

# Collective Bargaining Agreement

## 2023

Effective Date: December 22, 2023



**USDA Office of the General Counsel  
and  
AFGE Local 1106**

## PREAMBLE

This Agreement is entered into by and between the United States Department of Agriculture, Office of the General Counsel (“the Agency”), and American Federation of Government Employees, Local 1106 (“the Union”). The Agency and the Union enter into this Agreement in the spirit of 5 U.S.C. § 7101, which states:

- a) The Congress finds that—
  - (1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—
    - (A) safeguards the public interest
    - (B) contributes to the effective conduct of public business, and
    - (C) facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment; and
  - (2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

- b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

Pursuant to these principles, the Agency and the Union have agreed upon the various articles hereinafter set forth. This Agreement constitutes a collective bargaining agreement between the Agency and the Union.

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Headings. The headings in this Agreement are inserted for reference only and do not affect the interpretation of this Agreement.

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## **Article 1. TERMS AND DEFINITIONS**

When used in this Agreement, the terms contained in this Article have the meanings assigned below. Generally, all defined terms are capitalized in this Agreement with some exceptions. Various terms, capitalized or otherwise, may be identified as defined terms within the context of a single article and are not included in the listing below.

If a capitalized term appears in this Agreement, it has the meaning given to it by the United States Code, government-wide regulations, the Office of Personnel Management, or the meaning given to it by the Federal Labor Relations Authority if specifically related to labor-management relations, which, in descending order, shall control the meaning of capitalized terms. Any capitalized terms defined in this Article are intended to adopt and are subordinated to, in the event of conflict, the meaning provided by laws, regulation, and decisional authority as specified above. Otherwise, capitalized terms have their meaning as defined below unless the definition conflicts with the language of an Article.

**Agency.** The Office of the General Counsel of the Department, or any successor office(s); when not capitalized, “agency” has its ordinary meaning.

**Agency Facility.** Agency offices at the Jamie L. Whitten Building located at 12<sup>th</sup> Street and Jefferson Drive, S.W. and the South Building located at 1400 Independence Avenue, S.W., Washington, D.C., or any successor USDA facility in the National Capitol Region, and any Regional Office or Field Office, as those terms are defined below.

**AgLearn.** Training website maintained by USDA offering written, video and virtual training modules to all USDA employees on mandatory, professional and personal subjects.

**Agreement.** This collective bargaining agreement between the Agency and the Union and any Supplemental Agreement or other change negotiated pursuant to Article 12—Mid-Term and Impact and Implementation Bargaining. When not capitalized, “agreement” has its ordinary meaning.

**Conditions of Employment.** Personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters relating to political activities prohibited under subchapter III of Chapter 73 of this title, relating to the classification of any position, or to the extent such matters are specifically provided for by Federal statute. 5 U.S.C. § 7103(a)(14).

**ConnectHR.** Website maintained by USDA providing quick access to common USDA employee personnel and employment resources.

**Day.** A calendar day; if the day an action must be completed under this Agreement falls on a non-business day, the due date shall be the next business day.

**Department.** The United States Department of Agriculture.

**Designated Agency Management Official.** The General Counsel or the Agency manager or other official designated by the General Counsel to perform specific activities under this Agreement on behalf of the Agency.

**Division.** A Washington office division of the Agency.

**Employee.** A Bargaining Unit employee.

**Federal Service Labor-Management Relations Statute or “Statute.”** The labor relations statute that governs Federal labor relations for employees of the Federal government. (5 U.S.C. § 7101, *et seq.* (Title VII of the Civil Service Reform Act of 1978)).

**Field Office.** An OGC office outside of the National Capital Region.

**General Counsel.** The head of the Agency or any person designated to act in that capacity.

**Immediate Office of the General Counsel.** The General Counsel, Principal Deputy General Counsel, Deputy General Counsel(s) and any staff directly assigned to support those positions.

**National Capital Region.** The National Capital Region has the definition provided in 10 U.S.C. § 2674.

**Office of Administration and Resource Management or ARM.** The office within the Agency charged with support activities, including but not limited to budgetary, technological, and administrative functions.

**Official Personnel Folder or OPF.** A file containing records for an individual’s federal employment career. The long-term records in the file are included to protect the legal and financial rights of the government and the employee. The OPF is part of the government-wide system of records. Currently, the Agency uses the electronic OPF (eOPF) to maintain the Official Personnel Folder of each of its employees.

**Parties or Party.** The Union and the Agency; when not capitalized, “parties” or “party” have their ordinary meaning.

**Professional Staff.** Professional Staff currently includes Administrative Officers, Paralegals, Legal Administrative Specialists, Administrative Support Assistants, and Administrative Specialists employed by the Agency, and the staff employed by the Office of Administration and Resource Management, as well as any other non-attorney positions that the Agency may create from time to time.

**Regional Office.** The Agency's worksites in San Francisco, Denver, Kansas City, or Atlanta or successors to those locations as designated by the Agency.

**Service Computation Date.** As used herein, an employee's retirement service computation date.

**Supervisor.** An employee's immediate supervisor.

**Supervisor's Worksite File.** Records maintained by first line supervisors on each employee that directly reports to them. See Article 37—Personnel Records, Section 2.

**Supplemental Agreement.** Any written agreement between the Agency and the Union entered into during the term of this Agreement that modifies or supplements the terms of this Agreement.

**Union.** The American Federation of Government Employees (AFGE), Local 1106.

**Union President.** The President of AFGE Local 1106 or designee.

**Working Conditions.** As used in this Agreement, synonymous with **Conditions of Employment** as defined above.

## **Article 2. NOTICES, MODIFICATIONS, SEVERABILITY, INTEGRATION**

### Section 1. Notices.

Unless otherwise specifically addressed by a specific Article, all notices under this Agreement are to be made in writing at least seven calendar days prior to a response being requested from the recipient. Notices by the Agency are to be delivered to the Union President. Notices by the Union are to be delivered to the Designated Agency Management Official.

### Section 2. Modifications.

Modifications to this Agreement proposed by either Party shall follow the provisions of Article 12—Mid-Term and Impact and Implementation Bargaining.

### Section 3. Severability.

Upon a determination by a court of competent jurisdiction or other mutually agreed upon or legally imposed adjudicator or forum that any term or provision of this Agreement is invalid, illegal, or incapable of being enforced by law, the Parties shall engage in Mid-Term or Impact and Implementation Bargaining under Article 12 as appropriate. The rest of the Agreement shall remain in effect.

### Section 4. Entire Agreement.

This Agreement was negotiated in good faith by the Parties. The Agreement is the sole understanding of the Parties, and there are no other representations express or implied that exist outside the four corners of this document. Both Parties participated in drafting its provisions and therefore an ambiguity, if any, shall not be construed against a Party based on whether it drafted a provision. The Parties jointly represent that it is the agreement of each of their respective constituents to follow its terms in good faith.



### **Article 3. RECOGNITION, UNIT DESIGNATION, AND COVERAGE**

#### Section 1. Recognition and Unit Designation.

- a. By this Agreement, the Agency recognizes the Union as the exclusive representative of all employees in the Bargaining Unit as defined in this Article. In accordance with 5 U.S.C. Chapter 71, the Union represents all Bargaining Unit employees as described in Section 2 regardless of whether they are members of the Union.
- b. The Parties shall not do anything by custom or practice that violates this Agreement.

#### Section 2. Coverage.

The Bargaining Unit to which this Agreement applies includes all employees of the Agency, except those employees excluded from the Bargaining Unit under 5 U.S.C. §§ 7103 and 7112(b) and (c). For purposes of this Agreement, the term “employee” means a Bargaining Unit employee unless otherwise stated.

Upon request of the Union President, the Agency shall supply a list of all Agency employees excluded from the Bargaining Unit, along with the specific statutory reason for their exclusion with reference to position descriptions and job duties that take the position outside the Bargaining Unit. Upon request of the Union President, the Agency shall also supply a list of all Bargaining Unit positions showing their status under the Fair Labor Standards Act as “exempt” or “non-exempt.”

If the Agency makes the decision to exclude any position from the existing Bargaining Unit as it stands on the effective date of this Agreement, before the Agency takes the action, the Union President shall first be notified. Upon receipt of the notice, the Union President may meet with the Agency within 10 working days to attempt to resolve the matter, considering relevant determinations by the Federal Labor Relations Authority (FLRA) and any new duties assigned. If the matter is not resolved, the parties will follow the applicable FLRA procedures to resolve the dispute.

## **Article 4.      DURATION OF AGREEMENT**

### Section 1. Duration.

- a. This Agreement will remain in full force and effect until August 1, 2030. Thereafter, it shall automatically renew in increments of one (1) year beginning on the day after the anniversary date, unless either Party serves the other with written notice of a desire to renegotiate.
- b. Notice under Section 1(a) shall be provided to the other Party beginning on February 1, or at any point up to June 1, beginning in 2030 and in each successive year for so long as this Agreement remains in effect. Upon expiration of the notice period, if neither party provided notice, the agreement will be submitted to Agency Head review under 5 U.S.C. § 7114(c).
- c. Upon receipt by either Party of notice, both Parties shall begin negotiating Ground Rules no later than 30 days after the notice is delivered to the other Party and shall complete negotiation on the Ground Rules within 30 days from the start of the Ground Rules negotiations. Unless provided otherwise in the Ground Rules, the Parties' successor agreement negotiations shall begin within 30 days from the execution of the Ground Rules.
- d. Roll-over if not in renegotiations. If neither Party provides written notice under Section 1(a) to renegotiate the Agreement, then on June 2 of 2030, or June 2, of each year after 2030, the Agreement will be presented for Agency-head review and approval as authorized by 5 U.S.C. § 7114(c) to ensure that its terms are consistent with any applicable law, rule or regulation issued since its effective date. If Agency-head review results in changes to the Agreement, the Agency will provide appropriate notice to the Union prior to implementing them.
- e. Expiration and re-execution due to on-going renegotiations. When the renegotiation of an Agreement is pending or on-going or the Parties' negotiations are halted pending resolution of an issue or impasse before a third party, then this Agreement shall expire on August 1 of 2030, or August 1 of any successive year, and be immediately re-executed by the Parties to serve as an interim agreement. That interim agreement will be subject to Agency Head Review and approval as authorized by 5 U.S.C. § 7114(c) to ensure that its terms are consistent with any applicable law, rule or regulation issued since its effective date. The interim agreement will remain in place until the resolution of the dispute or issue or until a new CBA is in effect or until August 1 of the succeeding year, at which point it will expire and be immediately re-executed to serve as an interim agreement. The interim agreement will continue to expire and be re-executed and subject to Agency Head Review annually until it is replaced by a new CBA. If Agency Head Review results in changes to the interim agreement, the Agency will provide appropriate notice to the Union prior to implementing them.

### Section 2. Permissive Subjects.

At the time of the renegotiation for the successor agreement, the Agency retains the right to elect whether to negotiate over permissive subjects and the nature and extent of negotiating any or all permissive subjects.

Section 3. Mid-Term Bargaining.

The Union President or the Designated Agency Management Official may provide written notice to the other Party at any time that the Union or the Agency wishes to modify one or more articles of this Agreement. Except as provided by law or by other terms of this Agreement, the Party receiving the notice is not required to agree to renegotiations. The Parties will follow the procedures in Article 12—Mid-Term and Impact and Implementation Bargaining for those negotiations.

Section 4. Supplemental Agreements.

A Supplemental Agreement between the Parties that has become a part of this Agreement shall terminate at the same time as this Agreement.

## **Article 5. GOVERNING LAW AND REGULATIONS**

### Section 1. Governing Law.

For all matters covered by this Agreement, the Agency, the Union, and employees are governed by statutes and government-wide regulations in effect at the time the Agreement was adopted, and by subsequently enacted statutes.

### Section 2. Statutory Changes.

If, after adoption of this Agreement, there are changes to a statute or a new statute is enacted, the new or amended statute shall govern. The Parties will meet and confer whenever statutory changes require modifications of this Agreement. The parties will adhere to the provisions of Article 12—Mid-Term and Impact and Implementation Bargaining and engage in mid-term bargaining related to the affected provisions of this Agreement.

### Section 3. Other Changes.

Pursuant to 5 U.S.C. § 7116(a)(7), if provisions of this Agreement are inconsistent with later enacted government-wide regulations, Executive memoranda, or Departmental Regulations, the terms of this Agreement shall govern. Either party may propose amending this Agreement to implement such changes consistent with the provisions of mid-term bargaining under Article 12—Mid-Term and Impact and Implementation Bargaining.

### Section 4. Past Agreements and Practices.

- a. Past Agreements. This Agreement will supersede all previous collectively bargained agreements between the parties.
- b. Past Practices. All past practices that conflict with the terms and conditions of this Agreement are null and void.

## **Article 6.     EMPLOYEE RIGHTS**

### Section 1. General.

The Agency shall treat employees fairly, equitably, and without discrimination in all aspects of personnel management. Employees shall be free of discrimination based on their age (as defined by the Age Discrimination in Employment Act of 1967, as amended), gender, gender identity, sexual orientation, sex (including pregnancy), genetic information, race, color, religion, marital or family status, national origin, disability, political beliefs, status as a parent, union activity, other non-merit based factor, or any other protected class covered by law, rule, or regulation. The Agency shall comply with law, regulation, Department policy, Merit System Principles specified in 5 U.S.C. § 2301(b), and this Agreement relating to employee rights. The Agency shall not penalize employees for exercising their rights under this Agreement. Employees shall be free from restraint, interference, coercion, discrimination, or reprisal for presenting information regarding any matter for which relief is available under this Agreement.

### Section 2. Right to Union Membership.

Employees shall have the right to form, join, or assist the Union, or to refrain from these activities, freely and without fear of penalty or reprisal, and employees shall be protected in the exercise of these rights. The rights of employees include the right to act as a Union officer or representative, and to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under the Federal Service Labor-Management Relations Statute and this Agreement. The Agency will annually inform employees of these rights using the attached “Employee Rights Under the Federal Service Labor-Management Relations Statute” notice.

### Section 3. Right to Union Representation.

Employees have a right to Union representation and to meet with a Union representative during duty Time in accordance with the Federal Service Labor-Management Relations Statute and this Agreement. The Agency shall not require employees to state why they wish to speak to a Union representative. Union-related discussions between employees and their Union representatives that concern non-criminal matters are confidential.

### Section 4. Weingarten Rights.

The Agency shall notify employees annually of their right to representation under 5 U.S.C. § 7114(a)(2)(B), known as *Weingarten* rights. The Agency will use the attached USDA form *Weingarten* rights notice to provide this annual notification (<https://www.dm.usda.gov/employ/labor/weingarten.htm>). In addition, the notice shall be published on the Employee Information Page established under Article 17—Provision of Information and Employee Information Page. If the Agency conducts a meeting to examine an employee in connection with an investigation, the Union shall be given the opportunity to be present if:

- a. the employee reasonably believes that the examination may result in disciplinary action against the employee; and
- b. the employee requests representation.

Before it conducts an investigatory meeting, the Agency shall inform the employee of the purpose and nature of the meeting. If the employee makes a request for Union representation at the investigatory meeting, the Agency representative conducting the meeting shall, if necessary, postpone the meeting to allow the employee sufficient time to obtain a Union representative.

During an investigatory meeting, the Union representative may ask questions, clarify questions, seek clarifications, help the employee provide the Agency with facts favorable to the employee, identify other employees who may have knowledge of relevant facts, and request a caucus to speak to the employee privately.

#### Section 5. Freedom of Speech.

To the extent permitted by the Hatch Act and other applicable law and regulations including those concerning the expenditure of appropriated funds, employees may exercise their First Amendment rights without fear of penalty or reprisal by the Agency. Any right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied by the Agency.

#### Section 6. Employee Access.

Any employee has the right, regardless of labor organization membership, to bring matters of concern to the attention of appropriate Agency officials in accordance with applicable laws, rules, and regulations, and to choose their own representative in accordance with Article 14—Grievances and Arbitration.

In resolving work-related concerns, employees may choose to communicate with and seek advice from Agency or Departmental offices and officials such as the following: Human Resources staff including Reasonable Accommodation Coordinators; a supervisor or management official of higher rank than the Employee's immediate supervisor; and/or Civil Rights staff (*e.g.*, Equal Employment Opportunity officials, staff members of the EEO office or an EEO counselor). Employees may be granted a reasonable amount of Duty Time to meet with these officials.

#### Section 7. Access to Information and Documents.

Employees, and their designated representatives who have been authorized in writing, shall have access to and may make copies of all Department and Agency records to the extent that they are entitled to obtain the employee's record or information pertaining to the employee under the Privacy Act of 1974, that is, from an Agency-maintained system of records that are retrieved under their name or Social Security number, or any other identifier that is specific to the

individual employee, in accordance with the Privacy Act, 5 U.S.C. § 552a.

Section 8. New Employees.

The Agency will notify the Union President during the first week of employment of any new Bargaining Unit Employee and include the name and contact information of the employee. All new employees shall be informed by the Agency that AFGE Local 1106 is the exclusive representative of employees in the Bargaining Unit as set forth in the attached “Employee Rights Under the Federal Service Labor-Management Relations Statute” notice. A list of the officers of the Union also shall be given to each employee during onboarding. A Union representative shall be given 30 minutes of Official Time to meet with each new employee to explain the Union’s role and responsibilities. The Union representative may not use Official Time to solicit membership in the Union.

Section 9. Duty Time to Review the Collective Bargaining Agreement.

During the first week after the effective date of this Agreement, the Agency shall give each employee two hours of duty time to read the Agreement. New employees shall be given two hours of duty time during their first week of employment to read the Agreement. The Agency will notify employees of the grant of Duty Time to review the Agreement when the Agency distributes the Agreement to employees and when it provides the Agreement to new employees. The Agency may allow employees to use duty time for any joint Agency-Union training or presentation concerning the Agreement.

## **EMPLOYEE RIGHTS UNDER THE FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE**

Dear Bargaining Unit Employees of OGC,

The Office of the General Counsel for USDA recognizes the rights afforded to employees under the Federal Service Labor-Management Relations Statute (“The Statute”) to bargain collectively, organize and to participate in any labor organization of their choosing.

As a bargaining unit employee, this notice is to inform you of these rights and to provide you with your labor organization contact information.

### **Employee Rights**

5 U.S.C. § 7102 provides:

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

- (1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
- (2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

5 U.S.C. § 7114, in part, provides:

- (a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.
- (2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at--
  - (A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or
  - (B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if--
    - (i) the employee reasonably believes that the examination may result in



disciplinary action against the employee; and

(ii) the employee requests representation.

American Federation of Government Employees (AFGE) Local 1106 has been certified by the Federal Labor Relations Authority as your exclusive representative.

### **Union Membership**

As provided by the Statute, you have the right to join or to refrain from joining the union. If you wish to join (*i.e.*, become a dues-paying member of the union), you may use Standard Form 1187, Request for Payroll Deductions for Labor Organization Dues, to join the union (attachment). The completed form is a request that labor organization dues be deducted from your pay and to notify your labor organization of the deduction. You will submit your completed form to OGC's Office of Administration and Resource Management and to the AFGE Local 1106's Secretary-Treasurer.

By providing this information, the agency is neither encouraging nor discouraging union membership.

For more information regarding your rights or the information contained in this letter, you may contact any member of AFGE Local 1106's Executive Board or your local human resources office.

### **References**

- [FLRA](#)
- [The Statute](#)
- [SF-1187](#)
- Link to Employee Information Page
- Link to Union Officers in OGC Staff Directory

## **Annual Weingarten Notice**

The Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. Chapter 71, Section 7114(a)(2)(B) provides 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 the labor organization (i.e. Union) at any investigative examination/interview where you reasonably believe the examination may result in disciplinary action being taken against you. You may make this request at any time prior to or during the interview. If requested, the agency may opt to: suspend questioning and grant your request then resume the interview; discontinue the interview; or 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 are Union officials within the labor organization having exclusive recognition for employees in your work unit, the collective bargaining agreement for your bargaining unit, or the Federal Labor Relations Authority (FLRA) at <http://www.flra.gov/>.

## **Article 7.     MANAGEMENT RIGHTS**

### Section 1. Agency Authority.

Pursuant to 5 U.S.C. § 7106(a), and subject to 5 U.S.C. § 7106(b), nothing shall affect the Agency's authority:

- a. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
- b. In accordance with applicable laws:
  - i. to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;
  - ii. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
  - iii. 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
  - iv. to take whatever actions may be necessary to carry out the Agency's mission during emergencies.

### Section 2. Permissive Bargaining.

Pursuant to Executive Order 14003, the Agency elected to bargain with the Union over the permissive subjects contained in 5 U.S.C. § 7106(b)(1). Rescission of the Executive Order referenced above shall have no effect on any Article included in this Agreement during the term of this Agreement. Further, provisions negotiated under 5 U.S.C. § 7106 (b)(1) may not be the basis for Agency head disapproval if the agreement is rolled over. Prior to negotiating a successor Agreement, the Agency will determine and announce its decision whether it will agree to bargain over permissive subjects but reserves the right to determine the nature and extent of negotiating any or all permissive subjects to include withdrawing from negotiations on any permissive subject at any time prior to reaching agreement.

## **Article 8.     **UNION RIGHTS****

### **Section 1. General.**

Employees shall be protected from restraint, interference, coercion, or discrimination in the legitimate exercise of their rights and responsibilities as designated representatives of the Union. Within the confines of laws, rules, and this Agreement, the Union has the right to designate representatives of its own choosing.

### **Section 2. Pre-Decisional Involvement.**

Bargaining Unit employees have the right to participate, through the Union, in the formulation of policies and practices affecting conditions of their employment. The Agency shall engage the Union in pre-decisional involvement on major decisions affecting employees and their working conditions. Pre-decisional involvement does not waive the Agency's or the Union's statutory rights, including Impact and Implementation Bargaining.

### **Section 3. Department Directives.**

The Agency will provide the Union with all changes to USDA Orders, Directives, Manuals, Departmental Regulations, and other issuances relating to personnel policies, practices, procedures, and matters affecting working conditions of the Bargaining Unit, regardless of whether this Agreement takes precedence over such Orders, Directives, Manuals, Departmental Regulations, and other issuances.

### **Section 4. No Discrimination.**

The Union is responsible for representing the interests of all Bargaining Unit employees without discrimination and without regard to Union membership.

### **Section 5. Union Presence at Discussions.**

The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees in the Bargaining Unit concerning any grievance or any personnel policy or practices or other general conditions of employment. The mere fact that a Union representative will be among a group of employees present at a such discussion(s) does not relieve the Agency of the obligation to provide advance notice to the Union.

## **Article 9.     **UNION DUES WITHHOLDING****

### Section 1. Eligibility.

Employees may elect to have their Union dues withheld through payroll deduction. The Union is responsible for informing employees of the voluntary nature of dues withholding and the conditions governing the revocation of dues withholding. Employees may pay Union dues through the authorization of voluntary allotments from their salary if they are members in good standing of the Union; they voluntarily complete and submit to the Union President or Secretary/Treasurer a Standard Form 1187, Request for Payroll Deductions for Labor Organization Dues; and their biweekly salary is sufficient to cover the total amount of the dues allotment. In implementing the dues deduction procedure, the Parties will be governed by the provisions of 5 U.S.C. § 7115 or successor statute and this Article.

### Section 2. Procedure.

- a. The Union will be responsible for the distribution of the Standard Form 1187 for the use by an eligible member of the Union who wishes to authorize the deduction of his/her dues. The Standard Form 1188 will also be available through the Union and the Agency for employees who wish to revoke the allotment as described in Section 7.
- b. The Standard Form 1187 must be completed by an employee and the Union President or Secretary/Treasurer and forwarded to the Director of Administration and Resource Management for processing. The Director of Administration and Resource Management or their designee will forward the approved dues allotment form to the Department for processing and will coordinate as necessary to aid in timely processing.
- c. If the Union suspends or expels a Union member, it will immediately notify the Director of Administration and Resource Management by email of that determination. The Director of Administration and Resource Management or designee will subsequently ask the Department to cease dues deductions for the employee.

### Section 3. Change in the Amount of Dues.

Changes to the amount of Union dues cannot occur until 12 months have passed since the latest change. When the amount of regular dues changes, the Union President or Secretary/Treasurer will notify the Director of Administration and Resource Management of the change in writing. The Director of Administration and Resource Management or designee will acknowledge receipt of the written request and will ask the Department to change the amount of the dues allotments.

### Section 4. Union Responsibility. The Union shall:

- a. inform its members of the voluntary nature of this procedure for allotment of Union dues;
- b. provide the Standard Form 1187 to its members;

- c. send properly executed and certified Standard Forms 1187 to the Agency's Director of Administration and Resource Management; and
- d. provide written notification to the Agency's Director of Administration and Resource Management, with a copy to the Agency's Resource Management Specialist, of the following:
  - i. the Union officials authorized to certify Standard Forms 1187 (currently the Union President and the Secretary/Treasurer),
  - ii. any change in the amount of dues to be deducted, and
  - iii. the name of any employee who is no longer in good standing with the Union.
- e. The Union shall also provide the Standard Form 1188 to the Director of Administration and Resource Management whenever an employee provides this form to the Union.

Section 5. Automatic Termination of Dues Withholding.

Union dues withholding will be automatically terminated in the event of loss of exclusive recognition. Any individual allotment for dues withholding shall automatically terminate upon the separation of the employee from the Department or permanent transfer of the employee from the Bargaining Unit.

Section 6. Correction of Errors.

Administrative errors in remittance amounts will be corrected and adjusted within a reasonable period of time.

Section 7. Procedure to Cease Deductions.

A Union member may revoke his/her allotment for Union dues by submitting a completed and signed Standard Form 1188 to the Director of Administration and Resource Management.

- a. Within the First Year. A revocation submitted to the Agency during the employee's first year of dues allotment will become effective no earlier than the first anniversary of the pay period the Union dues deductions began and no later than the second pay period after that anniversary.
- b. After the First Year. Revocation requests must be submitted to the Director of Administration and Resource Management at least two weeks prior to the desired effective date. A revocation submitted after the first year of Union dues deductions will take effect the next full pay period, provided that the Union receives the employee's request on a timely basis and consistent with the law including any Federal Labor Relations Authority opinions.

- c. Upon receipt of a Standard Form 1188, the Director of Administration and Resource Management or designee will provide the Union Secretary/Treasurer with a copy of the Standard Form 1188. The Director of Administration and Resource Management or designee will forward the approved dues allotment form to the Department for processing.

Section 8. Miscellaneous.

Nothing in this Article prevents the Union from establishing dues amounts that are based on an employee's grade level.

## **Article 10. OFFICIAL TIME**

### Section 1. Definition.

Official Time means time that an employee otherwise would be in duty status, that is spent on Union representational activities that relate to labor-management issues as defined in 5 U.S.C. § 7131. The use of Official Time by Federal employees shall be governed by this Article and by the Statute.

### Section 2. Official Time Related to Negotiations.

An employee designated to participate in or assist with the negotiation of a collective bargaining agreement shall be authorized Official Time for those purposes, including adequate time to prepare for those negotiations, as provided by the Statute and in any agreed-upon ground rules. Official Time shall also be granted to designated employees for attendance at, and preparation for, any impasse proceeding, not to exceed the number of individuals designated as representing the Agency for those purposes.

### Section 3. Internal Union Business.

Official Time may not be used to conduct internal union business as provided in 5 U.S.C. § 7131(b). Any activities performed by any employee relating to the internal business of a labor organization (*e.g.*, meetings, solicitation of membership, elections of labor organization officials, collection of dues, etc.) shall be performed during the time employees are in non-duty status.

### Section 4. Proceedings Before the Federal Labor Relations Authority.

The Parties agree that employees shall be granted Official Time when participating in any phase of proceedings before the Federal Labor Relations Authority as provided in 5 U.S.C. 7131(c).

### Section 5. Time for Representational Activities.

The Agency shall grant a reasonable amount of Official Time for representational purposes as provided for by 5 U.S.C. § 7131(d) including:

- a. Any formal discussion between one or more representatives of the Agency and one or more employees in the Bargaining Unit or the employee's representatives concerning any grievance, personnel policy, practice, or other general condition of employment;
- b. Any examination of an employee in the Bargaining Unit by a representative of the Agency in connection with an investigation if:
  - i. the employee reasonably believes that the examination may result in disciplinary action against the employee; and



- ii. the employee requests representation.
- c. Any meeting between a Union representative(s) and one or more representatives of the Agency that is initiated by either the Agency representative or the Union representative.
- d. Assisting employees in preparing and presenting Equal Employment Opportunity Commission (EEOC) complaints under Article 18—Equal Employment Opportunity, grievances and arbitrations under Article 14—Grievances and Arbitrations, and responses to Agency proposed adverse actions under Article 42—Disciplinary and Adverse Actions, as well as appeals to the Merit Systems Protection Board or the Office of Special Counsel.
- e. The Agency agrees to grant up to twenty hours of Official Time each year on a calendar year basis to employees who are Union officers for the purpose of attending Union-sponsored labor relations training that furthers the interest of the Federal Government by improving the labor-management relationship. Written requests for Official Time to attend Union-sponsored labor relations training will identify the names and location of each representative proposed to attend the training and the number of hours requested for each representative. Such requests will be submitted to the Designated Agency Management Official at least ten (10) days in advance of the training. Management reserves the right to approve or deny the use of Official Time for training. The Union will be responsible for all costs associated with attendance at the training.

Section 6. Miscellaneous Provisions related to Official Time.

- a. Employees may not use Official Time to accrue overtime, compensatory time, or credit hours.
- b. Official Time can only be used in an amount as the parties agree is reasonable, necessary and in the public interest. The Union President may use in excess of twenty-four hours per week in Official Time status only with prior approval of their supervisor. Vice Presidents may use in excess of five hours per week in representational duties only with prior approval of their supervisor. When necessary to accommodate the use of Official Time the Agency has approved (or which requires no approval under this Agreement), the Agency will make reasonable efforts to modify the work assignments of Union representatives to allow the performance of their representational duties.
- c. Subject to prior supervisory approval, the Agency will permit employees to take leave without pay to perform representational activities including (but not limited to) those purposes covered by 5 U.S.C. §7121(b)(1)(C).

Section 7. Reporting.

All use of Official Time and leave without pay for labor relations activities must be recorded in the official time and attendance reporting system.

Section 8. Miscellaneous.

The Union shall provide the Designated Agency Management Official and the Agency's Director of Administration and Resource Management with the names of all Union officers and stewards and shall promptly notify the Agency of any changes in assignments. The information will also be published on the Agency's Employee Information Page in accord with Article 17— Provision of Information and Employee Information Page.

## **Article 11. UNION USE OF FACILITIES AND SERVICES**

### Section 1. Meeting Rooms; Other Space; Video Conferencing and Training.

- a. Use for Official Time Purposes. With the approval of the Agency, the Union may use (without charge) available conference rooms or similar space during duty hours for activities for which Official Time is authorized. The Union shall schedule use of the space through the Agency.
- b. Use for Non-Official Time Purposes. With the approval of the Agency, the Union may use (without charge) available conference rooms or similar space during non-duty hours for activities for which Official Time is not authorized. The Union shall schedule use of the space through the Agency.
- c. Other Space. The Agency agrees to provide the Union access to any appropriate space available for conducting Union business including the workspace assigned to them for the conduct of official Agency business, Union representatives will be responsible for scheduling and cancelling space as needed. The Agency may deny future reservations if the Union fails to follow the cancellation protocols.
- d. Video Conferencing/Training. If approved by the Agency, the Union may have access to the use of Video Teleconferencing and Computer Training Rooms for Union sponsored training for which Official Time is authorized. The Union will have the same access as other groups.

### Section 2. Office Space.

The Agency will provide wireless internet access to the Union, where it is otherwise available. Union members and officers may use their government office space and equipment for Union business. If either the Union President and/or Secretary/Treasurer are located in a private office without a locking door, upon request the Agency shall install a lock. If either the Union President or Secretary/Treasurer do not have a private office with floor-to-ceiling hard walls, upon request the Agency shall make a private space available for such occasional utilization by such person (such private space can include conference rooms or other rooms available for use at that time).

### Section 3. Equipment and Supplies.

- a. Telecommunications, Electronic Equipment and Conference Calls. For Union activities for which official time is authorized, the Union and employees may be permitted reasonable use of telecommunications and electronic equipment procured by the Agency. With adequate notice to the Agency, the Union may use Agency conference telephones and Teams or other videoconferencing programs to conduct meetings of its Executive board or its membership.
- b. Electronic Mail. Union Officials and employees may use electronic mail for Union

activities for which Official Time is authorized. On non-duty time, Union officials and employees may use electronic mail for union activities for which Official Time is not authorized. The Union is subject to the standards that apply to all users of USDA's electronic mail system, including cybersecurity training requirements and audits.

- c. Copy Machines and Scanners. Union Officials and employees may use copy machines and scanners for Union activities for which Official Time is authorized. On non-duty time, Union Officials and employees may have reasonable use of copy machines and scanners for Union activities for which Official Time is not authorized.
- d. Office Supplies. The Agency shall provide a reasonable amount of office supplies for Union activities for which Official Time is authorized.

#### Section 4. Information Services.

- a. Bulletin Boards. The Agency shall provide and allow the use of a separate bulletin board in each division or office for the posting of Union information.
- b. Official Publications. Official publications of the Union, which may include newsletters, fliers, or other notices, may be distributed on Agency property by Union representatives during non-duty time.
- c. Mail.
  - i. For Union activities for which Official Time is authorized, the Agency shall provide and pay for regular mail service by the United States Postal Service and, by agreement, for any other mail or delivery service the Agency uses. All Union mail shall bear the name and return address of a Union Official.
  - ii. The Union may use mail slots, bins, or inboxes for distributing Union materials during non-duty hours. The materials shall be reasonable in size and clearly identified as Union material and shall contain nothing that identifies the material as the Agency's material or implies that the material is sponsored or endorsed by the Agency.
- d. Telephone Directories. The telephone and room numbers of Union Officials shall be included in the Agency's internal telephone directory. The Union shall advise the Agency of changes in the names and titles of Union Officials.
- e. Intranet. The Agency agrees to provide space for a Union web page linked to OGC's SharePoint or other intranet site. The Union shall be responsible for maintaining the content on the web page.

#### Section 5. Accountability.

The Union shall use the Agency's facilities, services, and equipment described in this Article only for the purposes allowed by statute, regulation, and this Agreement.

## **Article 12. MID-TERM AND IMPACT AND IMPLEMENTATION BARGAINING**

### Section 1. Introduction.

This Article provides a procedure for Agency notification to the Union of changes affecting conditions of employment and for Agency notifications to the Union of various actions under the terms of this Agreement that may trigger Impact and Implementation Bargaining.

- a. If the Union wishes to initiate Mid-Term Bargaining, it shall provide written notice to the Agency of the proposed subjects for renegotiation. If the Agency agrees to renegotiate, the Parties will proceed once ground rules for the mid-term negotiation are in place.
- b. If the Agency wishes to initiate Mid-Term Bargaining, or to impose mandatory changes affecting conditions of employment, or is required to provide notification to the Union and an opportunity to engage in Impact and Implementation Bargaining over subjects identified in this Agreement, the parties shall follow the procedures outlined in Section 2, below.
- c. When a change proposed by either Party relates to subjects already covered by this Agreement that are not reserved management rights, the parties may decline to negotiate and reject the change.

### Section 2. Procedures.

- a. Advance Written Notice. The Agency shall provide written notice to the Union President at least 21 days in advance of a proposed change, except that advance notice is not required for a mandatory change in conditions of employment due to statutory changes or for Agency emergency actions taken under Article 32—Agency Emergency Actions for which written notice will be provided as soon as practicable. For statutory changes, the Parties shall meet and confer in accord with Article 5—Governing Law and Regulations.

For other than statutory changes, the Agency shall:

- i. identify the proposed change;
- ii. explain the reasons for the proposed change including whether the change relates to reserved management rights, subjects already covered by this Agreement, or new matters that are neither management rights nor a subject already covered by this Agreement affecting conditions of employment;
- iii. state the proposed implementation date;
- iv. state the likely effects of the proposed change; and
- v. estimate the number of employees potentially affected by the proposed change.

- b. Briefing. Upon request of the Union President, the Agency shall also provide a briefing within 14 days of the notice being delivered to the Union President.
- c. Union Response. Within 10 days of receipt of the advance written notice or the briefing, whichever is later, the Union President may present written recommendations to the Agency responding to the proposed change. If the Union President presents written recommendations to the Agency, the Agency shall respond in writing within 14 days of their receipt. If not satisfied with the Agency's response, the Union President may request negotiations within 7 days of receipt of the response. When the change proposed by the Agency relates to subjects already covered by this Agreement that are not reserved management rights, the Union President may reject the change. When the change proposed by the Agency relates to new subjects not already covered by this Agreement and are not reserved management rights, the Union President may request Mid-Term Bargaining over the new subjects.
- d. Negotiations. If the Union President requests Mid-Term Bargaining under subsection 2(c), above, the Parties shall draft ground rules for those negotiations within 10 days and will begin negotiating in accordance with those ground rules. If the Union President requests Impact and Implementation Bargaining, the Parties shall begin those negotiations within 10 days.
- e. Implementation of Statutory Changes. If, after adoption of this Agreement, there are changes to a statute or a new statute is enacted, the new or amended statute shall govern. Except as may be required by a statutory change, the Agency may defer implementation of a statutory change in conditions of employment to permit meeting and conferring with the Union in accord with Article 5—Governing Law and Regulations.
- f. Implementation of Other Changes. The Agency may implement other proposed changes if the Union President does not respond in writing within 10 days of receipt of the advance notice pursuant to subsection 2(a), above, or if the Union President responds to the advance written notice with written recommendations and the Agency accepts and implements those recommendations in full. If the Union President requests negotiations, the Agency will comply with this Article and may not implement the changes for so long as those negotiations continue in good faith, unless otherwise permitted by law or delaying implementation would impede the Agency's ability to effectively carry out its mission.
- g. Post-Implementation Bargaining. When statutory changes or the Agency's ability to effectively carry out its mission require implementation of changes to the Agreement prior to the completion of Impact and Implementation Bargaining, the Parties will engage in Impact and Implementation Bargaining over the changes as soon as is practicable following the change.

Section 3. Automatic Reopener and Accelerated Bargaining.

- a. Notwithstanding the other provisions of this Agreement, both Parties are permitted to reopen one Article of the Agreement, or add one Article to the Agreement, during the term of the Agreement. This automatic reopener can be over any subject contained in the Agreement or a subject not covered elsewhere in the Agreement. If addressing the subject implicates a portion of another Article in order to fully address the subject, the reopener shall extend to those portions of other Articles that would be affected by the subject. This provision requires the Parties to negotiate in good faith over the subject.
- b. The Party that invokes the right to reopen or add an Article to the Agreement pursuant to this provision will provide notice to the other Party of its intent to reopen under this provision. Thereafter, the Parties will negotiate over the subject for no longer than 60 days from the date notice was provided. Either or both Parties may request third-party mediation assistance at any time during the 60 days or after the 60 days. If the Parties cannot reach an agreement following third-party assistance, either or both Parties will request assistance from the Federal Service Impasses Panel.

## **Article 13. LABOR-MANAGEMENT FORUM AND COMMITTEES**

### Section 1. General.

The Parties are committed to maintaining a cooperative labor-management relationship, and to working together as partners in furthering the Agency's mission. Through collaborative problem-solving and consensus decision-making on a variety of workplace and labor-management issues, the Parties wish to help the Agency function more effectively and efficiently, better serve the Department and client agencies, save taxpayer dollars, and improve the quality of work life for all Agency employees.

The Parties also recognize the utility of communication between the Union and management to maintain a cooperative labor-management relationship, and of leveraging the expertise and knowledge of OGC employees to help the Agency accomplish its mission. Therefore, the Parties agree to form a Labor-Management Forum (Forum), and by mutual agreement to form committees that address specific issues or topics. Committees are formed to make recommendations to the General Counsel. The General Counsel may accept, reject or modify in whole or in part, any recommendation made by a committee and to the extent required by this Agreement will provide notice to the Union about the General Counsel's decision regarding those recommendations.

### Section 2. Labor-Management Forum.

- a. The Forum will be composed of the following members:
  - i. The Union President and the Designated Agency Management Official;
  - ii. an additional two Union representatives designated by the Union President;
  - iii. an additional two management representatives designated by the Designated Agency Management Official; and
  - iv. additional Union, management, or other representatives invited by the Parties to meetings involving particular issues.
- b. Forum meetings shall be held semi-annually or more often as needed. The Union President and the Designated Agency Management Official shall determine the dates and times for the meetings. Forum meetings shall be held by videoconference and shall be chaired by the Union President and the Designated Agency Management Official on an alternating basis.
- c. The agenda for Forum meetings shall be set by the Union President and the Designated Agency Management Official. Discussions may include: personnel policies and practices; conditions of employment; the Agency's budget; budget allocations to field offices and Washington divisions; numbers, types and grades of employees as well as the technology, methods, and means of performing work; labor-management plans; the Agency's



strategic plan; and other issues that might generally be considered non-negotiable under traditional statutory provisions.

- d. The Agency shall authorize Official Time for preparation and participation of Union representatives in the Forum meetings.

### Section 3. Committees.

#### a. Formation.

- i. Either Party may propose the formation of a committee to study a particular topic.
- ii. If both Parties agree, the committee will be established. If either Party rejects the formation of a committee, the committee will not be formed.
- iii. Any such committee affirmatively formed will be comprised of a Union representative and an Agency representative as co-chairs. Committees will be equally comprised of Bargaining Unit members and managers.
- iv. The co-chairs of any committee will collaboratively work to set the agenda, assign committee members work and decide on the duration of the committee.
- v. Meetings will be conducted by videoconference.
- vi. Employees will be granted duty time or Official Time as appropriate to participate in any committee work.

#### b. Agency Review.

Budgetary constraints may restrict the functioning of any committees, and implementation of any recommendation made by any committee. The Agency may accept, modify, or decline to implement any action proposed by a committee. Once the Agency has decided to accept, modify, or decline to implement an action proposed by a committee, the Designated Agency Management Official will inform the Union President in writing within 60 days of the decision. The Union President may request an explanation of the Agency's reasoning concerning the decision. The Designated Agency Management Official shall advise the Union President about the status of pending recommendations on a quarterly basis.

#### c. Legal Authority.

The Parties recognize that, while committees may be formed with the mutual consent of the Parties to study any topic, recommendations made by committees and approved by the Agency that would change the conditions of employment for OGC employees cannot be implemented without appropriate Impact and Implementation Bargaining with the Union.

## **Article 14.    GRIEVANCES AND ARBITRATION**

### Section 1. Introduction.

This Article provides a mutually acceptable method for orderly, prompt, and equitable settlement of grievances. The Parties recognize and endorse the importance of identifying and resolving problems promptly and of settling grievances at the lowest supervisory level. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal, to the extent provided by 5 U.S.C. Chapter 71 and this Agreement, in seeking adjudication of grievances.

### Section 2. Definition of Grievance. A grievance is any complaint:

- a. by an employee concerning any matter relating to the employment of the employee;
- b. by the Union President concerning any matter relating to the employment of any employee; or
- c. by an employee, the Union, or the Agency concerning the effect, interpretation, or claim of breach of this Agreement or any Supplemental Agreement between the Parties; or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

### Section 3. Election of Remedy.

- a. This Article establishes the exclusive administrative procedure available to employees for the processing and disposition of grievances which fall within its coverage, except when the employee has other rights provided by statute or Government-wide regulation and the employee elects to pursue their remedy utilizing that alternative.
- b. If an employee elects to pursue a statutory remedy, they may use a representative of their choice.
- c. If an employee proceeds by filing a grievance pursuant to this Article the employee has the right to Union representation at any stage of the grievance process.
- d. A grievant shall be deemed to have exercised their option under either a statutory procedure or the negotiated grievance procedure provided for in this Article at such time as the grievant timely initiates an action under the applicable statutory procedure or timely files a grievance under this Article, whichever occurs first. *See, e.g., 5 U.S.C. § 7121(d).*
- e. The choice of a remedy shall not exist for matters excluded from the negotiated grievance procedure under Section 4.
- f. At the employee's election, the following matters may be raised under the grievance

procedure or under a statutory procedure, but not both:

- i. Actions for which there is a statutory right of appeal to the Federal Labor Relations Authority (FLRA) (*i.e.*, Unfair Labor Practice (ULP) charges under 5 U.S.C. 7116).
- ii. Actions for which there is a statutory right of appeal to the Merit Systems Protection Board (MSPB) under 5 U.S.C. § 2302(b) (*e.g.*, adverse action, furloughs, removals, reductions in grade or pay, suspensions for more than 14 days, performance-based removals or demotions).
- iii. Actions for which there is a statutory right of appeal to the Equal Employment Opportunity Commission (*e.g.*, complaints based on discrimination, including race, color, religion, sex, national origin, age, or disability).

Section 4. Exclusions. The following matters are excluded from the coverage of the grievance procedure:

- a. a preliminary warning or notice of potential action, such as a proposal of disciplinary or adverse action;
- b. letters of counseling, warning, and/or instruction, so long as they constitute neither discipline of the employee nor an adverse action;
- c. an action terminating a temporary promotion within a maximum period of 2 years and returning the employee to the position from which the employee was temporarily promoted, unless the termination would constitute a prohibited personnel practice under 5 U.S.C. § 2302(b);
- d. approval or disapproval of claims under the Federal Employees' Compensation Act (FECA);
- e. non-selection for promotion from a group of properly ranked and certified candidates (including Senior Counsel selections made pursuant to Article 55);
- f. disapproval of a quality step increase, or any other kind of honorary or discretionary award, except that allegations of improper use by the Agency of procedures, or violation of law, Agency and Department policies, or this Agreement in processing awards may be grieved;
- g. termination of probationary employees or excepted service employees serving a trial period;
- h. reductions in force, except that allegations of improper use by the Agency of procedures, or violations of law, Agency and Department policies, or this Agreement in processing reductions-in-force may be grieved;

- i. the filling of any position outside of the Bargaining Unit;
- j. retirement, life insurance, or health insurance claims;
- k. any examination, certification, or appointment;
- l. prohibited political activity, except for discrimination based on political affiliation under 5 U.S.C. § 2302(b)(1)(E);
- m. national security suspensions or removals;
- n. classification of any position that does not result in the reduction in grade or pay or promotion potential of an employee;
- o. Any matter for which the grievant has appealed under an available statutory remedy as indicated in Section 3 above; and
- p. Any matter or issue not listed above that another Article of this Agreement specifically excludes from being grieved. Any such matter discovered after implementation of the Agreement will be added to the list.

Section 5. Filing Requirements.

- a. Grievances shall be initiated in writing with sufficient detail to inform the other party of the nature of the grievance, the basis of the violation, and the situation which gave rise to it. No specific format is required but they must be labeled as a “Grievance.”
- b. The party initiating a grievance shall provide sufficient information to put the responding party on fair notice as to the matter that is being grieved, and include at a minimum the following information:
  - i. the name of the grievant or grievants;
  - ii. the date the grievance is submitted;
  - iii. a brief description of the nature of the grievance including the circumstances giving rise to the grievance; the dates of the alleged violations, and, if a continuing violation, a statement as to why it is a continuing violation; the employment condition in dispute; and, to the best of their ability, the basis of the violation;
  - iv. the name and telephone number of the Union representative, if any;
  - v. any interest in mediation under Section 10 below; and
  - vi. the specific relief requested.

- c. The grievant may not raise new issues after initiating the grievance procedure. The parties to a grievance in progress may by mutual agreement join new issues for the sake of efficiency.
- d. A grievance concerning a continuing practice or condition may be filed at anytime but must be sufficiently proximate in time to put the recipient on notice.
- e. A grievance is officially initiated by delivery to the Designated Agency Management Official and Union President by the deadlines specified in this Article.

Section 6. Time Limits.

- a. A filing is timely if hand-delivered, postmarked, or transferred via electronic mail or facsimile no later than the final day of the designated period. If the day an action must be completed under this Article falls on a weekend or Federal holiday, the due date shall be the next regularly scheduled workday.
- b. The parties to a grievance may, by mutual agreement, extend any time limits specified in this Article, provided that such extension is requested prior to the due date.
- c. If a grievant fails to comply with the time limits for the grievance specified in this Article without good cause, the grievance shall be terminated.

Section 7. Employee Grievances.

- a. If an employee presents a grievance without Union representation, the Union shall be given an opportunity to be present at all formal discussions concerning the grievance and shall be given reasonable advance notice of the meetings. Union participation shall be by telephone or videoconference if the Union representative is not present in the same location as the grievant, unless the Union pays for all transportation expenses of the Union representative.
- b. Whenever possible, the parties shall resolve disputes informally by engaging in conversations between the employee and relevant supervisor. Within 45 days of the date the employee becomes or should have become aware of the event giving rise to the dispute being grieved, whichever is later, the employee shall seek to resolve the matter with the relevant supervisor by requesting to confer concerning the decision prior to filing a written grievance. If the employee wants Union representation, the employee shall notify the relevant supervisor and make the necessary arrangements through the Union. Following the conference, the relevant supervisor will inform the employee and any Union representative whether any resolution may be made on the employee's concerns. If the employee remains dissatisfied with the decision, the employee must file a grievance within 45 days after receipt of the declination of the relief requested. The relevant supervisor must transmit the declination to the employee in writing.

- c. The employee shall initiate a grievance by filing a grievance with the Designated Agency Management Official within 45 days of receipt of the decisionmaker's post-conference decision. The Designated Agency Management Official shall meet in person or by telephone with the employee and the Union representative, if any, within 21 days after receipt of the grievance, and shall issue a written decision within 45 days of the meeting. The Designated Agency Management Official has the discretion to overrule decisions made by the relevant supervisor to grant the relief requested by the employee, regardless of the relevant supervisor's position in the Agency. A copy of the decision shall be provided to the employee and the Union President.
- d. If the grievance does not resolve the matter, the Union may invoke arbitration within 45 days of receipt of the decision by the Designated Agency Management Official. Arbitration must be invoked in writing and shall be delivered to the Designated Agency Management Official.

#### Section 8. Union Grievances.

- a. The Union may initiate a grievance concerning the effect, interpretation, or claim of breach of this Agreement or any Supplemental Agreement between the parties; or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment. The Union may also initiate a grievance concerning any matter relating to the employment of any employee to the same extent that the employee would be able to grieve it. The Agency may provide varying, individual relief in response to a grievance that involves more than one employee.
- b. Within 45 days of the date the Union becomes aware, or should have become aware, of the event giving rise to the dispute, whichever comes later, the Union President shall file a written grievance with the Designated Agency Management Official. A grievance concerning a continuing practice or condition may be filed at any time but must be sufficiently proximate in time to put the recipient on notice.
- c. Within 21 days after receipt of the grievance, the Designated Agency Management Official shall schedule a meeting with the Union President to discuss the grievance, unless the parties agree to waive the meeting.
- d. The Designated Agency Management Official shall issue a written decision within 45 days of the date the meeting was held or waived. Within 45 days of receipt of the decision, the Union President may invoke arbitration. Arbitration must be invoked in a writing that shall be delivered to the Designated Agency Management Official.

#### Section 9. Agency Grievances.

- a. The Agency may initiate a grievance concerning the effect, interpretation, or claim of breach of this Agreement or any Supplemental Agreement between the parties; or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

- b. Within 45 days of the date the Designated Agency Management Official becomes aware, or should have become aware, of the event giving rise to the grievance, whichever is later, the Designated Agency Management Official shall file a written grievance with the Union President. A grievance concerning a continuing practice or condition may be filed at any time but must be sufficiently proximate in time to put the recipient on notice.
- c. Within 21 days after receipt of the grievance, the Designated Agency Management Official shall schedule a meeting with the Union President to discuss the grievance, unless the parties agree to waive the meeting.
- d. The Union President shall issue a written decision within 45 days of the date the meeting was held or waived. Within 45 days of receipt of the decision, the Designated Agency Management Official may invoke arbitration. Arbitration must be invoked in a writing that shall be delivered to the Union President.

#### Section 10. Mediation Procedures.

- a. For the purpose of this Article, mediation is a voluntary dispute resolution process that involves the introduction of a mediator into the grievance process. The cost of mediation of grievances initiated by employees will be paid for by the Agency if the Agency exercises its discretion to agree to mediation. The cost of any mediation of grievances initiated by the Union and Agency will be shared equally between the parties. Participation in the mediation process is voluntary for all parties. The relevant supervisor and an employee may agree to use mediation after the grievance is filed but prior to issuance of the decision. Participation in mediation tolls the time limits identified in this Article.
- b. A mediator from the Federal Mediation and Conciliation Service or other trained mediators will help resolve the grievance. The mediator shall meet with the grievant and the relevant supervisor, Designated Agency Management Official, or Union President, as appropriate, to facilitate the discussion and assist the participants in resolving their differences. The mediator shall not have decision-making authority, and any resolution shall be by mutual agreement of the participants. The participants may also reach agreement on a partial resolution of the grievance. Any agreement shall be in writing and binding on the participants and shall have the effect of permanently terminating the grievance, or that part of the grievance as to which agreement was achieved.
- c. Procedure.
  - i. The grievant shall indicate in the grievance filing whether there is an interest in using mediation. If the Agency agrees to use mediation it shall inform the grievant and the Union. Any mediation session constitutes a formal meeting under 5 U.S.C. § 7114(a)(2)(A), and the Agency shall give the Union notice as soon as the session is scheduled.
  - ii. A mediator acceptable to both participants shall be selected. All mediations shall

remain confidential and shall not exceed 5 days unless extended by mutual agreement of the participants.

- iii. If mediation produces a solution acceptable to the participants, a written agreement shall be prepared and signed by each. If the Union was not a participant in the mediation, a copy of the agreement shall be provided to the Union. Upon execution of the agreement, the grievance, or that part of the grievance as to which agreement was reached, shall be considered settled, and the grievance shall be terminated in whole or in part.
- iv. If mediation does not fully resolve the grievance, the relevant supervisor, Designated Agency Management Official, or Union President, as appropriate, shall issue a decision within 45 days after termination of the mediation session.

#### Section 11. Miscellaneous.

- a. Grieving employees and their representatives involved in the presentation and pursuit of grievances shall be free from restraint, interference, coercion, discrimination, or reprisal. Reasonable supervisory inquiries regarding the use of Official Time or duty time to prepare or present grievances shall not be construed as violating this section.
- b. Subject to the provisions of 5 U.S.C. § 7131(d)(1), Union representatives shall be granted Official Time as is agreed upon by the Agency and Union as reasonable, necessary, and in the public interest to prepare and present grievances, including assisting employees in preparing and presenting grievances.
- c. Subject to the provisions of 5 U.S.C. § 7131(d)(2), employees will be granted an amount of duty time that is agreed upon by the Agency and the Union as being reasonable, necessary and in the public interest to prepare and present grievances.
- d. Employees and Union representatives may ask their supervisors to modify their normal duties to allow the time agreed upon in subsections 11(b) and (c) above as being reasonable, necessary, and in the public interest for the preparation and presentation of grievances. Supervisory approval of such requests shall not be unreasonably withheld.
- e. Union representatives and employees shall accurately record their time consistent with time recordation requirements.
- f. During a mediation or arbitration hearing, each participant may, but is not required to, be represented by a number of presenting representatives, on Official Time or duty time, as appropriate, equal to the number of presenting representatives attending for the other participant. The participants will disclose the number of presenting representatives they intend to use to each other before the hearing.



Section 12. Grievability and Arbitrability.

- a. If a respondent believes that a particular issue is not subject to the grievance or arbitration provisions of this Article, the respondent shall raise this objection before or at the time of the grievance decision.
- b. When the respondent alleges an issue is non-grievable or non-arbitrable, the grievant will have five workdays to amend and refile the grievance one time.
- c. All disputes of grievability or arbitrability shall be referred to arbitration as a threshold issue subject to Section 13(d)(v) below.
- d. Any issue not raised by a party before or at the time a grievance is decided is waived and may not be raised in arbitration.

Section 13. Arbitration.

- a. Grievances not settled under the provisions of this Article may be submitted to arbitration in accordance with the terms of this Article. Only the Union President may invoke arbitration on behalf of an employee or the Union. Only the Designated Agency Management Official or the General Counsel may invoke arbitration concerning an Agency grievance.
- b. Unless the participants agree otherwise in writing, exhaustion of the grievance procedure is a mandatory prerequisite to invoking arbitration. Failure to invoke arbitration within the time limits specified in this Article shall constitute acceptance of the final grievance decision, and the matter shall not be subject to further review.
- c. Within 30 days of invoking arbitration, the grievant shall request a list of seven impartial arbitrators from the Federal Mediation and Conciliation Service. Once the list is received, the participants shall meet in person, by telephone or videoconference, or confer by email to strike names from the list. The participants shall toss a coin to determine who strikes the first name. The participants shall alternatively strike names until only one name remains. That individual shall be the arbitrator authorized to hear the grievance. If a participant refuses to participate in the selection of an arbitrator, the other party is authorized to select the arbitrator from the list provided by the Federal Mediation and Conciliation Service. Following the selection of an arbitrator, the participants shall request a list of available dates from the arbitrator to schedule the hearing.
- d. Authority of the Arbitrator.
  - i. The arbitrator shall conduct the arbitration in accordance with the provisions of this Article.
  - ii. The jurisdiction and authority of the arbitrator shall be confined to the issues presented

in the grievance. If there is a dispute regarding the issues, the arbitrator will consider the position of the parties and define the issues prior to convening a hearing.

- iii. The arbitrator shall not have the authority to add to, subtract from, or modify any of the terms of this Agreement or any supplemental agreement between the Parties.
- iv. If the agency is found to have engaged in an unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee or employees, the Agency may be ordered to pay attorney's fees in accordance with the Back Pay Act (5 U.S.C. § 5596).
- v. The arbitrator shall resolve any grievability or arbitrability disputes consistent with the terms of this Agreement and shall not proceed to the merits of the grievance if the finding on grievability or arbitrability is dispositive.
- vi. Arbitrators shall be bound by applicable law in deciding matters submitted to arbitration under this Article.
- e. Appeal of Arbitration Decision. Although the arbitrator's decision is binding on the participants, the participants retain their rights to file exceptions to the decision. During the pendency of any such appeal to the Federal Labor Relations Authority, the Parties will implement the arbitrator's decision or award. Any dispute over the implementation of the decision may be referred to the arbitrator by either party. The participants shall share any additional costs charged by the arbitrator for the referral.
- f. Fees and Expenses.
  - i. The arbitrator's fees and expenses shall be borne equally by the participants.
  - ii. If the participants to a grievance agree that a transcript is necessary, they shall share the cost of the transcript. If there is a disagreement about the need for a transcript, the participant requesting the transcription shall bear the cost. The prevailing party shall then be reimbursed for the cost of the transcription.
  - iii. Each participant will otherwise bear their own costs of participation in the arbitration.
- g. Recusal of Arbitrator. For matters of recusal, arbitrators and the participants shall be bound to the FMCS Arbitrator Code of Professional Responsibility as it exists at the time of the arbitration. See, <https://www.fmcs.gov/services/arbitration/arbitrator-code-professional-responsibility/>.
- h. Ex Parte Communications. Participants may not have *ex parte* communications with the arbitrator on the merits of the case but may discuss procedural matters with the arbitrator.
- i. Arbitration Procedure.

- i. Arbitration must be invoked within 45 days after receipt of the final grievance decision issued by the Union President, or the Designated Agency Management Official. A filing is timely if hand-delivered, postmarked or transferred via electronic mail or facsimile no later than the final day of the designated period. Failure to comply with this time limit shall constitute acceptance of the final grievance decision and the matter shall not be subject to further review.
- ii. Each participant may submit its own statement of issues for arbitration or the participants may submit a joint statement of issues, and the arbitrator shall determine the issues to be heard.
- iii. The arbitration hearing shall generally be held during normal duty hours. The participants and the arbitrator will decide if the hearing is to be virtual or conducted on the Agency's premises. If conducted on the Agency's premises, it shall generally be held at the Agency Facility where the grievant works. The Union President and the Designated Agency Management Official may mutually agree to hold the hearing at any other Agency location.
- iv. Employees participating as witnesses and advocates shall be in paid duty status during their normal duty hours. If ordered by the arbitrator or a participant requests to examine a witness in person, the employee witness shall appear in person. The in-person appearance by an employee witness before the arbitrator ordered by the arbitrator or requested by a participant shall be deemed a permitted "call back" under subsection 6(c) of Article 48—Telework as a "business or operational need where alternative virtual communication means are not suitable or available." When one participant requests the personal appearance of an employee witness and the arbitrator did not order the appearance of that witness in-person, then the participant requesting the appearance shall pay for the travel and *per diem* expenses for the appearance if the appearance is not at the Official Worksite of the employee witness. If the personal appearance is ordered by the arbitrator, the participants shall share the travel and *per diem* expenses for the appearance if the appearance is not at the Official Worksite of the employee witness.
- v. Unless otherwise determined by the arbitrator: Thirty days before the hearing, the participants shall exchange proposed witness lists and discuss the general nature of the testimony to be provided by each witness. The participants shall exchange their final witness lists not less than 14 days before the hearing. The lists shall contain the name, business address, and business telephone number of each witness. In addition, the arbitrator may for good cause allow testimony by rebuttal witnesses. If either participant requests sequestration of witnesses, the witnesses shall be sequestered. Observers may be permitted upon agreement of the participants.
- vi. Post-hearing briefs shall be due 30 days after the conclusion of the hearing unless the arbitrator specifically sets a different date. Rebuttal briefs will be permitted only with the agreement of the participants, or upon approval of the arbitrator and then shall be filed by the dates established by the arbitrator.

- vii. The arbitrator's award and decision are due 60 days from the date the hearing is conducted or 30 days from the date the final briefs are received, whichever is later. The arbitrator's award and decision shall be in writing and shall specifically address each point of contention between the participants.
- viii. The arbitrator may for good cause extend any time limits in the arbitration proceedings.
- ix. If a participant fails to comply with the time requirements of this Article without good cause, the participant shall be deemed to have abandoned the action and the arbitration proceeding shall be terminated.
- x. If a participant causes a scheduled arbitration hearing to be canceled, postponed, or delayed without good cause, that participant shall pay all fees charged by the arbitrator.

**Article 15. OGC ORGANIZATIONAL STRUCTURE**

Section 1. Current Organizational Structure.

As of the effective date of this Agreement, the offices, mission areas, and Divisions constituting the Agency are as follows:

Washington D.C.

Immediate Office of the General Counsel (including Law Library)

Administration and Resource Management

Civil Rights, Labor, and Employment Law Division

Litigation Section

Risk Management Section

General Law and Research Division

International Affairs, Food Assistance, and Farm and Rural Programs (FAIR) Division

Marketing, Regulatory and Food Safety Program Division

Natural Resources and Environment Division

Eastern Region

Atlanta, Georgia Regional Office

Harrisburg, Pennsylvania Field Office

Milwaukee, Wisconsin Field Office

Central Region

Kansas City, Missouri Regional Office

Little Rock, Arkansas Field Office

Temple, Texas Field Office

## Mountain Region

Denver, Colorado Regional Office

Albuquerque, New Mexico Field Office

Missoula, Montana Field Office

## Pacific Region

San Francisco, California Regional Office

Portland, Oregon Field Office

Juneau, Alaska Field Office

### Section 2. Changes in Structure.

Before the creation of any additional offices, divisions, mission areas or other subcomponents of the Agency, or the elimination or consolidation of any of these, the Agency will advise the Union of its intent to do so and will, upon request, brief the Union on its proposal, seek pre-decisional involvement, and engage in Impact and Implementation Bargaining pursuant to Article 12—Mid-Term and Impact and Implementation Bargaining.

### Section 3. Staff Changes.

Within 30 days of an employee leaving an Agency position whether through retirement, voluntary separation, involuntary separation, promotion, reassignment, or death, the Agency will notify the Union of the employee's departure from the Agency and will upon request discuss with the Union President whether the Agency intends to fill the vacant position and, if so, an approximate timeline for doing so.

### Section 4. Retained Management Authority.

Nothing in this Article prohibits the Agency from exercising its authority under 5 U.S.C. § 7106(a).

### Section 5. Office of Information Affairs and Records Management.

The Parties disagree over whether the Office of Information Affairs and Records Management should be included in OGC. As a result, the Parties will file a petition with the Federal Labor Relations Authority. Based on the outcome of the petition, the parties will update the CBA accordingly.

**Article 16. GENERAL COUNSEL COMMUNICATIONS**

The Parties agree that communication between the General Counsel and all employees is important to the efficient functioning of the Agency and the accomplishment of its mission. To facilitate this communication, the General Counsel or designee will meet with all employees under the supervision of the General Counsel by videoconference at least twice yearly. In advance of the meetings, the General Counsel or designee will solicit items for the agenda for the twice annual meetings from the Union President. Bargaining Unit Employees will have an opportunity to submit questions in advance to be addressed by the General Counsel or designee at the meetings. Nothing in this Article relieves the Agency from any notification or bargaining obligations it may have with respect to the matters discussed, whether required by this Agreement or by law.

**Article 17.    **PROVISION OF INFORMATION AND EMPLOYEE INFORMATION PAGE****

**Section 1. Employee Information Page.**

The Agency shall create and maintain an Employee Information Page website accessible to all employees that contains information concerning employee benefits (including but not limited to, insurance, retirement (including TSP), and healthcare benefits and options) and employee resources (including but not limited to, the Employee Assistance Program and Departmental resources, such as the TARGET Center, or its successor, the Office of the Assistant Secretary for Civil Rights, or successor office, for reporting Equal Employment Opportunity (EEO) complaints, and Office of Inspector General, or successor office, for reporting criminal activity, mismanagement and waste of funds, workplace violence, employee misconduct, and conflicts of interest). The Employee Information Page shall include a quick connection to ConnectHR or any successor website relating to human resources maintained by the Department.

**Section 2. Organizational Charts.**

The Agency shall provide organizational charts for both the Washington office and field offices (including any remote office employees) to all employees and the Union President. The organizational charts and any supplemental documents provided under this section shall identify all managers or supervisors and the staff or employee(s) that they manage or supervise. In addition, the Union shall submit information identifying the Union President, other members of the Union Executive Board and Union Stewards and the Agency shall include this information in its organizational chart. The Agency shall publish its current organizational chart(s) on the Employee Information Page and ensure that it is updated regularly.

**Section 3. Budget Information.**

Within 30 days of their completion and receipt by the Agency, upon request the Agency shall provide the Union President with the Agency's:

- a. Congressionally appropriated budget;
- b. OMB budget allowance;
- c. budget allocation for each region and field office, and for each Associate General Counsel area of responsibility;
- d. actual obligations by object class at the end of each fiscal year; and
- e. a quarterly "Status of Funds Details" report, or equivalent information.

**Section 4. Copies of Agreements.**

Within 30 days after this Agreement or any Supplemental Agreement between the Parties



goes into effect, the Agency shall provide copies of them to all employees and the Union President. Within 5 days after a new employee is hired, the Agency shall provide the new employee with copies of this Agreement and any Supplemental Agreement between the Parties.

#### Section 5. Employee Information.

The Agency shall maintain and provide the Union with a list of all staff or employees by name, position title, series, bargaining unit status, grade and office location. In addition, on a quarterly basis, the Agency shall provide the Union with the same information with respect to any changes in staff or employees, such as newly hired or departed staff or employees and staff or employees whose status and grades have changed. Staff or employees also includes any volunteers and legal interns and any individual employed or working on a non-permanent basis, such as reemployed annuitants, those holding limited term positions or on a temporary assignment or detail to OGC, and Schedule A, B, C, and D appointments.

#### Section 6. Other Information.

The Agency shall, upon the Union President's request, provide the Union President with the full results, information, and data from any Agency-sponsored Agency-wide survey of Bargaining Unit employees (including any survey of a group or subset of Bargaining Unit employees, such as a survey of field office employees) and if not disclosed, a general explanation of the nature of the information withheld. This obligation does not extend to any information that is, or is anticipated to become, the subject of any internal or external investigation, review, audit, inquiry, or litigation. For any other non-Agency sponsored survey such as the Federal Employee Viewpoint Survey (or successor survey), the Agency shall provide the Union President with a copy of or access to any results, information, and/or data from such survey as soon as practicable after requested by the Union President, and if not disclosed, a general explanation of the nature of the information withheld.

#### Section 7. Union Information Requests.

Nothing in this Article shall limit the Union's right to request information under 5 U.S.C. § 7114(b)(4) or any management rights that exist under law.

## **Article 18.    EQUAL EMPLOYMENT OPPORTUNITY**

### Section 1. General.

The Agency shall provide and promote equal employment opportunity for all qualified persons; shall prohibit discrimination based on age (as defined by the Age Discrimination in Employment Act of 1967, as amended), gender, gender identity, sexual orientation, sex (including pregnancy), genetic information, race, color, religion, marital or family status, status as a parent, national origin, disability, political beliefs, union activity, other non-merit based factor, or any other protected class covered by law, rule, or regulation; and shall provide a workplace that is free of all harassment, including sexual harassment. In all aspects of personnel management, the Agency shall provide employees the full protection afforded to them by law, regulation, Department policy, and this Agreement.

### Section 2. Furnishing Information.

Upon request, the Agency shall furnish the Union with copies of any approved employment plans (e.g., Equal Employment Opportunity or Diversity, Equity, Inclusion & Accessibility, outreach) applicable to the Agency.

### Section 3. Union Notification.

The Agency shall provide the Union with notice before the Agency issues any revised, renewed, or updated employment plans.

### Section 4. Counselors.

The Parties agree that trained equal employment opportunity counselors are necessary to properly administer an equal employment opportunity program. The Department's EEO Counselors advise employees of their rights in accordance with law and regulation. The Agency shall on an annual basis, and whenever requested by an employee, provide information on counselors available and accessible to employees, as well as posting this information on the Employee Information Page provided for in Article 17 of this Agreement.

### Section 5. Union Right to Represent Employees.

At the employee's request and with the Union's concurrence, the Union may represent the employee when an employee has filed a complaint under the Department's equal employment opportunity procedure, or under Article 14—Grievances and Arbitration, or with the Merit Systems Protection Board.

## **Article 19. REASONABLE ACCOMODATION**

### **Section 1. General Policy.**

Reasonable Accommodation is governed by Federal laws, regulations, rules, and policies, including Departmental Regulation 4300-008, "Reasonable Accommodation and Personal Assistance Services for Employees and Applicants with Disabilities," and this Agreement.

### **Section 2. Reasonable Accommodation Process.**

- a. The Agency will offer Reasonable Accommodations to the known physical or mental limitations of qualified individuals with disabilities/impairments regardless of the type of appointment, unless the Agency can demonstrate that the accommodation would impose an undue hardship on the operation of the Agency. For the purpose of providing a Reasonable Accommodation, a person is considered to have a disability when they have a physical or mental impairment that substantially limits one or more major life activities permanently or temporarily and when they have a record of such an impairment. Employees may request a reasonable accommodation at any time throughout their employment experience.
- b. The employee may request Union representation at any time during the Reasonable Accommodation process.
- c. When an employee with a disability decides to request an accommodation, the individual or their representative must inform the employee's immediate supervisor or Departmental Reasonable Accommodation Coordinator (Coordinator) about the need for an accommodation. Upon request, the supervisor will provide the employee with the name and contact information of the Coordinator. To request accommodations, an individual may use "plain English" and need not use the phrase "reasonable accommodation." Employees may initiate Reasonable Accommodation requests with their immediate supervisor or the Coordinator verbally or in writing (hard copy or email). Employees seeking Reasonable Accommodations need not disclose personal or medical information to supervisors, because supervisors do not evaluate medical documentation. If the supervisor receives medical documentation, the Coordinator may direct the supervisor to remove it from the file. Employees seeking Reasonable Accommodations must provide specific and descriptive documentation to the Coordinator, if the Coordinator is engaged and requests such information. The Coordinator can provide the supervisor with information on the employee's limitations to facilitate the interactive process.
- d. The Parties understand a Reasonable Accommodation involves an interactive process to assist in identifying the necessary adjustments requested and to determine the appropriate accommodation. The Parties agree the interactive process does not constitute a formal meeting requiring advance notice to the Union. The Parties recognize a Reasonable Accommodation will be determined on a case-by-case basis, taking into consideration the employee's existing limitations in relation to their essential job functions.

- e. Within 30 days of the request, absent any mitigating circumstances allowed under the law or unless otherwise agreed upon by the employee and the Agency, the supervisor will provide a written decision on the request for accommodation. If the request is granted, or the employee agrees with any alternate accommodation offered by the Agency, the agreement should be documented and the process comes to an end. If the supervisor denies the request, the denial must be in writing and explain in plain language the specific reasons for the denial. When the denial includes an alternate accommodation offered by the Agency, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the supervisor believes that the alternate accommodation will be effective.

### Section 3. Reasonable Accommodation Categories.

There are three categories of Reasonable Accommodation:

- a. A change to the job application process that allows a qualified applicant with a disability to apply and be considered for the position; or
- b. A change to the work environment, or to the way a job is customarily performed, that helps a qualified employee with a disability to perform the essential functions of that position; or
- c. A change or adjustment that helps an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities/impairments.

The Agency is not required to provide personal use items needed in accomplishing daily activities as a Reasonable Accommodation (e.g., prosthetic limbs, wheelchairs, eyeglasses, hearing aids, or similar devices).

### Section 4. Reasonable Accommodation Examples.

Examples of common Reasonable Accommodations include, but are not limited to the following:

- a. Job restructuring. Job restructuring generally means modifying the job to shift or redistribute nonessential job functions that an employee is unable to perform. The employee will then assume other non-essential functions in accordance with classification guidelines. Job restructuring may also involve changing when or how a task is performed. Job restructuring does not include removing, shifting or reassigning essential job functions.
- b. Assistance devices. An employee may be provided an assistance device, if the Agency determines the use of the equipment is necessary to perform official duties. Employees may contact the USDA Target Center for a more complete catalogue of the assistive technology, ergonomics, and particular accommodation devices, at: <https://www.targetcenter.dm.usda.gov/> .

- c. Unpaid leave. Unpaid leave may be an appropriate Reasonable Accommodation when an individual expects to return to work after receiving treatment for a disability, recovering from an illness, or taking some other action in connection with his/her disability.
- d. Travel. A Reasonable Accommodation may be provided to employees with disabilities/impairments on a case-by-case basis to ensure equal access to government travel. To provide employees with disabilities/impairments equal opportunity to travel on official business, certain additional travel expenses necessarily incurred to accommodate the employee's disability may be reimbursed under the Federal Travel Regulations.
- e. Telework. Telework may be considered a Reasonable Accommodation on a case-by-case basis when the arrangement would not interfere with the essential functions of the employee's position. The employee must demonstrate how limitations from their disability prevent them from performing their essential job functions at their duty station and how the essential job functions can be performed from their home or another offsite location.
- f. Modified work schedule. A modified work schedule may be considered a Reasonable Accommodation in certain circumstances when there is a direct correlation to the employee's limitations. It may include a number of modifications, such as altering arrival/departure times, providing periodic breaks during the day, or allowing a part time schedule.
- g. Reassignment. Should an employee with a qualified disability become unable to perform the essential functions of their job, after fully exhausting a Reasonable Accommodation, the Agency may seek to reassign the employee if and when a funded vacant position is available.

Additional common examples of Reasonable Accommodations can be found at DR 4300-008 at Section 10. See <https://www.usda.gov/directives/dr-4300-008>.

#### Section 5. Previously Approved Accommodations.

Once a Reasonable Accommodation has been established, new or updated medical information will only be requested in limited circumstances where the employee:

- a. Requests a new Reasonable Accommodation;
- b. Is observed by the supervisor having difficulties in performing essential job functions;
- c. Has a change to their essential job duties that are not addressed by the medical information previously provided; or
- d. Can no longer perform their essential job duties.

A Reasonable Accommodation may be reevaluated by the Agency whenever relevant circumstances change, such as;

- e. Responsibilities or essential job functions change;
- f. Staffing levels change;
- g. The employee's medical condition improves or declines; or
- h. The Reasonable Accommodation is no longer effective.

Section 6. Appellate Rights.

If an employee's request for Reasonable Accommodation is denied, the employee has a right to file an EEO complaint under Article 18—Equal Employment Opportunity or to utilize the grievance process in Article 14—Grievances and Arbitration.

## **Article 20. ACTIVE BAR MEMBERSHIP**

### Section 1. Active Membership.

All attorneys employed by the Agency must maintain, and provide evidence to the Agency of, their active continuous membership in good standing of the bar of any United States jurisdiction. Evidence of active membership shall be provided at the time of the annual performance appraisal.

### Section 2. Satisfactory Evidence of Active Membership.

Employees may use Duty Time and Agency equipment and supplies to obtain evidence of active membership. Satisfactory evidence of active membership includes, but is not limited to, a photocopy of an employee's bar card showing that the employee is an active member, a photocopy of the pertinent page from the bar's website showing that the employee is an active member, or a letter or certificate from the bar stating that the employee is an active member. If there is a disagreement between an employee and the Agency regarding the provision of satisfactory evidence of active membership, the matter shall be referred to the Designated Agency Management Official and the Union President for resolution.

### Section 3. Bar Dues.

Upon receipt of proof of payment, and when funds are available for such purpose, the Agency agrees to provide a reimbursement to Bargaining Unit attorneys for their payment of mandatory bar dues required to be paid to a state bar association during the fiscal year (October 1-September 30) as a prerequisite to obtain, or a requirement to maintain, their license to practice law, in one jurisdiction. This obligation shall begin in fiscal year 2023. Requests for reimbursement for payments due and made during the fiscal year shall be submitted to the supervisor between September 1 and 15, but no later than September 30.

Mandatory bar dues eligible for such reimbursement by the Agency do not include late fees, fees for specialty sections, membership in professional associations such as the American Bar Association, membership in more than one state's bar, continuing legal education, or any amount attributed to lobbying. At its election, the Agency may limit its total reimbursement obligation to Bargaining Unit attorneys under this provision in any fiscal year to \$100,000. In the event total requests for reimbursement by Bargaining Unit attorneys for bar dues exceed \$100,000, the payments will be reduced proportionally for all Bargaining Unit attorneys requesting reimbursement. The Agency's reimbursement obligation shall cease during the pendency of a sequestration, a Federally imposed hiring freeze due to budgetary constraints, Agency furloughs, or an Agency reduction in force.

### Section 4. Continuing Legal Education.

Training related to state continuing legal education requirements is discussed in Article 51— Training and Career Development.

## **Article 21.   WORKPLACE TECHNOLOGY AND EQUIPMENT**

### Section 1. Workplace Technology.

As used in this Article, workplace technology means government furnished electronic equipment and associated software, tools, applications, and cloud/internet-based computer systems that relate to an employee's methods and means of performing work. Core USDA workplace technology is workplace technology acquired, installed, and maintained Department wide by Office of the Chief Information Officer/Client Experience Center (OCIO/CEC). Employees are not permitted to furnish their own workplace technology (including electronic equipment) for government use.

### Section 2. Distribution and Installation of Workplace Technology.

Core USDA workplace technology is acquired, installed, and maintained Department wide by OCIO/CEC. If the Agency plans to distribute and/or install software or tools above USDA's core workplace technology that would materially affect working conditions, it shall provide the Union President with reasonable notice and an opportunity to comment on the distribution and/or installation prior to the distribution and/or installation.

### Section 3. Training.

The Agency shall offer training to employees in the use of workplace technology on or about the time it is provided to employees. Subject to budgetary restraints, this training may include video presentations, vendor-provided training, computer-based training, teleconferencing, and training by Agency personnel.

### Section 4. Outages and Disruption of Workplace Technology.

If the Agency is advised by OCIO/CEC of a planned or anticipated national workplace technology outage or disruption, it shall provide the Union President with reasonable notice. If the Agency is advised by OCIO/CEC that it plans or anticipates an office-wide outage or disruption, it shall provide affected employees with reasonable notice. If OCIO/CEC has already advised affected employees of the planned or anticipated outage or disruption, there is no obligation for the Agency to provide additional notice to the Union President or affected employees.

### Section 5. Additional Provisions.

- a. In addition to routine office supplies such as pens, folders, and notebooks, all employees will be provided with all necessary workplace technology as determined by the Agency and available in the budget to accomplish work assignments. The Agency at its election may offer additional equipment over and above the baseline required to accomplish assigned tasks to increase the efficiency of work (*e.g.*, additional monitors, printers, keyboards, mice, docking stations, etc.).



- b. Employees will receive and utilize a government-issued laptop and may be required to receive and utilize a government-issued mobile phone at the Agency's election.
- c. A Technology Committee formed under Article 13—Labor-Management Forum and Committees may examine the possible expansion and cost of Agency acquired workplace technology to further accomplish work assignments and make a recommendation to the General Counsel which may be adopted, modified, or rejected in whole or part.
- d. Supervisors shall approve Duty Time for employees to resolve issues related to workplace technology such as training, installation, configuration, and repair service.
- e. Apart from furnishing and maintaining workplace technology, the Agency shall not provide or pay for costs at an Alternative Worksite such as internet or telephone line usage fees, internet installation or connection fees, monthly service charges, telework center charges, maintenance, or any other costs incurred by the employee to obtain approval of the Alternative Worksite under Article 48—Telework.
- f. The Agency shall ensure that employees have access to technical support to resolve problems with the functioning of workplace technology, including help desk contact numbers, web-based support, and where appropriate and necessary in-person assistance.

## **Article 22.    **WORKSPACE****

### **Section 1. Provision of Workspace.**

The Agency agrees to provide employees with adequate workspace to perform their job duties while at the Official Worksite, as defined in Article 48—Telework.

### **Section 2. Relocation/Reassignment.**

To the greatest extent possible, issues concerning employee workspace assignments should be resolved at the office location between the employees and their supervisor. The supervisor shall involve employees and the Union early in the planning process of an office relocation or workspace reassignments to obtain input regarding the workspace or office assignments and will continue to consult with the Union throughout the relocation/reassignment process. If the employees and supervisor are unable to reach an agreement, the provisions of Section 4 of this Article shall determine the priority for office or workspace assignments.

### **Section 3. Workspace Expectations.**

Space limitations may require office sharing, hoteling or other flexible officing arrangements that may impact employees' ability to have an office assigned for their exclusive use. Employees shall maintain workspaces in a reasonably neat and professional condition. Maintaining common areas and any shared office space in a reasonably neat and professional condition is the responsibility of the Agency employees who use them. The Agency shall provide employees with adequate filing, personal and common storage space, and cleaning supplies.

### **Section 4. Workspace Assignments.**

Employees whose approved schedules provide more days physically present in the office per pay period shall have first priority for office assignment and workspace of the type customarily assigned by the Agency to the position held by the employee. The Agency may take into account GSA, OPM, and Departmental guidance on workspaces and will provide such guidance to affected employees consistent with Section 2 of this Article. For employees physically present in the office for the same number of days per pay period, the next criteria shall be the employee's grade level, and for employees within the same grade level, the employee's seniority as determined by the employee's Service Computation Date. If the Agency concludes the requirements of the position or needs of the Agency require it to assign workspace on a different basis, the notification provided to the Union under Section 2 of this Article shall include the reasons for the Agency's determination. The promotion, separation, transfer, or hiring of an employee or change in an employee's Telework Agreement may provide an opportunity, but not a right to reassignment of a workspace. In the event that employees with conflicting claims over workspace assignments cannot come to a mutually agreed upon solution, management will assign workspace consistent with the provisions of this Article.

Section 5. Reasonable Accommodation.

The needs of employees entitled to a reasonable accommodation that addresses workspace assignments shall be a priority in determining workspace assignments.

## **Article 23. TRAVEL**

### Section 1. Travel and Temporary Duty (TDY).

- a. Employees may request or be required to travel for official business. Travel away from an employee's duty station is covered by the Federal Travel Regulation (FTR), published by the General Services Administration (GSA) and viewable on their website, and this Article.
- b. Employees shall be reimbursed for all approved expenses incurred because of official travel, as required under law.
- c. Whenever possible, the Agency shall schedule employee travel to occur during an employee's regularly scheduled work hours. If the Agency determines that travel must be scheduled to occur outside of the employee's regularly scheduled work hours, the Agency shall notify the employee as soon as possible. In such instances, the Agency shall allow the employee an opportunity to fully discuss this determination with the Agency. The Parties acknowledge that in certain instances a travel schedule is based on litigation-related deadlines that are outside of the Agency's control.
- d. Employees shall not be required to use privately owned vehicles for travel on official business nor privately-owned mobile electronic equipment while on travel for official business unless such mobile electronic equipment use is *de minimis*.
- e. The Agency shall provide all equipment necessary for the employee to conduct official business while in travel status. Employees are responsible for the prudent care and security of Agency equipment used during official travel.
- f. Compensatory time off for travel shall be granted for time spent in travel status outside of regularly scheduled work hours unless overtime is required by law. Usual waiting time, as defined by law and which includes travel delays, counts as time in travel status. Usual waiting time does not include extended flight delays that allow the employee to leave the airport to rest, sleep, or engage in discretionary personal activities.
- g. Employees are allowed to combine personal travel with official business (e.g., traveling in advance of the start of official travel and/or extending their stay beyond the dates of official travel), provided this does not interfere with mission requirements. However, the Agency is not responsible for additional costs associated with personal travel.

### Section 2. Travel Rules.

- a. An employee traveling on official business for the Agency shall follow all government-wide regulations regarding government travel in effect at the time of travel, including the way travel plans must be arranged and which travel costs are incurred and

reimbursed.

- b. The Parties shall follow all government-wide regulations in effect at the time of travel regarding the activities that are allowed and not allowed to take place while on travel status.
- c. Normally, employees will not be required to stay away from their duty stations two (2) consecutive weekends unless the assignment involves working on the weekend or other exigent circumstances apply.
- d. Consistent with its obligations under applicable laws, rules, regulations, and the provisions of this Agreement, the Agency shall comply with its obligations relating to reasonable accommodations for employees with disabilities, including short-term or temporary disabilities. Employees with special needs not covered under the reasonable accommodation process will be addressed on a case-by-case basis. Employees with special travel needs shall self-identify and provide supporting documentation, when appropriate, in advance of any travel. The employee's supervisor has the authority to approve special needs requests consistent with law, rule and/or regulation and respond to the employee through memo or e-mail. Such approval will not be unreasonably withheld. The Agency shall make the final determination on the appropriate method to address special needs, taking costs under consideration.

Examples of methods to address special needs include but are not limited to:

- i. transportation and per diem expenses incurred by an attendant who must travel with the employee to make the trip possible;
  - ii. transportation to, from, and/or at TDY duty locations or local travel locations based on the traveler's needs;
  - iii. assistance provided by a common carrier to accommodate employees' special needs;
  - iv. costs for handling baggage and/or additional baggage that is a direct result of employees' special needs;
  - v. renting and/or transporting a wheelchair/scooter; and/or
  - vi. other accommodations when necessary to accommodate employees' special needs.
- e. Union officers may request approval for off-site training or permissive TDY and Official Time when it is at no cost to the Agency by submitting a request to the union officer's supervisor. Requests for permissive TDY and Official Time cannot be used for off-site meetings that are internal union business, including annual or biannual national conferences, nor for lobbying or other purposes for which Official Time is not granted pursuant to Article 10—Official Time.

### Section 3. Credit Card.

- a. Employees who are expected to travel as a part of their official duties will be issued government credit cards (aka travel charge card) for the express purpose of paying for specific travel-related expenses. These employees must complete an annual cardholder training course as specified by the Agency and must comply with all Department and government-wide regulations and policies related to government-issued credit cards in effect at the time of the travel.
- b. Employees may not use a government-issued credit card for expenses other than authorized official travel expenses as described by the FTR. Improper use of a government-issued credit card may subject an employee to discipline.

## **Article 24.    **TRANSPORTATION TO WORK****

### Section 1. General.

The Agency and the Union encourage employees to use means such as public transportation, carpools, vanpools, and bicycles to commute to and from work.

### Section 2. Transit and Bicycle Subsidy.

- a. Qualified Transportation Fringe Benefit. In furtherance of the Federal Employees Clean Air Incentive Act, 5 U.S.C. § 7905, and 26 U.S.C. § 132(f), an employee who uses qualified transit or a bicycle in commuting to or from the employee's residence or duty station may elect the following benefits:
  - i. Transit Pass Subsidy or Commuter Highway Vehicle Subsidy as defined by 26 U.S.C. § 132(f)(5)(A) and (B) and as provided in Section 2(c) of this Article; or
  - ii. Bicycle Subsidy as defined by 26 U.S.C. § 132(f)(5)(F) and as provided in Section 2(d) of this Article.
- b. Administration. This Article shall be administered in accordance with the provisions relating to qualified transportation fringe benefits set forth in 26 U.S.C. § 132(f). Benefits provided to employees under Section 2(a) of this Article are not subject to income tax, as allowed by this law. The Agency will administer the subsidy programs referenced in Section 2(a) of this Article consistent with the relevant USDA Departmental Regulations in effect at the time the employee seeks payment under the programs.
- c. Transit Subsidy. The Agency participates in a Transit Pass Subsidy and Commuter Highway Vehicle Subsidy program administered by the Department of Transportation. The Agency will continue to participate in these programs as long as the Department of Transportation administers them, provided that USDA continues to participate in the programs. If the Department of Transportation ceases to administer the programs, but any other federal Department administers substantially similar programs, the Agency shall participate in the programs, provided that USDA elects to continue to participate in the programs. Should the USDA elect to withdraw from such benefit programs, but the Agency retains the ability to participate, including an appropriation of funds for this transit subsidy purpose, it will do so, and will request an appropriation for the transit subsidy.
- d. Bicycle Subsidy. On January 1, 2009, the qualified bicycle commuting subsidy was added to the list of qualified transportation fringe benefits covered in 26 U.S.C. § 132(f). The purpose of providing a bicycle subsidy option is to reduce motorized vehicular traffic, reduce air pollution, and promote employee health and wellness by encouraging employees to use non-motorized bicycles as their primary means of commuting to and

from work. In furtherance of these goals, the Agency shall provide a subsidy to employees who regularly use a nonmotorized bicycle for their daily commute for a substantial portion of their travel. The subsidy shall not exceed \$20 per month for qualified bicycle commuting expenses.

- i. Qualified bicycle commuting expenses include the purchase of a commuter bicycle, bike lock, bike parking/storage, bike upgrades (lights, racks), repairs, and general maintenance. These expenses may also include personal safety and protective equipment and/or bicycle-share membership. These expenses are considered reasonable so long as the bicycle is regularly used (50 percent of daily commuting days or greater) for a substantial (50 percent or greater) portion of the distance between the employee's residence and place of employment.
- ii. Pursuant to 26 U.S.C. § 132(f), the employer reimbursement schedule is the 12-month period beginning the first and ending the last day of each calendar year for reasonable expenses incurred. To receive the benefit, employees must submit an Initial Application, and an Annual Certification and Claim for Reimbursement Form, both of which are appended to this Article. An Annual Certification and Claim for Reimbursement Form shall be submitted each January for the preceding calendar year.
- iii. An employee cannot claim the bicycle subsidy in any month in which the employee claims a qualified transit or parking subsidy.

### Section 3. Public Transportation and Parking at Agency Facilities.

The Agency and the Union agree that proximity to public transportation and the availability of free parking for employees at Agency facilities are benefits that aid in recruitment and retention of employees.

The Agency shall make a good faith effort while negotiating or renegotiating to acquire office space, whether such negotiations are conducted by the Agency or through GSA or another Government agency, and subject to competing Agency priorities, and applicable Government-wide, GSA, or Departmental requirements and policies, in a location with reasonable proximity to public transportation.

The Agency shall make the same good faith effort to secure an adequate number of free parking spaces for employees while negotiating or renegotiating for office space, whether such negotiations are conducted by the Agency or through GSA or another Government agency, subject to competing Agency priorities and applicable Government-wide, GSA, or Departmental requirements and policies, and provided that the imputed cost to the Agency of the provision of free parking per parking user shall not exceed the average cost of a transit subsidy per user in a comparable locality in which other Agency facilities reside.

The Agency may consider public transit availability and the number of days employees are physically present in the office in determining the adequate number of free parking spaces.



**BICYCLE COMMUTER SUBSIDY APPLICATION**  
**U.S. DEPARTMENT OF AGRICULTURE - OFFICE OF THE GENERAL COUNSEL**

Action Requested: _____ New _____ Cancellation		
Items 1-8 must be completed in full prior to submission to the Transit Benefits Coordinator.		
<b>APPLICANT INFORMATION</b>		
1. Name of Applicant:	2. Work Address:	3. Home Address:
4. USDA Agency Code: 14 Office of the General Counsel.	5. Employee SSN: (Last 4 digits only)	6. Work Phone Number

**EMPLOYEE CERTIFICATION**

**WARNING:** This certification concerns a matter with the jurisdiction of an agency of the United States and making a false, fictitious, or fraudulent certification may render the maker subject to criminal prosecution under 18 U.S.C, § 1001; Civil Penalty Action providing for administrative recoveries of up to \$10,000 per violation; and/or agency disciplinary actions up to and including removal from Federal Service.

I certify that I am employed by the U.S. Department of Agriculture Office of the General Counsel.

I understand that I must ride my bike to and from work at least half of my commuter days per month in order to qualify for the Bicycle Commuter Subsidy benefit.

I understand that I must certify that I commuted by bicycle a minimum of 50% of my commuter days for each month that I am claiming a subsidy and submit my completed certification annually in order to receive the benefit.

I understand that I may not concurrently receive both the Bicycle Commuter Subsidy and the mass transit or the parking benefit(s).

I understand that I must submit any bike commuter-related receipts to support my claim for the subsidy.

I understand that if I am involved in an accident while commuting, the accident will not fall within the Federal Tort Claims Act or the Federal Employees Compensation Act. Bicycle commuting is at my voluntary election and shall not constitute official duties of any kind. By

participating in this program, I assume the risks associated with this activity both for my own injuries and risk to third parties.

7. Signature of employee:	8. Date:
9. Name of Transit Benefits Coordinator:	10. Agency Maximum Benefit \$20 per month: Up to \$240 per year:
11. Signature of Transit Benefits Coordinator:	12. Date:

**Privacy Act Statement:** This information is solicited under authority Public Law 101-509. Furnishing the information on this form is voluntary, but failure to do so may result in disapproval of your request for a Bicycle Commuter Subsidy. The purpose of this information is to facilitate timely processing of your request, to ensure your eligibility, and to prevent misuse of the funds involved. This information may be matched with lists of other federal agency transit subsidy or parking benefits to ensure against duplicate enrollment.

**Bicycle Commuter Subsidy**  
**U.S. Department of Agriculture - Office of the General Counsel**  
**Annual Certification and Claim for Reimbursement**

Employee Information:

Name: \_\_\_\_\_

Office Location: \_\_\_\_\_

Office Phone: \_\_\_\_\_

1. Number of qualifying bicycle commuter months this calendar year (number of months I rode at least 50% of my commuter days): \_\_\_\_\_
2. \$20.00 x number of qualifying months=\$ \_\_\_\_\_
3. I certify that I spent equal to or in excess of \$ \_\_\_\_\_ this calendar year on qualifying bike commuter expenses, which are related to my use of a commuter bike. Note: Qualified bicycle commuting expenses include costs associated with the ownership and operation of a commuter bicycle, bike locks, bike parking/storage, bike upgrades (lighting systems, racks, and bags or baskets that attach to the bicycle), and repairs and general maintenance. These expenses may also include personal bicycle safety and protective equipment. I understand that I may only claim reimbursement for the calendar year of the purchase. The figure entered for this item 3 must be equal to or more than the figure entered in item 2.

My claim for a Bicycle Commuter Subsidy Benefit for calendar year is \$ \_\_\_\_\_

Signature of employee:	Date:
Name of Transit Benefits Coordinator:	Amount of Bicycle Commuter Subsidy Approved (\$240 maximum per year):
Signature of Transit Benefits Coordinator:	Date:

**Privacy Act Statement:** This information is solicited under authority Public Law 101-509. Furnishing the information on this form is voluntary, but failure to do so may result in disapproval of your request for a Bicycle Commuter Subsidy. The purpose of this information is to facilitate timely processing of your request, to ensure your eligibility, and to prevent misuse of the funds involved. This information may be match with lists of other federal agency transit subsidy or parking benefits to ensure against duplicate enrollment.

**Warning:** This certification concerns a matter within the jurisdiction of an agency of the United States. Making a false, fictitious, or fraudulent certification may render the maker subject to criminal prosecution under 18 U.S.C. § 1001, to include fine and/or imprisonment up five years and may provide for administrative recoveries of up to \$10,000 per violation. It may also result in agency disciplinary action up to and including dismissal.

**Article 25. BUSINESS CARDS**

The Agency shall provide business cards to its employees, if requested by the employee. The Agency may use its own equipment and personnel to produce the business cards. The Agency may choose the type and expense of the card that it will provide. Alternatively, at the request of an employee, the Agency will provide to the employee electronic files with acceptable formats and logos for use in their procurement of their own cards.

## **Article 26. OFFICE DRESS POLICY**

### Section 1. Purpose.

This flexible dress policy provides benefits to employees at no cost to the Agency, without inhibiting the provision of legal services or diminishing the Agency's professional image.

### Section 2. Definitions.

- a. Traditional business attire is neat, clean, and includes the following: a suit with a necktie; a sport coat with dress pants and a necktie; a dress; a two-piece suit; or a jacket, blazer, or sweater with a skirt or dress pants, or substantially equivalent traditional business attire.
- b. Business casual attire is neat, clean, and more casual than traditional business attire. It includes denim but does not include athletic wear, such as T-shirts, tanktops, sweatshirts, sweatpants, jogging or warm-up suits, and athletic shorts.

### Section 3. Traditional Business Attire.

Employees shall wear traditional business attire when interacting with those outside the Agency either in person or virtually in situations in which traditional business attire is expected either by their clients or by opposing parties and their counsel. The Agency does not require traditional business attire for any functions purely internal to the Agency.

### Section 4. Business Casual Attire.

For situations other than those set forth in Section 3 of this Article, employees may wear business casual attire while working at Agency facilities. However, employees wearing business casual attire are encouraged to have traditional business attire available so that they may attend unscheduled meetings where traditional business attire is obligatory. Employees may be required to wear traditional business attire to attend these meetings. While teleworking, for situations other than those set forth in Section 3, employees may wear clothing less formal than business casual.

### Section 5. Special Circumstances.

The provisions of this Article pertaining to traditional business attire and business casual attire shall not apply in the following circumstances:

- a. Employees who cannot reasonably comply with the provisions of this Article for medical reasons may, with approval of their supervisor, dress in a manner that accommodates the medical condition.
- b. For work that entails visiting sites in forests or fields, acceptable attire may include clothing that is not considered appropriate for the office but that is appropriate for the

outdoors.

c. If an employee's activities on a particular day involve physical work, such as moving office furniture or files, acceptable attire may include clothing that would not be considered appropriate for normal office duties.

d. Employees shall comply with any court-imposed dress code whenever appearing in court.

#### Section 6. Local Policies.

Agency offices may adopt dress policies tailored to local circumstances that are less restrictive than the policies established in this Article.

## **Article 27. EMPLOYEE WELLNESS**

### Section 1. General.

The Parties agree that promoting employee emotional, mental, and physical wellness, health, and fitness may benefit the Agency in terms of improved productivity, reduced health care costs, and reduced use of leave. The Agency will support programs that promote employee emotional, mental, and physical wellness, health, and fitness consistent with law and regulation.

### Section 2. Wellness Committees.

The Joint Union-Management Committee on Life Balance existing as of the date of this Agreement will continue to address wellness issues and make recommendations to the General Counsel on wellness policies and a wellness program consistent with the objectives of this Article. This committee may develop and/or sponsor educational programs, conduct surveys to assess the needs and interests of employees, and explore partnerships with other agencies for fitness and wellness opportunities. Wellness committees may also be established on a regional, divisional, or office basis with the consent of applicable supervisors and the Union to address wellness policies and programs on a more local level.

### Section 3. Agency-Sponsored Programs.

The Agency will publicize the availability of, and shall encourage employees to participate in, medical programs (such as flu shots, blood pressure screening, and education programs relating to health such as smoking cessation, diet and nutrition, cancer prevention, heart health, or stress reduction), whether produced by the Agency or other federal agencies, that may be open to employees as part of a wellness program or otherwise. Participation in such programs is voluntary and the Agency will announce in advance whether duty time is available for participation. The Agency, in its discretion, may approve duty time in advance for attendance at training programs related to first aid, cardio-pulmonary resuscitation (CPR), and the use of Automatic External Defibrillators (AEDs) as provided in Article 51—Training and Career Development.

### Section 4. Facilities.

Local wellness committees or managers may explore the possibility of using existing space in Agency facilities for exercise classes, yoga, and/or other low impact physical fitness activities during employee non-duty hours.

### Section 5. Health Services.

The Agency shall maintain on the Employee Information Page established under Article 17—Provision of Information and Employee Information Page a list of Federal health service units available for use by OGC employees in Washington and the field. The Agency may permit employees reasonable opportunity during duty time to visit onsite or other nearby Federal health service units for available health care and immunizations for contagious diseases.



#### Section 6. Employee Health Benefits.

The Agency agrees to notify employees of, and on the Employee Information Page provide electronic access to, open season information and instructions for medical, dental, and vision plans and flexible spending accounts, and dates for open season elections. To the extent the Agency is aware of health benefit fairs sponsored by the Department or other Federal agencies that are virtual or in the same geographic area as Agency employees and open to Agency employees, the Agency shall notify those employees of the opportunity to attend those health fairs.

#### Section 7. Nursing Mothers.

With reasonable prior notice, the Agency will arrange to provide a clean, healthy, and private environment other than a restroom and be flexible on scheduling reasonable break time for nursing mothers to express milk.

#### Section 8. Smoke-Free Environment.

There shall be no tobacco use, nor smoking (including by use of an electronic device or vaping) in any Agency office or in other inside areas under the Agency's control. Designated smoking areas, if any, shall be sufficiently remote from building entrances so as to allow for smoke-free access.

#### Section 9. Agency Workplace Environment.

The Agency shall provide employees with an Agency workplace environment that is comfortable, relatively free of distractions, and safe.

- a. Workstation Furniture and Equipment. The Agency shall provide employees with available information including via links on the Employee Information Page about ergonomic issues and prevention of work-related injuries. When replacing or upgrading workstation furniture or equipment, the Agency shall comply with all applicable regulations of the Occupational Safety and Health Administration and shall consider guidelines issued by that agency or by the National Institute of Occupational Safety and Health. The Agency shall also provide training on the safe and proper use of workstation furniture and equipment. Remote and teleworking employees shall obtain their own workstation furniture and equipment unless it is made available by the Agency and are responsible for the safe and proper use of the furniture while working.
- b. Air Quality and Temperatures. If air quality and temperatures in an Agency office cannot be maintained at levels conducive to good health, productivity, and employee well-being, the Agency shall address the issue in accordance with the provisions of Article 31— Workplace Security and Workplace Closures. Remote and teleworking employees shall have responsibility for their own temperature and air quality while working.

- c. Maintenance and Housekeeping. To the extent possible, the Agency shall take reasonable steps to avoid distractions to employees when scheduling maintenance, construction, or housekeeping activities, and shall comply with applicable safety and health standards, including CDC and OSHA standards and guidelines, relating to sanitation, insect, and vermin control.
  
- d. Additional Lighting, Air Cleaners or Filters, Approved Space Heaters and Personal Fans. Upon request, the Agency may make these items available to employees, as permitted by appropriation law. If recommended by the CDC and otherwise permitted by appropriation law, the Agency shall, to the extent funds are available, make personal air cleaners and/or filters available to all employees coming into Agency office spaces for the duration of any declared pandemic or other public health emergency.
  
- e. Hygiene supplies. The Agency shall supply adequate hand sanitizer, disposable gloves, and N-95 masks (or equivalent) as recommended by the CDC during a pandemic or other health emergency.

## **Article 28.   EMPLOYEE ASSISTANCE PROGRAM**

### Section 1. Purpose.

The Employee Assistance Program (EAP) is a voluntary, work-based program that offers free and confidential assessments, short-term counseling, referrals and follow-up services to employees and their eligible dependents who have personal and/or work-related problems affecting their emotional or mental well-being such as alcohol and other substance abuse, stress, grief, family problems or psychological disorders. The EAP also provides a mechanism for addressing conduct and performance-related employee problems as set forth in Article 42—Disciplinary and Adverse Actions, and below. The EAP is also available to assist employees, their families, and their workplace in response to workplace violence, trauma, and other emergency situations.

### Section 2. Providers.

As of the date of this Agreement, EAP services to OGC are provided through Federal Occupational Health (“FOH”), Department of Health and Human Services, who in turn contracts with a network of providers throughout the country. The Joint Union-Management Committee on Life Balance described in Article 27—Employee Wellness shall annually be provided with and review usage statistics provided by FOH and assess the program’s efficacy within the Agency. The Committee may make recommendations to the General Counsel regarding continuing the contract with FOH or may recommend another provider be considered.

### Section 3. Use of Leave Under the EAP.

Supervisors shall be encouraged to offer the availability of the EAP to employees who exhibit performance or conduct issues. If the Agency recommends that an employee participate in the EAP, whether or not such recommendation is associated with a performance or discipline problem, the employee shall be granted administrative leave for any assessment sessions and the first EAP counseling session. For additional counseling sessions or rehabilitation, or if the employee obtains EAP assistance on their own without Agency recommendation, the employee may use sick leave, annual leave, credit hours, compensatory time, or leave without pay.

### Section 4. Employee Rights and Responsibilities.

- a. Employees may voluntarily seek counseling from, information about, and referrals to the EAP.
- b. Employees may not be required to participate in the EAP; employees who decline to participate in the EAP shall not be penalized for declining.
- c. The confidentiality of medical records, counseling records, and other records of employees who participate in the EAP shall be preserved in accordance with applicable law and regulations including, without limitation, the Privacy Act of 1974. The Agency shall do whatever it can under applicable law and regulations to ensure that information regarding an employee's participation in the EAP is kept strictly confidential.

- d. An employee's job security, appraisals, and promotion opportunities shall not be adversely affected by participation in the EAP.
- e. If the Agency has grounds to take action against an employee because of performance or disciplinary problems which may be the result of mental illness, alcohol or drug abuse, or some other personal or family problem, the Agency, after a consideration of the circumstances, shall generally stay the action until the employee has been given reasonable time to enter into and participate in an appropriate rehabilitation or counseling program whether through the EAP or otherwise, in accordance with Article 42—Disciplinary and Adverse Actions provided that, in the case of the use of drugs that are illegal under Federal law, the employee has first satisfied all applicable notice and other requirements under Executive Order 12564. Employees must provide the Agency with documentation showing that they are participating in the appropriate rehabilitation program and must make reasonable progress toward improving their conduct or job performance.

Section 5. Union Participation in EAP Training.

A Union representative shall be invited to attend any seminars, workshops, conferences, or training sessions designed to acquaint Agency managers, supervisors, or employees with the EAP.

Section 6. Promoting the EAP.

- a. The Agency shall post information describing the EAP in a prominent location in each division and office. Information regarding the EAP and its available services and programs shall be provided and updated as necessary on the Employee Information Page discussed in Article 17—Provision of Information and the Employee Information Page.
- b. Information on the EAP, services available, and the name, email address, and phone number of the Agency's EAP Coordinator shall be sent to all employees annually via email.
- c. Reasonable advance notice of webinars and other special services provided by the EAP shall be sent to all employees via email.
- d. The Agency shall provide information about the EAP to new employees during their initial orientation as provided in Article 50—Onboarding.
- e. When the Agency makes or learns of any change in the EAP provider or any change in the services provided, the Agency shall timely provide that information to the employees and the Union President.

Section 7. Right to Union Representation.

An employee may request Union representation at any meeting with the Agency regarding the employee's participation in the EAP. The Agency shall inform the affected employee of this right at least three days prior to any such meeting.

## **Article 29. DRUG-FREE WORKPLACE PLAN AND PROGRAM**

### **Section 1. Legal Authority**

The Parties agree that as of the date of this Agreement, employees are subject to USDA's "Plan for a Drug-Free Workplace" dated April 19, 2011 (the "Plan"), and DR 4430-792-2, USDA's "Drug-Free Workplace Program" (the "Program"). The Plan and the Program implement Executive Order 12564 promoting a drug-free workplace in the Federal government.

### **Section 2. Employees Subject to Random Testing under the Drug-Free Workplace Plan and Program.**

Prior to designating any Bargaining Unit employees or positions to be newly subject to random testing under the Plan and the Program, the Agency shall notify the affected employees and the Union President and engage in Impact and Implementation Bargaining with the Union before testing the affected employees.

### **Section 3. Information Regarding USDA's Drug-free Workplace Plan and Program.**

As of the date of this Agreement, USDA's Office of Human Resources Management ("OHRM") maintains a webpage with guidance regarding the Plan and the Program at <https://www.dm.usda.gov/employ/employeerelations/drugfree.htm>. A link to the OHRM webpage will be included in the Employee Information Page maintained by the Agency. In the event that OHRM no longer provides this information, the Agency agrees that it will make the Plan and the Program available to employees on the Employee Information Page.

### **Article 30. CONTRACTING**

Pursuant to 5 U.S.C. § 7106(a) the Agency retains the right to make determinations whether to contract work and to determine which functions of the Agency's legal staff are inherently governmental. See OMB Circular A-76. Prior to procuring resources by contract for any work typically done or currently done by Agency staff to an outside party through any contract the Agency will provide notice to the Union. Upon receiving the Agency's notice, the Union may request Impact and Implementation Bargaining. Any request for Impact and Implementation Bargaining will be addressed in accordance with Article 12—Mid-Term and Impact and Implementation Bargaining.

## **Article 31.    **WORKPLACE SECURITY AND WORKPLACE CLOSURES****

### **Section 1. General.**

The Agency agrees to provide physical offices that are free from hazards that cause, or are likely to cause, accident, injury, or illness and that promote a healthy work environment. The Agency, in coordination with the General Services Administration or other federal agencies as appropriate, shall use its best efforts to ensure that each Agency Facility is located in a building with security facilities that meet or exceed applicable Federal government-wide standards. With respect to Agency Facilities, the Agency shall use its best efforts to comply with the Department's regulations regarding health and safety and the Occupational Health and Safety Act of 1970, as amended; Federal government-wide guidance issued by OPM; recommendations from the Safer Federal Workforce Taskforce and from the Department's Future of Work Taskforce; recommendations from the Centers for Disease Control; and any additional recommendations of the Occupational Safety and Health Administration, the General Services Administration, or other applicable Federal authorities.

### **Section 2. Violence and Disruptive Behavior in Agency Facilities.**

The Agency and the Union are committed to promoting and maintaining a safe environment for employees. Physical violence, threats, harassment, intimidation, and other disruptive behavior in Agency Facilities will not be tolerated. Such behavior includes, but is not limited to, oral or written statements or other actions that communicate a direct or indirect threat of physical harm. The Agency and the Union agree that acts or threatened acts of violence in Agency Facilities must be dealt with swiftly to prevent further occurrences. All employees have the responsibility to report threats and violence in Agency Facilities to a supervisor, manager, or appropriate security personnel. Individuals who commit such acts may be expelled and barred from the Agency Facility. Employees may be subject to disciplinary actions up to and including removal and criminal penalties.

### **Section 3. Unsafe/Unhealthy Working Conditions in Agency Facilities, Abatement Plans.**

- a. Employee Responsibility to Inform/Abatement. In accordance with the authorities cited in Section 1 of this Article, the Agency and the Union will work together to detect unsafe and/or unhealthy working conditions in Agency Facilities at the earliest possible time, and to correct them at the working level closest to the problem. An employee who is assigned duties that may endanger the employee's health or well-being shall notify the supervisor of the situation. The supervisor, upon deciding that unsafe conditions exist, shall take appropriate action to abate the unsafe working condition.
- i. Consultation. The Agency shall promptly consult with the Union about the unsafe and/or unhealthy condition and planned actions to abate that condition. If the unsafe or unhealthy condition creates an emergency, evacuations may be ordered, and offices or parts of offices may be closed in accordance with sections 5, 6, and 7 of this Article. Otherwise, the employees shall be offered leave, telework options, or other options in accordance with this Agreement.



- ii. Abatement Plan. If abatement of an unsafe or unhealthy working condition within 30 days will not be possible, the Agency shall prepare an abatement plan and provide it to the affected employees and the Union. The plan shall contain an explanation of the circumstances of the delay in abatement, a proposed timetable for the abatement, and a summary of any office closure, telework options and/or other interim steps that will be taken to protect employees from being injured by the unsafe or unhealthy working conditions.
  - iii. Lessor Cooperation. When an unsafe or unhealthy working condition cannot be abated without assistance from the General Services Administration, another Federal lessor agency, or any other lessor, the Agency shall cooperate with the lessor to abate the condition.
- b. Employee right to refuse. An employee may decline to perform an assigned task if the employee reasonably believes that the task poses an imminent risk of death or serious bodily harm and there is insufficient time for normal Agency reporting and abatement procedures.
- c. Personal Security. When an employee, in the performance of official duties, has been subjected to threats, harassment, or other conduct leading to a reasonable fear for the employee's safety or the safety of their family:
- i. The employee will notify the Agency of the threat as soon as possible and follow up with a written statement outlining the threat, which will be used by the Agency as the basis for conducting a review.
  - ii. When the Agency becomes aware that an employee has been subjected to threats or harassment in the performance of their official duties, the Agency shall take appropriate action. Such action may include but is not limited to: removing any materials identifying the employee's workspace in an Agency Facility, relocating the employee's workspace if requested, authorizing Temporary Telework if requested, and/or contacting local and federal law enforcement authorities.

#### Section 4. Evacuation Plans.

- a. Evacuation Plan. Each Agency Facility shall be covered by an evacuation plan that sets forth procedures for safe and efficient evacuation during emergencies. The evacuation plan shall identify the employees who have volunteered, or whom the Agency has designated, to assist in the evacuation of Agency Facilities. The Agency shall post a copy of the plan in each office, shall provide a copy to employees, and shall brief employees of each office in person on its contents and on any changes to it. The Agency shall provide all new employees with a copy of the evacuation plan during the first week of their employment and shall brief them on its contents during the first month of their employment. Evacuation plans for each Agency Facility shall be posted on the Employee Information Page.

- b. Evacuation Drills. The employees in each Agency Facility shall be included in all evacuation drills scheduled for their facilities. The Agency shall cooperate with the General Services Administration, the appropriate leasing agent, or local authorities whenever evacuation drills are scheduled at Agency Facilities.
- c. Persons with Disabilities or Functional Needs. Provisions will be made to ensure the safety of employees with disabilities and other persons with functional needs for assistance during an emergency. A list will be maintained of those employees who self-identify as needing additional assistance in the event of an emergency. To the extent possible, assistance will be provided to the self-identified employees until first responders arrive. Assistance may include escorting the employee, moving assistive equipment, transporting service animals, or carrying medical equipment or medicines.
- d. Re-Entry. If it is necessary to evacuate an Agency Facility, employees shall not be readmitted into the facility until it has been determined that there is no longer a danger.
- e. Shelter-in-Place. Shelter-in-place protocols contained in the relevant evacuation plan will be used if a shelter-in-place event occurs at the Agency facility. Shelter-in-place is a voluntary action, unless mandated otherwise by law enforcement or public health officials. To the extent covered by the applicable evacuation plan, the Agency shall provide food and water in anticipation of a sustained shelter-in-place. The Agency shall provide annual notice to employees on necessary supplies they might need in preparation of a shelter-in-place event, including but not limited to prescription medications, adequate footwear, and personal hygiene items. Employees are encouraged to visit and review information on the Ready.gov website and Employee Information Page for additional information.
- f. Union Review. The Agency and the Union shall meet upon the request of either party to discuss the effectiveness of the evacuation plan for any Agency Facility.

Section 5. Workplace Closure (not including Pandemic Evacuation or COOP).

- a. Workplace Closure at the Agency's Direction. The Agency shall temporarily close an Agency Facility when it concludes employees are prevented from safely performing work at the Agency Facility and, in its discretion, may grant Weather and Safety Leave to employees under 5 C.F.R. § 630.1603, except as provided under 5 C.F.R. § 630.1605. The Agency may temporarily excuse employees whose Agency-approved work location is not at an Agency Facility when it concludes that the conditions at the approved location prevent employees from safely performing work at the approved location and, in its discretion, may grant Weather and Safety Leave to those employees to safely travel to another approved work location under 5 C.F.R. § 630.1603, except as provided under 5 C.F.R. § 630.1605. Nothing in this Article affects a Telework-Ready Employee's obligations regarding Unscheduled Telework under Article 48—Telework.
- b. Employee Action Without Agency Direction. If an employee is working at an Agency Facility or other Agency-approved work location that is not at an Agency Facility and believes that they cannot safely perform work at their workplace, any employee may ask

the supervisor to close the Agency Facility, excuse them from the Agency-approved worksite that is not an Agency Facility, or use unscheduled annual leave to leave their workplace until they are able to resume work at an Alternate Worksite. The employee shall notify the supervisor before leaving their workplace if possible, but if notice is not possible at that time the employee shall notify the supervisor as soon as possible after leaving their workplace. If the Agency subsequently closes the Agency Facility, otherwise excuses the employee from their workplace, and/or grants Weather and Safety or other administrative leave, the employee will not be charged with annual leave for that absence. If the employee's supervisor does not subsequently close the Agency Facility, otherwise excuse the employee from the workplace, or grant Weather and Safety or other administrative leave, the Union President may request action from the employee's supervisor under the procedure for workplace closure in Section 5(e) below. Nothing in this Article affects a Telework-Ready Employee's obligations regarding Unscheduled Telework under Article 48—Telework.

- c. Guidance for Operating Status of Agency Facilities. The Agency will adhere to OPM and USDA guidance for the operating status of Agency Facilities in the National Capital Region. Field offices will follow the guidance of the local Federal Executive Board, management of the building in which the agency office is located, or local authorities, whichever is most applicable to the specific location as determined by the supervisor. To the extent possible, supervisors should advise employees which authority their office will follow to determine its operating status.
- d. Employee Notification. If the Agency evacuates or closes an Agency Facility, the Agency shall, whenever possible, notify employees as provided below.
  - i. Employees Present at the Agency Facility. The Agency shall attempt to notify each employee present in the Agency Facility. Whenever possible, the employees' supervisor shall also notify employees using email, telephone, or other available and appropriate means of communication.
  - ii. Employees Scheduled to Arrive at the Agency Facility. The employees' supervisor shall make every effort to inform employees scheduled to be in an Agency Facility of an evacuation or office closure before their arrival at the office using emergency contact information provided by the employee in accordance with this Article.
  - iii. Other Employees. The Agency shall notify all other employees of the Agency Facility's closure by email.
- e. Union Involvement. If the employee's supervisor does not close the Agency Facility, otherwise excuse the employee from the workplace, or grant Weather and Safety or other administrative leave pursuant to section 5(b) above, the Union President may request action from the employee's supervisor, relevant Regional Attorney or Associate General Counsel, or thereafter the General Counsel as appropriate.
- f. Emergency Action. Activation of Continuity of Operations Plans (COOPs) and Pandemic Evacuations are addressed in Article 32—Agency Emergency Actions.

Section 6. Union Notification. The Agency shall notify the Union President of all credible threats to employee health or safety as soon as possible after it learns of the threat. Whenever possible, the Agency shall also notify the Union President of the actions that will be taken in response to the threat.

Section 7. Emergency Contact Information. To facilitate notices in the event of workplace closure or relocation, the Agency shall collect employees' personal phone and email contact information in order that an emergency contact list may be maintained. Information gathered under this section will remain confidential and be used only as authorized in this Agreement.

Section 8. Emergency Assistance and First Aid.

- a. Emergency Assistance. If an employee must leave an Agency Facility because of illness or injury, the Agency shall, upon request, help the employee find transportation. If a co-worker provides assistance with prior supervisory approval the co-worker shall not be charged leave for the time involved.
- b. First Aid.
  - i. Volunteers. The Agency does not require its employees to provide first aid. Employees are volunteers if and when they choose to provide first aid within an agency facility.
  - ii. Supplies. The Agency will furnish First Aid Kits for each Agency office and provide information on available Automated External Defibrillator (AED) devices that are accessible to employees.
  - iii. Training. With prior approval of the supervisor, the Agency shall allow employees to use administrative leave to obtain training in first aid, CPR and the use of the AED.

## **Article 32. AGENCY EMERGENCY ACTIONS**

### Section 1. General.

Pursuant to 5 U.S.C. § 7106(a) the Agency has the power to take whatever actions may be necessary to carry out the Agency's mission during emergencies. The Agency may invoke various emergency authorities including but not limited to Continuity of Operations Plans (COOP) and/or evacuating employees from one or more Agency Facilities. These authorities may include paying employees under 5 C.F.R. Part 550, Subpart D, "Payments During Evacuation."

### Section 2. Notice.

The Agency may invoke emergency authorities to insure employee safety and accomplishment of the Agency's mission. As soon as practicable, the Agency will provide notice to the Union when it activates or invokes emergency authorities. Upon receiving the Agency's notice, the Union may request Impact and Implementation Bargaining. Any request for Impact and Implementation Bargaining will be addressed in accordance with Article 12—Mid-Term and Impact and Implementation Bargaining.

### Section 3. Post-Emergency Actions.

- a. Employee Assistance Program (EAP). The Agency shall take steps to assure the availability of the EAP after an emergency event and provide contact information to employees.
- b. Resumption of Normal Operations. As soon as practicable, when emergency operations are to end and normal operations are to resume, the Agency will provide notice to the Union. Upon receiving the Agency's notice, the Union may request Impact and Implementation Bargaining. Any request for Impact and Implementation Bargaining will be addressed in accordance with Article 12—Mid-Term and Impact and Implementation Bargaining.

## **Article 33. FURLOUGHS**

### Section 1. General Provisions.

- a. Pursuant to 5 U.S.C. § 7106(a), the Agency is authorized to determine the number of its employees and to layoff or furlough employees. The Agency shall implement furloughs in accordance with the law and directives and guidelines issued by the Office of Management and Budget and the Office of Personnel Management at the time of the furlough. The Agency will publish such directives and guidelines on the Employee Information Page established under Article 17—Provision of Information and Employee Information Page. both in advance of and during any furlough.
- b. Upon receiving notice of a potential furlough, the Agency shall notify the Union of the following:
  - i. Whether the furlough is due to a lapse in appropriations or is necessitated by Agency efforts to conserve budgetary resources, or any other cause;
    - A. One week prior to the expiration of appropriations bills, regardless of whether the enactment of appropriations appears imminent, the Agency will to the extent practicable communicate with employees regarding the possibility of furlough;
    - B. In cases of furloughs due to Agency efforts to conserve resources, notice will be at least 30 days in advance; and
    - C. Advance written notice and opportunity to answer are not required for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities in accordance with 5 C.F.R. § 752.404(d)(2).
  - ii. The expected beginning date of the furlough; and
  - iii. The expected duration of the furlough, if known.
- c. For every furlough, the Agency will compile a list of excepted employees (that is, those employees not subject to the furlough). When the list is finalized, the Agency will provide the Union President with a copy at or about the same time it provides the information to the excepted employees. To the extent the Agency is able to ascertain employees, including those outside the Bargaining Unit, that are likely to be repeatedly excepted from furlough, the Agency will maintain a list of such employees and notify them and supply the Union with a copy of the list.
- d. Unless contrary to law, leave status will be handled as follows:
  - i. Annual leave, sick leave, military leave, credit hours, and compensatory time shall be suspended during the term of the furlough. All properly scheduled and approved

leave that falls outside the furlough remains in effect. For example, if a furlough ends during a period in which an employee had approved use of annual leave, the employee is not required to resume duties until the termination of the scheduled annual leave.

- ii. Employees on approved leave without pay (LWOP) shall remain on LWOP for the approved duration of the leave. Employees on Continuation of Pay (COP) status shall remain on COP status to the extent COP may be paid during the furlough in accordance with law and the period of COP previously awarded remains unexhausted during the furlough.
- iii. Employees on LWOP under the Family Medical Leave Act (FMLA) during the furlough will continue to be charged LWOP and the time will count towards the employee's entitlement to family medical leave, as required by applicable law. However, employees on FMLA but in a pay status shall be placed on furlough instead, and the furlough time will not reduce the employee's entitlement to family medical leave.
- e. The Agency may adjust Performance Plans (as defined in Article 40—Evaluation of Employee Performance) to account for the length of a furlough.
- f. The running of any time period within which the Agency or Union may or must act pursuant to the terms of this Agreement shall be suspended for the duration of a furlough.
- g. Employees may accept outside employment while on furlough, provided that the outside employment does not pose a conflict of interest with their official duties, and they otherwise comply with all ethics and other applicable laws and regulations.

## Section 2. Agency Initiated Furloughs to Conserve Budget Resources.

- a. The Agency will make all reasonable efforts to address a budget shortfall without resort to furloughs. If the Agency determines to furlough employees as a means of saving or reducing expenditures, the Agency shall:
  - i. Solicit volunteers to work reduced hours in conjunction with the use of LWOP. In so doing the Agency will inform employees and the Union of the approximate total number of furlough days required to address the budget shortfall, so that employees may be encouraged to work reduced hours and take LWOP to the extent they desire to so address the budget shortfall and can plan for the disruption to their work and budgets.
  - ii. Allow affected employees to choose which workdays shall serve as their furlough days subject to their supervisor's approval in accordance with the Agency's leave request procedures as set forth in Article 49—Leave.
  - iii. The Agency may deny an employee's request to reduce work hours and take

LWOP and, upon request by the employee, will state the reason for the denial.

- b. If an insufficient number of employees volunteer for LWOP or other cost-saving measures and the Agency must furlough employees, the Agency shall furlough non-excepted employees by reverse seniority, where the least senior employees are the first employees furloughed, unless business and operational needs of the Agency (including the right to determine the qualifications needed for work assignments and which employees possess those qualifications) require exceptions to this procedure. In determining an employee's seniority, the Agency shall use an employee's Service Computation Date. If the Agency furloughs employees other than in reverse seniority order, upon request it will provide a written explanation to the Union President of the factors that warranted the exceptions to the reverse seniority procedure.

### Section 3. Furloughs Due to Lapses in Appropriations.

- a. Within a reasonable time period after the Agency is aware of the possibility of a furlough due to a lapse in appropriations, the Agency shall provide non-excepted employees with information available to the Agency concerning the potential furlough. Consistent with the guidance in OMB Circular A-11 section 124, the Agency will distribute instructions to its employees concerning potential shutdown activities and employee conduct during the furlough. In compliance with law, the instructions will specifically inform employees of their obligations to refrain from government work and from the use of all government equipment during the furlough. These instructions shall also be published on the Employee Information Page
- b. Unless the Agency directs them to do otherwise, non-excepted employees shall report to work at the beginning of the first regularly scheduled business day during the furlough due to a lapse in appropriations for the lesser of either a period of four hours, or as long as is required for them to complete the tasks necessary to implement the suspension of normal Agency business operations in an orderly manner.
- c. During the period of a furlough due to lapsed appropriations, non-excepted employees shall be regarded as in furlough status during their normal work schedule. Non-excepted employees shall refrain from all government work and from using government equipment. To the extent it is necessary to monitor for an end of the furlough, non-excepted employees shall do so through monitoring local or national media without using government equipment.
- d. The Agency shall keep non-excepted employees apprised of the status of the furlough through employees' personal electronic mail and telephone contact information collected pursuant to Section 7 of Article 31—Workplace Security and Workplace Closures. During a lapsed appropriation, employees shall accept an Agency supervisor's phone call or other means of communication for purposes of potentially summoning the employee to perform work required during the furlough.



- e. If it becomes necessary to summon non-excepted employees back to work during a furlough due to lapsed appropriations, the Agency will provide the employees as much warning as possible under the circumstances. To the extent reasonably practicable given the circumstances, the Agency should solicit volunteers if the work assigned could be capably accomplished equally well by more than one particular Agency employee. Upon request of a non-excepted employee summoned to work during a furlough for lapsed appropriations, the Agency will provide the employee with a written statement of the basis for the call to work. Immediately upon accomplishment of the assigned tasks, the employees will return to furlough status. If non-emergency work is assigned during a furlough, a written explanation of the reasons for the assignment will be provided to the Union President upon request after the conclusion of the furlough.
- f. Employees will be paid for the furlough period in accordance with applicable law.

#### Section 4. Post-Furlough Activities

- a. The Agency will inform employees of the resumption of normal Agency operations through their personal electronic mail and telephone contact information collected pursuant to Section 7 of Article 31—Workplace Security and Workplace Closures.
- b. Supervisors should liberally grant requests for telework, annual leave, sick leave, or leave without pay, as appropriate, if employees need additional time to resume their duties after a restoration of appropriations. The Agency may also grant limited amounts of administrative leave to employees as appropriate.

**Article 34. FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)  
(A.K.A. "Federal Worker's Compensation")**

Section 1. Authority.

This Article addresses Federal Worker's Compensation that may be available pursuant to the Federal Employees' Compensation Act (FECA), 5 U.S.C. § 8101 *et seq.* and its implementing regulations promulgated by the United States Department of Labor (20 C.F.R. Part 10) applicable at the time of the claim ("Applicable Law"). In the event of a conflict between any provision of this Article and Applicable Law, Applicable Law shall control.

Section 2. Workplace Illness/Injury.

When employees or their representatives report a work-related illness or that injury has occurred in the performance of official duties to their supervisor, the Agency shall promptly advise the employee of their right to file a claim for Federal Employees' Compensation Act benefits, which claim may request payment of medical expenses, including treatment from a medical provider of their choice. The Agency shall promptly advise employees of their right to request Continuation of Pay (COP) and/or compensation benefits that can be used in lieu of sick or annual leave.

Section 3. Information and Forms.

- a. Information. Upon notification of a workplace injury or illness, the Agency shall provide the employee who was injured or is ill with the necessary information and forms to file a Worker's Compensation Claim with the Office of Workers Compensation Programs, Department of Labor (OWCP). The Agency shall give appropriate assistance to the employee in filing a compensation claim.
- b. Forms. The injured or ill employee shall complete and submit a Form CA-1, Federal Employees Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation (or successor form), to their supervisor or a Form CA-2—Federal Employee Notice of Occupational Disease. Where the injured or ill employee is requesting COP, the form must be completed and submitted within thirty (30) calendar days of the injury or exposure. Employees should follow current applicable Department of Labor procedures when filing a FECA claim involving any infectious disease.
- c. Information Accessibility. The Agency shall make information about Worker's Compensation and forms available on its Employee Information Page.

Section 4. Continuation of Pay/Additional Compensation.

As of the date of this Agreement, COP is the continuation of an employee's regular pay without charge to sick leave for up to 45 calendar days when the employee is absent from work due to disability or medical treatment for a traumatic injury or illness. The Agency shall inform an employee who suffers a traumatic injury or illness of the right to elect COP for absences caused

by the traumatic injury as well as advise of their responsibility to submit medical evidence of disability. Additional compensation for injury, illness, disability, or death may be payable beyond COP in accordance with FECA and regulations promulgated thereunder.

Section 5. Restoration to Duty.

An employee who suffers a compensable illness or injury and fully recovers within one year after eligibility for compensation began shall be restored by the Agency to their former or an equivalent position in accordance with 5 U.S.C. § 8151 and 5 C.F.R. § 353.301. Employees who fully recover after one year, are medically unable to return to their former occupation, or are partially recovered after one year, are also entitled to certain job restoration rights in accordance with 5 U.S.C. § 8151 and 5 C.F.R. § 353.301.

Section 6. Union Assistance.

Employees have the right to Union representation and assistance at all stages of the FECA claim process.

## **Article 35. POSITION DESCRIPTIONS AND CLASSIFICATIONS**

### **Section 1. Position Descriptions.**

The Agency shall ensure that every employee has a position description that accurately reflects the employee's title, series, grade, pay plan, and the major duties performed by the employee and is properly classified under position classification standards. The Agency will make available to every employee a copy of their position description. The Agency will maintain a complete and up-to-date set of position descriptions of all classified positions in the Bargaining Unit and make that library available on the Employee Information Page established under Article 17—Provision of Information and Employee Information Page.

### **Section 2. Review of Position Descriptions.**

The Agency may review the accuracy of a position description at any time. Upon request by the employee, the employee and the supervisor shall review the employee's position description. Employees who believe that they are performing duties outside the scope of their position description, or that their position description is otherwise inaccurate, may submit to their supervisors a written request that their position descriptions be reviewed. The written request should explain why the employee believes the position description is inaccurate or specify the duties the employee is performing that are not reflected in the position description. After reviewing the employee's job duties and position description, the Agency shall issue a written decision within 30 days of the employee's request, stating whether the Agency believes that the position description is accurate. If the Agency determines that the employee's position description is not accurate, it shall revise the position description in accordance with Sections 4 and 5(b) of this Article.

An employee may designate the Union as the employee's representative in a position description review and appeal. If the Agency elects to permanently reassign the employee's work as a result of a position description review, the Agency shall notify the Union President and bargain to the extent required.

### **Section 3. Review of Position Classifications.**

The Agency may initiate a classification review of a position at any time. Employees who believe that their positions are improperly classified may request the Agency to initiate a classification review. In either case, when the Agency initiates a classification review of a position the Agency will submit the documentation for a classification review to OHRM and request a written decision on the position classification. The Agency will request that OHRM provide a decision on the position classification within 60 days. If OHRM is unable to provide a decision on the position classification within 60 days, the employee may withdraw the request for review of the position classification by OHRM and submit a request for a classification review directly to OPM. The employee may appeal the Agency/OHRM decision to the Director of OHRM in accordance with DR 4020-511-001. If the employee is not satisfied with that decision, they may appeal it to OPM in accordance with its procedures regarding classification appeals at 5 C.F.R. 511.601 *et seq.*

Alternatively, an employee may forego an agency and/or Departmental process and file an appeal directly with OPM in accordance with OPM classification and appeal procedures. However, all OPM decisions are final and there is no further appeal process. Before raising a classification issue directly with OPM, the employee is encouraged to use the Agency/OHRM classification review and appeal procedures described in this section.

An employee may designate the Union as the employee's representative in a classification review and appeal. If the Agency decides to change the classification of an employee's position as a result of a classification review, the Agency shall notify the Union President and bargain to the extent required.

#### Section 4. Adjustments in Classifications.

If Agency review of an employee's position description or position classification shows that the position should be classified at a higher grade level, and if otherwise qualified, the Agency shall grant the employee a noncompetitive temporary or permanent promotion or eliminate the grade-controlling duties of the position. If the promotion is granted, it will become effective the first full pay period after the position has been classified at a higher grade level. If the Agency eliminates the grade-controlling duties of the position, it shall inform the employee of the employee's rights under the applicable review procedure. The employee's rights to back pay and interest will be determined under the Back Pay Act, 5 U.S.C. § 5596, and applicable regulations. If Agency review of an employee's position description or position classification shows that the position should be classified at a lower grade level, the Agency shall effect an appropriate reduction in the employee's grade and pay or, if appropriate, shall assign the employee additional duties in order to avoid a reduction in grade and pay.

#### Section 5. New and Revised Position Descriptions.

- a. New Position Descriptions. When developing a new position description, the Agency should involve any affected existing employee, with the understanding that the Agency has the ultimate responsibility for defining the position. When a new position description has been approved and classified for an employee, the supervisor and the employee shall review the position description together. If the employee is dissatisfied by the position description, the employee may seek review under Section 2 of this Article. If the employee is dissatisfied by the position classification, the employee may seek review under Section 3 of this Article.
- b. Revised Position Descriptions. When an employee is assigned additional major duties that are not reflected in the current position description, the Agency shall revise the position description accordingly. When revising a position description, the Agency should involve any affected existing employee, with the understanding that the Agency has the ultimate responsibility for defining the position. When the revised position description has been approved and classified, the supervisor and the employee shall review the position description together. If the employee is dissatisfied by the position description, the employee may seek review under Section 2 of this Article. If the

employee is dissatisfied by the position classification, the employee may seek review under Section 3 of this Article.

Section 6. Rights of the Union.

- a. The Agency shall provide the Union President with a copy of any new or revised position description within a reasonable time prior to implementation. The Union may make recommendations to the Agency concerning the accuracy of any position description or classification. The Agency shall review the recommendations and provide the Union President with a written response within 30 days of receipt of the recommendations.
- b. If the Agency receives proposed position descriptions or classification standards for employee positions from the Department or the Office of Personnel Management, it shall provide the Union President with copies of the proposed position descriptions and classification standards and seek the Union's comments within a reasonable time prior to implementation.
- c. An employee may request Union representation at any time during a position description or position classification review.

Section 7. Civil Service Protection for Employees in Bargaining Unit.

The Agency and the Union agree that, as of the date of this Agreement, all members of the Bargaining Unit are employees covered by the Merit System Principles of the Civil Service or by Schedule A of the excepted service; have been hired by a neutral, merit-based selection process; and are not subject to employment-at-will. As of the date of this Agreement, all members of the Bargaining Unit are entitled to the protections of the Civil Service Reform Act of 1978 and are not in confidential policy determining, policy-making, or policy-advocating positions that are subject to change as a result of Presidential transition.

## **Article 36.    HIRING AND VACANCY ANNOUNCEMENTS**

### Section 1. General.

- a. The Agency will fill positions in accordance with applicable law and OPM regulations. The Agency retains the right to utilize flexible hiring authorities to hire qualified candidates but in any instance in which the Agency decides to fill a Bargaining Unit position without publishing a vacancy announcement, the Agency will notify the Union President and provide an explanation of the circumstances and reasons for the decision. Otherwise, the Agency shall post vacancy announcements for all available vacant positions not filled by voluntary reassignment under Article 39—Voluntary Relocations and Reassignments.
- b. The Agency will distribute copies of vacancy announcements to all employees by electronic mail.
- c. Vacancy announcements shall be posted for at least 14 days before the closing date.
- d. The Agency will share the vacancy or newly created position announcement with the Union President no less than two days prior to the Agency posting the announcement.
- e. If the Agency decides to interview any best qualified competitive service applicant for an available vacant competitive service position, all best qualified applicants shall be interviewed.
- f. The Agency shall notify all employees of selections made to fill vacant or newly created positions no later than 14 days after the employee reports for duty in the vacant or new position.

### Section 2. Contents of Vacancy Announcements.

Every vacancy announcement shall clearly specify the qualifications and selection criteria for the position, and the official to whom the application should be sent. Additionally, every vacancy announcement will note whether the position is eligible for telework or remote work (if applicable), and whether the position is part of the Bargaining Unit. For Bargaining Unit positions, the announcement will note that OGC employees are represented by AFGE Local 1106.

### Section 3. Existing Employees.

All employees shall have a fair and equitable opportunity for consideration for any available vacant and newly created positions. Whenever it intends to fill an available vacant or newly created position, the Agency first shall give full consideration to qualified employees who apply for a lateral transfer to the position pursuant to Article 39—Voluntary Relocations and Reassignments. In these circumstances, the Agency is not obligated to pay relocation expenses.

Section 4. Non-Senior Executive Service and Senior Executive Service Management Positions.

The Agency shall allow Bargaining Unit employees to compete for all supervisory positions within the Agency at the GS-15 level and below not filled by reassignment, though management maintains the reserved right to make selections from any appropriate source. The Agency may fill Senior Executive Service positions without competition.



## **Article 37. PERSONNEL RECORDS**

### Section 1. Official Personnel Records.

Official personnel records of employees are electronically maintained by the Department and may be accessed by employees or their designated representatives by contacting the Director of Administration and Resource Management for the Agency. Official Personnel Folders shall be retained in accordance with law and regulation.

### Section 2. Supervisor's Worksite Files.

Supervisors may maintain paper or electronic worksite files regarding employees, including home addresses, telephone numbers, and other emergency contact information; time and attendance records; performance appraisals and related materials; training, award, and promotion histories; and other matters pertinent to the performance of their personnel management responsibilities. Such records maintained in a Supervisor's Worksite File shall be made available to authorized persons for official purposes only, as allowed by law and regulation, and shall not be disclosed to any unauthorized person. Employees, and their designated representatives who have been authorized in writing, may have access to and may make copies of their records, in connection with a performance appraisal, or disciplinary or adverse action, or any purpose provided for by law and regulation. At the time of an employee's annual performance evaluation, the employee and the supervisor may review the Supervisor's Worksite File. Records, including supervisory counseling records, shall be purged in accordance with law, regulation, and this Agreement. Employees shall be allowed to initial and date supervisory counseling records before they are placed in the Supervisor's Worksite Files.

### Section 3. Privacy.

A record or file pertaining to an employee shall be made available only as provided for by law and regulation, including the Privacy Act of 1974, 5 U.S.C. § 552a.

## **Article 38.    DETAILS AND TEMPORARY PROMOTIONS**

### Section 1. Scope.

Details have the potential to enhance the experience, skill, and knowledge of employees in a manner that benefits both the professional growth of the employees and the operations of the Agency when the employees return to their original positions. A detail may be proposed by the employee, the Agency, or other entities in accordance with applicable law including 5 U.S.C. § 3341 *et seq.* A proposed detail may specify the employee to be detailed or the detail may be open to any employee who meets the requirements of the detail. Details may be to another office of the Agency or of the Department, to another agency of the Federal Government, to state or local governments, or to other organizations as provided by law and regulation.

### Section 2. Definition.

Details are temporary assignments of employees to different positions after which the employees shall return to their regular duties, without any reduction in the employee's pre-detail grade and step. Time spent on a detail shall count towards time-in-grade requirements, career ladder promotions, and within-grade increases pursuant to law and regulation. The employee and the receiving agency will be informed in writing the extent to which the detailed employee may be required to continue existing work assignments while on a full-time detail. Employees on a part-time detail will normally have their regular workload reduced proportionately.

### Section 3. Details Proposed by Employee.

A detail may be proposed by any employee. The employee shall submit a written proposal to the Agency that shall describe the entity to which the employee would be assigned; the position and duties to be filled; the duration of the detail; the proposed receiving entity's willingness to have the employee on detail; the benefits of the detail to the employee and the Agency; and identification of the entity that will pay the employee's salary and any per diem or transportation costs. Within a reasonable period of time, not to exceed 30 days from receipt of the proposal, the Agency shall issue a written decision on the proposal that either consents, declines to consent, or consents with modifications to the proposal. The decision shall be based on an evaluation of the benefits to the employee and the Agency; the effect of the detail upon the operations of the office and the workload of other employees; whether the receiving entity is willing to accept the detail and its costs; the number of details previously undertaken by the employee; the effect on current staffing levels; and the proposed cost to the Agency. The Agency is under no obligation to incur or pay any cost of the detail. The Agency may deny the request for a detail based on its evaluation of the factors listed above. At the request of the employee, the Agency will provide its decision and reasoning in writing. In the case of a denial, the Agency will also attempt to identify suitable opportunities for career development if any are available.

### Section 4. Details Proposed by Organizations Other Than the Agency.

If any entity specified in Section 1 other than the Agency requests that a particular employee be detailed to the entity, the Agency may comply with the request without considering other

candidates. If the entity does not specify a particular employee, the Agency will follow the competitive process described in Section 5 for Agency-initiated details. If any entity specified in Section 1 other than the Agency requests to detail an employee to the Agency, the Agency shall first subject that detail to the process described in Section 5 for Agency-initiated details.

#### Section 5. Details Initiated by the Agency.

Selection for details shall be conducted in a fair and equitable manner which typically requires that details be open to all qualified employees as described herein. In the atypical circumstance in which the Agency desires to select a willing employee for a detail without following the process described herein, the Agency will provide the Union with a written explanation of the exigencies that require the process to be set aside, or the compelling reasons justifying an alteration to the process.

When the Agency determines it is desirable to open a detail position for consideration, it shall provide all employees with:

- a. a description of the position and duties at least 30 days prior to the commencement of the detail;
- b. the geographic and organizational location of the detail;
- c. the duration of the detail;
- d. the qualifications for the position and any other criteria that will be the basis for the Agency's selection;
- e. the specifications for the application process, including the identification of the person to whom the application must be sent;
- f. the deadline for the submission of applications by interested employees; and
- g. the name of the selecting official.

The deadline for submission of applications normally should be no less than 21 days. To the greatest extent possible, the Agency should consider all applicants for a detail, regardless of geographic location, and utilize TDY assignments or remote work assignments for applicants situated outside of the local commuting area, if applicable, for the position. In its discretion the Agency may choose more than one candidate to serve in rotation if it believes the detail would benefit multiple employees.

For good cause, the Agency may detail employees if it determines that their involuntary detail is necessary. These details shall generally extend no longer than the time required to address the matter that gave rise to the detail. Upon request, the Agency will provide the Union President an explanation of the business or operational needs that require details that extend beyond 30 days.

## Section 6. Temporary Promotions.

Details that involve the performance of higher-graded work assignments are temporary promotions. Special provisions apply to these details as follows:

- a. Qualified employees detailed to a higher-graded position for a period of more than 30 days shall be temporarily promoted to that position. An employee shall be compensated at the appropriate rate for the higher-graded position commencing on the first day of the detail.
- b. The Agency is required to temporarily promote a qualified employee if the Agency has directed or permitted the employee to assume the duties of a higher-graded position. If the Agency knew or should have known that an employee is performing the duties of the higher-graded position, it has permitted the employee to perform those duties.
- c. The requirements of subsection (a) shall not be circumvented by rotating employees into a higher-graded position for 30 days or less in order to avoid compensating the employee at the appropriate rate for the higher-graded position.
- d. Temporary promotions of 120 days or longer for employees in the competitive service shall be filled through competitive procedures as established by law and this Agreement. Other temporary promotions will normally be filled through competitive procedures. If the Agency chooses to fill a temporary promotion non-competitively, it will provide the Union a written explanation of the business or operational needs justifying forgoing the competitive process.
- e. To provide experience to more than one applicant, the Agency may rotate temporary promotions of more than 30 days among eligible and qualified applicants.
- f. Temporary promotions for more than 30 days shall be properly documented in the employee's Official Personnel Folder. An employee who receives a temporary promotion for more than 30 days shall be provided with a copy of the position description and the performance plan.

## Section 7. Impact and Implementation.

Upon selection of an employee for a detail of more than 30 days, the Agency shall notify the employee, other applicants, and the Union at least 15 days before the commencement of the detail. The Union may consult with the Agency regarding the potential adverse effect of the detail on other employees, and any measures necessary to mitigate that effect, taking into account the costs of these measures compared to the benefits to be achieved by the detail.

## **Article 39. VOLUNTARY RELOCATIONS AND REASSIGNMENTS**

### Section 1. General.

The Parties agree that it enhances the Agency's mission capabilities to retain experienced employees and, consistent with the Agency's mission, to provide employees with the opportunity to relocate as necessary throughout their careers with the Agency, which is a nationwide employer. Further, some employees may desire for reasons of professional growth or personal satisfaction to change the focus of their professional portfolios over the course of their careers. In order to address these objectives, the Agency will, to the extent provided herein, offer voluntary relocations and voluntary reassignments to its employees.

### Section 2. Retained Management Rights.

Nothing in this Article shall be construed as an impingement on the Agency's management rights, including the right to assign work, direct employees, or the Agency's right to determine where its work will be performed, including to what extent it will maintain offices in existence, or with certain staffing levels or structure, or in certain locations. All relocations or reassignments are discretionary actions by the Agency and are subject to the Agency's determinations as to how it shall allocate its budget. The Agency agrees to comply with the processes specified in this Article but cannot guarantee that any individual request for relocation or reassignment will be granted.

### Section 3. Voluntary Relocations.

Employees may request in writing to relocate from one Agency office to another, with no change in the employee's work assignments or supervisory chain. If the Agency concludes that the employee's work may be performed at least equally well from the alternate Agency office location, and that the alternate Agency office location has adequate facilities, administrative support, and any other necessary resources including budget resources to accommodate the employee, and that the relocation would not otherwise have an adverse effect on the accomplishment of the Agency's mission, the Agency will allow the relocation. The Agency is not obligated to pay relocation expenses. If the Agency concludes that the employee's work cannot be performed at least equally well from the requested alternate location, or that adequate facilities, administrative support, and other necessary resources including budget resources are not available at the requested location to support the requested relocation, or that allowing the relocation would have an adverse effect on the accomplishment of the Agency's mission, the Agency will so inform the employee in writing, providing the reason for the denial of the voluntary relocation request.

### Section 4. Voluntary Reassignments.

Employees may request voluntary reassignments from one division or office to another within the Agency by providing that request confidentially to the Agency's Director of Administration and Resource Management or designee. The Agency shall maintain a confidential list of these employees and their preferences for reassignment. Upon request, the Agency shall provide the

Union President with a copy of the confidential list and any changes or updates reported to it. Whenever a Division, Regional or Field Office of the Agency is authorized to fill an available vacant position, or creates a new position, prior to advertising the position, the Director of Administration and Resource Management or designee shall provide the Division, Regional, or Field Office head with the names of employees who have expressed an interest in reassignment to such a position. The Agency may, at its discretion, give those employees full consideration in filling the available vacant or newly created position. If the Agency decides, after full consideration of reassignment requests, to advertise the position, all those requesting reassignment to such a position will be informed and may apply and compete fully for the position. The Agency is not obligated to pay relocation expenses for a voluntary reassignment.

## **Article 40. EVALUATION OF EMPLOYEE PERFORMANCE**

### Section 1. General.

The parties agree to follow the USDA Performance Management Program set forth in DR 4040-430 Employee Performance and Awards as of the date of this Agreement. To the extent the terms of the DR conflict with the terms of this Article, the DR's terms shall control. This Article describes some of the content from the DR that the parties believe will be helpful to both the Union and the Agency in implementation of the program.

### Section 2. Definitions.

- a. Appraisal. The formal process under which performance is reviewed and evaluated against performance elements and standards.
- b. Appraisal Period. The period of time covered by a specific performance plan, during which performance will be evaluated against elements and standards, and for which a Rating of Record will be prepared.
- c. Element. A work assignment or responsibility that is used to plan, monitor, and appraise employee performance.
- d. Element Rating. The level of performance assigned to a specific performance Element, as measured by a comparison of accomplishments to the performance standards established for that element. The two possible element ratings are "Fully Successful" and "Unacceptable" or "Does Not Meet Fully Successful."
- e. Performance Plan. The written document, or approved electronic alternative, that communicates fully successful performance to the employee for the position. A plan must include all Elements, and their respective performance standards and measures on which the employee will be evaluated. Employees are normally presented with their Performance Plan for the coming fiscal year following the conversation at which they are assigned their Rating of Record. New employees are presented with their Performance Plan within 30 days of their start date.
- f. Performance Standard. The performance thresholds, requirements, and expectations an employee must meet for an element to be appraised at a specific level of performance. Performance Standards are properly written as outcomes, rather than duties, and must include credible performance measures.
- g. Quarterly Conversation. A conversation at which the Rating Official communicates with the employee about the employee's performance, for the purpose of supporting the attainment of organizational and individual goals and to promptly identify and address any performance concerns.

- h. Rating of Record. The formal evaluation and summary rating of an employee's performance as compared to the Elements and Performance Standards for performance over the entire appraisal period.
- i. Rating Official. A representative of management, generally the employee's immediate supervisor, is ordinarily their Rating Official for purposes of producing the Rating of Record. In circumstances when the employee's supervisor has supervised the employee for less than 90 days prior to the time the Rating of Record is produced, the employee's Rating Official shall be a manager in the employee's supervisory chain of command who has held that position for longer than 90 days.

### Section 3. Performance Plans.

- a. All Elements are designated as critical.
- b. Performance Elements shall accurately reflect the responsibilities and duties assigned to and expected to be performed by the employee, consistent with an accurate and current position description. Generic standards covering similar positions with similar responsibilities must ensure expectations reflect the respective employee's actual duties and responsibilities and be clearly and specifically communicated.
- c. Performance Plans may be updated as necessary throughout the performance year. Whenever the Agency proposes to change an employee's Elements, it shall give the employee 60 days written notice to provide input regarding the proposed change. Upon agreement between the employee and the supervisor, the change may be implemented before the 60-day period elapses.
- d. If team Elements are used, employees shall be rated for their individual participation in and contributions to team operations, not necessarily the team's collective output, work product, or results.
- e. Performance Standards describe results, outcomes, goals, and expected accomplishments, rather than lists of duties and responsibilities. Standards are the performance thresholds, requirements, and expectations an employee must meet for an Element to be appraised at the Fully Successful level of performance. Performance measures are the defined indicators within the standards used to determine how well the employee produced or provided products or services. They are criteria that are observable and/or demonstrable, and may gauge quality, quantity, timeliness, cost effectiveness, and/or manner of performance.

### Section 4. Rating of Record.

- a. USDA's Performance Management Program provides for Ratings of Record that differentiate performance as either Fully Successful or Unacceptable. At the end of each appraisal period, an employee shall receive a Rating of Record of Fully Successful if all



Elements are rated Fully Successful. If any element is not rated Fully Successful, the Rating of Record is Unacceptable.

- b. The Agency shall ensure that Rating Officials are aware of the proper application and operation of the Performance Management Program to ensure that rating policies are applied uniformly throughout the Agency. Rating Officials shall assess the performance of employees throughout the entire appraisal period according to the Elements, Performance Standards, and measures in the Performance Plan. Each performance element must be evaluated separately, based on actual performance, accomplishments, contributions, and results. There is no default Element rating. The expectations articulated at the Fully Successful level of an Element's standards and measures must be entirely met before assigning that Element rating. An Element rating may not be lowered because of work that, through no preceding fault of the employee, was not completed while an employee was on pre-approved leave, including sick leave, because of work that could not be completed due to an abbreviated performance year, or for not meeting a specific standard due solely to factors outside the employee's control.
- c. Rating Officials shall discuss Ratings of Record with employees at the Quarterly Conversation at which they are delivered. The combination of discussing the Rating of Record and the communication of a new Performance Plan may be considered one Quarterly Conversation.
- d. An employee who wishes to challenge or appeal a Rating of Record may do so by following the grievance procedures set forth in Article 14—Grievances and Arbitration.

Section 5. Quarterly Conversations.

- a. Rating Officials must have a specific conversation with each employee to discuss performance no less than once each quarter. The purpose of the conversations is to facilitate regular and ongoing communication between the Rating Official and the employee that supports the attainment of organizational and individual goals and promptly identifies and addresses any performance concerns.
- b. Topics to be covered during the Quarterly Conversations include:
  - i. assessing progress toward the standards and measures in the Performance Plan;
  - ii. clarifying existing expectations, as necessary;
  - iii. discussing potential concerns about meeting expectations or any obstacles hindering the employee's capacity to meet the expectations, and how they will be addressed;
  - iv. documenting new assignments, potentially reprioritizing or eliminating other assignments, and revising the Performance Plan as necessary;
  - v. identifying the need for training and/or development, if necessary; and

- vi. providing feedback on the quality of performance in that quarter.
- c. Rating Officials shall assist employees in efforts to maximize job performance in accordance with their Performance Plans.

Section 6. Monitoring Performance.

- a. Rating Officials are responsible for providing regular, recurring, and timely performance feedback to employees, including monitoring progress toward quarterly and annual goals. Rating Officials are responsible for identifying and documenting potential issues with any employees not meeting their performance expectations and addressing such issues with the employee as soon as possible after the supervisor becomes aware of such issues.
- b. Employees are responsible for:
  - i. carrying out the performance expectations defined in their Performance Plans, including meeting applicable milestones;
  - ii. seeking clarification on the Performance Standards and measures, as needed;
  - iii. identifying work problems or other obstacles which may hinder the accomplishment of performance expectations, and working with Rating Officials to resolve them;
  - iv. seeking performance feedback from their Rating Official and, as appropriate, from internal and external customers; and
  - v. participating in the Quarterly Conversations with their Rating Official.

Section 7. Demonstration Opportunity (formerly Performance Improvement Plan or “PIP.”).

- a. A Demonstration Opportunity (DO) shall not be instituted for an employee unless the employee’s performance falls below the standards for Fully Successful on any Element. Before the Agency places an employee on a DO, the Agency shall notify the employee in writing of the Element(s) for which performance is below the Fully Successful level and inform the employee that unless they demonstrate performance in the Element(s) identified in the notice at the Fully Successful level, they may be reduced in grade or removed.
- b. After notifying an employee of its intention to place an employee on a DO, the Agency shall develop a DO plan for the employee. During this process, the Agency shall solicit feedback and suggestions for the DO plan from the affected employee.
- c. After a DO plan is developed, the Agency shall meet with the employee to discuss the contents of the DO. The employee may request Union representation at this meeting. The DO must:

- i. clearly identify the performance the employee is required to demonstrate for the Element(s) that are not currently being performed at the Fully Successful level;
  - ii. not describe the performance in a manner that defines what would have to be done to fail to demonstrate acceptable performance;
  - iii. be achievable within the duration of the DO;
  - iv. be commensurate with the duties and responsibilities of the employee's position and grade level;
  - v. allow for a margin of error during the DO;
  - vi. describe how performance will be measured and assessed; and
  - vii. describe any assistance the Agency will provide the employee to bring performance up to the Fully Successful level.
- d. The Agency must closely monitor the employee's performance during the DO. The employee must be informed at least once a week during the DO that they are or are not meeting expectations.
- e. The length of the DO should be determined by the complexity of the work, the duration of the segment of work which would provide adequate evidence that performance at the Fully Successful level is or is not demonstrated, and whether the employee has previously demonstrated acceptable performance as defined at the Fully Successful level of the current Performance Plan. A DO of 30 calendar days is normally sufficient. As described in DR 4040-430, the Agency may utilize DOs of longer than 30 days when the complexity of the work, or the duration of the segment of work which would provide adequate evidence that performance at the Fully Successful level is demonstrated, would reasonably warrant a longer opportunity to demonstrate success.
- f. At the Union President's request, the Parties shall discuss the potential adverse impact of a DO on other employees, and any measures necessary to mitigate that impact.
- g. At the conclusion of the DO, the Rating Official must immediately determine whether the employee has demonstrated acceptable performance as defined in the DO plan. The employee must be notified in writing within seven days about the determination.
- h. If the employee failed to demonstrate performance at the Fully Successful level, as identified in the DO Notice and applicable Performance Plan, the employee may be reassigned, reduced in grade, or removed. These adverse actions are subject to law, regulation, and this Agreement.

- i. If an employee has consistently demonstrated performance at the Fully Successful level for one year from the beginning of a DO and the employee's performance again falls below the Fully Successful level in any Element, the Rating Official must afford the employee an additional DO before determining whether to propose a performance-based adverse action.

## **Article 41. AWARDS**

### Section 1. General.

The granting of awards is discretionary, not an employee entitlement. Awards shall be made in accordance with Departmental and OPM regulations in effect when the award is made. As of the date of this Agreement, the Agency will implement awards in accord with Departmental Regulation 4040-430.

### Section 2. Types of Awards.

The following is a non-exclusive list of the types of potential incentives and recognition:

- a. Cash Awards;
- b. Time-Off Awards;
- c. Non-Monetary Awards; and
- d. Quality Step Increases.

### Section 3. Cash Awards.

If the Agency in its discretion determines that funding is available for cash awards and that it will allocate funding to such awards, the funding shall be distributed equitably among the Agency's organizational components in a manner which ensures that all employees have an equal opportunity for recognition.

### Section 4. Time-Off Awards.

The Agency may grant time-off awards to employees, which shall be made without charge to leave or loss of pay.

### Section 5. Non-Monetary Awards.

The Agency may recognize employee performance through honorary or informal recognition awards, including certificates of appreciation, letters of commendation, plaques, or similar items.

### Section 6. Quality Step Increases.

A quality step increase is an increase in the employee's rate of basic pay from one step or rate of the grade of the employee's position to the next higher step or rate within the grade. Quality step increases provide employees with incentives and recognition for the most exceptional levels of performance. The Agency may recognize the sustained exceptional performance of an employee

by granting a quality step increase. An employee who receives a quality step increase is ineligible for another performance award in that same rating year.

Section 7. Recommendations.

The Union may recommend to the Agency that it recognize an employee by the issuance of an award. Employees may recommend to the Agency that it recognize employees other than themselves by the issuance of an award. Decisions on all awards shall be made by the Agency in its discretion. The Agency is not obligated to agree with or otherwise act upon a Union or employee recommendation.

Section 8. Reporting of Awards.

At the end of each calendar year, the Agency shall provide the Union President with an annual report summarizing the funding allocated to the employee awards by division and office, and itemizing each award given throughout the year and amount paid, in the case of cash awards.

## **Article 42. DISCIPLINARY AND ADVERSE ACTIONS**

### Section 1. General.

- a. Supervisory responsibilities include early recognition and resolution of conduct problems that could lead to disciplinary action or could adversely affect the morale or working conditions of other employees. No employee shall be subject to disciplinary or adverse action except for such cases that promote the efficiency of the service.
- b. Disciplinary actions include reprimands and adverse actions imposed for disciplinary reasons. Adverse actions are suspensions, removals, or a reduction in pay or grade. Adverse actions may be disciplinary or non-disciplinary.
- c. Non-disciplinary adverse actions may include demotions based upon reclassification of positions, or unrequested loss of grade, or performance-based actions as a result of unsatisfactory work performance, including removal.
- d. If the Agency has grounds to take action under this Agreement against an employee because of disciplinary problems resulting from mental illness, alcohol or drug abuse, or some other personal or family problem, the Agency, after a consideration of the circumstances, shall generally hold the action in abeyance until the employee has been given reasonable time to follow the procedures in Article 28—Employee Assistance Program, provided the employee has first satisfied all applicable notice and other requirements under EO 12564, *Drug-Free Federal Workplace*. Upon request and within seven days, employees must provide the Agency with documentation from the EAP or other provider showing that they are participating in the appropriate rehabilitation program and must make reasonable progress toward improving their conduct. However, nothing in this Article restricts the Agency's ability to take appropriate emergency action to ensure the safety of employees under Article 31—Workplace Security and Workplace Closures.
- e. The Agency will not initiate disciplinary actions or adverse action for illegal drug or substance abuse when the employee:
  - i. Voluntarily identifies as a user of illegal drugs or has a substance abuse problem prior to being identified through the drug testing policy and program described in Article 29—Drug-Free Workplace Plan and Program or other means;
  - ii. Obtains counseling or rehabilitation through an EAP; and
  - iii. Thereafter refrains from using illegal drugs or substances.
- f. Any other personal extenuating circumstance will be considered in accordance with the *Douglas* Factors as described in Section 2 below.
- g. Furloughs are addressed in Article 33—Furloughs.

- h. This Article does not apply to the termination of probationary employees.

Section 2. Factors for Consideration (a/k/a Douglas Factors).

Per the decision in *Douglas et al. v. Veterans Administration et al.* (5 M.S.P.R. 280 (1981)), without purporting to be exhaustive, the following factors, given their appropriate weight, shall be considered in determining the appropriate response:

- a. the nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or inadvertent, malicious or for personal gain, or frequently repeated;
- b. the employee's grade level and type of employment, including fiduciary responsibilities, public contact, and prominence of the position;
- c. the employee's prior disciplinary record;
- d. the employee's prior work record, including length of service, job performance, dependability, and ability to get along with co-workers;
- e. the effect of the offense and any proposed penalty upon the employee's ability to perform at a satisfactory level, and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
- f. the consistency of the penalty with those imposed upon other employees for the same or similar offenses in the past;
- g. the consistency of the penalty with any applicable table of penalties;
- h. the notoriety of the offense or its impact upon the reputation of the Agency;
- i. the degree to which the employee had been notified of the rule or requirement, or had been warned about the conduct in question;
- j. the potential for the employee's rehabilitation;
- k. mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice, or provocation by others involved in the matter; and
- l. the adequacy and effectiveness of alternative sanctions to deter similar conduct in the future by the employee or others.



### Section 3. Letters of Reprimand.

Reprimands are disciplinary actions provided in writing and characterized by specific use of the term "reprimand." Letters of reprimand shall provide a description of the circumstances giving rise to the reprimand and an explanation of the possible consequences if the conduct continues. They shall be placed in the employee's Official Personnel Folder (OPF) and in the Supervisor's Worksite File.

The Agency shall provide the employee with a copy of the proposed letter of reprimand, which shall inform the employee of the right to respond and the right to Union or other representation. In accordance with Section 7 of this Article, the employee shall be provided copies of the materials relied upon in support of the proposed reprimand. The employee's Union representative, if any, shall be given copies of the documents provided to the employee. The employee shall be allowed up to seven days to respond orally or in writing to the proposed letter of reprimand. Upon receipt of the response, or expiration of the response time, whichever occurs first, the Agency shall determine whether to proceed with the reprimand. If the decision is to proceed, the Agency shall provide the employee with the final letter of reprimand and shall file it in the employee's OPF. The final letter of reprimand shall remain in the employee's OPF until the Agency deems that the behavior has been corrected, but no longer than two years from its effective date. A copy of the letter as well as the employee's written response, or a written summary of the employee's oral response, if any, will also be maintained in the Supervisor's Worksite File so long as the letter of reprimand remains in the employee's OPF. An employee may file a grievance regarding the final letter of reprimand pursuant to Article 14—Grievances and Arbitration.

### Section 4. Suspensions for 14 Days or Less.

When the Agency proposes the suspension of an employee for 14 days or less, the following procedures shall apply:

- a. The Agency shall provide the employee with not less than 14 days advance written notice specifying the reasons for the proposed suspension and providing any information the Agency relied on in reaching its to decision to propose the suspension, and informing the employee of the right to respond, the date by which the response is due, and the right to Union or other representation.
- b. The employee may respond orally or in writing, or both, within ten days of receipt of the advance written notice. If the employee responds in writing, a copy of any written response by the employee will be retained by the employee's supervisor in the Supervisor's Worksite File. If the employee responds orally, a written summary of the employee's response will be retained by the employee's supervisor in the Supervisor's Worksite File.
- c. Upon receipt of the response, or expiration of the response time, whichever occurs first, the Agency shall issue a final written decision to the employee. Any documents supporting the decision to suspend the employee shall be maintained in the Supervisor's Worksite File.

- d. If the decision is unfavorable to the employee, it shall include a statement of the employee's rights under Article 14—Grievances and Arbitration, and any applicable statutory rights.
- e. The Agency shall file the decision in the employee's OPF until the Agency deems that the behavior has been corrected, but no longer than four years from its effective date except for suspensions due to violations of civil rights, harassment, and safety in the workplace. Copies of the employee's response or a written summary of the employee's oral response to the notice of suspension, as well as any documents supporting the decision to suspend the employee, will be maintained in the Supervisor's Worksite File until the decision is removed from the employee's OPF. Nothing in this subsection affects the Agency's obligation under OPM rules to permanently maintain the SF-50 noting that a suspension was imposed on the employee in the employee's OPF.

Section 5. Suspensions for More Than 14 Days, Removals, or Reductions in Pay or Grade.

If the Agency proposes to take an adverse action against an employee other than a suspension of 14 days or less, whether for disciplinary reasons or for non-disciplinary reasons such as those described in Section 1(c) above, the following procedures shall apply:

- a. The Agency shall provide the employee with written notice at least 30 days prior to the proposed adverse action except when there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, in which case the written notice must be provided at least 7 days prior to the proposed adverse action;
- b. The notice shall state the reasons for the proposed adverse action and shall notify the employee of the right to respond and the right to Union or other representation;
- c. The employee may respond orally or in writing, or both, within 14 days from receipt of the proposed notice of adverse action, or within any longer period stated in the notice. The response may include affidavits and other documentary evidence in support of the response. If the employee responds in writing, a copy of any written response by the employee will be retained by the employee's supervisor in the Supervisor's Worksite File. If the employee responds orally, a written summary of the employee's response will be retained by the employee's supervisor in the Supervisor's Worksite File; and
- d. Upon receipt of the response, or expiration of the response period, whichever occurs first, the Agency shall issue a final written decision and place a copy in the employee's OPF. If the decision imposes an adverse action, the decision notice shall include a statement of the employee's rights under Article 14—Grievances and Arbitration and any applicable statutory rights, including the right to appeal the adverse action to the MSPB. Any documents or other materials supporting the adverse action will be retained by the employee's supervisor in the Supervisor's Worksite File.

Section 6. Response Deadlines.

The employee's response deadlines described in this Article may be extended by the Agency in writing based upon a showing of good cause.

Section 7. Materials for Review.

Upon request by the employee or the employee's representative, the Agency shall, in accordance with applicable law, provide all materials relied upon to support a proposed disciplinary action or adverse action.

Section 8. Response.

- a. Any response to a disciplinary action may proceed under Article 14—Grievances and Arbitration or, if applicable, a statutory appeal process, but not both.
- b. The Agency after a consideration of the circumstances, shall generally stay adverse actions other than terminations pending completion of the grievance and arbitration procedure under Article 14—Grievances and Arbitration.
- c. An employee's choice between a statutory appeal process and this Agreement's grievance procedure under Article 14—Grievances and Arbitration is considered to be made by the timely submission of either a grievance or a statutory appeal. Failure to provide a timely submission in either process shall constitute acceptance of the decision and no additional review shall occur.

Section 9. Employee Representation.

Employees who wish to be represented during any stage of disciplinary action may be represented by an attorney or other representative of their choice. The employee may request Union representation. The Union is not obligated to provide the requested representation but may do so at its discretion.

Section 10. Union Notification.

Nothing in this section prevents employees from exercising *Weingarten* rights provided under 5 U.S.C. § 7114(a)(2)(B). The Agency shall notify the Union President of meetings with an employee during which discipline or potential discipline will be discussed. The Agency shall provide the Union President with copies of proposed notices of disciplinary actions, and with copies of final decisions regarding disciplinary actions. The Agency shall redact the copies to remove the names of the employees and supervisors and any other information that could be used to identify the employees, consistent with the provisions of the Privacy Act.

## **Article 43. REDUCTIONS IN FORCE**

### Section 1. General.

The Agency shall conduct reductions in force in accordance with applicable regulations including 5 C.F.R. Part 351, statutes, and this Agreement. The terms “competitive area,” “competitive level,” “reduction in force,” “retention register,” and “order of retention” used in this Article and not otherwise defined in this Agreement shall have the meanings given to them in 5 C.F.R. Part 351.

### Section 2. Use of Reductions in Force.

The Parties agree that a reduction in force, whether for budgetary or for other management reasons, should be used only in extremely limited circumstances. Consequently, the Agency shall first consider other options before proposing a reduction in force. Other options the Agency may consider include transfers of work, transfers of staff, reducing costs through attrition, requesting approval to offer early-out retirements including VERA and VSIP (as defined in Article 56— Retirement, Phased Retirement, and Reemployed Annuitants), determining whether any full-time employees wish to convert to part-time employment of limited or unlimited duration, determining whether any employees wish to share a job, determining whether any employees wish to go on leave without pay, determining whether any eligible employees are interested in Phased Retirement, arranging for reimbursable work details, imposing a hiring freeze, using furloughs, or freezing nonessential expenditures. The Agency will make every effort to engage the Union in pre-decisional discussions regarding alternatives to reductions in force and development of any reduction in force plan at the earliest possible phase and throughout the process. Such pre-decisional involvement shall not absolve the Agency of any other notice, bargaining, or other obligations it may have to the Union or to the employees by virtue of this Agreement or existing law.

### Section 3. Union Notification and Procedures.

- a. If the Agency determines that it must conduct a reduction in force, it shall comply with this Article and existing law with respect to employee and Union notification.
- b. The Agency shall provide the Union President with written notice of a reduction in force at least 15 days in advance of a 60-day general notice to the affected employees.
- c. The Agency shall provide the Union President with the following information regarding any proposed reduction in force:
  - i. The legal authority and reasons for the proposed reduction in force;
  - ii. The competitive area to be affected by the proposed reduction in force;
  - iii. The numbers, types, and grades of positions to be affected by the proposed reduction in force;

- iv. The proposed effective date; and
  - v. Copies of the notices to be sent to employees.
- d. Before it issues specific reduction-in-force notices to employees, the Agency shall provide the Union President with a copy of, and allow the Union to comment on, the retention registers it intends to use in conducting the reduction in force. The Agency shall also provide the Union President with a copy of, and allow the Union to comment on, any amended retention registers. The retention registers shall be made available to the Union President as soon as they are available. An employee who is subject to a proposed reduction in force, and any designated representative who has been authorized by the employee in writing, shall be allowed to review the retention registers. The employee and any authorized representative shall also be allowed to review the employee's personnel files and any other documents the Agency used to complete the retention registers.

#### Section 4. Notice to Employees.

- a. The Agency shall give specific written notice to employees selected for release from their competitive level due to a reduction in force at least 60 days before the effective date of the reduction in force in compliance with 5 C.F.R. Part 351, Subpart H. The Agency shall provide the Union President with a copy of the notice.
- b. If the Agency informs employees that they are subject to a reduction in force, the employees will be encouraged to review, update, and copy their Official Personnel Folders. Employees and their designated representatives who have been authorized in writing shall be allowed to review their Official Personnel Folders during normal business hours. The Agency shall establish a deadline of not less than 15 days for submission of requests by the employees for revision of Official Personnel Folders.
- c. In addition to providing specific notice to employees selected for release from their competitive level, the Agency shall inform all employees in a competitive area of its plans for any reduction in force in that competitive area.

#### Section 5. Employee Use of Duty Time and Agency Facilities.

If the Agency informs an employee that the employee will be separated as a result of a reduction in force, the employee shall be entitled to a reasonable amount of duty time to participate in employment interviews, and to prepare and distribute resumes and job applications. The employee shall also be entitled to use Agency telephones, computers, and office equipment to seek other suitable Federal employment. The employee shall provide prior notice to the employee's supervisor before using duty time available under this section.

## Section 6. Placement Services.

In order to minimize the adverse effects of a reduction in force, the Agency shall conduct a placement program for employees who are subject to separation. This program shall include counseling regarding job opportunities and other alternatives available to employees affected by a reduction in force. The Agency shall provide employees with information concerning state unemployment compensation benefits. If permitted by law and regulation, the Agency shall offer to enroll employees subject to separation in a reduction in force in any Interagency Career Transition Plan administered by the Office of Personnel Management, any Career Transition Assistance Plan administered by the Department, the Department's Reemployment Priority List, and the Department of Labor Job Training Partnership Act programs. If payment is required and funds are available, the Agency may offer to enroll employees subject to separation in a reduction in force in other programs designed to assist them.

## Section 7. Details.

An employee who has been temporarily detailed to another position at the time the employee is separated from employment because of a reduction in force shall be separated from the employee's original position of record. The Agency will make reasonable efforts to support the completion of the detail to the extent permissible by law provided that funding is available for the detail from the receiving agency or other entity. The timelines for reduction in force notices in Sections 3 and 4 above shall apply to an employee participating in a detail.

## Section 8. Vacancies.

The Agency shall maintain a list of available vacant positions to be filled throughout the Agency. The Agency shall offer an employee who would otherwise be separated in a reduction in force an available vacant position that is within the same competitive area and within three grade intervals of the employee's present position, provided that the employee qualifies for the position. If no positions are available within the employee's competitive area, the Agency shall offer an employee who would otherwise be separated in a reduction in force an available vacant position that is outside the employee's competitive area and within three grade intervals of the employee's present position, provided that the employee qualifies for the position. Since the offer of a position outside the employee's competitive area is extended primarily for the benefit of the employee, the Agency shall not be obligated to pay relocation expenses. If the Agency decides to fill a position with an employee subject to separation in a reduction in force, the Agency shall make job offers to the employees in order of retention under 5 C.F.R. Part 351. An employee shall have 15 days to accept or reject a job offer made under this section. If the employee rejects a job offer made under this section within the employee's competitive area, the employee shall not be entitled to further job offers under this Article. If the employee rejects a job offer made under this section outside the competitive area, the employee shall be entitled to any other rights available to employees separated in a reduction in force.

Section 9. Reemployment Rights.

If an employee is separated in a reduction in force, the Agency shall offer the employee the first position in the same competitive area that the Agency decides to fill within three grade intervals, provided that the employee qualifies for the position, and the position shall not be offered to another employee under Section 8 of this Article. If more than one separated employee qualifies for a vacant position, the Agency shall make job offers to the employees in retention standing order. Employees who lose their jobs in a reduction in force shall retain reemployment rights with the Agency for a period of two years.

Section 10. Excepted Service Employees.

Employees under excepted service appointments shall be afforded the same basic rights enjoyed by competitive service employees in connection with the conduct of a reduction in force.

Section 11. Official Time.

Union representatives shall be entitled to a reasonable amount of Official Time (as defined in Article 10—Official Time) to assist employees affected by reductions in force. Among other things, Official Time shall be granted to Union representatives for private consultations with employees; preparation for, and participation in, meetings with the Agency; review of retention registers; review of personnel files as permitted by law, regulation, and this Agreement; responding to inquiries from employees, appeals, and consultation concerning reemployment rights.

## **Article 44. HOURS OF WORK**

### Section 1. Basic Work Requirement.

The basic work requirement is the number of hours, excluding lunch time, overtime and compensatory time, which an employee is required to work or is required to account for by leave or otherwise. The basic work requirement for full-time employees is 80 hours per pay period. The basic work requirement for part-time employees is 32-64 hours per biweekly pay period. An employee must select a work schedule set forth in this Article.

### Section 2. Hours of Work.

- a. Employees shall have a starting time of no earlier than 6:00 a.m. and a stopping time of no later than 8:00 p.m. on Monday through Friday, excluding Federal holidays.
- b. The Agency's core hours are from 11:30 a.m. to 2:30 p.m.
- c. Work schedules shall be available to employees in accordance with this Article and employees shall select one of the four work schedules listed in Section 3 below. Employees may elect to change from one type of work schedule to another no more than once per quarter, except by agreement of the employee and the supervisor, using the process described in Section 6(e) below.

### Section 3. Schedules.

- a. Standard 40-Hour Work Week Schedule. The standard 40-hour work week schedule shall consist of five consecutive 8-hour days, excluding time permitted for lunch, Monday through Friday, with the same starting and stopping time each day.
- b. Alternative Work Schedules. There are three Alternative Work Schedules:
  - i. **5/4/9:** A "5/4/9 Work Schedule" is a compressed schedule that for the pay period has 8 workdays of 9 hours each day (Monday through Friday) with the same starting and stopping times each day, and one workday of 8 hours, (Monday through Friday) and one day off (Monday through Friday); or
  - ii. **4/10:** A "4/10 Work Schedule" is a compressed schedule that for the pay period has four workdays of 10 hours each day (Monday through Friday), with the same starting and stopping times each day and one day off during each week; or
  - iii. **Flexible Work Schedule:** A "Flexible Work Schedule" is a schedule that for the pay period under which an employee must work a minimum of 35 hours per week and 80 hours per pay period and may work no more than 10 hours per day, including credit hours (if the employee is eligible to earn credit hours under this Article). With approval from their supervisor, employees on a Flexible Work Schedule may establish different starting and stopping times within the time bands set forth in Section 2(b) above for each workday. With prior notice to the supervisor whenever



possible, an employee on a Flexible Work Schedule may start the workday up to an hour earlier or an hour later than the scheduled starting time, with an equivalent adjustment within the same pay period. The change must be posted in the office or otherwise made readily available to other employees if required by the supervisor, and properly recorded in the Agency's timekeeping system.

- c. All Alternative Work Schedules in Section 3(b) shall provide that:
  - i. An employee on an Alternative Work Schedule may not schedule work in excess of a 10-hour day including credit hours (if the employee is eligible to earn credit hours under this Article); and
  - ii. A full-time employee must work at least four days per week and a minimum of 35 hours per week, unless the employee uses some form of leave, compensatory time or credit hours. A part-time employee must work the number of hours per week and per pay period that has been approved for the part-time schedule.

#### Section 4. Lunch and Break Periods.

- a. Lunch. Employees must take a lunch break if they work six or more hours in a day. An employee's lunch period is unpaid, and the employee's scheduled hours are adjusted accordingly to correspond to the length of unpaid lunch time selected by the employee. Employees on standard or compressed schedules shall have the option of scheduling up to 60 minutes for lunch. Employees on Flexible Work Schedules shall have the option of scheduling up to 120 minutes for lunch. The length of a Flexible Work Schedule employee's lunch break need not be the same every day.
- b. Breaks. Breaks are paid duty time. The Agency shall recognize one 15-minute break during each four full hours worked. Normally, one break will be taken before lunch and one break will be taken after lunch.

#### Section 5. Credit Hours.

- a. Credit hours are hours, in addition to the basic work requirement described in Section 1 above, that employees working a Flexible Work Schedule may elect to work and earn. Credit hours may only be earned by employees on a Flexible Work Schedule described in Section 3(b)(iii) above. With the supervisor's approval, an employee may use credit hours to vary the length of a workday or a work week.
- b. An employee may earn credit hours only on regularly scheduled workdays, within the time bands set forth in Section 2(b) above, up to a maximum of two credit hours per day.
- c. Credit hours shall be earned in increments of 15 minutes and may be used in increments of 15 minutes, except that the initial increment for earning credit hours on any day will be 30 minutes. Credit hours cannot be used until credit hours have been earned.

- d. Employees may use no more than two credit hours on any day in a pay period in which they report to the Official Worksite to meet their two days per pay period in-office attendance requirement. The two credit hours per day limit does not apply to telework days or in-office days once the employee's in-office requirement has been satisfied.
- e. Full-time employees may earn up to a total of 8 credit hours without prior approval of their supervisor and may accumulate up to a total of 24 credit hours with prior approval of their supervisor.
- f. Full-time employees may carry forward from one pay period to another a maximum of 24 credit hours. For part-time employees, the maximum number of credit hours that may be carried forward from one pay period to another is one-quarter of the employee's scheduled biweekly tour of duty or 12 hours, whichever is less.
- g. An employee shall request the use of credit hours as provided for in Article 49—Leave. Employees are not permitted to use credit hours without the prior approval of their supervisor.

Section 6. Additional Provisions.

- a. Nothing in this Article affects the Agency's responsibility to provide Reasonable Accommodation to employees in accordance with Article 19—Reasonable Accommodation.
- b. If differences arise between the Agency and an employee with respect to the implementation of a work schedule, the supervisor, the employee, and a Union representative shall discuss the differences and attempt to resolve them informally. If the parties do not reach an agreement, the employee may discuss the issue with the next level supervisor.
- c. A supervisor may deny an employee's request for a particular schedule that would otherwise comply with this Agreement, or propose to change an employee's existing approved schedule, only if the supervisor determines that the schedule will have an adverse impact on the Agency. An adverse Agency impact may include a reduction in productivity, a diminished level of services furnished to the public or clients, or an increase in the cost of Agency operations. If a supervisor denies an employee's schedule request, the supervisor will notify the employee and meet with the employee to determine if they can agree on a schedule. If requested, the Union shall be given an opportunity to be present at the meeting. If the request is denied the supervisor will provide the employee with a written explanation. If the employee's request is denied, or if the supervisor imposes a change on the employee's schedule over the employee's objection, the procedures provided in Article 14—Grievances and Arbitration shall apply.
- d. If a supervisor determines that a conflict between multiple employees' schedule requests for the same days or hours off will have an adverse impact on the Agency as defined in subsection (c) above, the supervisor shall notify the employees of the determination and shall meet with them to determine if they can agree on a schedule. If requested, the Union

shall be given an opportunity to be present at the meeting. If the parties are unable to reach an agreement, the procedures described in subsections (b) and (c) above shall apply. The employee with the earliest Service Computation Date shall be given preference in their work schedule.

- e. An employee who wishes to change a work schedule shall submit a written request to the supervisor, who shall review the request and respond in writing within 15 days. In deciding whether to approve an employee's request, the supervisor shall follow the process in subsection (c) above.
- f. Employees in travel status or attending training may be required to adjust their work schedules. Employees on detail may be required to comply with the work schedule of the organization to which they are temporarily assigned.
- g. If a scheduled day off falls on a Federal holiday, a fulltime employee's holiday shall be the employee's preceding regularly scheduled workday, except when the holiday falls on a Sunday, in which case the holiday is the workday immediately following the federal holiday.
- h. If an employee is required to work on scheduled days or hours off, the employee shall be given the opportunity to select alternative days or hours off within the same pay period, or to earn compensatory time as appropriate.
- i. To the extent feasible, the Agency shall schedule meetings during core hours of 9:00 a.m., to 5:00 p.m., and give employees as much advance notice of meetings as is practicable.
- j. Approved schedules of employees and supervisors as well as changes to approved schedules (including scheduled leave) must be posted in the office or otherwise made readily available to other employees if required by the supervisor. Supervisors shall make reasonable efforts to advise their employees of the supervisor's standard schedule and changes to it.
- k. Nothing in this Article alters the requirement that all full-time employees must report to their Official Worksite no less than two full days per pay period.

## **Article 45. OVERTIME AND COMPENSATORY TIME**

### Section 1. Governing Law.

The Agency will follow the governing law and OPM regulations on overtime and compensatory time in effect when the time accrues.

### Section 2. Overtime.

- a. Overtime is work performed more than eight hours in a day or more than 40 hours in a week, unless such work is performed in accordance with an Alternative Work Schedule permitted by Article 44—Hours of Work.
- b. Employees will be compensated for any overtime worked in accordance with applicable law.

### Section 3. Scheduling and Approval of Overtime.

- a. Overtime must be authorized in advance and approved in writing by the supervisor. An exception to the advance authorization requirement will be made when pressing organizational needs require overtime work and the supervisor agrees or has requested that the work be performed outside normal work hours.
- b. Overtime will be scheduled, approved, and worked in increments of 15 minutes.
- c. Overtime shall be distributed as equitably as possible among qualified employees. The Agency shall make reasonable efforts to ensure that employees are not assigned to perform an excessive amount of overtime. The Agency shall consider an employee's personal hardship when making unscheduled overtime assignments.
- d. As soon as the need is known, the Agency shall notify the employees who will be assigned to work overtime on the same or the following workday. Otherwise, the Agency shall, whenever possible, provide employees with 48 hours advance notice of upcoming overtime. Employees who report for scheduled overtime on a day when work was not scheduled for them, or for which they are required to return to their place of employment, are deemed to have worked at least two hours overtime.

### Section 4. Overtime Records.

- a. The Agency shall maintain appropriate overtime records to show which employees worked overtime and when the overtime was worked.
- b. The Agency shall make available to the Union President, upon written request, records of overtime assignments of employees to aid in resolving individual claims of unfair or inequitable distribution of overtime. The records will be redacted to the extent required by law.

## Section 5. Compensatory Time.

- a. Compensatory time is an award of duty time equal to the amount of time spent in overtime.
- b. Employees must request and receive approval before earning and using compensatory time. Approval will not be unreasonably withheld. Compensatory time will be scheduled, approved, and used in increments of 15 minutes, in accordance with the Article 49—Leave. For Fair Labor Standards Act (FLSA) exempt and non-exempt employees, accrued compensatory time must be used by the end of the 26th pay period following the pay period in which it was earned. If accrued compensatory time is not used by FLSA-exempt employees within this time, it will be forfeited. FLSA-exempt employees leaving the Department shall be paid for unused compensatory time that has not been forfeited at the pay rate at which it was earned. If accrued compensatory time is not used by an FLSA-nonexempt employee within 26 pay periods or if the FLSA-nonexempt employee transfers to another agency or separates from Federal service before the expiration of the 26-pay period time limit, the employee must be paid for the earned compensatory time at the overtime rate in effect when earned.
- c. OPM regulations limit eligibility to earn compensatory time to employees whose biweekly and annual earnings do not exceed certain maximum earnings limits. Therefore, employees whose earnings exceed OPM's maximum limit are ineligible to earn compensatory time. Employees whose earnings exceed OPM's maximum limit are eligible for credit hours if they are otherwise eligible for credit hours under Article 44—Hours of Work. The Agency will make good faith efforts to exercise its managerial discretion to limit circumstances in which it requires its Bargaining Unit employees to work overtime without additional compensation.
- d. Compensatory time off for religious observances will be awarded as described in the OPM regulations at 5 C.F.R. 550 Subpart J and Article 49—Leave.
- e. Compensatory Time related to travel is governed by the OPM regulations at 5 C.F.R. 550 Subpart N, Article 49—Leave, and Article 23—Travel.

**Article 46.    **OUTSIDE EMPLOYMENT, *PRO BONO*, VOLUNTEER, AND OTHER OUTSIDE ACTIVITIES****

Section 1. Introduction, Applicable Law, and Regulations.

Employees may engage during non-duty hours in outside activities, including outside employment, which do not involve conduct prohibited by statute or federal regulation. Agency attorneys seeking to engage in any volunteer activities, *pro bono* legal work or other outside employment allowed under this Article must comply with the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635); Supplemental Standards for Ethical Conduct for Employees of the Department of Agriculture (5 C.F.R. Part 8301), including the Additional Rules for Attorneys of the [USDA] Office of the General Counsel (5 C.F.R. § 8301.105 (together, Supplemental Standards); bribery, graft and conflict of interest statutes enacted in 18 U.S.C. §§ 201-209; the Hatch Act (5 U.S.C. §§ 7321-7326); and relevant local bar rules relating to the provision of *pro bono* legal services.

Section 2. Prior Approval of Outside Employment.

- a. Coverage. As provided in applicable law including 5 C.F.R. § 8301.102, prior Agency approval for outside employment shall be obtained by covered employees who are:
  - i. any employee required to file either a public (Office of Government Ethics Form 278) or a confidential (Office of Government Ethics Form 450) financial disclosure report, if the employment falls within the definition contained in the USDA Supplemental Standards; and/or
  - ii. any Bargaining Unit attorney, if the outside employment involves the practice of law, whether compensated or not.
- b. Procedure. A covered employee who wishes to engage in outside employment shall present a written request for approval to the head of the division or office in which the employee is located, in accordance with the procedures set forth in 5 C.F.R. § 8301.102(c). The General Counsel or designee shall appoint one or more Agency designees to review the request together with the Office of Ethics. The Agency shall respond to the employee, normally within 20 days of receipt of the request, by approving the request, seeking further information to determine whether the outside employment meets the standard for approval set out in Section 2.c. of this Article, or disapproving the request, setting forth its reasons for the disapproval. If the request requires a more expeditious response, the Agency shall make all reasonable efforts to respond as soon as possible.
- c. Standard for Approval. The Agency shall approve a covered employee's request to engage in outside employment unless it determines that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 C.F.R. Parts 2635 and 8301, relevant bar rules, and any other ethics rules or policies applicable to Agency employees.

- d. Additional Categories. If the requirement to file public or confidential financial disclosure reports is extended to additional categories of Bargaining Unit employees so that the employees would be considered covered employees under Section 2(a) above, the Agency shall notify the Union President.
- e. Teaching, Speaking and Writing. In addition to the requirement that an employee shall obtain written approval before engaging in outside employment in accordance with the procedures set forth in 5 C.F.R. § 8301.102, employment in teaching, speaking, writing, or editing is subject to disclaimer requirements and compensation restrictions set forth in 5 U.S.C. § 2635.807.

### Section 3. Recordkeeping.

The Agency shall retain notifications and requests for approval of outside employment, as well as Agency responses to them. These records shall be maintained in a confidential manner and with due regard for the privacy of employees who have sought approval or provided notification; shall not be shared with other employees who have no need to know of an employee's outside employment or other outside activities; and shall be protected from disclosure to the maximum extent provided for by the Freedom of Information Act, 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and all other applicable law and regulation.

### Section 4. Political Activities.

Political activities of employees shall be governed by law including the Hatch Act, 5 U.S.C. §§ 7321 through 7326, and its implementing regulations, 5 C.F.R. Parts 733 and 734.

### Section 5. Pro Bono Activities.

The Agency will respond to requests for Agency employees to provide *pro bono* legal services in accord with its published policy, OPM regulations, and applicable law in place at the time of the request. The Agency's *pro bono* policy will be published on the Employee Information Page established under Article 17—Provision of Information and employee Information Page. The Agency will notify the Union of any changes to the policy that affect the working conditions of Bargaining Unit employees, and the Union may request Impact and Implementation Bargaining as appropriate. Nothing provided in this section shall be construed to avoid or modify the provisions set forth or referenced in the preceding sections of this Article, which remain applicable to *pro bono* activities.

### Section 6. Other Volunteer Activities.

The Agency will respond to employee requests to engage in volunteer activities during normal duty time in accord with any published Agency or Departmental policy regarding volunteer activities, OPM regulations, and applicable law in place at the time of the request. Any request to use administrative leave for volunteer activities will be in writing, and the Agency will approve or deny the request in writing based on the authorities above. Nothing provided in this section shall be construed to avoid or modify the provisions set forth or referenced in the preceding sections of this Article, which remain applicable to other volunteer activities.

## **Article 47. PART-TIME EMPLOYMENT AND JOB-SHARING**

### Section 1. Part-Time Employment.

- a. The Parties recognize that part-time employment may provide benefits for the Agency and for employees. Part-time employment means regularly scheduled work of 16 to 32 hours per week, or 32 to 64 hours per pay period. Subject to approval of the supervisor, an employee may vary the number of hours to be worked in any week or pay period. Part-time employment arrangements shall follow all applicable OPM regulations.
- b. Part-time employment of limited duration means that the employee will engage in part-time employment for not less than 3 or more than 6 pay periods. For part-time employment of limited duration, the regularly scheduled work week shall be at least 20 hours and no more than 32 hours. Employees who request to go on part-time employment of limited duration shall specify the number of pay periods in which they intend to engage in part-time employment when giving notice under Section 1.d., below. Once approved, the election of part-time employment of limited duration shall be irrevocable, except that the Agency may terminate or alter the arrangement by agreement with the employee or pursuant to Section 3 of this Article.
- c. Part-time employment of unlimited duration means that the employee does not intend to limit the duration of the part-time employment. Subject to the provisions of Section 1.e., below, an election of part-time employment of unlimited duration does not preclude the employee from later converting to full-time employment.
- d. Subject to the provisions of this Article, an employee may convert to part-time or full-time employment. The employee shall submit a written request to the supervisor at least 3 pay periods before the conversion. The employee's notice shall specify the number of hours that the employee will work during the week or during the pay period, the schedule to be worked, and whether the conversion to part-time employment will be of limited or unlimited duration. The Agency shall give due consideration to employee requests and respond in a timely manner.
- e. In determining whether to allow conversion to part-time or full-time employment, the Agency shall consider the following factors:
  - i. the benefits to the Agency of the proposed arrangements;
  - ii. the available budget and needs of the Agency;
  - iii. the duties and responsibilities of the position including assignments and amount of work;
  - iv. available space, resources, and equipment;
  - v. the needs of the employee; and
  - vi. the impact on the remaining personnel in the office.



- f. If the Agency approves an employee's request for conversion to part-time or full-time employment, the Agency shall provide the employee with written notification of the approval, including the number of hours to be worked per pay period and the part-time schedule approved.
- g. If the Agency denies an employee's request for conversion to part-time or full-time employment, the Agency shall provide the employee with written notification of the reasons for the denial, and, upon request of the employee, shall discuss whether alternative arrangements are feasible.
- h. Whenever an employee requests conversion from full-time to part-time employment, the Agency shall inform the employee of the effect the conversion may have with respect to potential reductions in force, retirement, health and life insurance, eligibility for and timing of promotions, eligibility for and timing of within-grade pay increases, and accrual of leave. The Agency shall also inform the employee that the employee may be required to return to full-time status.
- i. To the extent allowed by law, part-time employees shall have equal opportunity with full-time employees to participate in all employee programs and benefits.
- j. Unless approved by the Agency, an employee may not convert from part-time to full-time, or from full-time to part-time employment more than one time during any 26 consecutive pay periods.
- k. An employee who is employed on a full-time basis shall not be required to accept part-time employment as a condition of continued employment.

## Section 2. Job-Sharing.

- a. The Parties recognize that job-sharing may offer benefits for the Agency and for employees. The Agency shall consider allowing two or more full-time employees in an office to convert to part-time employment of unlimited duration to share one job, provided that each employee qualifies for the position to be shared, and that the total number of hours to be worked by both employees shall not exceed 80 hours per pay period. Agency consideration of job-share arrangements shall include the factors identified in Section 1.e., above, as well as concerns inherent in job-share arrangements, such as coordination issues.
- b. Employees who want to share a job shall submit a written request to the supervisor, specifying the number of hours that each employee shall work. The Agency is under no obligation to recruit for a job-share position.

## Section 3. Ending or Altering a Part-Time or Job-Sharing Arrangement.

The Agency may end or alter a part-time or job-share arrangement based on the needs of the Agency, by providing the employee with written notice, at least 3 pay periods in advance of the

termination or alteration. In making this determination, the Agency shall consider increased work requirements, failure to meet job goals, changes in budget conditions, emergency work-related conditions, and the loss of employees or job-share partners. If it is necessary to end a job-sharing arrangement, the Agency may require one or both job-sharers to work full-time or may permit one or both to work part-time.

Section 4. Phased Retirement.

Part-time work under a Phased Retirement Agreement is covered under Article 56—Retirement, Phased Retirement, and Reemployed Annuitants.

## **Article 48. TELEWORK**

### Section 1. Authority and Purpose.

- a. Authority. In accordance with the Telework Enhancement Act, 5 U.S.C. § 6501 *et seq.* (Telework Enhancement Act), U.S. Office of Personnel Management 2021 Guide to Telework and Remote Work in the Federal Government, and Telework and Remote Work Programs DR 4080-811-002, this Article establishes the Agency’s telework program.
- b. Purpose. Telework is an arrangement in which an employee, under a written telework agreement, is scheduled to perform their work at an alternative Agency-approved worksite other than the Official Worksite. An employee’s participation in the Agency’s telework program is voluntary. This Article addresses Routine Telework and Situational Telework. Generally, employees covered by this Article are expected to report to their Official Worksite at least two full workdays in a biweekly pay period. The ability of the Agency to require employees to work at an Alternative Worksite in connection with a COOP or a pandemic health crisis under 5 C.F.R. § 550.409 is covered by Article 32—Agency Emergency Action. Telework does not include any part of work done while on official travel. Travel is covered by Article 23—Travel.
- c. Benefits. After two decades of telework experience at OGC, the Parties recognize that the telework program has maintained employee productivity and improved employee morale and job satisfaction and anticipate that it will continue to do so. Telework is not a substitute for adequate dependent care, as specified in Section 7(e) below. The Parties agree that it can be a valuable flexibility to employees with caregiving responsibilities, by eliminating time required to commute and expanding employees’ options in arranging dependent care.

### Section 2. Definitions.

- a. Alternative Worksite (“AWS”). An Alternative Worksite or AWS is an Agency-approved worksite location other than the Official Worksite where an employee performs their official duties. An AWS is one that satisfies all requisite Federal health and safety laws, rules, and regulations pertaining to the workplace and the requirements of this Agreement. Employees may have multiple approved AWS but must at all times provide their supervisor timely prior notice of the approved AWS at which they plan to work. It is the employee’s responsibility to ensure that their Alternative Worksites have high speed broadband internet access or secure Wi-Fi access capable of supporting use of USDA’s VPN and applications with the same functionality, privacy, security, and access as if they were at the Official Worksite.
- b. Official Worksite. The Official Worksite is the location of an employee’s duty station as documented on an employee’s Standard Form 50. At their election, supervisors may designate alternate facilities (e.g., client offices or other Federal facilities) as additional

Official Worksites for purposes of an employee's requirement to report to the Official Worksite at least two full workdays each pay period.

- c. Opt-Out. A telework-eligible employee who voluntarily declines to participate in the Agency's telework program. Opt-Outs must sign and check the voluntary Opt-Out box on the Telework Agreement.
- d. Portable Work. Work that can be performed with equal efficiency and effectiveness with respect to quality, quantity, timeliness, and other aspects of accomplishing OGC's mission at either the employee's Official Worksite or at an AWS. The Agency is not obligated to change an employee's regular assignments, duties, or the way the assignments are performed to make work qualify as Portable Work.
- e. Routine Telework. Telework that, as more fully described in Section 4 below, occurs as part of an ongoing schedule specified in a Telework Agreement.
- f. Situational Telework. Telework that, as more fully described in Section 5 below, is approved on a case-by-case basis and the hours worked and/or AWS are not part of a previously approved, ongoing, and regular telework schedule as set forth in a Routine Telework Agreement.
- g. Telework Agreement. The attached Departmental Form AD-3018 and addendum (and addenda or successors thereto) as completed by the employee and agreed to by the employee's supervisor.
- h. Telework Program Coordinator (TPC). The Agency official responsible for promoting the use of telework for and by OGC employees and for administering OGC's telework program pursuant to this Agreement.
- i. Telework-Ready Employee. Any employee who has a Telework Agreement authorizing telework.

### Section 3. Employees Ineligible for Telework.

- a. General. The Parties agree that an employee may be deemed ineligible for telework based on one or more of the following criteria, and as specified in this Section.
- b. Position. Ineligibility based on the employee's position.
  - i. An employee may be deemed ineligible if the employee's position has been identified, pursuant to this Section, as ineligible for telework and the employee's daily official duties, responsibilities, or actions are consistent with the employee's designated position. The Agency may identify a position as ineligible for telework based only on the following criteria:

- A. Position duties require daily physical presence at the official worksite and do not include Portable Work that can be accomplished from an AWS.
  - B. Position responsibilities require daily access to specialized equipment located at the official worksite and do not include Portable Work that can be accomplished from an AWS.
  - C. Position activities require daily access to classified materials and do not include Portable Work that can be accomplished from an AWS.
- ii. Determination of telework eligibility based on an employee's position should be based on job functions, and not managerial preference. Telework eligibility should be based on equitable, function-based criteria.
  - iii. As of the Effective Date of this Agreement, the Parties agree that there are no positions within OGC that have been identified as ineligible for telework. The eligibility of a position for telework does not preclude the Agency from requiring that work that is not Portable Work be performed at the Official Worksite.
  - iv. In the event the Agency determines that an existing position, or a newly created position, should be categorized as telework ineligible based on the criteria set forth above in this section, the Agency shall notify the Union President. In such instances, the position categorization is grievable by the Union President and/or employee, if applicable, pursuant to Article 14—Grievances and Arbitration.
- c. Ineligibility Based on the Employee's Performance.
    - i. An employee may be found temporarily ineligible for telework if their performance falls below fully successful.
    - ii. In such circumstances, supervisors are required to initiate corrective action in accordance with Article 40—Evaluation of Employee Performance.
    - iii. The employee's eligibility for telework must be reassessed every 12 months from the date the supervisor documented less than fully successful performance to the employee.
- d. Ineligibility Based on the Employee's Conduct.
    - i. An employee may be found temporarily ineligible for telework if the employee was subject to formal disciplinary action, adverse action, or was placed on a leave restriction within the previous 12 months in accordance with Article 42—Disciplinary and Adverse Actions.
    - ii. The employee's eligibility for telework must be reassessed every 12 months from the date the supervisor documented the employee's conduct leading to ineligibility.

e. Temporary Ineligibility.

- i. An employee may temporarily be ineligible for telework if the employee's duties, responsibilities, or activities change and, for a discrete period of time, the employee is performing work that is telework ineligible based on the criteria set forth above in this section.
- ii. Examples of temporary ineligibility include an employee on a detail or temporary assignment or assigned to assist with a special project.
- iii. The parties agree that any such temporary changes shall be for employee development or for achieving Agency operational or business needs that cannot be performed away from the Official Worksite and not as a form of discipline, punishment, or retaliation against the employee. The parties further agree that this temporary ineligibility provision is without prejudice to Agency rights specified in Section 7.d., below.
- iv. Any employee who is determined to be temporarily ineligible for telework pursuant to this Article will automatically return to being telework eligible without further action by that employee once the employee's duties, responsibilities, or activities return to normal.

f. Permanent Ineligibility. As specified in the Telework Enhancement Act, an employee is permanently ineligible for telework if they have been formally disciplined for the following:

- i. Violation of 5 CFR Part 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
- ii. Absence Without Leave (AWOL). AWOL is a non-pay status that covers an absence from duty that is not approved. Any USDA employee AWOL for five or more days in any calendar year is permanently ineligible.

Section 4. Routine Telework.

- a. Eligibility. Except with respect to any employees that are ineligible as of the effective date of this Agreement, all employees, regardless of tenure, grade, job series, or title, are eligible for Routine Telework.
- b. Routine Telework. Employees, other than those holding positions ineligible for telework as specified in section 3 above, may request Routine Telework for up to eight days in a pay period, but regardless of schedule, must report to the Official Worksite at least two full workdays a pay period unless their scheduled office day is excused because it falls on

a Federal holiday or the employee uses approved leave. Employees must document their telework arrangements on a Telework Agreement.

- c. Schedule. Every Telework Agreement for Routine Telework must have the Regular/Recurring Telework box checked and must identify the regularly scheduled day or days when the employee intends to telework from an AWS, their schedule for each day, and their AWS for each day. Employees with Routine Telework Agreements are automatically subject to Unscheduled Telework orders.
  - i. Telework may be authorized for an entire day or a portion of a day provided that time spent commuting to or from the Agency's office during a partial telework day shall not count as duty time worked that day.
  - ii. Supervisors may approve telework from more than one AWS so long as each AWS meets the requirements of the Telework Agreement and this Agreement, and the employee provides prior notice to their supervisor of any changes to the AWS where they plan to work.
- d. Approval. Within 10 business days of receipt of a telework request, as documented on a completed and signed Telework Agreement:
  - i. The employee's supervisor must meet with the employee to approve, modify, or deny the request.
  - ii. If a request is approved, the supervisor who approved the request must, within the same 10-day period, provide copies of the approved/signed Telework Agreement to the employee, the Agency's TPC, and the Union President.
  - iii. If a request is denied, the supervisor who denied the request must, within the same 10-day period, provide a written justification to the employee, with copies to the Agency's TPC and the Union President.
  - iv. If a request is modified and the employee does not agree to the modification, then the supervisor who proposed the modification must, within the same 10-day period, provide a written justification to the employee, with copies to the Agency's TPC and the Union President. The employee shall then have 10 days after receipt of the written justification to provide a written response to employee's supervisor, with copies to the Union President and the Agency's TPC, outlining the employee's disagreement with the modification.
  - v. To the greatest extent practicable, a telework request, as documented by the employee on a completed and signed Telework Agreement, shall be approved as submitted unless:
    - A. the request is for Routine Telework and does not provide for two full work days at the Official Worksite per pay period;

- B. the Agency has identified in writing work that can only be performed by the requesting employee at the Official Worksite on the day or days that the employee has requested telework;
  - C. the Agency determines that productivity or level of services furnished to the public, costs of Agency operations, or Agency operational needs require a different Telework Agreement and the Agency provides in writing an explanation of the specific loss of productivity or level of services, or increased costs, or detriment to Agency operational needs presented by the employee's proposed Telework Agreement and how those concerns are addressed by the Agency's proposed Telework Agreement;
  - D. the employee is ineligible for telework based on one of the criteria set forth in Section 3 above; or
  - E. the Agency determines that the Official Worksite cannot accommodate the employee's presence in the office on their requested days to report, except that the Agency must still provide workspace at an Official Worksite for Opt-Outs.
- vi. A telework request shall not be denied or modified on the grounds of ensuring that a minimum number of employees are physically present at the Official Worksite on one or more days unless Agency operational needs that cannot be performed away from the Official Worksite require a minimum number of employees to be physically present, or "in office" days have been scheduled in accordance with subsection 4(d)(vii) below.
- vii. "In Office" Days. OGC offices, Divisions, or working groups may desire to establish regular or recurring days when all employees are physically present at the Official Worksite. Supervisors may modify Routine Telework requests or existing schedules in a Telework Agreement to accommodate a designated "in office" day that generally will occur no more frequently than once every 30 days and require employees to be at the Official Worksite on those days. Supervisors shall make every effort to designate "in office" days on a predictable schedule and will provide employees with as much notice as is practicable for any "in office" day that is called outside the employee's schedule. If an "in office" day called outside the schedule conflicts with an employee's regularly scheduled telework day, the employee shall be permitted to telework on another day in the same pay period in lieu of their regularly scheduled day subject to supervisory approval.
- viii. If a request is denied or modified and the employee does not agree to the denial or modification, then within 10 business days of the denial or modification, the employee and the supervisor shall meet to discuss the differences and attempt to resolve them informally. The employee has the right to have a Union representative present when meeting with the supervisor. This 10-day period may be extended when agreed to in writing by the employee and the supervisor. At the conclusion of this 10-



day period, or extension, if any, if an agreement is not reached, the employee may pursue the remedy process outlined in Article 14—Grievances and Arbitration.

e. Scheduled Telework and Scheduled Office Days.

- i. Although a teleworking employee is expected to report to the Official Worksite at least two full workdays as defined in Article 44—Hours of Work in a biweekly pay period, if a Federal holiday falls on an employee’s scheduled office day, the employee is not required to report to the Official Worksite on a scheduled telework day in order to make up for the office day that fell on a holiday.
- ii. If an employee takes approved leave to be absent for all or part of a scheduled office day, the employee is not required to report to the Official Worksite on a scheduled telework day in order to make up for the office day where the employee was absent for all or part of the day.
- iii. If an employee with a Telework Agreement desires to switch scheduled telework days and scheduled office days in a pay period, the employee should request the switch as far in advance as practicable. The employee’s supervisor should allow the switch unless the Official Worksite cannot accommodate the employee’s presence in the office on the proposed switch day or Agency business or operational needs that cannot be performed away from the Official Worksite require the employee to be in the office on their regularly scheduled office day.

Section 5. Situational Telework

- a. Situational Telework. Situational Telework is telework that is approved on a case-by-case basis where the hours worked and/or the AWS are not part of a previously approved Telework Agreement for Routine Telework. The subsets of Situational Telework are: Ad Hoc Telework, Temporary Telework, and Unscheduled Telework. An employee may be approved for Routine Telework, Situational Telework or both. Telework Agreements for Situational Telework are subject to all the requirements and procedures for eligibility, approval, denial, modification, etc. as are set forth elsewhere in this Article including Sections 3 and 4 above.
- b. Situational Telework Agreements. Every Telework Agreement for Situational Telework must have the Situational Telework box checked and must identify the anticipated AWS. Employees with Ad Hoc or Temporary Telework Agreements are automatically subject to Unscheduled Telework orders.
  - i. Ad Hoc Telework: Employees may desire, for specific periods of time in response to specific events, to have the flexibility to telework from approved Alternative Worksites without committing to a regular and recurring schedule of Routine Telework, or the flexibility to supplement their Telework Agreement for Routine Telework of less than 8 days a pay period with additional days of telework up to a

maximum of 8 days a pay period. An employee approved for both Routine and Ad Hoc Telework may not telework more than eight days a pay period.

- A. Process: Employees should submit a Telework Agreement, check the box for Situational Telework, and identify the Alternative Worksites that are expected to be utilized. Employees should request permission in writing as far in advance as practicable from their supervisor for each instance of Ad Hoc Telework and identify their work schedule and Alternative Worksite.
- B. Examples: Ad Hoc Telework may accommodate a variety of employee and Agency priorities including but not limited to:
  - 1) Work/life balance needs (e.g., medical appointments, parent/teacher conferences, etc.) when commuting to the Official Worksite before or after such events is impractical or inefficient.
  - 2) An employee on annual leave who wishes to perform Agency work while on leave (for example an employee who needs to respond to litigation or client deadlines while on leave) in accordance with Article 49—Leave.
  - 3) An employee who has a mild illness that would not interfere with work performance or productivity (e.g., common cold).
  - 4) An employee who has a dependent at home due to a mild illness or school closure and whose caregiving responsibilities do not interfere with the employee’s work performance or productivity while working at the AWS.
  - 5) An employee needs to spend focused time on a specific task and the AWS provides a less distracting setting than the Official Worksite.
  - 6) An employee desires to telework as an exception to their regular routine.
- ii. Temporary Telework. In certain circumstances, an employee may request a Temporary Telework arrangement. Under this arrangement, the employee’s Official Worksite designation remains unchanged and there is a temporary exception to the requirement that teleworkers report to the Official Worksite at least two full workdays a pay period. The employee must be expected to return to the Official Worksite at some point in the near future on a regular and recurring basis. After the initial approval period, any subsequent request(s) and approval(s) for an extension of the arrangement must be made as soon as possible before the end of the initial approval period to ensure the temporary exception continues to apply. It is the responsibility of the employee’s supervisor to decide when it no longer is proper to apply the temporary exception. It is the employee’s responsibility to comply with any tax or pay consequences that could result from a Temporary Telework arrangement.

A. Examples. Temporary Telework may be approved for a variety of circumstances not limited to:

- 1) Recovery from an injury or medical condition or attending to the recovery of a family member;
- 2) Conditions that prevent commuting to the worksite, such as ongoing severe weather, a public health crisis, or planned or unplanned disruptions in public transportation;
- 3) Extended approved absences from work due to use of leave;
- 4) The employee is on a detail or extended work travel away from the Official Worksite; or
- 5) Family or personal reasons that allow for accomplishing Portable Work but prevent regular reporting to the Official Worksite for reasons beyond the employee's control.

B. In addition to the examples above, an employee may request a temporary exception to waive the requirement to report to the Official Worksite for up to any five scheduled office days in a leave year but no more than three scheduled office days may be waived in a row.

iii. Unscheduled Telework.

A. OPM or USDA authorized officials may announce operating status guidance allowing for unscheduled telework.

B. Employees with a Telework Agreement (for Routine or Situational Telework) are expected to telework or take other authorized leave (paid or unpaid), or a combination of both, as approved by the supervisor for weather or other events under subsection 5(b)(iii)(A) above. Telework performed outside the schedule of the Telework Agreement for weather or other events is regarded as Unscheduled Telework.

C. Teleworkers generally are ineligible for Weather and Safety Leave when a closure is announced, except in rare and infrequent circumstances:

- 1) Weather and Safety Leave may be granted to a Telework-Ready Employee who, in the supervisor's judgment, could not have reasonably anticipated the severe weather or other condition so did not take needed equipment or work with them. Supervisors may direct employees to prepare for such events by taking any necessary equipment and work home with them.

- 2) Weather and Safety Leave may be granted to a Telework-Ready Employee who is prevented from safely working at the AWS because of severe weather or other event (*e.g.*, electrical power or broadband outage, fire, flooding, or heating and cooling failures). Employees must communicate with their supervisors as soon as possible when such work disruptions occur and may be required to return to the Official Worksite or another agreed-upon location.
- 3) Teleworkers who are working in an Agency office or other Official Worksite when an early departure is announced for inclement weather or other event generally may receive Weather and Safety Leave for time required to commute home (excluding the period for an unpaid lunch break). This means that telework participants must complete the remaining hours of their workday (if any) either by teleworking or taking leave (paid or unpaid) once they arrive home.

iv. Ongoing Emergency Telework

- A. OPM or USDA authorized officials may announce emergency operating status in response to a pandemic, public health crisis, or other ongoing emergency situation under 5 C.F.R. § 550.409 and order employees to evacuate from their worksite and perform work from their home or an alternative location without regard to whether the employee has a Telework Agreement in place at the time the order to evacuate is issued.
- B. In instances in which the Secretary or General Counsel activates the COOP for the Department or Agency, or in which there is activation of a COOP for the Federal workforce by the White House or OPM, the COOP supersedes this Article. See Article 32—Agency Emergency Actions.

Section 6. Provisions Applicable to All Telework

- a. Flexible Work Arrangements/Credit Hours. Teleworkers may participate in all flexible and compressed work schedules or other flexible work arrangements available to Agency employees under Article 44—Hours of Work so long as the schedules and work arrangements comply with the requirements of Section 4 above. For example, an employee working a schedule of 4/10 hour days each week may telework up to 6 days a pay period with 2 scheduled office days and 2 days off. Teleworkers may earn and use Credit Hours in accordance with Articles 44—Hours of Work and 49—Leave.
- b. Changes/Termination of Existing Approved Telework Agreements. Approved Telework Agreements remain in effect until a change is initiated by the employee, the supervisor, or unless the employee becomes temporarily or permanently ineligible for telework as specified in Section 3 above. An employee who wishes to change or terminate their approved Telework Agreement should submit a new Telework Agreement to their supervisor at least 14 days before the requested effective date of the new telework

arrangement. The time periods identified in Section 4(d) above (Approval) shall apply to any request to change or terminate an existing approved Telework Agreement.

- c. Call-Back to Office. The Agency reserves the right to call employees back to the Official Worksite, even on scheduled telework days, in accordance with the following procedures:
  - i. Supervisors should minimize instances of disruption to approved telework schedules unless necessary to accomplish business or operational needs where alternative virtual communication means (e.g., teleconference, virtual meetings) are not suitable or available. In those circumstances, teleworking employees working at an AWS may be recalled to the Official Worksite on a scheduled telework day.
  - ii. An employee may not be recalled to the Official Worksite as a form of discipline, punishment, or retaliation against the employee.
  - iii. The supervisor should notify affected employee(s) as soon as possible if they are subject to a recall to the Official Worksite, generally at least 24 hours in advance.
  - iv. Employees shall leave the AWS and return to the Official Worksite if requested under this section. If return to the Official Worksite is not possible, the employee may continue to work from the AWS only with agreement of the supervisor, otherwise the employee must request leave. Employees returning to the Official Worksite if requested under this section generally should be permitted to take a replacement telework day that pay period or the following pay period.
- d. Equitable Treatment. Supervisors shall evaluate all teleworkers and Opt-Outs under the same performance management system and afford them the same professional opportunities, assignments, and treatment with regard to work projects assigned, performance appraisals, awards, recognition, training and developmental opportunities, promotions, and retention incentives.

## Section 7. Employee's Telework Responsibilities

- a. General. Telework is official work time and a tool for accomplishing work. While teleworking, all workplace policies remain in place, including work start/end times, rules regarding time and attendance, and employee expectations concerning performance and conduct. Teleworking employees shall provide the same level of support, availability, and accessibility to clients, coworkers, and their supervisor(s) as if working at the Official Worksite, including organizational and individual work requirements (e.g., client service, timeframe for returning phone calls, voicemail messages, and email communication), staff meeting attendance, duty hours, and accurately coding time and attendance; and complete all applicable mandatory training courses. Teleworking employees will follow USDA safety requirements and ensure proper security of USDA equipment, information, and materials at the AWS.

- b. Outages and Disruptions. Employees are responsible for communicating to their supervisor in a timely fashion any power, heating, air conditioning, internet, or telephone outages, or other similar disruptions to the AWS, other than *de minimis* outages or disruptions. In the event of outages or disruptions to the AWS, the employee shall continue performing Agency work that may be carried out during the outage. When an outage or disruption exceeds 30 minutes and the employee is unable to continue performing Agency work during the outage, employees shall discuss with their supervisor the need to charge leave or take administrative leave, based on whether the outage or disruption was localized or widespread through the region. In such situations, the employee may, in lieu of charging leave, utilize schedule flexibilities and resume teleworking later on the day in question (within the hours of work), provided the outage or disruption ends later in the day and provided the employee has the approval of their supervisor. The employee may also commute to the Official Worksite, provided the employee has the approval of their supervisor and discussed the need to charge leave and/or utilize schedule flexibilities for the time required to commute to the Official Worksite.
- c. Government Furnished Equipment. The employee shall take reasonable safeguards to protect government furnished equipment from theft and damage while commuting between the AWS and Official Worksite and follow the requirements of Article 21—Workplace Technology and Equipment while teleworking.
- d. Telework Training/Self-Certification. Employees shall complete required USDA employee telework training and submit the Telework Agreement to their Supervisor.
- e. Dependent Care. Employees shall ensure all necessary dependent/elder care arrangements are maintained and do not interfere with the employee’s work while working at the AWS. If caregiving responsibilities would interfere with an employee’s work duties during the time the employee is working at an AWS, the employee must arrange for other care or request leave or work schedule adjustments for those periods when the employee is not able to work due to caregiving responsibilities.
- f. Compliance with Other Requirements. Employees shall ensure compliance with the USDA’s and the Agency’s information technology policies and procedures; comply with Agency policies and the provisions of this Agreement regarding pay, work schedules, time reporting code requirements, leave requests, and other administrative requirements in the same manner as employees working at their Official Worksite; and maintain information and document security and confidentiality in accordance with Agency, Departmental, and Federal Government-wide requirements.
- g. Safe Workplace/Injury. Employees shall ensure that the AWS is safe and allows for safe work habits. If an injury occurs to the employee at the AWS while performing official duties, the employee shall immediately notify their supervisor, providing details of the incident or injury in accordance with Article 34—Federal Employees’ Compensation Act. The employee shall also complete any necessary Department of Labor, Occupational

Safety and Health Administration forms as provided by the Agency in accordance with Article 34.

Section 8. Agency's Telework Responsibilities

- a. Data. Upon request, the Agency shall provide telework participation data to the Union President, including documented approvals and disapprovals as provided in this Article, whenever such data is compiled.
- b. Injuries. The Agency shall assist the employee in determining whether the employee is covered by the Federal Tort Claims Act (FTCA), Federal Employees' Compensation Act, and/or any other relevant law or regulation in accordance with Article 34—Federal Employees' Compensation Act. The Agency shall also provide the employee with any necessary forms to document the injury or incident and assist the employee in completing these forms, such as those specified by the Department of Labor, Occupational Safety and Health Administration accordance with Article 34. However, neither the Agency, Department, nor United States is liable for damages to the employee's personal or real property while the employee is teleworking, except to the extent the Government is held liable by the FTCA or any other applicable law or regulation.
- c. Telework Program Coordinator. Within 30 days of the effective date of this Agreement, the Agency shall make an announcement to all employees identifying the Agency's TPC. This information shall also be posted on the Employee Information Page as provided in Article 17—Provision of Information and Employee Information Page. The Agency shall update this announcement whenever the Agency's TPC is replaced. The Agency's TPC will administer the telework program and promote its use as follows:
  - i. Ensure all employees are notified of their eligibility to telework and encourage them to annually review or update their Telework Agreements or Opt-Out by selecting the appropriate box on their Telework Agreement;
  - ii. Notify and provide new employees with a link to or copy of this Article and include training on telework in the Agency onboarding process covered in Article 50—Onboarding;
  - iii. Ensure supervisors are aware of their responsibilities set forth in subsection 8(d) below;
  - iv. Ensure managers are aware of the requirement for teleworkers and supervisors to complete required training prior to implementing a telework arrangement;
  - v. Coordinate with relevant parties on inventories of available computers, laptops, mobile phones, printers, and other office equipment for use in the telework program prior to reporting the property as excess;

- vi. Ensure employees and supervisors accurately record duty time spent in telework status in the time and attendance system;
  - vii. Encourage supervisors to review Telework Agreements with their employees annually; and
  - viii. Upon request, the Agency will meet with the Union to discuss its reports to OHRM on OGC's telework program.
- d. Supervisors. OGC supervisors shall:
- i. Notify all assigned employees of their eligibility to telework, or opt out;
  - ii. Follow procedures and timeframes set forth in this Article for responding to and otherwise processing any telework work request, including making a good faith effort to resolve any telework work request denials or proposed modifications in a timely manner;
  - iii. Provide written notification and explanation to any employee who is not eligible to participate in telework under this Article;
  - iv. Ensure consistent and fair administration of this Article in their areas of responsibility; and
  - v. Upon approval of a Telework Agreement, establish and communicate clear expectations with employees regarding methods of communication (*i.e.*, client service, timeframes for returning phone calls, voice mail messages, and email communications), staff meeting attendance, duty hours, and the accurate coding of telework for time and attendance purposes.



## United States Department of Agriculture Telework Agreement

1. Agreement Date:	2. Agreement Type: <input type="checkbox"/> New <input type="checkbox"/> Revision <input type="checkbox"/> Opt Out
<p><b>3. For employees opting out of participation in the telework program, please affirm the following:</b></p> <p><input type="checkbox"/> I fully understand that I am eligible to participate in USDA's Telework Program. I acknowledge that I have been notified of my status, and at this time I voluntarily decline to participate in telework in any capacity.</p> <p><input type="checkbox"/> I understand that I may revisit my decision to participate in the Telework Program at any time, provided that I meet the eligibility and suitability requirements and complete a revised telework agreement form.</p>	
<b>Employee Information</b>	
4. Employee Name ( <i>First, MI, Last</i> )	
5. Mission Area/Agency/Staff Office	6. Organization/Division
7. Employee Appointment Type: <input type="checkbox"/> Full Time <input type="checkbox"/> Part Time <input type="checkbox"/> Intermittent <input type="checkbox"/> Seasonal <input type="checkbox"/> Other: _____	
8. Employee Work Schedule <input type="checkbox"/> Full Time <input type="checkbox"/> Part Time <input type="checkbox"/> Intermittent <input type="checkbox"/> Seasonal <input type="checkbox"/> Other: _____	
9. Employee Tour of Duty <input type="checkbox"/> Standard <input type="checkbox"/> Compressed (5/4-9) <input type="checkbox"/> Compressed (4-10) <input type="checkbox"/> Flexible <input type="checkbox"/> Other: _____	
10. Estimated total number of commuting miles saved: _____ miles per pay period      _____ miles per year	
11. Requested Telework Category <input type="checkbox"/> Regular/Recurring <input type="checkbox"/> Situational/Non-scheduled	12. Telework Location <input type="checkbox"/> Residence <input type="checkbox"/> Satellite Office <input type="checkbox"/> Telework Center
13. Telework: Week 1 Schedule <input type="checkbox"/> Mon <input type="checkbox"/> Tue <input type="checkbox"/> Wed <input type="checkbox"/> Thurs <input type="checkbox"/> Fri <input type="checkbox"/> Sat <input type="checkbox"/> Sun  Telework: Week 2 Schedule <input type="checkbox"/> Mon <input type="checkbox"/> Tue <input type="checkbox"/> Wed <input type="checkbox"/> Thurs <input type="checkbox"/> Fri <input type="checkbox"/> Sat <input type="checkbox"/> Sun	

<p>14. Employee has completed required telework training?</p> <p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p>Date completed:</p>	<p>15. Supervisor has completed telework training?</p> <p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p>Date completed:</p>
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**Telework Agreement Conditions**

- Employee requests participation in the program and will adhere to the applicable guidelines, policies and law. Agency concurs with employee participation and agrees to adhere to the applicable guidelines, policies, and law.
- To be considered telework ready, employees must have an approved core or situational telework agreement in place, in addition to being available to work, including for professional development activities, having the appropriate equipment, or other means necessary to be able to perform work and stay connected.
- Employee's most recent performance rating must be at least equivalent to "fully successful."
- Employee understands that unscheduled telework or unscheduled leave must be used with supervisory notification during periods of unscheduled telework authorization due to weather or other emergencies. An employee performing unscheduled or regularly scheduled telework: 1) is expected to work all regularly scheduled hours on days when unscheduled telework is announced or to request unscheduled leave from the supervisor; and 2) is expected to work all regularly scheduled hours when unscheduled telework is announced and weather-related delayed arrival or early departure is authorized or request unscheduled leave from the supervisor.
- Employee agrees to follow policy for requesting and obtaining supervisory approval of leave.
- Employee's time and attendance (T/A) for all official duty time spent in a teleworking status will be recorded using the proper telework time code.
- Employee's official tour of duty must include at least a 30-minute uncompensated lunch.
- Employee understands requirements for an adequate and safe office space and that these requirements must be met.
- Employee will apply approved safeguards to protect Government records from unauthorized disclosure or damage and will comply with the provisions set forth in the *Privacy Act of 1974* ([5 U.S.C. 552a](#)).
- Employee is covered under the *Federal Employee's Compensation Act (FECA)*/*Federal Tort Claims Act (FTCA)* in the course of performing official duties at the alternate work.
- Employee understands that telework is not a substitute for dependent care (childcare or elder care) while performing official duties in a residential office and that appropriate arrangements must be made to accommodate children and adults who cannot care for themselves.

- This telework agreement shall correspond with the employee's approved transit subsidy benefits. It is the employee's responsibility to adjust and re-certify their transit subsidy authorizations to ensure alignment with this telework agreement.
- This telework agreement should be reviewed and discussed between the employee and supervisor on an annual basis.

**Approving Signatures**

17. Signing this form constitutes a telework agreement between the USDA, the employee, and the approving supervisor.

Employee Signature	Date Signed
Supervisor Signature	Date Signed
Telework Program Coordinator Signature	Date Signed

**To be Completed by Supervisor**

18. Request Status

- Approved
                 
  Disapproved
                 
  Returned for Correction

Reason(s) for Disapproval

- Position duties require physical presence on a daily basis.
- Position duties require access to and/or use of specialized equipment on a daily basis located only at the traditional work site.
- Position duties require access to the handling of classified material on a daily basis.
- Employee has received a less than fully successful performance rating or has received formal disciplinary action for conduct issues and that formal notice remains in their eOPF or personnel folder.
- Permanent ineligibility** pursuant to telework status and Departmental regulation.

*Please return the signed form to the Mission Area/Agency/Staff Office Telework Coordinator.*

Telework Program Coordinator Signature	Date
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<b>Telework Security and Work Equipment Checklist</b>	
<b>Information Security</b>	
Has the employee been trained to recognize and handle controlled unclassified information (CUI) in a telework environment?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has a locked file cabinet been identified/provided to secure sensitive CUI files, records, papers, or electronic media?	<input type="checkbox"/> Yes <input type="checkbox"/> No
A review of the job duties and responsibilities has been completed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Issues related to level of sensitivity were noted from the review.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Workstation Configuration</b>	
The employee has been issued the following government furnished equipment (GFE). GFE refers to Mission Area/agency/staff office owned equipment.	
<input type="checkbox"/> Computer <input type="checkbox"/> Printer <input type="checkbox"/> Cell Phone <input type="checkbox"/> Software <input type="checkbox"/> Other:	
<b>Telework Connection Requirements</b>	
The following connectivity requirements are employee-provided and paid for by the employee unless other formal written agreement is approved by the supervisor and the employee.	
<input type="checkbox"/> Telephone/modem line <input type="checkbox"/> Direct internet/wireless connectivity <input type="checkbox"/> N/A	

## Instructions

- 1. Agreement Date:** Select the date from the dropdown box or type in the date MM/DD/YYYY format.
- 2. Agreement Type:** Select the applicable agreement type. This entry identifies if this telework agreement form is new, a revision to an existing agreement, or if the employee is opting out of participation in the program.
- 3. Opt-out affirmation:** If the employee is choosing not to participate in telework at this time, both affirmation selections will need to be selected.
- 4. Employee Name:** Enter your name in first name, middle initial, last name format.
- 5. Mission Area/Agency/Staff Office:** Enter your current Mission Area, agency, or staff office name; do not enter the office acronym.
- 6. Organization/Division:** Enter your current organization or division name. (acronym allowable).
- 7. Employee Appointment Type:** Select your appointment type. This entry should identify if your employment appointment type is full-time, part-time, intermittent, or seasonal. If your appointment type is not one of these selections, select “Other” and enter your specific appointment type.
- 8. Employee Work Schedule:** Select your work schedule type. This entry should identify if your work schedule is full-time, part-time, intermittent, or seasonal. If your work schedule type is not one of these selections, select “Other” and enter your specific work schedule type.
- 9. Employee Tour of Duty:** Select your tour of duty type. This entry should identify if your tour of duty is standard, compressed, or flexible. If your tour of duty is not one of these selections, select “Other” and enter your specific tour of duty type.
- 10. Estimated total number of commuting miles saved:** Enter the miles saved per pay period and the miles saved per year in the applicable fields.
- 11. Requested Telework Category:** Select if you will be teleworking on a regular/recurring basis or on a situational/unscheduled basis.
- 12. Telework Location:** Identify if you will be teleworking from your residence, a satellite office, or a telework center.
- 13. Week 1 & 2 Schedules:** Select the days for both weeks of the pay period that you will be teleworking.

14. **Employee telework training:** Identify if you (employee) have taken telework training and the completion date of your training.
15. **Supervisor telework training:** Supervisor must identify if they have taken the supervisory version of the telework training and the completion date of their training.
16. **Approving Signatures:** The employee, supervisor, and telework program coordinator must sign this form to verify the affirm the telework agreement has been approved and is in place.
17. **To be Completed by Supervisor:** The approving supervisor must complete the agreement status information section. If a telework agreement is disapproved, the reason(s) for disapproval must be identified and the employee informed of the disapproval in accordance with DR 4080-811-002, *Telework Program*.
18. The attached *Telework Security and Work Equipment Checklist* should be reviewed by the supervisor and the employee to ensure security, workstation configuration, and telecommunications requirements are addressed.

**Office of the General Counsel Addendum (Addendum) to  
Form AD-3018 Telework Agreement**

This telework arrangement applies to: \_\_\_\_\_ (employee).

1. This Addendum sets forth additional terms of the telework arrangement entered between the employee and the Office of the General Counsel (Agency). To the extent the employee has executed a prior addendum to an existing Form AD-3018, this Addendum supersedes and replaces that prior addendum in its entirety.

2. The terms of this Addendum and the Form AD-3018 executed by the employee and the Agency (together, the Telework Agreement) must be read in conjunction with Departmental Regulation 4080-80-811-002 and the 2023 Collective Bargaining Agreement between the Agency and the American Federation of Government Employees, Local 1106 (herein “CBA”).

3. This telework arrangement is for:

\_\_\_\_\_ Routine Telework (as defined in Article 48 of the CBA—Telework.)

\_\_\_\_\_ Situational Telework (as defined in Article 48 of the CBA—Telework.)

\_\_\_\_\_ Both Routine and Situational Telework (as defined in Article 48 of the CBA—Telework.)

4. This telework arrangement will begin on \_\_\_\_\_ and continue until terminated by the employee and/or the Agency in accordance with Article 48 of the CBA—Telework.

5. The employee’s division or office is: \_\_\_\_\_

6. The employee’s Official Worksite(s) (as defined in the CBA) is/are:

\_\_\_\_\_

\_\_\_\_\_

7. The employee’s Alternative Worksite(s)/AWS (as defined in the CBA) is/are (note: this section should be completed by employees requesting Routine Telework and Situational Telework; multiple AWS may be listed; employees are responsible for assuring that each

location complies with Article 48 of the CBA—Telework and informing their supervisor(s) as to which location is being utilized on which day):

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8. Unless otherwise instructed or as approved by the employee's supervisor in accordance with Article 48 of the CBA—Telework the employee shall work only at an Official Worksite or an Alternative Worksite.
9. The employee agrees not to conduct personal business while in official duty status at the Alternative Worksite. Telework is not a substitute for adequate dependent care while performing official duties in a residential office and appropriate arrangements must be made to accommodate children and adults who are present in the residence and cannot care for themselves.
10. For employees requesting Routine Telework, the employee's work schedule for a pay period is:
11. Employees are subject to Unscheduled Telework as provided for in Article 48 of the CBA—Telework.
12. All pay, special salary rates, leave, and travel entitlements shall be based on the employee's Official Worksite. The employee's time and attendance shall be accurately recorded as work at the official duty station or telework as appropriate.
13. The employee must follow established office procedures for requesting and using leave as set forth in Article 48 of the CBA—Telework and Article 49 of the CBA—Leave.
14. Employees are responsible for the proper use, care, and security of Agency/Government furnished property and equipment (GFE) at any Alternative Worksite as set forth in Article 48 of the CBA—Telework and Article 21 of the CBA—Workplace Technology and Equipment, which establish the duties and responsibilities of the Agency and the employee with respect to such equipment. In addition to the information contained on Form AD 3018 and upon request, the employee will provide their supervisor a list of all other GFE that is at the Alternative Worksite.
15. Employees are responsible for the proper use, care, storage, security, and retention of Government records at any and all Alternative Worksites. The employee shall protect



Government records from unauthorized disclosure, loss, or damage, and shall comply with the Privacy Act of 1974, 5 U.S.C. § 552a.

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Telework Program Coordinator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **Article 49. LEAVE**

### Section 1. General.

The Agency shall administer leave in accordance with law, this Article, and OPM regulations in effect at the time the leave is taken. All leave charges will be in 15-minute increments. For purposes of this Article, the term “family” includes a spouse and parents thereof, child (including adopted and foster children) and spouses/domestic partners thereof, parent and spouses/domestic partners thereof, sibling and spouses/domestic partners thereof, grandparents and grandchildren and spouses/domestic partners thereof, domestic partner and parents thereof, and any individual related by blood or affinity or whose close association with the employee is the equivalent of a family relationship.

### Section 2. Annual Leave.

- a. For purposes of this Article only, annual leave includes annual leave, compensatory time, and, to the extent they are allowed under this Agreement, credit hours. However, employees may use no more than two credit hours on any two days in a pay period in which they report to the Official Worksite. Consistent with Article 48—Telework, employees are expected to be at the Official Worksite at least two full days per pay period, unless they use approved leave (no more than two credit hours per day may be approved).
- b. Annual leave is part of an employee’s compensation and employees are entitled to use annual leave in accordance with this Agreement. Supervisors shall grant requests for annual leave unless the requested absence would cause an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, increasing the cost of Agency operations, or resulting in inadequate office coverage.
- c. Requests for annual leave shall be made and approval shall be granted as far in advance as practicable. If a request for annual leave is denied, the supervisor shall, upon request by the employee, provide the employee with a written explanation of the denial and specify when the employee will be able to take the requested leave. Where two or more employees seek overlapping leave, the use of which by both or all employees will cause an unacceptable adverse impact on the Agency as determined by the supervisor, the supervisor shall meet and confer with all affected employees to determine whether an accommodation can be reached. If no accommodation is reached and acceptable to all parties affected, preference will be given to employees with the earliest Service Computation Date or some randomized process agreed upon by the affected employees.
- d. Annual leave shall be granted in a manner that permits employees to take two consecutive weeks of annual leave per year. The Agency shall make reasonable efforts to accommodate employee requests to take longer periods of annual leave subject to subsections 2(b) and (c) of this Article, above.
- e. All annual leave that an employee may accrue during the leave year is available for use on the first day of the leave year, in accordance with the supervisory approval provisions

of this Article. An employee may request annual leave in advance of its actual accrual provided that:

- i. the employee has served more than 90 days in the employee's current appointment;
  - ii. the request does not exceed the amount of annual leave that the employee will earn during the rest of the leave year; and
  - iii. it is anticipated that the employee will be in a duty status long enough to repay the advanced leave.
- f. The Agency shall not cancel approved leave without consent of the employee, except in unusual and infrequent circumstances.
- g. Annual leave that is erroneously charged or forfeited through no fault of the employee shall be restored in accordance with applicable regulations.
- h. With prior notice to the supervisor, an employee may use short periods of annual leave, normally 2 hours or less, without receiving advance approval. However, the use of this leave is ultimately subject to approval by the supervisor. In the event the supervisor determines that the employee's use of a short period of annual leave without advance approval was unjustified under subsection 2(b) of this Article, the employee's use of leave may be converted to leave without pay or absent without leave as appropriate.
- i. Employees are entitled to use annual leave as necessary to prevent any unintended loss of leave at the end of the leave year. Employees shall plan and request the use of annual leave well in advance, but no later the start of the third biweekly pay period prior to the end of the leave year so as to avoid any potential loss at the end of the leave year.

### Section 3. Sick Leave.

- a. An employee's request to use earned sick leave shall be approved when available to the employee under the circumstances listed in Section 8, below, and OPM regulation and policy, including the following:
- i. requests advance approval for medical, dental, or other examinations or treatment;
  - ii. is incapacitated because of sickness, injury, or pregnancy;
  - iii. is required to give care and attendance to a member of the employee's family who is incapacitated as the result of a physical or mental illness, injury, pregnancy, or childbirth, or who requires medical, dental, or optical examination or treatment;
  - iv. would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by the employee's presence on the job because of exposure to a communicable disease; or

- v. makes arrangements necessitated by the death of a family member or attends the funeral of a family member.
- b. Employees should notify their supervisors and request approval for medical, dental, and other appointments as far in advance of the date and time of the appointments as possible.
- c. If an employee is unable to report for duty because of illness, injury, infection, or quarantine the employee shall notify the supervisor as soon as possible. The employee shall keep the supervisor informed of the need for continued use of sick leave. The Agency shall keep confidential the employee's reason for use of sick leave. This information shall be disclosed only to those with a need to know in the course of their job duties.
- d. Employees may be required to furnish additional information in accordance with applicable regulations when requesting approval for sick leave in excess of three or more consecutive workdays.
- e. If there is a pattern of questionable sick leave use, the supervisor may ask the employee for an explanation of the sick leave use. If the problem persists, the supervisor may provide the employee with written notice of the problem and advise the employee that restrictions on the use of sick leave may be imposed. If the problem continues, the supervisor shall provide written notice of restrictions regarding the use of sick leave and their duration. Sick leave restrictions shall be in place for no more than four months. However, if the problem continues, an employee's sick leave restriction may be extended for additional periods of four months or less.
- f. Upon the employee's request and with the presentation of a medical certificate if requested by the Agency, the Agency may advance sick leave to permanent employees for up to 30 days, provided the employee has first exhausted accrued sick leave. However, advanced sick leave may not be granted to employees subject to sick leave restriction under subsection 3(e) of this Article, above, or for whom future accrual of sick leave is improbable.
- g. Sick leave that is erroneously charged shall be restored in accordance with applicable regulations.

#### Section 4. Religious Leave.

In accordance with law, including 5 U.S.C. § 5550a, a supervisor shall permit an employee to earn compensatory time that the employee may use to attend religious services, or when religious beliefs do not allow the employee to work during normal duty hours. The employee may earn the necessary compensatory time either before or after using the religious leave. However, before using the religious leave, the employee and supervisor shall agree on a schedule for earning the necessary compensatory time.

## Section 5. Leave Without Pay.

- a. Leave without pay (LWOP) is a voluntary, temporary, non-pay status, and approved absence from duty during normal duty hours that may be granted at the request of an employee. Requests for LWOP must be submitted to the supervisor. Upon request of the employee, the Agency shall provide the employee with information regarding the effect of extended LWOP on the employee's benefits, earned leave, and creditable service.
- b. Employees may not use LWOP as a substitute for part-time employment status. If the Agency determines that an employee is using LWOP as a substitute for part-time employment status, the Agency may deny a request for LWOP. The provisions of this subsection do not apply to employees taking LWOP under the Family and Medical Leave Act, as part of a Reasonable Accommodation, or for any other reason required by statute or regulation.
- c. An employee may request that LWOP be approved for any reason. An employee's request for LWOP may be submitted orally or, upon request of the supervisor, in writing, and shall state the reasons for the request and the dates and duration of the period for which LWOP is sought. At the employee's request, the supervisor shall provide a written explanation if the request is denied in whole or in part.
- d. An employee may request LWOP for academic opportunities, training, or occupational development that will enhance the employee's skills and benefit the Agency.
- e. Notwithstanding subsection 5(b), above, if, for budgetary or other reasons, the Agency determines that the use of LWOP by employees would be advantageous, the Agency shall notify all employees and solicit applications for LWOP. The notice shall state when the applications are due and shall advise employees of the effect of LWOP on employee benefits, earned leave, and creditable service. Employees who wish to request LWOP under this subsection shall submit a written request to their supervisors stating the period for which LWOP is sought. If the Agency receives more requests for LWOP under this subsection than it can accommodate, employees with the earliest Service Computation Dates shall be given priority, unless their absence would cause an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations. After the Agency reviews all LWOP requests submitted under this subsection, it shall provide a written response to each applicant, stating that the request has been approved, or, if approved in part or disapproved, stating the reasons for which the request was not approved.

## Section 6. Absence Without Leave.

Absence without leave (AWOL) is absence without approved leave and without adequate reason for failing to obtain prior approval for the absence. Employees may be charged with AWOL if they are absent without prior authorization. A charge of AWOL is not a disciplinary action but may serve as the basis for taking disciplinary action.

Section 7. Administrative and Other Leave.

- a. Administrative leave is an authorized absence from duty without loss of pay or charge against earned leave.
- b. Employees shall be granted administrative or other kinds of leave if it is necessary to close an office location, delay the start of work hours, or release employees early. If any of these events occurs, the Agency shall make reasonable efforts to provide timely notice to affected employees that administrative leave is in effect.
- c. The Agency may approve administrative and other permissible types of leave to permit employees:
  - i. to vote in a civil election (up to four hours per election event including travel time), or serve as a non-partisan poll worker or non-partisan observer, (up to four hours per leave year including travel time);
  - ii. to serve on a jury or, when permitted under Department or other applicable regulations, to attend judicial proceedings as a witness;
  - iii. to attend the funeral of a coworker or other professional associate;
  - iv. to take necessary bar examinations or required civil service examinations;
  - v. to serve in the Military Reserves or National Guard (including active duty);
  - vi. to donate blood without compensation (up to four hours of administrative leave including necessary travel time);
  - vii. to donate bone marrow (up to seven days of administrative leave per calendar year plus annual or sick leave);
  - viii. to serve as an organ donor (up to 30 days of paid leave plus annual or sick leave);
  - ix. to participate in employment interviews and to prepare and distribute resumes and job applications under the circumstances described in Article 43—Reductions in Force; or
  - x. to engage in other activities for which administrative and other kinds of leave are permitted by law or by other provisions of this Agreement such as leave to use the EAP under Article 28—Employee Assistance Program, or leave to participate in *pro bono* or other voluntary activities under Article 46—Outside Employment, *Pro Bono*, Volunteer, and Other Outside Activities.
- d. The Agency may grant weather and safety leave under 5 U.S.C. § 6329c and 5 C.F.R. Part 630, Subpart P or any applicable successor regulation when employees are prevented from safely traveling to, or safely performing work at, a location approved by the Agency.

## Section 8. Other Types of Leave.

The Agency will provide employees leave consistent with all applicable statutes and regulations. As of the date of this Agreement, leave administration for Federal employees is governed by title 5, chapter 63 of the United States Code and title 5 of the Code of Federal Regulations. USDA's ConnectHR and the Employee Information Page established under Article 17—Provision of Information and Employee Information Page have links to OPM and Departmental resources and information on leave available to Agency employees, including but not limited to the types of leave listed below.

- a. Excused Absence for Employees Returning from Active Military Duty
- b. Bone-Marrow or Organ Donor Leave
- c. Court Leave (Jury Duty)
- d. Disabled Veteran Leave
- e. Emergency Leave Transfer Program
- f. Family and Medical Leave
- g. Family and Medical Leave to Care for a Covered Servicemember
- h. Family and Medical Leave Qualifying Exigency Leave
- i. Funeral Leave and Other Bereavement Options
- j. Leave and Workplace Flexibilities for Childbirth, Adoption, and Foster Care
- k. Workplace Flexibilities and Work-Life Programs for Elder Care
- l. Leave and Families
- m. Leave Without Pay
- n. Military Leave and Military Related Leave Issues
- o. Sick Leave (General Information)
- p. Sick Leave for Adoption
- q. Sick Leave for Family Care and Bereavement
- r. Sick Leave to Care for a Family Member with a Serious Health Condition
- s. Sick Leave for Personal Medical Needs
- t. Voluntary Leave Bank Program
- u. Voluntary Leave Transfer Program
- v. Voting Leave (CPM 2022-05 implementing Executive Order 14019).

## Section 9. Leave Transfer and Leave Bank Program.

To the extent the Department establishes (or has established) a leave transfer program in accordance with applicable law, the Agency shall maintain and participate in such a program. To the extent the Department establishes (or has established) a voluntary leave bank program in accordance with applicable law, the Agency shall maintain and participate in the program. The Agency shall circulate annual email reminders regarding the existence and availability of the leave transfer and leave bank programs. Relevant information regarding these programs shall be posted on the Employee Information Page.

Section 10. Voluntary Work during Periods of Approved Leave.

An employee may elect to work during a period of approved leave, so long as the employee provides their supervisor with reasonable prior notice of the known matter(s) to be worked on and the expected duration and timing of work to be conducted. With prior notice to the supervisor, an employee may elect to be on call on a general or limited basis for work-related matters during periods of leave. Time spent on work will be recorded as duty time in the timekeeping system.



## **Article 50. ONBOARDING**

### Section 1. General.

An effective new employee orientation (or onboarding) program is an important component in ensuring that all employees receive information regarding OGC and their rights, benefits, roles, and responsibilities as employees of USDA.

### Section 2. Orientation Sessions.

New employee orientation sessions will be conducted on an as needed basis as determined by the Agency. All new employees will be required to attend either virtually or in person. The Agency will be responsible for determining the timing, length, contents, and agenda of the orientation sessions, but will include the Union President in discussions concerning the timing and agenda for the sessions.

### Section 3. Union Involvement.

The Union President, or designee, will be introduced by the Agency representative and provided no less than 30 minutes of time to describe the work of the Union and share information with employees concerning this Agreement (its contents and how it functions), the role of Union officers and stewards, and the laws and regulations that apply to labor-management relations for federal employees. The Union President, or designee, cannot use this time to recruit employees for union membership.

### Section 4. Session Agenda.

In setting the agenda for any onboarding program or session, the Agency may consider including the following topics and substantive information on: employee benefits (including but not limited to, insurance, retirement, Thrift Savings Plan, healthcare benefits and options); employee resources (e.g., the Employee Assistance Program, or successor program, and Departmental resources, such as the TARGET Center, or its successor, the Office of the Assistant Secretary for Civil Rights, or successor office, for reporting Equal Employment Opportunity (EEO) complaints, and Office of Inspector General, or successor office, for reporting criminal activity, mismanagement and waste of funds, workplace violence, employee misconduct, and conflicts of interest); a presentation from the Office of Ethics regarding ethical obligations applicable to Federal employees; and substantive information and discussion concerning employee training, career development, and promotion opportunities and requirements, for both attorney and non-attorney employees (including classification as Senior Counsel). Nothing in this section is intended to constrict the Agency's right to assign work.

## **Article 51. TRAINING**

### Section 1. General.

The Parties recognize the value of a well-trained workforce and the need for a well-planned and well-conducted training program. For purposes of this Article, the term “training” includes but is not limited to continuing legal education (CLE). The training program shall be designed to improve job performance, provide for career development, and meet Agency needs. The identification and selection of training is the joint responsibility of the employee and the Agency. In general, and as outlined in this Article, subject to the availability of funds for this purpose, as referenced in subsection 5(a) below, the Agency shall be responsible for providing Agency-sponsored training and career development programs, as well as providing for online CLE classes. Employees shall plan training well in advance of CLE compliance deadlines, the end of the fiscal year, and the end of the leave year.

### Section 2. Use of West LegalEd Center (WLE).

The Agency shall, to the greatest extent possible and subject to sufficient funding, maintain its current subscription to WLE, or any successor or replacement subscription, that allows employees to attend live and on-demand legal education classes, including those that provide CLE credit, at no cost to the employee. The provision of WLE is not intended to be a substitute for an Agency-sponsored training or career development program, nor should the availability of a class or program on WLE be the sole basis for denying a request by an employee to attend a CLE class or other training or career development program outside of WLE. In the event budgetary restrictions require the Agency to suspend or terminate its WLE subscription (or any successor or replacement subscription), the Agency shall promptly notify the Union President and shall resume its subscription as soon as feasible when sufficient funds are available.

### Section 3. Career Development.

Factors to be considered in making decisions regarding career development and training for employees include educational experience, relevant work experience, job performance, and relevant individual skills and potential.

- a. At least annually, the employee and the supervisor shall meet to discuss training and career development. At this meeting, the employee and the supervisor shall discuss the employee’s developmental needs and appropriate training courses. Typically, this meeting will occur during the employee’s annual performance evaluation or when training funds are allocated for the upcoming fiscal year.
- b. At any time, an employee may request a conference with the supervisor to discuss training and career development.
- c. The Agency encourages the use of Individual Development Plans as a helpful tool to guide discussions on career development and training. The Plans are also an important part of succession planning by helping employees develop skills that will be needed in

the future. DR 4040-410 “Creating Individual Development Plans” provides general information on Plans and instructions on how to create a Plan either online through AgLearn or using form AD-881. The use of Individual Development Plans by employees is voluntary and will not be considered by supervisors in evaluating performance.

#### Section 4. Training Requests.

- a. All Bargaining Unit attorneys shall be permitted to use duty time to attend without prior approval from their supervisor as many WLE or AgLearn classes as needed on an annual basis (or other periodic basis) to satisfy that attorney’s annual (or other periodic basis) CLE requirements for the jurisdiction where the attorney maintains an active bar membership the attorney uses to satisfy the requirements of Article 20—Active Bar Membership. In addition, the Agency shall permit each Bargaining Unit attorney to use up to 24 hours of duty time annually with prior notice to their supervisor to attend any additional WLE or AgLearn classes that relate to the employee’s assigned duties or would enhance the Agency’s mission and the employee’s performance. All other (non-attorney) Bargaining Unit employees shall be permitted to use up to 40 hours of duty time annually with prior notice to their supervisor or manager to attend any WLE or AgLearn classes as desired for career development or training that relate to the employee’s assigned duties or would enhance the Agency’s mission and the employee’s performance. Employees may request additional duty time to attend training on WLE or AgLearn, if the Agency determines that additional training on WLE or AgLearn relates to the employee’s assigned duties or would enhance its mission and the employee’s performance.
- b. Employees may ask to attend courses, seminars, meetings, or conferences at Agency expense that will enhance current working skills or provide training for work that may be assigned in the future. The supervisor may grant or deny a request depending on the relevance of the training, training fund priorities, demands of the office workload, and other training opportunities provided to the employee.
- c. The Agency shall permit an employee to use duty time to attend training that is approved but not funded by the Agency (such as those outside of WLE and any Agency-sponsored training or career development program) if the Agency determines that the training relates to the employee’s assigned duties or would enhance its mission and the employee’s performance.
- d. Upon request by the employee, the Agency shall provide a written explanation as to why the employee’s training request was denied.

#### Section 5. Miscellaneous.

- a. At the beginning of each fiscal year or when the Agency has been provided its final budget for that fiscal year, whichever is later, the Agency shall notify the Union President regarding: (a) the schedule and topics for that year’s Agency-sponsored training and career development programs; and (b) the amount of funds it plans to make available for

additional training that fiscal year. After notifying the Union President and receiving any comments from the Union, the Agency shall make its final determination regarding its training and career development programs and the amount of training funds and shall notify the Union President. The Agency shall notify the Union of any changes in the Agency-sponsored training and career development programs or amount of training funds.

- b. Upon request, the Agency shall provide the Union President with the following information for each Associate General Counsel area of responsibility and for each Field Office: the amount of funds expended under this Article that fiscal year, or any prior fiscal year, and a list of courses and seminars approved or denied by the Agency.

## **Article 52. SUPERVISOR TRAINING AND EMPLOYEE FEEDBACK**

### **Section 1. General.**

The Parties acknowledge that few factors are as important in the day-to-day satisfaction of the Bargaining Unit workforce than a well-trained supervisory team. Supervision and management require unique skills and can benefit from training and feedback.

### **Section 2. Supervisory Training for Non-Supervisors.**

During quarterly conversations pursuant to Article 40—Evaluation of Employee Performance, the Agency will assess non-supervisory employees' desires to prepare for available future management positions. The Agency will identify suitable AgLearn courses or other methods to prepare Bargaining Unit employees interested in supervisory positions. Subject to any terms and conditions set by OPM or the Department, the Agency will notify Bargaining Unit employees of opportunities to apply for the SES Candidate Development Program. The Agency may specify evaluation criteria that it may apply to applicants from OGC, including a preference for supervisory experience (which may include supervisory experience gained from details and serving in acting supervisory positions). The employees may use duty time to take courses approved by the Agency. Employees may propose outside courses or other activities, including details both internal to the Agency and in other organizations in accordance with Article 38—Details and Temporary Promotions, that they believe would be valuable in acquiring supervisory experience and skills. If the Agency agrees, the employee may use duty time for the courses or activities and may request Agency training funds for any necessary fees. If the Agency does not agree, upon the employee's request, the Agency will supply a written explanation of its reasons.

### **Section 3. Management Training for Supervisors.**

The Parties agree that supervisors are currently required to take training dealing with management and supervision of personnel under 5 C.F.R. § 412.202 and DR 4040-412-002. Upon request, the Agency will provide the Union with an accounting of such training taken by Agency supervisors on an annual basis. The Union may identify additional courses it believes would benefit Agency managers. If the Agency agrees that the courses should be offered to Agency managers, the Agency and Union will each pay for half of any cost of taking the courses, to the extent funds are available to the Agency for this purpose and this funding arrangement complies with law.

### **Section 4. Labor Management Training.**

In its discretion to assign work, the Agency may consider providing the Designated Agency Management Official (DAMO) with adequate training on the Federal Service Labor Management Relations Statute to perform the duties of the position. The Agency may also consider providing training to any other Agency official who undertakes duties prescribed by the Statute (mid-term negotiations, resolution of grievances, or impact and implementation bargaining). Upon request, the Agency will provide the Union with a description of the labor

relations training provided to the DAMO or other Agency officials. The Union may identify additional courses it believes would benefit Agency officials with duties relating to labor relations. If the Agency agrees that the courses should be offered to Agency officials with duties relating to labor relations, the Agency and Union will each pay for half of any cost of taking the courses, to the extent funds are available to the Agency for this purpose and this funding arrangement complies with law.

#### Section 5. Employee Feedback.

The Parties recognize the value of providing the Agency with information about supervisory performance to promote a collaborative working environment and to proactively address potential problems with mission accomplishment and workplace morale. The Union may, at its discretion, provide the Agency with feedback from Bargaining Unit employees concerning their first- and second-line supervisors annually between September 1 and September 30, and the Agency may, at its discretion, take into account employee feedback obtained by the Union in evaluating supervisory performance.

## **Article 53. PROFESSIONAL STAFF PROMOTIONS**

### Section 1. General.

In considering promotions for OGC personnel other than those in the GS-0905 series (herein “professional staff”), the Agency will follow applicable law, Office of Personnel Management classification standards, and Departmental Regulations in effect at the time of the Agency's determination.

### Section 2. Promotions.

Professional staff employee positions are advertised and graded with promotion potential, if applicable, provided the employee's performance is fully successful and upon the requisite amount of time in grade. For example, positions are graded at GS-7/8, meaning that after 52 weeks of GS-7 service that is fully successful, the employee would be eligible for promotion to a GS-8. Professional staff employees in such positions with a fully successful performance rating will be promoted to the next higher grade after they have served 52 weeks in grade, provided that they have demonstrated, in the judgment of their supervisor, the ability to perform work at the next higher grade, work at the next higher grade is available, and budgetary resources are available. In such situations, supervisors will submit required materials for all professional staff promotions to the Office of Administration and Resource Management at least 30 days in advance of a proposed promotion date in order to assure promotions are not unduly delayed.

### Section 3. Professional Staff Positions.

Except for positions in the Immediate Office of the General Counsel and positions in the Office of Administration and Resource Management, as of the effective date of this Agreement, the Agency has the following professional staff positions in its organizational structure:

- a. Administrative Officers advertised and hired as GS 11. There is one Administrative Officer position for each Regional Office and one for each Washington Office Division;
- b. Paralegals advertised and hired as GS 9/11;
- c. Legal Administrative Specialists advertised and hired as GS 7/9;
- d. Administrative Support Assistants advertised and hired as GS 7/8;
- e. Administrative Specialists advertised and hired as GS 9; and
- f. Secretary: There are three legacy positions denoted as “Secretary.” These three positions will be eliminated either through conversion to one of the positions listed above at managerial discretion, or upon the departure from the Agency of the incumbent holding the position.

The Agency expects that, subject to the provisions of this Agreement and its discretion in determining its organizational structure, each Field Office and Washington Office Division shall have no less than one professional staff position in addition to the Administrative Officer positions in the Regional and Divisional Offices.

Before the creation of any additional positions, or the eradication of any of these positions, the Agency will provide notice to the Union, and the Union may request to engage in Impact and Implementation Bargaining under Article 12—Mid-Term and Impact and Implementation Bargaining.



## **Article 54. ATTORNEY PROMOTIONS UP TO THE GS-14 LEVEL**

### **Section 1. General.**

In considering attorney promotions, the Agency will follow applicable law, Office of Personnel Management classification standards, and Departmental Regulations in effect at the time of the Agency's determination.

### **Section 2. Promotions up to the GS-14 Level.**

Attorneys with a fully successful performance rating shall be promoted, in accordance with their position description, to the next higher grade up to the GS-14 level after they have served 52 weeks in grade, provided that they have demonstrated, in the judgment of their supervisor, the ability to perform work at the next higher grade, work at the next higher grade is available, and budgetary resources are available. Any attorney not so promoted shall be provided with a written explanation of the factors preventing the promotion and a developmental plan and/or training designed to address those factors. Any such attorney will be re-evaluated for promotion after the passage of not more than six additional months and shall be promoted at that time provided that they have demonstrated, in the judgment of their supervisor, the ability to perform work at the next higher grade, work at the next higher grade is available, and budgetary resources are available. Supervisors will submit required materials for all attorney staff promotions to the Office of Administration and Resource Management at least 30 days in advance of a proposed promotion date in order to assure promotions are not unduly delayed.

### **Section 3. Other Promotions.**

Promotions to management positions are not covered by this Article. Promotions to the GS-15 level are covered by Article 55—Senior Counsel Promotions.

## **Article 55. SENIOR COUNSEL POSITIONS**

### Section 1. Senior Counsel Process.

Classification of a position as a “Senior Counsel” is a right retained exclusively by management pursuant to 5 U.S.C. § 7103(a)(14)(B) and this Article will be administered consistent with the provisions of 5 U.S.C. § 7106(a)(2)(C). Nothing in this Article is to be construed in a manner that abrogates or abridges the Agency’s right to make decisions regarding Senior Counsel.

### Section 2. Reservation of Management Rights.

Notwithstanding any provision of this Article and Agreement to the contrary, the Agency retains the right to re-assign work to other attorneys, remove grade defining duties, or make other accommodations to reduce the complexity of an attorney’s job duties to avoid reclassifying a position to GS-15.

### Section 3. Senior Counsel Positions.

Non-supervisory attorneys employed at the GS-15 grade level are designated as “Senior Counsel.”

### Section 4. Selection of Senior Counsels.

- a. Senior Counsel Vacancy Announcements. The Agency may announce, from time to time and as they become available, open and vacant Senior Counsel positions. Non-exclusive examples include “team lead” positions within Agency working groups, or positions requiring specialized knowledge and practice beyond that of the Agency’s staff attorney positions. The Agency shall create and post these vacancy announcements and consistent with 5 U.S.C. § 2301, consider all qualified individuals from all appropriate sources. In making a selection for a Senior Counsel, the Agency shall give first consideration to attorneys already employed by the Agency.
- b. Supervisory Nomination. If the supervisor of a GS-14 attorney believes that the attorney is performing work at the GS-15 level, the supervisor shall request that the Regional Attorney or Associate General Counsel or other designee petition the General Counsel to reclassify the position as a Senior Counsel. If the General Counsel or designee agrees with the assessment that the attorney is performing GS-15 level work they may choose to reclassify the position to Senior Counsel, or else re-assign work to other attorneys, remove grade-defining duties, make other accommodations to reduce the complexity of an attorney’s job duties, or exercise any other management right that may exist under law.
- c. Self-nomination Process. Non-supervisory GS-14 attorneys who are not recommended for reclassification by their supervisors but who nevertheless believe they are performing at the level of a GS-15 attorney may submit a letter, draft recommendation and other supporting documents to the General Counsel requesting a reclassification to a Senior Counsel. If the General Counsel or designee concurs with the assessment that the attorney

is performing GS-15 level work they may approve the recommendation and reclassification of the position to Senior Counsel, or else re-assign work to other attorneys, remove grade defining duties, make other accommodations to reduce the complexity of the attorney's job duties, or exercise any other management right that may exist under law.

- d. Remedy. An employee's only remedy for a denial of a request for reclassification to GS-15 under this Section 4 shall be to seek a classification appeal (or "desk audit") in accordance OPM standards. Denial of a reclassification to GS-15 shall not be grievable pursuant to Article 14—Grievances and Arbitration.

#### Section 5. Senior Counsel Staffing Levels.

The departure of any Bargaining Unit Senior Counsel from their position within the Agency through retirement, promotion, removal from the Bargaining Unit, or voluntary or involuntary separation, shall create a vacancy for a Senior Counsel. The Agency may use any of the means identified in this Article to fill the Senior Counsel vacancy. If management determines not to fill a vacant Senior Counsel position, and upon request of the Union President, the General Counsel or designee will provide a written explanation regarding the decision not to fill the position(s).

## **Article 56. RETIREMENT, PHASED RETIREMENT, AND REEMPLOYED ANNUITANTS**

### **Section 1. Information.**

As provided in Article 17—Provision of Information and Employee Information Page, the Agency will provide all employees with information regarding the federal retirement program, including disability retirement. This will include information, materials, and resources on the Employee Information Page such as links to the OPM web site retirement resources and to Departmental resources such as ConnectHR, including the retirement calculator thereon; timely circulation of information regarding retirement seminar opportunities; etc. New employees shall be provided relevant information and basic training on retirement benefits at their onboarding training as provided in Article 50—Onboarding.

### **Section 2. Retirement Coordinator/Retirement Benefits Questions.**

All employees will be notified annually of a specific contact person in the Agency and/or Department assigned to provide them retirement benefit assistance and general assistance on retirement and separation questions – the Retirement Coordinator. This information will also be posted on the Employee Information Page. The Retirement Coordinator will be available to discuss all questions about retirement, voluntary and involuntary separation, and related issues including, without limitation: retirement eligibility, calculated estimated annuity, Phased Retirement questions, disability retirement questions including rights to apply for disability retirement prior to and post-separation, eligibility for a deferred annuity, eligibility for Discontinued Service Retirement, questions about VERA and VSIP when the Agency has made those available to its Bargaining Unit employees, and questions about the contents and timing of the retirement application. The Retirement Coordinator may refer employees with questions to additional resources within the Department.

### **Section 3. Retirement Training/Seminars.**

Employees may use duty time and request Agency training funds (if available) to attend pre-retirement training at a minimum of three career stages: early career (1-5 years as a Federal employee), mid-career (12-15 years as a Federal employee), and pre-retirement (20-30 or more years as a Federal employee). If duty time or Agency training funds are used for this training, it must be virtual or in the local commuting area or the employee must bear the cost of travel.

### **Section 4. Retirement Applications.**

Employees may use duty time and equipment to prepare and process retirement applications and the Agency and the Retirement Coordinator shall provide all assistance reasonably requested. An employee may withdraw a retirement application at any time prior to its effective date, although to avoid unnecessary disruption to the Agency's operations including succession planning, performance of work, and hiring, the employee should provide notice of withdrawal at the earliest practicable date.

Section 5. VSIP (Voluntary Separation Incentive Payments) and VERA (Voluntary Early Retirement Authority).

- a. General. Voluntary Separation Incentive Payments (VSIP) and Voluntary Early Retirement Authority (VERA) are two provisions authorized by OPM that the Agency may request for the purpose(s) of (including but not limited to): in the case of VERA - substantial restructuring, reshaping, downsizing, transfer of function or reorganization of the Agency to temporarily lower the retirement age and service requirements in order to increase the number of employees who are eligible to retire; and in the case of VSIP – providing a lump sum payment of up to \$25,000 as of the effective date of this Agreement to employees as an incentive to voluntarily separate from federal service. VERA is authorized under 5 U.S.C. § 8336(d)(2) for CSRS employees and 5 U.S.C. § 8414(b)(1)(B) for FERS employees, and implemented by 5 C.F.R. § 831.14 for CSRS and 5 C.F.R. § 842.213 for FERS. VSIP is authorized by 5 U.S.C. §§ 3521-3525 and implemented by 5 C.F.R. Part 576. The Agency’s administration of any VERA or VSIP will be governed by the cited statutes and regulations and their successors. Both VERA and VSIP are referred to in this Article as “buyouts.”
- b. Voluntary, Confidential Nature. Buyouts are voluntary. No adverse action will be taken against an employee for not accepting a buyout offer. The identity of any employee applying for a buyout will be held confidential. The employee's identity will be kept confidential and not be released to the employee’s supervisors or any Department or Agency personnel other than on a need-to-know basis for VERA/VSIP processing until the employee has submitted a complete retirement application package.
- c. Union Rights. Prior to the initiation of any VERA or VSIP within the Agency, the Agency will provide notice to the Union. Upon receiving the Agency’s notice, the Union may request Impact and Implementation Bargaining under Article 12—Mid-Term and Impact and Implementation Bargaining concerning the VERA or VSIP including the timing and requirements of the application process and any selection criteria to be used to select offerees. The completion of Impact and Implementation Bargaining concerning the VERA or VSIP does not constitute a waiver of any Union right to bargain with the Agency over circumstances other than those addressed by Impact and Implementation Bargaining, including circumstances giving rise to the VERA or VSIP or any subsequent changes to Bargaining Unit employees’ working conditions that may occur as a result of the VERA or VSIP, or a waiver of any other Union rights under this Agreement, regulation or law.

Section 6. Phased Retirement.

- a. Background. The Phased Retirement program is an optional human resource tool that allows employees at the end of their Agency careers to work part-time schedules while beginning to draw retirement benefits determined by OPM. The program is also a management tool that will allow for the transfer of institutional knowledge from an experienced employee to new employees by providing a unique goal-driven mentorship.

Phased Retirement is not intended for long-term use; rather, the program is used as a tool to transition both the organization and retiring employees.

- b. Considerations. Phased Retirement is not an employee right or entitlement, but rather an option that requires the mutual consent of both the employee and the Agency. Phased Retirement involves complex considerations including the short and long-term impact on the Agency's budget and staff involved in implementation, office space, development of metrics to measure and manage, as well as training for employees and supervisors. The decision to approve or deny an application for Phased Retirement shall be a matter within the Agency's sole discretion.
- c. Phased Retirement Authorities. This Article and the Phased Retirement Program established by the Agency shall be administered in accordance with:
  - i. 5 U.S.C. § 8336a (for Civil Service Retirement Service "CSRS" employees);
  - ii. 5 U.S.C. § 8412a (for Federal Employee Retirement System "FERS" employees); and
  - iii. OPM's implementing regulations in effect on the date of the employee's Phased Retirement application.
- d. Agreement to Develop and Implement Phased Retirement. Within 90 days after the effective date of this Agreement, the Agency will submit an application to the Department's Office of Human Resource Management to participate and implement a Phased Retirement Program specific to the Agency. The application will be submitted to the Union for comment at least 10 days prior to its submission to OHRM. The Agency shall implement the Phased Retirement Program as soon as practicable after approval of the Program by OHRM.
- e. Parameters. The Phased Retirement Program implemented under this Article will explicitly include the parameters in this Section. At a minimum, the Agency shall require, before approving any application for Phased Retirement, that:
  - i. The required documents for participation are timely completed by the employee seeking Phased Retirement;
  - ii. Mentoring responsibilities relevant to a specific Agency-determined need for a particular practice area or office(s) shall equal at least 20 percent of the assigned duties; and
  - iii. The applicant for Phased Retirement must have significant knowledge, skills, or abilities that, in the sole discretion of the Agency, are necessary to mentor and transfer to other employees in a particular practice area or office(s).
- f. Information. Once the Agency's application is approved by the Department's Office of Human Resource Management the Agency will publish its Phased Retirement Program to

employees via an all-OGC email and place a link to the Program and any application materials on the Employee Information Page. The Retirement Coordinator will be available to Agency employees to answer questions concerning Phased Retirement.

- g. Application. Any Phased Retirement Program implemented under this Article shall be available for application by all eligible Bargaining Unit employees in OGC as determined under the applicable regulations. The decision to approve or deny an application for Phased Retirement must be prompt, in writing, and provide an explanation of the factors the Agency considered in rendering its decision.
- h. Bargaining Unit. Bargaining Unit employees participating in any Phased Retirement Program remain members of the Bargaining Unit as defined in Article 3—Recognition, Coverage, and Unit Designation and shall be treated in the same way as a regular, part-time employee within the Bargaining Unit with respect to the procedures and protections provided to Bargaining Unit members by this Agreement. For purposes of RIFs and furloughs, Bargaining Unit employees participating in Phased Retirement are treated the same as other part-time employees under Article 47—Part-Time Employment and Job-Sharing, to the extent permitted by law and OPM regulations. Bargaining Unit employees participating in Phased Retirement may be eligible for VSIP upon full retirement, to the extent permitted by law and OPM regulations.
- i. Exception to Grievance Procedures. The decision to approve or deny any employee’s application for Phased Retirement shall not be grievable under Article 14—Grievances and Arbitration.

#### Section 7. Reemployed Annuitants.

- a. Notice. Prior to reemploying any retired Agency employee as a reemployed annuitant, the Agency will notify the Union of its intention and discuss the necessity and anticipated benefits of reemploying the retired employee, including any anticipated impacts on existing Agency employees. Upon receiving the Agency’s notice, the Union may request Impact and Implementation Bargaining in accordance with Article 12—Mid-Term and Impact and Implementation Bargaining.
- b. List of Former Employees. The Agency’s Director of the Office of Administration and Resource Management or designee will maintain a list of retired employees who may wish to contract with the Agency or become reemployed annuitants after retirement. At any time prior to an employee’s final day as an Agency employee, the employee may provide the Director their name and specialized skills for inclusion on the list. The retired employee is responsible for keeping their contact information updated with the Director. The Director of the Office of Administration and Resource Management or designee will upon request provide a copy of the list to the Union President.