the two-week notice period. Because of the potential effects of a permanent change of schedule on other Bargaining Unit Employees in the same or related work unit, notice to the Union of a permanent change is necessary even when an Employee, or group of Employees, and a supervisor may agree on the necessity or acceptability of a specific permanent change.

**Section E. Credit Hours**

1. Credit hours are credit for work performed by an Employee on a Maxiflex or Variable Day schedule in excess of their scheduled tour of duty on any scheduled workday for work performed between 6:00 a.m. and 6:30 p.m. Monday through Friday in order to vary the length of a subsequent workday or workweek. Employees covered by a fixed tour (standard and compressed work schedule) cannot earn credit hours.

2. Work performed for credit hours is differentiated from overtime work, which is ordered or directed by the Employer. Work performed for credit hours will not be converted to or compensated as, overtime work, nor is it subject to the rules and regulations of overtime work.

3. Employees on a Maxiflex or Variable Day schedule will be permitted to earn credit hours, subject to the following limitations:

a. “The working of credit hours is conditioned on the availability of appropriate work and the supervisor reserves the right to determine what work is appropriate for earning credit hours. Prior supervisory approval is required for working credit hours.”

b. Employees may earn up to two credit hours on any workday and up to 20 credit hours in any biweekly pay period. Credit hours will not be earned on a nonworkday. Credit hours can be earned and used in 15 minute increments.

c. Credit hours can be earned for Union representational activities only for a Management-initiated meeting.

d. No credit hours can be earned for travel outside of an Employee’s regular duty hours.

4. Employees shall indicate their times worked for the credit hour period through applicable time and attendance procedures.

5. An Employee cannot carry over from one pay period to the next more than 24 unused credit hours.

6. Employees cannot be forced to use credit hours. Employees cannot be forced to earn credit hours. Employees approved to work overtime may elect to earn credit hours consistent with this article.

7. Employees who have earned credit hours may request time off during their regularly scheduled work hours. Use of credit hours shall be subject to advance supervisor approval, in the same manner as leave, and will be scheduled so as to avoid disruption to the work of the work unit and to minimize the number of Employees in a work unit who are off on any given workday (e.g., Supervisors may take into account scheduled leave of other Employees in the work unit and scheduled days off for Employees in the work unit in considering an Employee's request to use accumulated credit hours).

8. Use of credit hours may be requested in combination with approved leave and/or compensatory time off. Credit hour use may be requested in 15 minute

increments. Credit hour use will be requested in the Time and Attendance (T&A) System.

9. Credit hours may not be earned for working during the lunch period. Use of credit hours may be requested to extend a lunch period.

10. Credit hours must be earned before they are used.

11. Unused credit hours will be compensated at the applicable rate in effect at the time of separation of the Employee from the Agency, for whatever reason, including retirement.

12. Credit hours may not be used to create an entitlement for a shift differential or other premium pay.

**Section F. Holidays**

1. When a Federal holiday falls on an Employee's scheduled workday, the Employee is entitled to holiday leave according to the following:

    a. for Employees on a Compressed Work Schedule, the total number of hours scheduled for that day. For example, if a holiday falls on Monday and the Employee is scheduled to work nine hours, the Employee will be paid nine hours for the holiday.

    b. or Employees on Maxiflex, Variable Day, or Standard Work Schedules, are entitled to 8 hours holiday leave.

2. When a Federal holiday occurs on a full-time Employee's scheduled day off or compressed day off, the Employee is entitled to holiday leave according to Section F.1.a. or 1.b. in this Article, as applicable, for the workday immediately preceding the holiday as their "in lieu of holiday," with the following exceptions:

    a. If the nonworkday is Sunday (or an “in lieu of” Sunday), the next basic workday is the “in lieu of” holiday.

    b. If Inauguration Day falls on a nonworkday, there is no provision for an “in lieu of” holiday.

c. If the Head of the Agency determines that a different “in lieu of” holiday is necessary to prevent an “adverse Agency impact,” they may designate a different “in lieu of” holiday for full-time Employees under compressed work schedules.

d. An Employee is not entitled to another day off as an “in lieu of” holiday if a Federal office or facility is closed on a holiday because of a weather emergency or when Employees are furloughed on a holiday.

3. When a Federal holiday occurs on a day that a part-time Employee is:

a. not scheduled to work, the Employee is not entitled to holiday leave;

b. scheduled to work, and then provisions of Sections F.1. and F.2. in this Article will apply, except that the part-time Employee is entitled to the smaller of the number of hours scheduled for that day or eight hours.

**Section G. Special Situations**

To facilitate completion of certain educational and/or training programs and/or complete unusual work or developmental assignments or details that will improve an Employee's value to the Agency, or to address other special mission-related situations, an Employee may request their work schedule be changed for a temporary period so as to accommodate these special circumstances. The Employer agrees to consider such changes and to work with the Employee to work out an agreeable schedule, if possible, that will allow the Employee to pursue these types of opportunities while ensuring completion of the required functions of the work unit. Each request will be evaluated on its own merits on a case-by-case basis. As used in this Section, temporary period is understood by the Parties to generally be 180 days, or less.

**Section H. Court/Military Leave**

1. When an Employee goes on court/military leave, the Employee shall be paid for a standard 8-hour workday for each day for which court/military leave is required. For military leave purposes, Employees will be charged military leave to the extent to which it is earned.

2. If an Employee receives notification after starting the pay period that the Employee is scheduled for military/court leave later during the same pay period, or if the military/court leave requirement is not for an entire pay period, the Employee may request to use provisions of one of the available alternative work schedules in Section C.1. in this Article to complete the pay period.

**Section I. Shift Work**

1. Swing shift Employees may use an hour of annual leave or work an added hour at the time of conversion to daylight savings time so as to maintain their regular eight-hour shift.

2. Employees will not have more than two different tours of duty within a period of seven consecutive days beginning with Sunday, unless it is required for the Employer to accomplish its mission.

3. Employees will be given at least 14 days' notice prior to any significant change in their shifts.

4. The Employer will grant an Employee's request to change shifts due to hardship if other approaches to accomplishing the Agency's mission will permit the change.

## ARTICLE 7: OVERTIME AND COMPENSATORY TIME

### Section A. Definitions

1. Work unit: The organizational structure under the direction of the FIRST LINE SUPERVISOR. In some instances, this may be a staff, a section, a branch, or even a division if the division director is the first line supervisor.

2. Qualified Employee: Any person assigned to the Agency that meets personnel classification standards and possesses specialized knowledge or skills necessary for the assignment requiring overtime/compensatory time.

3. Overtime: Pay provided under 5 United States Code (U.S.C.), for hours of work officially ordered or approved in excess of 8 hours in a day or 40 hours in an administrative workweek.

4. Compensatory time: Time off with pay in lieu of overtime pay for irregular or occasional overtime work, or when permitted under Agency flexible work schedule programs, time off with pay in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work.

5. Nonexempt Employee: An Employee who is covered by the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA).

### Section B. General

1. Overtime/compensatory time will be earned in accordance with the applicable laws and/or regulations that applies to the Employee.

2. For Employees on a fixed or flexible schedule, work in excess of the established number of hours on a specific day is considered overtime, if ordered and approved in advance.

3. Time under this Article will be earned or used in increments of 15 minutes, subject to the same approval procedures as apply to annual leave in Article 8.

4. Overtime shall be paid at the overtime rate. When compensatory time is used, the procedures in Section D in this Article apply.

5. Overtime will be awarded for time expended in transit during normal non- duty hours in accordance with the provisions of controlling laws, rules and regulations.

6. Call back overtime shall be compensated at a minimum of two hours payable in overtime or compensatory time for both Title 5 and FLSA Employees.

7. Subject to law, including Comptroller General/Office of Personnel Management (OPM) decisions, the Agency will reimburse Employees for parking and/or transportation expenses that are in addition to costs normally incurred to commute to and from work, and are incurred as a direct result of overtime work. Additionally, subject to, and to the extent permissible under applicable laws, Comptroller General/OPM decisions and guidance, the Agency will take all necessary actions within its authority to reimburse Employees for transportation expenses incurred to commute to and from work for call back overtime when the Employee is dependent on public transportation for such travel, when (a) highly unusual circumstances are present that constitutes a clear and present danger, an emergency, or a compelling operational consideration as those terms are defined by 31 United States Code (U.S.C.) 1344. FMR. Subchapter A. Part 102-5, and Comptroller General decisions: or (b) reimbursement is authorized pursuant to independent statutory authority.

8. The Employer will make every reasonable effort to ensure the safety and security of Employees during overtime assignments.

9. Employees shall not be required to work overtime if, by doing so, they would be in violation of any law.

10. The Employer determines the need for, approves and assigns all overtime work, and determines the required qualifications of Employees to perform it.

11. The assignment or denial of overtime work will not be made as a reward or penalty to an Employee, but solely in accordance with the terms of this Agreement.

**Section C. Procedure for Assignment of Overtime/Compensatory Time**

1. The Employer will ensure that work units share staff resources, where appropriate, and that overtime/compensatory assignments are equitably

distributed among qualified Employees ensuring that undue burden is not placed on any one work unit or Employee.

2. The Employer will give an Employee as much advance notice as possible in making overtime assignments, but the Parties acknowledge that emergencies, operational exigencies, and unanticipated workload requirements may result in the Employer's inability to give advance notice. However, Employees will be allowed reasonable time under the circumstances to make arrangements necessary to minimize personal hardship.

3. All qualified Employees will be provided the opportunity to work overtime using the following procedure:

    a. Establish a rotational list of qualified Employees in order by seniority based on Service Computation Date (SCD) for leave. New Employees will be placed on the list according to SCD for leave.

    b. The Employee at the top of the list has the first right of refusal for overtime/compensatory time. Whether the Employee works the overtime/compensatory time or refuses, the Employee's name then goes to the bottom of the list.

    c. Employees remaining on the list who have not worked overtime/compensatory time move up the list.

    d. In the event of a tie, the Employee with the greatest current continuous service with the Agency is entitled to work the overtime.

4. If all Employees on the list refuse or in the absence of sufficient qualified volunteers within the work unit, supervisors may direct qualified Employees to work overtime, based on inverse seniority (among qualified Employees within the work unit) as determined by Federal service computation date.

5. Fully qualified Employees in training or on details may be considered for overtime in their regular work unit if they are reasonably available as to time, workload, and location.

6. The availability of other equally qualified Employees in the work unit may be considered if an Employee has a demonstrated hardship in a particular instance.

**Section D. Compensatory Time**

1. Compensatory time is a form of overtime. All rules and procedures established in this Article that govern the assignment and accrual of overtime are applicable to compensatory time, except as noted herein.

2. Fair Labor Standards Act (FLSA) "nonexempt" Employees may be allowed to earn compensatory time rather than overtime provided that the Employee requests in writing, at the time overtime is assigned, that compensatory time be granted in lieu of overtime. Compensatory time for FLSA nonexempt Employees is granted at the discretion of the Employer; however, the Employer may not require that the Employee earn compensatory time in lieu of overtime.

3. Title 5 "FLSA exempt" Employees may be allowed to earn compensatory time rather than overtime provided that the Employee requests in writing, at the time overtime is assigned, that compensatory time be granted in lieu of overtime. Compensatory time for FLSA exempt Employees is granted at the discretion of the Employer. Compensatory time in lieu of overtime may be made mandatory at the discretion of the Employer for FLSA exempt (Title 5) Employees whose basic rate of pay (including locality pay and special pay rates) exceeds the established rate of a GS-10/10.

4. Whether an Employee may earn or work compensatory time does not depend upon the Employee's leave balance or the amount of compensatory time already accrued but is consistent with the provisions of this Article and the needs of the Agency.

5. Compensatory time not used by the end of the following year in which it was earned or by the time of separation will be payable at the overtime rate the compensatory time was earned.

6. Compensatory time will be used before annual leave unless the forfeiture of annual leave will occur.

**Section E. Federal Holidays**

1. When the Employer requires the services of Employees on a designated Federal holiday, the Employer will fill its needs using the procedures established under this Article.

2. To minimize the effect of assigning Employees to work on designated Federal holidays, the Employer will make every reasonable effort to provide a minimum of seven calendar days' notice to affected Employees.

**Section F: Official Time for Union Representation**

Union representatives when on official time may not receive overtime pay or compensatory time off for Labor-Management activities performed outside of their regularly scheduled tour of duty.

## ARTICLE 8: LEAVE

### Section A. General Rules

1. Employees will earn annual and sick leave in accordance with applicable laws and regulations.

2. Denial of leave requests will not be used in lieu of disciplinary or adverse actions.

3. Leave will be charged in fifteen (15) minute increments.

4. It is the Employee's responsibility to ensure requests for use of leave are received by the approving official and approved prior to taking leave. Approving officials will timely consider requests for leave and make every reasonable effort to ensure that responses are promptly received by the Employee. All leave requests and all approval or disapproval of leave requests will be submitted in the Time and Attendance (T&A) System.

5. If the needs of the Employer do not permit the approval of leave requested in advance, the Employee and the Employer will work together to schedule leave at an agreed upon time.

6. When unscheduled leave is necessary, Employees will request leave from their supervisor or designee, as soon as possible but no later than the beginning of their scheduled tour of duty. If the supervisor or designee is unavailable, the Employee will leave a telephone number where the Employee can be reached.

    a. If an Employee is incapacitated or otherwise not reasonably able to comply with the notification requirements provided above, the Employer shall accept notification from a third party, such as a friend or family member, medical provider, or police, acting as the Employee's agent for purposes of this Article. Acceptance of such third-party notification, however, does not relieve the Employee of responsibility for contacting the supervisor as soon as is reasonably possible to provide any required information or documentation in accordance with this Article.

b. While it is the intention of the Parties to respect the privacy of Employees in dealing with personal matters, notification provided to supervisors in conjunction with unscheduled leave requests must include sufficient information concerning the circumstances to permit the supervisor to evaluate the appropriateness of approving or disapproving leave. This may include a brief description of the circumstances necessitating the unscheduled leave, the expected duration of the absence, and the status of affected, pending work assignments. When it appears that an absence will extend beyond the original date of anticipated return to duty, the Employee will promptly notify the Employer of the new anticipated date of return. The Employer may require periodic telephone calls updating the condition of the Employee.

7. When leave scheduling conflicts arise, if the Employees are unable to reach agreement, the supervisor will make the final determination by giving consideration to circumstances such as, but not limited to, the nature of the leave requested, seniority, and the date of request.

8. For leave accounting purposes, the lunch period shall not exceed 30 minutes. Exception: under Flexilunch as described in Article 6, Section B, an Employee can modify their schedule to allow for longer than 30-minute lunches.

9. Requesting a change of leave type:

    a. Employees may request a change to another type of approved leave:

        (1) Either before or during the current pay period so long as the leave type being substituted is appropriate and approved by the supervisor.

        (2) Within two pay periods after T&As are transmitted, when the circumstances for which the leave was approved changed during the absence from work (i.e. the Employee got sick while on vacation), or the Employee provides justification for the change. These requests must be approved by the Employee's supervisor.

b. Leave without pay (LWOP) cannot be substituted for any paid leave previously approved and certified in the T&A system.

c. Corrections to T&As will be processed as necessary.

10. Employees may request sick or annual leave, or leave without pay, to attend and participate in a substance abuse treatment program. The Employer will grant the requesting Employee sick or annual leave, or leave without pay, in accordance with procedures in this Article.

11. Medical Certification:

a. "Medical certification" 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. For sick leave requested because of exposure to a contagious disease, the medical certification should indicate the name of the disease and indicate that the disease is contagious, and the period of confinement and/or quarantine, if quarantine is required by ordinance or statute. Medical certification must be submitted to the Employer within 15 calendar days from the Employee's return to duty.

b. The Employer may require medical certification:

(1) for an unscheduled absence in excess of three consecutive workdays.

(2) for any use of sick leave if the Employee is on sick leave restriction.

(3) for a chronic condition which does not necessarily require medical treatment although absence from work may be necessary. If the Employee has previously provided a medical certificate of the chronic condition, the Employee is not required to provide a medical certificate on a continuing basis. However, the Employer may require reasonable updates to the medical certificate.

(4) to consider an Employee's request for leave for medical reasons, including treatment and convalescence related to childbirth, and care for a spouse, son, daughter, parent, or legal ward with a serious health condition.

(5) to consider an Employee's request for special consideration such as reassignment or other reasonable accommodation and there is a question as to the medical need for such an accommodation.

(6) to consider requests for advanced sick leave in accordance with Section C in this Article.

(7) to support requests for "family leave" under Section E in this Article.

(8) from an appropriate physician stating that the Employee can return to work, and noting any applicable limitations.

c. For purposes of making an administrative determination, the Employer may not require medical documentation beyond that required by applicable laws and regulations. Documentation provided to the Employer will remain strictly confidential among those having a need to know.

**Section B. Advanced Annual Leave**

1. A permanent Employee who expects to remain in service through the leave year may request advancement of annual leave in an amount not to exceed that which the Employee will accrue for the remainder of the leave year. The Employer may grant the request.

2. An Employee who wishes to request advancement of annual leave will submit through the Time and Attendance (T&A) System and provide a written explanation of the reason for the request.

**Section C. Sick Leave**

1. Sick leave may be granted for absences required by illness, injury, medical appointments, treatment, or certain circumstances involving contagious diseases in accordance with applicable laws and/or regulations.

2. When an Employee knows in advance that sick leave will be required for a reason set forth in the above, the Employee will request sick leave at the time the necessity for the leave is determined. In evaluating requests for sick leave, in those circumstances in which the Employee has substantial control over the need, the Employer and Employee will work together to schedule leave at an agreed upon time.

3. Advanced Sick Leave:

    a. The Employer may approve requests for advanced sick leave after considering the following factors:

        (1) Leave is properly applied for in accordance with this Article.

        (2) Repayment can reasonably be expected through leave accruals taking into account the Employee's prior leave record including requests for advanced leave, the Employee's length of service, and the nature of the incapacitation.

        (3) Accommodations can be made within the work unit to cover the work unit's critical functions. This factor may only be considered in situations in which the Employee has substantial control over the circumstances and can reschedule the requested leave.

        (4) Medical certification, as described in Section A in this Article, is required from all Employees requesting advanced sick leave.

        (5) Any other relevant factors.

b. As a maximum, a permanent Employee may be advanced up to 240 hours of sick leave allowed by Office of Personnel Management (OPM) regulations.

c. There is no limit on the number of times an Employee may request advanced sick leave. The Employer will consider each request for advanced sick leave on its individual merits and in accordance with the criteria described above.

4. Health Unit Visits:

a. Employees may leave the worksite to attend an on-site health unit. Except in cases of emergency, the Employee will obtain approval of the Employer prior to leaving the worksite.

b. The Employee may be allowed to remain in the health unit for up to one hour during a given workday. If the Employee is unable to return to work after one hour, the Employee will request appropriate leave. This Section applies only to Employees who are ill while in duty status.

c. Employees who are injured on the job will not be charged sick leave but will be granted administrative leave to visit the Health Unit at the time or on the day of the on-the-job injury, in accordance with applicable worker's compensation procedures.

5. Sick leave will be granted in cases in which an Employee is required to care for a family member with a contagious disease or as defined by applicable laws and regulations. The Employee's request for sick leave must be accompanied by appropriate medical documentation, including such specifics as the particular disease and the acute infectious period, as applicable.

6. Abuse of Sick Leave:

a. When the Employer has reasonable grounds to suspect the Employee of sick leave abuse, the Employer will meet with the Employee to discuss the suspected sick leave abuse, potential ramifications, and possible solutions.

b. As appropriate, the Employer may subsequently notify the Employee in writing that, for a stated period not to exceed three months, the Employee will be on sick leave restriction, and requests for sick leave will not be approved unless supported by medical certification.

c. A copy of any leave restriction letter given to an Employee will be provided concurrently to the Union President or designee. The Union also will be notified concurrently via email when the Employer extends the Employee's leave restriction

d. Employees on leave restriction may be required to provide medical certification upon return to duty, not later than five workdays from the Employee's return to duty.

e. Employees will follow the procedures outlined in Section A.6.a. in this Article to notify their supervisor of emergency sick leave.

f. Employees on leave restriction will be treated consistently with other Employees when the Employer or OPM announces a delayed arrival or unscheduled leave policy affecting the Employee's worksite due to weather or other emergencies. Employees will be permitted to request leave or leave without pay (LWOP). The Employee will provide the Employer evidence of non-routine incidents in the event of unscheduled leave. The Employer will evaluate and weigh such evidence in determining leave approval.

**Section D. Administrative Leave**

1. Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to other types of leave. The Employer will grant administrative leave in accordance with applicable guidelines and this contract.

2. For inclement weather or other emergency situations, the Agency will follow the current Office of Personnel Management (OPM) issued Washington, D.C., Area Emergency Dismissal or Closure Procedures developed in consultation with the Metropolitan Washington Council of Governments. The procedures are updated yearly and can be viewed or printed from the OPM website (https://www.opm.gov and click on operating status).

3. Blood Donation:

    a. Upon advance request by the Employee to the approving official, an Employee donating blood without compensation may be granted administrative leave of up to four hours for related rest and recuperation. The four hours of administrative leave for rest and recuperation is in addition to the time necessary to travel to the donation site, donate blood, recuperate at the donation site, if needed, and return to work.

    b. An Employee who is not accepted for donating blood is only entitled to time necessary to travel to and from the donation site and the time needed to make the determination.

    c. Appropriate documentation from the donation site may be required by the Employer. Such documentation is normally provided directly to the Agency for on-site donations.

4. Employees will be given excused absence for bone marrow and/or organ donations in accordance with applicable laws.

5. For USDA-sanctioned health care screenings:

    a. Employees with fewer than 80 hours (two weeks) of accrued sick leave, may be excused for up to four hours per calendar year.

    b. Employees with 80 hours or more of accrued sick leave, may be excused using their paid leave (i.e., sick, credit, annual, etc.).

6. Job Interviews: Administrative leave is authorized for Employees who participate in only USDA (Department or Agency) job interviews in the Washington Metropolitan Area.

**Section E. Paid and Unpaid Family and Medical Leave**

1. Leave Entitlement:

    a. An Employee, who has completed at least 12 months of Federal service and is not employed on an intermittent basis or a temporary appointment

with a time limitation of one year or less, has the right, as established by the Family and Medical Leave Act and implementing regulations (5 Code of Federal Regulations (CFR), Part 630, Subpart L), to 12 administrative workweeks of unpaid leave during any 12 month period. Leave under this category is governed by the applicable laws and regulations and the terms of this Agreement.

b. Upon request, an eligible Employee is entitled to a total of 12 workweeks or 60 workdays leave without pay during any 12-month period for the birth of a child, care of a newborn within one year after birth, adoption, or foster care of a child within one year after placement, or care of a spouse, son, daughter, parent, or legal ward who has a serious health condition.

c. An eligible Employee may request other types of leave for which the Employee meets legal and regulatory requirements. Such leave might include, but is not limited to, paid parental leave as established by 5 United States Code (U.S.C.) 6382 and implemented by 5 CFR, Part 630, Subpart Q, additional leave without pay, annual leave, advanced annual, credit hours, or sick leave, earned compensatory time, and leave made available under the Voluntary Leave Transfer Program and the leave bank.

2. Requests and Approvals: When the need for leave is foreseeable, an Employee will request leave under the provisions of this Article at least 30 days in advance to allow the supervisor time to prepare for any staffing adjustments necessary to compensate for the Employee's anticipated absence. However, the Parties recognize that due to the unpredictable nature of these situations, adjustments in the requested leave may be necessary.

3. Medical Certification:

a. The Employer may require administratively acceptable medical certification as defined in Section A.11.a. in this Article when an Employee requests leave for medical reasons, including treatment and convalescence related to childbirth, and care for a spouse, son, daughter, parent, or legal ward with a serious health condition.

b. The Employer may also require administratively acceptable medical certification when an Employee requests special consideration such as reassignment or other reasonable accommodations and there is a question as to the medical need for such an accommodation.

c. The Employer may require, at the Employer's expense and by a health care provider designated or approved by the Employer, a second medical opinion to verify the validity of the certification provided by the Employee. If the second opinion differs from the original certification, the Employer may require at the Employer's expense, certification from a third health care provider selected jointly by the Employer and Employee.

4. Protection of Employment and Benefits Upon Return to Duty: An eligible Employee who takes family leave will be entitled to return to the same or equivalent position, with equivalent benefits, pay, status, and other terms and conditions of employment, unless termination of employment is otherwise required by reduction in force, for cause, or for similar reasons unrelated to the use of family leave.

5. Use of Sick Leave to Care for Family Members or Relating to a Death of a Family Member:

a. Subject to the statutory and regulatory limitations and any other applicable Office of Personnel Management (OPM) and Departmental rules, sick leave may be granted in cases in which an Employee is required to give care to or attend to a family member, as defined by OPM regulations, having an illness, injury, or other condition which, if an Employee had such condition, would justify the use of sick leave by such an Employee under this Article, or for purposes relating to the death of a family member, including to make arrangements for or attend the funeral of such family member.

b. Hours and limitations for authorized use of sick leave under this paragraph for part-time Employees will be subject to OPM-established limitations that are proportional to the above.

6. Leave without pay (LWOP) is a temporary absence from duty, without pay, which an Employee may request. The voluntary nature of LWOP distinguishes it from nonpay status resulting from absent without leave (AWOL), furlough, or suspension. Except as noted below, approval of LWOP is discretionary. LWOP may be denied, for example, if the Employee's services are required, if the Employee has not provided adequate documentation, or if the Employee has not followed prescribed procedures for requesting the leave.

7. Approval of application for LWOP is mandatory for:

    a. Military training or active duty for members of the Reserves or National Guard, who are not entitled to, or have exhausted their military leave.

    b. Medical treatment for disabled veterans.

    c. Employees exercising LWOP rights under the Family and Medical Leave Act.

8. Amount of LWOP that May be Granted: An approving official may grant LWOP without regard to the amount of annual or sick leave to an Employee's credit.

9. Requesting LWOP for 30 Days or Less:

    a. LWOP may be requested in 15-minute increments for up to 30 calendar days for any reason, including up to 24 hours for parental or family needs.

    b. No SF-50 or 52 is required for LWOP of less than 30 calendar days.

    c. The Employee will submit an application for LWOP to their supervisor, in advance if possible. The request should include:

        (1) Explanation of circumstances surrounding the request; and

        (2) a medical certificate if the absence is for medical reasons.

d. LWOP may be approved/disapproved by the supervisor or approving official. In the case of a possible disapproval, the Employee and supervisor shall be willing to discuss other alternatives.

10. Requesting LWOP for More Than 30 Days:

a. LWOP for more than 30 calendar days is considered extended LWOP. It may not be taken without supervisory approval except in emergencies. Initial grants and extensions are limited to one year at a time.

b. Extended LWOP must be approved by the Employee's supervisor, Division Director, and when an SF-50 or SF-52 is generated, final approval shall be obtained from a next level supervisor.

c. A request for extended LWOP will be made according to paragraph 10.c. of this Section.

d. A supervisor or other designated official, as appropriate, will initiate:

(1) an SF-52 for approved extended LWOP, indicating an anticipated not-to-exceed date, and submit the SF-52 through appropriate channels.

(2) additional SF-52s for any extensions of the initial LWOP request, indicating anticipated not-to-exceed date, and submit through appropriate channels.

(3) an SF-52 to place the Employee back in pay status when they return.

e. An SF-50 or 52 will not be generated if the Employee has been approved as a Leave Recipient through the Voluntary Leave Transfer Program or the leave bank.

11. Special Consideration:

a. Employees will request extended LWOP when they are planning or reasonably certain they will return to duty, except in the following cases:

(1) Employees whose application for disability compensation or disability retirement is pending.

(2) Employees receiving workers' compensation benefits, unless it is known that they are permanently disabled. In these cases, supervisors should contact their servicing staff specialist.

b. Approving officials will consider extending LWOP for the following:

(1) Employees who have an illness or disability as certified by a medical certificate or other acceptable evidence, unless such evidence indicates that the Employee will not return to duty. In these cases, supervisors should contact their servicing staffing specialist.

(2) Career or career-conditional Employees seeking Federal employment outside their commuting area and the LWOP would allow them to avoid a break in service.

(3) Employees to attend school, if the course of study will result in increased ability to perform work in the Agency. If the Employee is a veteran attending school under the GI Bill of Rights, a liberal policy will be applied even though the course of study may not be directly related to Agency activities.

(4) Employees to teach at a college or university, if such teaching will give the Employee additional experience and training of value to USDA or the Agency or will further the interest of USDA or the Agency.

(5) Career or career-conditional Employees when accompanying a member of the Armed Forces or a Federal service Employee on a rotational assignment, transfer of function or relocation of activity. In these cases, extended LWOP should not exceed 90 calendar days.

(6) Employees serving on a temporary basis as an officer or a representative of a Union representing Federal Employees.

(7) Short term assignments (90 calendar days or less) to public international organizations to engage in organizing programs or consulting work.

12. Family Related LWOP:

a. Approving officials may upon request by the Employee, in accordance with the Presidential memorandum dated April 11, 1997, grant up to 24 hours of LWOP per calendar year for the activities listed below. (The 24 hours is separate from and should not be confused with FMLA entitlements.) Where paid leave is appropriate and not contrary to regulations, Employees should be permitted its use prior to unpaid leave. Employees may also use earned credit hours and/or compensatory time.

b. School and early childhood educational activities allows Employees (including those who do not have children) to support a child's educational development and advancement by attending parent-teacher conferences, meeting with the child-care providers, interviewing for a new school or child-care facility, or participating at volunteer activities such as tutoring, coaching, etc. "School" is defined as an elementary or secondary school, Head Start Program, or a child-care facility.

c. Routine family medical purposes allows parents to accompany children to routine medical or dental appointments, such as annual check-ups or vaccinations. This is applicable in circumstances where an Employee does not have the 13 days of sick leave available currently allowed under existing regulations.

d. Elderly relatives' health or care needs allows Employees to accompany elderly relatives to routine medical or dental appointments or other professional services related to their care, such as making arrangements for housing, meals, phones, banking services, and other similar activities.

13. Non-Federal Special Situations: Approving officials will consider approving LWOP for Employees to work in a non-Federal, private, or public enterprise

(other than a public international organization) when the work is temporary and the following requirements are met:

a. The activity in which the Employee is to be engaged is one of special interest and will result in increased job ability applicable to the Agency,

b. The performance of such work does not involve using information secured as the result of employment in USDA to the detriment of the public service,

c. The acceptance of such employment is not likely to bring criticism or cause embarrassment to USDA, and the Employee is not accepting an office in an organization or permitting the use of their name in the advertising material of the organization commercializing the results of work conducting by USDA, regardless of the merits of such enterprise.

14. Retroactive Substitutions of Annual Leave for LWOP: LWOP may be retroactively changed to annual leave if:

a. Due to an administrative error or misunderstanding, of which the Employee was not aware that they had an annual leave balance or that annual leave could have been used; or

b. The Employee is accepted into the Voluntary Leave Transfer Program and donated leave is available.

**Section F. Military Leave**

1. Any full-time or part-time permanent Employee who is a member of the National Guard or other reserve units of the Armed Forces are entitled to accrue, use, and carryover military leave in accordance with current laws and Office of Personnel Management (OPM) regulations.

2. Upon request, Employees will provide certification of the completion of the military duties that necessitated the military leave. This certification can be in the form of endorsed orders, Leave and Earning statements, inactive duty training muster sheets, or any other documentation deemed acceptable by the Agency.

**Section G. Court Leave**

1. Court leave will be approved according to 5 United States Code (U.S.C.) 6322 and applicable regulations.

2. Court leave will be granted from the report date stated in the summons through the date discharged from court; court leave will not be granted when the Employee is excused from jury duty for a day or a substantial part of a day. In such cases, the Employee must request annual leave, credit hours, or leave without pay (LWOP); if the Employee fails to return to duty absent without leave (AWOL) may be charged.

3. The Employee must notify the Employer at least two weeks in advance or upon receipt of the summons from the court. Court leave must be requested through the Time and Attendance (T&A) System with a copy of the jury duty or court summons submitted with the request. Upon receipt the Employee must present to the Employer a jury duty certificate signed by an officer of the court, if the court leave was granted for jury duty.

4. In every instance, the Employee may fulfill the citizenship responsibilities of jury duty. The Employer may petition the court to excuse the Employee if jury duty will substantially interfere with the program of work.

5. Leave for private party judicial proceedings will require the use of annual, LWOP, compensatory, and/or credit hours.

**Section H. Religious Observances**

1. In accordance with laws and government-wide rules and regulations, Employees wishing to attend or participate in the observance of a religious holiday normally will be permitted to be absent on annual leave, credit hours, or compensatory time so long as the Employee requests such leave at least three workdays in advance and their absence will not cause a workload problem.

2. Failure to work the required amount of time to repay advanced compensatory time off will result in annual leave or leave without pay (LWOP) being charged.

**Section I. Leave Transfer Program and Leave Bank**

The Employer agrees to continue its Voluntary Leave Transfer and Leave Bank Programs in accordance with laws, rules, and regulations.

**Section J. Additional Leave**

Bargaining Unit Employees will be entitled to any additional leave provided by statute, government-wide rule, regulation, policy, procedure, practice, or Executive Order..

## ARTICLE 9: POSITION DESCRIPTIONS

### Section A. Position Descriptions

1. Position descriptions (PDs) shall be current and accurately reflect the principal duties, responsibilities, and supervisory relationships of the position as assigned by the Employer.

2. Supervisors and Employees will annually review PDs and update as necessary to accurately reflect the principal duties and responsibilities of the position as assigned by the Employer.

3. Upon request, the Employer will provide each Employee with a copy of their - applicable PD and the next higher grade, if any, for the position.

    a. When there is a significant change in an Employee's duties, responsibilities, and/or supervisory relationships for a period to exceed 30 days, the Employee will be provided an accurate and updated PD within 20 workdays of the effective date unless mutually agreed that a different timeframe is needed.

    b. Employees newly hired to the Agency will be provided a current, accurate copy of the PD within 12 workdays of the Employee assuming their duties.

4. Whenever a PD is amended, the Union will be provided a copy within ten workdays of the effective date of the amended PD.

5. In accordance with laws and regulations, Employees may grieve reductions in grade, pay, or loss of promotion potential that result from a classification decision following procedures in Article 38 of this Agreement.

6. The phrase "other duties as assigned" normally relates to tasks of an incidental, infrequent, or emergency nature, which are impractical to include in the PD. The Employer may assign or change duties and responsibilities necessary to accomplish work appropriate to the Employee's position.

**Section B. Classification Standards**

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1. Positions will be classified by comparing the duties, responsibilities, and supervisory relationships in the official position description (PD) with the appropriate classification and job grading standard.

2. The Human Resources Division (HRD) is available to provide information to Employees regarding their concerns about the titles and series of their position. Employees who believe their positions should be reclassified may ask the Employer for an explanation as to why it would or would not be appropriate to do so under the relevant classification standards.

3. An Employee may choose to file a classification appeal.

4. The Employer will refrain from temporarily reassigning the Employee's work during the classification appeal if the sole purpose for reassigning the work is to avoid reclassification of the Employee's position.

**Section C. Position Description Changes Due to Reorganization or Classification Changes**

1. The Employer will inform the Union as soon as possible, but no later than 45 days before significant changes will be made in the duties and responsibilities of positions held by Employees due to reorganization or when changes in position classification standards result in classification changes.

2. The Employer will provide copies of updated position descriptions (PDs) within 45 days of the updated PD.

**Section D. Grade Determining Duties**

The Employer will assure that duties assigned to the Employee that are grade determining will be included in the position description (PD).

## ARTICLE 10: PERSONNEL RECORDS

### Section A. Official Personnel Records

Employees' official personnel records are contained in the electronic Official Personnel Folders (eOPFs) maintained by Human Resources Division (HRD). HRD also maintains a copy of Employee performance appraisals of the most recent three years in separate folders established for that purpose, which would include electronic files. Records of disciplinary and adverse action proposals, including the documentation upon which such proposals are based, are maintained by HRD. If the proposed adverse action is sustained, a copy of the final decision memo is retained in the Employee and Labor Relations' files, and the SF-50 documenting the action is filed in the eOPF. Letters of reprimand are also filed in the eOPF for up to two years; however, the Employer may remove the reprimand from the eOPF at any time. Employees may have access to all of these records under the conditions set forth in Article 2.

### Section B. Supervisory Files

1. Supervisors of Bargaining Unit Employees may maintain worksite files on such matters as emergency locator information, time and attendance records, training, award, and promotion histories, and other matters pertinent to the performance of their personnel management responsibilities. In most instances, such files will contain only information that is accessible to the Employee through the records maintained by HRD. To the extent that the supervisor maintains records containing information that is not duplicate of material contained in the official files maintained by HRD, such records, other than reports of an ongoing criminal investigation, will be disclosed upon request to the Employee who is the subject of the information or to their designated representative. Personal notes that a supervisor may keep as a memory jogger are not considered records and are not releasable to Employees, unless relied upon by the supervisor in taking a formal disciplinary or adverse action.

2. Employees may make a written statement to the Employer in response to information they consider unfavorable to themselves, which is maintained by the supervisor as a record.

3. No record, information, or document in the supervisor's or personnel office's worksite file will be made available to any unauthorized persons to inspect,

review, copy or photocopy. Such information will be made available to authorized persons only for official use, as specified by the Office of Personnel Management (OPM), other applicable laws, and this Agreement.

4. An Employee may authorize a designated representative in writing, to receive, on their behalf, all current and subsequent information, including worksite personnel files, used as a basis for the disciplinary or adverse action against the Employee. The Employer will disclose to the Employee, or their authorized designated representative, all such information within 10 workdays of the receipt and verification by HRD of such information.

**Section C. Form and Disposition of Records**

1. All provisions of this Article apply to electronic as well as paper files.

2. All personnel files maintained by the Employer, including the eOPF maintained by HRD, will be disposed of in accordance with the General Records Schedule and other applicable laws.

**Section D. Employee Records**

1. The eOPF prescribed by the Office of Personnel Management (OPM) is the official repository of records providing the basic source of factual data about the Employee's employment history. The eOPF may be used by the Employer's Personnel Office as permitted by applicable laws, rules, or regulations for any legitimate official purpose, including but not limited to, screening qualifications, determining status, computing length of service, and providing information for statistical purposes.

2. Contents of the eOPF may be released and records of such information disclosures maintained in accordance with provisions of 5 Code of Federal Regulations (CFR) §293 and §297.

3. Any Employee, or designated representative who is authorized in writing by the Employee, shall be granted reasonable access during business hours, to review and receive a copy under appropriate supervision, of any documents contained in the eOPF in accordance with applicable laws, rules, and regulations. Normally, the Employer will make the copies, but if this would result in

significant time delay, the Employee may make the copies under appropriate supervision.

4. Any information, including documentary information, that is unfavorable, derogatory or which reflects adversely upon an Employee's character or government service shall be maintained in the eOPF only in accordance with applicable laws and regulations. Employees may review and/or seek to amend any such information in accordance with 5 CFR Part 297, Subpart C, entitled Amendment of Records.

5. Employees may update their resume and/or government employment application with relevant information regarding experience, education, and training, and have that document filed in their eOPF.

## ARTICLE 11: CAREER DEVELOPMENT AND TRAINING

### Section A. Definitions

For purposes of this Article:

1. "Training:" The activity undertaken to increase the knowledge, proficiency, ability, and skills of an Employee.

2. "Career Development:" Training in the performance of those duties which support the Agency's mission and performance goals. These include potential duties in a different job or occupation at the same or higher level than the one currently held by the Employee.

### Section B. General

1. The intent of Agency-sponsored training is to both improve the current job performance and to develop the skills, knowledge, and abilities of the Employee in order to promote the mission of the Agency. The Parties will support and encourage Employees in developing their knowledge, skills, and abilities, and in contributing to the more effective use of available human and material resources in service to the Agency.

2. Each Employee is responsible for applying effort, time, and initiative in increasing their potential through career development and training. The Parties will encourage Employees to take advantage of educational opportunities and training that enhance work efficiency and provide needed skills for advancement.

3. The Employer will maintain information and provide guidance about suitable and available education, training, and career development resources.

4. The Employer will assist Employees in planning and completing a plan of career development and training via a formal Individual Development Plan (IDP).

5. The Employer will notify Employees directly of selection or nonselection for Agency-sponsored training or educational opportunity for which they applied or were nominated within 30 calendar days of the closing date for nominations for training by the training office. It is understood by the Parties that for some

classes this will not always be possible. In cases of nonselection, the Employees may request in writing and receive a written explanation for the denial.

6. When an Employee needs to verify their on-the-job experience to an institute of higher learning, the Employer will provide verification to the Employee in the same form requested by the Employee (*e.g.*, a letter, memorandum, or telephone call) within 10 workdays.

7. The Employer will make payment for all authorized expenses in connection with approved training.

8. An Employee who fails to complete training or receives a grade of less than C will reimburse the Employer unless a waiver is granted by the Employer.

9. After an Employee has satisfactorily completed a training course, a record of the completed training will be filed electronically in a training database. Employees requesting a copy of their individual training records may do so by contacting the Human Resources Division, Workforce Programs Branch, Employee Development Section.

**Section C. Training**

1. The following approaches to Employee training will be used, as appropriate:

    a. In-service, out-service, or on-the-job training to improve Employee capabilities to perform their current duties;

    b. cross training and rotational assignments in similar positions;

    c. enrollment of Employees in part-time educational programs at local educational institutions and/or in correspondence courses; and

    d. long-term training in Federal and non-Federal educational institutions.

2. Normally at the time of the interim review, as well as at the time of performance evaluation, or at any other time necessary, supervisors will discuss with Employees training needs and opportunities that would help the Employee to improve performance in their current position. Unscheduled discussions

concerning an Employee's training needs and performance improvement opportunities may be initiated by the Employee or supervisor at any time.

3. Supervisors will ensure that IDP will be prepared or revised for all Employees placed into new positions in accordance with Section G in this Article. IDPs will be used by the Employer to determine appropriate training and developmental needs to improve the Employees' competencies.

4. When training is requested primarily to prepare Employees for advancement, or if the requested training would fulfill specific qualification requirements for a position with known promotion potential, selection for such training will be made under competitive promotion procedures, including those contained in Article 17, Merit Promotion. Such training is subject to the Employer's budgetary limitations.

5. Employees in career-ladder positions who have not yet reached the full performance level will not be required to compete for training, which the Employer deems necessary for their accession to the full performance level.

6. When membership in a professional organization is not a trainer- determined or vendor- determined prerequisite for attendance at a training session, the Employer will not consider membership as the sole factor in determining which Employees will receive the training.

**Section D. New Processes and Training**

1. The Employer will meet, consult, and bargain with the Union in accordance with applicable laws, when new skills are necessary as a result of the introduction of new equipment and/or new processes which affect or impact the employment of the involved Employees.

2. The Employer will notify the Union as soon as practicable of proposed installation of any new equipment, machinery, or processes which would result in substantial changes in work assignments or require additional training of members of the bargaining unit, and to bargain said substantial changes.

3. Upon request by either Party, the Parties will meet and discuss, in good faith, the possibility of instituting programs to train or retrain Employees in new skills so

as to assure an adequate supply of available Employees trained in these new skills. Written requests for such a meeting will state the purpose of the meeting.

4. In order to effect a smoother transition to automated processes, the Employer will meet with the Union and bargain in good faith over the establishment of training courses or on- the-job training to effectively enable affected Employees to perform their job duties as well as provide for requisite staff development. Bargaining will be conducted as permitted by law and Executive Order.

**Section E. Career Development**

1. Employees will be given reasonable opportunities and time necessary to discuss their career development with their supervisors and the personnel staff.

2. Both Parties recognize that an Employee may become dissatisfied with their job because of limited advancement possibilities or changing career goals. In such cases:

    a. an Employee may request a meeting with the appropriate Employer representative for the purpose of career counseling;

    b. an Employee's request for a lateral transfer to a different job or a transfer to a lower-grade job will not be considered a factor in any adverse action under Article 28 concerning that Employee.

**Section F. Career Development Resources**

1. The Agency will provide a variety of activities and services to Employees at all stages of their careers. The emphasis is on career enhancement through self-assessment, self-paced learning, development advice, and referral services. The Agency will keep confidential, the resources and services utilized by an Employee, unless the Employee agrees otherwise.

2. The services and activities will consist of, but are not limited to:

    a. providing development advice to help Employees identify training and professional development opportunities;

    b. providing training resources;

c. providing referral services;

d. providing information to Employees on career-related topics, i.e., Individual Development Plans, résumé preparation, and interviewing techniques;

e. administering tools for assessing and/or diagnosing skills and career interests;

f. facilitating mentoring programs;

g. supporting the Agency's cross-training and retraining efforts; and

h. supporting workshops.

3. To the extent that available resources permit, the Agency will continue to provide these services and activities.

4. The Agency will bargain with the Union in accordance with applicable laws and this Agreement over any substantial changes to Employee's access, services offered, hours of accessibility by Employees, and any other changes in the method in which services are provided under this Article.

5. Employees will be granted a reasonable amount of official time to use the services and activities provided in this Article.

**Section G. Individual Development Plan (IDP)**

1. Employees will complete an IDP to identify training for the performance of the duties the Employee currently performs or will be performing, as well as opportunities for career development.

2. The Employee and supervisor will meet to discuss the IDP. The Employee will have the opportunity to explain why they requested training and career development.

3. If, at any stage of the IDP review process requested training and/or opportunity for career development is not approved the Employee will be advised.

**Section H. Tuition Assistance**

1. An eligible Employee (a career Employee or a career-conditional Employee who has completed one year of current, continuous Federal service) who initiates a request for tuition assistance and obtains prior approval from the Employer, will have tuition costs (tuition is defined as the cost of the course per credit hour) paid at educational institutions during their nonwork hours, provided that:

    a. The course will enable the Employee to increase ability in current and future assigned duties or duties the Employee will be performing (i.e., the course is job-related);

    b. The Employee agrees in writing to stay with the Employer three times the actual length of the course. Failure to complete this required service will result in the Employee being required to repay costs incurred by the Agency. This requirement may be waived at the Agency's discretion.

    c. The Employee will provide Workforce Programs Branch , Employee Development Section with a course evaluation and, if a college course, a copy of the final grade.

    d. Funds are available to pay for such training without deferring or canceling commitments of higher priority.

**Section I. Requests for Changes in Work Hours**

Requests for a change in regular working hours and/or appropriate leave for educational purposes will be given consideration if such change does not unreasonably interfere with the workload and the overall mission accomplishment of the Employer in accordance with Article 6, Section G.

## ARTICLE 12: ONBOARDING PROCESS

### Section A. Notice of New and Reassigned Employees to the Bargaining Unit

The Employer will notify the Union in writing of the names of all new and reassigned non-supervisory GS/WG Employees, their grade, classification, positions to which they are assigned, entry on duty (EOD) date, and bargaining unit status (excluding Schedule C Employees) within 30 days after the entry on duty date.

### Section B. Information to New Employees

1. On, or before the EOD, the Employer will provide the following to each Employee newly assigned to non-supervisory position (excluding Schedule C Employees):

    a. The name of the website for the Onboarding Web Portal, a Reference for New Employees at https://www.dm.usda.gov/OBP/OBPIndex.htm;

    b. The name, telephone number, and email address of AFSCME Local 3925; and,

    c. A link to the electronic copy of this Agreement, and upon request a hard copy of this Agreement.

2. A new hire in a non-supervisory position will be entitled to meet with a Union representative and receive an introductory letter and related materials from the Union.

3. Upon the Employee's request, the Employer will provide a face-to-face meeting with the new Employee to answer additional questions.

### Section C. Official Time for Orientation for New Employees

1. A new Employee will be granted official time to participate in all aspects of the orientation process.

2. The Employer will notify the Union of the time and place of the orientation. It will also provide an opportunity for the Union to participate in the orientation process.

**Section D. Checklist**

1. The new Employee will be given the opportunity to review the "Onboarding Checklist" found on the website listed in Section B.1.a. in this Article.

2. The supervisor will maintain a completed copy of the "Onboarding Checklist" and provide the Employee access upon request.

## ARTICLE 13: TRAVEL AND PER DIEM

### Section A. Travel

1. Travel will be in accordance with the Federal Travel Regulations.

2. All travel must be approved in advance.

3. Whenever possible, official travel will be scheduled during the Employee's workday. In those cases where this cannot be accomplished, the affected Employee(s) will be compensated for travel time in keeping with applicable pay laws and government-wide regulations.

4. Upon application in the travel system, an Employee may be advanced sufficient funds to cover anticipated per diem and mileage expenses in accordance with established regulations. Travel advance balances will be maintained in accordance with existing requirements.

5. A government credit card may be provided to Employees through appropriate policy and procedures. The credit card may be used only for expenses incurred in connection with official travel. Failure to comply with the terms and conditions of the card, or to timely make payments on the amount due, can subject a cardholder to disciplinary action.

6. The Employer will attempt to minimize extended travel (more than two weeks).

### Section B. Per Diem

1. Employees will be reimbursed in accordance with applicable travel laws and regulations (including Comptroller General decisions) for reasonable expenses they incurred in the discharge of their official duties.

2. Pursuant to Federal Travel Regulations, Employees are expected to exercise care in incurring expenses. Indirect travel routes or en route delays, luxury accommodations, use of non-contract carriers and unusual services or expenses must be authorized in advance on approved travel authorizations in accordance with established regulations and procedures. Employees are responsible for paying excess costs.

**Section C. Travel Regulations**

Employees will be given access to applicable travel regulations.

**Section D. Vehicles**

1. The Employer agrees to refrain from encouraging use of privately-owned vehicles (POV) for official travel.

2. In the event the use of a POV is authorized, mileage for such use will be compensated at the prevailing rate published in the Federal Register.

3. When an Employee is authorized to use a POV for official business and that vehicle sustains damage, the Employee may file a claim in accordance with 31 Code of Federal Regulations (CFR) 4.

**Section E. Illness**

In accordance with Federal Travel Regulations and Comptroller General Decisions, an Employee that becomes ill while in official travel status is generally entitled to per diem for a period not to exceed 14 calendar days. The period of illness is chargeable to the Employee's leave. The supervisor will be notified as soon as possible when an Employee becomes ill while in official travel status.

**Section F. Compensatory Time Off for Official Travel**

Compensatory time off for official travel may be earned by an Employee for time spent in a travel status away from the Employee's official duty station when such time is not otherwise compensable. (See 5 CFR Part 550, Subpart N).

## ARTICLE 14: TELEWORK AND REMOTE WORK PROGRAMS

### Section A. General

The Agency supports telework and remote work as workplace flexibilities for recruiting top talent; retaining current Employees; reducing the cost of office space; absenteeism; and the use of workers compensation. The purpose of telework and remote work is fundamentally to complete the duties, responsibilities and other authorized activities of an Employee's official position from an alternative worksite other than at the location an Employee normally works. Telework and remote work also enables Employees to better manage work and personal or family responsibilities.

### Section B. Telework Policy

1. Telework is voluntary for all USDA Employees. At a minimum, every Employee must decide either to participate in the telework program or affirmatively opt out of the telework program by completing the Agency's electronic form (currently the Telework Management System [TMS]).

2. Employees occupying a telework eligible position may telework up to 8 days per pay period based on the duties of the position and the amount of onsite activities that must be performed. All approved telework arrangement must be documented in the Agency's electronic form (currently the TMS).

3. A teleworker's official duty station will remain unchanged if they report physically to their employing office worksite location for two full workdays or a combination of workday and some form of personal leave each biweekly pay period on a regular and recurring basis. If a holiday falls on a teleworker's day to physically report to the employing office worksite, it is not required to add an alternate day to the teleworker's requirement to physically report to the employing office worksite for that specific biweekly pay period.

### Section C. Position Eligibility for Telework

1. The Agency presumes that all positions are suitable for telework, unless:

    a. Duties require daily contact with other people or where daily physical presence is required per the official duties of the position.

b. Duties require daily use of specialized equipment located only at the worksite.

c. Duties require daily handling of classified materials.

d. Use of government-furnished computer access to Local Area Network or email is not available.

e. The Agency agrees to make available the means and resources necessary to enable Employees to telework subject to funding limitations as determined by the Agency and availability of equipment.

**Section D. Employee Eligibility for Telework**

1. All Employees in a telework eligible position are presumed eligible for telework except in the following situations:

   a. If their performance falls below fully successful. In such circumstances, supervisors are required to initiate corrective action in accordance with Article 25- Unacceptable Performance. The Employee's eligibility for telework must be reassessed every 12 months from the date the supervisor determined the performance fell short.

   b. If the Employee was subject to formal disciplinary action, adverse action, or was placed on leave restriction within the previous 12 months

   c. If the Employee has been disciplined for one of the following, which will permanently make the Employee ineligible for telework:

      (1) Violation of 7 Code of Federal Regulations (CFR) 2635, Subpart G, Misuse of Position, of the Standards for Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing their official duties; or

      (2) Absence Without Leave (AWOL). AWOL is a non-pay status that covers an absence from duty that is not approved. Any Employee AWOL for 5 or more days in any calendar year is permanently ineligible.

**Section E. Administrative Policies for Telework and Remote Work**

1. Telework Agreement: The telework agreement is the electronic document certified by the telework Employee and their supervisor in which each understands the guidelines and procedures of the program. A telework agreement will be completed for all telework requests. The telework agreement will be acted upon within 10 workdays of its submission to the first line supervisor.

2. Employee Withdrawal from Telework: Except when required in the event of an emergency, an Employee's involvement in the telework program is voluntary and may be discontinued by the Employee at any time with appropriate notice. Such notice must be sufficient to allow necessary workplace adjustments to be made.

3. Removal of Employee from Telework: The supervisor may adjust/terminate an Employee's telework agreement if performance declines or telework no longer meets the organizational needs of the work unit. Normally, the Employee will not be removed from Telework for a single minor infraction of the Telework Agreement. The supervisor and Employee will make a bona- fide effort to work out specific problems before any decision is made to remove the Employee from the telework program.

4. Grievances: Grievances under this Article will be handled according to Article 38.

5. Time & Attendance: Supervisors will continue to certify time and attendance for telework Employees. Employees are required to record their telework hours in the Time and Attendance (T&A) System using the appropriate codes. All managers and supervisors will pay particularly close attention to how to code time correctly when teleworking.

6. Equipment: Teleworkers may only use software, hardware, and telecommunications approved by the Employer to complete their work assignments. Employees approved for work off-site will be provided with necessary software and hardware to complete their work assignments subject to funding limitations as determined by the Agency. The Employer will not pay any additional utility expenses associated with telework.

7. Emergency Dismissal: Telework will be considered for emergency situations that involve national security, extended emergencies or other unique situations. As a result, Employees who telework on the day of an emergency Agency closure can be required to continue working from their alternative worksite if the closure occurs on their telework day. When both primary and alternative worksites are affected by a widespread emergency, the teleworker may be granted excused absence as appropriate. When the emergency affects only the alternate worksite for a majority of the workday, the teleworker may be required to report to the primary worksite, request leave, or be granted an excused absence, depending on the circumstances. Some teleworkers may be designated as emergency, mission critical, or Continuity of Operations Planning (COOP) Employees. These teleworkers continue to carry out the Agency's operations.

8. Position Descriptions and Performance Standards: Established position descriptions (PDs) will apply to telework Employees. Performance standards for telework Employees will be results-oriented and will describe the quantity and quality of expected work products and the method of evaluation. Generally, the same performance standards will apply to both telework Employees and on-site Employees who perform the same tasks.

9. Workers Compensation Act: Telework Employees are covered by the Federal Employees Compensation Act and may qualify for payment for on-the-job injury or occupational illness.

10. Work Schedule, Overtime, Pay, Leave and other Personnel Issues: Rules concerning work schedules, overtime, pay, leave, core hours and other personnel issues apply to telework Employees and remote Employees as they do to on-site Employees. The telework and remote agreement documents the initial work schedule and should be updated to reflect changes in work schedules. In addition to regularly scheduled on-site days, Employees are responsible for attending meetings or other on-site events; reasonable notice, generally not less than 24 hours, of such events will be given to Employees who are not scheduled to be in the office on those days.

11. Hoteling: The Agency agrees to share desk assignments, if needed, for Employees who are away from their primary worksite. The Agency agrees, whenever appropriate, to incorporate teleworking and/or hoteling into headquarters' complex renovations project plans as alternatives to reducing the

cost of securing additional space through leasing and/or renting during the temporary renovation and the cost of moving Employees to other locations.

**Section F. Remote Work Policy**

1. Except as specifically stated herein, eligibility, procedures, and policy for Remote Work will be in accordance with DR 4080-811-002.

    a. Remote work is an arrangement under which USDA Employees are able to perform their position's job duties at an approved alternate worksite, typically the Employee's residence. The remote worksite may be within or outside of the Washington D.C. Metropolitan Area as defined as duty locations in the locality pay area (Washington – Baltimore – Arlington, DC-MD-VA-WV-PA) as established by the Office of Personnel Management (OPM) and in accordance with the Union certification of the Mission Area, Agency, or staff office's worksite. Remote work Employees will be expected to work at a designated approved location, typically the Employee's residence, on a regular and continuing basis.

    b. Employees whose Agency approved positions may be effectively performed either remotely or virtually are eligible for remote or virtual work, unless there is a compelling demonstrated business need that would prevent an Employee from being eligible for remote work.

    c. Although remote Employees generally are not expected to report to the Agency, or staff office worksite, the supervisor may require a remote Employee to report to the worksite when the Employee's duty functions cannot be done virtually, e.g., collaboration on a project, training or an official meeting that cannot be done virtually, or random drug testing, to carry out the functions of the remote Employee's job that cannot be done remotely or virtually to facilitate the Agency's mission. Supervisors will provide Employees with as much advance notice as possible when they are required to report to the Agency, or staff office worksite.

    d. Employer will follow OPM guidelines in determining official duty station for Employees approved for telework and remote work.

**Section G. Office Equipment**

Equipment: Teleworkers and remote workers may only use software and hardware approved by the Employer to complete their work assignments. Employees will be provided necessary software and hardware to complete their work assignments subject to funding limitations as determined by the Agency. The Agency agrees to notify Employees of significant changes in Agency's hardware and software that would affect telework and remote Employees. Training on such changes will be provided at the Employee's primary worksite, if necessary. The Employer will not pay any additional utility expenses associated with telework or remote work. Divisions may provide supplies to Employees based on budgetary availability.

## ARTICLE 15: TECHNOLOGY, METHODS AND MEANS OF PERFORMING WORK

**Section A.**

Proposed changes in technology, methods, and means of performing work initiated by either the Agency or the Union will require appropriate advance notice (including pre-decisional involvement when applicable), and bargaining in accordance with applicable laws, Executive Orders, rules, regulations, and policies.

**Section B.**

Routine network-wide software updates do not require pre-decisional consultation between Union and Management.

**Section C.**

Employee-owned software is not allowed on government workstations, unless approved by the Employer for installation.

## ARTICLE 16: CAREER LADDER PROMOTIONS

### Section A: General

1. An Employee in a career ladder position will be promoted on the first full pay period after all of the following requirements are met:

    a. The Employee becomes minimally eligible to be promoted after one year or whatever lesser period satisfies basic eligibility requirements;

    b. The Employee is certified as demonstrating the potential for satisfactory performance at the next higher level. In this regard, the supervisor must make this determination prior to the date the Employee is minimally eligible to be promoted, according to Section C in this Article.

    c. The Employee must have an overall summary rating of Fully Successful. An Employee whose current performance is lacking will receive written notice as described in Section B in this Article.

    d. All other requirements of laws and regulations are met.

### Section B. Supervisor Certification

1. Supervisors will review the work of each Employee, in a career ladder position who will be eligible for a career ladder promotion prior to the Employee's eligibility date, unless the Employee is moved into a position with greater promotion potential, according to Section C in this Article. Supervisors will provide a written notice to Employees who do not meet the requirements for promotion, no less than 30 calendar days prior to the eligibility date, detailing the exact reason(s) the Employee did not meet the requirements for promotion, as well as what is required to meet the requirements for promotion. Reasons for delays for a career ladder promotion will be explained in the written notice. Once an Employee's performance improves to meet the requirement for promotion level, the supervisor will certify the Employee for promotion.

2. If written notice requirements are not met and performance is found to be acceptable, and the Employee has displayed the potential to perform at the higher level, the promotion will be made retroactive to the date the Employee met the time-in-grade requirements in their current position.

**Section C. Movement into New Position with Promotion Potential**

1. An Employee who competes, is selected, and is moved into a new position at the same or lower grade than they currently hold, and the new position has greater promotion potential, they may be promoted to the next higher level, provided eligibility requirements are met.

2. The supervisor will review the Employee's potential for satisfactory performance at the next higher level above the grade of the new position no later than 90 calendar days after being placed.

3. The supervisor will notify the Employee of the results of the review within 10 workdays.

4. If the supervisor has not performed the review within 90 calendar days of the Employee's move to the new position, nor provided the written notice, and the Employee is not performing satisfactorily, the supervisor must review and notify the Employee within 10 workdays of the Employee's request for a promotion as stated in this Section. The supervisor's failure to meet this requirement is grieveable under Article 38 of this Agreement.

## ARTICLE 17: MERIT PROMOTION

### Section A. General Provisions

1. The principle of merit promotion is to ensure that Employees are given full and fair consideration for advancement without discrimination for non- merit reasons and to ensure selection from among the best-qualified candidates. The Employer recognizes the value of promoting from within.

2. Positions in the bargaining unit will be filled on the basis of merit and in accordance with 5 Code of Federal Regulations (CFR) 335 and other applicable laws, rules, regulations and this Agreement.

3. To facilitate any downsizing effort, the Agency will, whenever possible, consider qualified in-house applicants prior to considering the applications of outside candidates.

4. Employees who are on extended leave or travel are responsible for notifying their supervisor if they want to be considered for promotional opportunities while they are on travel or leave, and for leaving a telephone number or e-mail address with their supervisor. Supervisors must notify temporarily absent subordinate Employees about announced vacancies for which they indicated an interest so that they may apply. Employees who wish to be considered for vacancies but who will be temporarily absent from the workplace should make appropriate arrangements to have Internet access to apply for vacancies online utilizing the automated system.

5. Employees who submit applications are encouraged to independently confirm:

    a. the receipt of their application by checking USAJobs;

    b. the status of their application and;

    c. the status of the vacancy for which they are applying.

### Section B. Vacancy Announcements

1. The Employer will utilize the Agency-wide automated system for all solicitations and application processes.

2. Announcements for bargaining unit positions will be open for at least 10 calendar days.

3. All vacancy announcements for positions within the Washington, D.C. Metropolitan Area will be posted electronically on the Office of Personnel Management (OPM) website for Federal vacancies. The Agency will issue an e-mail announcement of vacancies that open each week, if vacancies are no longer posted in the FPAC Unpacked Employee Newsletter.

4. All vacancy announcements will contain the following information:

    a. announcement number and issue date;

    b. area of consideration;

    c. title, series, grade;

    d. types of appointments identified;

    e. an indication that it is for multiple positions and/or is an open continuous announcement, if applicable;

    f. geographic location of position;

    g. closing date for acceptance of applications;

    h. duties of the position;

    i. whether the position is a bargaining unit position;

    j. qualification requirements, including any selective placement factors;

    k. evaluation methods to be used; if any;

    l. known promotion potential, if any;

    m. instructions for applying;

n. whether reimbursement for relocation expenses is authorized in the event selection is made of a candidate from outside the commuting area;

o. a statement that the principles of equal employment opportunity will be adhered to in all phases of the promotion process; and

p. an Agency contact and a reasonable accommodation statement for applicants with disabilities when an accommodation for any part of the application and hiring process is requested.

**Section C. Qualification Standards**

1. Qualification requirements and selective placement factors for vacant positions will be job-related.

2. Candidates will be rated eligible for a position if they meet the minimum qualification requirements for a General Schedule position described in the OPM Qualifications Standards Operating Manual (or Wage Grade Qualifications Standards, as appropriate) as supplemented by valid job-related selective placement factors, if any.

## ARTICLE 18: REASSIGNMENTS

### Section A. Definition

1. Reassignment: Changing from one position to another without promotion or demotion, and without change of employment status while serving continuously within one Agency.

2. Transfer: Changing from one Agency to another without a break in service of more than one full workday.

### Section B. General

1. The Parties understand the Employees, or the Agency may initiate the reassignment of an Employee for such purposes as:

    a. maintaining or improving the economy, integrity, or efficiency of the Agency;

    b. assuring the best utilization of Employee skills or abilities;

    c. making the best use of current staff and other resources;

    d. providing Employees with opportunities to enhance their qualifications, skills, abilities, and experience in areas of work performed by the Agency;

    e. resolving work-related problems;

    f. addressing Employee hardship and reasonable accommodation concerns;

    g. fulfilling an Employee's request; and

    h. allowing cross training for Employees.

2. Reassignments will be consistent with Career Transition Assistance Program (CTAP) regulations.

**Section C. Procedures - Employee Requests for Reassignments**

1. An Employee may make a written request for a voluntary reassignment through their first line supervisor, a supervisor in their chain of command, or by submitting a request directly to the Union and the Union will forward the request to the Employee and Labor Relations Section.

2. Management will respond, in writing, within 30 calendar days of Management's or Employee and Labor Relations Section receipt of the Employee's request.

3. The Agency will review the Employee's request utilizing the various factors outlined in Section B in this Article. The Agency may not be able to meet the Employee's requests, given the needs and exigencies of the Agency. Upon request, Human Resources Division (HRD) will provide career development assistance and information regarding available employment resources.

4. The Agency will not pay relocation expenses that result from an Employee-initiated voluntary reassignment. When a reassignment results from the Agency's solicitation of volunteer(s) (i.e. statement of interest), the Agency will not pay relocation expenses.

**Section D. Employer-Initiated Actions**

1. Before initiating a reassignment, the Agency will provide notice to the Union. The Union will have 10 workdays to respond to the notice. Failure to respond waives the Union's rights to negotiate impact and implementation of the reassignment.

2. When a reassignment from one bargaining unit position to another bargaining unit position is required, the Agency will notify the Employee of the details of the new assignment in advance of the reassignment.

3. Whenever the reassignment is a directed reassignment (is not voluntary and is outside the commuting area) relocations expenses required by regulations will be paid. The Agency agrees to give the Employee a reasonable amount of time to accomplish the change in duty station in an orderly manner. The Employer will provide an explanation to the Employee and to the Union the reasons for the reassignment if the reassignment was not at the Employee's request.

4. When a reassigned or transferred Employee indicates that the action will result in undue personal hardship, the Agency will give reasonable consideration to the Employee's claims, and, if possible, make a reasonable effort to minimize the hardship in accordance with applicable laws and regulations.

5. Recently reassigned Employees will be placed in vacant cubicles within their respective new work area based on seniority.

6. The Agency will consider any Employee’s requests to move within an office after Employees are reassigned to another office. The Agency will base its approvals for requests to move on business needs and seniority.

## ARTICLE 19: DETAILS

### Section A. Definition

For the purposes of this Article, the term detail means the temporary assignment of an Employee to new duties or to another position.

### Section B. Details to a Position at the Same Grade Level

1. Length of Detail: All details will be for a specific period of time. The detail of an Employee to a position at the same grade level will generally not exceed 120 days. For details of more than 120 days, the Employer will consider any personal concerns of the Employee related to the detail. This provision may not be circumvented by resorting to a series of details of less than 120 days.

2. Documentation: Details of an Employee to a position at the same grade level will be documented:

    a. by an SF-50 for details of more than 30 days.

    b. at the request of the Employee for details of 30 days or less by a memorandum to the Employee and signed by the supervisor to which the Employee was detailed with a brief description of the duties of the Employee on the detail.

3. Impact on Merit Promotion Procedures: Merit promotion procedures do not apply when a detail is to a position at the same grade level.

4. Employees detailed to a position at the same grade level for more than 120 days will be provided with a copy of the position description (PD) and a performance plan for the position. For details of 120 days or less, performance requirements should be incorporated and reflected in the existing performance plan.

### Section C. Details to a Higher-Graded Position

1. Length of Non-Competitive Detail: An Employee may not be non-competitively detailed to a higher graded position for more than 120 days. A detail to a higher graded position for more than 30 days requires a temporary promotion, provided time in grade requirements are met (per 5 Code of Federal

Regulations (CFR) 300.604). This provision may not be circumvented by rotating an Employee in and out of a detail position.

2. Details under this Section anticipated to be more than 120 days require the competitive announcement of the detail position. This does not prevent an Employee from being temporarily promoted for less than 120 days while the position is being advertised.

3. Documentation: Details under this Section will be documented:

    a. by an SF-50 for details of more than 30 days.

    b. at the request of the Employee, for details of 30 days or less, by a memorandum to the Employee and signed by the supervisor to which the Employee was detailed with a brief description of the duties of the Employee on the detail.

4. Details will not be used to circumvent competitive procedures or be used to give an unfair competitive advantage to the Employee detailed to a higher-graded position.

5. Employees detailed to a higher-graded position for more than 30 days will be provided with a copy of the position description (PD) and a performance plan for the position within 30 calendar days of the beginning of the detail.

**Section D. Return to Original Assignment**

Upon return to their original position, the Employee will be given reasonable time to become acquainted with any changes which have occurred during their absence.

**Section E. Training and Developmental Assignments**

Work assignments/details made as part of recognized training or professional development programs will not be covered by the requirements of this Article to the extent that they conflict with program guidelines or requirements or interfere with the achievement of the training or professional development program objectives.

**Section F. Intranet Posting**

The Employer will establish an Intranet site (currently myFPAC) where Employees may indicate their interest in short-term work assignments.

## ARTICLE 20: PART-TIME EMPLOYEES

### Section A. Employee Information

The Employer recognizes the benefit of part-time employment to both the Agency and Employees in those situations where mission accomplishment permits such arrangements. Employees may request information concerning the impact of converting from full- time to part-time or part-time to full-time employment in the areas of retirement, reduction in force, health and life insurance, promotion, and step increases.

### Section B. Consideration

1. The Employer will consider the Employee's requests to convert to part-time or full-time work.

2. An Employee's requests for changes in part-time or full-time employment must be made in writing to the Employer.

3. Employees will sign a statement indicating acceptance of part-time employment conditions, at the time of entering into a part-time position.

### Section C. Adjustment of Schedule

Employees may request in writing to initiate or change their non-pay day(s) off in accordance with the provisions of Article 6.

## ARTICLE 21: PROBATIONARY EMPLOYEES PROCEDURES

### Section A. Definitions

A probationary Employee is an Employee who has been given a new career or career-conditional appointment and who meets the conditions described in 5 Code of Federal Regulations (CFR), Part 315.801(a).

### Section B. Procedures for Probationary Bargaining Unit Employees

1. The Employer agrees, upon request, to advise a probationary Bargaining Unit Employee (BUE) of their performance progress at any time after expiration of the first six months of the probationary period but no later than the end of the 10th month of the probationary period.

2. The Employer may discharge a probationary Employee at any time during their probationary period if they fail to demonstrate fully their qualifications for continued employment. When the Employer decides to terminate a BUE serving a probationary period because their work performance or conduct during this period fails to demonstrate their fitness or qualifications for continued employment, the Employer will terminate the probationary BUE by notifying them as to why they are being separated and the effective date of the action.

3. The Employer agrees that when it deems advanced notice of termination to be in the best interests of the Service, i.e. of the Employer's operation and mission accomplishment, the affected probationary BUE will be given two weeks advanced notice. If less than two weeks probationary time remains prior to the effective date of such action, a lesser advanced notice may be given.

4. The Employer may allow a probationary BUE the opportunity to resign their position in lieu of termination unless the needs of the Service, time or the availability of the probationary BUE dictate otherwise.

5. To the extent permitted by applicable laws, rules, and regulations, probationary Employees will have the right to appeal their termination to the Merit Systems Protection Board, or, if the Employee believes that their termination is based on discrimination, the Employee may file an EEO complaint.

**Section C. Consultation**

An Employee in a probationary status may consult with the Union regarding their termination.

## ARTICLE 22: REDUCTION IN FORCE AND FURLOUGH

### Section A. General Provisions

1. Purpose:

   This Article establishes procedures for effecting any reduction in force (RIF) actions in the bargaining unit and successor bargaining units. It should be used in conjunction with 5 United States Code (U.S.C.) and Title 5, Code of Federal Regulations (CFR), Part 351, which is available in all servicing personnel offices. Article 49 creates a meeting forum which will allow the Union to provide input for any potential RIF.

2. Use of Regulations:

   a. The Employer is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished or vacated.

   b. Each Agency will follow 5 CFR 351, when it releases a competing Employee from their competitive level by furlough for more than 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 an Agency has formally announced a RIF in the Employee's competitive area and when the RIF will take effect within 180 days.

   c. When the Agency fills a vacant position by an Employee who has been reached for release from a competitive level for one of the reasons in Sections A.1. and A.2.b. in this Article, RIF procedures will be followed.

3. Not Covered:

   a. Actions not covered. This RIF policy does not apply to:

(1) The termination of a temporary or term promotion or the return of an Employee to the position held before the temporary or term promotion or to one of equivalent grade and pay.

(2) A change to lower grade based upon the reclassification of an Employee's position due to the application of new classification standards or the correction of a classification error.

(3) A change to lower grade based on reclassification of an Employee's position due to erosion of duties, except that this exclusion does not apply to such reclassification actions that will take effect after an Agency has formally announced a RIF in the Employee's competitive area and when a RIF will take effect within 180 days. This exception ends at the completion of the RIF.

(4) Placement of an Employee serving on an intermittent, part-time, on call, or seasonal basis in accordance with conditions established at the time of appointment.

(5) A change in an Employee's work schedule from other than full time to full time. A change from full time to other than full time for a reason covered in Sections A.1. and A.2.b. in this Article is covered by RIF procedures.

(6) Reassignment, not due to displacement, to a position at the same grade in the same or different competitive levels, including reassignments due to reorganization.

4. Policy:
   a. Reductions in personnel strength will be accomplished, whenever possible, by planning and attrition. Every effort will be made to avoid the use of RIF procedures to effect such reductions. RIFs will be implemented only if their necessity cannot reasonably be abated through other means, such as hiring freezes, furloughs, reduction in travel or training that is not critical to the mission of the Agency, or reduction of

contracts with consultants and contractors, and any and all other expenses that are not critical to the mission of the Agency.

b. Employees and their Union representatives will be informed as soon as reasonably possible but no less than 60 days in advance of any necessity for a RIF. The Union may respond within 30 days of notification with a request for information beyond that provided under this Section. In the event of a reduction of 50 or more Employees, the following entities will be notified: The appropriate State program authorized by the Workforce Investment Act (WIA) of 1998; the chief elected government official of the local government(s) within which 50 or more Employees will be separated by a RIF; and OPM at this address:

Deputy Associate Director
Recruitment and Hiring
U.S. Office of Personnel Management
1900 E Street NW, Room 6500
Washington, D.C. 20415

c. If regulations require other entities to be notified the Agency will notify. Once Employees have been informed of a pending RIF under Section A.4.b. in this Article, Employees may make reasonable use of official time, equipment, and supplies for the purpose of finding other employment as long as it does not unduly interfere with the Agency's business. Employees and supervisors will follow procedures in Article 43 in use of official time for this purpose.

d. The Agency will, to the extent feasible, offer Employees being separated or downgraded due to a RIF vacant continuing positions for which they are qualified.

e. Outplacement assistance will be provided to all Employees who are separated as a result of a RIF. Outplacement assistance will be in accordance with the Federal, Department and Agency Career Transition Assistance Programs (CTAP).

5. Communications Between Management and Employees:

a. RIF actions covered by this Article are highly sensitive subjects. Open communications with Employees and Union representatives will help Employees understand the need for the RIF action and will encourage them to continue work with as little disruption as possible. Management officials will ensure that all Employees are provided with complete and timely RIF information.

b. Management acknowledges its duty to comply with negotiated Agreement provisions concerning Union notice of planned RIFs and participation at formal meetings, and will provide the Union with information on Employees':

(1) competitive area
(2) competitive level
(3) subgroup
(4) RIF service computation date.

6. Planning: When the need for a RIF has been ascertained under procedures in Sections A.1. and A.2.a. in this Article:

a. Management will inform the Union of its determinations regarding a potential RIF, and provide relevant information responsive to Union inquiries.

b. The Agency will obtain information related to the extent to which the workforce is likely to be reduced through normal attrition, which includes resignations, retirements, and other separation actions.

7. Rights to Information: The Agency will notify the Union and Employees of the following items:

a. Employees and their Union representatives will be informed as soon as reasonably possible but no less than 60 days in advance of any necessity for a RIF. The Union will respond within 30 days of notification with a request for information beyond that provided under this Section.

b. Notify Employees of their rights to use official time, supplies, and equipment for the purpose of finding outside employment as stated in Section A.1. - 4. in this Article.

c. An employee to be RIFed will be notified as soon as reasonably possible but no less than 60 days before the RIF is to become effective. When a RIF is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of an Agency head or designee, has approved a notice period of less than 60 days, the Agency will notify the Union and Employees as soon as practicable. This shortened notice period must cover at least 30 full days before the effective date of release of the RIF notice.

d. The Agency will provide timely notice to the Union that final retention register is available for review.

e. The Union will be provided a list of exceptions to qualification standards when the Agency makes exceptions to qualifications standards in order to assign an Employee to a vacant available position. See Section F.8. in this Article.

f. The Agency will make every reasonable effort, including manual preparation of documents, to ensure that Employees receive a copy of the Separation-RIF SF-50, or equivalent in a timely fashion to file for unemployment compensation. The Agency may substitute an equivalent document acceptable to State Unemployment Compensation Agency in the commuting area.

8. Definitions: These definitions only apply to Article 22.

a. Annual Performance Rating of Record: Annual performance rating of record for the purpose of a RIF will be the record from the most recently completed appraisal period prior to the date of issuing the RIF notices or the cutoff date the Agency specifies prior to issuing the RIF notices, after which no new ratings will be put on record. Rating of record has the meaning given that term in 5 U.S.C. ch. 43, 430.203. For an Employee not subject to or part 5 U.S.C. ch. 43, 430.203, it means the officially designated performance rating, as provided for in the Agency's appraisal system, that is considered to be an equivalent rating of record under the provisions of 5 U.S.C. ch. 43 430.201(c).

b. Assignment Right: The right of an Employee to be assigned (by means of bump or retreat) in the second round of competition to a position in a different competitive level held by an Employee with a lower standing on the retention register (See Sections F.3., F.4., and F.5. in this Article).

c. Bump: Bump assignment rights to a lower subgroup as defined in 5 CFR 351.701 (b). Also see Section F.3. in this Article.

d. Competing Employee: An Employee in tenure group I, II, or III in either the competitive or the excepted service.

e. Competitive area: The area described in Article 1 or other organizational and geographical boundaries within which Employees compete in a RIF (See Section C.2. in this Article.)

f. Competitive Level: Competitive level will be established by the Agency to determine the competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an Agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption in accordance with 5 U.S.C. ch. 43 351.403.

g. Days: Calendar days.

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

i. Furlough: The placement of an Employee in a temporary non-duty and non-pay status for not more than one year. For furloughs of more than 30 consecutive calendar days (or 22 workdays, if done on a non-continuous basis), RIF procedures will apply.

(1) Emergency Furlough: A furlough because of lack of appropriations or lack of work due to unpredictable events such as natural disasters, fires, etc.

(2) Non-emergency Furlough: A furlough because of budgetary short-fall or lack of work other than noted in the definition of Emergency Furlough.

j. Local 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 live and can reasonably be expected to travel back and forth daily to their usual employment.

k. Non-pay Status: Includes absent without leave (AWOL), leave without pay (LWOP), furlough and suspensions.

l. Notice: An official written communication provided to an individual Employee announcing that they will be affected by a RIF action. The specific RIF notice contains the specifics of a RIF action to be taken. It must be issued not later than 60 days before the RIF is to become effective. When a RIF is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of an Agency head or designee, may approve a notice period of less than 60 days. This shortened notice period must cover at least 30 full days before the effective date of release.

m. Representative Rate: The fourth step of the grade for a position under the General Schedule, or the prevailing rate for a position under the Federal Wage system or similar wage determining procedure; and, for other positions, the rate designated by the Agency as representative of the position.

n. Retention:

(1) Register: A list of competing Employees within a competitive level who are grouped by tenure of employment, veteran's preference, and length of service, augmented by performance credit. In practice, the terms competitive level and retention register generally have the same meaning and refer to the competitive level after an Employee's retention standing is determined.

(2) Standing: An Employee's relative position on the retention register.

o. Retreat: See Section F.4. in this Article.

p. Rounds of Competition: The different stages of competing for retention in a RIF action. In the first round of competition, Employees compete to stay in their competitive level. In the second round of competition, Employees compete for assignment to positions in different competitive levels.

q. Subgroup Standing: The Employee's relative position on the retention register based on tenure group and veteran's preference subgroup. It does not take into account length of service or performance credit.

r. Tenure: The period of time an Employee may reasonably expect to serve under a current appointment.

s. Transfer of Function: 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 area in which the function is performed to another local commuting area. The gaining competitive area may be in the same or in a different agency. The movement of work within a competitive area is reorganization.

t. Undue Interruption: A degree of interruption that would prevent the completion of required work by the Employee 90 days after the Employee has been placed in a different position through a RIF. The 90-days standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines and other demands. However, a work program would generally not be unduly interrupted even if an Employee needed more than 90 days after the RIF to perform the optimal quality or quantity of work. The 90-days standard may be extended if placement is made under RIF procedures to a low priority program or to a vacant position.

u. Veteran's Preference: Veteran's preference will pertain to preference in Federal employment and the following apply. Veteran means a person who was separated with an honorable discharge or under honorable conditions from active duty in the armed forces performed in a war; or, in a campaign or expedition for which a campaign badge has been authorized; or during the period beginning April 28, 1952, and ending July 1, 1955; or, for more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955, and ending October 14, 1976 in accordance with 5 CFR 211.102.

v. Work Schedule: Full-time, part-time, intermittent, seasonal, or on-call basis.

**Section B. Transfer of Function**

1. General:

a. A transfer of function does not suspend Management's right to take other legitimate personnel actions. These actions may be taken before, concurrent with, or after the transfer of function.

b. In order to assist Employees who must decide whether or not to accept transfer to a new geographic location, Agency officials should provide available information to affected Employees regarding the new location of the activity, the timing of the transfer, the gaining organization, the foreseeable new positions, and the conditions upon which this information is subject to change. Information should also be made available to the extent practicable concerning such matters as availability and cost of housing in the new area, and the government's obligations to pay travel and moving expenses. Similarly, positive outplacement programs must be undertaken to assist, to the extent practicable, Employees who are faced with separation because they do not choose to transfer with the function, or because they did not receive offers at the new location.

c. A function being transferred solely for the purposes of liquidation is not a continuing function. A function is transferred only when it disappears or is discontinued at one location and appears in an identifiable form at

another location. The function must, at the time of transfer, be authorized to continue in operation for more than 60 days. In contrast, a discontinued function that does not appear at another location is considered to have been abolished. An Employee whose position is transferred solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing Employee for other positions in the competitive area gaining the function.

2. Losing Competitive Area: The following apply to the losing competitive area in a transfer of function:

    a. Regardless of an Employee's personal preference, a competing Employee occupying a position that has been identified for transfer has no right to transfer with a function, unless the alternative is separation or downgrading in the competitive area losing the function.

    b. Except as permitted in Section B.3.e. in this Article, the losing competitive area must use adverse action procedures if it chooses to separate an Employee who declines to transfer with their function. An Employee who declines to transfer with the function may not be separated any sooner than the effective date of the transfer of the Employees who chooses to transfer with the function to the gaining competitive area.

    c. Transfer of function regulations do not permit the losing competitive area to carry out a RIF solely for Employees who decline to transfer with their function. However, the losing competitive area may, at its discretion, include Employees who decline to transfer as part of a concurrent RIF conducted for other reasons. They may also reassign the Employee to another continuing position under the general authority to reassign Employees.

3. Identification of Positions with a Transferring Function:

    a. The competitive area losing the function is responsible for identifying the positions of competing Employees with the transferring function. A competing Employee is identified with the transferring function on the

basis of the Employee's official position. Two methods are provided to identify the Employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

b. Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Method One is not applicable.

c. Under Identification Method One, a competing Employee is identified with a transferring function if:

(1) (a) The Employee performs the function at least half of their work time; or
(b) Regardless of the time the Employee performs the function during their work time, the function performed by the Employee includes the duties controlling their grade or rate of pay.

(2) In determining what percentage of time an Employee performs a function in the Employee's official position, the Agency may supplement the Employee's official position description (PD) by the use of appropriate records such as, but not limited to, work reports, organizational time logs, work schedules.

d. Identification Method Two is applicable to Employees who perform the function during less than half of their work time and are not otherwise covered by Identification Method One. Under Identification Method Two, the losing competitive area must identify the number of positions it needed to perform the transferring function. To determine which Employees are identified for transfer, the losing competitive area must establish a retention register in accordance with this Article that includes the name of each competing Employee who performed the function. Competing Employees listed on the retention register are identified for transfer in the inverse order of their retention standing. If for any retention register this procedure would result in the separation or

demotion by a RIF at the losing competitive area of any Employee with higher retention standing, the losing competitive area must identify competing Employees on that register for transfer in the order of their retention standing.

e. (1) The losing competitive area may permit other Employees of the Agency to volunteer for transfer with the function in place of Employees identified for transfer. However, the losing competitive area may permit these Employees to volunteer only if no competing Employee is separated or demoted solely because a volunteer transferred in place of them to the gaining competitive area.

(2) If the total number of Employees who volunteer for transfer exceeds the number of Employees required to perform the function in the gaining competitive area, the losing competitive area, at its discretion, may give preference to the volunteers with the highest retention standing.

4. Gaining Competitive Area: The following regulations apply to the gaining competitive area in a transfer of function.

a. The transfer of function provisions does not affect Employees of the gaining competitive area if the transfer of function does not require a RIF or other personnel actions in that organization.

b. If a transfer of function requires that the gaining competitive area conduct a RIF, Employees identified for transfer by the losing competitive area will be transferred to the gaining competitive area before it conducts a RIF, with no change in tenure. They have the right to compete in any RIF on retention registers comprised of both themselves and the Employees assigned to the gaining competitive area at the time the transfer is effected. A transferred Employee who is reached for a RIF action in the gaining competitive area has no retreat rights to the losing competitive area.

c. The gaining competitive area may determine the retention rights of incoming Employees in a transfer of function without an actual relocation of the competing Employees from the losing competitive

area. The losing competitive area may act as an agent for the gaining competitive area in providing information to transferring Employees and, if applicable, in processing lump sum annual leave payments and severance pay.

d. Employees whose positions are transferred solely for the purpose of liquidation, and who are not identified with operating functions specifically authorized at the time of transfer to continue in operation for more than 60 days, are not competing Employees in the gaining competitive area. The Employee has the right to transfer to the gaining competitive area solely for the purpose of separation by a RIF.

e. An Employee whose position is transferred solely for liquidation is placed on the reemployment priority list of the gaining competitive area rather than the losing competitive area.

f. The transfer of function regulations does not apply to the transfer of a function which is terminated in the losing competitive area, and is subsequently transferred to another competitive area for completion.

g. A competing Employee who the Agency identifies with a terminated program is a competing Employee in the losing competitive area for RIF competition.

5. RIF Grievances:

An Employee has no right to appeal a transfer of function. However, an Employee may raise a transfer of function issue as part of an appeal or grievance of a subsequent RIF or adverse action that the Employee believes resulted from the transfer of function.

**Section C. Scope of Competition**

1. General:

a. Employees compete for retention in a RIF action on the basis of competitive area, competitive level, tenure of employment, veteran's preference, and length of service augmented by performance credit. These factors are explained below.

b. Records established for RIF purposes (such as documentation of competitive area and competitive level determinations) must be available for review by representatives of the Office of Personnel Management (OPM), by representatives of the bargaining unit, and by an Employee of the Agency, to the extent that this register and records have a bearing on a specific action taken, or to be taken, against the Employee. The Agency will preserve intact all registers and records relating to an Employee for at least one year from the date the Employee is issued a specific notice or until all related grievances and appeals have been settled.

2. Competitive Areas:

A competitive area will be defined solely in terms of the Agency's organizational unit(s) and geographical location, and it will include all Employees within the competitive area. A competitive area may consist of all or part of the Agency. The minimum competitive area is a subdivision of the Agency under separate administration within the local commuting area. The Union recognizes that the determination of RIF's competitive areas is a management function.

3. Competitive Levels:

a. Competitive level: A group of all positions in a competitive area which are in the same grade or occupational level, and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the Agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption. It is the concept of interchangeability that is paramount. The competitive level is based upon each Employee's position description (PD), not on the Employee's personal qualifications. Only occupied positions are included in a competitive level. During the RIF process, Management will utilize continuing vacancies to minimize the adverse impact of the RIF.

b. Separate competitive levels are established in each competitive area according to the following:

(1) By service: Competitive vs. Excepted;

(2) By appointment authority: Separate levels are established for Excepted Service positions filled under different appointment authorities;

(3) By pay schedule;

(4) By type of work schedule: Full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among Employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked; and

(5) By trainee status: Separate levels for Employees in formally designated trainee or developmental programs, as defined by 5 Code of Federal Regulations (CFR) 351.702 (e) (1) through (4).

c. A position is placed in a competitive level when it is established. The competitive level is shown on the PD cover sheet, and is entered into the National Finance Center (NFC) automated personnel inventory system.

d. The initial round of competition in a RIF action is among Employees in the same competitive area who are assigned to positions in the same competitive level.

e. Each subsequent round of competition in a RIF attempts to place an Employee released from their competitive level in a previous round through exercise of their Bump and Retreat rights.

**Section D. Retention Standing**

1. Order of Retention for Competitive Service:

a. After grouping interchangeable positions into competitive levels, the Agency applies the four retention factors in establishing separate retention registers for each competitive level that may be included in the RIF. The name of each Employee is listed in the retention register in the

order of their retention standing. The retention register includes the name of each Employee who holds a position in the competitive level, holds another position because of a temporary promotion from the competitive level, or is detailed from the competitive level. Employees on military duty with restoration rights are not included. Competing Employees are placed on a retention register in the following groups and subgroups. The descending order of retention standing:

(1) By Tenure Groups is: Group I, Group II, and Group III.

(2) By Subgroups, based upon eligibility for veteran's preference in RIF, within each tenure group is: Subgroup AD, Subgroup A, and Subgroup B.

(3) By Length of Service within each subgroup: Employees are ranked beginning with the earliest service date (including performance credit).

b. Tenure groups for competitive service Employees are comprised as follows:

(1) Group I: All career Employees not serving a probationary period for appointment to a competitive position and other Employees specified in 5 Code of Federal Regulations (CFR) 351.501(b)(1) (i) - (iv).

(2) Group II: All career-conditional Employees, all Employees serving a probationary period for initial appointment to a competitive position, and Employees whose tenure status is pending final resolution by the Office of Personnel Management (OPM).

**Note**: The fact that an Employee is serving a probationary period for a supervisory or managerial position does not affect the tenure group of the Employee's appointment for RIF purposes.

(3) Group III: Includes all Employees serving under indefinite appointments, temporary appointments pending establishment of a register, status quo appointments, term appointments, and

any other non-status non-temporary appointments which meet the definition of provisional appointments contained in 316.401 and 316.403 of 5 CFR 351.

c. The subgroups are comprised of the following Employees:

(1) Subgroup AD: All preference eligibles with compensable service- connected disabilities of 30 percent or more.

(2) Subgroup A: All preference eligibles not included in Subgroup AD above.

(3) Subgroup B: All non-preference eligibles.

d. A retired member of a uniformed service who is drawing retired pay must meet certain OPM criteria in order to be considered preference eligibles for RIF purposes. These criteria are defined in 5 CFR 351.501.

2. Order of Retention for Excepted Service:

a. Competing Employees in the excepted service are classified on a retention register on the basis of their tenure of employment, veteran's preference, length of service, and performance, in descending order as set forth in this Section for competing Employees in the competitive service.

b. Groups are defined as follows:

(1) Group 1: All permanent Employees whose appointment carries no restriction of condition such as conditional, indefinite, specific time limit, or trial period.

(2) Group 2: All Employees serving a trial period or whose tenure is equivalent to a career-conditional appointment in the competitive service.

(3) Group 3: All Employees whose tenure is indefinite (without specific time limit) but not actually or potentially permanent; or whose appointment has a specific time limitation of more

than one year; or who are currently employed under a temporary appointment of one year or less, but who have completed one year of current continuous service under a temporary appointment with no break in service of one workday or more.

3. Length of Service and Credit for Performance

   a. A service date will be established for each competing Employee in a RIF.
   b. Employees are listed on a retention register within Veterans Preference subgroups by length of service, in descending order, starting with the earliest service date.
   c. An Employee's service date for RIF purposes is one of the following:

      (1) The date the Employee entered on duty, if the Employee has no previous creditable service;

      (2) The date obtained by subtracting the Employee's total previous creditable service from the date the Employee last entered on duty; or

      (3) The date obtained by subtracting from the date in Section D.3.c.(1) or (2) above any service credit for performance to which the Employee is entitled under Section D.3.d. below.

      (4) An Employee who is a retired member of a uniformed service is entitled to credit for the length of time in active service in the armed forces during a war, or in a campaign for which a campaign badge has been authorized, or the total length of time in active service in the armed forces if the Employee is considered a preference eligible under 5 CFR 351.501(d). (5 CFR 351.503c).

   d. Employees are given performance credit for RIF competition when the Employee’s performance meets certain requirements. The amount of credit added is based on the mathematical average (rounded in the case of fractions to the next higher whole number) of the value of the Employee's last three actual Federal annual performance ratings of

record received during the 4-year period prior to the date of issuance of specific RIF notices, or the date the Agency freezes ratings before issuing RIF notices. An Employee who has not received any rating of record during the 4-year period will receive credit for performance based on the modal rating for the summary level pattern that applies to the Employee's official position of record at the time of the RIF. A modal rating is defined as the summary level assigned most frequently among the actual ratings of record that are:

(1) assigned under the summary level pattern that applies to the Employee's position of record on the date of the RIF;

(2) given within the same competitive area, or the Agency's option within a larger subdivision of the Agency or Agency-wide; and

(3) on record for the most recently completed appraisal period prior to the date of issuance of RIF notices or the cutoff date specified under Definitions in Section A.8.g. in this Article, after which no new ratings will be put on record.

e. An Employee, who has received at least one but fewer than three previous ratings of record during the 4-year cycle, will receive credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received.

f. In determining this average the value assigned to each actual performance rating of record this will be adjudicated following the OPM rules and guidance as applicable:

| ** | Level 1 | Level 2 | Level 3 | Level 4 | Level 5 |
|---|---|---|---|---|---|
| Pattern A | 0 | NA | 16 | NA | NA |
| Pattern B | 0 | NA | 13 | NA | 17 |
| Pattern C | 0 | NA | 13 | 17 | NA |
| Pattern D | 0 | 0 | 17 | NA | NA |
| Pattern E | 0 | NA | 12 | 15 | 18 |
| Pattern F | 0 | 0 | 14 | NA | 18 |
| Pattern G | 0 | 0 | 14 | 17 | NA |
| Pattern H | 0 | 0 | 14 | 16 | 18 |

**NA means not applicable to the rating pattern, i.e., the level is not used in that pattern. The numbers represent the number of years to be credited for a rating at that level and under that pattern.

Examples:

(1) An Employee on a 5-tiered system (Pattern H), whose last three annual performance ratings of record were Outstanding, Exceeds Fully Successful, and Exceeds Fully Successful would have a total of 17 years (18 + 16 + 16 = 50, divided by 3 = 16.7, rounded to next higher whole number) added to their length of service for RIF purposes.

(2) An Employee whose last three annual performance ratings of record were Outstanding and Superior (based on 5-tier system - Pattern H) and Pass (based on Pass/Fail rating system - Pattern A) would have a total of 17 years (18 + 16 + 16 = 50, divided by 3 = 16.7, rounded to next higher whole number) added to their length of service for RIF purposes.

NOTE: For all ratings of record put on record before October 1, 1997, or where all ratings within the 4-year cycle and

competitive area are in the same rating pattern, the performance credit assigned to each actual performance rating must use the 20, 16, 12 additional years of service for Outstanding, Superior, and Fully Successful ratings.

(3) If an Employee has had more than three annual performance ratings of record during the 4-year period, the three most recent Federal annual performance ratings of record are used. An annual performance rating of record received prior to the 4-year period cannot be used.

(4) Regardless of whether the Employee's service occurred in one or more Federal agencies, the Employee's actual ratings are to be used to the extent they are available. If they are not available in the Employee's official records, the current employing agency will accept Employee copies of annual performance ratings of record for this purpose. For Employees who received performance ratings while not covered by 5United States Code (U.S.C.) ch. 43, those performance ratings will be considered ratings of record when it is determined that those performance ratings are equivalent ratings of record under provisions of 5 CFR 430.201(c). (5 CFR 351.504 a 3).

(5) The cutoff date for submission of performance appraisals will be 90 days before the date the specific RIF notice is issued to Employees. No new appraisals will be accepted after this date.

4. Retention Register:

a. The Agency will prepare a retention register for each competitive level affected by the RIF, listing Employees by tenure group/subgroup as follows: IAD, IA, IB, IIAD, IIA, IIB, IIIAD, IIIA, and IIIB.

b. An Employee serving a temporary promotion will be placed on the retention register for the competitive level from which they were promoted.

c. An Employee who has received a written decision to demote or reassign them because of unacceptable performance or conduct will be placed on the retention register for the competitive level to which they will be demoted or reassigned.

d. The Agency will list, apart from the retention registers but on the same document, in the following order, the name of each Employee who:

(1) Is serving under a time-limited appointment or temporary promotion (together with the expiration date of appointment or promotion); or

(2) Has a written decision under 5 CFR Part 432 or Part 752 of removal from the position because of unacceptable performance or conduct. An Employee who has received a written decision under 5 CFR 432 or Part 752 of the decision to demote them because of unsuccessful performance or conduct competes from the position to which they have been or will be demoted.

(3) Employees so listed are noncompeting Employees in the competitive level, because the Agency must remove them from positions in the competitive level by means other than a RIF before releasing any competing Employee from the level through a RIF.

**Section E. Release from Competitive Level**

1. Release of Noncompeting Employees:

a. When an Employee's position is abolished in a RIF, the Employee is not automatically released from their competitive level. The Agency first releases noncompeting Employees from the competitive level. A noncompeting Employee is one who:

(1) Is serving under a specifically-limited temporary appointment to a position in that competitive level;

(2) Is serving under a term promotion or temporary promotion to a position in that competitive level (these Employees are returned to their permanent positions of record, or equivalent); or

(3) Has received a written decision of removal from a position in that competitive level.

b. A reassignment made during a reorganization to a position in the same competitive level is neither a RIF nor an adverse action, because RIF regulations apply only when there is a release from a competitive level. The Agency may reassign any Employee in the competitive level to a vacant position at the same grade level in the same or different competitive level.

2. Release of Competing Employees:

a. If a competing Employee must be released, an Employee in an abolished position has a right to one of the other positions in the level as long as they are not the lowest standing Employee. If the Employee in the abolished position is the lowest standing Employee, they may be released from the competitive level. Similarly, when satisfying an assignment right of an Employee from a different competitive level, the Agency is not required to offer the job of the lowest standing Employee, but may reassign Employees within the level and offer any position in the level so long as the assignment right is satisfied and the proper order of release from the level is followed.

b. After the Agency has released all noncompeting Employees from a competitive level, it selects competing Employees for release in the inverse order of their retention standing, beginning with the lowest standing Employee. All Employees in tenure group III are released before any Employee in tenure group II is released, and all Employees in tenure group II are released before any Employee in tenure group I is released. Within each tenure group, Employees in subgroup B are released first, followed by subgroups A and AD in that order. Within each subgroup, Employees are released in the order of their service dates (as augmented by performance rating credits), beginning with the most recent service date.

c. When Employees in the same subgroup have identical service dates and are tied for release, the performance rating credit will be deducted and the Employee with the most recent service computation date will be released first. If Employees have the same service computation date after deducting the performance rating credit, tie breakers are as follows:

(1) Creditable Federal service, including County Office service and excluding military service;

(2) Creditable USDA service, including County Office service and excluding military service; and

(3) Creditable Agencies' service, including County Office service and excluding military service.

d. Exceptions to the order of release described above are listed in 5 Code of Federal Regulations (CFR) 351.601 (a) (1) and (2) and 351.606, 607, 608, and 805. Any Employee reached for release out of the regular order must be notified in writing of the reason for the exception.

e. An Employee released from a competitive level may have the right to be assigned to another position. If so, the Employee must be offered that position (or an equivalent one). Assignment rights are discussed in detail in Section F in this Article.

f. Only when an Employee has no right of assignment to another position, or turns down an offered position satisfying the assignment right, may the Agency furlough or separate the Employee under RIF procedures. The Agency may furlough a competing Employee only when it intends within one year to recall the Employee to the position from which they were furloughed. The Agency may not furlough competing Employees for more than one year. If a furlough is not appropriate, the Employee is separated. However, an Employee may not be separated while a lower standing Employee in the same competitive level remains on furlough.

3. Recall of RIFed or Furloughed Employees:

When the Agency recalls Employees to duty in the competitive level from which RIFed or furloughed, it will recall them in the order of their retention standing, beginning with the highest standing Employee, or as otherwise required by USDA regulations.

**Section F. Assignment Rights**

1. Eligibility:

   a. In a RIF action, a competitive service Employee in tenure group I or II, who has a current annual performance appraisal of record of “results achieved” or “minimally successful” or higher, has eligibility for assignment to another position, provided that the position:

      (1) Is in the competitive service;

      (2) Is in the same competitive area;

      (3) Will last at least three months;

      (4) Is one for which the released Employee is qualified;

      (5) Has a grade or representative rate of pay no higher than the grade or representative rate of the position from which the Employee is released;

      (6) Is encumbered by an Employee subject to displacement by the released Employee by either "bump" or "retreat". Employees do not have inherent rights to vacant positions;

      (7) Has the same type of work schedule (full-time, part-time, etc.) as the position from which the Employee is released; and

      (8) Has a pay rate which requires no reduction or the least possible reduction in the Employee's present pay rate.

   b. Promotion potential is not considered in filling a position under RIF regulations. A RIF offer may have more, less, or the same potential.

c. The existence of an encumbered position does not oblige an Agency to offer an Employee a particular position; however, it does establish the Employee's right to be offered a position at the same grade level as the encumbered position.

d. Even though an Employee is entitled to only one offer of assignment, the Agency must make a better offer if a position with a higher representative rate is available on or before the date of the RIF notice.

e. Employees in tenure group III or those having current annual performance appraisals of record of "unacceptable" have no assignment rights in a RIF action.

2. Best Possible Offer:

a. When more than one available position meeting all criteria of Section F.1. in this Article will satisfy an Employee's assignment right, the Employee must be offered the position with the highest representative rate. When two or more available positions exist with the same representative rate, the Employee may be offered any of the positions.

b. While the best possible offer must be made to a competing Employee, they may voluntarily accept an available position at a lower representative rate. Willing acceptance of such an offer, with full knowledge of entitlement to a position with a higher representative rate, does not satisfy an Employee's assignment right. Such a voluntary acceptance of an available position is not covered by RIF regulations and does not confer grade or pay retention.

c. A competing Employee may be reassigned to a vacant position in the same competitive area, or in a different competitive area in the same commuting area, which is at least equivalent to the Employee's assignment right. However, Employees have no right to such reassignment, nor do they have the right to choose assignment to any particular position in a RIF action.

d. A competing Employee may be offered a temporary position (under an appointment not to exceed one year) only in lieu of separation by a RIF when the Employee has no other assignment right.

3. Displacement of a Lower Subgroup Employee (“Bumping”):

    a. Upon release from a competitive level, an eligible Employee is entitled to "bump" to an available position which requires no reduction, or the least possible reduction, in a representative rate, when the occupied position is encumbered by an Employee subject to displacement (see Section F.4. in this Article, AND is the same grade or no more than three grades or three grade intervals (or equivalent) below the position from which the Employee is released. Employees must be qualified for the offered position. (5 CFR 351.701a).

    b. An eligible Employee in subgroup IAD can displace an Employee in IA, IB, or any Employee in tenure groups II and III. An IA Employee can displace Employees in IB, or any Employee in group II or III. An IB Employee can displace any Employee in group II or III. An eligible Employee in subgroup IIAD can displace an Employee in IIA, IIB or any Employee in tenure group III. An IIA Employee may displace an Employee in IIB or any Employee in group III. An IIB Employee may displace any Employee in group III.

4. Displacement of an Employee in the Same Subgroup (“Retreating”): Upon release from a competitive level, an eligible Employee is entitled to "retreat" to an available position that requires no reduction, or the least possible reduction, in a representative rate, when the occupied position is:

    a. Encumbered by an Employee with a later service date in the same subgroup as the retreating Employee;

    b. The same grade, or no more than three grades or three grade intervals (or equivalent) below the position from which the retreating Employee is released (the position may be up to five grades or grade intervals lower if the released Employee is a preference eligible with a compensable service-connected disability of 30 percent or more);

    c. The same position, or essentially identical to a position previously held by the released Employee in any Federal agency; and

d. The criteria for an essentially identical position are the same as the criteria for competitive level, as defined in Section C.3. in this Article, except as stated in 5 CFR 351.701(c)(3).

5. Displacement of an Employee in the Same Subgroup ("Bumping"):

   The Agency will permit a competing Employee to displace an Employee with lower retention standing in the same subgroup consistent with Section F.3. in this Article when the Agency cannot make an equally reasonable assignment by displacing an Employee in a lower subgroup (reference 5 CFR 351.705(a)(1)).

6. Preference Eligibles with 30 Percent or More Service-Connected Disabilities:

   a. The personnel office must notify the Office of Personnel Management (OPM) when it determines, based on the available evidence, that a preference eligible who has a compensable service-connected disability of 30 percent or more, is not able to fulfill the physical requirements of a position to which the Employee would otherwise have been assigned under RIF procedures.

   b. At the same time, the personnel office must notify the Employee of the reasons for the determination and of the Employee's right to respond to OPM within 15 days of the notification.

   c. OPM will make a final determination concerning the physical qualifications of the Employee for the position, and inform the personnel office and the Employee of the findings. The Agency may not assign any other Employee to the position until OPM has made its final determination.

   d. The personnel office must comply with the final OPM determination.

7. Grade and Pay Retention:

   Employees assigned to positions at a lower representative rate than the position from which released are entitled to two years of grade retention and subsequent pay retention in accordance with 5 CFR 536.

8. Exceptions to Qualifications Standards

   In a RIF action, exceptions may be made to qualifications standards in order to assign an Employee to a vacant available position at the same or lower representative rate. This may be done when it is determined that the Employee has the capacity, adaptability, and skills required, or that they can be retrained to assume the duties of the new position within a reasonable period of time. Reasonable time, for purposes of this exception, will be 90 days unless otherwise agreed to by the Union and Management. However, minimum educational requirements (such as 24 semester hours in Accounting, or the equivalent, for the GS-511 series) cannot be waived.

**Section G. Notice to Employees**

1. Notice Period:

   a. Career and career-conditional Employees affected by RIF actions will be given at least 60 days advance specific notice. These conditions apply to Employees being separated, furloughed for more than 30 days, reduced in grade, or required to accept assignment beyond the commuting area in a transfer of function. The initial 60day specific notice need not be extended if the notice is amended resulting in a more favorable action for the Employee; but if the amendment results in a more severe action (such as a change from demotion to separation), a new 60days notice is required. Employees who accept a functional transfer offer and then decline during the last 30 days of the 60days notice period need only be given a 30-days' advance notice of separation. At the time the Agency issues a notice to an Employee it must give a written notice to the exclusive representative of every affected Employee at the time of the notice.

   b. Career and career-conditional Employees who receive an initial or subsequent notice of separation or furlough due to a RIF may not be carried in leave without pay (LWOP) status beyond the effective date of their RIF action.

   c. Generally career or career-conditional Employees may not be carried in annual leave status beyond the effective date of a RIF action. However, if Employees would become eligible for immediate annuities if carried

beyond the effective date of a RIF, they are to be allowed to use accrued annual leave until they become eligible to retire.

2. Content of Notice: Specific advance notice of release from the competitive level as a result of a RIF action will include all of the following information:

   a. A general statement of reasons the RIF is being conducted;

   b. A statement of the specific action to be taken: separation, demotion, furlough, or reassignment;

   c. The effective date of the action;

   d. The Employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last four years;

   e. The place where the Employee may inspect the regulations and records pertinent to their case;

   f. If applicable, the reasons for retaining a lower standing Employee under a mandatory exception, discretionary exception, or discretionary temporary exception authorized by Office of Personnel Management (OPM) regulations;

   g. If applicable, a statement that Employees are being separated under liquidation procedures without regard to standing within the subgroup, and the date that the liquidation will be complete;

   h. The Employee's appeal or grievance rights, time limits, and appropriate procedures;

   i. If applicable, the Employee's rights, entitlements, and responsibilities with respect to the available outplacement and assistance programs such as CTAP, Career Development Centers and other programs which may be available;

   j. Notice to the Employee of the right to reemployment consideration;

k. Information on applying for unemployment compensation;

l. Estimate of severance pay;

m. Information on the Employee's eligibility to continue health and life insurance benefits after a RIF separation; and

n. Notice to the Employee of the entitlement to a copy of OPM's retention regulations found in 5 Code of Federal Regulations (CFR) 351.

3. Status During Notice Period:

The notice period begins the day after the Employee receives the RIF notice. Neither the day the Employee receives the notice or the effective date of the RIF action may be counted in computing the notice period. Generally, Employees will remain in a duty status during the notice period. Under emergency conditions due to a lack of work or funds, Employees may be placed on annual leave, or in nonpay status, with or without their consent, for all or part of the notice period, with the prior approval of the Agency head. Employees may be placed in LWOP only with the Employee's consent. (5 CFR 351.806).

**Section H. Notice to Interested Agencies and Groups**

1. General:

This action is applicable to RIF actions which result in the closure of a field office, or a reduction in personnel within a region, which is expected to be of interest to members of Congress and the public. It applies to actions involving the abolishment of 50 or more encumbered positions within an area.

2. Information to Employee Union Organization:

Every effort will be made to provide information to the National Office of the Union as well as the president of Local 3925 on a reduction to the Bargaining Unit Employees.

3. Information to the Office of Personnel Management:

Appropriate OPM offices will be informed as soon as information is available about significant RIFs so that they may assist in carrying out RIF actions and placing displaced Employees.

4. Information to State Employment Service Offices:

    a. Appropriate employment service offices in each competitive area must be provided the earliest practicable advance notice of the number and kinds of Employees being affected by a major reduction and be offered office space for satellite offices for both unemployment and employment services.

    b. If the RIF involves more than 49 Employees, the appropriate Dislocated Worker Unit and the highest elected official in the area where the RIF actions will take place must be notified. As a minimum, the number of Employees to be separated, the locations of those Employees, and the effective date of the RIF must be provided in this notice.

5. Information to the U.S. Department of Labor:

    Pertinent information should be provided to the Department of Labor regarding Employees to be displaced, to assist that agency in discharging its responsibilities under the Federal Unemployment Compensation Program.

6. Information to Local Chambers of Commerce:

    Information should be provided to local Chambers of Commerce and other local civic organizations.

**Section I. Placement Assistance**

1. Placement assistance will be offered in accordance with the Federal, Department and Agency CTAP programs.

2. Management will provide resume-writing software (currently Microsoft Suites) to Bargaining Unit Employees (BUEs) in each division or over the Local Area Network and allow reasonable use of Agency equipment to prepare resumes by BUEs seeking outplacement to the extent that such activities do not interfere

with ongoing Agency work. Agency equipment may include but not be limited to: computer, phones, fax machines, printers and copiers.

3. Upon request, the Agency may grant 40 hours of administrative time to career and career-conditional Employees who have been identified as surplus to make use of career transition resource services and facilities. Upon request, Employees who have received an official notice of separation will receive an additional 40 hours of administrative time to make use of career transition resource services and facilities. Additional time may be provided by supervisors on a case-by-case basis, in coordination with Human Resources Division (HRD), without unduly interfering with the Agency's business to attend the following:

    a. Job fairs;

    b. Job interviews;

    c. Seminars, counseling services and appointments with outplacement consultants, and

    d. Other job search activities.

4. The Agency will attempt to make facilities available for:

    a. In-house job fairs;

    b. D.C., Maryland, Virginia, and other local Employment Officials to set up field offices in Agency office space;

    c. Office space for outplacement consultants, counseling services, and classroom space for retirement and job-hunting seminars; and

    d. D.C., Maryland, Virginia, and other local Unemployment Officials to set up field offices in Agency office space.

5. The Agency will attempt to make available:

    a. Access for BUEs to search job posting bulletin boards on Internet and other electronic sources;

b. D.C., Maryland, and Virginia unemployment compensation forms in each Division; and

c. Retirement and job-hunting seminars, counseling services and outplacement consultants.

**Section J. Severance Pay**

Eligible Employees who are involuntarily separated from the Federal service in a RIF action will be granted severance pay in accordance with 5 Code of Federal Regulations (CFR) 550.

**Section K. RIF Appeals**

1. General:

   a. With the exception of those Employees covered by this Section, any Employee who received a specific notice of a RIF action, including separation, demotion, or furlough of more than 30 days, and believes that the provisions of this collective bargaining agreement, or of applicable Office of Personnel Management (OPM) or USDA regulations, have not been correctly applied, may file an appeal with the Merit Systems Protection Board (MSPB). An Employee who accepts an offer of assignment to another position at the same grade and same representative rate may not appeal the RIF action to the MSPB. As part of the specific RIF notice, the Employee will be provided a link to the MSPB website where the form can be found, and will be advised that they:

      (1) Have 30 calendar days after the effective date of the action to file an appeal;

      (2) May have access to the MSPB regulations regarding the processing of appeals; and

      (3) May file the appeal in person, or by mail or electronically file, but in either case is responsible for ensuring that the appeal is received timely at the appropriate MSPB field office.

b. An Employee may not file a RIF appeal before the effective date of the RIF action, even when the Employee's basic right is to file a grievance under the negotiated grievance procedure.

2. Grounds for RIF Appeal: Employee appeals of RIF actions may be based on, but not limited to the following grounds:

   a. Retention of an Employee in a lower subgroup in a job for which the appellant considers themselves qualified;

   b. Insufficient notice;

   c. Inadequate reasons, or failure to give reasons, for exceptions to the regulations;

   d. Denial of the right to examine the regulations or to inspect the retention registers and related records;

   e. Improper competitive area;

   f. Improper competitive level;

   g. Improper tenure grouping;.

   h. Error in establishing the service date;

   i. Failure to make a reasonable assignment offer;

   j. Improper determination of qualifications for another assignment;

   k. Improper placement on leave without pay (LWOP) during the notice period; and

   l. Failure by the Agency to comply with its own administrative procedures.

## ARTICLE 23: PERFORMANCE APPRAISAL

### Section A. Evaluation of Work Performance

1. Performance appraisal is a continuous process. It is an integral part of a sound Employee/supervisor relationship involving communication between Employee and supervisor concerning requirements or job expectations, performance necessary to achieve them, and progress in terms of meeting stated objectives. Communication will include on-going feedback to the Employee about the level and quality of performance. Performance appraisal is a joint process designed to increase constructive communication between the supervisor and the Employee, and to improve the Employee's performance.

2. Performance plans including elements and standards will be based on the requirements of the position.

### Section B. Definitions

1. Two-tier appraisal system: A performance appraisal system that has two levels of performance: “Fully Successful” or “Unacceptable.”

2. Annual rating of record: A written record of the appraisal of each performance element, and the overall performance rating. Annual ratings are ratings of record and are generally conducted once a year.

3. Appraisal: The act or process of reviewing and evaluating the performance of an Employee against the described performance standards.

4. Appraisal rating period: The rating period is October 1 through September 30 of the following year.

5. Critical performance element: A component of an Employee's job that is of sufficient importance performance below the “Fully Successful” level would result in unacceptable performance in the Employee's position.

6. Demonstration Opportunity (DO): A written notice informing an Employee of performance deficiencies and of the action to be taken by the Employee to improve performance during a specific time frame. The DO is not a developmental opportunity or an opportunity to merely improve performance; it

is an opportunity to demonstrate performance at the Fully Successful level in the respective element(s). (See Article 25, Unacceptable Performance).

7. Departure rating: An appraisal which is completed when an Employee has served on a performance plan for at least 90 calendar days and is leaving one permanent position for another; it is not a formal rating of record and is only to be considered by the rating official of record when determining the annual rating of record.

8. Electronic approvals: A process that can include electronic signatures or embedded tracking information that indicates approval.

9. Performance plan: The aggregation of all of an Employee's written critical elements and performance standards; it is the document that identifies the critical performance elements and standards against which the Employee will be rated.

10. Progress review: An interim review of the Employee's progress toward achieving the performance standards; it is not a rating.

11. Performance standard: The expressed measure of the level of achievement established by the Employer for the duties and responsibilities of a position.

12. Rating official: An Employee's first line supervisor or other person designated with responsibility for establishing performance work plans, conducting progress reviews, and issuing final ratings of record.

13. Rating of record: The final summary rating normally issued at the end of the appraisal period which becomes a part of the Employee's performance file.

14. Signature: Signature may be written or electronic. An electronic signature is a process that can include imbedded tracking information.

**Section C. Performance Plans**

1. Pursuant to 5 United States Code (U.S.C.) 4302, performance standards must, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the positions in question. Performance standards will be established on a common format.

2. Rating officials/supervisors must involve Employees in the development of their performance plans prior to the start of a new performance year, as much as practicable, which means seeking and considering Employees' ideas and opinions in the development of performance plans. Performance standards will be expressed in writing, by measures that the Agency expects to be achieved for each position element. The standards for all elements will be defined at the Fully Successful level. The standard definitions will be specific, observable, obtainable, and measurable descriptions in terms of quantity, quality, timeliness, and manner of performance so as to provide a clear means of assessing at which level performance elements have been accomplished.

3. A performance plan consisting of performance elements and standards will be documented on a prescribed form.

4. Prior to implementing a performance plan, the Agency encourages input from each Employee in developing the performance plan. Employees will be given notice of when to provide such input and will be provided a minimum of five workdays to submit comments. An Employee may request that their standards or elements be reconsidered in light of their comments or if the Employee's duties have been significantly changed.

5. Performance plans will be established and provided to the Employee in writing, or electronically, within 30 calendar days after the beginning of the appraisal period unless USDA grants an extension. At the time the plan is provided to each Employee, the supervisor and Employee will discuss the plan and its elements in an attempt to avoid any subsequent misunderstandings about the expected performance. An Employee's failure or refusal to sign the performance plan does not void the contents of the plan or the performance expectations documented within it.

6. Employees permanently assigned to new positions or work units with different elements and standards, or Employees on details expected to exceed 120 calendar days, will be issued a new performance plan within 30 calendar days of entering the new position or starting the detail.

**Section D. Performance Appraisal**

1. The minimum performance appraisal period for a rating of record is 90 calendar days in active status under an approved performance plan. The 90 days do not need to be consecutive. If an employee did not work under a performance plan for at least 90 days prior to the ratings deadline, a rating of record for that performance year cannot be produced.

2. Employees on a performance plan for a minimum of 90 calendar days during the performance year will be rated accordingly.

3. When an Employee changes from one permanent position, which they have been in for at least 90 calendar days, to another permanent position or at the termination of a detail that has lasted at least 120 calendar days, the rating official will prepare feedback comments on the Employee's performance and forward comments to the new rating official of record. The departure rating will be issued within 30 calendar days of the change in position and will be considered by the rating official of record when formulating the rating of record.

4. Excluded from coverage are Employees expected to be employed less than 90 calendar days, students employed as trainees under a work-study program or under temporary appointments, and Employees in long term training programs.

5. Official time spent performing Union functions will not be considered as a positive or negative factor when evaluating a critical element.

**Section E. Ratings of Record**

1. All ratings given must be based on the Employee’s performance.

2. Employees may submit written or electronic statements at any time during the rating period, whether or not the statements are requested by the supervisor. An Employee’s submission will be a part of the supervisor’s evaluation.

3. Employees will ordinarily be given a completed appraisal within 30 calendar days of the end of the rating period except as otherwise stated in this Agreement or required by law or an extension from USDA. When an Employee receives the rating of record, the supervisor and the Employee will meet and discuss the basis for the rating. The Employee will be asked to sign the original paper

document or indicate receipt of the electronic rating document. The Employee is expected to acknowledge receipt of the rating with their signature. This acknowledgement does not mean the Employee agrees with the rating. When an Employee refuses to sign the rating, the supervisor must record such refusal on the rating.

4. An Employee may submit written objections to the rating within 10 workdays of the discussion with their supervisor described in paragraph 3 of this Section. The written objections will be attached to the rating. An Employee who does not choose to submit written objections may still grieve their rating of record in accordance with Article 38.

**Section F. Progress Reviews**

1. Informal discussions, including review of performance to determine progress and problems, are a normal part of supervision and will occur throughout the appraisal period.

2. Progress reviews provide the opportunity to identify and resolve problems of the Employee's performance. A formal discussion is required for the mid-year review and end-of-year rating.

3. Progress reviews will summarize the Employee's performance in comparison to each element of the performance plan. Corrective actions will be identified, as appropriate.

4. Additional progress reviews may be conducted.

5. Supervisors and Employees are to indicate on the performance plan when progress review discussion(s) occurred.

**Section G. Miscellaneous.**

If there are any changes to applicable laws, Federal rules or regulations, Executive Order(s), Office of Personnel Management (OPM), or USDA Departmental Regulation that affect the provisions of this Article, either Party has the right to renegotiate this Article in accordance with applicable laws and this Agreement.

## ARTICLE 24: WITHIN GRADE INCREASES

### Section A. Granting Within Grade Increases (WGIs)

1. If the Employee is performing at the "Fully Successful" rating, the Employer will grant a within-grade-increase (WGI) to the Employee in the first pay period following completion of the required waiting period.

2. Within-grade step increases are based on an acceptable level of performance and longevity. Per Office of Personnel Management (OPM) guidance, waiting periods for step increases are 52 weeks for Steps 1-4 (1 year), 104 weeks for Steps 5-7 (2 years), and 156 weeks for Steps 8-10 (3 years).

### Section B. Notification Requirements for Denial of WGI

When a manager concludes that an Employee's performance is not at the Fully Successful level, the Employee will be notified in writing, at least 30 calendar days in advance, that the WGI will be denied. The notice will state the element(s) and standard(s) that the Employee has failed to perform at the Fully Successful level, with examples of unsatisfactory performance, and advise the Employee as to what they must improve for their performance to be at the Fully Successful level. The notice will advise the Employee of their reconsideration rights.

### Section C. Reconsideration WGIs

If an Employee's performance is lacking in a critical performance element, then the Demonstration Opportunity (DO) process is followed. See Article 23, Section B.6. If an Employee's performance is lacking in a non-critical element, then a WGI reconsideration decision is due 30 calendar days from the date of the Employer's receipt of the Employee's written request for reconsideration. Neither the substantive nor procedural aspects of WGI denials may be grieved until a reconsideration decision is due or issued.

## ARTICLE 25: UNACCEPTABLE PERFORMANCE

### Section A. Scope

1. This Article applies only to Employees who have completed their probationary or trial period. It does not apply to Employees serving on a temporary appointment.

2. A personnel action resulting from "Unacceptable" performance is defined as the reassignment, reduction in grade, or removal of an Employee whose performance fails to meet established performance standards in one or more critical elements of the Employee's position.

### Section B. Procedural Requirements

1. The provisions in this Article will not preclude the Agency from taking an action for unacceptable performance under 5 United States Code (U.S.C.) ch. 75. A supervisor is not required to use the procedures in this Section or 5 U.S.C. ch. 43 when taking an action for unacceptable performance.

2. The supervisor will counsel an Employee who is experiencing performance issues.

    a. At any time during the rating period, if the supervisor identifies that an Employee’s performance in one or more critical element(s) is at the Unacceptable level, the supervisor will notify the Employee of the Critical Elements for which performance is unacceptable and inform the Employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance with the issuance of a Notice of Opportunity to Demonstrate Acceptable Performance (NODAP).

    b. The NODAP must inform the Employee that unless their performance in the critical element(s) at issue improves and is sustained at an acceptable level of performance, the Employee may be demoted or removed from employment.

    c. The NODAP will afford the Employee generally 60 calendar days to demonstrate acceptable performance under the critical element(s) at

issue, equal to the duties and responsibilities of the Employee's position. This time period will be extended due to any authorized leave.

d. During the NODAP period, the supervisor may offer assistance to the Employee in improving unacceptable performance.

e. A supervisor can issue an unacceptable rating prior to issuing a NODAP. However, no reduction in grade or removal action will be taken under 5 Code of Federal Regulations (CFR) Part 432 until the completion of the NODAP period.

f. Once the NODAP period has ended or the supervisor determines that the opportunity period is no longer needed, the supervisor will provide the Employee with a written notice of their determination of the Employee's level of performance at that time.

3. Notice of proposed adverse action: An Employee, whose reduction in grade or removal is proposed, is entitled to 30 calendar days' advance written notice, which informs the Employee of the following:

   a. the nature of the proposed action;

   b. the specific instances of unacceptable performance by the Employee on which the proposed action is based;

   c. the critical element(s) of the Employee's position involved in each instance of unacceptable performance;

   d. the time to reply;

   e. the right to be represented by the Union or other representative;

   f. the right to make an oral and/or written reply; and

   g. to receive a written decision with appeal rights.

**Section D. Employee Response**

The Employee will be given the opportunity to respond orally and/or in writing prior to a decision. Any request for an oral reply must be submitted within three calendar days, written reply must be submitted within 15 calendar days.

**Section E. Adverse Action Decision Letter**

1. If, after full consideration of a case, an adverse action is warranted, the Agency will decide whether to take an adverse action against the Employee. The Employee will be notified of the decision in writing.

2. The deciding official will prepare a decision letter to the Employee, with a copy to the Union, which will include all of the following:

    a. findings with a response to each reason and specification listed in the letter proposing the action;

    b. findings with a response to each factual dispute, if any, raised by the Employee's reply, by stating the reasons why each factual dispute was rejected;

    c. written concurrence in the action by an official who is in a higher position than the official who proposed the action;

    d. notice that the Employee has the option to appeal the action to the Merit Systems Protection Board (MSPB) or through the negotiated grievance procedure, but not both; and

    e. notice that the Employee will be deemed to have exercised their option to raise the matter under one procedure or the other at the time the Employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.

**Section F. Time Extensions**

Except for the advance notice period in Section C.1. in this Article, any of the time limits set forth in this Article may be extended or waived by mutual agreement of the Parties.

## ARTICLE 26: EMPLOYEE RECOGNITION AND AWARDS

**Section A.**

The Parties acknowledge the importance of timely recognition of Employees for high quality contributions to the Department and its mission. Recognition and encouragement by the Agency are an important incentive that increases Employee job satisfaction and contributes to the overall quality of work performance.

**Section B.**

Management retains their right to exercise discretion to issue or to not issue Employee awards according to the Statute, 5 United States Code (U.S.C.) 7106 (a) (1). It is recognized by the Parties that there are no entitlements to awards, and all awards should be issued in the best interest of the Department and its Employees.

**Section C.**

Awards will be granted in a consistent and objective manner without discrimination, and in accordance with applicable laws, rules, and regulations.

**Section D.**

Department awards may include, but are not limited to, the following: performance awards, quality step increases (QSIs), time off awards, on-the-spot awards, and special act awards to individuals or groups, if they meet the criteria for such an award.

## ARTICLE 27: EEO AND PROHIBITED PERSONNEL PRACTICES

### Section B. Prohibited Practices

1. Nothing in this Section will 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.

### Section C. Equal Employment Opportunity

1. The Employer will remain vigilant in seeking to identify and eliminate any internal policy, practice or procedure which has the purpose or effect of impermissibly denying equal employment opportunities.

2. The Employer will also cooperate and work with the appropriate Civil Rights subject matter expert to resolve any discrimination inquiries or complaints.

3. The Parties agree that equal employment opportunity will be administered in accordance with Title 7 of the Civil Rights Act of 1964, 29 Code of Federal Regulations (CFR) Part 1614, 5 United States Code (U.S.C.), Executive Order, and other applicable rules and regulations.

4. The Union may make recommendations about the Affirmative Action Plan. Copies of the plan will be provided to the Union and to each Employee upon request.

5. The Union agrees to assist and cooperate with the Employer in assuring equal employment opportunity. The Union will promptly advise the Employer of any problems or potential problems it perceives in the areas of equal employment opportunity or reasonable accommodation. This will include meeting to discuss measures being taken in this area and possible solutions to problems as they occur.

**Section D. Due Process**

1. An Employee affected by a prohibited personnel practice or who believes that they have been discriminated against on the grounds set forth in this Article, may file either a grievance under the provisions of this Agreement (Article 38), or a complaint under an appropriate complaint/appeals procedure, but may not file under more than one procedure.

2. Any Employee who wishes to file or has filed a grievance or complaint will be free from coercion, interference, and reprisal, and will be entitled to expeditious processing of the complaint within time limits prescribed by regulations or this Agreement.

**Section E. Representation**

1. Whether the Employee chooses to file under EEO procedures or under the negotiated grievance procedure (Article 38), Employees have a right to be represented or to be unrepresented.

2. For complaints filed under EEO procedures, the representative may be a Union representative, another Employee, or an attorney.

3. For complaints filed under the negotiated grievance procedure (Article 38), the representative is a Union representative or a Union-designated representative. If the Employee elects to process the grievance without representation, the Union will have the right to be present at any meeting, between the Agency and the Employee concerning the grievance, to ensure fair treatment and procedural adherence to the terms of Article 38.

**Section F. EEO Information**

1. EEO complaint procedures will be posted in accordance with applicable laws, government-wide rules, and departmental regulations. The Union will also be given a copy of the complaint procedures.

2. The Agency's EEO complaint procedures can be found at: https://www.fpacbc.usda.gov/about/civil-rights-and-equal-employment-opportunity/equal-employment-complaints-processing-resolutions/index.html

**Section G. Statistical Summaries**

See Article 37 for EEO reports.

**Section H. Obligations**

Where the development and implementation of the Agency's Equal Employment Opportunity plans and programs involve changes in personnel policies, practices, or working conditions, the Agency will fulfill its bargaining obligations with the Union under 5 United States Code (U.S.C.) ch. 71, Labor-Management Relations and this Agreement.

## ARTICLE 28: DISCIPLINARY AND ADVERSE ACTIONS

### Section A. Definitions

1. For the purposes of this Agreement:

    a. A "suspension:" The placing of an Employee in a temporary status without duties and pay for disciplinary and adverse actions.

    b. A "disciplinary action:" A letter of official reprimand or a suspension of 14 calendar days or less.

    c. An "adverse action:" A suspension of more than 14 calendar days, reduction in grade or pay, or removal.

    d. A "reprimand:" A written document describing the conduct or other deficiency giving rise to the reprimand, and provides official notice that a failure to correct the conduct or deficiency, or future misconduct, may result in more severe action.

    e. A "workday:" Any day the Agency is open for business.

### Section B. General Provisions

1. The rights afforded under this Section are not applicable to temporary Employees or students with Not to Exceed (NTE) dates.

    a. No Employee will be disciplined and/or subject to adverse actions except for such cause as will promote the efficiency of the service. The Agency agrees that any disciplinary and/or adverse action taken will be appropriate to the specific offense and in accordance with applicable laws, rules and government-wide regulations. In establishing penalties for Employee discipline, the Agency will apply departmental regulations, including any applicable penalty guides.

    b. Unless otherwise stated within this Article disciplinary/adverse actions will be administered as timely as possible.

c. Except for emergency actions in any disciplinary action or adverse action, the Employee will be provided with a copy of the material relied upon by the Agency to take the action at the time of the notice of the proposal of such action.

d. Employees may grieve disciplinary and adverse actions in accordance with terms of Article 38 of this contract.

e. When appropriate, Parties are encouraged to enter into an alternative discipline agreement by mutual consent.

f. Previous considerations: In determining the appropriateness of penalties for misconduct, the Employer will consider the relatedness and recency of prior offenses, as well as other mitigating measures, in accordance with relevant case law.

**Section C. Reprimand**

1. Reprimands will be maintained in the Employee's Official Personnel Folder (e-OPF) for a period not to exceed two years.

2. The period of retention may be reduced when the Employee's supervisor determines that circumstances warrant a shorter period. Such determination may be made in response to an Employee's request to remove the reprimand from the Employee's e-OPF.

3. Reprimands, which have been overturned as a result of grievance or other authority, will be removed as soon as practicable from the Employee’s e-OPF.

**Section D. Disciplinary Actions**

1. Cause:

   a. The Agency may suspend an Employee for 14 calendar days or less for such cause as will promote the efficiency of the service.

   b. The Agency may not take a suspension against an Employee on the basis of any reason prohibited by 5 United States Code (U.S.C.) 2302.

2. Procedure: When the Agency proposes to suspend an Employee for 14 calendar days or less, the Agency will:

    a. notify the Employee, in writing, at least 10 workdays prior to the proposed suspension date of the following:

        (1) the proposed action;

        (2) the specific reasons for the proposed action;

        (3) the opportunity to review the evidence that is relied upon to support the charges;

        (4) the time to reply and provide affidavits and other documented evidence in support of the reply;

        (5) the right to be represented by the Union;

        (6) the right to make an oral and/or written reply within seven workdays from the receipt of the proposed action;

        (7) the right to provide affidavits and other documented evidence to support their response. Note: The right to answer orally does not include the right to a formal hearing with examination of witnesses. This period of seven workdays will not start until the material referenced in Section B.1.c. in this Article is provided; and

        (8) issue a final written decision after receipt of the written and/or oral reply, or the termination of the advance written notice period. This decision letter will contain the specific reasons for the decision and notify the Employee of their appeal rights.

**Section E. Adverse Actions**

1. Cause:

a. The Agency may suspend an Employee for more than 14 calendar days, reduce the Employee's grade, or remove an Employee only for such cause as will promote the efficiency of service.

b. The Agency may not take a suspension for more than 14 calendar days against any Employee, reduce the Employee's grade, or remove an Employee on the basis of any reason prohibited by 5 United States Code (U.S.C.) 2302.

2. Action by the Deciding Official:

a. After carefully considering the proposed letter, evidence of record, and the Employee's response, if any, including any mitigating factors, the deciding official shall decide:

(1) to withdraw the proposed action; or

(2) to institute a lesser action; or

(3) to institute the proposed action.

b. Stay of Action: At the request of the Employee, the effective date of the action may be stayed up to 10 calendar days from the date of the decision letter.

c. The deciding official must be a higher-ranking official than the official proposing the action.

**Section F. Time Limit Extensions**

Except for time limits subject to statutory or regulatory requirements, any of the time limits set forth in this Article may be extended or waived by mutual agreement of the Parties.

**Section G. Crime Provision for Adverse Action**

If there is reasonable cause to believe that the Employee has committed a crime for which a sentence of imprisonment may be imposed, the proposed action may be effected less than 30 calendar days from the receipt of the advance written notice.

**Section H. Notice and Investigative Leave** See Article 8.

**Section I. Arbitration**

See Article 39.

## ARTICLE 29: WAIVER OF OVERPAYMENT

### Section A. Processing Requests

1. When an Employee receives an overpayment of pay and allowances, they may request a waiver of overpayment in accordance with applicable laws, rules, and regulations.

2. The Employer will process all requests for waiver of overpayment as expeditiously as practicable.

3. To the extent possible, if an Employee has applied for a waiver of overpayment, no overpayment will be collected until the Employee's application for waiver of overpayment has been decided.

4. If a request for overpayment is denied, the Employee will be notified of the reason(s) for the denial in writing.

### Section B. Repayment

1. When an Employee is not granted a waiver for overpayment, the Employee will be permitted to make repayment in accordance with applicable laws, rules, and regulations.

2. If an Employee terminates employment with the Employer prior to the liquidation of any overpayment described in this Article, the Employer retains the right to satisfy any outstanding balance from any funds due to the Employee.

## ARTICLE 30: RETIREMENT COUNSELING AND RESIGNATION

**Section A.**

Employees may visit the Agency's retirement counselors and federally-sponsored programs without charge to leave. Employees within five years of retirement eligibility may attend retirement programs upon supervisory approval.

**Section B.**

The Agency agrees to make available an annual training program on retirement issues which any interested Employee may attend. In the absence of such a program, Employees within five years of retirement eligibility may be afforded the opportunity to attend other similar Office of Personnel Management (OPM)-sponsored training or events. Other Employees may attend these sessions, subject to space or budget considerations or limitations.

**Section C.**

Upon request, the Agency will provide the Employee with a statement setting forth an estimate of the Employee's monthly compensation and options available. The Agency reserves the right to limit such requests to once a year.

**Section D.**

An Employee may withdraw an employment resignation at any time prior to close of business on its effective date provided the withdrawal is communicated in writing to the Agency.

## ARTICLE 31: OUTSIDE EMPLOYMENT

Employees may engage in outside employment during non-duty hours that does not involve conduct prohibited by statutes or Federal regulations. Certain Employees may be required to obtain Agency approval before engaging in certain outside employment or activities. Employees should contact the USDA Office of Ethics with questions on outside employment.

## ARTICLE 32: EMPLOYEE ASSISTANCE PROGRAM

### Section A. Objective

The Employer and the Union support the objective of assisting Employees whose job performance may be adversely affected by work and/or life problems including, but not limited to, alcoholism, drug abuse, duress, financial or legal concerns, marriage or family concerns, infectious diseases, other personal problems or professional issues. Given this common objective, the Employer agrees to continue to support the Departmental Employee Assistance Program (EAP).

### Section B. Confidentiality

Employee participation in the EAP is strictly confidential.

### Section C. Annual Notification to Employees

The Employer will continue to issue an annual notice to Employees explaining the Program and the services it provides.

### Section D. Program Participation

1. The Parties recognize that the Employee Assistance Program is designed to assist Employees with personal difficulties that affect their work performance.

2. The Employer will not take any action against an Employee for seeking assistance through the EAP. If an Employee participates in the EAP, the responsible supervisory official will give consideration to this fact in determining any appropriate disciplinary and/or adverse action, in accordance with the applicable Douglas Factors.

3. EAP services are available to Employees who request and need them. The Employer agrees to assist Employees by providing information and encouragement to use counseling services as needed. Should counseling appointments require absence from the workplace; the Employee will make the appropriate advance arrangements with their supervisor.

4. When the Employer determines that a conduct or performance problem exists which may be drug or alcohol related and refers the Employee to EAP, the

Employer may take appropriate disciplinary or adverse action, consistent with fairness and the obligation to provide reasonable accommodation.

**Section E. Leave During Duty Hours**

An Employee may request to use administrative, sick, annual, or leave without pay (LWOP) for absences during duty hours for counseling, assessment, referral, rehabilitation, or treatment in accordance with leave regulations and this Agreement. Upon prior approval, supervisors may allow the Employee up to one hour (or more as needed for travel time) of excused absence for each counseling session during the assessment/referral phase. In an emergency, supervisory approval may be obtained after using the EAP.

**Section F. New Hire Orientation**

During orientation, newly hired Employees will receive EAP information and materials related to services provided by the EAP.

## ARTICLE 33: HEALTH AND SAFETY Section A.

### General

1. The Agency will promote health and safety in the workplace and for Employees in accordance with applicable laws, rules, regulations, policies, procedures, and practices as amended.

2. It is recognized that each Employee has the primary responsibility for their own safety and as such, is further responsible for promptly bringing any unsafe working conditions to the attention of their supervisor. The Agency will investigate and, if warranted, promptly take appropriate action to correct the unsafe condition.

3. The Union agrees to assist the Agency in publicizing the benefits and encouraging the use of protective devices and equipment by Employees.

4. Pursuant to applicable laws and regulations, no Employee will be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in Agency occupational safety and health program activities, or because of the exercise by such Employee on their own behalf or on another's, of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, or 29 Code of Federal Regulations (CFR) 1960. These rights include, among others, the right of an Employee to decline to perform their assigned task because of a reasonable belief that, under the circumstances the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting.

### Section B. Agency Action

1. The Agency will work with all persons, entities, or organizations, which own and/or control workspace to which Bargaining Unit Employees (BUEs) are assigned, to ensure that healthy and safe working conditions are maintained, and are in compliance with applicable laws, rules, regulations, and this Agreement. The Agency will provide feedback to Employees and the Union regarding the results of any action taken.

2. The Agency will:

    a. provide safe working conditions;

    b. provide information concerning Federal Employee Health Benefits, Short Term Disability Insurance Programs, clear guidance on workers' compensation claims processes, guidance on Employee Assistance Programs, Reasonable Accommodation (RA) programs and American Disability Act (ADA) resources;

    c. work with the building manager, the Department, General Services Administration (GSA), and private lessors, as applicable, to have safe electrical equipment, adequate light, and ventilation in all work areas;

    d. provide information about ergonomic hazards and how to prevent ergonomic related injuries;

    e. grant periodic relief to Employees by using VDTs (video display terminals) for extended periods during the course of the day and interspersing other work tasks requiring less visual concentration; provide, to the extent possible, safety devices, such as glare screens, printer sound covers, etc., which will promote greater safety and comfort for VDT operators. When Employees request federally funded equipment that is not normally issued for ADA compliance or RA medical needs, Employees will request, in writing, to their supervisor and the request will be kept for the record, for tracking methods for any audits of any Federal funds being spent;

    f. follow the ADA and GSA regulations in providing facilities appropriate and adequate to accommodate the needs of Employees with disabilities;

    g. obtain and provide to the Union copies of applicable regulations and/or fire safety inspection certificates;

    h. make all safety reports required by laws, regulations, and/or this Agreement available for the Union to review; and

    i. acquire, maintain, and require Employees to use approved personal protective and safety equipment necessary to provide protection to

Employees from hazardous conditions encountered during the performance of official duties.

**Section C. Union Action**

The Union will encourage all Bargaining Unit Employees (BUEs) to work safely with due consideration for the safety, health, and comfort of all fellow Employees, as well as to care for and respect the Agency's facilities and equipment, and their own work environment to avoid preventable unhealthy or unsafe working conditions.

**Section D. Employee Reports of Unsafe or Unhealthy Working Conditions**

1. All BUEs will report any unsafe or unhealthy working conditions to their immediate supervisor as soon as any such conditions come to their attention.

2. The Agency will investigate the reported condition as soon as is practicable, and may refer the situation to:

    a. FPAC Safety Office;

    b. the appropriate FPAC or USDA office;

    c. GSA;

    d. the Occupational Safety and Health Administration of the Department of Labor;

    e. the Public Health Service Health Unit; or

    f. other appropriate officials including the municipal fire marshal or building inspector for further investigation.

3. The Union will be given an opportunity to accompany any inspector who responds on such a complaint during the inspector's physical inspection of the workplace. The Union representative will be granted official time for this purpose.

4. The Employer will respond within three workdays to an Employee's report of hazardous conditions and will report within 30 calendar days of plans and

actions taken regarding the hazard. No Employee will be unreasonably required to continue working in a situation determined to pose a threat of imminent danger.

5. If an Employee is assigned duties which they reasonably believe could possibly endanger their health or well-being, the Employee will immediately notify their immediate or second-line supervisor of the situation.

    a. If the supervisor cannot solve the problem and agrees with the Employee, the supervisor will, under normal circumstances, delay the Employee's assignment(s) and refer the matter through the proper channels for appropriate action, unless the delay would unduly interfere with the Agency's operation.

    b. When the supervisor does not agree with or address the Employee's concerns, the Employee has the right to consult the Union and the right to file a report in accordance with the applicable Agency or departmental regulations.

**Section E. Occupational Injury or Illness**

1. Employees who become injured or occupationally ill while performing their duties will report the injury or illness to their supervisor immediately.

2. The supervisor will refer the Employee to the Health Unit, other medical services, or the Human Resources Management Division (HRD) as appropriate, and as permitted by applicable laws, rules, or regulations.

3. The supervisor will also advise the Employee to contact HRD to obtain information on benefits under the Federal Employees' Compensation Act.

4. The Agency will promptly process all paperwork in connection with compensation claims.

**Section F. First-Aid**

Where full health facilities are not available on the premises, the Agency agrees to provide a first aid kit(s) and designate a position to maintain the kit(s).

**Section G. Health and Safety Committee**

The Safety and Health Committee will function in accordance with Agency guidelines.

## ARTICLE 34: REORGANIZATION AND WORKPLACE MOVES

### Section A. General

1. A "reorganization:" The establishment, abolishment, transfer, or consolidation of functions; or the assignment of new or realignment of existing organizational reporting lines of an office.

2. A "workplace move:" Any change in an Employee's office location or modification to existing office space.

3. Time limits in this Article may be extended by mutual agreement.

4. Management will promptly respond to all reasonable Union requests for information.

5. In accordance with this Article, Management will notify the Union of their intention when a reorganization or workplace move is under consideration. In accordance with this Article and Article 49, Management may notify the Union of a potential reorganization or workplace move at the Union – Employer meetings under Article 49.

### Section B. Reorganization

1. Management will present a written draft proposal of the potential reorganization for the Union to review. The draft proposal will include the following:

    a. estimated implementation date;
    b. listing of Bargaining Unit Employees affected along with their grade and series;
    c. current organizational chart;
    d. proposed organizational chart;
    e. proposed locations of affected Employees;
    f. proposed location of equipment; and
    g. explanation of how disabled Employees' needs have been addressed.

2. Within five workdays after presenting the written draft proposal to the Union, Management will conduct an Employee - Management meeting with affected

Employees and the Union. At the meeting, Management will present the draft proposal, answer questions, and receive Union representative and Employee input.

3. The Union will have 10 workdays from the date of the meeting to review the information presented during the meeting and submit comments on the draft package. The Union's comments will incorporate any feedback submitted by Employees.

4. Management will take the comments received from the Union and provide a formal reorganization proposal to the Union. The formal reorganization proposal will include a purpose of the reorganization, which Bargaining Unit Employees (BUEs) are affected, old & proposed organizational charts, including grade and job series changes, physical location of Employees, target dates for implementation, Management's point of contact, and any other necessary documents.

5. Within 10 workdays of receipt of the formal reorganization proposal, the Union may either accept the formal reorganization plan or request formal negotiations.

6. Management will proceed accordingly unless formal negotiations are timely requested by the Union.

7. Management will implement the reorganization plan in accordance with this Agreement, existing personnel rules, and labor relations laws.

**Section C. Workplace Moves**

1. After the initial floor plan is drafted, Management will notify the following Employees of the need to schedule meetings/discussions with a BUE(s) on negotiable workplace moves:

    a. relevant Union representative(s) (i.e. AFSCME Chief Steward, President), and
    b. servicing labor relations (LR) specialist.

2. In the case of office moves, Management will provide a draft information package to the Union, a current floor plan, and a proposed floor plan will be prepared that shows:

    a. proposed locations of affected Employees;

    b. proposed location of equipment;

    c. the needs of people with disabilities have been addressed; and

    d. other material relevant to the workplace change to clarify the impact of change should be provided for the Union representative(s), if available.

3. Within five workdays Management will schedule a meeting with the Union and affected Employees to discuss the draft package of workplace moves.

4. The Union will have 10 workdays from the date of the meeting to review the information that was presented during the meeting and submit comments on the draft package. The Union's comments will incorporate any feedback submitted by Employees.

5. Management will take the comments received from the Union and provide a formal workplace move proposal to the Union. The proposal will include the following detailed current and proposed floor plans, which includes:

    a. Employee location;

    b. desk location;

    c. equipment location;

    d. before and after room square footage for each BUE;

    e. a statement on how the needs of people with disabilities have been taken into account;

    f. a copy of the Management Services Division (MSD) Project Plan with tentative action dates;

Note: Managers are encouraged to provide Union representatives with copies of before and after MSD Computer Aided Design floor plans.

g. Employee's grade; and

h. Employee service computation date.

6. After evaluating the workplace move plan, the Union may either accept the formal workplace plan or request formal negotiations within 10 workdays.

7. Management will proceed accordingly unless formal negotiations are timely requested by the Union.

8. In the event Employees will be displaced for more than one day or uncontrollable delays occur in moving Employees to a new location and Management is unable to provide an alternative worksite or other assignments, the displaced Employee will be placed on administrative leave until Management can provide a worksite or other assignment until the delay and/or displacement is resolved.

## ARTICLE 35: COMMERCIAL ACTIVITIES (A-76 CONTRACTING OUT)

### Section A. Purpose

This Article pertains to work performed or that could be performed by existing Bargaining Unit Employees (BUEs) who are negatively impacted by commercial contracting (A-76) pursuant to applicable laws and regulations. Each party recognizes its obligation to serve its internal and external customers efficiently and economically and undertakes to fulfill this obligation by comparing the costs of outside source contracting and in-house performance.

### Section B. Definitions

1. An Agency Function: A function which is so intimately related to the public interest as to mandate performance by Agency Employees. These functions include those activities which require either:

    a. the exercise of discretion in:
        (1) applying statutory mandates,
        (2) following regulatory authority,
        (3) issuing final policy,

    b. the use of value judgment in:
        (1) making program decisions,
        (2) regulating agricultural conservation,
        (3) encouraging soil and water conservation,
        (4) administering farm and collateral loans, or both,
        (5) managing risk,
        (6) disbursing revenue,
        (7) controlling Treasury accounts,
        (8) financing Treasury borrowing,
        (9) administering public funds,
        (10) analyzing cost/benefit issues,
        (11) designing user-friendly automated systems,
        (12) directing Federal Employees.

    c. other functions not in competition with the commercial sector.

2. A Procurement Forecast" A planning document submitted to the Office of Small Disadvantage Business Utilization for the propose of identifying Agencies planned procurements.

3. A Cost Benefit Analysis: The A-76 process of developing an estimate of the benefit of Agency performance of a commercial activity and comparing it to the costs to the Agency for performance of the activity; and, further, comparing the cost/benefit of conversion to contract with the cost/benefit of conversion to in-house.

4. A Commercial Activity: An agency-provided service which could be obtained from a commercial source. A commercial activity is not a governmental function. A commercial activity also may be part of an organization or a type of work that is distinct from other functions or activities, and which is suitable for performance by contractors outside the Agency.

5. Statement of Work (SOW): A description of the work to be performed. An SOW may become part of a Request for Proposals to which a contractor may respond.

6. "Interested Party for the purpose of filing a protest:" An actual or prospective offer or whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. (See Federal Acquisition Regulation Part 33.1)

7. Sole Source Acquisition: A contract for the purchase of supplies or services that is entered into by an agency after soliciting and negotiating with only one source.

8. Program Office: The office that initiates the procurement request.

**Section C. Procurement Forecast**

The Agency will post all procurement forecasts on the Office of Small and Disadvantaged Business Utilization's (OSDBU) website, provide notification to the Union of all procurement forecasts posted on the OSDBU website. The North American Industry Classification System provided on the procurement forecast will be a placeholder only based on historical spending. Program offices will respond within 10 workdays of the date

of a Union request for information regarding a procurement forecast before the final acquisition plan is approved.

**Section D. Contract Modifications**

1. The Program Office will provide notification to the Union of any potential contract modifications to on-going contracts that may impact BUEs.

2. The Program Office will respond to the Union's information request prior to the finalization of the contract modification.

**Section E. Solicitation**

1. The Union does not meet the definition of an "interested party for the purpose of filing a protest" unless it is under commercial contracting.

2. Prior to release of a request for solicitation, the Union may request the opportunity to timely negotiate impact and implementation of such a decision on existing BUEs, except in cases of overriding exigency such as health, safety or security.

3. The Union will only request to see the Statement of Work (SOW) or Performance Work Statement in advance of the solicitation in acquisitions that the Union will not submit a proposal. The Union officially waives its right to submit a proposal or serve as a subcontractor for such acquisition.

**Section F. Information**

Upon request, the Program Office will provide the Union with a copy of the approved contract**.**

**Section G. Outplacement**

The Agency will follow Article 22 of this contract when Employees are subjected to a reduction in force as a result of actions as described in this Article. The Agency will follow Article 34 of this contract when Employees are subjected to reorganization as a result of actions described in this Article.

## ARTICLE 36: PLACEHOLDER

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## ARTICLE 37: REPORTS

**Section A.**

By April 30 and October 31, the Agency will provide the Union with a list, categorized by organizational subdivision, of all Employees in the bargaining unit. Each Employee will be identified by name, job title, series, and grade, step, and time in grade as reflected in the National Finance Center (NFC) database and service computation date. The list will be provided electronically.

**Section B.**

The Union is not bound by the Employer's identification of a particular Employee or group of Employees as (a) bargaining unit or non-bargaining unit Employee(s) solely on the basis of the Employer having made such identification.

**Section C.**

On a yearly basis, the Agency will provide the Union with the USDA FPAC Fiscal Year Annual EEO Program Status Report (MD-715).

## ARTICLE 38: GRIEVANCE PROCEDURES

### Section A. Common Purpose:

1. The purpose of this Article is to provide a mutually acceptable method for the prompt resolution of grievances filed by the Parties.

2. The Parties agree that all grievances should be resolved in an orderly, prompt, and equitable manner that will maintain the self-respect of the Employee and be consistent with the principles of good management and the public interest.

3. The Parties, especially Union representatives and first-line supervisors, are encouraged to meet as necessary to informally discuss and attempt resolution of matters or problems of concern to either Party; including, but not limited to, Employees' concerns or dissatisfactions and problems of this Agreement's interpretation and application.

4. Most grievances arise from misunderstandings or disputes which can be resolved promptly and satisfactorily on an informal basis. In order to successfully resolve grievances at the lowest level, the Parties agree to have full and open discussions among the participants to clearly and objectively find the facts, identify contributing and mitigating factors, and make every effort to reach a concise resolution.

5. See also Article 28, Disciplinary and Adverse Actions and see also Article 27, EEO and Prohibited Personnel Practices, Section D. Prohibited Personnel Practices are grieveable.

### Section B. Definitions:

1. "Grievance:" Any written and signed complaint:

    a. by any Employee with respect to terms and conditions of employment governed by this Agreement;

    b. by the Union concerning any matter relating to terms and conditions of employment governed by this Agreement; or

c. by any Employee, AFSCME Local 3925 or its successor, or the Agency or its successor concerning:

(1) the effect or interpretation, or a claim of breach, of this Agreement; or

(2) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

(3) any Agency personnel policy, procedure, or practice.

2. "Workday:" Any day the Agency is open for business.

3. "Close of Business:" The end of the Agency's business hours.

**Section C. Scope of Procedures**

1. The procedures set forth in this Agreement will be the procedures available to Bargaining Unit Employees (BUEs), and to the Parties to this Agreement for resolution of grievances covered under the terms of this Agreement.

2. Exclusions: The following matters are not grieveable under these procedures, and are specifically excluded from the coverage of this Article.

a. any claimed violation of 5 United States Code (U.S.C.) ch. 73, Subchapter III, relating to prohibited political activities (Hatch Act);

b. retirement, life insurance, or health insurance;

c. a suspension or removal under 5 U.S.C. 7532 (national security reasons);

d. any examination, certification, or appointment administered by the Office of Personnel Management;

e. the classification of any position which does not result in the reduction in grade or pay of an Employee, or loss of promotion potential;

f. reduction in force or furloughs of more than 30 days;

g. non-selection for promotion from a group of properly ranked and certified candidates, or failure to receive a non-competitive promotion;

h. termination of a probationary Employee during the probationary period, and termination of a temporary Employee during their temporary appointment;

i. a preliminary warning notice of an action which, if effected, would be covered under this procedure or under a statutory appeals procedure;

j. the substance of elements and performance standards or statements of work objectives.

**Section D. Application:**

1. A grievance may be filed by an Employee or a group of Employees, by the Union, or by the Employer.

2. Only the Union, or a representative designated by the Union, may represent BUEs in such grievances.

3. Any BUE, or group of BUEs, may personally present a grievance and have it resolved without representation by the Union provided that the Union will be given an opportunity to be present at all formal discussions in the grievance process and receive copies of all documents.

4. Any resolution must be consistent with the terms of this Agreement. The Parties agree to keep the number of participants at the meetings to a minimum.

**Section E. Employee and Union Procedures:**

1. The following apply to all steps of the grievance procedures:

   a. A written response is due.

   b. Computation of time is in accordance with Section K in this Article.

c. Extensions will be granted in accordance with Section J in this Article.

d. The issues involved, and the relief requested will be specified.

**Note:** If a new issue arises during this grievance, it will not be included in the original grievance; however, a new grievance may be filed.

e. Additional information may be introduced to support the original issues.

f. The grievance will be considered closed when all the requested relief, which is specific to the grievant, is granted at any step.

2. Step 1 Grievance:

a. The written and signed grievance must be filed with the grievant's immediate supervisor, with a copy provided to Labor Relations within 30 workdays of the act or occurrence or 30 workdays after the grievant knew or should reasonably have known of the act or occurrence giving rise to the grievance.

b. In the case of ongoing or recurring alleged violation, a grievance may be filed within 30 workdays of the most recent occurrence, so long as documentation exists verifying the ongoing violation matter.

c. Except as provided in Section G in this Article, a grievance may not be filed more than one year from the date of the act or occurrence, which gave rise to the grievance, or after the date the grievant knew or should reasonably have known of the act or occurrence.

d. Within 10 workdays of the date of receipt of the written grievance, the grievant and/or the assigned Union representative will meet with the grievant's immediate supervisor in a good faith effort to resolve, discuss, or clarify facts and issues that may impact the decision.

e. Within 10 workdays of the date of the meeting in Section E.2.d. above, the supervisor will provide the grievant, the Union, and labor Relations with a copy of the written decision. Included with the written decision will be a statement indicating the grievant's right to submit a grievance

to Step 2, as well as the name and title of the reviewing official designated to hear Step 2 of the grievance procedure.

f. If the Administrator is the Step 1 official, then Step 2 is waived.

3. Step 2 Grievance:

   a. If the grievant is dissatisfied with the decision given in Step 1, the grievant may submit the grievance, in writing, within 15 workdays, to the next level supervisor, with a copy provided to Labor Relations.

   b. Within 10 workdays of the date of receipt of the written grievance, a meeting, involving the grievant and/or their Union representative and next level supervisor, will be held in a good faith effort to resolve, discuss, or clarify facts and issues that may impact the decision. The requirement for this meeting may be waived by mutual consent of the Parties.

   c. Within 10 workdays of the date of the meeting in Section E.3.b., or the date of the waiver of the meeting, the deciding official will provide the grievant, the Union representative, and Labor Relations with a copy of the written decision.

4. Grievances taken in response to a written decision letter, notifying the Employee of an action under 5 United States Code (U.S.C.) 7512 (Adverse Actions) or 5 U.S.C. 4303 (Unacceptable Performance), must be filed in writing within 21 calendar days of receiving the decision letter as a Step 2 grievance. A management reviewer will meet with the grievant in any case filed as a result of these actions.

5. If in any step of the grievance procedure it is determined that the Employer's official does not have the authority to resolve the grievance, the grievant will be informed, and the grievance will be forwarded to the proper official. This will fulfill the grievant's obligation to meet the timetable set up in the grievance procedure, but it will not be considered as one of the steps. Any grievances starting at the Step 2 level that are not resolved, the Union may invoke arbitration.

**Section F. Procedures for Consideration of Employer Grievance:**

A grievance by the Employer will be submitted in writing to the Union President within 30 workdays of the event giving rise to the grievance. At the request of either Party, the Parties will meet within 10 workdays after receipt of the grievance and seek possible resolution options. The Union will respond in writing to the grievance within 20 workdays of receipt of the grievance. The decision will specify that it is the Union's final decision on the grievance.

**Section G. Procedures for Consideration of a Union Grievance:**

The Union will submit a grievance in writing to the Employer within 30 workdays of the event giving rise to the grievance. If in any step of the Union grievance procedure it is determined that the Employer's official does not have the authority to resolve the grievance, the Union will be informed and the grievance will be forwarded to the proper official. In a good faith effort to resolve, discuss, or clarify facts and issues that may impact the decision, the Employer will meet with the Union within 10 workdays of the receipt of the grievance. The decision will be issued within 20 workdays and specify that it is the Employer's final decision on the grievance. Should the Union find the decision unacceptable, it may invoke arbitration in accordance with provisions contained in Article 39 (Arbitration) of this Agreement.

**Section H. Use of Alternative Dispute Resolution (ADR)**

1. Alternative Dispute Resolution (ADR) is used to promote principles and practices that contribute to improved working relationships, and is designed to work towards quickly and informally preventing and resolving workplace and program conflicts within USDA. The Parties are committed to consider the use of ADR to resolve disputes, and to foster a good labor and management relationship.

2. A referral for ADR can be made only by mutual agreement of the Union and the Agency and will be in writing to the appropriate Party. If an Employee is self-represented, the Union representative will be entitled to be present during ADR discussions.

**Section I. Principles:**

1. Participation in the ADR process must be voluntary with the mutual consent of the Parties. Either Party may voluntarily withdraw at any time in the process.

2. ADR should be undertaken in good faith, and be effective, timely, and efficient. It should focus on conflict resolution and problem-solving, and foster a cooperative labor and management relationship.

3. ADR will be a process available for grievances. The process can be used at any Step of the grievance procedure or prior to scheduling an arbitration.

4. ADR may be used to resolve the entire dispute or a portion of the dispute.

5. ADR is confidential. The Parties will be advised that the contents of the mediation discussion are confidential. All notes will be destroyed at the close of mediation. Each party will have a copy of the ADR Agreement. The original Agreement will be maintained at the National Civil Rights' office.

6. ADR resolutions will not be precedential unless specifically agreed to by the Parties.

7. All agreements signed by the Parties are binding.

8. Any issue may be considered for mediation.

9. If the Parties agree to use ADR, each Party will bear the full costs of its participants in the ADR process, including travel and per diem. The Parties will use neutral mediators in the ADR process.

10. On the day the Parties agree to participate in ADR, any grievance time limits will be suspended. If mediation fails to resolve all issues in dispute, or either Party withdraws, time limits will resume the next workday.

**Section J. Time Limits:**

1. Time limits in this Article may be extended by mutual consent of the Parties. The Parties agree to respond to a grievance within the timeframes allowed. Failure by the grievant to meet time limits, or to request and receive an

extension of time, will automatically cancel the grievance, unless extenuating circumstances prevail. This does not preclude the grievant/Union representative from seeking relief from the other resolution processes including, but not limited to EEO and ADR.

2. Extenuating circumstances refer to situations beyond the reasonable control of the Parties, such as, but not limited to:

    a. extended military leave

    b. extended detail or temporary duty travel

    c. medical condition

    d. office closures

    e. natural disaster.

3. If the responding official fails to meet time limits or to request and receive an extension of time, the grievant may appeal the grievance to the next step of the process (i.e., from Step 1 to Step 2), in Article 39 of this Agreement.

**Section K. Requests for Information:**

Information may be requested pursuant to 5 United States Code (U.S.C.) 7114(b) (4). In such cases, the time limits in Section J in this Article will be extended equal to the amount of time reasonably required to provide the information. Such cases may involve several responses requiring different response times. The Parties agree to provide each response as soon as it is researched and reported.

**Section L. Computation of Time:**

In computing periods of time for purposes of this Article, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period will be included, unless it is a Saturday, Sunday, legal holiday, a day other than a legal holiday when the Employer's office is closed, or a day on which a liberal leave policy is in effect due to inclement weather. In this event, the period runs until the end of the next day, which is not one of the aforementioned days.

**Section M. Notices and Submissions:**

The Party generating a notice or making a written submission is responsible for ensuring timely delivery to the required recipients. Copies will be provided to the Employee, the designated Union representative, and the applicable Agency representative. If the required Agency representative is unavailable, a copy will be provided to the Human Resources Division Labor Relations office.

## ARTICLE 39: ARBITRATION

### Section A. Right to Arbitration

1. If the decision on a grievance processed under the negotiated grievance procedure is not acceptable, the issue may be submitted to arbitration. The request to refer an issue to arbitration must be in writing and submitted to the other Party within 25 workdays following receipt of the decision by the aggrieved Party.

2. The Party invoking arbitration may opt to postpone the arbitration hearing date if that Party has filed an Unfair Labor Practice charge, alleging information relevant to the case has been withheld, until the Federal Labor Relations Authority has rendered its decision.

### Section B. Submission of the Issue

The Parties agree that a joint submission of the issue is the most desirable, and will work diligently to arrive at one submission. If the Parties fail to agree on a joint submission of the issue for arbitration, the party invoking arbitration will submit the request within 10 workdays. Each Party will submit a separate statement to the arbitrator who will determine the issue to be heard.

### Section C. Selecting the Arbitrator

1. When arbitration is invoked, the Parties will meet within 10 workdays to attempt to select an arbitrator. The Parties may mutually agree to waive this meeting. If no agreement is reached, the invoking Party will submit a request within 10 workdays to the Federal Mediation and Conciliation Service for a list of seven impartial persons qualified to act as arbitrator, and will also provide a copy of the request to the other Party.

2. Within 10 workdays after receipt of such list, the Employer and the Union representative will meet to select an arbitrator, unless an extension of time is mutually agreed upon. If the Parties cannot agree on an arbitrator from the list, each Party will strike one name in turn from the list. The determination of which Party will strike first from the list will be determined by the flip of a coin. After each Party has struck three names from the list, the remaining person will serve as the arbitrator. If either Party refuses to participate in the selection process, the

other Party will make a selection of an arbitrator from the list. These time limits will not be strictly enforced if mitigating circumstances exist.

**Section D. Fees and Expenses**

1. The arbitrator's fees and expenses will be borne by the losing Party, except that in any decision not clearly favoring one Party's position over the other, the arbitrator may specify that all costs should be borne equally by the Parties.

2. If a clarification of an arbitrator's decision is necessary, the requesting Party will pay for the additional arbitration fees and expenses. The arbitrator will be requested to complete the clarification within 30 workdays. If jointly requested, the costs will be shared.

3. An Employee, who is found to have been affected by an unjustified or unwarranted personnel action, which has resulted in the withdrawal or reduction of all or part of their pay, allowances, or differentials of the Employee, is entitled to appropriate relief in accordance with the Back Pay Act, 5 United States Code (U.S.C.) 5596(b).

4. The arbitration hearing will be held, if possible, on the Employer's premises and during the regular day shift hours. The grievant and any Employee called as a witness (from within the FPAC workforce) will be excused from duty, with pay, to the extent necessary to participate in the official proceedings. Questions raised as to whether a witness is needed will be resolved by the arbitrator prior to the hearing. The Agency will authorize reasonable travel expenses for such witnesses in accordance with established Agency travel policies and procedures.

**Section E. Authority**

1. The arbitrator's authority is limited to the adjudication of issues which were raised in the grievance procedure. The arbitrator will not have authority to add to, subtract from, or modify any of the terms of this Agreement, or any supplement thereto. The arbitrator will apply all applicable laws.

2. In considering grievances concerning actions based on unacceptable performance and adverse actions appealable to the Merit Systems Protection Board (MSPB), the arbitrator will be governed by 5, U.S.C. 7701(c)(1), and, to the extent applicable, by the precedential decisions of MSPB.

**Section F. Grievability/Arbitrability Determinations**

The arbitrator will have the authority to make all grievability and/or arbitrability determinations. Threshold questions of arbitrability will be heard by the arbitrator on the same hearing date as the hearing on the merits of the case, unless otherwise agreed by the Parties.

**Section G. Arbitration Process**

1. The Parties may mutually agree to expedited arbitration or a formal hearing. If the Parties do not agree on the arbitration process, a formal hearing will be held.

2. Upon selection of the arbitrator in a particular case, the respective representatives for the Parties will communicate with the arbitrator and each other in order to select a mutually agreeable date for the arbitration hearing.

3. Expedited Arbitration:

    a. A stipulation of facts to the arbitrator can be used when both Parties agree to the facts at issue and a hearing would serve no purpose. In this case, data, documentation, etc., are jointly submitted to the arbitrator with a request for a decision based upon the facts presented.

    b. An arbitrator inquiry may be used to expedite the resolution of the grievance. In this case, the arbitrator would make such inquiries as deemed necessary, prepare a brief summary of the facts, and render an on-the-spot decision with a summary opinion. The Parties may mutually agree to eliminate the summary opinion.

    c. Mini-Arbitration: In this case, an oral hearing will be held. The arbitrator will prepare a brief summary of the facts and render a decision with a summary opinion. The Parties may mutually agree to eliminate the summary opinion.

4. Formal hearing: A submission to an arbitration hearing should be used when a formal hearing is necessary to develop and establish the facts relevant to the issue. In this case, a formal hearing is convened and conducted by the arbitrator.

5. The arbitrator will be requested to render the decision and remedy to the Parties as quickly as possible.

6. Except as provided in Section G.8. in this Article, the arbitrator's decision will be final and binding. The arbitrator's decision and remedy will be implemented without delay.

7. Transcripts: The cost of the transcript requested by one Party for its exclusive use and not shared, will be borne by the requesting Party. If it is mutually agreed to request a transcript, the cost will be borne equally.

## ARTICLE 40: MID-CONTRACT NEGOTIATIONS

### Section A. Agreements Under This Article

1. Any agreements reached under the provisions of this Article will be deemed supplemental to this Agreement and will expire when this Agreement expires.

2. Should a provision of any agreement negotiated pursuant to this Article be rendered invalid by appropriate authority, either Party may reopen the specifically affected sections, as well as issues clearly and unmistakably bargained away as part of this Agreement.

3. Notwithstanding this Article, nothing will affect the authority of the Agency to take whatever actions may be necessary to carry out its mission during emergencies.

### Section B. Mandated Changes

1. Disposition of future statutes or judicial decisions.

    a. Such actions may require the Parties to change this Agreement. If either Party desires to negotiate the impact and implementation of the change, it will provide written notification to request bargaining to the other Party. Such notice will include a specific proposal for negotiations.

    b. The receiving Party will respond within 10 workdays of receipt of the notice with a proposal. Such failure will constitute a waiver of any right to negotiate on the proposed required change, and the specific formal proposal will become part of this Agreement.

    c. Neither Party will be permitted to propose changes unrelated to the change specifically required by statutes or judicial decisions.

2. The Agency will meet its obligations to bargain in good faith, and to delay implementation, unless prohibited by law, of the planned change until it has met its negotiation obligations in accordance with laws, regulations, and terms of this Agreement.

**Section C. Scope of Mid-term Bargaining**

At any time after one year from the effective date until six months before the expiration date, each Party may submit a written notice with a proposal to the other Party of its intent to reopen one Article for re-negotiation on an annual basis. Negotiations will be conducted in accordance with Section E in this Article.

**Section D. Impasse Procedures**

1. If agreement cannot be reached on the matters under negotiation, the following procedures will apply:

2. Declarations of Impasse

    a. Neither Party may declare an impasse until all Articles and Sections are agreed to, or declared non-negotiable by the Agency, or declared at an impasse by either Party. The Parties agree that each will use their best good-faith efforts to avoid impasse in negotiations.

    b. If the Agency declares a provision to be outside the duty to bargain (i.e., non-negotiable), it will provide the exclusive representative a written allegation concerning the duty to bargain in accordance with Federal Labor Relations Authority regulations.

3. Impasse

    a. In the event either Party believes there to be an impasse in negotiations, the Federal Mediation and Conciliation Service (FMCS) will be immediately requested to provide services and assistance to resolve the dispute pursuant to 5 United States Code (U.S.C.) 7119.

    b. If mediation services of the FMCS do not result in resolution of the issue, either Party may invoke the services of the Federal Service Impasses Panel (FSIP) pursuant to 5 U.S.C. 7119. Prior to taking such action, however, the Party seeking to invoke the services of the FSIP will provide notice to the opposing party of its intention to take such action.

**Section E. Ground Rules**

1. Negotiations will take place during regular duty hours and begin as soon as practicable, but not later than 60 calendar days after receipt of a proposal by either Party unless, otherwise mutually agreed by the Parties.

2. The Agency will provide mutually acceptable facilities for negotiations or may conduct negotiations using available technology.

3. The Union will be authorized the same number of Union representatives on official time as the Agency has representatives at the negotiating table.

4. Either Party may have a subject matter expert (SME) present, as necessary, who can provide information necessary for the successful completion of bargaining. The SME will not count toward the bargaining team's representatives. The Agency will not reimburse or pay for travel expenses for the Union's SME.

5. It is the intent of the Parties to consolidate issues for bargaining to the greatest extent possible.

6. Unless mutually agreed, no new proposals will be submitted by either Party after the first day of negotiations.

7. All agreements are tentative until full agreement is reached.

8. Agreements reached will be written and signed by both Parties, and are subject to Union ratification and Agency head review before they become effective.

**Section F. Proposed Changes**

1. A proposed change, affecting the conditions of employment of any Employee, will be submitted in writing to the Union. The notice will include the following:

    a. A description of the change.

    b. The proposed date of implementation.

2. The Union may request to negotiate the proposed change within fifteen (15) working days of receipt of the notice.

3. A request for negotiation will be accompanied by proposals or counter proposals, as appropriate.

4. The Parties may mutually agree to extend or shorten the time limits described above.

## ARTICLE 41: PRECEDENCE, EFFECT OF LAWS AND REGULATIONS, AND SEVERABILITY

### Section A. Previous Agreements and Past Practices

This Agreement supersedes all previous Agreements and past practices in conflict with this Agreement.

### Section B. Mandated Changes

The provisions in Article 40, Sections B.1. and B.2. will be applicable to this Section.

### Section C. Severability

Should any part, term, condition or provision of this Agreement be declared or determined by any court, head of the Agency, or arbitrator to be illegal or invalid, the validity of the remaining parts, terms or provisions will not be affected thereby, and said illegal or invalid part, term or provision will be deemed not to be a part of this Agreement. If a finding of illegality or invalidity is made the Union may request a briefing or request to negotiate with the Employer within 10 workdays of receipt of the proposed change. If the Union requests a briefing, one will be held within 10 workdays of the request. If a request to negotiate is submitted under this Section, the procedures under Article 40 will apply.

### Section D. Effect of Agreement

For the duration of this Agreement, it will have the full force and effect of regulations within the bargaining unit.

## ARTICLE 42: DURATION AND TERMINATION

### Section A. Effective Date

This Agreement and all renegotiated Articles and/or portions of Articles, will take effect on the date of Agency Head approval, or on the 31st calendar days after execution, unless disapproved when submitted for Agency head review pursuant to the provisions of 5 United States Code (U.S.C.) 7114.

### Section B. Duration

1. This Agreement will remain in effect for four years from its effective date.

    a. Thereafter, it will automatically renew in increments of one year beginning on the day after the anniversary date, unless either Party serves the other with written notice of a desire to renegotiate or modify this Agreement in whole or in part.

    b. Such notice will be provided to the Party not more than 120 calendar days nor less than 60 calendar days prior to the expiration date of this Agreement.

2. Upon receipt by either Party of notice, both Parties will meet within 90 calendar days of receipt of a proposal to begin negotiations, unless mutually agreed to by the Parties.

    a. When either Party notifies the other that it wishes to modify this Agreement, this Agreement will be extended until the effective date of the modified agreement.

    b. The provisions of any Article in this Agreement may only be reopened pursuant to Mid-term Bargaining, Article 40, or where affected by changes of laws.

## ARTICLE 43: OFFICIAL TIME AND UNION REPRESENTATIVES

### Section A. Definitions

1. Official Time: The time used by the Employer's Bargaining Unit Employees (BUEs) as Union representatives, or in their own capacity, when in duty status, without charge to annual leave, and approved by the Agency, in accordance with Section E in this Article. for the purposes set forth in Section C in this Article.

2. Reasonable Time: The time necessary to accomplish a labor relations task for which official time is requested, including a reasonable amount of time to travel to and from the task location.

3. Preparation Time: Reasonable time spent by the Union representative(s), witnesses, or the individual party(s) preparing for the activities described in Section C in this Article.

4. Participation Time: The time spent as a Union representative(s), as a witness, or as an individual party(s) to the actions or activities described in Section C in this Article.

### Section B. General

1. Specific requests for official time will be for a reasonable amount of time, as referenced in Section A.2. above, given the task or issue at hand and be specified at the time the request is made.

2. Union officials and representatives cannot receive monetary awards for any work done on behalf of the Union.

### Section C. Purposes and Uses of Official Time

1. Union representatives designated under Section H, in this Article, may request official time to complete required representational functions, including reasonable preparatory time, in the following circumstances:

    a. to attend a formal discussion between one or more representatives of the Agency, and one or more Employees or their representatives concerning

any personnel policy or practices, or other general condition of employment;

b. to attend an examination of an Employee by a representative of the Agency, in connection with an investigation, if the Employee reasonably believes that the examination may result in disciplinary action against the Employee, and the Employee requests representation;

c. to attend any meeting as a Union representative with one or more representatives of the Employer that is initiated by either a Management official or the Union representative in order to informally resolve problems of concern to either party pertaining to matters covered under C.1.a. and b. in this Article;

d. to represent the bargaining unit in the negotiation of a collective bargaining agreement, including attendance at impasse proceedings, during the time the Employee otherwise would be in a duty status. Note: The total number of individuals approved for official time for this purpose will not exceed the number of individuals designated as representing the Agency for this purpose;

e. for purposes approved by the Federal Labor Relations Authority under 5 United States Code (U.S.C.) 7131(c);

f. to attend training in Labor-Management Relations, as authorized. The use of official time for Labor Management training does not include Union conferences whose sole purpose is to train Union officials on internal Union business matters;

g. in connection with any other matter, including lobbying Congress as it concerns legislation related to BUEs' conditions of employment, and grievances filed in accordance with Article 38 of this Agreement, in an amount agreed to by the Union and the Employer to be reasonable, necessary, and in the public interest;

h. to provide testimony before Congress, when specifically requested by Congress, concerning issues related to "Conditions of Employment" or all matters affecting Federal employment;

i. to participate in proceedings initiated by the Union or by the Agency in connection with statutory or regulatory appeal procedures;

j. to hold informational meetings of members of the bargaining unit, subject to advance approval of the Employer; and

k. other official time may be granted by Management on an as needed basis to participate in Agency projects when Union representation is needed. Official time will be requested in advance through the supervisor and the Employee must ensure that it is approved prior to participation.

2. BUEs who use official time will record the official time on their time and attendance record using the appropriate code.

**Section D. Prohibited Use of Official Time**

Any activities performed by any Employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) will be performed during the time the Employee is in a non-duty status.

**Section E. Procedures for Use of Official Time**

1. All requests for the use of official time will be for specific periods and must be made in advance and recorded in the Time and Attendance System (currently WebTA). Each request will be based on the good faith estimate of the official time required to perform the particular function. Requests for the use of official time will be made to the Employee/Union representative's supervisor or in their absence, the second line supervisor. If the first and second level supervisors are unavailable, the Employee will email the supervisor specifying a location at which the Employee may be reached and an estimate of the official time required.

2. Prior to meeting with an Employee, neither the Employee nor the Union representative will be required to explain to their supervisor the specific reason for the meeting beyond representing that the meeting relates to an individual matter as defined in Section C in this Article. Requests for official time for

Labor-Management Relations training under Section C.1.f. in this Article will be specified as such.

3. In the event additional official time is required due to unforeseen circumstances, after approval has been given, the Employee and/or Union representative will request an extension of that time. Such a request may be made by telephone or email. The request will be made to the original approving official, or, in that person's absence, to the next higher level of supervision. The extended time will be granted if justified unless the Employee or Union representative's absence will significantly interfere with the completion of the work unit's mission and functions.

4. Upon completion of a period of official time, the Union representative and/or Employee will promptly report back to work, and notify the Management official(s) who approved their official time that the Union representative has returned. Any extension of official time and actual time used will be noted on WebTA.

5. The Parties understand that circumstances may arise that prevent advance approval of official time, such as telephone calls or unscheduled visits to the Union representative's worksite. The Union representative will inform Employees of the proper procedures for obtaining approval for use of official time to engage in representational activities, as outlined in this Article.

6. Union representatives' transportation and per diem costs for Union representatives may be paid only when the Agency extends to the Union an official invitation to participate in meetings outside the Washington, D.C. Metropolitan Area. Costs will be paid by the Agency which extends the invitation.

7. The Employer will pay reasonable transportation costs for Union representatives to attend official meetings in the Washington, D.C. Metropolitan Area. The shuttle service should be used whenever possible. Official meetings may be conducted via Microsoft Teams or other technology.

**Section F. Approval of Requests**

Employees entitled to use official time for the purposes set forth in Section C in this Article will be approved for official time when requested unless their presence at the worksite is needed to meet the work unit's mission and functions.

**Section G. When a Request for Official Time is Not Approved**

1. When the Employer requests that a Union official be present for Labor Management activities and the Union official's supervisor denies the Union official's request for official time, the Employer will make reasonable efforts to resolve the conflict and, if necessary, will provide the Union with the opportunity to designate another Union official or, if after making a good faith effort, the Union is unable to designate an alternate representative, the Employer will make an attempt to reschedule the Labor Management activities to meet representational deadlines to enable the Union to fulfill its representational responsibilities.

2. In the event an Employee or Union official's request for official time is denied, the supervisor will make a brief notation in the Time and Attendance (WebTA) System leave describing the basis for the denial.

3. In the event an Employee's request for official time for an authorized purpose is denied, the supervisor will make reasonable effort to identify an alternative time for when official time would be approved.

**Section H. Designation of Union Representatives**

1. The Union will provide Management with the names and titles of Union representatives each year.

2. Stewards

    a. It is the intent of the Parties to ensure there are a sufficient number of Shop Stewards available to ensure the Union is able to meet its representational responsibilities while permitting the timely completion of each work unit's mission and functions.

b. The Union will have the right to designate stewards. The number of stewards authorized includes the President, Vice President, and the Chief Steward.

(1) The Union will assign each Steward a representational area and will communicate such assignments to Management and Employees. A representational area will be the building in which the Steward regularly performs work assignments.

(2) The Union may designate an alternate from another representational area if a regularly designated Steward is unavailable due to reasons such as absence or Union or Agency workload, or if in a particular case there is a requirement for specialized expertise as determined by the Chief Steward.

(3) The Chief Steward will make a reasonable effort to ensure the timely availability of a Union representative.

3. The Union will provide an initial list of stewards and officers within 10 working days of the signing of this Agreement to the Employee and Labor Relations Chief. This list may be updated and modified from time to time.

a. Any changes to the original list will be submitted in writing to the Employee and Labor Relations Chief three working days before the individual will be recognized by the Employer as having authority to represent the Union and be granted official time for representational duties.

b. In exceptional circumstances, such as when a new steward replaces an old steward and is immediately confronted with a situation requiring Union representation, the Union will notify the Employee and Labor Relations Chief verbally and via email so Employee and Labor Relations can communicate with the supervisor about the official time requests.

**Section I. Official Time for Designated Union Officials**

1. The Union may designate one elected official from the President, Executive Vice President, Vice President of FPAC, or Chief Steward to be on 100 percent official time to conduct Union business. The Union may also designate one official to be on 50 percent official time to conduct Union business.

    a. The Union will designate the officials who will serve in this capacity each year for a one-year term, and notify the Agency prior to assuming the responsibility. Designated representatives will work with their respective supervisor to ensure workload demands are met and official time is granted.

    b. In the event that an official cannot complete the one-year term, the Union shall notify the Agency of the newly elected designated official and whether that individual will complete the current one- year term or begin another one-year term.

2. The designee will, for administrative purposes, remain in the current position of record, at the current title, series, and grade. Upon termination of the 100 percent official time designation, official time for continued Union representation will be in accordance with the current contract language.

3. The Agency is free to temporarily fill one additional identical position to perform the duties of the 100 percent designee's position of record within the organization. At the termination of the 100 percent official time designation, the temporarily filled identical position may be terminated by the Agency. Input from the Union will be obtained and considered by the Agency prior to making a decision to continue with or terminate the temporary position.

4. The official is eligible to attend training or conferences necessary to maintain professional skills of the assigned permanent position. Criteria for approval or disapproval will be the same as applied to other Employees in that work unit. Training related to Union responsibilities is covered in Section C.1.f. in this Article.

5. For purposes of career ladder or career enhancement program participation, the time spent as a 100 percent designated Union official will not be counted. Upon

termination of the 100 percent Union official tenure the person will re-enter the program at the same status as when they left.

6. Time spent by the designated Union official on 100 percent official time counts as time- in-grade for within grade increase (WGI).

7. The designated Union Official is free to apply for any vacancy announcements and will be fairly considered for any promotional opportunity that they are qualified for within the Agency. Performance on Union work on 100 percent official time will be viewed with neutrality by the selecting official(s).

8. While serving on 100 percent official time, the designated Union official is ineligible for performance ratings unless the Employee is assigned to an Agency position and performs Agency mission duties for at least a 90-day period.

    a. An Employee who has served in a position for 90 days during the rating period prior to designation as the 100 percent designated Union official will receive an interim rating within 60 days of the effective date of the reassignment. This will revert to the annual rating at the end of the appraisal period unless the Employee has returned to regular Agency duties, in which case, this rating will be considered in developing the annual rating.

    b. If the Employee performs the duties of the Union official, and during the rating period serves 90 days of Agency duties after becoming the 100 percent Union official, the annual rating will be the rating received during the 90-day period, based on current regulations.

    c. Without the 90-day period, the Employee understands that they will receive no rating.

9. In the event of a reduction in force (RIF), the designated Union official will enjoy the same rights as other Agency Employees, and their position of record will be viewed with neutrality in any RIF planning.

10. The designated Union official will relocate to the Union office during the assignment to 100 percent time, unless the Parties mutually agree that relocation is not necessary. To assure confidentiality required by the duties, the Union office will be a private office.

**Section J. Disputes**

Any dispute over the use of official time will be resolved through the grievance procedure set forth in Article 38 of this Agreement.

## ARTICLE 44: FACILITIES AND SERVICES

### Section A. Union Facilities and Services

1. The Employer will provide an enclosed, lockable office with furniture and equipment for the exclusive use of the Union.

2. The Employer will provide two telephones with voice speakers with an outside line for local calls in the Union Office. The office will be listed in the official telephone directory by Union name, room number, and telephone numbers. The Employer will provide access to FPAC community fax machines.

3. The Union may request rooms to hold meetings on the Employer's premises during the lunch period and outside normal duty hours subject to the official needs of the Employer. For satellite offices where a Union Office is not located, the Union may request rooms on the Employer's premises, and to hold meetings during normal working hours in accordance with the terms of Article 43.

4. Upon receiving advanced notice, the Employer will issue daily passes to Union-identified representatives in order to carry out their responsibilities under this Agreement. Union Representatives who are not employed by the Agencies must be escorted by an Agency Employee.

5. Upon receiving a one-week advanced notice, the Employer will provide the Union with available tables and easels for display in public spaces.

### Section B. Union Access to Bulletin Boards and Literature Distribution

1. The Employer will provide two bulletin boards per floor, which will be exclusively for the use of the Union. The Union is responsible for the content of its posted material. The Parties agree to discuss any objections they may have to material posted on bulletin boards.

2. The Employer agrees that the Union has the right to use the Employer's interoffice mail distribution system to mail documents or correspondence to the Employer or to Bargaining Unit Employees (BUEs).

3. The Union agrees that, prior to the bulk distribution of its literature, the Union is responsible for preparing, collating, and distributing such literature.

4. The Union may distribute its literature, desk to desk before or after work or during the lunch hour of the BUE distributing the literature, subject to the Agency's security needs and in accordance with the terms of Article 43.

5. Union representatives not employed by Agencies may be admitted to the Agencies premises to meet with local Union representatives and/or BUEs to discuss appropriate matters, and may participate in meetings between the Union and the Employers.

**Section C. Union Office and Equipment**

The Parties recognize that office space is needed and necessary in carrying out the day-to-day activities generated from Labor-Management Relations. The Parties agree to the following:

1. AFSCME Local 3925 will occupy a designated room in the building housing the most Employees as a home office.

2. Management will furnish the Union office the following at no expense to the Union:

    a. 1 computer (standard configuration as determined by Employer)

    b. Access to FPAC community fax/printer/copier machines

    c. 1 desk (60" X 30")

    d. 1 conference table

    e. Up to 12 chairs

    f. 1 locking file cabinet (4 shelf lateral)

    g. 1 telephone (3 mic Polycom)

    h. 1 wall clock

i. door locks

j. 1 window air conditioner (depending on the location).

3. The Union will have a conference room designated for Union-related activities.

4. The office furniture and equipment will be maintained by the Agency. This includes troubleshooting software and hardware problems.

## ARTICLE 45: CHILD DAYCARE Section A. List of

## Child Daycare Facilities

1. Healthful and adequate child daycare facilities are conducive to a family-friendly work environment, and are in the best interests of the Agency.

2. Employees can obtain a list of child daycare facilities located in General Services Administration (GSA) space within the National Capital Region from the GSA website at: https://www.gsa.gov/resources/citizens-and-consumers/child-care-services/find-a-child-care-center-near-you

## Section B. Visiting Children in Child Daycare

1. With advance supervisory approval, Employees may expand their lunch period within the established lunch band for the purpose of visiting the childcare center, in accordance with Article 6.

2. Employees will make up the time in which the lunch period is expanded either at the beginning or end of that day.

3. This Section is not applicable to Employees on fixed work schedules.

## Section C. Federal Childcare Subsidy Program (FCCSP)

At the discretion of the Employer, appropriated funds, otherwise available for salaries, may be used to provide childcare cost assistance for lower income Employees (reference Public Law 107-67, Section 630 and the regulations found at 5 Code of Federal Regulations (CFR) Part 792 subpart B.)

1. General Information

    a. Subject to the availability of funding, the Employer will provide a child daycare subsidy to Bargaining Unit Employees (BUEs) whose total family income is lower than $55,000. The program is designed to assist them in their efforts to obtain quality, childcare for children under the age of 13 or, disabled and under the age of 18, and are enrolled, or will be enrolled, in licensed family childcare homes or center-based

childcare. The childcare must be licensed and/or regulated by state and/or local authorities.

b. Implementation of the program under this Article will be for Employees.

2. Eligibility

a. To qualify for a subsidy, Employees must use licensed child daycare, be a permanent Employee, with a scheduled tour of duty of at least 40 hours per pay period, and have a Total Family Income (TFI) as reported on the Adjustable Gross Income line of the most recent IRS Form 1040/1040A of less than $55,000 per year. If the eligible Employee is married, benefits may only be granted if the spouse is working, enrolled in full-time studies or unable to care for the child or children.

Note: Benefits will not be granted for licensed overnight care.

b. The parameters of the program are:

| Level | If the Total Family Income as reported on the Adjustable Gross Income line of the most recent IRS Form 1040/1040A is less than $55,000Y | The Monthly Subsidy Equal** |
|---|---|---|
| 1 | $52,000 - 54,999 | $183.00 |
| 2 | $49,000 - $51,999 | $266.00 |
| 3 | $46,000 - $48,999 | $349.00 |
| 4 | $43,000 - $45,999 | $432.00 |
| 5 | $42,999 or less | $515.00 |

** The benefit will be reduced by the amount of other state or local government childcare subsidies an eligible Employee receives, and will be paid directly to the childcare provider. Subsidy amounts apply to total costs of childcare, not cost per child.

c. An Employee will be eligible for the program immediately upon joining the Agency, provided that the Employee is qualified based on the TFI and meets other eligibility criteria.

d. An Employee who is deemed ineligible may appeal that decision in accordance with the provisions of the FCCSP.

3. Funding Availability

a. The Employer agrees to seek appropriated funds to implement the program. The Employer will provide a 60-day notice to the Employees and the Union before implementation if appropriated funding is approved and available.

b. The Employer reserves the right to terminate or cap the program if necessitated by budget or ceiling constraints or other constraints beyond its control.

c. For any change to funding availability, the Employer will provide a 60-day notice to the Employees and the Union.

4. Program Administration

a. The Employer will seek involvement from the Union in the development of the FCCSP plan.

b. The Employer will fairly and equitably administer the program in accordance with applicable laws, regulations, and procedures for the benefit of Employees eligible to participate in the program.

c. The Employer intends this benefit to be a childcare cost assistance program, such that beneficiaries who meet the tax law requirements will be able to exempt all or a portion of the subsidy from tax liability, and will establish the program under guidelines to achieve that objective. An Employee’s tax liability for assistance received under this program will

be determined by the applicable tax code. The Employee is responsible for determining their tax situation.

d. To encourage full participation by eligible Employees, the Employer and the Union will develop a campaign that actively promotes the program.

e. To ensure compliance with Federal regulations, laws, and program guidelines, the Employer and the Union will regularly monitor and evaluate the program.

Note: Guidance found at: https://intranet.usda.gov/FPAC/employee-services-work-life-and-wellness-programs

## ARTICLE 46: FOOD SERVICES

**Section A.**

The Employer and the Union agree that accessibility to affordable and adequate food service facilities is a concern for Bargaining Unit Employees, and is a component in the existence of a friendly workplace.

**Section B.**

The Employer agrees to continue to support its Employees' reasonable access and use of food service located in the South Building or any worksite the Employees may occupy. The needs of Employees with disabilities must be taken into account.

**Section C.**

The Union reserves the right to bargain to the fullest extent permitted by law and Executive Order over food services if Employees' access to food service facilities changes.

## ARTICLE 47: PUBLIC TRANSPORTATION AND PARKING

### Section A. General

1. In the interest of relieving Washington, D.C. Metropolitan Area traffic congestion, reducing air pollution, and conserving energy, the Employer encourages the use of mass transit or van pool by participating in the Metropolitan Transit Promotion Program (MTPP).

2. To be eligible for transit benefits, an Employee must, as a normal means of commuting, use a mass transportation system or a commuter highway vehicle either of which is a member of the WMATA Federal Metro Pool Program.

3. Continuation of these programs is dependent on the availability of funds within the respective budgets of the Agency.

### Section B. Metrocheks

1. Metrochek is a nontaxable monthly distribution of farecards paid by the Agency and issued to eligible Employees as a metro farecard.

2. Neither Metrocheks nor any other media to which they are converted can be transferred from the recipient to any other individual. Moreover, Metrocheks or the media to which they are converted may only be used for eligible commuting to and from work; not for personal trips or trips between office locations. Inappropriate conversion or use will result in the Employee's removal from MTPP, and may result in disciplinary action and/or criminal prosecutions, as appropriate.

3. For additional information, the Employee may contact the Department or Agency Transit Coordinator.

### Section C. Pre-Tax Parking

1. Pre-tax parking is authorized for eligible Employees to exclude certain parking expenses from their taxable income. This benefit is provided by Executive Order 13150, Code of Federal Regulations 1.132.9, and 5 United States Code 7905.

2. For additional information, the Employee may contact the Department or Agency Transit Coordinator.

## ARTICLE 48: FITNESS/HEALTH FACILITIES

**Section A.**

The Employer and the Union agree that accessibility to affordable and adequate fitness/health facilities is a concern for Bargaining Unit Employees (BUEs) and is a component in the existence of a friendly workplace.

**Section B.**

The Employer agrees to continue to support BUEs' ready access and use of fitness/health centers located in the South Building.

1. With advance supervisory approval, Employees may expand their lunch period within the established lunch band for the purpose of physical fitness.

2. Employees will make up the time in which the lunch period is expanded either at the beginning or end of that day.

3. This is not applicable to Employees on fixed work schedules.

**Section C.**

The Union reserves the right to bargain to the fullest extent permitted by law, over fitness and health facilities, if bargaining unit members' access to fitness and health facilities changes during the term of this Agreement.

## ARTICLE 49: UNION-EMPLOYER MEETINGS

**Section A.**

The Employer and Union representatives will meet periodically to promote two-way communication and to help identify problems and propose solutions to better serve the public and the Agency's mission.

**Section B.**

These meetings, which will be attended by the Employer and not more than two Union representatives, will be held quarterly, or more frequently by mutual agreement, at a mutually convenient time. The purpose of these meetings is to discuss broad matters of mutual concern, which may include, but need not be limited to: the identification and/or correction of conditions causing grievances and misunderstandings; improving communications between Employees and supervisors; maintaining Employee productivity and morale; training and career development opportunities; the improvement of working conditions; potential unfair labor practices; Agency-wide workplace harassment and bullying trends; and possible reorganizations. The agenda items are to be submitted five days in advance of the meeting date. If neither party submits an agenda item five days prior to the mutually agreed upon meeting date, then the meeting will not be held.

**Section C.**

These Union-Employer meetings will not consider individual grievances, complaints, or disputes.

**Section D.**

The Union will be granted official time for these meetings, in accordance with the provisions of 5 United States Code (U.S.C.) 7131.

## Appendix 1: Certification of American Federation of State, County and Municipal Employees (AFSCME), District Council 20, Local 3925

FEDERAL LABOR RELATIONS AUTHORITY
DENVER REGION

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U.S. DEPARTMENT OF AGRICULTURE

FARM PRODUCTION AND CONSERVATION BUSINESS CENTER

FARM SERVICE AGENCY

RISK MANAGEMENT AGENCY

(Agency/Joint-Petitioner)

and

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES
DISTRICT 20 COUNCIL, AFL-CIO

(Union/Joint-Petitioner)

WA-RP-23-0008

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DECISION AND ORDER

**I. Statement of the Case**

On November 9, 2022, the U.S. Department of Agriculture, through the Farm Production and Conservation Business Center (FPAC-BC), the Farm Service Agency (FSA), and Risk Management Agency (RMA), and the American Federation of State, County, and Municipal Employees, District Council 20, AFL-CIO (AFSCME District Council 20) filed a joint petition with the Federal Labor Relations Authority (Authority) Washington Region under Section 7111(b)(2) of the Federal Service Labor Management Relations Statute (the Statute). On November 15, 2022, this petition was administratively transferred to the Denver Region. The petition sought to consolidate AFSCME District Council 20's two existing bargaining units into a single bargaining unit.

Pursuant to section 2422.30(c) of the Authority's Rules and Regulations, and based upon the Parties' Joint Stipulations of Fact, I hereby find and conclude as follows:

**II. Findings**

On April 5, 2018, in Case No. WA-RP-18-0005, the Federal Labor Relations Authority certified the American Federation of State, County, and Municipal Employees, District Council 20, AFL-CIO as the exclusive representative of the following unit:

| | |
|---|---|
| Included: | All professional and nonprofessional employees employed by the U.S. Department of Agriculture, Farm Service Agency and Risk Management Agency in the Washington, D.C. metropolitan area. |
| Excluded: | All management officials, supervisors and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6) and (7). |

On February 26, 2019, in Case No. WA-RP-19-0002, the Federal Labor Relations Authority certified the American Federation of State, County, and Municipal Employees, District Council 20, AFL-CIO as the exclusive representative of the following unit:

| | |
|---|---|
| Included: | All professional and nonprofessional employees employed by the U.S. Department of Agriculture, Farm Production and Conservation Business Center in the Washington, D.C. metropolitan area. |
| Excluded: | All management officials, supervisors and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6) and (7). |

On May 15, 2017, the Secretary of Agriculture announced his intention to create an Under Secretary for Farm Production and Conservation (FPAC) and realigned FSA and RMA to report to a new mission area. The FPAC Mission Area delivers commodity, conservation, credit, crop insurance, disaster, and other programs that support and strengthen the economic productivity of U.S. agriculture, ensure an abundant food supply, and improve the health of the nation's agriculture lands and natural resources. The FSA administers farm commodity loan and purchase programs, farm ownership and operating loans, and the conservation reserve program, in order to maintain a self-sustaining food supply in the United States. It also provides disaster assistance and administrative support to the Commodity Credit Corporation, which funds most of the commodity and export programs of the U.S. Department of Agriculture (USDA). The RMA serves America's agriculture producers through effective, market-based risk management tools to strengthen the economic stability of agriculture producers and rural communities. RMA is responsible for delivering a broad based and actuarially sound crop insurance program and developing other market-based approaches to manage farm risks.

As part of the FPAC realignment, operational and management functions for FSA and RMA were combined into the FPAC Business Center (FPAC-BC). On October 14, 2018, the FPAC BC began operations to provide services to FSA and RMA. The FPAC BC is a "one-stop shop" for the FSA and the RMA to obtain mission support services, i.e., Human Resources, Finance and Budget, Information Technology, etc. The consolidation of the administrative services streamlined processes, improved mission support delivery and allowed FPAC agency staff to focus on continuing to provide best-in-class customer service and program delivery.

The FPAC-BC and FSA/RMA bargaining units are subject to the same personnel policies and practices and departmental regulations, and the employees perform similar duties and share common position titles. There are approximately 316 employees in the FPAC-BC and FSA/RMA bargaining units, and the number of employees in the units will not be affected by the petition.

On February 18, 2013, the parties negotiated a collective bargaining agreement for the FSA/RMA bargaining unit, which is still in effect. The parties are currently negotiating a collective bargaining agreement for the FPAC-BC bargaining unit, and seek to consolidate the respective bargaining units so that this collective bargaining agreement will apply to the FPAC-BC and FSA/RMA bargaining unit employees. The parties have previously negotiated an agreement applicable to both bargaining units; specifically, on March 17, 2022, the parties negotiated a Memorandum of Understanding concerning telework and remote work the FPAC-BC, and FSA/RMA bargaining unit employees.

The parties agree that the petitioned for unit is appropriate under the Statute, as the employees share a clear and identifiable community of interest, and the consolidation will promote effective dealings and efficiency of operations within the Agency. The parties, therefore, request the Regional Director consolidate the two existing units into a single bargaining unit.

## III. Analysis and Conclusion

Section 7112(d) of the Statute allows consolidation of two or more bargaining units represented by the same exclusive representative "if the Authority considers the larger unit to be appropriate." *U.S. Dep't of the Air Force, Air Force Materiel Command Wright-Patterson Air Force Base, Ohio*, 55 FLRA 359, 361 (1999). The reference in Section 7112(d) of an "appropriate" unit incorporates the appropriate unit elements established in Section 7112(a) of the Statute. *Id.* A unit may be determined to be appropriate if it will: "(1) ensure a clear and identifiable community of interest among the employees in the unit; (2) promote effective dealings with the agency involved; and (3) promote efficiency of the operations of the agency involved." *U.S. Dep't of Commerce U.S. Census Bureau*, 64 FLRA 399, 402 (2010) (citing *U.S. Dep't of the Navy Fleet and Industrial Supply Center, Norfolk, Virginia,* 52 FLRA 950, 959 (1997)).

In this matter, the evidence and stipulations support the conclusion that the bargaining unit employees share a clear and identifiable community of interest, and the consolidation will promote effective dealings and efficiency of operations within the Agency. Noting the Parties' agreement, I find that the consolidation will be granted, and after considering the parties interests and concerns, the new unit will be described as follows:

Included: All professional and nonprofessional employees employed by the U.S. Department of Agriculture, Farm Production and Conservation Business Center, Farm Service Agency, and Risk Management Agency in the Washington, DC metropolitan area. The Washington, DC metropolitan area for this bargaining unit is defined as locations in the locality pay area (Washington - Baltimore - Arlington, DC-MD-VA-WV-PA) as established by the Office of Personnel Management.

Excluded: All management officials, supervisors and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7). Any Farm Service Agency State Office and County Office level employees in Maryland, Virginia, Pennsylvania, or any other States. Any Risk Management Agency Regional Office and

Compliance Office level employees in Maryland, Virginia, Pennsylvania, or any other States.

**IV. Order**

Having found that the proposed consolidation may be granted and the parties having waived their right to a hearing and to file an application for review pursuant to § 2422.31 of the Regulations, pursuant to the authority vested in the undersigned, it is hereby ordered that the two units, identified above, be consolidated into a single unit represented by the American Federation of State, County, and Municipal Employees, District Council 20, AFL-CIO.

/Timothy J. Sullivan/

Timothy J. Sullivan
Regional Director, Denver Region
Federal Labor Relations Authority
1244 Speer Blvd., Suite 446
Denver, CO 80204-3581

Dated: March 15, 2023

**CERTIFICATE OF SERVICE**

I certify that I have served the parties listed below a copy of the Decision and Order and Certification of Consolidation of Units in Case No. WA-RP-23-0008 in the manner indicated below:

**E-MAIL**

Lachond Holmes, Federal Sector Representative
AFSCME, District 20 Council, Local 3924, AFL-CIO
100 M Street SE
Washington, DC 20003
Email: lholmes@districtcouncil20.org

John Hippe, Employee/Labor Relations Specialist
USDA, Farm Production and Conservation Business Center
5229 Shadow Rock Drive
Cheyenne, WY 82009
Email: john.hippe@usda.gov

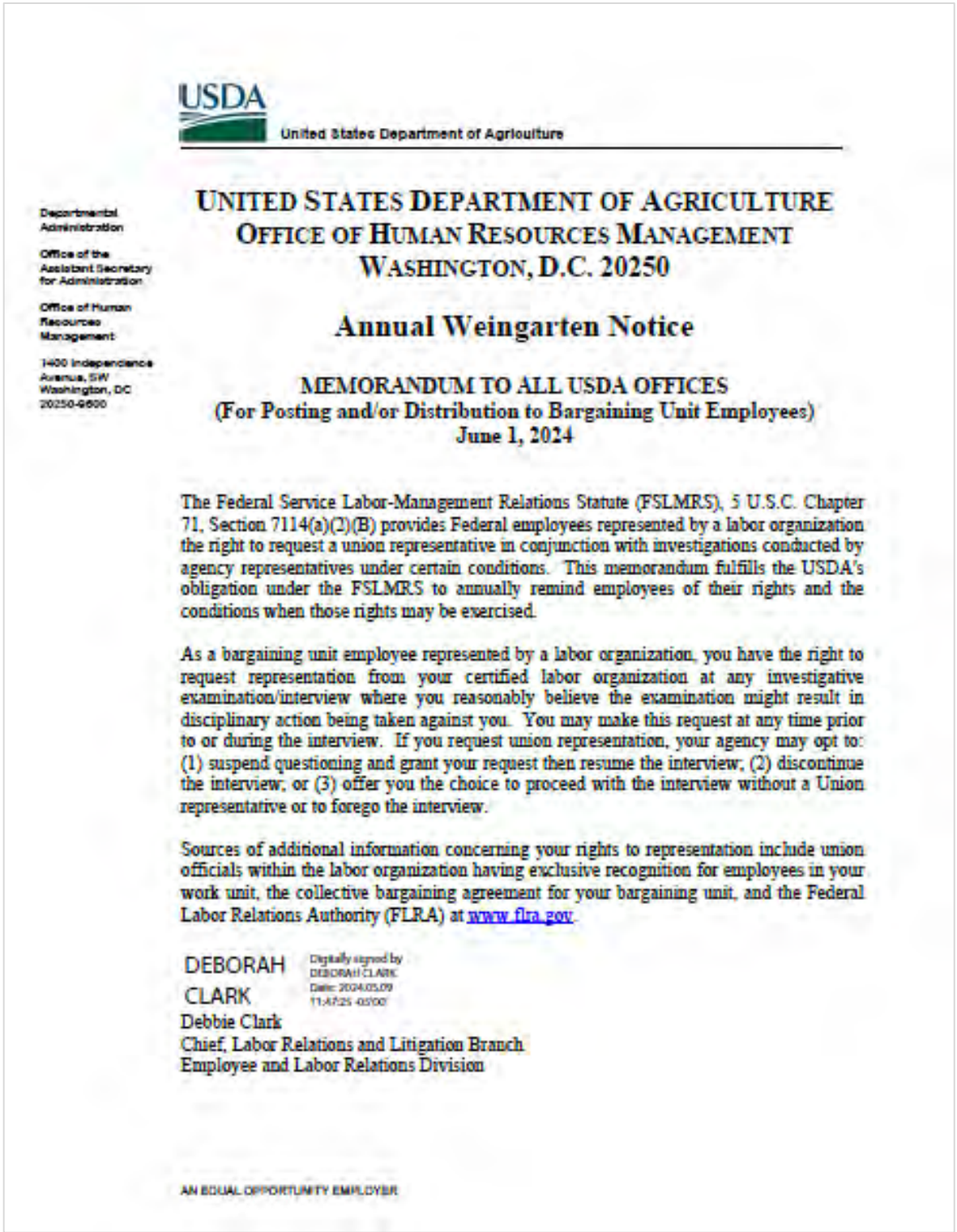
Office of the General Counsel
Federal Labor Relations Authority
1400 K Street, N.W., Second Floor
Washington, DC 20424-0001
DGC@flra.gov

Office of Personnel Management
awr@opm.gov

DATED THIS 15th day of March 2023, at the Denver Regional Office of the Federal Labor Relations Authority, Office of the General Counsel.

/s/ *Katie Smith*

## Appendix 2: Sample Letter of Annual Notification of Right to Have Union Representation



USDA
United States Department of Agriculture

Departmental Administration
Office of the Assistant Secretary for Administration
Office of Human Resources Management
1400 Independence Avenue, SW
Washington, DC 20250-9600

**UNITED STATES DEPARTMENT OF AGRICULTURE**
**OFFICE OF HUMAN RESOURCES MANAGEMENT**
**WASHINGTON, D.C. 20250**

# Annual Weingarten Notice

**MEMORANDUM TO ALL USDA OFFICES**
**(For Posting and/or Distribution to Bargaining Unit Employees)**
**June 1, 2024**

The Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. Chapter 71, Section 7114(a)(2)(B) provides Federal employees represented by a labor organization the right to request a union representative in conjunction with investigations conducted by agency representatives under certain conditions. This memorandum fulfills the USDA's obligation under the FSLMRS to annually remind employees of their rights and the conditions when those rights may be exercised.

As a bargaining unit employee represented by a labor organization, you have the right to request representation from your certified labor organization at any investigative examination/interview where you reasonably believe the examination might result in disciplinary action being taken against you. You may make this request at any time prior to or during the interview. If you request union representation, your agency may opt to: (1) suspend questioning and grant your request then resume the interview; (2) discontinue the interview; or (3) offer you the choice to proceed with the interview without a Union representative or to forego the interview.

Sources of additional information concerning your rights to representation include union officials within the labor organization having exclusive recognition for employees in your work unit, the collective bargaining agreement for your bargaining unit, and the Federal Labor Relations Authority (FLRA) at www.flra.gov.

DEBORAH CLARK
Digitally signed by DEBORAH CLARK
Date: 2024.05.09 11:47:25 -05'00'

Debbie Clark
Chief, Labor Relations and Litigation Branch
Employee and Labor Relations Division

AN EQUAL OPPORTUNITY EMPLOYER

## Appendix 3: SF-1187 (Request for Payroll Deductions for Labor Organization Dues)

Standard Form 1187
Revised March 1989
U.S. Office of Personnel Management

# REQUEST FOR PAYROLL DEDUCTIONS FOR LABOR ORGANIZATION DUES

### Privacy Act Statement

Section 5525 of Title 5 United States Code (Allotments and Assignments of Pay) permits Federal agencies to collect this information. This completed form is used to request that labor organization dues be deducted from your pay and to notify your labor organization of the deduction. Completing this form is voluntary, but it may not be processed if all requested information is not provided.

This record may be disclosed outside your agency to: 1) the Department of the Treasury to make proper financial adjustments; 2) a Congressional office if you make an inquiry to that office related to this record; 3) a court or an appropriate Government agency if the Government is party to a legal suit; 4) an appropriate law enforcement agency if we become aware of a legal violation; 5) an organization which is a designated collection agent of a particular labor organization; and 6) other Federal agencies for management, statistical and other official functions (without your personal identification).

Executive Order 9397 allows Federal agencies to use the social security number (SSN) as an individual identifier to avoid confusion caused by employees with the same or similar names. Supplying your SSN is voluntary, but failure to provide it, when it is used as the employee identification number, may mean that payroll deductions cannot be processed.

Your agency shall provide an additional statement if it uses the information furnished on this form for purposes other than those mentioned above.

| 1. Name of Employee *(Print or Type-Last, First, Middle)* | 2. Employee Identification Number *(SSN or Other)* | 3. Timekeeper Number |
|---|---|---|
| | | |

| 4. Home Address *(Street Number, City, State and ZIP Code)* | 5. Name of Agency *(Include Bureau, Division, Branch or Other Designation)* |
|---|---|
| | 1400 Independence Ave., SW<br>Washington, DC 20250 |

## Section A-For Use By Labor Organization

Name of Labor Organization *(Include Local, Branch, Lodge or Other Appropriate Identification)*

AFSCME Council 20, Local 3925

I hereby certify that the regular dues of this organization for the above named member are currently established at $ _____ per

(biweekly pay period) (calendar month). *(Strike out whichever period is not appropriate, based on arrangement with the employee's agency.)*

| Signature and Title of Authorized Official | Date *(Month, Day, Year)* |
|---|---|
| | |

## Section B-Authorization By Employee

I hereby authorize the above named agency to deduct from my pay each pay period, or the first full pay period of each month, the amount certified above as the regular dues of the (Name of Labor Organization):

AFSCME Council 20, Local 3925

and to remit such amount to that labor organization in accordance with its arrangements with my employing agency. I further authorize any change in the amount to be deducted which is certified by the above named labor organization as a uniform change in its dues structure.

I understand that this authorization, if for a biweekly deduction, will become effective the pay period following its receipt in the payroll office of my employing agency. I further understand that Standard Form 1188, Cancellation of Payroll Deductions for Labor Organization Dues, is available from my employing agency, and that I may cancel this authorization by filing Standard Form 1188 or other written cancellation request with the payroll office of my employing agency. Such cancellation will not be effective, however, until the first full pay period which begins on or after the next established cancellation date of the calendar year after the cancellation is received in the payroll office.

Contributions or gifts (including dues) to the labor organization shown at left are not tax deductible as charitable contributions. However, they may be tax deductible under other provisions of the Internal Revenue Code.

| Signature of Employee | Date *(Month, Day, Year)* |
|---|---|
| | 04/16/21 |

| **FOR COMPLETION BY AGENCY ONLY-** The above named employee and labor organization meet the requirements for dues withholding. (Mark the appropriate box. If "YES", send this form to payroll. If "NO", return this form to the labor organization.) | YES | NO |
|---|---|---|
| | | |

**1-Agency Copy** **2-Labor Organization Copy** **3-Employee Copy**

The following representatives of the American Federation of State, County, and Municipal Employees (AFSCME), Local 3925 (Union), and the Farm Production and Conservation Business Center (FPAC), Farm Service Agency (FSA) and Risk Management Agency (RMA) (Employer) hereby entered into this Agreement the 9th day of September 2024.

FOR THE UNION





FOR THE EMPLOYER