

Negotiated Collective Bargaining Agreement (CBA)

Between the

National Institutes of Health (NIH)

and

**American Federation of Government
Employees (AFGE)**

Local 2419

AFL-CIO

The Federal Service Labor-Management Statute
Title VII
Civil Service Reform Act

The effective date of this agreement is: March 20, 2023

Table of Contents

Preamble..... 3

Article 1. Recognition and Coverage of Agreement..... 4

Article 2. Mid-Term Bargaining 7

Article 3. Rights of Agency 10

Article 4. Employee Rights 11

Article 5. Union Rights 16

Article 5a. Union Representation..... 18

Article 6. Official Time..... 20

Article 7. Notice to Employees..... 25

Article 8. Annual Leave..... 26

Article 9. Sick Leave 28

Article 10. Miscellaneous Leave and Excused Absence 30

Article 11. Special Leave Procedures 34

Article 12. Personnel Records..... 35

Article 13. Hours of Work 36

Article 14. Time Keeping and Attendance 43

Article 15. Retirement and Separation 45

Article 16. Emergencies and Continuity of Operations 46

Article 17. Facilities for Breaks and Meals..... 48

Article 18. Holidays 49

Article 19. Safety and Health..... 50

Article 20. Position Classification 56

Article 21. Training and Employee Development 58

Article 22. Performance Management System..... 62

Article 23. Within Grade Increases..... 73

Article 24. Reduction in Grade and Removal Based on Unacceptable Performance
75

Article 25. Incentive Awards 77

Article 26. Outside Employment 81

Article 27. Temporary Promotions, Details, and Reassignments 83

Article 28. Temporary and Probationary Employees 85

Article 29.	Reduction in Force	86
Article 30.	Disciplinary and Adverse Actions	94
Article 31.	Grievance Procedure	100
	Negotiated Grievance Form	107
Article 32.	Arbitration	109
Article 33.	Contracting Out	113
Article 34.	Technology	116
Article 35.	Assignment of Work	118
Article 36.	Voluntary Dues Withholding	119
Article 37.	Union Communications	121
Article 38.	Wellness	123
Article 39.	Responsible Labor Management Relations	127
Article 40.	Transfer of Function	129
Article 41.	Workers' Compensation	134
Article 42.	Job Sharing	137
Article 43.	Duration and Changes	139
Article 44.	Environmental Pay	140
Article 45.	Office and Equipment for the Union	146
Article 46.	Part Time Employment	149
Article 47.	Medical Qualifications, Determinations, and Reasonable Accommodations	150
Article 48.	Employee Investigations and Interviews	157
Article 49.	Family Leave	158
Article 50.	Merit Promotion Plan	162
Article 51.	Travel	171
Article 52.	Equal Employment Opportunity (EEO) and Anti-Harassment	176
Article 53.	Employee Parking	183
Article 54.	Alternative Dispute Resolution	184
Article 55.	Overtime	187
Article 56.	Attire and Appearance	190
Article 57.	Tobacco Free Policy	195
Article 58.	Information Sharing	197

Preamble

1. This Agreement is made by and between the National Institutes of Health, Department of Health and Human Services, hereinafter called the "Agency" and the American Federation of Government Employees, AFL-CIO, Local 2419, hereinafter referred to as the "Union," and collectively referred to as the "Parties." It is the intent and purpose of both Parties to this Agreement to promote and improve the efficient administration of the National Institutes of Health and the major role it plays in the advancement of biomedical research and the nation's health, and the well-being of employees within the meaning of the Title VII of the Civil Service Reform Act of 1978, PL, 95-454. To further establish a basic understanding relative to personnel policies, practices and conditions affecting their employment and to provide a means for amicable discussion and resolution of matters between the Parties at the National Institutes of Health. Therefore, the Parties do hereby agree to:
 - A. Actively engage each other in the resolution of issues in a timely and professional manner;
 - B. Recognize and respect the needs of the other party;
 - C. Consider opportunities to improve the relationship between the Parties;
and
 - D. Recognize that employees are a valuable resource.

This agreement, and any such supplemental agreement thereto, shall constitute a collective bargaining agreement between the parties.

Article 1. Recognition and Coverage of Agreement

Section 1.

The Agency recognizes that Local 2419, American Federation of Government Employees, AFL- CIO, is the Exclusive Representative of all employees in the bargaining unit.

AFGE Local 2419 recognizes its responsibility for representing the interests of all employees in the bargaining unit it represents without discrimination and/or without regard to union membership status, pursuant to section 7114(a)(l) of the Federal Service Labor-Management Relations Statute.

Section 2.

The bargaining unit consists of the following units in accordance with the certifications issued by the FLRA. Case Nos. WA-RP-04-0049, WA-RP-04-0102, WA-RP-04-0103, WA-RP-03-0037, and WA-RP-04-0083.

Office of Research Facilities (ORF), OD

All employees of the Office of Research Facilities, National Institutes of Health (NIH) excluding all Management Officials, Supervisors, Professional Employees and Employees described in 5 U.S.C. 7112 (b) (2),(3),(4),(6), and (7).

Nutrition Department, CC

All Federal Wage System employees and General Schedule (GS) Health Technicians (Dietetic, GS-699) employed in the Nutrition Department, NIH, Clinical Center, Bethesda, Maryland, but excluding all management officials, supervisors, professional employees and employees described in S U.S.C. 7112(b) (2),(3),(4),(6), and (7).

Office of Research Services (ORS), OD1 Printing and Reproduction

All employees of the Printing and Reproduction Branch, ORS, NIH, but excluding all management officials, supervisors, professional employees and employees described in 5 U.S.C. 7112(b)(2), (3),(4),(6) and (7).

Medical Arts and Photography

All employees of the Medical Arts and Photography Branch, Division of Research Services, NIH, but excluding all Management Officials, Supervisors, Professional employees and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

Center for Career Resources

All nonprofessional employees employed by the ORS, Center for Career Resources, excluding employees, who prior to becoming employees of the Center were not represented by American Federation of Government Employees Local 2419, and who are employed at the Center for less than 90 days, Professional employees, Supervisors, Management Officials and employees described in 5 U.S.C. 7112(b) (2), (3), (4), (6) and (7).

Parking Office

All non-professional employees employed by the ORS, Division of Public Safety, Parking Office located in Bethesda, but excluding all Management Officials, Supervisors, Professional employees and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

Division of Library Services

All employees in the Division of Library Services (DLS), ORS, but excluding all Management Officials, Supervisors, Professional Employees and Employees described in 5 U.S.C. 711.2(b)(2), (3), (4), (6) and (7).

Emergency Communications Center

All non-professional employees employed by the National Institutes of Health, ORS Division of Public Safety, Police Branch, Emergency Communications Center, Bethesda, MD, but excluding all Management Officials, Supervisors, Professional Employees and Employees described in 5 U.S.C. 7112(b)(2),(3),(4), (6) and (7).

Section 3.

The eligible employees in these organizational components shall be known collectively as the "Bargaining Unit." However, it is agreed that when it is appropriate to name a specific unit (DFOM, ECC, OA etc) within a section, then the agreement will refer to that unit. The parties agree that section applies solely to the named unit. ¹

Section 4.

This Article is not intended to and does not amend or modify the certifications executed by the Federal Labor Relations Authority (FLRA). Instead, this Article is intended to mirror existing certifications. To the extent the Agency reorganizes or changes its

¹ Due to various ORS re-organizations, the ORS positions outlined now reside in the ORS, Division of Emergency Management, the Division of Occupational Health and Safety, the Division of Library Services, the Division of Amenities and Transportation Services, the Events Management Branch, and the Medical Arts Branch. The specific positions covered by the unit are Visual Information Specialist, Library Technician, Lead Library Technician, Audiovisual Production Specialist, Photographer, Business Specialist, Program Specialist, Program Support Assistant, Emergency Services Dispatcher, Lead Emergency Services Dispatcher, IT Specialist, Technical Information Specialist, Translator, Writer Editor, and Purchasing Agent.

organizational name, then the organizational name change will not have the effect of removing bargaining unit employees from the unit certified by the FLRA.

Article 2. Mid-Term Bargaining

Section. 1 General

This Article governs the mid-term bargaining relationship of the Parties over matters which are not covered by this Agreement. The Parties agree that the purpose of this Article is to establish a complete and orderly process to improve efficiency and expedite mid-term negotiations in the interest of the Agency, its employees, and its stakeholders.

Section. 2 Procedures

- A. The exclusive representative, Union, is responsible for mid-term negotiations on behalf of all Union bargaining unit employees (BUEs).
- B. The Parties recognize that operational need, or other situations (i.e., exigencies) permitted by law, may mandate that a change be implemented before bargaining concerning the matter is concluded where an obligation to notify the Union and bargain upon request, exists. Where basic management rights are involved, and an operational need or other situation permitted by law requires the Agency to act without undue delay, the Agency may implement the proposed change and any required impact negotiations will occur or continue on a post-implementation basis.
- C. Mid-term agreements negotiated under the terms of this Agreement, must undergo Agency Head Review (AHR) requirements of 5 U.S.C. 7114(c). Mid-Term agreements reached under this Article, must be provided to the AHR authority on the day of signature for AHR.
- D. Changes that are negotiated or agreed to pursuant to this Section shall be duly executed by the Parties and shall become an integral part of this Agreement and subject to all of its terms and conditions.
- E. When conducted in-person, negotiations will take place in space provided by the Agency and will be held as needed. When in-person negotiations are conducted, the Agency will supply resources to the Union necessary for negotiations, including a caucus room, printer, computer, and necessary office supplies. The Parties may mutually agree to conduct negotiations virtually via teleconferencing. If negotiations are held virtually, the Agency will provide the teleconferencing platform and access to the Union.
- F. The Parties will mutually agree to a negotiations schedule.
- G. Either Party may request assistance from the Federal Mediation and Conciliation Service after either Party has declared impasse.

Section. 3 Agency-initiated changes

- A. The Agency will notify the Union of changes in conditions of employment that are more than de minimis and that affect the bargaining unit. The Union will have 15 calendar days to submit a written request to bargain over the change. The request will contain the written proposals which the Union wishes to negotiate. Management will schedule bargaining within 30 days of receipt of the Union's written request.
- B. The Union may also request a briefing from the Agency within 15 calendar days of the notice from the Agency. The Agency will make best efforts to provide a timely briefing.
- C. Should the Union fail to request to negotiate and/or fail to submit written proposals within 15 calendar days, the Agency may proceed with implementation of the change.
- D. For notice purposes, the Union is defined as President, Executive Vice President, Treasurer, and Secretary. The notice will include a description of the nature and scope of the proposed change, the proposed implementation date, the work areas affected, the impacted employees, and the name of the Agency contact person. For this Article, if a due date falls on a weekend, Federal Holiday, or date when the Federal Government is closed, then the due date will be the next business day where it is not a Federal Holiday, and the Federal Government is open.

Section. 4 Union-initiated changes

- A. Union initiated mid-term bargaining will address negotiable subjects of bargaining as defined by U.S.C. Chapter 71 and applicable caselaw, rule, regulation, and the Agreement.
- B. The Agency may request a briefing of the Union's proposal. The Union agrees to provide the briefing within seven (7) calendar days of the request from management.
- C. The Parties will schedule bargaining within 30 days of receipt of the Union's proposal.

Section. 5 Composition of Bargaining Teams

- A. The Parties agree that each bargaining team will be comprised of up to four (4) members. The Parties may mutually agree to have more bargaining team members, and the Union may have the same number of negotiators as the Agency.
- B. Absent mutual agreement, the Parties are each limited to one (1) observer who will not participate in negotiations.

Section. 6

- A. The language in this agreement supersedes any memoranda of understanding

(MOU) or agreement (MOA) relating to topics that are covered by this agreement.

B. This Agreement supersedes all past practices unless they were in effect on the date of this Agreement and not covered by this Agreement, as defined by FLRA case law.

Section. 7

In the event of any inconsistency or conflict between this Article (Article 2) and any other Article contained in this Agreement, the terms, conditions, and provisions of this Article shall govern and control.

Article 3. Rights of Agency

Section 1.

In accordance with the Civil Service Reform Act of 1978 the Employer retains the authority:

- A. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency.
- B. In accordance with applicable laws:
 - 1. To hire, assign, direct, lay off and retain employees in the Agency or to suspend, remove reduce in grade or pay or take other disciplinary action against such employees;
 - 2. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
 - 3. With respect to filling positions, to make selections for appointments from:
 - a. Among properly ranked and certified candidates for promotion; or
 - b. Any other appropriate source; and
 - 4. To take whatever actions may be necessary to carry out the agency mission during emergencies.

Section 2. Exceptions

Nothing in this section shall preclude the Agency and the Union from negotiating:

- A. At the election of the Agency, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
- B. Procedures which management officials of the Agency will observe in exercising any authority under this Section; or
- C. Appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

Article 4. Employee Rights

Section 1. Respect in the Workplace

It is the intent of the Parties that all employees shall be treated with fairness, dignity, mutual respect, and courtesy.

Section 2. Compliance with Rules, Regulations, and Agreement

Rules, regulations, and the provisions of this Agreement should be enforced by management, and employees are expected to comply with them. Where management finds that employee conduct is inconsistent with applicable rules, regulations, or the provisions of this Agreement, and that this conduct has been due to lack of enforcement, management should apprise the employee of what is expected prior to starting to enforce that rule, regulation, or provision of this Agreement.

Section 3. Right to Join or Assist Union

Employees covered by this Agreement 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 in the Civil Service Reform Act of 1978, such rights include the right:

- A. 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
- B. To engage in Collective Bargaining with respect to the conditions of employment through the Union as provided by law and this Agreement.

Section 4. Conflict of Interest

Nothing in this Section, or this Agreement, authorizes participation in the management of a labor organization by a management official, or a confidential employee, except as specifically provided in the Civil Service Reform Act of 1978, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

Section 5. Right to Remedial Relief for Employees in the Bargaining Unit

In seeking remedial relief under this Agreement, the grievant and the duly designated Union representative, if any, shall be free from restraint, interference, coercion, discrimination, and reprisal.

Section 6. Following Supervisory Orders and/or Instructions

Employees have an obligation to follow and carry out a supervisor's lawful order and/or instruction(s). Failure to carry out a lawful order and/or instruction(s) may result in disciplinary action up to removal.

An employee who believes that the supervisor's order and/or instruction(s) is unlawful, may do any or all of the following:

- A. Give the supervisor a written statement expressing the employee's objection to the order;
- B. Report the alleged violation to the HHS – Office of Inspector General or 1-800-447-8477; or
- C. Verbally inform the supervisor of his concerns.

Section 7. Employees Right to a Representative of Their Choice

Nothing in this Agreement shall be construed to preclude an employee from:

- A. Being represented by an Attorney or other Representative, other than the Exclusive Representative, of the employee's own choosing in any grievance or appeal action; or
- B. Exercising a grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal provisions contained in this Agreement.

Section 8. Private Lives vs. Official Duties

- A. The Agency recognizes that an employee's financial obligations or obligations alleged by any creditor are private matters. In the event of a dispute between an employee and a private individual or firm with respect to an alleged debt or financial obligation, the Agency will not take any action against the employee which is contrary to law, rule or regulation.
- B. Any NIH official who has authority to take, direct others to take, recommend, or approve any personnel action, shall not discriminate for or against any employee on the basis of conduct which does not adversely affect the performance of the employee or the performance of others; except that nothing in this Subsection shall prohibit the Agency from taking into account in determining suitability or fitness any conviction of the employee for any crime under the laws of any State, the District of Columbia, or the United States.
- C. No employee will be required to perform work without being in an official duty status. Private lives and off duty hours of employees will not be infringed upon, to the

maximum extent feasible, by the Agency expect for bona fide management reasons, in accordance with government wide rules, regulations or law.

Section 9. Campaigns or Drives – Solicitation of Employees in the Bargaining Unit

- A. Definition – For the purpose of this Article; solicitation of employees in the bargaining unit means requests for contribution for the Combined Federal Campaign, participation in savings bond drive, blood drive, or other Agency approved solicitations which have been announced in generally published Agency directives.
- B. Participation – Contributions from employees in the Bargaining Unit and participation by employees in the unit to solicit contributions shall be voluntary. There shall be no discrimination against any employee in the unit for nonparticipation or for any level of contributions. An employee in the bargaining unit may be requested to volunteer to solicit contributions. A management or supervisory employee may participate in direct solicitation of employees in the Bargaining Unit which are not under their direct supervision.
- C. Contributions for gifts for supervisors, management officials or fellow employees will be strictly voluntary, as provided by law, rule or Government wide regulation.

Section 10. Studies

The Union shall be notified in advance of studies by management affecting conditions of employment. The Union may request to negotiate on issues related to the studies which impact on the Bargaining Unit to the maximum extent permissible by law. The Union will request bargaining in accordance with the time frames established in Article 2, Section 3. The results of any such study that will create a change in the conditions of employment shall be shared with the Union, in its capacity as the employee's representative, upon completion of the study. Either independently or through the Union, an employee has the right to respond to any such study conducted by the Agency.

Section 11. Use of Personal Audio Devices

Employees have the right to play radios, cassettes, etc. on the work site so long as the use does not disturb the productivity of the employee or other employees within the work site and does not distract clientele. The use of audio devices will be limited where safety becomes a major concern. Supervisors have final authority over use of personal audio devices.

Section 12. Supervision and Assignment of Work

Consistent with the management's right to assign work to employees and to determine methods and means of performing work, employees can normally expect assignments to be made consistent with grade level, position description, and performance.

Employees will usually receive instructions from and make reports through established supervisory/managerial channels as described or depicted in pertinent position descriptions, organizational charts, and directives. Exceptions to these practices will not be done on a routine basis, unless in accordance with Article 21, Training. Employees in the unit will be informed of whom they are to look to for supervision and performance appraisal.

Section 13. Polygraph Test

The Agency will not ordinarily request or require an employee in the bargaining unit to submit a polygraph test.

Section 14. Personnel Records

The Official Personnel Folder (OPF) and Electronic Personnel Folder (e-OPF) will be maintained, and retained, in accordance with the law, Government wide regulations, and this Agreement.

Employees may be granted reasonable amounts of time, upon approval of the Supervisor, to examine any of the records in their e-OPF.

All employees will have access to a computer to view or print their e-OPF.

Section 15. Presenting Disputes

Employees or group of employee's presentation of disputes are handled in accordance with Article 31.

Section 16. Reporting Waste and Abuse

An employee covered by this Agreement may, without fear of penalty or reprisal, engage in the disclosure of information which the employee reasonably believes evidences:

A violation of any law, rule, or regulation; or

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

Alleged violations may be reported to OIG on 1-800-447-8477.

Section 17. Representation

An employee covered by this Agreement shall be given an opportunity to be represented by the Union at:

- A. Any formal discussion between one (1) or more representatives of the Employer and one (1) or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general conditions of employment; or
- B. Any examination of an employee in the unit by a representative of the Employer in connection with an investigation if:
 - 1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
 - 2. The employee requests representation.

Section 18. Searches

Employees work areas, lockers, desks, etc. will not be searched without just cause. If a search becomes necessary, the employee may request Union Representation in accordance with Section 17 of this Article.

Article 5. Union Rights

Section 1.

The Union is the exclusive representative of the employees in the Bargaining Unit and is entitled to act for, and represent the interests of, all employees in the unit.

Section 2.

- A. The Union shall be given the opportunity to be represented at any formal discussion between one (1) or more representatives of the Employer and one (1) or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.
- B. The appropriate Union representative will receive reasonable advance notice of such formal discussions. For purposes of this Agreement, the appropriate Union representative will be commensurate with the management level which initiated the formal discussion. i.e., Union Steward at the local unit level. The Union President will be the official representative at Bargaining Unit level formal discussions.
- C. At any formal discussion, the appropriate Union representative will be identified and has the right to ask questions, comment, speak and make statements related to the subject matter addressed by the Employer at that meeting and shall not seek to take charge of or disrupt the meeting.
- D. When management invites the Union to a formal discussion, it will give the Union notice of the general subject matter of the meeting.

Section 3.

The Union shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the employer in connection with an investigation if:

- A. The employee reasonably believes that an examination may result in disciplinary action against the employee; and
- B. The employee requests representation.

Section 4.

The Union shall have the right to present its views, either orally or in writing, to the Employer on any matters of concern regarding personnel policies and practices, and matters affecting working conditions.

Section 5.

When a new bargaining unit employee is hired and arrives at their duty station, the Agency will inform the new unit employee of the name of the Union, the Union President's name, the Union office phone number and the name of the Steward in that work area, if there is one. The Union will provide the new employee with a copy of the negotiated agreement. Within the first two weeks of arriving at their duty station, the Agency will notify the Union of the bargaining unit employees. Within the first pay period of arriving at their duty station, each new BU employee may request from their supervisor a ten minute time period to meet with the union regarding the requirements of the collective bargaining agreement. This ten minute period will be granted as workload allows.

Section 6.

The Parties agree to recognize Labor Recognition Week on an annual basis at an agreed upon time. During that week, the Union may use bargaining unit common facilities, such as break rooms and meeting rooms, where they exist, to set up exhibits that publicize the contributions of organized labor, including AFGE Local 2419, to society. This provision does not grant official time to employees for participating in this event. This shall not limit the Union's access to facilities that are outside the bargaining unit.

Article 5a. Union Representation

Section 1.

The Agency recognizes the Union Steward system for the purpose of promoting an effective relationship between supervisors and employees by helping to settle problems at the lowest possible level. Stewards, as representative of the Union, recognize that the supervisor is responsible for determining the quality, quantity and timeliness of work performed.

Section 2.

When organizational segments combine for any reason, the newly combined unit will have the same number of steward positions as the individual units had in total prior to combination. When employees are transferred from a unit that had no steward and the number of bargaining unit employees has increased substantially, management will consider a request by the union for an additional steward position.

Section 3.

The union stewards will be designated in writing to the Labor Relations Officer, and the designations will be kept current by the Union. Local 2419 shall give the agency LRO, a list of Officers, Stewards, and other designated Union Representatives, within thirty (30) days of the effective date of this agreement and within (30) days after each general election. AFGE Local 2419 shall notify the Agency whenever any changes are made to this list.

Section 4.

The parties agree that the function of the steward is to gather pertinent facts regarding employee complaints and grievances in their designated area of stewardship and to attempt to resolve them through established lines of supervision. A steward's area of stewardship, including representation under the grievance procedure, shall be within the organizational unit in which he/she is employed. The President of the Local 2419 or their designee, may assign a steward from another organizational unit on a case-by-case basis if a special need exists in an individual case. It is understood that such an assignment will not be made routinely. The President of Local 2419 will notify the Labor Relations Officer, ORS, and the Labor Management Branch, OHRM, as appropriate, in advance of such exceptions.

Section 5.

The steward will be allowed time away from their job to transact authorized functions as noted in Section 4 above, after requesting and receiving approval of official time from their immediate supervisor. The Agency agrees to provide official time to process grievances, and for Union Officials to perform representational duties in accordance

with Article 6, Official Time. The steward will inform their immediate supervisor where he/she plans to go and will indicate the time required. The urgency of the workload at the time of the request will be the controlling factor in granting the request. Supervisors have the discretion making such determinations.

Section 6.

The Parties agree that time away from the assigned work area granted to stewards and employees will not be used for discussion of matters connected with the internal management or operation of the Union; the collection of dues or assessments, the solicitation of memberships, campaigning for elective office in the Union; the distribution of literature or authorization cards; or the solicitation of grievances or complaints. The Union recognizes its responsibility to ensure that the stewards do not abuse this authority by unduly absenting themselves from their assigned work areas and the stewards will make every effort to perform their authorized functions in a proper and expeditious manner.

Section 7.

All internal Union business will be conducted during the non-duty hours of the employees concerned. Official working hours include rest periods or breaks, but do not include lunch periods.

Article 6. Official Time

Section 1.

- A. This Article provides an equitable process for the allocation and approval of official time for representational activities as negotiated pursuant to the Federal Service Labor-Management Relations Statute (FSMLRS or Statute) and shall be administered in accordance with said Statute and this Agreement.
- B. "Union representatives" as used in this Article, means any employee representing the exclusive representative (in this case as a duly designated Local AFGE 2419 Union representative).
- C. This Article respects the Statute's goals of promoting collective bargaining while honoring the Statute's requirement that its provisions be interpreted to promote an effective and efficient government. The Agency and the Union share the responsibility to ensure that any official time used for representational activities:
 - 1) Is authorized prior to use;
 - 2) Is used appropriately, in accordance with the Statute and this Article; and,
 - 3) That appropriate recordkeeping mechanisms are utilized for tracking and recording all time by all union representatives for performing representational activities during the term of the Agreement.

The Union agrees that in the interest of effective and efficient government as stewards of the American taxpayer, it is best to address abuse of any official time used for union representational matters, to include failure to timely and accurately report the time used. Alleged abuses of official time will be brought to the attention of the local union president by an appropriate management official. The management official will discuss the matter with the local union president who will take appropriate action (e.g., warning to the union official, suspend, or prohibit the union official from using official time).

- D. Taking an administrative action as defined above does not prohibit the agency from effecting discipline or adverse action as appropriate.

Section 2.

In accordance with 5 U.S.C. Section 7131 of the FSLMRS, Union Officers and Representatives will receive reasonable amounts of official time within the scope of the FSLMRS.

The total number of hours used by all Union officers and representatives in a calendar year related to 5 USC 7131(d) shall not exceed 2400 hours. However, no one Union

officer or representative will use official time from this allotment for more than 50% of their scheduled duty time in any given year.

If the bank or cap authorized is exceeded in any given year, the Union may use the following year's official time allotment for section 7131(d) and will continue to be provided section 7131(a) and (c) time under the Statute.

Official time will be granted under the Statute (not deducted from the Official Time Bank referenced above) for:

1. Negotiations of collective bargaining agreements and attendance at impasse proceedings (excluding travel and preparation time) under 5 U.S.C. Section 7131 (a) of the FSLMRS. The number of Union officers and representatives shall not exceed the number of individuals designated as representing the Agency for such purpose.
2. Participation in any phase of a Federal Labor Relations Authority (FLRA) proceeding, for which official time is ordered by the FLRA under Section 7131 (c) of the FSLMRS.

Section 3.

Union representatives and bargaining unit employees shall not perform any activity relating to internal Union business on official time, including, but not limited to, the solicitation of membership, elections of labor organization officials, and collection of dues. These activities must only be performed while in a non-duty status, i.e., outside tour of duty, leave without pay (LWOP), or annual leave.

Section 4.

- A. The Union President will provide the Chief of the Employee and Labor Relations Branch, NIH, or her designee(s), written notification of Union officers. This written notification will include names, union positions, duty station, telephone number, organizational unit, and immediate supervisor of each Union representative within ten (10) calendar days of the effective date of this Agreement so that appropriate discussions can be held with these supervisors and managers.
- B. The Union President shall provide the Chief of the Employee and Labor Relations Branch (ELRB), NIH, or her designee(s), the same information in writing of any change in the list of Union representatives no later than ten (10) calendar days before the effective date of the change. Temporary changes, e.g., to cover another representative's absence, shall not be utilized to increase the number of representatives entitled to use official time, provided by this Article.
- C. The Union President will indicate the duration of any temporary appointment at the time of the appointment notification. No employee will be granted official time unless the Chief of the ELRB, or his designee(s), has received appropriate notification from

the Union president.

Section 5.

All Union representatives are expected to perform the duties of their official position to which they are assigned when not on approved official time. The Agency has a duty to consider reasonable workload adjustments for individuals proportional with the amount of official time approved and used.

Section 6.

- A. Union representatives will be permitted to leave their assigned work area on official time, as appropriate, as authorized under and subject to this Agreement, including the limitations on pay and official time, after providing a written request to use official time to their immediate Supervisor or appropriate Management Official. Typically, all requests to use official time will be submitted at least 2 workdays in advance and include the following information (1-8 below), as reflected in Appendix A. Management recognizes that, under certain circumstances, 2 workdays advance notice may not be practicable and will review requests on a case-by-case basis.

The Agency will be implementing a new electronic official time system to replace the manual process described in this Article. The same or very similar information (1-8 below) will be required when the electronic official time system replaces the manual process. The Agency will provide notice and bargain the new electronic system to the extent required by 5 USC 71.

1. Union representative's name
2. Supervisor/management official
3. The date the request is submitted by the employee
4. Contact number for the union representative
5. The date on which the official time will be used
6. A good faith estimate of the start and end time for the activity
7. The location, including address or building/room number if on the Bethesda, RTP, or RML Campuses
8. The specific activity that will be completed during the time and the category code of the appropriate representational category for that activity
9. The initials of the employee requesting to use the official time

Each request shall specify, sufficient detail to evaluate each request. If the information included in the request is insufficient, the management official will return the form to the representative for correction. The supervisor will approve or deny the request in a timely manner. All denials will be in writing to the requesting representative.

- B. If there is more than one (1) Union representative reporting to the same Supervisor, the parties agree to work closely and constructively to reduce the impact of multiple

representatives on performance of the work of the unit. Management may initiate a reassignment if management determines that the impact on the work unit is not satisfactorily resolved.

- C. A Union representative shall, to the extent possible, schedule his/her absences so as not to compromise important work assignments, impede work, or interfere with the effective, efficient, and timely accomplishment of the Agency's mission. The supervisor shall, to the extent possible, schedule assignments, and inform Union representatives of assignments, in advance in order to reduce the likelihood of conflicting demands.
- D. When possible, Union representatives are encouraged to advise their supervisors of known, scheduled activities that may require official time approval.
- E. Except in the circumstances outlined below in F, employees are only permitted to leave their worksite after reporting to their immediate supervisor or appropriate management official and confirming the previously approved official time (Section 6 A).
- F. Union representatives who are eligible and approved for telework or remote work may perform union duties (excluding internal union business) while working remotely, after submitting and receiving approval for the use of official time. Union representatives, who are not eligible for telework or remote work, are required to report to their worksite at the start of their tour of duty each day except when the Union Representative is expected to attend FLRA, FSIP, or other proceedings eligible for official time under this Article at a location other than their official worksite, and the timing of such proceeding prohibits them from reporting to the worksite.
- G. If management is unable to approve a request for official time, management will, within one workday, identify an alternate time for use of the requested official time.
- H. Upon entering any work area to meet with an employee, the representative will advise the employee's immediate supervisor of his or her presence, the employee to be contacted, and the estimated duration of the meeting.
- I. On occasion, activities approved for official time may take longer than originally anticipated. In these cases, the Union representative will contact their supervisor to notify them of the need to extend the anticipated return time and to seek approval for such time. The supervisor will determine if the time can be extended or if rescheduling is necessary due to work requirements. If extension is granted, the Union representative will reflect adjustments when he or she submits their Appendix at the end of the pay period.
- J. When the Union representative needs to leave the work site and his or her supervisor is temporarily absent from the site, the representative will request release

and get approval from another supervisor or manager in the chain of command prior to leaving the work site.

Section 7.

The representative, by the end of each pay period, will review their official time request(s) for that pay period and complete the form. Specifically, the actual information should be completed, and the Appendix A document should be signed by the representative. Then the document should be returned to their Supervisor so that the Appendix A document for that pay period can be reconciled.

Section 8.

In the event of any inconsistency or conflict between this Article (Article 6) and any other Article contained in this Agreement, the terms, conditions, and provisions of this Article shall govern and control.

Article 7. Notice to Employees

Section 1.

An employee who receives a personally addressed proposed disciplinary or adverse action, shall receive an additional copy which the employee may choose to provide to the Union.

Section 2.

Each employee will have access to an electronic payroll system which provides on a bi-weekly basis a payroll statement showing the employee's total cumulative earnings and total cumulative deductions from the first yearly pay period in each standard category. The notices also contain annual leave and sick leave balances. Any award monies will be accompanied by an explanation statement on the statement or separately.

Article 8. Annual Leave

Section 1. General Provisions

Employees accrue and have a right to use annual leave in accordance with applicable laws and regulations and this agreement. The determination as to the time and amount of leave granted at any specific time is made by the supervisor, considering employees desires, staffing, workload, and training requirements as determining factors. The minimum charge for annual leave is fifteen (15) minutes with additional charges in multiples thereof. Supervisors will make every effort to expeditiously inform employees of their approval/disapproval of advance requests for annual leave.

The Employer will attempt to schedule annual leave to provide each employee the opportunity to use all earned annual leave in order to avoid forfeiture. All use or lose leave will be scheduled prior to the end of pay period twenty-four (24) each year. The supervisor will not cancel or modify previously approved leave except for bona fide management reasons. The reason(s) will be explained to the employee.

Section 2. Scheduled Leave (Vacation)

Schedules for use of annual leave will be constructed on the basis of employee preference and workload, and skill needs of the bargaining unit. Conflicts in employee preference will be resolved on the basis of length of service in the bargaining unit. An employee will not be permitted to change their selection if it disrupts the selection of another employee unless the latter is agreeable thereto and approved by their Supervisor.

Section 3. Unscheduled Leave

At the discretion of the supervisor, unscheduled annual leave may be granted upon request by an employee if reasonable notice (normally twenty- four [24] hours) is given, and when the workload permits.

Section 4. Emergency Annual Leave

Leave requests for emergency reasons will be considered on the circumstances of the individual request and are at the discretion of the supervisor. An emergency for annual leave purposes is defined as:

- A. A condition which came to the employee's attention after he/she has left work;
- B. A situation of such a serious nature as to justify the employee's decision not to report; or
- C. A situation arising during duty hours that necessitates the employee's immediate absence from duty.

Normally annual leave for emergency reasons will be approved only for the amount of time necessary to satisfy the emergency. When requesting emergency annual leave the employee must indicate the amount of leave needed. If the emergency extends beyond the period for which leave was originally requested, the employee must again notify the Employer and request additional leave.

Section 6. Use or Lose Leave

Employees faced with the possibility of loss of leave shall notify the Employer of their leave requests for the balance of the leave year before the end of pay period 24. Employees may donate annual leave under the Voluntary Leave Transfer Program. If leave is forfeited due to no fault of the employee, it will be restored in accordance with appropriate regulations.

Section 7. Advanced Annual Leave

Requests for advanced annual leave may be made by employees to their supervisor and will be considered in a fair and objective manner in accordance with applicable rules and regulations.

Section 8. Annual Leave for Internal Union Functions

Union officials may request annual leave to conduct internal Union business. Approval is subject to work site requirements.

Section 9 Division-Specific Procedures

Divisions may establish procedures for the requesting and granting of leave which reflect work requirements or needs of the division (for example, for employees in divisions doing shift work), provided such procedures are not inconsistent with the provisions of this article.

Article 9. Sick Leave

Section 1

Employees will earn sick leave in accordance with applicable law, rules, and regulations. Sick leave will be charged in 15-minute increments. The Parties recognize the importance of sick leave and the obligation of the employee, as well as the advantage to the employee, to utilize it only when incapacitated for duty by sickness, injury, or other valid reasons. The Parties agree to jointly encourage employees to conserve such leave so that it will be available to the employees in the event of an extended illness.

Section 2

Approval of sick leave will be granted to employees when they are incapacitated for performance of their duties because of sickness, injury, or pregnancy. Sick leave is also appropriate when requested in advance for medical, dental or optical examination or treatment and will normally be granted. The employee will request the sick leave at least one week in advance if the employee has that much notice of the examination or treatment. Sick leave will also be approved when the employee's presence on the job would jeopardize the health of others because of exposure to a communicable disease.

Section 3. Unscheduled Sick Leave Procedures

Where unscheduled sick leave is requested, the following procedures will be followed:

- A. If the need arises while the employee is at work, the employee shall notify the Supervisor of the nature of the illness, the anticipated extent of their absence, and seek the Supervisor's approval for sick leave or leave without pay;
- B. If the employee is unable to report for duty due to an illness or other acceptable medical emergency, they must notify their supervisor prior to the beginning of the shift. Where the employee's supervisor is not normally available, the employee must contact the supervisor within the first hour of the start of the shift, if possible; or
- C. Situations that prevent the employee from being able to call will be addressed on a case-by-case basis. This would include instances where the employee is incapacitated and unable to call. In these instances, the supervisor will accept calls from an alternate, provided the person identifies himself/herself and he/she can provide the information required.

Section 4. Documentation to Support Absences

An employee shall not normally be required to furnish a doctor's certificate to substantiate requests for approval of sick leave unless such sick leave exceeds three working days of continuous duration. However, if an employee has been placed on

Special Leave Procedures (see Article 11), the provisions of that article will apply. Normally, medical certificates for absences in excess of three days will be submitted upon return from sick leave.

Section 5. Chronic Conditions

Employees who are suffering from a chronic condition which may require the use of unscheduled sick leave on a regular and recurring basis, must establish the chronic nature of their illness with medical documentation. The documentation shall indicate how often it is anticipated that the employee may be incapacitated by the chronic condition and the likelihood that the condition may or may not continue and/or its expected duration. In those instances, the employee will not normally be required to provide medical documentation for additional sick leave usage, related to the chronic condition.

Section 6. Advance Sick Leave

An employee may request up to 240 hours advanced sick leave. Advanced sick leave approval will be at the appropriate level. An employee who is under Special Leave Procedures, may or may not be granted advance sick leave. For other employees advanced sick leave will be given when all of the following conditions are met:

- A. The employee is eligible to earn sick leave;
- B. There is no reason to believe the employee will not return to work after having used the leave;
- C. The employee has provided acceptable medical documentation of the need for advanced sick leave; and
- D. There is reason to believe that the employee will accrue enough sick leave to pay the advance back.

Section 7. Confidentiality

The employer will treat as confidential any medical information related to the employee in support of a request for sick leave. The Employer may disclose such information subject to its Privacy Act obligations for work related reasons on a need-to-know basis only.

Article 10. Miscellaneous Leave and Excused Absence

Section 1. Court Leave

- A. Court Leave will be granted in order to permit employees to participate in judicial proceedings arising out of workplace incidents of violence by members of the public against employees. Employees who are summoned as witnesses in their private capacity in judicial proceedings in the District of Columbia, a State, territory or possession of the U.S. including the Commonwealth of Puerto Rico and the Trust Territory of the Pacific Islands are entitled to court leave when the United States, the District of Columbia or a State or Local Government is a party and the employee is not one of the parties in the suit. Employees who are summoned as witnesses in an official capacity on behalf of the Federal Government are on official duty, not court leave.
- B. Employees called for jury duty or jury qualification, will be granted court leave consistent with Federal, state and local law and regulations. When called, the employee shall notify the Leave Approving Official promptly and shall submit a true copy of their Summons for jury service. Upon completion of their service, the employee shall present to the Leave Approving Official satisfactory court issued evidence of time served on such duty, if available.
- C. Duration of Jury Service. An employee who is under proper summons from a court to serve on a jury should be granted court leave of absence with pay for the entire period, from the date stated in the summons on which he is required to report to the court to the time he is discharged by the court, regardless of the number of hours per day or days per week he actually serves on the jury during the period. The employee must return to duty during periods when he or she is excused from court or jury duty and would normally be scheduled to work, including weekends and/or holidays unless this would be impractical.
- D. Interim Excuse From Jury Duty. If an employee is excused from court service with sufficient time to enable that employee to return to duty for at least 2 hours of the scheduled workday, exclusive of travel time, the employee shall return to duty unless granted appropriate leave by the employer. It is the employee's responsibility to request and receive approval prior to going on leave.

Section 2. Administrative Leave

A. Blood Donations

An employee's supervisor may approve excused absence for an employee who is donating blood without compensation for a reasonable amount of time for purposes of donation and recovery, normally two (2) hours. Additional time may be excused if appropriate because of the location of the donation site, the type of donation program (e.g. donation of blood platelets), or other factors determined be leave-

approving official.

B. Agency issued Traffic Citations

When an employee receives a traffic or parking ticket from the Agency police force, the employee has the right to defend such tickets in court. In cases where the employee's citation is rescinded and /or the employee is completely exonerated in their case on the merits before the court or liaison, the Agency will convert any annual leave the employee requested to defend him/herself to administrative leave. This includes time required to report to, attend, and return from court. This provision will only apply to Agency issued traffic and parking violations.

Section 3. Military Leave

- A. Permanent and career-conditional employees who are members of the National Guard, or any reserve unit of the Armed Forces (that is, Army, Navy, Air Force, Marines, or Coast Guard), shall be entitled to military leave for each day of active duty in such organizations up to a maximum of fifteen (15) calendar days in any fiscal year (prorated for part-time employees). Military leave, not to exceed fifteen (15) days, which is unused at the beginning of succeeding fiscal year will be carried forward for use in that fiscal year only. This gives a full-time employee the potential for thirty-day (30) military leave during a fiscal year (less for part-time employees, also prorated).
- B. Approval of military leave provided in the foregoing shall be based on a copy of the orders directing the employee to active duty and a copy of the certificate on completion of such duty.
- C. Military leave shall be without loss of pay.
- D. Employees are not entitled to military leave to use for weekend drill. However, employees should request accommodations to attend weekend drill by rescheduling a conflicting tour of duty, annual leave or leave without pay as far in advance as possible.

Section 4. Disabled Veteran Leave (DVL)

- A. Disabled Veteran Leave (DVL) was authorized by the Wounded Warriors Federal Leave Act of 2015. DVL is for the purposes of undergoing medical treatment for a service-connected disability for which sick leave could regularly be used. Employees who are hired on or after November 5, 2016 who are Veterans with a 30% or greater service-connected disability may be eligible for DVL.
- B. OPM has specified that for the purposes of DVL, 'hired' means:
 - 1. Newly hired with no previous Federal service; or
 - 2. Reappointed with at least a 90-day break in service; or

3. Military reservists or members of the National Guard that return to duty in their civilian positions after a period of military service.
- C. Eligible employees will receive 104 hours of Disabled Veteran Leave for the treatment of their service-connected disability or disabilities. This is a one-time benefit that is provided either when the employee is hired as outlined above or upon the effective date of the qualifying disability. It is available for use for a period of one year, after which time any unused portion expires. The benefit is pro-rated for employees who are part-time, or who have uncommon tours of duty.

Section 5. Voting

- A. Excused absence will be given to employees to vote in national, state and local municipal elections or referendums in accordance with B below.
- B. An employee living within normal commuting distance will be given time as necessary to vote, without charge to leave, which will permit him/her to report to work within three (3) hours after the polls open or leave up to three hours before the polls close, whichever requires the least amount of excused absence.
- C. If the employee's voting place is beyond normal commuting distance and absentee balloting is not permitted, he/she may be granted sufficient time off to vote not to exceed eight (8) hours.
- D. In jurisdictions where registration in person is required, excused absence to register will be granted on the same basis as for voting, except that not time shall be granted if registration can be accomplished on a non-workday.
- E. The employee has a responsibility to make arrangements with their leave approving official in advance for time off to vote or register.

Section 6. Leave Without Pay

- A. Leave without pay is temporary non-pay status and absence from duty granted upon an employee's request. All requests for leave without pay, regardless of duration, are subject to approval by the appropriate authority. A period of leave without pay shall not exceed one (1) year for each application.
- B. Current employees who are subsequently elected to a Union office or appointed to serve as a delegate to a Union convention which requires their absence from work may request LWOP or annual leave to fulfill their obligations. Internal union business which requires absence from the Agency's premises, may also be appropriate for a request for LWOP or annual leave. The Employer may grant leave without pay for such employee (s) provided the request is submitted not less than twenty-eight (28) days prior to the day the absence is to begin. Leaves of absence granted under this provision for employees elected to a Union office may be for a period of time

concurrent with the term of the office. All requests will be considered subject to workload considerations.

- C. The Agency recognizes the obligation to return an employee to duty at the expiration of approved leave without pay in a position and rate of pay to which the employee is entitled in accordance with Government-wide rules and regulations.
- D. Employees in an approved leave without pay status shall accrue all rights and privileges with respect to retirement status and coverage under the Federal Employees Group Life Insurance and Federal Employees Health Benefits Program (FEHB) to the extent they are entitled such benefits. The Agency will continue to pay its share of the FEHB premium for the first 365 days of LWOP. The employee is responsible for the employee's contribution in accordance with Government-wide rules or regulations. Employees are encouraged to seek advice from their personnel office on this issue.
- E. Employees on LWOP will be afforded the right to compete for their position during a reduction in force according to Government-wide rules and regulations.

Article 11. Special Leave Procedures

Section 1.

Whenever an employee's attendance record is considered unsatisfactory due to unauthorized absences or frequent requests for unscheduled leave (annual leave, sick leave, LWOP) he/she may be required to follow prescribed procedures to support all requests for leave. Unauthorized absences and even approved unscheduled leave requests may be used as a basis for SLP. The employee will be given a statement in writing serving as notice that certain prescribed procedures for granting leave will be followed. It is agreed that Special Leave Procedures are an attempt to aid employees in establishing appropriate leave use, and it is not an adverse or disciplinary action. However, a violation of Special Leave Procedures may be used as a basis for future adverse or disciplinary action.

Section 2.

No employee shall be given a written notice placing him/her on special leave procedures without prior discussion of the reasons for such action and given an opportunity to improve their record. No employee will normally be placed on Special Leave Procedures unless the leave abuse as described in Section 1 meets or exceeds as a general guide four (4) incidents within a six (6) month period. Each employee's individual case must be based on its own merits and evidence.

Section 3.

The record of each employee on Special Leave Procedures will be reviewed for no more than four (4) months following the date of the letter imposing the Special Leave Procedures. If there are no occurrences of abuse within the duration of the Special Leave Procedures, the employee will be relieved of the requirement to follow Special Leave Procedures.

All Special Leave Procedures will contain an express expiration date. Special Leave Procedures and their requirements may only be extended in writing.

Special Leave Procedures will be expunged from the manager's records on the three (3) year anniversary of their expiration. However, a copy will be maintained in the Employee & Labor Relations Branch.

Article 12. Personnel Records

Section 1.

Official Personnel Folders (OPF) will be maintained in the electronic system (EOPF) in accordance with applicable laws, regulations, and this agreement.

Only information authorized by law or regulation will be maintained in this electronic system. Information not required for personnel, operational or other official reasons shall not be maintained in the EOPF consistent with law, rule, and regulation. Information in the OPF not authorized by law or regulation, or required for personnel, operational, or other official reasons shall be removed upon request by the employee.

Employees have regular access to their individual OPF through the EOPF system and may be granted reasonable amounts of time to review their OPF without charge to leave or loss of pay.

There will be no unauthorized access to an employee's EOPF.

Section 2.

Personnel records kept by an employee's supervisor shall be maintained in a secure, confidential file and may not be used in a disciplinary action, unless they have been disclosed to the employee on a timely basis.

Article 13. Hours of Work

Section 1. General

- A. Hours of work for Employees will be handled in accordance with law, rule, regulation, executive order, Agency policy, and this Agreement. Matters relating to holiday pay, compensatory time, and overtime will be handled in accordance with appropriate laws, rules, regulations, executive order, Agency policy, and this Agreement. Changes to Agency policy will be handled in accordance with 5 U.S.C. § 7106 and this Agreement.
- B. The Agency has discretion to schedule basic workweeks and pay periods, establish or reschedule tours of duty, and assign or change tours of duty in the interest of effective management of operations, in accordance with this Agreement. The Agency will attempt to schedule tours of duty and assignments so that all employees have at least two (2) consecutive days off. However, the Agency reserves the right to determine employee schedules based on operational needs.
- C. The Agency will notify employees of their tour of duty. Each employee will be given reasonable advance notice, normally one (1) pay period, of their tour of duty and any changes to such, except in emergency situations. When the Agency has a need to change an employee's schedule, two (2) weeks' advance notice will be given, when possible. Established tours of duty may require staff to work holidays.
- D. In the event that the Agency makes a change, the Agency will provide the Union notice and an opportunity to bargain in accordance with Article 2 of this agreement and the Statute.
- E. On a case-by-case basis, the employee and manager may mutually agree to change the established schedule to meet ad hoc needs. Such an ad hoc change will be documented by an email or in writing.
- F. Employee requests for an alternative work schedule will be made in accordance with Agency policy, and approval will be based on operational need, including but not limited to, office coverage, mission necessity, and availability. Alternative work schedules are not an employee entitlement.
- G. Employees are required to obtain approval from their supervisors before leaving their assigned place of work during duty hours. Employees absenting themselves from the job site of their assigned duties without authorization may be charged absence without leave (AWOL). In an emergency restroom situation where a supervisor is not immediately available, the employee will inform a co-worker of their need to leave the work area.
- H. Each employee will be at their normal mustering station/work site attired for work in clothing appropriate for the job to be accomplished and prepared to begin their

duties at the designated starting time of their workday or shift, and at the conclusion of any lunch/break period.

- I. Transportation to the employee's Official Duty Station (ODS) is considered commuting and does not entitle the employee to reimbursement for official travel.

Section 2. Definitions

A. For the purposes of this Article, the following definitions shall apply:

1. Administrative Workweek means a period of seven (7) consecutive calendar days designated in advance by the Employer.
2. Regularly Scheduled Administrative Workweek for full-time employees means the period within an administrative workweek when these employees are regularly scheduled to work. For part-time employees, it means the officially prescribed days and hours within an administrative workweek during which these employees are regularly scheduled to work.
3. Pay Period means the fourteen days from Sunday through the Saturday 14 days later that each paycheck is based on. For the purposes of schedules, the days of the pay period will be numbered days one (1) through fourteen (14) consecutively. For example, the first Tuesday of the Pay Period is Day 3; the second Tuesday of the Pay Period is Day 10.

Section 3. Breaks

- A. Employees will be granted breaks and meal periods in accordance with law, rule, regulation, and agency policy governing such matters.
- B. Office of Research Facilities (ORF) Provisions for Wage-Grade Staff - Employees assigned to 24/7 shifts in the ORF will have no scheduled lunch period, but such employees will be allowed an unspecified period of time during their tour of duty to eat lunch at such times as they can be spared from their duties. The officially recognized lunch period for AWS Shift personnel will be 12:00 p.m. – 12:30 p.m. EST.
- C. Clean up: Prior to regularly scheduled breaks, employees may take five minutes for cleanup. Prior to lunch, employees may take 15 minutes for cleanup and travel to an appropriate break area. At the end of the workday, employees may take 30 minutes to clean up the work area and shower. Employees assigned to shift duties may be required to clean up in rotation. Shift employees may be recalled during cleanup to their duty stations during critical operating situations or may not be allowed any cleanup time under such circumstances.

- D. Breaks in working hours of two 20-minute breaks will be observed, workload permitting (except employees in the CC – Nutrition Department, see 2 below). Employees will be given one (1) twenty-minute (20) break per every four-hour (4) work period. The break can be taken no earlier than one hour after the employee's tour begins, and no later than one hour before the tour is scheduled to end. Breaks cannot be taken consecutively.
1. When employees are held over after their shift for an additional 4-hour period, they will be provided an additional 20-minute break.
 2. CC – Nutrition Department - Breaks in working hours of two 15-minute breaks will be observed for full-time employees, workload permitting. Part-time employees are provided one 15-minute break, workload permitting.

Section 4. Tier Designations

- A. It is an employee's responsibility to know his or her Tier designation and follow Agency guidance and procedures related to such. Tier One employees are notified of their emergency work status each year. Employees shall report to work in accordance with OPM and NIH guidance based on the designation they receive each year, in accordance with Article 16. An employee who does not report and/or does not call in in accordance with procedures provided, may be subject to administrative action.
- B. The Union will be provided a list of bargaining unit employees' Tier designations on an annual basis.

Section 5. Schedules

- A. ORF
1. DFOM
 - a. MFMB (Bethesda, Baltimore, Poolesville, and Ft. Detrick Maintenance)
 - i. 24/7 Operations Schedules
 1. Shift A
 - a. 6:00 p.m. – 6:00 a.m. EST
 - b. Week 1 of the pay period: Mon., Tues., Fri., and 8 hrs on Sat. 6:00 p.m. – 2:00 a.m.
 - c. Week 2 of the pay period: Sun., Wed., Thurs.
 2. Shift B
 - a. 6:00 a.m. – 6:00 p.m. EST
 - b. Week 1 of the pay period: Mon., Tues., Fri., and 8 hrs on Sat. 6:00 a.m. – 2:00 p.m.
 - c. Week 2 of the pay period: Sun., Wed., Thurs.
 3. Shift C
 - a. 6:00 p.m. – 6:00 a.m. EST
 - b. Week 1 of the pay period: Sun., Wed., Thurs.

- c. Week 2 of the pay period: Mon., Tues., Fri., and 8 hrs on Sat. 6:00 p.m. – 2:00 a.m.
 - 4. Shift D
 - a. 6:00 a.m. – 6:00 p.m. EST
 - b. Week 1 of the pay period: Sun., Wed., Thurs.
 - c. Week 2 of the pay period: Mon., Tues., Fri., and 8 hrs on Sat. 6:00 a.m. – 2:00 p.m.
 - ii. Alternative Work Schedule (AWS) Schedules (5-4/9 Schedule with 1 day off each pay period)
 - 1. AWS A1
 - a. 7:00 a.m. – 4:30 p.m. EST
 - b. Week 1 of the pay period: Mon. – Thurs. OFF Fri.
 - c. Week 2 of the pay period: Mon. – Thurs. and 8 hrs on Fri. 7:00 a.m. – 3:30 p.m.
 - 2. AWS A2
 - a. 7:00 a.m. – 4:30 p.m. EST
 - b. Week 1 of the pay period: Mon. – Thurs. and 8 hrs on Fri. 7:00 a.m. – 3:30 p.m.
 - c. Week 2 of the pay period: Mon. – Thurs. OFF Fri.
 - 3. AWS B1
 - a. 7:00 a.m. – 4:30 p.m. EST
 - b. Week 1 of the pay period: Tues – Thurs. OFF Mon.
 - c. Week 2 of the pay period: Tues. – Thurs. and 8 hrs on Mon. 7:00 a.m. – 3:30 p.m.
 - 4. AWS B2
 - a. 7:00 a.m. – 4:30 p.m. EST
 - b. Week 1 of the pay period: Tues – Thurs. and 8 hrs on Mon. 7:00 a.m. – 3:30 p.m.
 - c. Week 2 of the pay period: Tues. – Thurs. OFF Mon.
 - iii. 4/10 Schedule (1 day off each week)
 - iv. Basic Schedule (Straight 8-hour schedule, Mon. – Fri.)
- 2. RTP (Durham, NC)
 - a. First Shift
 - i. 4/10 Schedule (1 day off each week)
 - ii. 6:00 a.m. – 4:30 p.m. EST
 - b. Second Shift
 - i. 4/10 Schedule (1 day off each week)
 - ii. 1:00 p.m. – 11:30 p.m. EST
 - c. AWS Schedule (5-4/9 Schedule with 1 day off each pay period)
 - i. Tours begin between 7:00 a.m. – 9:00 a.m. EST
 - d. Basic Schedule (Straight 8-hour schedule, Mon. – Fri.)
 - i. Tours begin between 7:00 a.m. – 9:00 a.m. EST
- 3. RML (Hamilton, MT)
 - a. 4/10 Schedule (1 day off each week)
 - i. 6:00 a.m. – 4:30 p.m. MT
 - b. 5-4/9 Schedule (1 day off each pay period)

- i. Tours begin between 7:00 a.m. – 9:00 a.m. MT
 - c. Swing Shift (5/8 Basic Schedule)
 - i. 4:00 p.m. – 12:00 a.m. MT
 - d. Midnight Shift (5/8 Basic Schedule)
 - i. 12:00 a.m. – 8:00 a.m. MT
 - 4. DTR (Bethesda Boiler Plant)
 - a. 24/7 Operations Schedules
 - i. Shift A
 - 1. Pay Period 1: 6:00 a.m. – 6:00 p.m. EST
 - 2. Pay Period 2: 6:00 p.m. – 6:00 a.m. EST
 - 3. Week 1 of each pay period: Mon., Tues., Fri., Sat.
 - 4. Week 2 of each pay period: Sun., Wed., Thurs.
 - ii. Shift B
 - 1. Pay Period 1: 6:00 p.m. – 6:00 a.m. EST
 - 2. Pay Period 2: 6:00 a.m. – 6:00 p.m. EST
 - 3. Week 1 of each pay period: Mon., Tues., Fri., Sat.
 - 4. Week 2 of each pay period: Sun., Wed., Thurs.
 - iii. Shift C
 - 1. Pay Period 1
 - a. 6:00 p.m. – 6:00 a.m. EST (Sun.)
 - b. 6:00 a.m. – 6:00 p.m. EST (Wed., Thurs., Mon., Tues., Fri., Sat.)
 - 2. Pay Period 2
 - a. 6:00 a.m. – 6:00 p.m. (Sun.)
 - b. 6:00 p.m. – 6:00 a.m. EST (Wed., Thurs., Mon., Tues., Fri., Sat.)
 - iv. Shift D
 - 1. Pay Period 1
 - a. 6:00 a.m. – 6:00 p.m. EST (Sun.)
 - b. 6:00 p.m. – 6:00 a.m. EST (Wed., Thurs., Mon., Tues., Fri., Sat.)
 - 2. Pay Period 2
 - a. 6:00 p.m. – 6:00 a.m. (Sun.)
 - b. 6:00 a.m. – 6:00 p.m. EST (Wed., Thurs., Mon., Tues., Fri., Sat.)
 - b. Other Schedules
 - i. AWS Schedule (5-4/9 Schedule with 1 day off each pay period)
 - ii. 4/10 Schedule (1 day off each week)
 - iii. Basic Schedule (Straight 8-hour schedule)
- B. ORS
 - 1. DEM (Emergency Communications Center)
 - a. The ECC operates 24 hours a day, seven days a week.
 - b. Given the nature of the work performed in the ECC and management's need to ensure coverage of the emergency phone lines, employees are required to contact the supervisor on duty no less than 1 hours before the start of their shift, except in extenuating circumstances, if they are unable to report for duty.
 - c. 24/7 Schedules
 - i. Shift A

1. 6:00 p.m. – 6:00 a.m.
2. Week 1 of the pay period: 3 12-hr shifts and 1 8-hr shift
3. Week 2 of the pay period: 3 12-hr shifts
- ii. Shift B
 1. 6:00 a.m. – 6:00 p.m.
 2. Week 1 of the pay period: 3 12-hr shifts
 3. Week 2 of the pay period: 3 12-hr shifts and 1 8-hr shift
- d. Basic Schedule (Straight 8-hour schedule)

2. Division of Library Services (DLS)

- a. NIH Library is open to NIH staff and the public every weekday, Monday-Friday, 8:30am-4:00pm. On Federal Holidays and whenever OPM announces that the government is closed, the library is closed to NIH staff and the public.
- b. At least two Information Desk staff members are required to be on duty at all times when the library is open.
- c. In the event Information Desk staff are not able to cover all hours the library is open, volunteers already in a duty status will be solicited from other permanent staff. If no one volunteers, a staff member may be assigned to work at the Information Desk.

C. CC

1. Nutrition Department

- a. The Nutrition Department is responsible for preparing and delivering breakfast, lunch, and dinner meals to Clinical Center patients and visitors 365 days a year.
- b. One week of schedules will be posted by Friday of each week 14 calendar days in advance of becoming effective.
- c. Employees are assured of at least two days off weekly.
- d. Schedules
 - i. Cooks and Food Service Workers
 1. First Shift: 6:00 a.m. – 2:30 p.m.
 2. Second Shift: 11:30 a.m. – 8:00 p.m.
 - ii. Call Center Health Technicians
 1. First Shift: 6:00 a.m. – 2:30 p.m.
 2. Second Shift: 11:00 a.m. – 7:30 p.m.

Section 6. Shift Rotation

A. This section applies to ORF Bargaining Unit employees who are eligible to work shift. Employees who are eligible may rotate on and off shiftwork in accordance with the following procedures:

1. The assignment of day work or maintenance personnel (non-shift) to shift, if needed, will be done according to the following procedure. The Agency will first solicit qualified volunteers for assignment to shift. If there are no qualified volunteers or an insufficient number of volunteers to fill shift vacancies, personnel

will be selected as management deems appropriate based on qualifications and seniority in the bargaining unit.

2. Employees may be deferred from shift due to unique/special skills at management's discretion. An employee will only be granted one (1) such deferment, after which the employee will be the next employee to be assigned shift work.
3. Changes between shifts can only occur when vacant positions are created for any reason. Existing qualified shift personnel will be given first priority for such vacancies based on seniority in the bargaining unit. Only employees currently assigned to the branch where the vacancy occurs will be given consideration for the reassignment.
4. Employees experiencing personal situations impacting their work shift, i.e., attending school, childcare, etc., may request an exception to the shift changes procedures at any time throughout the year through normal supervisory channels. Approval of such requests is at the sole discretion of management based on skills needs in the interest of effective operations.
5. Employees, with their supervisor's approval, may arrange for trading shifts with other qualified personnel who volunteer to accept their tour of duty. The employee arranging the trade will have their name marked off that shift. The employee accepting the trade will have their name put on for that shift.
6. Employees will be notified of the decision to change their shift normally within two (2) weeks from the date of the request. The Employer will explain the reason(s) for its decision.
7. In the event of any inconsistency or conflict between this section and any other Article contained in this Agreement, the terms, conditions, and provisions of this Article shall govern and control.

Article 14. Time Keeping and Attendance

Preamble

In order to foster a work environment based on mutual respect and trust, the parties have developed and agree to the following policy guidelines concerning time keeping and attendance.

Section 1.

- A. The parties agreed that the following methods may be used to account for employees' time and attendance:
 - 1. An electronic timekeeping system;
 - 2. Visual check by supervisors;
 - 3. Sign In and Sign Out Sheets; and
 - 4. Mustering stations.
- B. Online presence using electronic communication tools will not be used for timekeeping purposes. However, ORS and ORF employees who are logged onto a computer and use a computer as part of their daily duties and responsibilities should generally have online presence in electronic communication tools.

Section 2. Implementation

- A. Prior to any changes to the existing methods of accounting for time and attendance, employees will be provided informational packages regarding the change. The informational packages will be distributed not less than fourteen (14) days before the change. Management of the affected units will meet with employees regarding the change. The Union will be given an opportunity to be present at the meeting and participate.
- B. Management and the Union will meet in order to obtain a full understanding on new methods of accounting for time and attendance.
- C. Management will be responsible for maintaining all time and attendance records.
- D. The Union will be notified prior to any changes in the existing methods of accounting for time and attendance and have an opportunity to bargain any changes that are more than *de minimis* in accordance with Article 2.

Section 3.

Employees violating the procedures for time keeping and attendance, may be subject to any of the following:

1. Special time and attendance reporting requirements developed by management in accordance with Article 11.
2. Employees who fail to improve or follow required time and attendance procedures prescribed by management may be subject to continued restrictions and/or disciplinary action in accordance with Article 30 on Disciplinary and Adverse Actions.

Section 4.

- A. Training and equipment will be provided as needed.
- B. Supervisors are responsible for communicating concerns related to time and attendance procedures with employees in a timely manner

Article 15. Retirement and Separation

Section 1.

An employee, at any time, is entitled to request and receive an annuity estimate from a Benefits Specialist, which may include informational material regarding Thrift Savings Plan, Health Benefits and Life Insurance.

Section 2.

Each employee who contemplates separation or retirement, or who has retired or separated, whether voluntarily or involuntarily, will receive written notification that they may contact a Benefits Specialist in the Benefits office, including phone number, address, and webpage, they be informed about their eligibility for disability retirement, applying for discontinued service annuity, eligibility for deferred annuity, and all options regarding retirement, TSP, life insurance, and health insurance.

Section 3.

An employee may withdraw a resignation or retirement application at any time prior to its effective date, provided the withdraw is communicated to the Employer in writing and received by the Employer. Employees who have resigned or retired may request that they be considered for re-employment to their recently vacated position in accordance with Government-wide rules and regulations.

Section 4.

The parties recognize that final decisions concerning retirement applications and issuance of retirement checks are the responsibility of the Office of Personnel Management. The Employer agrees to process and transmit all necessary paperwork in connection with retirement applications in a timely fashion.

Section 5.

Upon receipt of a written request from an employee who is eligible to retire, or who is within 120 days of such eligibility, the Employer agrees to provide a statement setting forth an estimate of the employee's monthly compensation upon retirement, types of retirement options available, and the procedures for continuing any health or life insurance policies. This information will be updated at the employee's request, but not more frequently than once a year.

Article 16. Emergencies and Continuity of Operations

Preamble

The Agency has a Continuity of Operations Plan (COOP) in place that is designed to ensure maintenance of the Agency's mission essential functions while also protecting the health and safety of NIH employees, patients, and visitors. All NIH employees must be designated as "Emergency", "Non-Emergency/Telework" or "Non-Emergency/Non-Teleworker." The Emergency Tier Designations (ETDs) are made by the Agency and have been developed based on guidelines from the Office of Personnel Management (OPM) and the principles articulated in COOP directives. ETDs will be utilized when there are emergencies affecting the employee's official duty station.

Section 1 – Emergency Tier Designations

- A. Tier I – Employees designated as "Emergency" must remain at work on-site or report to work on-site at the regularly scheduled start of their duty hours upon notification of delayed openings, early dismissals, closures, and other announcements regarding the use of unscheduled telework or unscheduled leave by OPM, NIH, senior leadership in the Office of Human Resources (OHR) and the office of the Director of their division, unless otherwise directed by their supervisor. If Tier I employees are not scheduled to start their tour of duty when an emergency event impacts normal operations and their presence is required to maintain continuity of operations, their supervisor or an authorized official will contact them, as necessary. Some Tier I employees may perform their duties outside normal NIH operating hours (After hours, weekends and holidays) as part of their normal work schedule.
- B. Tier II – Mission Critical. Employees designated as "Tier II – Non-Emergency/Teleworkers" are assigned to functions whose omission would negatively impact the ability of the Agency to perform mission essential functions and critical program and business operations functions. These functions could be performed at an alternative worksite and therefore employees who participate in an approved NIH telework program with a current and approved telework agreement with routine and/or ad hoc or situational telework selected would be expected to telework during emergencies. They may also be called by their supervisor to report to work on site to maintain continuity of operations during emergencies involving incidents of national security, natural or man-made disasters, extended emergencies, or other unique situations such as a pandemic influenza outbreak.
- C. Tier III – Employees designated as "Tier III Non-Emergency/Non-Teleworker typically include employees whose functions must be performed at their duty station, but not at the onset of an emergency, and not during an emergency that impacts their duty station. This Tier also includes employees not eligible for telework or who choose not to participate in telework.

Section 2- Designation and Notification of ETD

The Agency will have an ETD Coordinator or point of contact for the ETD program in every Institute, Center, or Office, who will be responsible for ensuring employees in their organization have been designated, notified, and understand their ETD.

- A. New employees will be notified of their ETD within 2 weeks of their entry date;
- B. After employees are notified of their ETD, they are responsible for acknowledging their understanding of the requirements of their ETD;
- C. Tier I employees must be notified annually in writing of their ETD. Notification must come from the employee's immediate supervisor or higher. Tier I employees may acknowledge their ETD digitally or in writing;
- D. Tier II and III employees may be notified of their ETD in writing or by email. Once they have acknowledged their ETD, and unless their ETD changes, no further notice or acknowledgment is required.

Section 3 – Union Notification and Availability

The union will be notified in a timely manner of changes in working conditions necessitated by an emergency as they occur. The parties shall bargain changes in working conditions, as practicable. During an emergency event, the Union will provide the Agency with contact information for Union representatives and will attempt to facilitate coordination with bargaining unit members as needed. An emergency event is defined as a condition threatening life or property or an event that limits the essential functions of the Agency. If the emergency event is significant in scope, Management agrees to make the local representative's contact information available to bargaining unit employees. If feasible, the Agency will provide the Union with private space and equipment for Union activities under any necessary reconstitution efforts by the Agency. The Parties agree that there is a need for communication during an emergency event.

Section 4 - Pay and Leave

During an emergency event, subject to the Tier designations and requirements in Section 1 and to the extent practicable, the Agency will make available leave flexibilities and pay entitlements allowed under current law and regulation (i.e., administrative leave and evacuation payments). Employee benefits will remain unchanged during emergency situations. To the extent it is available for use, the electronic time and attendance system will be used to report duty hours and leave during an emergency event. During an emergency the employee shall contact their supervisor, designated agency official regarding their leave or pay status. If a voice mail message is left, the employee must leave a contact number where he/she can be reached. Fair Labor Standards Act (FLSA) statutes apply.

Article 17. Facilities for Breaks and Meals

Section 1.

The Agency will provide adequate facilities for the work force to take breaks and meals that comply with applicable laws, rules and Government wide regulations.

Section 2.

Reasonable access to a break room, based on the location of the work unit, will be provided to all bargaining unit employees. NDCC employees will have access to ice. Each break room will be equipped with a microwave oven and a refrigerator, as well as a table and chairs.

Section 3.

The equipment will be maintained in safe/good working order by the employer. Employees should report any equipment problems when identified.

Section 4.

Employees share a responsibility to maintain a clean and healthy environment in break and lunchrooms.

Section 5.

Upon Management's approval, the Union will be allowed to provide microwave ovens in designated areas, other than the lunchrooms identified in Section 2 above. The Union will be responsible for maintaining the equipment in safe working order.

Article 18. Holidays

Section 1.

Employees shall be entitled to all holidays in accordance with applicable laws, Government wide rules and regulations and Executive Orders.

Section 2.

Employees working on a holiday shall be paid holiday pay, shift differential, and/or overtime in accordance with applicable law, Government wide rules and regulations.

Section 3.

Tours of duty will not be established or modified for the purpose of avoiding the payment of holiday pay.

Section 4.

It is agreed that as the mission of the Agency dictates, employees will be required to work on holidays.

Article 19. Safety and Health

Section 1. Preamble

The Employer will provide and maintain safe and healthful working conditions for employees. The Agency will comply with the applicable standards of the Occupational Safety and Health Administration as well as all relevant health and safety codes and standards established and mandated by an authorized government entity.

Section 2. General

A. In addition to general safety standards and regulations, the parties recognize, in filling its obligations in Section 1 above, that safety standards and regulations may be developed specific to the unique job-related conditions within the bargaining unit that are appropriate to the Employer's operations.

B. The Union may make safety and health suggestions which offer practical and feasible ways of improving safety and health conditions for consideration by the NIH Safety and Health Committee, as more fully described below.

Section 3. Responsibilities and Training

It is recognized that supervisors, employees, and the union, share the responsibility for safety and health. All are obligated to know and observe safety rules and practices as a measure of protection for himself/herself and others. The agency will ensure that all employees are adequately trained in all areas of Occupational Safety and Health as needed to perform the official duties of their respective positions.

1. The Agency agrees to provide timely appropriate training to employees who are required to perform duties which involve potential hazards to safety and health.
2. The Agency agrees to allow employees to attend with supervisory approval, on duty time, training it provides for safety and health.
3. The Agency agrees that all designated safety representatives will receive safety and health training. Sources of training may include OSHA or National Safety Council.
4. Employees will complete mandatory safety training provided by the Employer.

Section 4. Reporting and Abatement of Unsafe Conditions

In the course of performing their work, employees will be alert to observing unsafe conditions in their immediate areas. When unsanitary, unsafe, or unhealthful conditions are observed by the employees, it is their responsibility to report them at once to the immediate supervisor.

The Agency agrees to respond to employee reports of unsafe or unhealthful working conditions and require an inspection within twenty-four (24) hours for potential serious conditions and five (5) workdays for other conditions.

1. Any unsafe or unhealthy working condition not corrected in the prescribed time period will be resolved jointly by the Union and Agency Safety Representatives.
2. Any employee or steward is authorized to request an inspection of the workplace when he/she believes an unsafe or unhealthful condition exists.
3. The Agency agrees to post notices of hazardous conditions discovered in any workplace. This notice shall be posted at or near the location of the hazard and shall remain posted until the cited condition has been corrected. Such notices shall contain a warning, and description of the unsafe or unhealthful working, conditions and all required precautions required by applicable regulations.
4. The Agency agrees to assure prompt abatement of unsafe or unhealthful working conditions. When this cannot be accomplished, the Agency agrees to develop, following consultation with the Union, an abatement plan setting forth a timetable for abatement and a summary of interim steps. Employees exposed to such conditions shall be informed of the abatement plan and the Union shall be consulted during the implementation of the plan.

Section 5. Imminent Danger Situations and Threats to Safety/Health

In the case of imminent danger situations, employees or the Union will make reports to the Employer by the most expeditious means available. The term "imminent danger" means any conditions or practices in any workplace which are such that a danger exists that could reasonably be expected to cause death or physical harm immediately or before the imminence of such danger can be eliminated through normal procedures. In such situations, the employee may decline to perform assigned tasks in the usual work area when they have a reasonable belief, under the circumstances, the task or area poses an imminent danger. In these instances, the employee must report the situation to their supervisor or another supervisor who is immediately available. The employee may leave the immediate area to ensure their safety but will hold themselves available for appropriate work in another area, if requested. If these procedures are followed, the employee will continue to be paid as long as they remain available to perform other work as requested by their supervisor.

Section 6. Material Safety Data Sheets

The Agency shall make available in each work area copies of Material Safety Data Sheets (MSDS), where required, for review by the employees or the Union. Upon request, the Agency will allow the Union or an employee to make a reasonable number of copies of a MSDS.

Section 7. Uniforms and Equipment

- A. When the Agency has made a determination that the need exists and, requires the use of special equipment, the wearing of uniforms, protective clothing, identification badges or special wearing apparel to protect the employee from the environment, or as a means of identification, these specified items will be provided by the Agency. All special equipment, uniforms, protective clothing, or special wearing apparel must be used and or worn as prescribed by the Agency.
- B. The Office of Research Facilities (ORF) and the Clinical Center (CC) will provide lockers and changing facilities for all of their employees who are designated to wear uniforms. Since a uniform is incidental to work, employees shall change into any uniform or required apparel before regular duty hours.

Section 8 - Inspections

- A. Annual inspections of bargaining unit employees' work environments will be conducted by designated safety representatives of the Employer and the Union. Facilities that are industrial in nature (i.e., Power Plant and machinery spaces) will be inspected on a more frequent basis as agreed to, or monthly. At the conclusion of each inspection, the official in charge of the facility shall be advised of any apparent unsafe or unhealthful conditions. Employee reports of unsafe or unhealthful working conditions shall be addressed in accordance with 29 CFR 1960.28. Nothing in this section waives any rights the Union may have pursuant to law, rule or regulation. A copy of all reports will be sent to the AFGE local 2419 Union Office upon completion but in no case more than five (5) days upon completion.
- B. During the course of any inspection, an employee may bring to the attention of the safety inspectors any unsafe or unhealthful condition which they believe to exist.
- C. A representative or designee of the Union shall be provided with reasonable advance notice and an opportunity to accompany the safety inspector(s) on official time during any inspection conducted by the Employer or by the safety representative described in Subsection 8A. The Employer will pay mileage costs if applicable, for Union representatives who are bargaining unit employees for travel to and from inspections under this Section.

Section 9. Health and Safety Committee

- A. The Employer and the Union will cooperate in the continuing effort to eliminate accidents and health hazards. To this end, there shall be established a Health and Safety Committee (HSC).
- B. The HSC shall be composed of ten (10) members, five (5) representatives of the Employer and five (5) employee representatives (Safety Reps) to be selected by the Union. The Chairperson for this committee will be elected by the committee and will

be rotated between the Union and Management as often as the committee determines, but in no case shall one term exceed two (2) years.

- C. The parties agree that Safety Reps should be given sufficient time, training, resources and encouragement to perform their duties.
- D. The HSC shall meet at least quarterly, i.e. every three (3) months, or at such other times as are agreed to by the parties. The Committee Chairperson shall provide a written report of each meeting to the NIH Safety Committee and designated Union representatives, as appropriate.

Section 10. Functions of the HSC

- A. The HSC established pursuant to this Article shall be advisory in nature, and will advise, and will be consulted by the NIH management officials responsible for safety and health.
- B. The HSC shall monitor the performance of the NIH Occupational Safety and Health Programs, and are encouraged to review accident trends, recommend specific training needs, review adequacy of emergency evacuation procedures, and make recommendations to NIH management. Other functions of the HSC include, but are not limited to:
 - 1. monitoring the operation of any local or division-specific safety and health program and making recommendations to the official in charge for improvement;
 - 2. monitoring findings and reports of workplace inspections;
 - 3. participating in inspections;
 - 4. Reviewing plans for abating hazards and preventative maintenance;
 - 5. Reviewing responses to reports concerned with allegations of hazardous conditions, alleged safety and health program deficiencies and allegations of related discrimination and retaliation; If half (1/2) of the committee members are not satisfied with a response, they may request an investigation by the Occupational Health and Safety Administration (OSHA).
 - 6. Reviewing procedures for handling safety and health suggestions and recommendations from employees; and
 - 7. Reviewing reports of unsafe and unhealthful conditions
- C. The HSC shall have full access to all existing information relevant to their advisory and monitoring functions.

- D. Since the HSC is established as an advisory committee, committee members shall receive a reasonable amount of official time, and necessary travel and per diem expenses, to take part in the deliberations of the committee.
- E. Any Union member of the HSC will be allowed official time up to forty (40) hours annually for union sponsored training. The Employer will notify the Union of any changes in rules or regulations related to safety and health that require additional time needed for training. The agency will provide such additional time as needed.

Section 11. Health Services

- A. The Employer will, to the extent practical and available locally from government sources, continue to offer whatever health services are obtainable for employees.
- B. In any work location where health facilities are not available on the premises, the Employer agrees to provide and maintain standard GSA authorized first aid kits.

Section 12 – Emergency Services and Supplies

- A. The Employer will post emergency procedures in common areas (e.g. active shooter protocols, shelter in place, COOP, names and contact information for employer safety officers) and location of emergency supplies and resource materials.
- B. The Employer will provide emergency supplies and equipment at each office location and inform employees as to their location.
- C. The Employer will provide employees, where practicable, with information concerning the nearest medical service facility/clinic where emergency medical services can be provided. Employees will also be informed of the procedures to be used to contact the NIH police and the NIH Fire Department or local emergency responders, if off the Bethesda campus. Employees should assume personal responsibility for taking appropriate steps to inform themselves about emergency services and procedures.
- D. If it becomes necessary for an employee to leave work because of an incapacitating illness or injury, and normal transportation is not available or within the employee's capacity, the Employer agrees to assist in arranging transportation to a medical facility or to the employee's home, at the request of or on behalf of the employee.
- E. Contingent upon funding and assessment of needs the Agency will offer cardiopulmonary resuscitation (CPR) and automatic external defibrillators (AED) training to all interested persons.

Section 13 - Asbestos

The Employer shall, through coordination with Health and Human Services (HHS), perform periodic monitoring of asbestos levels in the Employer's buildings that have been identified by HHS as having potential asbestos problems. The results of the monitoring shall be provided to the Union. In the event such monitoring reveals a level of exposure in excess of the standard established by the Office of Safety and Health Administration (OSHA), through coordination with HHS, the Employer agrees to move exposed employees to work sites that do not have excessive exposure as soon as practicable. To the maximum extent permitted by law and regulations, affected employees will be paid hazardous duty pay or environmental differential pay during the period of exposure. For purposes of this agreement "period of exposure" means the time between the receipt of a conclusive report indicating a level of exposure above the standard pursuant to Article 44 (EDP) and the time affected employees are removed from such exposure.

Section 14 - Retaliation

The Employer will assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in agency occupational safety and health program activities, or because of the exercise by such employee on behalf of himself or others of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, or 29 CFR 1960. These rights include, among others, the right of an employee to decline to perform their assigned task because of a reasonable belief that, under the circumstances the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures established by the Employer.

Section 15 – NIH Health Fair

The Union will be given space at the NIH Health Fair and Open Season to provide information describing the Union's optional insurance and benefit plans. The Union will also be allowed to distribute these brochures to employees using the Employer's internal mail system.

Article 20. Position Classification

Section 1.

A position description consists of all the current major duties and responsibilities assigned or delegated by management.

Section 2.

The position description is a written record of the principal duties and responsibilities assigned to a position and which comprise the work assigned to an employee. The position description shall clearly state what work is to be performed.

Section 3.

A position description must state the principal duties, responsibilities and supervisory relationships in a manner necessary for proper classification. However, position descriptions are not expected to contain a comprehensive or exhaustive listing of each and every task or duty which is performed by an employee. Minor duties may be omitted from the position description or covered by a brief statement showing that minor duties may be performed.

Section 4.

A group of like positions, those similar in principal duties, responsibilities and supervisory relations, may be covered by a single position description.

Section 5.

Neither the listing of duties in a position description nor the inclusion or omission of a statement regarding the performance of other duties as assigned controls or in any manner affects the right of the Employer to assign duties to an employee or to assign, change or eliminate part or all of the duties and responsibilities that have been grouped together to constitute a position.

Section 6.

It is the obligation of the Employer to periodically review position descriptions to ensure that they reflect the currently assigned duties of the employee, and to ensure that significant changes in duties and responsibilities are reflected in the position description.

Section 7.

An employee will be provided with a copy of their position description through eopf, or successor system, and upon appropriate request.

Section 8.

An employee has the right to appeal the classification of his/her position at any time. Before pursuing an appeal, the employee should address his/her concerns with his/her immediate supervisor and second level supervisor. When the classification of a position results in the reduction in grade or pay of an employee, the employee may appeal to the Merit Systems protection Board under such regulations as the Merit Systems Protection Board may prescribe.

Section 9.

An employee may file a classification appeal directly or designate in writing a representative to process their appeal for him. The appeal must be submitted in writing.

Section 10.

A General Schedule (GS) employee may file a classification appeal directly with the Office of Personnel Management or through the Appeals Procedure established by the Agency.

Federal Wage System employees must first appeal to the NIH before pursuing an appeal with the USOPM. If the employee is dissatisfied with the agency's decision, he/she then may pursue with USOPM within 15 days of the agency's decision, specifying the part of the agency's decision with which he/she disagrees.

Section 11.

Appeals will be processed in accordance with NIH policy and applicable OPM regulations. The appeal must contain the following information:

1. Organizational location of the position;
2. Title (or requested title), series, and grade;
3. Reasons why the position is believed to be incorrectly classified; and
4. A statement of any relevant circumstances, information, or classification standards which have a bearing on the appeal.

In the event that the Agency makes a change which is more than de minimis, the Agency will provide the Union notice and an opportunity to bargain in accordance with Article 2 of this agreement and the Statute.

Article 21. Training and Employee Development

Section 1

The Employer and the Union agree that the training and development of employees within the unit is a matter of significant importance. In conjunction with this concept, the Employer, within budgetary limitations, will make available to an employee the training the Employer determines will improve individual and organizational performance and assist in achieving the Employer's mission and performance goals. This would include, but not be limited to, training for newly assigned positions, different positions, and positions which have collateral duties. The Employer and the Union agree to continue encouragement of self-initiated development efforts of individual employees consistent with the terms of this Article, Government-wide rule/regulation, or law.

Section 2

Employees will be selected for training in a fair and impartial manner, i.e., consistent with law and regulation. Training opportunities will be offered without regard to race, color, religion, national origin, age, sex, lawful political affiliation, marital status, physical disability, or membership in a lawful labor organization.

Section 3

- A. Mandatory training which is required by the Agency to ensure that employees maintain adequate proficiency to perform the duties of their position will be conducted during the regular duty hours of the employee. If that is not possible the employee's duty hours will be adjusted to allow them to attend the required training.
- B. Where optional training (training which is job related and requested by the employee, but attendance is not required) is approved by the Agency, the Agency shall make reasonable adjustments to the employee's shift or work schedule to allow him to attend such training on regular duty hours.
- C. When reasonable adjustments to the employee's work schedule that will permit him/her to attend optional training during their regular duty hours cannot be made, the requesting employee will be notified and given the opportunity to attend the training on their own time.

Section 4

The Employer will maintain information about its in-service or Employer-sponsored educational resources. This information will be made available to all bargaining unit employees. Employees seeking counseling and guidance regarding the in-service training program should discuss the matter with their immediate supervisor and/or the appropriate training office.

Section 5

The Employer agrees that when an employee is reassigned due to their position being eliminated, sufficient training, as determined by the Employer will be given to the employee to enable him to perform the duties of the new position. When training is determined to be necessary for new jobs and skills, the Agency will endeavor to utilize existing eligible employees in the unit.

Section 6

When an employee requests non-government training, the Employer will pay authorized expenses for such training at a facility approved by the Employer when the following conditions have been met:

- A. The training has been requested in writing and approved in advance;
- B. The training will improve individual knowledge, skills, personal performance, organizational performance and assist in achieving the Employer's mission and performance goals;
- C. Existing training programs within National Institutes of Health will not adequately meet the training need;
- D. It is not feasible to establish a new training program to meet the need effectively;
- E. Reasonable inquiry has failed to disclose the availability of a suitable and adequate program elsewhere in Government;
- F. Funds are available to pay for the training;
- G. The course is not being taken solely for the purpose of obtaining a degree; and
- H. The approval of such training will not create an undue interference with operational requirements or an imbalance in staffing patterns.

Section 7

Any employee who receives in excess of eighty (80) hours of training in one (1) non-Government training program must sign an agreement using the appropriate form to continue in National Institutes of Health employment for a period three (3) times the actual amount of the time spent in training. Employees who fail to successfully complete the training or comply with the requirements of the agreement may be obligated to reimburse the government. However, when an employee fails to attend or academically pass a training course due to circumstances beyond the employee's control, they will not be expected to reimburse the government for the cost of that training. Examples: unforeseen severe weather or road conditions, failure by Agency to notify employee in

advance of scheduled training, simultaneously scheduled employee training or assignments, and illness.

Section 8

When training is given by the Employer primarily to prepare employees for promotion, selection for the training will be made under the competitive promotion procedures contained in the Agreement.

Section 9

Where the Employer offers in-service training to enhance job proficiency, excluding required and remedial training, the following procedures will apply:

- A. The Employer will post announcements sufficiently in advance of the training to allow the employees to make a request.
- B. In the event of a posting failure which affects a group of employees, the remedy available under this Agreement shall be limited to priority consideration when such training is offered again.

Section 10

In cases where training cannot accommodate all interested employees or the needs of the Employer preclude recommending all interested employees, the Employer will seek to provide alternate training opportunities for those interested employees. The Employer will seek to make available such training to bargaining unit employees that enhances the employee's job proficiency and development.

Section 11

The Employer agrees to reimburse employees for all travel, per diem, and other costs directly related to training in accordance with applicable laws and regulations.

Section 12

Employees required to attend training other than at their duty station or on their assigned shift will be given notification as far in advance as possible and absent unusual circumstances, at least two (2) weeks prior to the commencement of such training. This requirement may be waived by the employee.

Section 13

- A. Employees whose duties require certification and/or a license in order to be retained in their current position must successfully complete a training course and/or pass an examination. Failure to successfully complete the training course and/or pass an

examination may subject the employee to removal from the position, or, if practicable, be reassigned to a vacant position to which the employee qualifies. Any such action will be taken in accordance with law and the terms of this agreement.

B. In order to determine the quality of training, an evaluation through questionnaires may be conducted by the Employer after any training.

Section 14

Training given during regular duty hours will have a direct effect on production and expenditure of funds. Therefore, the Agency must approve or disapprove all requested training and establish schedules for all approved training.

Section 15

Supervisors at all levels should stimulate the interest of employees in self-development and give employees encouragement, guidance and assistance.

Section 16

Once annually, management and the Union will meet to review training data for the bargaining unit. Any discrepancies, obvious training deficiencies, or suggestions will be discussed and considered at this time.

Article 22. Performance Management System

These requirements are established under and to be used in conjunction with:

- A. 5 U.S.C. Chapter 43
- B. 5 C.F.R. Part 430

Section 1. Purpose and Objectives of Performance Appraisal System

The purpose of the performance appraisal system is to accomplish the following objectives:

1. Provide for periodic appraisals of job performance which are objective, fair, and reasonable;
2. Recognizing and rewarding employees whose performance so warrants in accordance with Article 25;
3. Provide for employee participation in establishing elements and standards as appropriate;
4. Provide employees with oral and/or written feedback, as necessary, in order to keep them apprised of what is expected of them and how well they are meeting those expectations; and provide assistance in improving performance and furthering individual development; and
5. Use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

Section 2. Critical Elements

- A. A critical element means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unacceptable performance on the element would result in unacceptable performance in the position. Individual Performance Plans will contain only critical elements.
- B. Rating Officials will set performance expectations and goals for employees to channel their efforts toward achieving organizational objectives. Performance elements and standards should be SMART – specific, measurable, attainable, relevant, and timely.
- C. In preparing SMART standards, supervisors should adhere to the following:
 1. Specific: The elements in the employee's performance plan need to clearly identify what needs to be accomplished - that is, the results that the employee is

aiming towards should be the central focus of each critical element (i.e., if the goal is to complete reports, the standard should specify what milestones need to be achieved to count the report as complete).

2. **Measurable:** Elements should have clearly defined measures (quality, quantity, timeliness or cost-effectiveness), which will allow both the employee and the supervisor to know that the requirement has been achieved. The supervisor will communicate to the employee how the results will be determined. To maximize the value of performance measures, they must reflect accomplishments that are meaningful and important.
 3. **Attainable:** All elements and standards must be achievable. The employee and the supervisor will discuss the work relating to the critical elements to establish a clear expectation of what must be done to achieve the results expected. In the discussion, consideration will be given to the time, tools, training, support or other resources and control factors that are necessary for the employee to perform at the required level. The supervisor should create a situation where the employee has a reasonable expectation of achieving his/her goal given the necessary resources (training, time, support) to perform at the required level.
 4. **Relevant:** Critical elements and performance standards are to be aligned with the goals of the Department and the mission of the employee's organization. Critical elements must be based on major duties in an employee's position description and the employee's organization's Management Plan/Annual Performance Plan. Supervisors will communicate to employees how their role contributes to the success of the organization and how their critical elements support that contribution. If the employee does not have a position description, the Department shall prepare one within sixty (60) days of the establishment of the employee's performance plan, and the employee will have five (5) work days to review the new position description and recommend further revisions to the performance standards consistent with major duties in the position description.
 5. **Time-bound:** The employee will be made aware of when the expected result is to be achieved. Critical elements should include milestones, or a schedule, and all dates should be clearly communicated so that the employee will have an understanding of what is expected and by when it is expected.
- D. **Prohibition of Absolute Standards:** Performance standards should avoid the appearance of requiring perfection rather than excellence. Standards should not be absolute, allowing no room for error.

Section 3. Performance Standards

- A. Performance standard means a statement of the expectations or requirements established by management that defines the acceptable level for a critical element. A performance standard may include, but is not limited to, such factors as quantity,

quality, timeliness, and manner of performance. A performance standard will, to the maximum extent feasible, permit the accurate evaluation of the job performance on the basis of objective criteria related to the job in question for each employee or position.

- B. A performance standard should not address the usage of leave, tour of duty, or any other nonperformance-related matter.
- C. When a performance element(s) or standard(s) containing several components are developed and may be an appropriate vehicle for capturing the various dimensions of a job, each of which may be important in accomplishing the overall assignment and mission, the employee will be advised as to the relative importance of the criteria contained within the standard.
- D. In applying performance element(s) and standards, an employee's performance appraisal shall take into account all of the job functions the employee is expected to perform and the actual amount of time available (or not available) to perform those functions. Factors beyond an employee's control may include, but are not limited to, unusual or extenuating circumstances such as availability of resources, delays attributable to others, unanticipated additional work assignments, changing priorities or high-volume workloads. Deadlines and quantitative goals should be extended or adjusted by management as conditions warrant.

Section 4. Criteria for Identifying Job Elements and Establishing Performance Standards

In identifying elements, due consideration will be given to consistency with mission and function statement, Agency goals and priorities, employee input, position descriptions, existing elements, elements for similar positions, and other relevant materials.

Section 5. Initiating Appraisal Periods and Performance Plans

- A. Within thirty (30) calendar days of assignment of a bargaining unit employee to a new supervisor or a change in the employee's position or duties; or change in the elements or standards related to the position; or following the issuance of the formal annual rating of record, the immediate supervisor will fully discuss the position description, new or revised elements, standards, and the acceptable level of performance with the employee. The immediate supervisor will assure that the employee has a copy of the current position description, and the standards and elements developed in accordance with Section 3 of this Article.
- B. Prior to implementation of the performance plan, the employee will receive in writing the critical element and performance standards for the employee's position. At the time that the supervisor furnishes a copy of the written performance plan, the supervisor and employee shall meet to discuss the critical elements and performance standards. If the employee disagrees with them, the supervisor shall

discuss those disagreements with the employee in an attempt to resolve them. However, it is management's right to set the performance standards.

Section 6. Grievability and Arbitrability of Job Elements and Performance Standards

The identification of job elements and the establishment of performance standards are a management right. Management agrees to formulate the job elements and performance standards fairly, reasonably, and objectively. The job elements and performance standards are not grievable. However, employees may grieve the application of the job elements and performance standards as related to their final rating of record.

Section 7. Rating Levels and Calculation of Final Rating

A. The following ratings will be used for employees:

1. **Achieved Expected Results (AE) Level of Performance:** An employee's performance of the duties and responsibilities of their assigned position reflects at least the "Achieved Expected Results (AE)" level in all critical elements. The employee fully meets the expectations outlined in the standards; the results meet the standards for quality, quantity, and/or timeliness associated with the objective and were achieved with the appropriate level of guidance. Performance must be at this level for the employee to receive a within-grade increase to the next higher step of the grade, or the next higher grade in a career ladder promotion.
2. **Achieved More Than Expected Results (AM) Level of Performance:** The employee consistently exceeds expectations of "Achieved Expected Results (AE)" performance requirements, continually demonstrates successful collaborations within the work environment, overcomes significant organizational challenges, and works productively and strategically with others in non-routine matters, some of which may be complex and sensitive. The employee consistently demonstrates the highest level of integrity and accountability in achieving HHS program and management goals.
3. **Achieved Outstanding Results (AO) Level of Performance:** The employee produces results that significantly exceed expectations and/or result in uncommon successes, are consistently superior, and/or exceed performance requirements. Despite major challenges such as changing priorities, insufficient resources, unanticipated resource shortages, or externally-driven parameters, employee performance is a model of excellence. Contributions impact well beyond the employee's level of responsibility. The employee demonstrates exceptional initiative in achieving results critical to Departmental success and strategic goals. Products and skills create significant changes in their area of responsibility and authority.
4. **Partially Achieved Expected Results:** This is the minimum level of acceptable performance for retention on the job and improvement is necessary. The

employee has difficulties in meeting expectations. Actions taken by the employee are sometimes inappropriate or marginally effective. Organizational goals and objectives are met only as a result of close supervision.

5. **Achieved Unsatisfactory Results (UR) Level of Performance:** The employee fails to achieve the successful level of performance standard in one or more critical elements even though circumstances allowed for its achievement. “Achieved Unsatisfactory Results (UR)” performance can result in the employee’s reassignment, removal, or reduction grade.

B. The employee’s annual rating of record will be calculated as follows:

1. **Determining Element Ratings:** Ratings are based on a comparison of performance with the standards established for the appraisal period. Rating Officials, at the end of the annual appraisal period, should solicit performance input from former supervisors for those employees who have changed positions or supervisors during the appraisal period. The Rating Official will assess performance and assign a score to each standard to determine the overall element rating (see Table 1).

Table 1: Critical Element Ratings	Points Assigned
Level 5: Achieved Outstanding Results (AO)	5.00
Level 4: Achieved More Than Expected Results (AM)	4.00
Level 3: Achieved Expected Results (AE)	3.00
Level 2: Partially Achieved Expected Results (PA)	2.00
Level 1: Achieved Unsatisfactory Results (UR)	1.00

2. **Element Comments:** Written comments are recommended for each element rated higher or lower than “Achieved Expected Results (AE).”
3. **Determining Summary Rating:** Summary ratings are determined based on a review of all the critical element ratings.
 - a. After rating and assigning a score to each critical element, the Rating Official will total the points and divide that by the number of critical elements to arrive at an average score (up to two decimal places).
 - b. This score will be converted to a summary rating using the point values in Table II.
 - c. If an employee receives a “Partially Achieved Expected Results (PA)” rating on one or more critical elements, he or she cannot receive a summary rating of higher than “Achieved Expected Results (AE)”.
 - d. A summary rating of “Achieved Unsatisfactory Results (UR)” must be

assigned to any employee who is rated “Achieved Unsatisfactory Results (UR)” on any critical element.

- e. An element rating of Not Rated (NR) will not affect the average score used to determine the summary rating.

Table II: Summary Ratings	Points
Level 5: Achieved Outstanding Results (AO)	4.50 to 5.00
Level 4: Achieved More Than Expected Results (AM)	3.60 to 4.49
Level 3: Achieved Expected Results (AE)	3.00 to 3.59
Level 2: Partially Achieved Expected Results (PA)	2.00 to 2.99
Level 1: Achieved Unsatisfactory Results (UR)	1.00 to 1.99

- 4. Narrative Summaries: Rating Officials must provide a narrative summary rating when an employee’s performance is at the “Achieved Unsatisfactory Results (UR)” or “Achieved Outstanding Results (AO)” level. The narrative should contain examples of the employee’s performance which substantiate how the employee’s performance falls within the levels assigned. Narratives are recorded on the performance plan.
 - 5. Disagreement with Rating: Recognizing that there may be differences of opinion between employees and Rating Officials on performance assessments and ratings, employees may respond to performance ratings and request reconsideration. Employee comments become a part of the official appraisal rating of record.
 - a. Employees who desire to add such written comments shall have seven (7) calendar days from the date of the issuance of the appraisal.
 - b. Employee comments must be reviewed by the Rating and Reviewing Officials to determine whether these comments warrant any changes in the element or summary ratings to be submitted for the record.
 - c. Reviewing Officials may elect to change the rating of record. This amended rating will be entered into the performance plan and signed by the Reviewing Official and the employee.
- C. Employees being reduced in grade or removed based on performance have the right to appeal to the Merit Systems Protection Board; or if an employee believes he or she was discriminated against based on any of the protected classes or actions, an EEO complaint may be filed.

Section 8. Annual Rating of Record

- A. Employees will be appraised at least once a year and given a rating of record. The

rating of record is completed at the end of the rating period established by the Agency. The final rating of record summarizes the employee's performance over the entire rating period including interim rating. The Agency will communicate the rating to the employee within 45 days following the end of the rating period, barring exceptional circumstances.

- B. In addition to the annual rating of record, other interim ratings may be prepared. All interim ratings will be summarized in the employee's final rating of record. An interim rating will be prepared when there is a significant change in the employee's performance plan as a result of a change of position, duties, program objectives or priorities, prior to WIGI, etc., and if the employee has served for the minimum 120-day appraisal period. Employees will be provided a copy of all interim ratings.
- C. The employee may submit self-assessments to the supervisor at any time during the performance period (e.g., monthly, quarterly, mid-year, etc.). The employee's self-assessment shall be voluntary. The Agency shall provide guidance or training to the employee on preparing self-assessments and using the system. The Agency shall not alter an employee's self-assessment. The Agency shall provide employees no less than seven (7) days to insert their self-assessment for mid-year and final approvals. Employees who submit a self-assessment should expect that it will be seriously considered and, upon request, may meet with their supervisor to discuss their self-assessment. The self-assessment does not relieve the rating official of the responsibility for preparing a fair and thorough performance assessment. However, the supervisor is not required to consider any portion of the self-assessment which the supervisor finds to be unsupported. The rating official should be aware of the accomplishments of the employee throughout the performance period.
- D. A reasonable period of observation shall be a requisite condition for preparing a performance appraisal. The period may not be less than 120 days.
- E. Employees will only be evaluated on work which they have been assigned.
- F. When an employee's performance exceeds an acceptable level, the supervisor will normally utilize the generic statement(s) as outlined in Article 25. The supervisor may substitute a narrative for the generic statements that demonstrates the employee's performance exceeds what is required for acceptable. The supervisor will nominate that employee for an award in accordance with Article 25.

Section 9. Details

- A. On a detail or temporary promotion of less than 120 days, the employee will be given a summary of achievements accomplished on the detail/temporary promotion. When employees are detailed or temporarily promoted within the Department, and the length of detail or temporary promotion is expected to last 120 days or longer, the gaining supervisor shall provide written critical elements and performance standards to employees at the beginning of the detail or temporary promotion. A

copy of the ratings on critical elements will be forwarded to the supervisor of the employee's permanent position and must be considered in assigning an employee's next rating of record.

- B. However, in the case of an extended period of detail or temporary promotion during a rating period (for example, a detail of 246 days or more), the supervisor of the temporary position will provide a complete performance plan and prepare the rating of record.

Section 10. Feedback to Employees

- A. The objectives of performance management are met through one-on-one feedback to the employee, the midyear performance review, and the final rating of record.
- B. The feedback is intended to keep employees informed on how they are doing in their job performance. Feedback is provided by regular communications between the employee and the supervisor.
- C. Each employee will be given a progress review at the midpoint of the rating cycle. At this midyear progress review, the employee shall be informed if performance in any Critical Element is not fully meeting the expectations outlined in the element, and the employee will be given suggestions on how to bring their performance in the Critical Element to an acceptable level.
- D. The rating official will maintain documentation of performance feedback provided to the employee.

Section 11. Special Circumstances

Supervisors will not use or hold against the employee, when evaluating performance, any of the following:

1. Factors or changes which affect performance and are beyond the control of the employee; and
2. Authorized absences (including Union representation) during the course of the working hours.

Section 12. Rating Certification

- A. The employee should acknowledge receipt of their annual rating by signing and dating the final rating of record. An employee's signature on the final rating of record form shall not constitute Agreement with the rating or indicate that the employee will not appeal the appraisal.
- B. When an employee refuses to sign or acknowledge the rating, the unsigned rating

becomes the final rating of record.

Section 13. Information Sharing

- A. Management agrees to share Agency proposed new elements and standards for similar or common positions within the bargaining unit with the Union.
- B. Upon request, the Agency will provide the Union with information related to bargaining unit performance appraisals in accordance with Title 5 U.S.C. 7114 (b)(4).

Section 14.

Upon request, the Selecting Official will discuss existing or tentative elements and performance standards for vacant positions, within the bargaining unit, with candidates referred for selection.

Section 15. Improving Unsatisfactory Performance

- A. As early as possible, the employee's attention will be called to areas of performance needing improvement and steps will be initiated to assist the employee in meeting performance standards. Such actions as determined by the supervisor may include regular and careful review of work or on-the-job and/or classroom training.
- B. When informal efforts discussed above do not result in acceptable performance, the employee will be provided an opportunity period to demonstrate acceptable performance. In order to give the employee a reasonable opportunity to demonstrate acceptable performance, the opportunity period will be for a minimum of forty-five (45) calendar days for employees whose performance on one (1) or more elements would result in a rating of Unacceptable. The opportunity period may be extended by the supervisor responsible for monitoring the opportunity period if circumstances warrant such an extension.
- C. The opportunity period notice will be developed in writing and the employee will be given an opportunity to review the notice, ask questions, and/or comment on the notice, and/or seek counsel of a Union representative seven (7) calendar days prior to its implementation. Final authority for the establishment and the content of the opportunity period notice rests with management.
- D. The notice will include the following:
 - 1. Notice that the employee's performance is at the unacceptable level;
 - 2. The element(s) and the standard(s) where the employee was unacceptable;
 - 3. What the employee must do to reach an acceptable level of performance;
 - 4. The assistance that will be provided;
 - 5. The length of the opportunity period; and
 - 6. The action that may be initiated if the employee does not improve to the

acceptable level of performance at the completion of the opportunity period.

- E. At a minimum, the opportunity period notice shall provide for regular weekly feedback by the supervisor of the employee's progress in meeting the required level of performance. Supervisors are encouraged to provide weekly feedback in person, unless the employee is working remotely.

Section 16. Removal of Outdated Performance Information in the Employee Performance Files

If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed and the employee's performance continues to be acceptable for one (1) year from the date of the employee is provided an opportunity to demonstrate acceptable performance, then any entry or other notation with regard to the "unacceptable" performance for which the action was proposed shall be removed from any Agency record relating to the employee.

Section 17. Documents

No document shall be placed in a supervisor's employee performance file unless the employee has an opportunity to review the document beforehand.

Section 18. Assuring Deliverance of Performance Appraisal

- A. The Union may initiate consultation on any matter involving overdue appraisals with the Agency Labor- Management Relations Committee.
- B. The Union may initiate a grievance on any matter involving overdue appraisals of any employee in the unit.

Section 19. Other Provisions

- A. The performance appraisal system will be consistent with applicable laws and regulations. In implementing this system, management agrees not to commit any prohibited personnel practices. Management further agrees to refrain from:
 1. Creating a performance standard which requires the performance of overtime work unless the employee is notified of that fact at the beginning of the appraisal period (which is not to question management's right, as such, to require the performance of overtime work);
 2. Requiring the performance of work for which employees are not compensated;
 3. Requiring the use of an employee's personal possessions (e.g., cameras and calculators) for the accomplishment of job tasks.

- B. The Agency will give the Union two (2) weeks advance notice of all position description reviews, updates, audits, etc. within the Bargaining unit. The Union will be allotted one (1) person to participate and comment on the review of all position descriptions within the Bargaining Unit.

Article 23. Within Grade Increases

Section 1. General

Pursuant to 5 U.S.C. 5335, an employee is entitled to receive a within-grade increase subject to completion of the appropriate waiting period and a determination that the employee's work is of an acceptable level of competence. An acceptable level of competence is defined as performance by an employee of the duties and responsibilities of their assigned position at or above the "Achieved Expected Results (AE)" level on their most recent rating of record. Such determination will be made in accordance with applicable law and regulation.

Section 2. Notice

The employee will be issued an SF-50 in their eOPF when their WIGI is processed.

Section 3. When Performance is Less than Acceptable

- A. The basis for a determination of acceptable level of competence will be the employee's rating of record and performance since the last rating of the record.
- B. When the supervisor believes that the employee's work is not acceptable, the supervisor shall follow the provisions of the Performance Management System Article.
- C. When an employee's WIGI is withheld, he/she shall be provided with an opportunity to improve as provided for in the Performance Management System Article.

Section 4. Negative Determination

- A. When a determination is made that an employee's work is not at an acceptable level of competence (negative determination), the employee will be promptly notified in writing:
 - 1. Of the basis for negative determination;
 - 2. Of the employee's right to secure reconsideration of the negative determination; and
 - 3. Of the time limits within which the employee may request reconsideration.
- B. Employees in the bargaining unit may be represented by Local 2419 at any stage of the reconsideration process.

Section 5. Withholding a Within-Grade Increase

- A. After a within-grade increase has been withheld, the Employer will grant the within-

grade increase at any time after they determine that the employee has demonstrated sustained performance at an acceptable level of competence.

- B. After withholding a within-grade increase, the immediate supervisor shall determine, at a minimum, whether the employee's performance is at an acceptable level of competence after twenty- six (26) calendar weeks following the original due date for the within-grade increase. If the new determination is again negative, the employee must again be so notified.

Section 6.

Appeals under this Article are subject, at the discretion of the employee, to be grieved in accordance with law and this contract.

Article 24. Reduction in Grade and Removal Based on Unacceptable Performance

Section 1. Employees covered

This Article applies to the following bargaining unit employees:

- A. Employees in the competitive service.

Section 2. Applicability of this Article

This Article applies to reduction in grade and removal actions based on unacceptable performance which management has chosen to process under Title 5 C.F.R. Part 432.

Section 3. General

The Agency will administer actions covered by this Article in accordance with the law and applicable Government-wide regulations.

Section 4. Appeal Rights

- A. Except in cases where there is an allegation of discrimination on the basis of race, color, religion, sex, national origin, age or disability in connection with the action, an employee covered by this Article may appeal an action taken under this Article through the negotiated grievance procedure or to the Merit Systems Protection Board (MSPB), but not both. The employee shall be deemed to have exercised his or her option to raise the matter under either the negotiated grievance procedure or the MSPB procedures at such time as the employee files a grievance or an appeal with the MSPB.
- B. In cases where there is an allegation of discrimination on the basis of race, color, religion, sex, national origin, age, or disability in connection with the action, an employee covered by this Article may appeal an action taken under this Article through the negotiated grievance procedure, to the MSPB, or through the Equal Employment Opportunity (EEO) complaint procedure. An employee who has elected to pursue the matter through the EEO complaint procedure or the MSPB appeal procedure may not appeal the matter through the negotiated grievance procedure. The employee shall be deemed to have elected the forum under which he/she wishes to proceed at the time he/she files a grievance, an appeal with MSPB, or a formal EEO complaint.

Section 5. Employee Right to Review Material

An employee in the bargaining unit has the right to review such documentary evidence (including the notice of reduction in grade or removal) as may be relied upon in support of an action based on unacceptable performance.

Section 6. Initial Procedures

At any time during the performance appraisal cycle that an employee's performance becomes unacceptable in one (1) or more critical elements, the Agency shall inform the employee as provided in Article 22 of this Agreement. The Agency should also inform the employee that unless their performance in the critical element(s) improves to and is sustained at the "partially achieved expected results" level, as defined in Article 22, the employee may be reduced in grade or removed.

The employee will be afforded a reasonable opportunity to demonstrate acceptable performance in accordance with Article 22, Section 15 of this Agreement.

Section 7. Notice of Proposed Action

- A. When management issues a notice of proposed action under this Article, the notice will state a reasonable time, not less than fourteen (14) calendar days, by which the employee's reply to the notice of proposal must be made. Any employee or the employee's representative may request an extension of time in writing to submit a reply. Such requests shall be routinely granted unless good cause exists to deny the request. This time frame will start when the employee personally receives their official copy of the proposed action.
- B. An employee is entitled to a reasonable amount of duty time to prepare their response to the notice.
- C. The employee may include documentation of a medical condition which they believe contributed to their unacceptable performance, as provided by 5 C.F.R Section 432.105.
- D. When management issues a notice of proposed action under this Article, the notice will include a statement that the employee is entitled to representation, including representation by Local 2419.

Article 25. Incentive Awards

Section 1. Objectives

- A. It is the policy of NIH to fairly and equitably recognize and reward individuals and groups for excellence in service to the overall mission of NIH and the missions of its Institutes and Centers (IC). This program provides various means of demonstrating, through monetary and non-monetary recognition, the high value NIH sets on employee contributions and achievements that enhance organizational performance, support organizational goals and objectives, and improve organizational quality.
- B. The parties agree that the awards and recognition program should:
1. Foster the confidence of employees that the program recognizes employees based on merits of their accomplishments and contributions;
 2. Generate understanding and openness by publicizing the awards and recognition criteria, processes and results;
 3. To the extent possible and within financial management controls, be designed to recognize accomplishments throughout the year, and as close in time to the
 4. accomplishment as feasible; and
 5. Further the goals of the Agency and reward those individuals or groups/teams whose achievements personify and reinforce the core values of the National Institutes of Health.

Section 2. Definitions

1. Employee Referral Award - An award granted to an employee for referring a high-quality external candidate for a "hard to fill", mission critical, and high value position.
2. Federal Technology Transfer Act Award - A cash award that recognizes scientific, engineering and technical personnel for inventions, innovations, computer software, or other outstanding scientific or technological contributions of value to the United States due to commercial application or contributions to the missions of NIH, HHS and/or the Federal Government, or for exemplary activities that promote the domestic transfer of science and technology development within the Federal Government resulting in use by American industry or business, universities, State or local governments, or other non-Federal parties.
3. Honorary Award - A non-monetary symbolic award bestowed on employees for significant accomplishments and contributions to the NIH, HHS and/or the Federal Government.
4. Invention Award - An award (cash and honorary) for an invention determined to be

of value to the NIH and for which patent coverage is sought or obtained that contributes to an improvement in Government economy, efficiency, or operations.

5. Monetary Award - A cash award granted to an employee or group.
6. Non-monetary Informal Award - An award that recognizes a contribution made by an employee or group that does not meet the standard for a cash award or in cases where the supervisor chooses to not grant a cash award (e.g., T-shirt, mug, gift card). For additional information on non-monetary informal awards, including gift cards/certificates.
7. On-the-Spot Award (OTS) - A small cash award given by the supervisor to recognize an employee for a worthy accomplishment or for an unusual one time achievement.
8. Performance Award/Bonus - A lump sum cash payment given to an employee based on the employee's rating of record. A performance award does not increase base pay.
9. Quality Step Increase (QSI) - An increase in the rate of base pay equivalent to one step within the grade given to recognize exceptional performance in lieu of a performance award/bonus.
10. Special Act or Service Award - A lump-sum cash award used to recognize short-term accomplishments, meritorious acts, service, scientific or other achievements accomplished within or outside assigned job responsibilities. The act, service or achievement results in either tangible or intangible benefits to the government.
11. Suggestion Award: An award granted for an adopted idea, method or device, submitted through a formal documentation process for evaluation that directly contributes to the economy, efficiency or effectiveness of Government operations.
12. Time-off Award - An award given in the form of paid time off of up to 80 hours during the leave year without charge to leave that may be based on performance reflected in the rating of record or as a specific contribution.

Section 3. Award Categories

- A. Monetary Awards – Include Special Act or Service Awards, On-the-Spot Awards, Invention Awards, FTTA Awards, Employee Referral Awards, and Suggestion Awards. NOTE: Employees should not receive more than one monetary award for the same activity.
- B. Performance Award/Bonus - A lump sum cash award based on the employee's most recent rating of record. A Quality Step Increase (QSI) is a monetary award that may be given to an employee in lieu of a performance award/bonus for performance rated Exceptional under PMAP.

- C. Non-Monetary Awards - Include Time-off, Informal Non-monetary, NIH Director's Award, NIH Merit Award, Certificate of Service, and Retirement Certificate. Refer to the Non-Monetary Awards Categories Chart.

Section 4. Monetary and Non-Monetary Awards (not based on Performance Rating)

- A. Monetary and non-monetary awards are meant to recognize employees or groups/teams of employees who perform a single action or series of actions, either within or outside normal duties, which are so significant that special recognition is clearly justified.
- B. Time Off Awards can be used as an alternative or in conjunction with monetary awards as a means of recognizing superior achievement.
 - 1. Time off awards can be used as an alternative to or in conjunction with cash awards as an alternative means of recognizing superior accomplishments.
 - 2. A time off award may not be converted to a cash payment.
 - 3. Full-time employees may not be granted more than 80 hours of time off during a single leave year.
 - 4. Part-time employees shall be considered for time off awards based on their tour of duty.
 - 5. The determination to award a time off award is a management right at its sole discretion.

Section 5. Awards for Overall Performance

- A. The Parties agree that performance awards are a valuable tool toward building morale.
- B. The Agency shall formulate the annual performance awards for employees fairly, and within the constraints of each Division or Institute's budget. Fairly does not guarantee, nor does it preclude equality of awards among employees.
- C. Management shall process the award granted within three (3) pay periods of the date of the decision to make the awards or the appraisal, whichever is later.
- D. All employees who have received a summary Level 5/Achieved Outstanding Results (AO) performance rating for the year shall be eligible for the following. Management shall consider employee preference in selecting the award method. Final determination of the award type is made by Management.
 - 1. A quality step increase; or a cash award.

2. A time off award may be granted in lieu of (a) above. The time off award does not have to be equivalent to the amount of cash award that would have been received.
 3. The Department shall identify the number of hours of the time off award or the amount of the proposed cash award.
- E. All employees who have received a summary Level 4/Achieved More Than Expected Results (AM) performance rating for the year may be eligible for:
1. A cash award.
 2. A time off award may be granted in lieu of (a) above. The time off award does not have to be equivalent to the amount of cash award that would have been received.
 3. The Department shall identify the number of hours of the time off award and the amount of the proposed cash award.
- F. In some Divisions employees who have received a summary Level 3/Achieved Expected Results (AE) performance rating for the year (no critical element marginal ratings) will be eligible for a cash award.

Section 6. Award Information to Union

The Union will be provided statistical data (percentage targeted for awards, title, series grade, step, and work area) annually on awards for all employees in the affected budgeted area (i.e., ORS, ORF, and CC). A meeting may be requested by the Union to discuss any concerns or issues it may have regarding the data.

Article 26. Outside Employment

Section 1.

- A. The Employer agrees that an employee may engage in outside employment, or participate in or be associated with a business enterprise, so long as such activity will not
 - 1. Interfere with their efficient performance of their duties or their availability for duty;
 - 2. Result in a conflict of interest or the appearance of a conflict with their official NIH duties;
 - 3. Bring discredit upon or lower public confidence in the National Institutes of Health; or
 - 4. Violate law, rule or regulation.
- B. Approved outside employment, or association with a business enterprise, shall not interfere with an employee's availability for overtime, detail or any other assignment whether or not such activity or assignment is scheduled in advance.

Section 2.

- A. Employees desiring to accept or undertake outside employment, or to engage in or be associated with a business enterprise, shall obtain prior approval of the Employer by forwarding a request in accordance with Agency procedure. The Employer agrees to act on the request no later than fifteen (15) working days of receipt of the form; however, it will aim to respond as soon as possible, generally by the fifth (5) day. If the employee has not received approval or a written order not to begin the employment, the employee shall contact the Employer to inquire as to the status of their request and the Employer shall issue a final decision within ten (10) days. If no response is received by that date, the employee may take the matter directly to expedited arbitration.
- B. If the Employers response is to disapprove the request it will provide an explanation, in writing, of the statutory, regulatory and/or contractual basis for the denial.
- C. If the employee has not changed positions, he need not reapply for approval simply because the approving official has changed.
- D. Employees are encouraged to ask for and the Employer further agrees to provide guidance and specific interpretative assistance on questions concerning outside employment when requested in writing by the employee.

Section 3.

When the Employer determines that any approved outside employment or association with a business enterprise is inconsistent with the criteria for approval, the employee shall be directed to terminate their employment or association within a reasonable period of time and the employee shall terminate their outside employment by that date. This will be done by a written notice which includes an explanation for the basis of the denial.

Article 27. Temporary Promotions, Details, and Reassignments

Section 1.

It is agreed as a matter of principle that employees should be paid at rates commensurate with the duties to which they are assigned (equal pay for equal work). Therefore, the Agency agrees that the use of details to positions of higher grade or step affecting pay will be held to a minimum.

Section 2.

A position that is vacant for a period of fourteen (14) days or less may, at management's discretion, be assumed by another employee. When a position is anticipated to be vacant for fourteen (14) days to twenty-eight (28) days, it will be covered by a detail and documented by a memo to all affected employees. Assignments to a position of a higher grade that are expected to last more than twenty-eight (28) days will be filled by a temporary promotion. For purposes of this Section, days shall be defined as calendar days.

Section 3.

Employees selected for temporary promotions must meet the requirements for basic eligibility in accordance with applicable regulations of the Office of Personnel Management. They need not however, be selected under competitive promotion procedures unless the promotion is for more than 120 days.

Section 4.

Temporary positions that are expected to last more than 120 days will be advertised and filled using competitive selection. If a temporary promotion which was not advertised and filled using noncompetitive selection (i.e., a temporary promotion that was not expected to last more than 120 days) and it is later determined that it will exceed the one hundred and twenty (120) days, will be advertised for competitive selection at that time.

Section 5.

The use of repetitive 120 days or less (noncompetitive temporary promotions) will not be utilized to avoid merit procedures, or the requirements of Section 4 above.

Section 6.

When a position exists, which employees may be detailed into at a higher grade for more than 120 days, the Agency shall advertise and competitively establish a best qualified list. This list will be forwarded to the selecting official. Applicants will be rotated in 120 day increments and will be based on seniority in the bargaining unit. Non-

bargaining unit employees who qualify for the positions will be considered after bargaining unit employees. If it is determined that the position will be made permanent it will be advertised for competitive selection.

Section 7.

Employees may be detailed, in accordance with applicable regulations, between specialized position categories to take care of situations such as temporary workload imbalances or to prevent the need for reductions in force.

Section 8.

Upon termination of a temporary promotion, the employee will be returned to the position from which he/she was promoted, at the pay rate to which he/she would have been entitled had he/she not received the temporary promotion.

Section 9.

A temporary promotion may not be made primarily:

1. For training or evaluation of an employee in a higher-graded position;
2. To give an employee a trial period before permanent promotion;
3. To decide among candidates for permanent promotion; or
4. To train an employee in higher-grade duties.

Section 10.

Employees may submit advance requests for noncompetitive reassignment to positions within the Bargaining Unit for which they are qualified. Management will consider all such requests.

Article 28. Temporary and Probationary Employees

Section 1. Temporary Employees

- A. This Section applies to temporary employees whose appointments are for more than four (4) months. Such employees are in the bargaining unit.
- B. Temporary employees will be provided a copy of their official position description and be told of the conditions of employment upon entrance on duty.
- C. The Union has the right to express its opinion to management concerning the use of temporary employment.
- D. Temporary employees will not be used to circumvent the merit promotion procedure.
- E. The Agency will endeavor to notify temporary employees as early as possible if their appointments will be terminated. Temporary employees, whenever possible, will generally be given notice 14 days prior to the effective date of their separation. This will not preclude the Agency taking any action it deems appropriate for disciplinary and/or performance reasons in accordance with government-wide rules and regulations. However, management has the right to terminate temporary employees with cause.

Section 2. Probationary Employees

- A. The purpose of this Section is to clarify certain rights of probationary employees where those rights may not be clear elsewhere in this Agreement.
- B. The Agency agrees to provide probationary employees a reasonable and fair opportunity to improve job performance. The Agency agrees to evaluate the performance of probationary employees during the probationary period and to counsel the employee concerning performance deficiencies. The Agency will give the employees, verbally or in writing, the results of any interim review, if given.
- C. The Agency will endeavor to notify probationary employees as early as possible if their appointment will be terminated. Probationary employees whenever possible will be given notice 14 days prior to the effective date of their separation. This will not preclude the Agency taking any action it deems appropriate for disciplinary and/or performance reasons in accordance with government-wide rules and regulations. However, management has the right to terminate probationary employees with cause.

Article 29. Reduction in Force

Section 1. General

A. This article is in accordance with:

1. 5 U.S.C. 3501-3504
2. 5 C.F.R. Part 351

B. This article governs:

1. The separation, demotion, reassignment requiring displacement of another employee, or furlough for more than thirty (30) calendar days of bargaining unit employee(s) by reduction in force from their respective levels; and
2. Transfers of function, when applicable, and in accordance with Article 40 Transfer of Function.

C. This article concerns the impact and implementation of the government-wide regulations on reduction in force (RIF), which may occur during the life of the Agreement, with respect to employees in the Local 2419 bargaining unit. It is the sole procedure to be used in implementing reduction in force and transfer of function which affect bargaining unit employees. Reductions in force will be accomplished in accordance with statutory requirements, civil service rules and regulations, and this Agreement.

D. No reduction in force action may be taken until every position in the affected competitive area is assigned to a competitive level.

Section 2. Definitions

1. Competitive Area – A competitive area will be defined solely in terms of the agency's organizational units and geographical locations, and with limited exceptions must include all employees within the competitive area so defined. A competitive area may consist of all or part of the agency. The minimum competitive area is a subdivision of the agency under separate administration within the local commuting area. (5 CFR 351.402)
2. Competitive Level – A competitive level consists of all the positions in a competitive area that are in the same grade or occupational level and classification series, and which are similar enough in qualifications requirements, duties, pay schedule, and working conditions, so that the Agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption, in accordance with 5 C.F.R. 351.403. All actions which impact employees as a result of establishing a competitive level shall be uniformly and consistently applied.

3. Retention Register – The Retention Register is the ranking of employees in the competitive level after the Agency applies the following four factors, as mandated by government regulations: 1) tenure of employment; 2) veteran's preference; 3) length of service; and 4) performance ratings.

Section 3. Notification

A. Preliminary notification to Local 2419 of Reduction in Force or Transfer of Function

1. When it is anticipated that transfer of function out of the commuting area or reduction in force affecting bargaining unit employee(s) will be necessary, Local 2419 will be given preliminary notification in writing. This notification will be given as soon as practicable, but no less than fifteen (15) calendar days, after the determination by management that a RIF or TOF is necessary. The notice shall contain:
 - a. The reason for the reduction in force or transfer of function;
 - b. The approximate number of employees who may be affected initially;
 - c. The competitive areas and level that may be involved initially in a reduction in force; and
 - d. The anticipated effective date that action will be taken.
2. The Union may submit a request to bargain on the Impact and Implementation on all issues not covered by this agreement relevant to RIF and TOF.

B. Notice To Employees

1. Affected employees will be given a specific notice in writing no less than sixty (60) calendar days prior to the implementation date of a reduction in force or transfer of function out of the commuting area unless circumstances dictate otherwise as further explained below. The notice period begins the day after the employee receives the notice.
2. The notice will advise employees to review their Official Personnel File (OPF) to ensure that their current experience, training and qualifications are accurate.
3. When a reduction in force is caused by circumstances not reasonably foreseeable, the Office of Personnel Management (OPM), at the request of the Agency, may authorize a notice period of less than sixty (60) days before the effective date of release.

Section 4. Retention Registers

- A. At least two (2) workdays before the issuance of initial specific notices, Local 2419 will be provided a copy of the annotated retention register(s) to be used to issue specific notices. Amended or revised retention registers will be provided to Local 2419 as soon as possible.
- B. The retention register will include:
 - 1. The employee's tenure group, competitive level, and original service date;
 - 2. The ratings of record used to compute credit for performance;
 - 3. The amount of credit for performance; and
 - 4. The adjusted service date.
- C. Employees and/or their designated representative will be permitted to review the retention register so that the employee may consider how the competitive level was constructed and how the relative standing of the employee was determined. This includes the right to review the complete retention registers for other positions that could affect the composition of the employee's competitive level, and the determination of the employee's assignment rights.
- D. Employees' performance ratings of record, due prior to the issuance of specific RIF notices, will be submitted to the servicing personnel office in sufficient time for retention standing to be determined. The due date would ordinarily be no more than fifteen (15) calendar days prior to the issuance date of specific notices.
- E. When employees affected by RIF are in the same competitive level with the same length of service, as augmented by performance credit, and the same subgroup, ties will be broken in the following order:
 - 1. Time in grade; and if a tie remains;
 - 2. Length of time in the Bargaining Unit; and if a tie remains;
 - 3. Length of service at the National Institutes of Health.
- F. Employees service computation dates for RIF purposes shall be adjusted for performance in accordance with Government rules and regulations.

Section 5. Review of Position Descriptions and Official Personnel Files

- A. The agency is responsible for maintaining correct personnel records that are used to determine the retention standing of its employees competing for retention under this part.

- B. Prior to initiating any reduction in force action, position descriptions shall be reviewed for accuracy and official personnel folders must be reviewed and updated to reflect employees' latest experience and training for use in determining qualifications for other positions. As deemed necessary, the Employer may request employees to provide additional information.

Section 6. Release From Competition

To the extent not defined or set forth by this Article, all terms and provisions concerning retention and release from competition are contained in 5 C.F.R. Part 351.

- A. When it becomes necessary to release employees from a competitive level, noncompeting employees shall be released first. After all employees who are not competing employees are eliminated, the Employer shall select competing employees for release in the inverse order of their retention standing beginning with the lowest; i.e., all employees in Group III are released before any in Group II, and all employees in Group II are released before any in Group I. Within each Group, all employees in Subgroup B are released before any in Subgroup A, and all employees in Subgroup A are released before any in Subgroup AD.
- B. Noncompeting employees will be listed apart from the retention register but on the same document. They will be removed by means other than reduction in force from positions in the competitive level before releasing any competing employee from the level through reduction in force action. Noncompeting employees are those:
 - 1. Serving in a position under a specifically limited temporary appointment or temporary or term promotion;
 - 2. With a written decision under 5 CFR Part 432 of removal for performance reasons.
- C. Employees with a written decision of demotion under Title 5 C.F.R. Part 432 will compete from the position to which demoted.
- D. The only exceptions to the above procedures will be those afforded by government-wide rules and regulations.
 - 1. The Employer may provide a temporary exception for up to ninety (90) days for bona fide administrative reasons (e.g., an employee on extended sick leave or an absent employee who did not receive their notice on the same date as higher outstanding employees) so long as the rights of higher standing employees are not adversely affected.
 - 2. Where the Employer has made exceptions to the normal order of selection as outlined above, notice shall be provided as follows:

- a. In cases of a continuing exception (more than [90] days), written notice of the exception and the reasons for the exceptions will be given to each higher standing employee reached for release from the same retention register;
 - b. In cases of a temporary exception (up to ninety [90] days), written notice of the exception and the reason for the exception including the date the lower employee's retention will end, will be given to each higher standing employee reached for release from the same retention register;
 - c. The Employer will notate on the retention register the reason for any exception to the regular order of release. In addition, when a temporary exception is made the retention register will also reflect the date the retention will end;
 - d. All exceptions will be made in a fair and objective manner;
- E. Group I or II employees who are selected for release from their competitive level, shall be offered to be assigned to a position for which they are qualified in another competitive level which requires no reduction, or the least possible reduction, in a representative pay rate when a position in the other competitive level is held by another employee in a lower tenure group or in a lower subgroup within the same tenure group AND is no more than three (3) grades or grade intervals below the position from which released; or with lower retention standing in the same tenure group and subgroup AND is not more than three grades or grade intervals below the position from which released (except that for a preference eligible with a compensable service connected disability of thirty [30] percent or more the limit is five [5] grade intervals) AND is the same position or an essentially identical one, previously held by the released employee in a Federal Agency.
- F. An employee is entitled to only one (1) offer of assignment. In the event there are two or more positions with the same representative rate identified by the Employer, the Employer shall select the one it wishes to offer. An employee is entitled to no further offers when:
1. They accept an offer;
 2. They reject an offer;
 3. They fail to reply to an offer within a reasonable time.
- G. An employee will be given ten (10) working days in which to accept or reject a reassignment offer made pursuant to this Section.

Section 7. Content of Notice of Release

A. The Notice of Release shall contain the following:

1. The action to be taken, the reasons for the action, and its effective date;
2. The employee's competitive area, competitive level, subgroup, service date, and three (3) most recent ratings of record received during the last four (4) years;
3. The place where the employee may inspect the regulations and record pertinent to this case;
4. The reasons for retaining a lower-standing employee in the same competitive level under 351.607 or 351.608 of Title 5 C.F.R.;
5. Information on re-employment rights, except as permitted by 351.803 (a) of Title 5 C.F.R.; and
6. The employee's right, as applicable, to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations or to grieve under a negotiated grievance procedure. The agency shall also comply with 120.21 Title 5 C.F.R. of this title.

B. When an agency issues an employee a notice, the agency must, upon the employee's request, provide the employee with a copy of OPM's retention regulations found in 5 CFR Part 351.

Section 8.

Where an employee is proposed for separation or assignment to a lower grade level, the employee and/or their designated Union representative shall have the right to inspect retention records and other records pertinent to their case, including Office of Personnel Management and NIH reduction in force regulations. The employee and/or their Union representative are entitled to inspect the registers listing employees who may be entitled to replace him, as well as the registers of employees they may be entitled to displace.

Section 9. Re-employment Priority

- A. The Employer shall establish and maintain a re-employment priority list for each competitive area in which it separates Group I or II employees by reduction in force. The name of each separated employee shall be entered on the list for all competitive positions in the commuting area for which they are qualified and available.
- B. An employee who has declined assignment to a full-time, non-temporary, competitive position with a representative rate no lower than that of the position from which separated, shall not have their name placed on the list.

- C. The name of a separated Group I employee shall remain on the list for two (2) years, while the name of a separated Group II employee shall remain on the list for one (1) year from the date separated.
- D. An employee's name shall be deleted from the list when:
 - 1. The employee so requests in writing;
 - 2. The employee accepts a non-temporary, full-time competitive position;
 - 3. They decline a non-temporary, full-time competitive position with a representative rate no lower than that of the position from which separated by reduction in force.

Section 10.

Employees separated from the Agency by reduction in force actions shall be advised in writing by the Employer of their rights to severance pay, if any; a lump sum payment for all accrued annual leave; their eligibility to apply for the Office of Personnel Management displaced employee programs (e.g., CTAP, ICTAP, etc.); their qualifications for placement on the temporary re-employment priority list; their eligibility for discontinued service retirement; and the effect of the reduction in force on life and health insurance coverage.

Section 11.

An employee who is placed as a result of a reduction in force action in a lower grade position than the previous position, and who is otherwise eligible, shall receive grade and pay retention benefits in accordance with Title 5 U.S.C. 5362 and 5363.

Section 12. NIH Career Transition Assistance

A. Policy

In making personnel adjustments resulting from program and organizational changes, it is the objective of the Agency that it will make every reasonable effort to place all employees affected by the RIF or TOF in continuing positions for which they are qualified at NIH. Where it is determined to be appropriate by Management, consideration will be given to retaining effected employees to enable them to qualify for continuing positions.

B. Personal Interview; Special Problems

The Agency will give affected employees a personal interview and will treat each as an individual and try to resolve special problems.

C. Displaced Employee Assistance Program

1. This program applies to all employees in the bargaining unit of the Agency except those having temporary appointments and those falling in Group III under Part 351 of OPM Regulations.
2. Employees displaced by reduction in force will be assisted by the Agency in finding other suitable positions as explained in this Article. This includes Employees who are affected by TOF and are unable to accept assignment to another commuting area.
3. The procedures for assisting displaced employees are as follows:
 - a. When an employee is released from the Agency by RIF action, every effort will be made to seek placement of the employee in another position for which the employee is qualified and available at the same or lower grade from which the employee was displaced.
 - b. The employee's name will be entered on an NIH Displaced Employee List (DEL) or its equivalent. The employee's name will be automatically referred for consideration for all NIH vacancies for which he or she is qualified. If the employee is not selected, the selecting official will provide a written explanation for non-selection.

Section 13.

When an employee or the Union believes the Employer has incorrectly applied applicable law, regulation, or this Article in a reduction in force action, a dispute may be filed pursuant to Article 31, and /or take any applicable action under law, rule or regulation, as permitted.

Article 30. Disciplinary and Adverse Actions

Section 1. General

- A. The objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. The parties agree to the concept of private, progressive discipline designed primarily to correct and improve employee behavior. However, major offenses may be cause for severe action, including removal, regardless of whether previous discipline has been taken against the offending employee. Bargaining unit employees shall be the subject of disciplinary action only for just and sufficient cause.
- B. Actions shall be fair and equitable, i.e., Management shall consider the relevant factors given the circumstances of each individual case and similar cases, if any, to make a fair decision.
- C. The Agency agrees to discuss with the employee the basis for any proposed disciplinary or adverse action prior to the issuance of a proposal, unless an emergency or employee's unavailability precludes such a discussion.
- D. Investigations and disciplinary actions shall be timely. Timeliness shall be based upon the circumstances and complexity of each case.
- E. The term "days" as used in this Article shall mean calendar days.
- F. This Article applies to:
 - 1. An action based solely on misconduct reasons; or
 - 2. An action that involves both performance and misconduct related reasons.
- G. This Article does not apply to:
 - 1. Actions based solely on unacceptable performance;
 - 2. Termination of employees serving on temporary or probationary appointments;
 - 3. Non-preference eligibles in the excepted service who are suspended for more than fourteen (14) days, reduced in grade, or removed.

Section 2. Counseling

- A. Counseling shall be conducted in a private setting.
 - 1. Verbal Counseling - Verbal counseling is not considered disciplinary action. It cannot be grieved by the employee nor be relied upon by Management in any

disciplinary action.

2. Written Counseling - Letters of Counseling are not considered disciplinary actions but may be cited in any subsequent disciplinary or adverse action against the employee.
3. Notwithstanding the foregoing, management may rely on prior counseling to establish that the employee was on notice of expected behavior.

Section 3. Definitions – Disciplinary Actions

A. Official Reprimand - An official written notice which sets forth specific actions of misconduct of such a nature that routine discussions and/or counseling sessions are not sufficient.

B. Suspensions of fourteen (14) days or less - The temporary placement of an employee in non-duty, non-pay status for disciplinary reasons.

C. Adverse Actions

1. Suspensions of fifteen (15) days or more - The temporary placement of an employee in non-duty, non-pay status for disciplinary reasons.

2. Reduction in Grade - The involuntary assignment of an employee to a position at a lower classification or job grading level.

3. Removal - The involuntary separation of an employee from employment with the Department for misconduct reasons.

4. Furloughs of thirty (30) days or less - The placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

Section 4. Official Reprimands

Letters of reprimand shall be placed in an employee's Official Personnel Folder for a period not to exceed two (2) years. However, at Management's discretion, it may be for a lesser period of time.

Section 5. Suspensions of Fourteen (14) Days or Less

A. Management shall provide the employee with advance written notice, stating the specific reasons for the proposed action with sufficient specificity so as to enable the employee to prepare a response. Management shall provide the employee and the Union with one (1) copy each of the documentation relied upon to support the proposed action, which shall include the names of witnesses, if any, involved in

supporting the charges. No suspension will go into effect until the employee has had an opportunity to respond, in accordance with Chapter 75.

- B. Upon receipt of the official notice of proposed suspension action, an employee shall have twenty-one (21) days to respond to the proposed action. The response may be made orally or in writing, or both. The employee's response may include any statements or material the employee believes is relevant to defending against the proposed action. Management will consider requests for duty time up to sixteen (16) hours for the preparation of oral and written responses.
- C. Management shall issue a final written decision within twenty-one (21) days after the expiration of the twenty-one (21) day response period, stating the specific reasons, including a statement of the employee's appeal rights. If Management determines that further investigation is necessary, the time limit for issuance of the decision shall be extended. The employee shall be notified of such an extension and shall continue to be notified at thirty (30) day intervals thereafter. The decision shall be made by a management official at or above the level of the official who proposed the action.
- D. The employee may be represented by an attorney or other representative, which includes the right to Union representation.
- E. If arbitration is not invoked by the Union within the timelines set forth in Articles 31 and 32 of this Agreement the matter is closed for purposes of the grievance/arbitration procedure.

Section 6. Adverse Action Suspensions of Fifteen (15) Days or More, Reduction in Grade or Pay, Removals, or Furloughs for 30 Days or Less

An employee shall be entitled to:

- A. At least thirty (30) days advance written notice of the proposed action with sufficient specificity so as to enable the employee to prepare a response. Management shall provide the employee and the Union with one (1) copy each of the documentation relied upon to support the proposed action, which shall include the names of witnesses if any, involved in supporting the charges.
- B. Upon receipt of the official notice of proposed disciplinary action, an employee shall have twenty-one (21) days to respond to the proposed action. The response may be made orally or in writing, or both. The employee's response may include any statements or material the employee believes is relevant to defending against the proposed action. Upon a reasonable written demonstration of need, the employee may be granted sufficient additional time to respond. This request for additional time must be made within the twenty-one (21) day period.
- C. Be represented by an attorney or other representative, which includes the right to Union representation.

- D. Up to sixteen (16) hours of duty time, if needed, within the period in (1) above, for preparing the oral and/or written response. Requests for additional time will be considered. The supervisor authorizes when the time may be used. Disputes between the supervisor and employee regarding the scheduling of use of duty time will be resolved by the deciding official.
- E. A written decision, which includes the specific reasons at the earliest practicable date. Such a decision, including a statement of the employee's appeal rights, shall be made within twenty-one (21) days of the receipt of the employee's response, or after the expiration of the twenty-one (21) day response period if the employee does not respond. The decision shall be made by a management official at or above the level of the official who proposed the action. If Management determines that further investigation is necessary, the time limit for issuance of the decision shall be extended. The employee shall be notified of such an extension and shall continue to be notified at thirty (30) day intervals thereafter.
- F. Within thirty (30) days of the effective date of the action, the employee may appeal the matter to the Merit Systems Protection Board (MSPB).
- G. If the employee elects not to appeal the matter to the Merit Systems Protection Board, then the Union may invoke arbitration in accordance with this Agreement.
- H. If an employee believes the action to be based in whole or in part on prohibited discrimination (race, color, religion, sex, national origin, age, disability, etc.) they may either file a grievance or file an EEO complaint in accordance with the statutory appeals process.

(Note: Indefinite suspensions are covered under OPM regulations at 5 CFR 752.404(d))

Section 7. Union Notification

When Management issues a notice of proposal and/or decision to suspend, reduce-in grade, or remove an employee in the unit, Management shall provide to the Union a general statement of the charges, proposed action, and subsequent decision. For purposes of this Section, the notice will be sent to the Local President or their designee.

Section 8. Alternative Discipline

A. General:

1. Alternative discipline is an effort to correct behavior in lieu of traditional discipline when management determines an alternative has a greater potential to prevent repetition of the misconduct.
2. Alternative discipline may be used at management's discretion in lieu of an

official reprimand or a suspension of fourteen (14) days or less.

3. Alternative discipline is not intended to diminish the seriousness of employee misconduct.

B. Types of alternative discipline include:

1. The employee makes an annual leave donation through the leave donation program equal to the amount of time that would have been spent on suspension;
2. Employee attends an appropriate program approved by the Employee Assistance Program;
3. The employee's suspension is recorded as LWOP so that there will be no permanent record of a disciplinary action; and
4. The employee serves a suspension on paper only, no loss of pay, but the suspension is recorded in the employee's OPF.

C. The above is not intended to be an exhaustive list or to limit a manager's ability to propose other alternatives to traditional discipline. Any alternative discipline must be consistent with law, rule, regulation and/or Agency policy.

D. Process:

1. If Management determines that alternative discipline is appropriate, it will offer in writing the alternative discipline simultaneously with providing the employee the notice of decision on the traditional discipline. The disciplinary process will be put on hold for up to 5 days to provide the employee time to consider alternative discipline. During the 5-day period, the employee or union representative may request to meet with management to discuss or propose a type of alternative discipline.
2. Employees shall be notified of the manager's decision within five (5) days after the meeting.
3. If the employee accepts the alternative discipline proposed by management, the alternative discipline will be placed in a written agreement between the employee and management. The agreement may include, but is not limited to:
 - a. the specific form of the alternative discipline;
 - b. the date by which it is to be completed;
 - c. the charged misconduct and the proposed traditional discipline;

- d. recognition by the parties that the alternative discipline may be referenced in any subsequent disciplinary action; and
 - e. a voluntary waiver of any appeal rights the employee may have regarding the matter.
- 4. If the employee declines or fails to respond to the alternative discipline, the disciplinary process will continue pursuant to this Agreement. If the employee accepts the alternative discipline and fails to meet the terms and conditions of the agreement, then the traditional penalty as identified in the agreement will be imposed.
 - 5. The parties recognize that any alternative discipline taken by management is non-precedential. Alternative discipline is based on the unique circumstances of each situation and may not be appropriate in other situations.

Section 9. Last Chance Agreement.

- A. If proposed, a Last Chance Agreement (LCA) is an offer by management to create a contract between an employee and the Department in which the Department agrees to hold an adverse action decision in abeyance, in exchange for:
 - 1. an employee's commitment to a certain set of behaviors or conditions for a set period of time
 - 2. an employee's waiver of their appeal rights.
- B. If the employee fails to fulfill the terms of the agreement, the penalty is effectuated.
- C. The effective period of a LCA will not exceed two (2) years, but at management's discretion may be for a shorter period of time. The Union will be notified when an employee is offered a LCA.

Article 31. Grievance Procedure

Preamble

Supervisors and employees are encouraged to communicate regularly with each other and discuss any problems or concerns and try to resolve them informally. If such informal efforts are unsuccessful, the Union, Agency, or employees may utilize the grievance procedures as prescribed in this Article.

Section 1. Purpose

- A. The purpose of this Article is to provide a fair, simple, mutually satisfactory, and expeditious method for the settlement of grievances of the Parties.
- B. The parties agree that the grievances processed through this procedure should be resolved as early as feasible and at the lowest organization level practicable.

Section 2. Definitions

- A. A grievance is defined as any complaint:
 - 1. By any bargaining unit employee concerning any matter related to the employment of the employee;
 - 2. By the Union concerning any matter related to the employment of any bargaining unit employee; or,
 - 3. By any employee, the Union, or the Agency concerning:
 - a. The effect or interpretation, or a claim of breach, of this Collective Bargaining Agreement; or,
 - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation, affecting conditions of employment.
- B. The term grievant in this Article refers to the aggrieved Party, which is the bargaining unit employee(s), the Union, or the Agency on whose behalf the grievance is filed.

Section 3. Matters Excluded

- A. Grievances on the following matters are excluded by this Agreement:
 - 1. Any complaint concerning retirement, life insurance, or health insurance;
 - 2. Any suspension or removal for national security reasons;
 - 3. Any examination, certification, or appointment;
 - 4. The classification of any position that does not result in the reduction in grade or

- pay of an employee;
5. Separation or termination of an employee serving a probationary or trial period; return of an employee serving a supervisory or managerial probation to a non-supervisory or non-managerial position; termination of an employee during a trial period; the termination of an employee serving on a temporary or time limited appointment; the termination of an employee in the Student Educational Employment Program, including STEP and SCEP; or temporary employees and/or employees serving a probationary or trial period;
 6. A notice of proposed action or warning;
 7. The substance of performance standards and elements/measures, and/or the determination as to whether an element/measure is critical or non-critical;
 8. Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating to prohibited political activities);
 9. Non-selection from among a group of properly ranked and certified candidates;

Section 4. Election of Procedure

- A. Any aggrieved employee affected by discrimination, a removal, or other adverse action, or actions based on unsatisfactory performance, may, at his or her option or through his/her exclusive representative, raise the matter under a statutory appeal procedure or under this negotiated grievance procedure, but not both. This choice of remedy venue shall not exist for issues excluded from this negotiated grievance procedure under Section 3 of this Article as they are excluded from the negotiated grievance process altogether.
- B. Consistent with law, rule, and regulation, an employee, pursuant to 5 USC 7121 (d), an employee shall be deemed to have exercised his or her option under either a statutory/administrative procedure or a negotiated procedure at such time the employee or Union timely initiates an action under the applicable statutory procedure or timely files a negotiated grievance in writing according to this Article, whichever occurs first.
- C. Similarly, an employee affected by a prohibited personnel practice under 5 U.S.C.2302 (b) (l) of the Civil Service Reform Act, which lists types of discriminatory personnel practices, may raise the matter under a statutory procedure or the negotiated procedure, but not both. This choice of remedy venue shall not exist for issues excluded from this negotiated grievance procedure under Section 3 of this Article as they are excluded from the negotiated grievance process altogether.

Section 5. Time Limits

- A. Time limits for the filing of a grievance under this procedure, is, at a minimum, forty-five (45) calendar days, unless extended. The time period shall begin to run from the next workday after the grievant became aware or should have become aware of the matter being grieved. A continuing violation may be grieved at any time. The date of expiration of a time limit shall be close of business hours the last day of the stated

period, unless that day falls on a Saturday, Sunday, or non-workday, in which case the following full workday shall be considered the last day. Either party may grieve a continuing condition at any time. Where a grievant fails to meet a time limit, unless extended by mutual consent, the matter shall be considered resolved according to the last response.

- B. Where the receiving party of a grievance fails to meet a time limit, the grievance shall be advanced to the next step of the grievance procedure. Management shall serve all grievance responses, and all other communications concerning the grievance, upon the appropriate Union representative. No time limit for responding or appealing shall begin to run until the union representative has received the Management response or communication.
- C. Management shall send all grievance responses to the appropriate Union representative. The grievance response shall be delivered to the designated Union representative's e-mail address. Where the response is e-mailed, receipt shall be confirmed by using return receipt requested.
- D. For purposes of timeliness, the grievance shall be considered filed when it is delivered to the employee's first-line supervisor, however, the employee should also deliver a copy to the assigned Labor Relations specialist as listed on the OHR website.
- E. Each grievance should propose a remedy. Minor errors or omissions in completing the grievance form shall not be used as a basis to reject any grievance.

Section 6. Parties to Grievance

- A. Negotiated grievances may be initiated by bargaining unit employee(s) covered by this Agreement, by the Union on behalf of the Union, by the Union on behalf of a bargaining unit employee(s), or by the Agency. Representation of bargaining unit employees shall be the sole and exclusive province of the Union. This does not preclude an employee from utilizing a non-union representative as outlined the Employee Rights Article. Except as provided by law, this is the exclusive procedure available to bargaining unit employees, the Union, or the Agency for the resolution of negotiated grievances within this Article's scope.
- B. Nothing herein shall preclude either party from attempting to resolve the grievance informally outside of the grievance process.

Section 7. Filing of Grievance and Grievance Decisions

- A. Representation: The employee or Union will be entitled to one (1) representative during all stages of the grievance process. When electing to be represented, a bargaining unit employee may only be represented in the negotiated grievance procedure by a union representative who has been properly designated as an AFGE

Local 2419 Representative under Article 6, unless the employee chooses to self-represent or be represented by a non-union representative as outlined in the Employee Rights Article.

1. Union representatives must be designated by the AFGE Local 2419 President by email to the Labor Relations Specialists servicing the particular work unit of the grievant.
 2. A Representative must be identified on the grievance form included in this article, unless the grievant has not yet obtained representation.
- B. If at any time a settlement is reached, it shall be forwarded to the Chief of the Employee and Labor Relations Branch, prior to the Parties' signature. Settlements must be approved for compliance with HHS, NIH policy, law, rule, regulation, and the CBA and must be signed within five (5) calendar days after approval by the Chief, ERLB, or designee. No settlement may be effected that is not in conformance with applicable law, rule, regulation, HHS, NIH policies where applicable, and the CBA.
- C. Grievance Form/Delivery: Any grievance filed by employees or the Union shall be submitted on the form included in this article. A grievance must be presented by email to the appropriate management official and should be sent to the Labor Relations Specialist who services the particular work unit (as referred to above). Forms must be signed (electronic signatures will be accepted) and transmitted as PDF files. The delivery receipt or system delivery confirmation will serve as the certificate of service and prove the date received for purposes of the timeline for a response.
- D. Grievance Composition. All grievances filed by employees or the Union shall:
1. State the name of all grievants covered by the grievance;
 2. Identify the type of grievance being filed;
 3. Designate a Representative if any;
 4. State the date of the occurrence being grieved;
 5. Clearly state the factual basis of the grievance, providing sufficient information for the deciding official to understand the basis for the grievance and make an informed decision. Grievants shall disclose all issues, concerns and information known at the time of filing which it reasonably believes to be relevant to the matter;
 6. Cite the specific Article(s) and Section(s) of this Agreement, regulation, or law alleged to have been violated or misapplied, if known;
 7. Clearly specify the remedy sought; and
 8. Be signed by the grievant(s) and the representative, if applicable, for grievances filed on behalf of employees; the Union representative and the Union president for grievances filed on behalf of the Union.
- E. Denial of Grievance. Grievances will be denied if they are:

1. Filed untimely;
2. Inclusive of issues that are excluded from this negotiated grievance procedure, Section 3 of this Article, or are otherwise procedurally/substantively deficient; and/or
3. Not properly filed per the requirements of this article.

F. Grievance Decisions. All grievance decisions will:

1. Be in writing and state the issue being grieved;
2. Provide a summary of the findings, and the rationale for the decision.
 - a. Issues of arbitrability will be raised in the decision if reasonably known at the time and decided upon by an arbitrator by brief prior to the merits of any grievance.
3. The decision will be issued by email. When the grievant is represented by the Union, the decision shall be issued to the designated Union representative. The delivery receipt or system delivery confirmation will constitute both the delivery and receipt date.
4. If a grievance decision is not issued within the established or extended timeframes the grievance and the relief shall be considered denied and the grievance will automatically be advanced to the next step of the grievance procedure or arbitration if the steps outlined in the grievance procedure have been exhausted.

G. Extension of Time Limits: The time limits provided in this Article may be extended by mutual agreement. The party requesting the additional time is responsible for formally requesting in writing the extension of time through the appropriate Union or Management Official. Any such request shall specify the reason(s) an extension is needed and specify the additional time requested. The request and response shall be made part of the official grievance file.

Section 8. Informal Resolution of Grievances

Many grievances arise from misunderstandings or disputes which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Every appropriate effort will be made by the parties to settle disputes at the lowest possible level.

Section 9. Grievance Procedures

A. Properly submitted grievances shall be processed according to the following procedures:

1. Step 1:
 - a. If the dispute is not resolved informally, a grievance meeting will take place within ten (10) calendar days of the employee submitting the Grievance Form for the Step 1. The Step 1 grievance meeting can be held by

videoconferencing hosted by NIH, or by telephone phone if the one of the parties is not located in the same duty location or is off site for legitimate business-related reasons. Each party will identify who is present in the video conferencing and/or on phone line prior to the grievance meeting commencing. The Parties agree that grievance meetings will not be recorded.

- b. The Step 1 management official shall have ten (10) calendar days from the date of the grievance meeting to provide the grievant with a written response to their concerns indicating whether they are resolved and whether or not the remedy is granted and to either grant or deny the grievance.
- c. If no meeting is scheduled or either party fails to attend a scheduled meeting, then the Step 1 official shall issue a decision within 10 days of the expiration of the meeting deadline.

2. Step 2:

- a. To present a Step 2 grievance, the grievance form submitted at Step 1 must be filed to the employee's second level supervisor, unless a different respondent is identified by the LRO, within 10 calendar days after the Step 1 official issues his or her written decision to the informal Step 1 grievance. or, if the Step 1 official does not provide a written response, within 10 calendar days of when such response was due. When the form is submitted, it must identify that it is being submitted as a Step 2 grievance.
- b. The grievance at the Step 2 stage must be consistent with the grievance form presented at the Step 1 informal stage. A grievance cannot be expanded or altered at the Step 2 stage of the process.
- c. Expansions or alterations of the original Step 1 grievance at the Step 2 stage will be considered beyond the scope of the grievance and will not be considered by the Step 2 official and may not be considered by an Arbitrator.
- d. The responding management official shall have 14 calendar days to respond to the Step 2 grievance. The Step 2 Deciding Official shall designate the management representative to be notified for the purpose of requesting arbitration and participation in selection of an arbitrator.

Section 10. Group Grievances

Either party may propose to the other party the combining of grievances which are before the same deciding official and which concern issues so similar that they can be efficiently and effectively treated as a group grievance. If the representatives handling the grievances do not agree as to whether the grievances should be combined, the grievances shall be treated individually through the grievance procedure to arbitration. If

arbitration is invoked and either party seeks to combine the grievances, the arbitrator shall be asked to determine, as a threshold issue, whether they can be efficiently and effectively treated as a group grievance.

Section 11. Grievances between the Union and the Agency (Parties' Grievances)

- A. Should either party have a grievance over any matter covered by this procedure, it shall inform the designated representative of the other party of the specific nature of the complaint in writing within forty-five (45) of the date or when the party became aware or should have become aware of the matter being grieved.
- B. Upon request, the parties shall meet within twenty (20) days to discuss informal resolution of the grievance after notice is given.
- C. Within thirty (30) days after receipt of the written grievance, the receiving party shall send a written response stating its position regarding the grievance. If the response is not satisfactory, the grieving party may refer the matter to arbitration.

Section 12. Referral to Arbitration

- A. If a Step 2 decision is not acceptable, the Union president or Agency representative may invoke Arbitration by the procedures outlined in Article 32 of this agreement. In the interest of cost reduction, efficiency and quicker resolution, the parties will give serious consideration to (1) combining hearings when the site of dispute is the same and there is a similarity of facts, law, or witnesses or (2) seeking third party mediation from FMCS or FLRA's Collaboration and Alternative Dispute Resolution Office (CADRO) to pursue settlement while hearing dates are pending.
- B. Only the Union President or the Agency can refer a grievance to arbitration.
- C. Invocations to arbitration will be made within 14 calendar days from the date on which the disputed grievance decision is or should have been issued.
- D. If the party invoking arbitration fails to make reasonable efforts to schedule an arbitration hearing within 180 days of invocation, the matter will be consider withdrawn by the moving party.

Section 13. Other Articles

In the event of any inconsistency or conflict between this Article (Article 31) and any other Article contained in this Agreement, the terms, conditions, and provisions of this Article shall govern and control.

Negotiated Grievance Form

NIH and AFGE Local 2419

Name(s) of Grievant(s):

Type of Grievance

Employee Union Management

For individual or group grievances

Step 1 Official name (first-line supervisor): _____

Step 2 Official name (second-line supervisor): _____

Designated Representative/contact information: _____

Date(s) of Alleged Violation(s)/Occurrence(s): _____

Basic facts of the grievance (must include sufficient specificity so that responding party can understand the facts at issue):

Alleged Violation

Contractual:

Statutory or regulatory violations:

Remedy Requested:

Grievant Signature

Name (Written)

Date

Union Representative Signature

Name (Written)

Date

Relevant Attachments/Supporting Evidence:

Note: May attach additional sheets of paper as necessary. Each additional sheet should be appropriately labeled.

Article 32. Arbitration

Section 1. Timeline for Filing

If the Agency and the Union fail to settle any grievance processed under the negotiated grievance procedure, such grievance shall be submitted to arbitration upon written request by either party within twenty-one (21) calendar days after issuance of final decision.

Section 2. Arbitrator Selection

- A. Within fourteen (14) calendar days from the date of the request for arbitration, either party shall request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial persons qualified to act as arbitrators. The Parties shall meet within seven (7) calendar days after receipt of such list. If they cannot mutually agree upon one of the listed arbitrators, then the Agency and the Union will each alternately strike one arbitrator's name from the list of seven (7) until one name remains who shall be the duty selected arbitrator.
- B. Once an arbitrator is selected, the moving party must, within ten (10) days notify the selected arbitrator that is prepared to move forward. If the moving party fails to do so, the arbitration shall be considered withdrawn by the moving partying.
- C. All arbitrations will be held within sixty (60) days of the moving party notifying the selected arbitrator that it is prepared to move forward, unless otherwise mutually agreed to or if the arbitrator is unavailable. When, due to circumstances beyond the control of the arbitrator and the parties, an arbitrator cannot hear a case within 90 days, the Parties may mutually agree to select another arbitrator by requesting a new list from the FMCS.

Section 3. FMCS Designation

- A. The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case in the event:
 - 1. Either party refuses to participate in the selection of an arbitrator; or
 - 2. Upon inaction or undue delay on the part of either party.

Section 4. Statement of the Issues

If the Parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate statement of the issue(s). The arbitrator shall make a final determination of the issue(s) to be heard.

Section 5. Costs

- A. The losing party shall pay the arbitrator's fees and expenses. The arbitrator shall indicate which party is a losing party. If, in the arbitrator's judgement, neither party is the clear losing party, costs shall be shared equally.
- B. If fees are assessed by the arbitrator due to cancellation or postponement, the party responsible for the cancellation or postponement shall pay all attendant, costs unless settlement or other mutual arrangements are made.

Section 6. Witnesses

- A. The arbitration hearing will be held, if possible, on the Agency's premises during the regular day shift hours of the basic workweek. However, the Parties may mutually agree to conduct the arbitration virtually.
- B. All participants in the hearing shall be in duty status. The Parties may have an observer present. The Union's observer may be a representative of the Union and will be allowed official time to attend, in accordance with Article 6 of this agreement. A union member who is not a representative may be granted administrative leave to attend as an observer, at management's discretion. The observer has no say in the arbitration proceeding and is present only to observe the proceedings.
- C. The parties shall exchange witness lists and also provide them, to the Arbitrator no less than seven (7) days in advance of the hearing and shall include a brief summary statement of the expected testimony of each witness. Disputes as to the relevancy of a witness or redundant testimony will be resolved by the Arbitrator. These requirements do not pertain to rebuttal witnesses. Parties shall not intimidate or coerce the testimony of witnesses subject to penalty. An opposing party will not contact the other party's witnesses without first providing a minimum two (2) day notice to the opposing party.
- D. Witnesses not identified in the witness list seven (7) days in advance, shall be permitted to testify or participate in the arbitration, at the arbitrator's discretion.
- E. All employees who are called as witnesses are considered to be on duty time to participate in the arbitration process and hearing.
- F. At the request of either party the arbitrator may order the sequestration of any witness or witnesses during the testimony of other witnesses. Witnesses that are part of either party's representational team shall not be sequestered; however, they must provide testimony before any other witnesses are called.
- G. Either party may call expert witnesses to testify. An expert witness testifies and gives advice during the Arbitration according to their field of expertise.

Section 7. Arbitrator's Decision

- A. The arbitrator will be requested to render their decision as quickly as possible after the conclusion of the hearing.
- B. The arbitrator's award shall be binding on the Parties subject to the provisions of Chapter 71, Title 5 of the U.S. Code. Any disagreement by either party of the application of an arbitrator's award shall be returned to the arbitrator for settlement including remanded awards.

Section 8. Exceptions

Any exception to an arbitrator's award may be filed with the Federal Labor Relations Authority in accordance with the provisions of Chapter 71, Title 5 of the U.S. code, or in any other forum permitted by law

Section 9. Transcripts

Except as mutually agreed otherwise by the Parties, arbitration will be conducted as oral proceedings with provision for a verbatim transcript. The requesting party shall pay for the transcript. Any additional copies shall be paid for by the requesting party.

Section 10. Questions of Arbitrability

The arbitrator shall hear arguments regarding arbitrability and the merits of the case at the same hearing. If the Parties agree otherwise, the merits of the case will be deferred by the arbitrator pending resolution of the arbitrability issue.

Section 11. Expedited Arbitration

- A. In rare circumstances, the parties may mutually agree to process a grievance through an expedited arbitration process. The following provisions apply to this expedited process:
 - 1. The hearing shall be conducted in accordance with the following:
 - a. the hearing shall be informal;
 - b. no briefs shall be filed or transcripts made;
 - c. there shall be no formal rules of evidence;
 - d. the hearing shall normally be completed within one day
 - e. if the arbitrator or the parties mutually agree at the end of the hearing that the issues involved are of such complexity or significance as to warrant referent to the regular Arbitration proceedings, the case shall be referred to that process;
 - f. the arbitrator may issue a bench decision at the hearing but in any event shall render a decision within forty-eight (48) hours after conclusion of the hearing. Such decision shall be based on the record before the arbitrator and may include a brief written explanation of the basis for such conclusion. These decisions will not be cited as a precedent. The arbitrator's decision shall be

final and binding. An arbitrator who issues a bench decision shall furnish a written copy of the award to the parties within forty-eight (48) hours of the close of the hearing.

- g. If the arbitrator fails to render a decision within forty-eight (48) hours, or any other timeframe mutually agreed to, the arbitration will be conducted in accordance with the other provisions of this Article.

- B. No decision by an arbitrator during an expedited hearing shall be regarded as a precedent or be cited in any future proceeding, but otherwise will be a final and binding decision.

Section 12. Scope of Arbitrator's Authority

The arbitrator shall have no power to add to, subtract from, disregard, alter, or modify any terms of this agreement.

Article 33. Contracting Out

Section 1

The Agency agrees to inform the Union as soon as possible, but in no case less than sixty (60) days prior to a review of the activity being conducted for the purposes of possible contracting out services currently being provided by bargaining unit employees.

Section 2. Contracting Out not under OMB A-76

- A. When the Agency determines that bargaining unit work will be contracted out:
1. The Agency will meet and confer with the Union concerning the impact on bargaining unit employees. The Union will be provided a copy of the performance work statement and contract solicitation document as soon as they are available. The Union's recommendations will be solicited and reviewed during the study concerning the most efficient organization and performance work statement.
 2. The Union shall be notified of the solicitation for bids. The Union may submit bids to perform the services, at their discretion.

Section 3. Contracting Out under OMB A-76

- A. The Department will provide the Union and all affected employees written notification of formal announcements of the start date of each OMB Circular A-76 competition at the same time as the public announcement. The notification will include all information contained in the formal public announcement, if not explicitly prohibited by A-76 rules.
- B. By no later than the formal public announcement date of each OMB Circular A-76 competition, the Department shall provide the Union the final preliminary list of affected bargaining unit employees with the following information about each: job title, grade, step, work unit, and work location.
- C. When a decision is made to conduct an OMB Circular A-76 competition on an area, the Department shall conduct an informational briefing with the Union and affected employees to discuss the process and the rights of competition and answer any questions regarding the A76 process. The briefing will include information on competition contests. At the briefing, attendees will be provided either a cite or copies of the applicable laws, rules and regulations governing contracting out.
- D. The Agency shall endeavor to provide all available information to the Union upon request, in accordance with OMB A-76 procedures.
- E. If there is adverse impact to bargaining unit employees resulting from making government property available to prospective and selected providers, it shall notify

the Union under Article 2 procedures.

- F. The Department will provide the Union and all affected employees written notification of formal announcements of the completion end date of each OMB Circular A-76 competition simultaneously with the public announcement. The notification will include all information contained in the formal public announcement.
- G. The Department shall offer debriefings required by OMB Circular A-76, Attachment B, Paragraph D6d, with the Union and all affected employees as soon as is practicable after the end of each OMB Circular A-76 competition.

Section 4. Competition Cancellation

The Department will provide the Union and all affected employees written notification of formal announcements of the cancellation date of each OMB Circular A-76 competition as soon as is practicable after the public announcement. The notification will include all information contained in the formal public announcement.

Section 5. Competition Challenges and Appeals

Without regard to whether the Union is an interested party and unless otherwise prohibited by law, rule, or regulation, the Department will inform the Union of all contests and appeals filed by interested parties at the same time as the Department provides notice to other interested parties.

Section 6. Displaced Employees

- A. The Agency agrees to exert maximum effort to find suitable employment for bargaining unit employees who are displaced as a result of contracting out including:
 - 1. Giving them priority consideration for suitable positions within DHHS in accordance with the policies established by the Deputy Assistant Secretary for Human Resources.
 - 2. Paying reasonable costs for training and relocation when these will contribute directly to placement.
 - 3. Arranging for gradual transition when conversions are made to provide greater opportunity for attrition and placement; and
 - 4. Coordinating with the DHHS and other agencies to obtain private sector employment for separated employee. (General Administration Manual, Chapter 18-10-80[6]).

Section 7. Applicable Law

- A. The Agency agrees to abide by all government-wide rules, and regulations with respect to contracting out activity.
- B. Segments of the bargaining unit shall not be reorganized for the sole purpose of circumventing the requirement of OMB Circular A-76.

Article 34. Technology

Section 1.

- A. The Agency will ensure that employees have proper equipment, resources, and technology that allows employees to maintain their productivity and work performance.
- B. NIH staff is permitted limited personal use of authorized IT resources if the use:
 - 1. is incidental and involves minimal additional expense to the government;
 - 2. doesn't interfere with staff productivity, the NIH mission or operations;
 - 3. occurs during breaks or non-work time;
 - 4. is not used to misrepresent oneself or NIH;
 - 5. doesn't have the potential to cause public embarrassment to NIH;
 - 6. doesn't compromise the integrity of any NIH system or system security safeguards;
 - 7. doesn't violate federal laws or policies or any provisions of this policy or other NIH policies;
- C. Employees are prohibited from using technology in a way that violates federal law, rule, or regulation.
- D. Employees are expected to complete required training associated with use of government equipment
- E. Prior to implementing any mechanical or electrical/electronic device in the Bargaining Unit based on new technology, which may impact employees in the bargaining unit, the Agency will notify the Union in accordance with Article 2 of this agreement. Among the principal considerations of such bargaining will be appropriate training so as to enable affected employees to maintain their present job status. The Agency will balance staffing levels and the use of technology in a manner that does not adversely affect the safety of Bargaining Unit employees.

Section 2.

It is understood by both parties that the advancement in technologies is not intended to replace the human element, but merely enhance the performance of the employee and their abilities to provide a safer, more rapid, and greater economical service to the Agency.

Section 3.

Training in a new technology will be given in a fair and equitable manner.

Section 4.

Subject to budgetary limitations, technological advancements installed in areas shall be distributed evenly throughout all areas to prevent unbalanced technical advantage from one section to another, allowing for technological training to keep pace with installation.

Article 35. Assignment of Work

Section 1.

The Agency retains the basic right to assign work and the Union acknowledges said right. The Agency shall endeavor when exercising said right upon bargaining unit employees to ensure that the duties are accurately reflected by current position descriptions.

Section 2.

Employees who perform duties outside their position description shall receive proper orientation or training (including OJT), as appropriate, to allow them a fair opportunity to perform the duties safely and achieve the highest level of performance for the Agency.

Section 3.

Employees will normally work within the scope of their position description. Occasionally, employees may be required to perform duties which are beyond the scope of the position description. Management will endeavor to limit these occurrences to a minimum and evenly distributing these duties between all qualified employees.

Article 36. Voluntary Dues Withholding

Section 1.

Members of the Union employed in the Bargaining Unit may make a voluntary allotment for union dues through payroll deductions provided that the employee is a member in good standing and has a regular bi-weekly salary sufficient to cover the amount of the authorized allotment after the deduction of other legal and requirement amounts.

Section 2.

- A. Dues will be withheld on a bi-weekly basis conforming to the regular pay periods. The deductions will be initiated with the first full pay period following receipt of the assignment form (Standard Form 1187) in the Workforce, Performance and Measurement Division of OHRM (Building 31, Room 3B40) or ORS Personnel Office, as appropriate, and necessary processing into the DHHS payroll system.
- B. Deductions will continue until terminated as provided in this Article.
- C. A member may revoke their authorization by submitting Standard Form 1188 in duplicate to the OHRM or ORS Personnel Office, as appropriate. Revocations may not become effective until the first anniversary date of the initial allotment and annually thereafter, the first full pay period following September 1, provided that the revocation has been received prior to the designated effective date and the necessary processing into the DHHS payroll system has completed.

Section 3.

The Union has the responsibility to certify to the LRO when there is a change in the amount of union dues. Changes shall not be permitted to be made more frequently than once every twelve (12) months or in accordance with Title 5 U.S.C. Chapter 71.

Section 4.

Management will notify the Union of dues deductions that are terminated for employees who are no longer eligible pursuant to Title 5 U.S.C. 7115 (b) within ninety (90) days of termination. In cases where the Agency fails to stop deductions or notify the Union, the Agency will reimburse the employee for all overpayments made in excess of the ninety (90) day period.

Section 5.

The Agency will make Electronic Funds Transfer to the appropriate Union account. Deposits will be made every pay period and correspond to the employees' pay periods.

Section 6.

The Agency will provide the Union a listing of the names of employees from whom payroll deductions were made and the amount of the bi-weekly deductions.

Article 37. Union Communications

Section 1. Copies of the Agreement

- A. An ADA-compliant copy of this Agreement shall be posted by the agency on its website. The Agency will print 100 of copies of the agreement and deliver them to the Union to distribute to bargaining unit employees. The copies will be delivered within 60 days of the implementation of this agreement.
- B. The Agency agrees to provide employees access to printers to print copies of this agreement.

Section 2. Bulletin Boards

The Agency agrees that bulletin board space shall be provided in designated areas within the bargaining unit for the display of union literature, notices, etc.

Section 3. Postings

- A. The Union may post literature; however, it must not violate any laws, compromise the security of the Agency, or contain libelous material. Official publications of the Union may be distributed on Agency property by Union representatives during non-duty time, unless otherwise approved by management.
- B. The Union assumes responsibility for maintaining information posted on the bulletin boards in an orderly and current status.
- C. The Union will also be allowed to use all public access bulletin boards for Union related material. Such postings will be allowed to remain up for a period of not less than fourteen (14) calendar days. The Union will be responsible for placement and removal of all such postings and will maintain all such postings in a professional manner.

Section 4. Removal of Postings

If a management official has reasonable belief that any item posted on the union bulletin board is not appropriate, then he will request that the appropriate LRO review it. The LRO will inform the Union of the decision and, if appropriate, meet with the Union President or their designee to discuss items which appear to be in violation of this Article. If the parties cannot come to an agreement, the LRO shall make the decision whether to allow the item to be posted. If management deems any posting to be unacceptable, management may remove the posting and the union may file a grievance under Article 31 of this agreement.

Section 5. Link to Local's Website

The Agency will maintain a hyperlink on the NIH website that will link to the NIH AFGE Local 2419 website.

Section 6. E-Mail

- A. The parties understand that access to and use of the Agency's electronic mail by union representatives shall be in accordance with Government wide law, rules and regulations.
- B. Therefore, the Agency agrees to provide the Union with access to and use of the Agency's electronic mail subject to the following restrictions:
 - 1. Access and use for representational activities shall be on approved official time (or non-duty time). However, union representatives and employees will be allowed a de minimis amount of time to view and respond to email messages while on duty time, so long as such use does not interfere with Agency work.
 - 2. The Agency's electronic mail cannot be used for internal union business.
- C. The Agency agrees to provide the Union with a current list of employee email addresses on an annual basis.

Section 7. Compliance

Violation of any of the above policies, guidelines, or restrictions may result in the user being suspended from access privileges.

Article 38. Wellness

Section 1. General

The Parties agree that promoting employee wellness, health, and fitness, may benefit the Agency in terms of improved productivity, reduced health care costs, and reduced use of leave. Management will support a variety of programs that promote employee health, fitness and wellness, consistent with law, rule, and/or regulation.

Section 2. Committees

A function of the Health and Safety Committee (HSC), referred to in Article 19 of this Agreement, is to encourage wellness programs. The HSC shall form a subcommittee to address wellness issues. Local Wellness Committees may be established to address the wellness needs of specific NIH facilities. Wellness committees are encouraged to develop/sponsor educational programs, conduct surveys to assess the needs and interests of the employees, promote healthy food choices in the cafeterias and vending machines, and pursue health club discounts. Wellness committees may also explore partnerships with other agencies for fitness and wellness opportunities.

Section 3. Education programs

The Agency will provide access to and encourage employees to participate in educational programs such as but not limited to: nutrition, weight reduction, stress reduction, smoking cessation, heart health, and cancer prevention to educate employees on how they may achieve optimal health. The Agency shall also provide training programs, where available, related to first aid, cardio-pulmonary resuscitation (CPR) and the use of automatic external defibrillators (AEDs).

Section 4. Immunization Programs

The Agency will provide immunizations, where available, through its existing Health Unit or Public Health Service facilities. When the Agency provides immunizations for contagious diseases such as the flu, employees not located at a participating facility may use a reasonable amount of administrative time, up to two (2) hours, to secure vaccination for these contagious diseases.

Section 5. Health Examinations

Subject to available funds, health examinations shall be offered to bargaining unit employees within the prorated allocation, if any, made available by the Agency within that office. Where the number of such examinations is limited, Management shall establish fair and equitable criteria to be used for selection.

Section 6. Ergonomic Furniture and Equipment

- A. Management will make every effort to provide employees with ergonomic furniture and equipment including but not limited to, standing desks and ergonomic chairs.
- B. The Division of Occupational Health and Safety provides, at no cost to the NIH employee and contract personnel operating under close federal oversight, ergonomic assessments of workstations, training that identifies ergonomic hazards encountered in NIH workplaces, telework, and medical management for employees who sustain work-related musculoskeletal disorders (WMSDs).
- C. Many work-related tasks have some degree of risk for developing an MSD. The NIH Ergonomics Program is designed to assist DOHS staff in identifying work-related workstation designs and tasks that may place NIH employees at risk for developing an MSD. Ergonomic hazards are identified by the following methods:
 - 1. NIH Ergonomics Webpage - The ergonomics website guides the employee through the proper steps for evaluating their workstation and job tasks and provides contact information to request an ergonomic evaluation or report an ergonomic hazard. The request, whether via e-mail or phone call, is forwarded to the Ergonomics Program Manager (EPM) or a Technical Assistance Branch-Industrial Hygienist (TAB-IH). The website can be accessed at the following address: <https://go.usa.gov/xnt6r>
 - 2. The NIH Ergonomics website provides guidance for NIH employees working on site or teleworking interested in evaluating their own workstations. NIH Employees are encouraged to conduct a self-assessment evaluation (<https://go.usa.gov/xHgAH>):
 - a. Annually to ensure that the ergonomic setup remain the same
 - b. When moving to new office or while teleworking
 - c. While replacing office furniture, e.g., new chair, desk, or computer monitors
 - d. When employees have concerns about MSD symptoms
- D. Employee Request for Evaluation - NIH employees are encouraged to complete the NIH self-assessment checklist (<https://go.usa.gov/xHgAH>) to make adjustments to their workstation. After completing the ergonomic NIH self-assessment checklist, a copy of the assessment will be forwarded to the employee and to the EPM. Thirty (30) days after or call DOHS directly at 301-496-2960 to request an ergonomic evaluation of their work area.
- E. Once an ergonomic hazard has been identified, the EPM or TAB-IH will analyze the job task and make recommendations to improve the ergonomic design of the work area and/or the job task. Work area evaluation may include an employee interview, video analysis, firsthand observation, and/or evaluation of the self-assessment checklist submitted by the employee.

- F. The employee's supervisor, with technical assistance from the EPM or a TAB-IH should implement all engineering, administrative, and work practice controls recommended during the ergonomic assessment. The EPM shall follow-up to determine whether the changes were successful and if the employee is experiencing improvement of MSD symptoms.

Section 7. Nursing Mothers Program

- A. The Nursing Mothers Program provides services for future and current nursing mothers that have concerns about breastfeeding. The program provides the emotional support and worksite assistance nursing mothers need to make the return to work less stressful.
- B. The Nursing Mothers Program provides:
 - 1. Prenatal breastfeeding education classes entitled "Breastfeeding and Return to Work" and "How to Get Started with Breastfeeding?" which are taught on the NIH campus. The ideal time to attend the class is during the third trimester of your pregnancy.
 - 2. Telephone support with our lactation consultants while on maternity leave who provide advice and problem-solving during the critical first weeks that you're home with your baby.
 - 3. Return to work consultation concerning how to maintain lactation and other issues related to making the transition back to work. Approximately two weeks prior to returning to work you will receive a private consultation with a Lactation Consultant to discuss how to collect and store your milk and other issues related to the transition back to work.
 - 4. **Onsite lactation rooms** in NIH buildings (located on and off the NIH Main Campus). Most rooms are equipped with a breast pump.
- C. In order to use Agency-provided lactation rooms, employees must register with the Nursing Mothers Program. Employees will be given a reasonable amount of duty time to use lactation rooms.
- D. Employees interested in participating in this program should contact the Office of Research Services, Division of Occupational Health and Safety's (DOHS) website for additional information and resources.

Section 8. Fitness Facilities

Local Wellness Committees 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. The details of such programs and

procedures for utilization of space will be a topic of discussion for the Local Wellness Committee. Irrespective of scheduled fitness activities, the business needs of the Agency shall always take precedence.

Section 9. Fitness

- A. Subject to available funds, Management may provide a subsidy for gym, health club, or fitness center memberships, either at an on-site fitness center located in a NIH facility, or, when no on-site facility is available, for local gyms, health clubs, or fitness centers. If subsidies become available, the Health and Safety Committee will make recommendations regarding the program under applicable law, rule, or regulation.
- B. In recognition of the many benefits of physical activity, including improved attendance and less use of sick time, Employees may be permitted a reasonable amount of duty time each week to utilize on-site fitness centers, workload permitting. However, it is recognized that some employees' job duties are not conducive to use of the fitness facilities during work hours. Weekly use of duty time for use of fitness facilities shall not exceed three (3) hours per week.

Section 10. Voluntary Participation

- A. Employee participation in any health program, including but not limited to education programs, immunization programs, health examinations, and fitness programs, shall be voluntary.
- B. Employees will not be penalized on the basis of their choosing to participate or not participate in such programs, nor will any distinction be made among employees on the basis of the hours of participation.
- C. If the Agency tracks program outcomes, the Agency shall track only total or general results of the program. Program outcome information will be shared with the Union, if available and upon request. The Agency shall not identify individual participants, or use identifying information in any way.

Section 11. Vending

Where vending is available, the Department will make a good faith effort to ensure that healthy choices are available to employees such as: fruits and vegetables, fruit juices, unsweetened waters, low calorie, and other healthy choices.

Article 39. Responsible Labor Management Relations

Section 1. Purpose

- A. The parties agree to the establishment of a Labor Management Relations Committee to confer in good faith to seek mutual understanding on problems arising under this Agreement, to discuss planned management initiatives, new policies, reorganizations, or transfers of function, and to provide the Union with the opportunity for pre-decisional involvement in matters concerning working conditions or concerning other matters of employee management relations. Individual grievances, complaints, or disputes will not be the subject of these meetings.
- B. The Agency shall, to the full extent permitted by law, allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the full extent practicable without regard to whether these matters are negotiable subjects of bargaining under 5 U.S.C. 7106. However, the Parties' participation in any pre-decisional discussions will not constitute a waiver of its right to assert that a matter is non-negotiable.
- C. The labor management committee participants are encouraged to share information on pre-decisional topics and make good faith attempts to resolve issues; however, the committee meetings do not take the place of traditional bargaining.

Section 2. Membership

- A. Members of the Labor Management Relations Committee will be comprised of the following:
 - 1. President of the Union;
 - 2. Labor Relations Officer;
 - 3. Two additional management representatives;
 - 4. Two additional Union Representatives
 - 5. One jointly selected facilitator from the Office of the Ombudsman, NIH
- B. The Parties agree to designate all members and alternates prior to each meeting.

Section 3. Conduct of Meetings

- A. The Labor Management Relations Committee will meet biannually.
- B. All designated members are encouraged to attend all meetings, in person or virtually.
- C. Proposed agenda items will be exchanged by the Parties thirty (30) days prior to each biannual meeting. The parties will meet at least once to discuss and finalize the agenda.

Section 4. Training Opportunities

In addition to discussion of matters identified under Section 1 above, meetings may include training opportunities for participants in matters related to labor relations, such as presentations by the FLRA, FMCS, or other joint training on topics such as bargaining, mediation, alternative dispute resolution, or alternative discipline.

Section 5. Meeting Notes

Either party may independently keep notes of the meeting for their own use.

Section 6. Official Time

Employees attendance at the meetings will be on official time pursuant to Article 6 of this agreement during times which they would normally be in a duty status.

Article 40. Transfer of Function

Section 1. Definitions

- A. Competitive Area – A competitive area will be defined solely in terms of the agency's organizational units and geographical locations, and with limited exceptions must include all employees within the competitive area so defined. A competitive area may consist of all or part of the agency. The minimum competitive area is a subdivision of the agency under separate administration within the local commuting area. (5 CFR 351.402)
- B. A transfer of function is the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) effected; or the movement of the competitive area in which the function is performed to another commuting area.
- C. A function is all or a clearly identifiable segment of the mission of NIH, including all integral parts of that mission, regardless of how it is performed, but generally excluding an individual job or task.
- D. Retention Register – The Retention Register is the ranking of employees in the competitive level after the Agency applies the following four factors, as mandated by government regulations: 1) tenure of employment; 2) veteran's preference; 3) length of service; and 4) performance ratings.

Section 2. Rights of the Parties

- A. The Employer retains the right to determine the organization of employees within the Agency, and in accordance with applicable law, regulations and this Agreement, to assign, release and retain employees within the Agency, to remove or reduce in grade such employees.
- B. Transfers of function shall be carried out in accordance with applicable law, regulations and this Agreement.
- C. Notwithstanding any provisions in this Article, the Union retains the right to conduct impact and implementation bargaining with respect to any specific transfer of function.

Section 3. General

- A. When an employee's work transfers, they are entitled to transfer with it only if the lack of an opportunity to do so would result in their demotion or separation from the Agency.

- B. The Employer retains the right to reassign employees to different duty stations for just cause. For all actions invoked under this section, the Employer will pay all associated expenses to the maximum extent allowable under the law.

Section 4. Procedures

- A. When a transfer of function is to be effected, the Employer will identify employees for transfer with a function in the losing competitive area. Employees to be transferred will be identified as follows:
 - 1. METHOD ONE – A competing employee will be identified with a transferring function if the employee performs the function during all or a major part of their work time; or, regardless of the amount of time the employee performs the function during their work time, if the function performed includes the duties controlling the employee's grade or rate of pay. Method One will be used to identify each position to which it is applicable.
 - 2. METHOD TWO – Competing employees who perform the function during less than half of their work time will be identified with a transferring function in the inverse order of their retention standing for reduction in force purposes unless the procedure would result in the separation or demotion of an employee with a higher retention standing, in which case the losing competitive area must identify competing employees in the order of their retention standing. Method Two will be used only when identification Method One is not available.
- B. As the needs of the Agency allow, volunteers in the losing competitive area will be allowed to transfer in place of those employees identified for transfer of function under Method One or Two provided;
 - 1. The volunteers are in the same competitive level(s) as the employees identified under Method Two; and
 - 2. No competing employee identified for transfer under Method One or Method Two will be separated or demoted solely because a volunteer transferred in their place to the gaining competitive area.
- C. When the Employer determines that employees in more than one competitive level are interchangeable for transfer of function purposes, competitive levels will be combined for the purpose of allowing for volunteers.
- D. Selections for transfer will then be made in the order of the volunteer's standing on the retention register for their competitive level(s), up to the maximum number of employees the Employer has determined will be transferred with their function. If there are insufficient volunteers to make up this number, Method One or Two, as appropriate, will be used to identify the remaining employees to be transferred.

Section 5.

In the event an employee declines to transfer with a function, the Agency reserves the right to initiate an adverse action procedure for removal pursuant to Article 30.

Section 6.

- A. When a transfer of function occurs while a reduction in force is already in progress in the losing competitive area, the Employer may determine that the movement of employees with the function is not essential to the continuity and efficiency of the function. In such circumstances, at the discretion of the Employer, reduction in force procedures may be used to release from their competitive levels those employees who have declined to move with their function. Any separations and displacements will be treated as part of the concurrent reduction in force.
- B. Reduction in force procedures will not be used to separate employees who decline to move with their function unless a reduction in force is already in progress in the losing competitive area and the Employer determines that reduction in force procedures rather than adverse action procedures will be used.
- C. When the losing competitive area identifies and transfers more employees than the gaining competitive area needs to carry on the function, the gaining competitive area will follow reduction in force procedures if necessary to relieve the surplus, in accordance and Government-wide rules and Article 29, if applicable.
 - 1. After competing employees in the losing competitive area have indicated whether they will accompany their function, the rights of employees who have decided to accompany their function will be determined by combining the retention registers of the segment being transferred with the appropriate registers of the competitive area receiving the function. A determination of the rights of the incoming employees will not require a physical relocation or a paper transfer to the gaining competitive area.
 - 2. Those employees in the losing competitive area who compete unsuccessfully for retention in the gaining competitive area will not be transferred, either on paper or physically relocated, to the gaining competitive area in order to be separated. They will be separated from the losing competitive area acting as agent for the gaining competitive area.
- D. A transfer of function will not result in personnel actions affecting employees of the gaining competitive area when the transfer does not require a reduction in force on the gaining end.

Section 7. Notice

- A. The Employer shall provide a specific written notice to each employee identified for

transfer with a function of at least sixty (60) calendar days prior to the effective date. The notice will advise employees of the transfer of function and request their decision as to whether they will accompany their function to the new location. The notice will include all information available on the date of issuance, such as the title, grade, and location of the new position; what action is being taken; the effective date of the action; and what is involved in the acceptance or rejection of the offer of transfer.

- B. It is recognized that in some situations, information such as the title or grade of the position to which an employee is being transferred will not be available. Such a circumstance will occur when a reduction in force is necessary in the gaining competitive areas as a result of a transfer of function. This notice will advise them that they will be afforded applicable reduction in force rights if the offer to transfer the function is accepted. Under such circumstances employees will be given an opportunity to review a combined retention register for affected competitive levels which would be in effect in the gaining competitive area.
- C. Employees will be given a minimum of thirty (30) work days, but more time when practicable, in which to accept or reject an offer of transfer with a function.

Section 8.

- A. The Employer shall provide assistance in obtaining other employment to those employees identified for transfer who declined to accompany their function to the new location. Between the date employees decline to accompany a transfer of function and the date of their separation from the Agency, the Employer will provide the following assistance:
 - 1. The Employer has determined that it will designate an out placement coordinator to serve as the focal point for all assistance activities;
 - 2. A file of resumes, applications, or equivalent submitted by declining employees will be maintained for distribution to prospective Employers when possible. When requested by the prospective Employers, these documents will be provided;
 - 3. Eligible employees, who have submitted a resume, application, or equivalent, will be registered in the Office of Personnel Management displaced employee programs (e.g., CTAP, ICTAP, etc.); and
 - 4. Eligible employees will be registered on the NIH Re-employment Priority List for the losing competitive area. Employees separated for declining to transfer with a function will be entered on such lists for placement after Group I and Group II employees separated by reduction in force procedures.

Section 9.

The Employer shall advise, in writing, employees separated from the Agency for refusal to transfer with a function of their rights to severance pay, if any; any lump sum payment for all accrued annual leave; their eligibility to apply for the Office of Personnel Management displaced employee programs (e.g., CTAP, ICTAP, etc.); their eligibility for placement on the NIH Re-employment Priority List; their eligibility for discontinued service retirement, if applicable; and the effect of separation on the health and life insurance coverage.

Section 10.

- A. When an employee or the Union believe the Employer has incorrectly applied applicable law or Government wide rule or regulation, or this Article in a transfer of function action, a dispute may be filed pursuant to Article 31.
- B. An employee separated under adverse action procedures as a result of a transfer of function may appeal that action under the procedures in Article 31.

Article 41. Workers' Compensation

Section 1. General

- A. If an employee is injured while on duty or becomes ill as a result of the workplace environment, the employee may be entitled to workers' compensation benefits in accordance with the Federal Employees' Compensation Act (FECA).
- B. To ensure that workers compensation claims are properly processed, the Agency has appointed a Workers' Compensation Specialist to provide guidance and assistance as needed, to supervisors and employees on the procedures for filing workers' compensation claims and employees' and supervisors' rights and responsibilities concerning such claims. The Agency shall periodically publish the names, locations, and phone numbers of the Agency Workers' Compensation Specialist.
- C. While the Agency may use a third party to administer the Office of Workers' Compensation Program (OWCP), to ensure proper functioning of the program, it is the responsibility of the Agency to take the following actions in a timely fashion: advise employees, or their representative(s), of their rights under FECA; assist employees in filling out forms or refer employees to the appropriate resource, act on forms that require agency or supervisory action; follow up with designated third parties if appropriate and requested; and prominently display, and maintain links to current FECA policies and procedures on the Agency's website.

Section 2. Reporting

- A. The applicable provisions of FECA as administered by the Division of the Federal Employees' Compensation, Department of Labor will be made available to employees. The Agency agrees to provide an employee who is injured on duty status with Agency-specific directions regarding using the electronic workers' compensation system within a reasonable amount of time after reporting the job accident or injury.
- B. When an employee suffers an illness or injury in the performance of their official duties, they, their family member, or their designated representative must:
 - 1. Notify the employee's supervisor as soon as practical. Submit the appropriate claims forms in a timely manner to the supervisor;
 - 2. Fill out required forms and submit any requested documentation, unless their injury or illness prevents them from doing so; and
 - 3. If the injury has caused the employee to miss work, notify the employee's supervisor of the date the employee expects to return to work.
- C. Should the employee require assistance, he or she should contact the NIH Workers' Compensation Program located in the Benefits Payroll Liaison Branch.

- D. Employees who learn that they have a disease which may be occupationally related should report their illness within the timeframes established by law.
- E. Employees may use a reasonable amount of time and government equipment to complete workers' compensation claims.
- F. If the employee's injury or illness prevent them from making required reports, the reports must be submitted by the supervisor.

Section 3. Leave/Continuation of Pay.

An employee who suffers a traumatic injury while on duty may be granted up to 45 days of Continuation of Pay (COP) after filing a form CA-1, if requested and in accordance with OWCP rules and regulations. Employees should review the OWCP area of NIH's web site for leave and COP options. COP does not apply when filing a CA-2 for Occupational illnesses or diseases. Once the Department of Labor approves an employee's claim for compensation, an employee may request a re-credit of leave used during recovery from a job-related injury. If and/or when the Department of Labor (DOL) approves the request for the re-credit of leave or has waived the repayment, and once the employee repays the Agency for the leave that has been used, the Agency shall process the change into the payroll system within two (2) pay periods from the receipt of the payment.

Section 4. Counseling

When an employee claims that an injury or illness is work-related, appropriate information and counseling will be provided by management. Additional inquiries concerning other available benefits, including disability compensation, will be referred to the NIH Workers' Compensation Program located in the Benefits Office of the Workforce Relations Division, Office of Human Resources.

Section 5. Leave Buy-Back

In accordance with appropriate regulations concerning the Federal Employees' Compensation Act, 5 U.S.C. 8100, the Agency will, whenever practicable, provide for employees to buy back annual or sick leave used in lieu of injury compensation.

Section 6. Return to Duty.

Employees returning to duty from an approved Workers' Compensation injury or illness will be restored in accordance with applicable Rules and Regulations.

Section 7. Review of Documents.

Employees shall be permitted to review documents in the possession of the Agency that Department of Labor has authorized to be made available. Employees may be accompanied by their designated representative.

Article 42. Job Sharing

Introduction: Job sharing is a way to permit employees to work part-time in positions where full-time coverage is required.

Section 1. Definition

Job sharing is a form of part-time employment in which the tours of duty of two (2) or more employees are arranged in such a way as to cover a single full-time position.

Section 2. Status

Although they share the duties of a full-time position, job sharers are considered to be individual part-time employees for purposes of appointment, tour of duty, pay, classification, leave, holidays, benefits, position change, service credit, record keeping, reduction in force, adverse actions, grievances, and personnel ceilings.

Section 3. Tour of Duty

Specific work schedules depend on the nature of the job and the needs of the office and job-sharing team. Almost any reasonable arrangement is possible if it meets the needs of the supervisor and the job sharers. Scheduling should take advantage of the fact that two (2) people rather than one (1) are filling the job; these possibilities include overlapping time, split shifts, or working in different locations at the same time. Work schedules for job sharers can be from sixteen (16) to thirty-two (32) hours per week and can be varied in the same way as other part-time employees. The amount of scheduled overlap depends on the needs of the particular position.

Section 4. Employee Requests

Employee requests for part-time employment in order to participate in job sharing must be made in writing to the employee's immediate supervisor. The Employer will give fair and objective consideration to the employee's request for part-time employment and grant such requests based on the Employer's need for the employee's services, the suitability of the position for part-time employment, availability of resources, and the impact on the efficiency of the Agency. Requests will be approved or disapproved within thirty (30) days of receipt by the immediate supervisor. In the case of a disapproval, the supervisor will inform the employee in writing and provide the reason for the denial.

Section 5. Information on Impact of Conversion to Part Time Employment

Employees who have been approved to convert to part-time employment for the purposes of job sharing may request information concerning the impact of the conversion from full-time to part-time employment in the areas of retirement, reductions in force, health and life insurance, promotion and step increases. This information will

be provided to the employee in the form of a written fact sheet. The employee will be required to sign a statement indicating that they received this information.

Section 6. Changes in Job Sharing Situations

Job sharing situations may change from time to time. For example, one employee who shares a position with another might leave the program. This may have an adverse effect on the remaining employee who shares the position. In these instances, management will fully consider the effect on the remaining employee and their needs. The remaining employee will be allowed thirty (30) calendar days, if practicable, from receiving written notice from the Employer to find another employee, acceptable to management, to share the position. If no employee can be identified or is not acceptable to management, management reserves the right to direct the employee to resume full-time employment or backfill the part-time vacancy. The final decision for all changes in job sharing situations shall be made by management.

Article 43. Duration and Changes

Section 1. Duration

This Agreement shall remain in full force and effect for a period of six (6) years from the date of approval.

Section 2. Automatic Extension and Notice to Terminate or Renegotiate

The Agreement shall be automatically extended for six (6) month periods unless: (1) either party gives the other party written notice of its intention to terminate or renegotiate this Agreement no less than sixty (60) nor more than ninety (90) calendar days prior to its termination date, or two (2) at any time it is determined that the Union no longer is entitled to exclusive recognition for the Unit covered hereunder. Such notice must be accompanied by a list of the Articles either party intends to add, amend, reopen, modify or terminate. Ground rule negotiations will then begin no later than 30 days after the receipt of the notice provided by either party. If renegotiation of the Agreement is in progress but not completed upon the termination date of this Agreement, this Agreement will remain in full force and effective during renegotiation of said Agreement and until such time as a new Agreement is approved.

Section 3. Severability

If any provision of this agreement is invalidated by existing or subsequent laws, decisions of the FLRA, the Comptroller General, or courts of competent jurisdiction, such provision shall be renegotiated for the purpose of an adequate replacement. All other provisions of the agreement shall remain in full force and effect.

Section 4. Reopening Clause

During the term of this agreement, either party may propose negotiations to reopen, amend, or modify this agreement. Such negotiations may only be conducted by mutual agreement of the Parties, and in accordance with Article 2 of this agreement.

Article 44. Environmental Pay

Section 1. Reducing Risks

- A. The Agency will make every effort to eliminate or to reduce to allowable levels established by OSHA, law, regulation, industry standards (including, but not limited to, Association for Assessment and Accreditation of Laboratory Animal Care, Joint Commission on the Accreditation of Health Care Organizations, and the Biosafety in Microbiological and Biomedical Laboratories Publication) and this Agreement, all hazards, physical hardships, and working conditions of an unusually severe nature. However, any industry standard will not apply unless they meet or exceed standards established by OSHA and this agreement. Should OSHA or this agreement not establish a specific standard, industry standards will apply.
- B. Whenever unsafe or unhealthy working conditions are identified, the first course of action must be an attempt to eliminate or reduce the hazards. Management will determine whether a hazard can be eliminated or reduced by the use of the standard hierarchy of controls (e.g., elimination, substitution, engineering controls, administrative controls, and/or personal protective equipment). When the Agency does not reduce the hazard, physical hardship, and/or working condition of an unusually severe nature to a level at or below the applicable standard, an environmental differential will be paid.

Section 2. Compliance with Law, Regulations, and Policy

The designation of a situation as being appropriate for payment for an environmental differential is not intended to condone work practices which circumvent Federal safety laws, rules, or regulations, nor does it excuse employees from following ORF and NIH safety procedures and policies, including wearing proper protective/safety equipment as required.

Section 3. Applicable OPM Standards

Environmental Pay determinations will be made in accordance with OPM's Appropriated Fund Operating Manual, Appendix J, Schedule of Environmental Differentials Paid for Exposure to Various Degrees of Hazards, Physical Hardships, and Working Conditions of an Unusual Nature (Appendix J), and any applicable law, rule, and regulation.

Section 4. Procedures

- A. When a supervisor knows that an employee will be assigned to one of the authorized work situations described in Section 5 of this Article, he will notify the employee at the time of the assignment.
- B. If an employee has not been so notified and if during a job assignment, an

employee believes they have been assigned to one of the authorized work situations for which Environmental Differential Pay (EDP) is warranted they will bring the matter to the attention of the supervisor as soon as possible. The immediate supervisor and/or the next level supervisor will attempt to eliminate or reduce the hazards. The immediate supervisor and/or the next level supervisor will make a determination and so advise the employee. Disputes arising from such determinations may be submitted for resolution under the negotiated grievance procedure in this Agreement.

Section 5. Specific Types of EDP Work (not all-inclusive)

NOTE: The following categories represent a sample set of EDP-authorized work situations and is not intended to be an exhaustive list.

A. Hot Work 4% Pay

1. Working in confined spaces wherein the employee is subjected to temperatures in excess of 110 degrees Fahrenheit.
2. Working in confined spaces wherein the employee is subjected to temperatures in excess of 110 degrees Fahrenheit where such exposure is not practically eliminated by the mechanical equipment or protective devices being used.

B. Cold Work 4% Pay

1. Working in cold storage or other climate-controlled areas where the employee is subjected to temperatures at or below freezing (32 degrees Fahrenheit).
2. Working in cold storage or other climate-controlled areas where the employee is subjected to temperatures at or below freezing (32 degrees Fahrenheit) where such exposure is not practically eliminated by the mechanical equipment or protective devices being used.

C. Dirty Work 4% Pay

1. Performing work which subjects the employee to soil of body or clothing:
2. Beyond that normally to be expected in performing the duties of the classification; and
3. Where the condition is not adequately alleviated by the mechanical equipment or protective devices being used, or which are readily available, or when such devices are not feasible for use due to health considerations (excessive temperature, asthmatic conditions, etc.); or
4. When the use of mechanical equipment, or protective devices, or protective clothing results in an unusual degree of discomfort.

Examples:

The Parties agree that when the following tasks are performed that the employees performing such work will receive dirty pay. These pre-agreed upon tasks will not prevent the Agency from identifying and paying dirty pay for other tasks that may be identified to meet the criteria of Section 5. C. 1, 2, 3.

The cleaning, removal, or collection of soot or combustion byproducts from the boiler fire sides, or ash ejector where the employee is required to enter the boiler or ash ejector.

Internal work in oil tanks, voids, pits, manholes, sumps, wells.

Employees involved in major oil spill containment and cleanup, and maintenance of oil spill containment cofferdams, dikes, or dams, sewer and or storm drains.

D. Asbestos 8% Pay

1. Working in an area where airborne concentrations of asbestos fibers may expose employees to potential illness or injury. This differential will be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 as published in title 29, Code of Federal Regulations, §§ 1910.1001 or 1926.1101. Regulatory changes in §§ 1910.1001 or 1926.1101 are hereby incorporated in and made a part of this category, effective on the first day of the first pay period beginning on or after the effective date of the changes.

Example:

Working in areas where air tests reveal that levels of above 0.1 ff/cc exists as an eight-hour time weighted average. The Agency will conduct an ongoing program of monitoring air in work areas for asbestos. The Union may however conduct its own tests at its expense for asbestos subject to below conditions set by the NIH Office of Occupational Safety and Health. Those conditions include:

Tests must be done by a certified Industrial Hygienist.

Lab work must be done by an EPA certified testing lab.

NIH has no liability for injury or illness to the testing firm or lab personnel

E. Poisons (toxic chemicals) – High Degree Hazard 8% Pay

1. Working with or in close proximity to poisons (toxic chemicals) other than tear gas or similar irritants, which involves potential serious injury such as permanent or temporary, partial or complete loss of faculties and/or loss of life including exposure of an unusual degree of toxic chemicals, dust, or fumes or equal toxicity generated in work situation by processes required to perform work assignments wherein protective devices and/or safety measures have been developed but have not practically eliminated the potential for such personal injury (Any chemical or substance identified as a Level 3 or above for any category of ratings of the NFPA 704 Hazard Identification System) when the container is opened and direct exposure can occur.

Examples:

Handling and storing toxic chemical agents including monitoring the areas to detect presence of vapor or liquid chemical agents; examining of material for signs of leakage or deteriorated material; decontaminating equipment and work sites; work

relating to disposal of deteriorated material (exposure to conjunctivitis, pulmonary edema, blood infection, impairment of the nervous system, possible death). Renovation, maintenance, and modification of toxic chemicals; guided missiles, and selected munitions. Operating various types of chemical engineering equipment in a restricted area such as reactors, mixers, filters, stripping units, fractionating columns, blenders, mixers, pumps, and the like utilized in the development, manufacturing, and processing of toxic or experimental chemical warfare agents. Demilitarizing and neutralizing toxic chemical munitions and chemical agents. Handling or working with toxic chemicals in restricted areas during production operations. Preparing analytical reagents, carrying out calorimetric and photo metric techniques. Injecting laboratory animals with compounds having toxic, incapacitating or other effects. Recording analytical and biological tests results where subject of above types of exposure. Visually examining chemical agents to determine conditions or detect leaks in storage containers. Transferring chemical agents between containers. Salvaging or disposing of chemical agents.

F. Poisons (toxic chemicals) – Low Degree Hazard 4% Pay

1. Working with or in close proximity to poisons (toxic chemicals other than tear gas or similar irritating substances) in situations for which the nature of the work does not require the individual to be in as direct contact with, or exposure to, the more toxic agents as in the case with the work described under high hazard for this class of hazardous agents.
2. Working with or in close proximity to poisons (toxic chemical other than tear gas or similar irritating substances) in situations for which the nature of the work does not require the individual to be in as direct contact with, or exposure to, the more toxic agents as in the case with the work described under high hazard for this class of hazardous agents and wherein protective devices and/or safety measures have not practically eliminated the potential for personal injury. (This will be paid for any chemical or substances identified as a three [3] or above for any category of rating of the NFPA 704 Hazard Identification System) when the containers remain factory sealed, and only accidental exposure could occur.

Example:

Handling for shipping, marking, labeling, hauling, and storing loaded containers of toxic chemical agents that have been monitored.

G. Micro-Organisms High Degree Hazard 8% Pay

1. Working with or in close proximity to micro-organisms which involves potential personal injury such as death, or temporary, partial, or complete loss of faculties or ability to work due to acute, prolonged, or chronic disease. These are work situations wherein the use of safety devices and equipment, medical prophylactic procedures such as vaccines and antiserums and other safety measures do not exist or have been developed but have not practically eliminated the potential for such personal injury. Employees who are required to enter active or “hot” (not decontaminated) laboratories designated as three (3) or higher by the biosafety publication DHHS (CDC) 93-8395 will receive this

pay.

Examples:

Direct contact with primary containers of organisms pathogenic for man such as culture flasks, culture test tubes, hypodermic syringes and similar instruments, and biopsy and autopsy material. Operating or maintaining equipment in biological experimentation or production. Cultivating virulent organisms on artificial media, including embryonated hen's eggs and tissue cultures where inoculation or harvesting of living organisms is involved for production of vaccines, oxides, etc., or for sources of material for research investigations such as antigenic analysis and chemical analysis.

H. Micro-Organisms Low Degree Hazard Pay 4%

1. Working with or in close proximity to micro-organisms in situations for which the nature of the work does not require the individual to be in direct contact with primary containers of organisms pathogenic for man, such as culture flasks, culture test tubes, hypodermic syringes and similar instruments, and biopsy and autopsy material.
2. Working with or in close proximity to micro-organisms in situations for which the nature of the work does not require the individual to be in direct contact with primary containers of organisms pathogenic for man, such as culture flasks, culture test tubes, hypodermic syringes and similar instruments, and biopsy and autopsy material and wherein the use of safety devices and equipment and other safety measures have not practically eliminated the potential for personal injury. This pay will be authorized when employees enter and work in secure level laboratory areas of Level 2 as designated by biosafety publication DHHS (CDC) 93-8395.

Section 6. OPM Changes

If any new or changed categories or differential rates are authorized by OPM regulations during the term of this Agreement, the Parties will negotiate appropriate changes or additions to this Agreement in accordance with the procedures outlined in Article 2 of this agreement.

Section 7. New EDP Situations

- A. If, after this Agreement is in effect, either party believes that an EDP situation, in addition to those authorized in Section 4, has developed, the Parties will attempt to resolve such issues through negotiation between the parties.
- B. The Parties agree that if an Agreement is reached, the Agreement may include a retroactive EDP adjustment to any unit employee who has worked in the agreed upon work situation during the thirty-day (30) period before the beginning of the negotiations.

Section 8. Payment of EDP

- A. An employee subjected at the time to more than one hazard, physical hardship, and/or working condition of an unusually severe nature as listed in the Agreement or Appendix J shall be paid for the exposure which results in the highest differential but shall not be paid more than one differential for the same hours of work.

- B. When an employee is entitled to an environmental differential which is paid on an actual exposure basis, he/she shall be paid a minimum of one hour's pay for exposure. For exposure beyond one hour the employee shall be paid in one quarter hour increments.

Article 45. Office and Equipment for the Union

Section 1. General

- A. The Agency will provide office space in Bethesda, approximately 500 square feet, to include equipment and furniture.
1. The Agency will provide the Union with suitable office space at the Bethesda campus. The Union has requested a new office space on the Bethesda campus, and the Agency is committed to a one-time office change during the life of this agreement, unless the parties mutually agree otherwise. The Union will retain use of the current Union Office space in Building 31 until more suitable space can be arranged. The new Union space will be near an elevator and will have natural light. The space provided to the Union will be at least 500 square feet. The Union office will have adequate heat and ventilation and the Agency will ensure that the temperature in the Union office is maintained within a normal temperature range for an office environment.
 2. Within the Union office, the Agency will provide a private office, with floor to ceiling walls and a locking door. The private office will have a desk and two chairs, a computer, telephone, and connection to a printer and scanner within the Union office.
 3. The Agency will provide adequate office furniture and equipment for the entire Union office, including an additional desk and chair (if requested by the Union), a conference room table with chairs, a locking file cabinet, and a second telephone and computer (outside of the private office.) The Agency will ensure the office equipment is functional and the computers and printer/scanner are connected to the Agency's network.
 4. There will be a functional lock on the door of the Union office and the Union will be provided with three (3) sets of keys. In the alternative, management may provide card access using the employee's PIV card.
 5. The Agency will provide the office and equipment described in this section to the Union within six (6) months of the effective date of this Agreement. In the event that no other areas become available within that six (6) month period, the Agency will notify the Union in writing and continue to explore available options until there is a resolution.
- B. The Agency will provide office space on the Research Triangle Park Campus, to include equipment and furniture.
- C. The Agency agrees to provide clear signage at the elevators and in the hallways directing employees to the location of the Union offices at both the Bethesda and Research Triangle Park campuses.

- D. Should there be a Union representative located at the Rocky Mountain Laboratory campus, the Agency will provide the use of a conference room, as needed. The representative will also be provided with a locking file cabinet and the use of a commercial type of copier, fax machine, and phone.
- E. Management may enter the Union office no more than two (2) times per year to perform routine maintenance located within the Union space. Management must provide seven (7) days' notice of such requested entry for routine maintenance. If an emergency arises, such as a flood or drain backup, management will provide as much notice as is practicable to the Union prior to entering their space.

Section 2. NIH Email

The Union shall be provided use of intra office mail system and electronic mail on the NIH intranet. All Stewards and Officers will have separate email accounts. The use of these shall not be for internal Union business. The agency will also provide telephone service within Union offices.

Section 3. Office Equipment

- A. At the Bethesda and Research Triangle Park campuses the Agency will provide desks, chairs, a locking file cabinet, access to a commercial office-type copy machine, a computer, and telephone.
- B. At the Bethesda campus, the Agency will provide a conference room table and a room large enough for its use.
- C. Maintenance of the office equipment is the responsibility of the union. The replacement of old or aging equipment is the responsibility of the Agency.
- D. The Union will meet the requirements for accountability of personal property for the office equipment, in accordance with Agency policy. The Union will meet the requirements for securing PII data, Personal Identifiable Information, in accordance with Agency policy.
- E. The Agency will ensure the office equipment is functional and the computers and printer/scanner are connected to the Agency's network.
- F. A conference room will be made available for the Union's use during non-working hours.

Section 4. Union Office Keys

- A. The Union will be provided up to three (3) keys to their assigned office spaces. Any keys issued by the NIH are prohibited from being copied, duplicated, or reproduced

by an employee or their representative. In the alternative, management may provide card access using the employee's PIV card.

- B. Upon request, the Union agrees to provide the LRO with a current list of all union office keyholders.
- C. Upon separation from the bargaining unit or the Agency for any reason, keyholders shall surrender their union office key the local President or LRO for return to the locksmith.
- D. The Agency will ensure that the Union has keys to locking file cabinets containing employee records.

Article 46. Part Time Employment

Section 1. Annual Survey

The Union will conduct an annual survey of employees in the bargaining unit to determine their interest in part-time employment. The survey form will include information on the rights and benefits of part-time employment. The Union will consult with the Agency on the content of the survey form and share the results of the completed survey with the Agency.

Section 2. Part-Time Employment

Qualified Bargaining Unit employees will be given priority consideration for any part-time positions within the bargaining unit.

Section 3. Conversions

- C. If a full-time employee wishes to convert to part time, they shall make a request to their supervisor.
- D. Conversion from full-time to part-time employment and the reverse can be made only with the employee's written request and management approval. Employees will be given a copy of the position description upon management approval of the conversion and shall be informed of any change to the grade of that position before accepting conversion to part time.
- E. Employees who accept or convert to part-time positions have no guarantee they will be subsequently converted to full-time employment, but management agrees to make good faith efforts to accommodate the employee's request.
- F. An employee who is denied a conversion from full time to part time or vice versa shall be notified in writing of the reasons.

Section 4. Information on Impact of Conversion to Part Time Employment

Employees who have been approved to convert to part-time employment will, upon request, be provided information concerning the impact of the conversion from full-time to part-time employment in the areas of retirement, reductions in force, health and life insurance, promotion, and step increases, prior to the effective date of the conversion.

Article 47. Medical Qualifications, Determinations, and Reasonable Accommodations

Section 1. General

The Agency will follow law, applicable government-wide regulations, and this Article in all medical examinations related to an employee's ability to perform their official duties.

Section 2. Prerequisite Conditions

When there are reasonable grounds to believe that a health problem is causing performance or conduct problems of an employee, the employee shall be given an opportunity to provide medical evidence documenting the health problem affecting their performance or conduct and/or an opportunity to voluntarily request reasonable accommodation or initiate an application for disability retirement on their own behalf. The employee will be informed of their right to union representation during the medical examination process.

Section 3. Procedures

- A. Notice to the Individual. When the Agency orders or offers a medical examination or requests medical documentation, it must inform the employee in writing of:
1. The reasons for the examination or request for medical documentation;
 2. The consequences of failure to report for examination, if so ordered; and
 3. The individual's right to submit medical information from their own physician or practitioner, and the Agency's obligation to consider such information.
- B. Informing the Physician. The Agency will ensure that the physician knows exactly what medical information is required, the duties and requirements of the position (including environmental considerations), and any other pertinent factors directly relevant to determining the individual's ability to perform safely and efficiently, without hazard to them or others. If an employee has been under medical treatment, this fact should be communicated to the examining physician by the employee or their designated representative. The results of the examination should take account of the examining and treating physician's diagnoses and/or conclusions, the examining physician should make a concerted effort to account for such inconsistencies and to discuss their implications for the person's employability.

Section 4. Counseling

When the Agency determines that the performance or conduct of an employee may be health-related, the employee may be encouraged to seek counseling through the Employee Assistance Program.

Section 5. Reasonable Accommodation

A. General

1. The Agency will provide a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability unless the Agency demonstrates that the accommodation would impose an undue hardship on its operations, as defined by the U.S. Equal Employment Opportunity Commission's regulations at 29 CFR 1630. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with disability to enjoy equal employment opportunities.
2. Categories of reasonable accommodations include, but are not limited to: (1) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential function of that position. (2) Modifications or adjustments that enable a qualified individual with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated individuals without disabilities. (3) Modifications or adjustments to the job application process that enables a qualified applicant with a disability to be considered for the position that such qualified applicant desires.
3. Where there is a conflict between this Agreement and the Agency policies on Reasonable Accommodation, this Agreement will prevail. The policy, procedures, and terminology established in this Article are in conformance with the governing law, rule, and regulations, including but not limited to: (1) The Rehabilitation Act of 1973; (2) The Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008; and (3) EEOC's regulations implementing the ADA (29 CFR part 1630).

B. Definitions

1. Undue hardship. Undue hardship means significant difficulty or expense and focuses on the resources and circumstances of the Agency in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship means significant difficulty or expense incurred by the Agency, in consideration of the following factors:
 - a. the nature and net cost of the accommodation;
 - b. the overall financial resources of the Agency, the number of persons employed in the office or program area of the employee, and the effect on expenses and resources;
 - c. the overall financial resources of the Agency, the overall size of the Agency with respect to the number of employees, the number, type, and locations;
 - d. the type of operations of the Agency including the composition, structure, and functions of the workforce; and

- e. the impact of the accommodation on the Agency's operations, including the impact on the ability of other employees to perform their duties and the impact on the Agency's ability to conduct business; or would fundamentally alter the nature or operations of the Agency. The Agency must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship.
2. Individual with a Disability. An individual who :
 - a. has a physical or mental impairment that substantially limits one or more major life activities,
 - b. has a record of such impairment, or
 - c. is regarded as having such impairment.
 3. Qualified Individual with a Disability. An individual with a disability who, with or without reasonable accommodation, can perform the essential functions (grade controlling duties) of the position in question without endangering the health and safety of themselves or others.
 4. Major life activities. Major Life Activities include but are not limited to (1), caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and (2) Major bodily functions including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.
 5. Essential Functions. In general, the term essential functions means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position. The grade controlling duties that an employee must be able to perform, with or without a reasonable accommodation are a factor in determining whether job duties are essential functions. (See EEOC regulations at 29 CFR 1630.2(n) for more examples of factors.)

C. Examples of Reasonable Accommodations

Reasonable accommodations may include but shall not be limited to:

1. Modification of job duties including job restructuring.
2. Modification of job environment (i.e., making facilities readily accessible to and usable by disabled persons).

3. Telework modification, work at home (separate and apart from the Department's Telework policy), or an alternate worksite as a reasonable accommodation for disabled employees.
4. Part-time or modified work schedules.
5. Acquisition or modification of equipment.
6. Making available alternate forms of written examinations, Agency written program and training materials, policies, laws, rules, and regulations.
7. Providing qualified readers and interpreters.
8. Reassignment. This type of reasonable accommodation is a last resort accommodation provided to an employee who, because of a disability, can no longer perform the essential functions of their current position, with or without reasonable accommodation, unless the Department can show that it would be an undue hardship. The reassignment accommodation will be based on positions the employee qualifies for at the same or lower grade, if necessary.
 - a. Unless doing so would constitute an undue hardship, the Agency must reassign the individual to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position. If there is no vacant equivalent position, the Agency must reassign the employee to a vacant lower-level position for which the individual is qualified.
 - b. If there is no vacant funded position for which the employee qualifies, the Agency may consider a medical inability removal.

D. Process for Requesting a Reasonable Accommodation

1. Request for Reasonable Accommodation. The process for requesting a reasonable accommodation may be initiated by an employee, a representative of the employee, the employee's supervisor, or other Agency official. The request for the reasonable accommodation will be processed within 30 business days from the date of the written or oral request, absent any mitigating circumstances allowed under the law or unless otherwise agreed upon by the employee and the Agency. If the proposed accommodation or an acceptable counterproposal does not require expenditures of Agency funds outside the control of the supervisor, the process should be concluded with the agreement between the employee and the supervisor.
2. Interactive Process. The employee and supervisor shall engage in an interactive process to propose and determine an appropriate accommodation. This process should identify the precise workplace limitations resulting from the disability and

potential reasonable accommodations that could overcome those limitations. It should provide the employee's supervisors with an opportunity to discuss how the proposed accommodation might affect other employees' performance and other aspects of Agency operations. It is the Agency's and Union's objective that the entire reasonable accommodation process be resolved, to the extent possible, between the employee and supervisor to preserve privacy and confidentiality and to resolve matters in the most expeditious, informal means possible.

3. The process to consider a reasonable accommodation request should begin immediately upon the receipt by the receiving official or the Office of Equity, Diversity, and Inclusion's Accommodation Consultant (EDIs AC) of an oral or written request by the individual asking for the accommodation or their representative with a response due to the employee within seven (7) days of receipt. If the decision maker renders a "recommended denial" determination, the denial must include an explanation for the denial in plain language, clearly stating the specific reasons for the denial. Where the decision maker has denied a specific requested accommodation but has offered to make a different one in its place which was not agreed to during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the decision maker believes that the recommended accommodation will be effective.
4. If an individual wishes reconsideration, they should first ask the decision maker to reconsider the decision. The decision maker will respond to the request for reconsideration within five (5) business days. If the decision maker does not reverse the decision, the individual can ask the second line supervisor for reconsideration. The second line supervisor shall respond to this request within seven (7) business days.
 - a. If medical information is needed, the receiving official, second line supervisor, or AC will explain to the individual seeking the accommodation, in specific terms, why the need for information or if the provided information is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.
 - b. Upon reviewing and ensuring that the employee's position description is accurate, the manager or supervisor will provide the employee with a copy of their position description and a list of any supplemental essential job functions. The manager may also provide a copy of the employee's performance standards, when needed.
 - c. Documentation from the employee is not necessary when both the disability and the need for reasonable accommodation are obvious or when the individual has already provided sufficient information to substantiate that the employee has a disability and needs the requested reasonable

accommodation. The employee's supervisor may forego requesting documentation of the employee's disability and/or need for an accommodation if the disability is known to the supervisor and the supervisor believes the accommodation is reasonable and necessary.

- d. When requested, the employee shall provide a written justification regarding the employee's medical condition from a health care provider or other credible source, including but not limited to a licensed professional social worker, rehabilitation counselor, representative of a benefits agency such as Social Security or similar agency, or other credible source. The employee may self-certify that the accommodation is necessary when the employee's disability is obvious or known to the Agency. The justification will include an explanation of how the accommodation will permit the employee to perform essential functions, as well as the duration of the necessary accommodation.
 - e. If after submission of the information, the Agency believes that it is insufficient, they shall provide to the employee, in writing, the reason and allow the employee an opportunity to provide the missing information within 15 days. Examples include medical documentation is inadequate to establish that the individual has a disability and/or the proposed reasonable accommodation meets the needs of the individual. Should the employee fail to produce documentation the process will be discontinued.
 - f. When the justification resubmitted to the Agency is insufficient, at its option, the Agency may do any of the following: i. offer a medical examination and/or review (including a psychiatric evaluation), at the agency's expense (Management will grant the employee a reasonable amount of administrative leave to attend an agency offered examination); ii. allow the employee to provide additional medical documentation to the Agency; iii. allow the employee to provide the additional medical documentation in a sealed envelope directly to Office of Human Resources or the Occupational Medical Service (OMS) or allow the employee's physician to provide the medical documentation directly to the Office of Human Resources or OMS.
5. Denial. Any disapproval of a reasonable accommodation must be made in writing in plain language providing the detailed reasons for denial of the accommodation, if alternate accommodations were considered and what was considered.
 6. Appellate Rights. If an employee's request for reasonable accommodation is denied or the decision maker does not reverse the decision in the reconsideration process, the employee has a right to file an EEO complaint. The employee may elect alternatively to appeal the denial through the Grievance process; however, they may only choose one process.

E. Previously Approved Accommodation

Once a permanent disability has been established it will not be subject to further medical documentation or revocation. However, when an employee requests a new or additional reasonable accommodation based on changing or expanding needs associated with an existing medical condition, only the new or additional needs shall be subject to review and evaluation.

F. Training

The Agency shall provide training to all Agency employees on Reasonable Accommodation. The training may be conducted via various methods including interactive and distance learning.

G. Changes to Law

When the law on reasonable accommodations changes, the Agency shall revise its reasonable accommodation policies accordingly. Where there is a conflict with this Agreement and the Agency policies on Reasonable Accommodation, this Agreement will prevail.

H. Availability of Information on Agency Website

Any Reasonable Accommodation policy adopted by the Agency, as well as information on how to request a Reasonable Accommodation, will be posted on the Agency website.

Section 6. Privacy

All medical records shall be considered sensitive and will be maintained and used in accordance with the applicable provisions of 5 CFR 339.

Article 48. Employee Investigations and Interviews

A. When an employee is interviewed, they will be informed of the general nature of the matter being investigated and whether or not the interview is related to possible administrative action and/or criminal misconduct by them.

B. Weingarten Rights

Bargaining Unit employees have the right to a Union Representative during any examination, interview, and/or investigation by a representative of the Employer if the employee reasonably believes that it may result in disciplinary action against the employee. To invoke this right the employee must request representation.

C. Kalkines Rights

In an interview involving possible misconduct or criminal matters, where prosecution has been declined by appropriate authority, an employee will be required to answer questions only after the Employer representative has clearly indicated to the employee that the information will only be used in an administrative action. The Employer representative shall inform the employee that his statements, concerning the allegations during the interview, cannot and will not be used against him in a subsequent criminal proceeding, except for possible perjury charges for any false answers given during the interview. After the employee has been advised of the above under this paragraph, the employee must answer all questions put to him regarding any matter which has a reasonable relationship to matters of official interest. The employee must further be advised that failure to cooperate may be grounds for disciplinary action up to removal from the Service.

Article 49. Family Leave

Section 1

- A. In the event the law expands and/or provides additional rights, benefits or privileges related to the Family Medical Leave Act (FMLA), Paid Parental Leave (PPL), or sick leave for family care and bereavement, all such rights and privileges are hereby incorporated into this agreement.
- B. Requests for leave under this Article must specify if the leave requested is FMLA, PPL, or Sick Leave for Family Care and Bereavement and will be in writing in advance when possible. Use of the electronic timekeeping system is an acceptable method or written request.

Section 2. Family and Medical Leave Act of 1993.

- A. Pursuant to the Family and Medical Leave Act (FMLA) and its implementing regulations, an eligible employee who has completed at least twelve (12) months of service as an employee shall be entitled to a total of twelve (12) administrative work weeks of leave without pay (LWOP) during any twelve-month (12) period for one or more of the following reasons:
 - 1. The birth of a son or daughter of the employee and the care of such son or daughter;
 - 2. The placement of a son or daughter with the employee for adoption or foster care;
 - 3. The care of a spouse, son, daughter, or parent of the employee who has a serious health condition; or
 - 4. A serious health condition of the employee that makes the employee unable to perform the essential functions of their position.
- B. If leave taken under this Act is foreseeable based on an expected birth, placement for adoption or foster care or planned medical treatment, the employee shall provide notice to Management of their intention to take leave not less than thirty (30) days before the date the leave is to begin. If the date of the circumstances requires leave to begin within thirty (30) days, the employee shall provide such notice as is practicable.
- C. An employee can substitute accrued annual or sick leave, consistent with current laws and regulation, for any part or all of the twelve-week (12) unpaid leave entitlement.
- D. If the need for leave taken under this Act is foreseeable based on planned medical treatment, the employee shall consult with Management and make a reasonable effort to schedule medical treatment so as not to unduly cause disruption to the operations of the unit, subject to the approval of the health care provider.

- E. An employee may be required to provide acceptable medical documentation as provided by the law.
- F. An employee who takes FMLA leave is entitled to continue their health benefits coverage. An employee may pay the employee share of the premiums on a current basis or pay upon their return to work.
- G. An employee who takes FMLA leave is entitled to be returned to the same or equivalent position, with equivalent benefits, pay status, and other terms and conditions of employment.

Section 3. Paid Parental Leave

- A. The Federal Employee Paid Leave Act (FEPLA) is effective Oct. 1, 2020, and allows the substitution of up to 12 weeks of paid parental leave (PPL) for FMLA unpaid leave granted in connection with the birth of an employee's son or daughter or the placement of a son or daughter with an employee for adoption or foster care. An employee must invoke FMLA unpaid leave in order to receive PPL.
- B. In order to receive PPL, an employee must have:
 - 1. Completed at least 12 months of covered service at any time in the past, including certain periods of active duty in the uniformed services performed by members of the National Guard or Reserves;
 - 2. A part-time or full-time work schedule (i.e., employees with an intermittent work schedule are ineligible); and
 - 3. An appointment of more than 1 year in duration (i.e., employees with temporary appointments not to exceed 1 year are ineligible.)
- C. By law, paid parental leave is available to eligible employees only in connection with the birth or placement of a son or daughter that occurs on or after October 1, 2020, and is not effective with respect to any birth or placement (for adoption or foster care) occurring before October 1, 2020.
- D. Paid Parental Leave may be used no later than the end of the 12-month period beginning on the date of the birth or placement involved. At the end of that 12-month period, any unused balance of PPL granted in connection with the given birth or placement permanently expires and is not available for future use. PPL may be used intermittently within this established 12-month timeframe.
- E. In order to receive PPL, employees must:
 - 1. Provide advance notice to their supervisor, in writing, of intent to invoke PPL by substituting paid leave for FMLA unpaid leave using the PPL Request Form.
 - 2. Provide the agency, upon request, with the appropriate documentation, verifying that his/her use of PPL is directly connected to a birth or placement that has occurred.

3. Sign the service agreement to work for 12 weeks after the day on which the PPL concludes.

Section 4. Sick Leave for Family Care and Bereavement [formerly known as Federal Employees Family Friendly Leave Act (FEFFLA)]

- A. In accordance with law, rule, and regulation, employees are entitled to use sick leave in order to:
 1. Provide care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth;
 2. Attend to a family member receiving mental, dental, or optical examination or treatment;
 3. Make arrangements necessitated by the death of a family member or attend the funeral of a family member; and
 4. Provide care for a family member who would, as determined by the health authorities having jurisdiction or a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease.
- B. A full-time employee may be granted up to 104 hours (13 days) of accrued sick leave each leave year for the purposes outlined above. The amount of sick leave for these purposes to which a part-time employee is entitled shall be pro-rated in accordance with 5 CFR 630.401.
- C. For the purposes identified under A. above, a family member is defined as:
 1. Spouse, and parents thereof;
 2. Sons and daughters, and spouses thereof;
 3. Parents, and spouses thereof;
 4. Brothers and sisters, and spouses thereof;
 5. Grandparents and grandchildren, and spouses thereof;
 6. Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and
 7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- D. An employee may be required to provide medical certification in accordance with law, rule, and regulation.

Section 5. Sick Leave to Care for a Family Member with a Serious Health Condition

- A. An employee is entitled to a total of 12 weeks (480 hours) of sick leave each leave year to care for a family member with a serious health condition, which includes 13 days (104 hours) of sick leave for general family care or bereavement purposes. If the employee previously has used any portion of the 13 days of sick leave for

general family care or bereavement purposes in a leave year, that amount must be subtracted from the 12-week entitlement. If an employee has already used 12 weeks of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 13 days in the same leave year for general family care purposes. An employee is entitled to no more than a combined total of 12 weeks of sick leave each leave year for all family care purposes.

- B. In accordance with OPM regulations, an agency may grant sick leave only when supported by administratively acceptable evidence. An employee must provide administratively acceptable evidence or medical certification within 15 days of the agency's request. If the employee is unable to provide evidence, despite the employee's diligent, good faith efforts, he or she must provide it within a reasonable period of time, but no later than 30 calendar days after the agency makes the request. If the employee fails to provide the required evidence within the specified time period, he or she is not entitled to sick leave.

Article 50. Merit Promotion Plan

Section 1. General

- A. The purposes and intent of this Article are to ensure that employees are given full and fair consideration for advancement and to ensure selection from among the best qualified candidates.
- B. This Article is applicable to all personnel actions filling competitive positions in the Local 2419 bargaining unit subject to the categories of exceptions stated in Section 3 of this Article.
- C. This Article shall be interpreted in accordance with OPM regulations. Nothing in this Article shall in any way abridge the rights of the individual employee under such regulations, specifically, the employee's right to file a complaint.
- D. The Agency and Local 2419 agree to fill positions in the bargaining unit on the basis of merit in accordance with systematic and equitable procedures adopted for this purpose. As a general rule, depending on the requirements of the job to be filled and on the number of highly qualified candidates within the Agency, positions will be filled from within the NIH.
- E. It is further agreed that this Article must be administered in such a way as to develop maximum possible employee confidence and to achieve the purposes of this Article as simply and efficiently as possible.

Section 2. Definitions

- A. Area of Consideration: The area, organization, or group of organizations in which a search is made for eligible applicants to fill vacancies covered by this plan. The area of consideration must be sufficiently broad to ensure the availability of high-quality applicants, taking into account the nature and level of the positions to be covered.
- B. Basically Qualified: An applicant being considered for any placement action who meets all established minimum qualification requirements (as prescribed in the Office of Personnel Management (OPM) Operating Manual – Qualification Standards for General Schedule Positions or an OPM-approved agency-specific qualification standard including appropriate selective factor(s) for the position being filled.
- C. Best Qualified: Those applicants who are superior in the evaluation criteria. It is the primary grouping of individuals referred to selecting officials.
- D. Career Ladder - The range of grades in an occupational series or specialization starting with the lowest level at which an employee can be hired, up to and including the full performance level of the position.

- E. Career Transition Assistance Program (CTAP): A program designed by the agency to actively assist its surplus and displaced employees by providing selection priority for competitive service vacancies.
- F. Evaluation Criteria: The knowledge, skills, and abilities (KSAs) and/or other characteristics needed for successful performance in the position to be filled. These criteria are used to determine the best qualified applicants for the position. The KSAs and/or other characteristics are derived from an analysis of the position and must be documented as part of the job analysis process.
- G. Full-Performance Level - The grade level in an occupational career ladder to which the employee has noncompetitive promotion potential based on satisfactory ability to perform at that level.
- H. Interagency Career Transition Assistance Program (ICTAP): ICTAP is a process by which employees who have been involuntarily separated may receive selection priority for jobs in agencies other than the one in which they were previously employed.
- I. Job Analysis: A systematic method for gathering, documenting and analyzing information about the content, context and requirements of the job. It demonstrates that there is a clear relationship between the tasks performed on the job and the competencies/KSAs required to perform the tasks.
- J. Priority Consideration (PCP) or Priority Placement (PPP): program designed to provide priority consideration or placement of employees adversely affected by actions such as:
 - 1. administrative/procedural errors where an applicant fails to receive proper consideration for a merit promotion vacancy announcement;
 - 2. Reduction-in-Force, realignments;
 - 3. position classification decisions; and
 - 4. transfer of function.
- K. Selective Factor: A job-related knowledge, skill, and/or ability that is required for satisfactory performance in a particular position. A selective factor, sometimes referred to as a selective placement factor, is in addition to the basic OPM qualification standard for a position and is therefore part of the minimum qualification requirements that applicants for the position must meet to be minimally qualified. Selective factors cannot be so narrow that they preclude from consideration applicants who could perform the duties of the position.
- L. Trainee Position - A trainee position is one involving a well - defined training program (which includes both on-the-job and classroom training) of a definite duration, and the performance of assigned tasks on a rotating or non-rotating basis under close guidance and instruction with promotion scheduled upon satisfactory

completion of the training period.

Section 3. Exceptions to Merit Promotion.

- A. Competitive merit staffing procedures apply to all personnel actions to fill positions in the competitive service in the bargaining unit. However, competitive procedures do not apply to the following actions:
1. A promotion resulting from an upgrading of a position, without significant change in the duties and responsibilities, due to issuance of a new classification standard or the correction of an initial classification error;
 2. A position change permitted by reduction-in-force regulations (see 5 C.F.R. Part 351);
 3. A promotion when at an earlier stage an employee was selected under competitive promotion procedures for a position below the full performance level. It is important to note that the promotion potential position must be documented and recorded on the OF-8, SF-50, and vacancy announcement. (See Records Retention and Disposal Section);
 4. A promotion following non-competitive conversion of a Pathways Program employee, Veteran's Readjustment appointee, Presidential Management Fellow, or under another authorized program;
 5. A promotion from a trainee position when the employee was selected for the target position under competitive procedures;
 6. A temporary promotion or detail to a higher grade of 120 calendar days or less; all details to higher grade positions and temporary promotions, to same position, held during the preceding 12 month period are counted in the calculation of the 120 calendar day total;
 7. A promotion to a grade previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement) from which an employee was neither separated nor demoted for performance or conduct reasons;
 8. A promotion, reassignment, change to lower grade, transfer, reinstatement, or detail from one position to another having no higher promotion potential than that of the position the employee currently holds or previously held on a permanent basis in the competitive service and did not lose for performance or conduct reasons;
 9. A promotion of an applicant not given proper consideration in a competitive promotion action;
 10. A promotion as a result of a negotiated settlement of a complaint (e.g., Equal Employment Opportunity (EEO) complaint or administrative grievance);
 11. A promotion based on accretion of duties (this is a non-competitive action that must be supported by a desk audit).

Section 4. Locating Candidates

- A. Area of Consideration: The area of consideration for positions within the bargaining

unit, at a minimum, will be Agency-wide.

- B. Extending the Search: The minimum area of consideration will be extended to the extent practicable, when the minimum area is unlikely to or fails to produce any highly qualified candidates and further advertising is likely to produce additional highly qualified candidates.
- C. All bargaining unit positions will be posted on USAJobs and the internal NIH website. Vacancy announcements within a bargaining unit section will be emailed to staff within that bargaining unit. Vacancy announcements will be posted, while open, on bulletin boards where notices to employees are normally posted.

Section 5. Vacancy Announcements

- A. When vacancy announcements are open to NIH-wide applicants only, the vacancy announcement shall be open for a minimum of 10 calendar days. When vacancy announcements are open government-wide, the vacancy announcement shall be open based on the determinations and need of the agency and/or OPM requirements.
- B. A vacancy announcement shall be used in advertising and shall include the following information about the position to be filled:
 - 1. Announcement number, opening and closing dates, and organization and geographic location of position;
 - 2. Area of consideration;
 - 3. Cut-off dates if the position is advertised "open continuous";
 - 4. Point of contact for vacancy, including mailing address, e-mail address and telephone number;
 - 5. Number of positions available or stating "Few" or "Many" if the exact number is not known at the time of posting;
 - 6. Position title/series/grade, pay scale, and salary range, including promotion potential and full performance level of the position;
 - 7. Work schedule; if part-time, must include hours per week;
 - 8. A summary of the duties of the position;
 - 9. Complete minimum qualification requirements including selective factors (if applicable), applicable educational requirements, and any other factors that must be met in order to qualify for the position;
 - 10. A statement that indicates that qualification requirements must be met within 30 calendar days of the closing date of the vacancy announcement;
 - 11. For positions that have a minimum education requirement or allow applicants to meet minimum qualifications based on their education, a statement indicating what documents are required at the time of application and at appointment (if selected);
 - 12. A description/definition of specialized or qualifying experience;
 - 13. Whether or not relocation expenses are available;

14. Statement indicating that additional vacancies may be filled if they arise;
15. Statement indicating that applicant information may be shared with additional areas of the organization if additional vacancies arise;
16. Statement that the selectee may serve an initial probationary period, unless exempt based on previous completion of such probation or service prior to the effective date of the probationary period requirement;
17. Evaluation method(s) to be used;
18. Supporting documentation receipt requirements;
19. Whether the position is in a bargaining unit;
20. If the position requires medical qualifications, a statement addressing this must be included (e.g., Pre-employment medical screening may be required.)
21. If the position requires physical requirements, a statement addressing this must be included (e.g., Position may require a physical evaluation).
22. Any other conditions of employment, such as: shift work, frequent travel, physical exam, etc.;
23. When applicable, Veterans' Employment Opportunities Act (VEOA) information, including documentation required for proof of eligibility and deadlines for submitting required documentation;
24. CTAP and ICTAP (if applicable) information, including documents required for proof of CTAP/ICTAP eligibility, and deadlines for submitting required documentation, and the definition of "well qualified;"
25. Privacy Act notice;
26. EEO statement;
27. Ethics statement;
28. Reasonable accommodation statement;
29. Background investigation or security clearance statement; and
30. Selective Service statement.

Section 6. Determining Basic Eligibility

- A. Each employee who submitted an application shall be given notice in writing by the appropriate personnel office as to their eligibility for the position, and whether or not their application was referred to the selecting official. Applicants may request reconsideration of their referral determination with the HR Specialist noted in the vacancy announcement.
- B. Any selective factor(s) required in addition to mandatory Office of Personnel Management (OPM) standards must be approved by the appropriate personnel office and be included in the announcement. Such additional requirements must be essential to the proper performance of the duties of the position and shall be documented. No candidate may be eliminated from consideration on the basis of an additional standard not specified in the announcement or listing.
- C. All candidates shall be rated against the same standards without prejudicial regard to race, color, religion, sex, national origin, politics, marital status, non-disqualifying handicap; age, or membership or non-membership in an employee organization.

Physical condition will be a factor in determining eligibility only as specified in Subsection B. above.

- D. An employee's present position, grade, and/or job title, per se, shall not be cause for disqualification from any vacancy in a higher-level position in a different series if the employee otherwise meets the requirements for such vacancy.

Section 7. Referral of Candidates

- A. A. Candidates will be evaluated by HR for minimum qualifications in accordance with OPM regulations. Application, resume, and other required forms as noted on the vacancy announcement will be used for this purpose.
- B. In addition, applicants must meet any selective and/or other factors identified in the announcement as being essential to establish basic eligibility for consideration. Applicants will be considered basically qualified if they will meet all of the requirements within thirty (30) calendar days after the closing date of the vacancy announcement, with the exception of U.S. citizenship requirements, which must be met by the closing date.
- C. Employees and Outside Candidates. Evaluation of all candidates, both employees and outsiders, will be based on a review of each individual's total background to determine the extent to which each meets the following criteria:
 - 1. The best combination of education and experience required for the specific job to be filled; and
 - 2. Past and present job performance as related to the requirements of the job to be filled.
- D. All applicants who meet minimum qualifications will be referred to the selecting official and will be placed on the merit promotion certificate in alphabetical order.

Section 7. Certification and Selection

- A. Interview - Interview arrangements are coordinated by the selecting official or someone acting on their behalf. Interviews may be accomplished either in person, telephonically or virtually, although in person is preferable. Current bargaining unit employees referred to the selecting officials will be interviewed.
- B. To further ensure fairness and equity in the hiring process, managers are encouraged to develop standard questions for each vacancy. Follow up questions may be asked. Notes made during the interview process must be maintained by the selecting official for 3 years. (See Records Retention and Disposal Section).
- C. Selecting officials and/or OHR staff may receive requests for reasonable

accommodation for the interview process from applicants with disabilities. Requests for reasonable accommodations should be responded to quickly and effectively. The NIH Disability Employment Program Manager, EDI, may be contacted to assist with these provisions.

- D. Selection - The selecting official is entitled to make their selection from the candidates on the certificate. Each applicant referred must be given full consideration, and the selection must be based on job-related reasons. Unless circumstances prevent the filling of the vacancy, the selecting official is expected to make their selection within a reasonable time following receipt of the certificate, and completion of interviews.
- E. Validity of Certificates - Merit promotion certificates are valid for ninety (90) days. If a selectee declines or vacates the position within ninety (90) calendar days of the issuance of the certificate, the list of eligibles may be used again. Additional selections may be made from a properly issued promotion certificate within ninety (90) calendar days of the date the certificate was issued, provided the position(s) to be filled have the same title, series, grade and are in the same geographic location as the position originally announced; and the qualifications requirements are the same.
- F. Actions under a merit promotion plan, whether in identification, qualification, evaluation, or selection of candidates or any other phase of the promotion process, shall be made without regard to political, religious, or labor organization affiliation, or non-affiliation, marital status, race, color, sex, sexual orientation, national origin, disability, or age, and shall not be based on any criteria that are not job related, including favoritism based on personal relationship, patronage, or nepotism.

Section 9. Career Ladder Promotion Process

- A. After having entered a career ladder, an employee may advance in grade up to the full performance level without further competition.
- B. Employee must meet the time in grade requirement of 52 weeks in order to advance to the next grade.
- C. Promotions are dependent upon the employee's performance rating being at least fully successful, his/her ability to perform the duties at a higher level. Management bears the burden of supporting their decision if they deny a career ladder promotion.
- D. If an Employee has met the promotion criteria in this section, the Agency will certify the promotion which will be effective at the beginning of the first pay period after the requirements are met.

Section 10. Priority Consideration

- A. If, due to an administrative/procedural error, an applicant fails to receive proper consideration for a merit promotion vacancy announcement, the following procedures will take place:
1. If the affected certificate(s) is still active and a selection has not been made, the selecting official is notified immediately and the certificate is amended to include the applicant; or
 2. If the affected certificate(s) has expired and no selection was made, the individual is not entitled to receive priority consideration; or
 3. If a selection has already been made from the affected certificate(s), the individual must receive priority consideration for the next appropriate vacancy announcement in the same series, grade, promotion potential, and geographic location open within NIH. In order to ensure the applicant receives priority consideration, the individual will be placed in the Priority Consideration Program (PCP) listing housed in the HREPS database and will be notified periodically so long as they are entitled to priority consideration rights. The individual eligible for priority consideration must be considered by the selecting official(s) before other applicants are ranked or referred for selection.
 4. If an individual is referred as a priority consideration eligible and another applicant is selected for the position, the individual is no longer entitled to priority consideration. As long as no selections are made, the individual continues to be eligible for priority consideration for merit promotion vacancies. Documentation of consideration by the selecting official and reasons for any nonselection must be maintained as part of the vacancy case file.

Section 11. Selection of CTAP and ICTAP Eligibles

Selection priority is to be given to eligibles under the Career Transition Assistance Plan (CTAP) and Interagency Career Transition Assistance Plan (ICTAP) placement programs. This means that a CTAP eligible employee must be selected over any other candidate for vacancies within the local commuting area. An ICTAP eligible must be selected over any other candidate outside of HHS for vacancies within the local commuting area except as noted in 5 C.F.R. 330.705(c).

Section 12. Review of Merit Promotion Actions

- A. If a vacancy cannot be filled for any reason, once a list of candidates has been certified for the vacancy, the agency will give an employee who has made inquiry under this Section or their designated representative the reason why the position cannot now be filled.
- B. A Merit Promotion Plan vacancy announcement shall not be canceled for the purpose of avoiding conformance with the merit promotion plan or this Agreement.

C. Upon request, the HR Office will advise Local 2419 of the official with authority for a specific personnel action.

Article 51. Travel

Section 1. General

- A. Employees shall be reimbursed for travel on official business in accordance with law, rule or government wide regulation, and this Agreement in the maximum amounts permissible.
- B. The parties agree that any changes in rates or reimbursement to Federal employees by law or regulation during the life of this Agreement are hereby made part of this Agreement.

Section 2. Duty Stations

- A. For the purposes of this Article, a “regular duty station” is defined as the specific work location (e.g., geographic location.) to which an employee is assigned permanently or as part of a predetermined rotational schedule. Repeated travel to another specific work location (either within or outside an agency, etc.) will be treated as travel to a temporary duty station.
- B. For the purpose of this Article a “temporary duty station” is defined as any job site which is not the employee’s regular duty station. The parties agree that the definition of temporary duty station is applicable for determinations of mileage and other related travel expenses subject to reimbursement (excluding per diem) in accordance with existing Federal travel regulations.

Section 3. Travel Status

- A. To the maximum extent practicable, the Employer shall schedule the time to be spent by an employee in a travel status away from their regular duty station within the regularly scheduled work week of the employee. When travel is required outside the regularly scheduled work week, the official involved shall furnish the employee, upon request, written reasons for their decision.
- B. Time spent in a travel status away from the regular duty station of an employee is not hours of employment for pay purposes unless:
 - The time spent is within the days and hours of the regularly scheduled administrative work week of the employee, including regularly scheduled overtime hours; or
 - The travel:
 - a. Involves the performance of work while traveling;
 - b. Is carried out under arduous conditions;

- c. Is incidental to travel that involves the performance of work while traveling; or
- d. Results from an event which could not be controlled administratively.

Section 4. Local Travel

- A. After an employee places him/himself at his/her regular duty station, the cost to the employee of any local travel required for official purposes during regular hours of work or on overtime shall be reimbursed by the Employer. In this regard, once an employee arrives at his/her regular duty stations, he/she will receive full mileage reimbursement for any subsequent travel to any temporary duty station.
- B. When an employee travels from his/her residence to a temporary duty station and or from a temporary duty station to their home, the employee will be reimbursed for any mileage in excess of their normal round trip from their home to their regular duty station.
- C. When an employee travels from their residence to their regular duty station, then travels from their regular duty station to a temporary duty station, then travels from the temporary duty station back to their home, the employee shall be reimbursed for the distance between the two (2) duty stations. If the distance between the employee's final temporary duty stations and their home exceeds the distance between the employee's regular duty station and their home, the employee shall be reimbursed for the excess expense.
- D. The provisions above do not apply to, or cover established rotational assignments through different duty stations. The site of each rotational duty assignment shall be the employee's regular duty station for the duration of the employee's rotational assignment at that specific jobsite.
- E. The local travel reimbursement policies set forth in this section apply to overtime assignments as well as assignments during regular work hours.

Section 5. Per Diem

- A. Employees shall be eligible for per diem or actual subsistence allowance only when they travel to an assignment outside the local commuting area.
- B. Employees traveling outside the local commuting area for a period of more than twelve (12) hours without incurring lodging costs are entitled to partial per diem.
- C. The following are included in per diem reimbursement:
 - 1. Lodging – The term "lodging" includes expenses, except lodging taxes, for overnight sleeping facilities; baths; personal use of the room during daytime; telephone access fees; and service charges for fans, air conditioners, heaters, and fireplaces furnished in rooms when such charges are not included in the

room rate. Lodging does not include accommodations on airplanes, trains, buses, or ships. Such cost is included in the transportation cost and is not considered a lodging expense.

- a. Exception: lodging taxes have *not* been removed from the foreign per diem rates. Therefore, separate claims for these taxes will not be allowed.
2. Meals – Expenses for breakfast, lunch, and dinner and related tips and taxes (specifically excluded are alcoholic beverage and entertainment expenses, and any expenses incurred for other persons).
 3. Incidental expenses:
 - a. Fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards, or stewardesses and others on ships, and hotel servants in foreign countries.
 - b. Transportation between places of lodging or business and places where meals are taken if suitable meals can be obtained at the TDY site.
 - c. Mailing costs associated with filing Travel Voucher claims and payment of Government-sponsored charge card billings. (FTR 301-12.1)

Section 6. Privately Owned Vehicles

- A. When use of one privately owned vehicle is made by two (2) or more employees on official business, mileage reimbursement will be made to the owner of the vehicle.
- B. When travel on official business could be performed by two (2) or more employees riding in one privately owned vehicle, and the employees elect to travel in separate automobiles, mileage reimbursement will be made only to one (1) employee. Management will determine which driver will be reimbursed.
- C. When joint use of one (1) privately owned vehicle would be impracticable or cause unreasonable personal hardship, each traveler shall submit a written justification for the use of more than one (1) separate automobile. The Employer shall approve mileage reimbursement for separate vehicles when such justifications and requests are in accord with applicable law and regulation and this Agreement.

Section 7. Return to Regular Duty Station

- A. In the case of a voluntary return of a traveler to their regular duty station (or their place of residence from which he regularly commutes to their regular duty station), the employee will be reimbursed for the cost of the round-trip home and back to their temporary duty station or the cost of per diem if he had remained at this temporary duty station, whichever is the lesser.

- B. If an employee elects to remain at the site of their temporary duty assignment rather than return to their regular duty station for non-workdays, the employee will be reimbursed for the cost of the round-trip home and back to their temporary duty station or the cost of per diem he incurs by remaining at their temporary duty station, whichever is the lesser.

Section 8. Selection of Lodging

- A. When the Employer makes lodging available for an employee on official travel, the employee will have the option of remaining in the Employer-provided lodging or of securing other lodging.
- B. If the employee elects to secure their own lodging, the Employer will reimburse the employee for the cost of the lodging provided by the Employer or the cost of the lodging secured by the employee, whichever is lesser.
- C. Where lodging is provided by the Employer and remaining at the place of lodging is integrally related to, and necessary for, the accomplishment of the purposes for the official travel the employee may not exercise the option provided in Subsection B above.
- D. Where necessary for business related reasons, the Employer can require that employee stay at the Employer selected lodging.

Section 9. Public Transportation

- A. An employee who regularly utilizes public ground transportation in the performance of official duties shall be reimbursed for the cost thereof upon submission of the appropriate expense voucher and in accordance with appropriate government wide regulations. In the alternative, and where practicable, the Employer may issue bus tokens, fare cards, taxi fare books or other bulk vouchers.
- B. The type of public ground transportation which may be used on a particular occasion shall be determined by the Employer.
- C. If the employee elects to use a different but equally efficient type of public ground transportation, the employee will be reimbursed for the lesser amount of the cost of the ground transportation determined by the Employer or the employee selected ground transportation.

Section 10. Travel Advances

- A. Upon timely application, the Employer will take all reasonable steps, consistent with current policies and procedures, to provide travel advances to employees prior to the date of departure on official travel.

- B. In cases of emergency job related travel, the Employer will take all reasonable steps to provide travel advances to employees in accordance with Federal Travel regulations.

Section 11. Official Time for Travel

- A. As permitted by law and in accordance with Article 6 this agreement, Union representatives may use Official Time to travel for representational purposes, including but not limited to, travel to and from Union sponsored training or other training reasonably related to representational functions.
- B. When traveling on Official Time for representational purposes, Union Officials are not required to request travel authorizations or submit documentation through the NIH travel system, unless the Union Official is requesting reimbursement for travel expenses.

Article 52. Equal Employment Opportunity (EEO) and Anti-Harassment

Section 1. Statement of Purpose

- A. The Agency and Local 2419 recognize that the mere declaration not to discriminate in employment is not enough to ensure equality of opportunity. Therefore, the Parties agree that positive steps must be taken to provide equality of opportunity for all employees and to prohibit any discrimination because of race, color, sex, sexual orientation, national origin, religion, age, marital status, political affiliation, disability, or status as a veteran.
- B. The Agency and Local 2419 agree to cooperate in providing equal opportunity for employment and promotion to all qualified persons, to cooperate in ending discrimination, and to promote the full realization of equal employment opportunity through a positive and continuing effort.
- C. The Agency and Local 2419 agree to creating an environment where people feel welcome, respected, and valued and where all individuals can contribute to their fullest potential. In alignment with this, the NIH is committed to creating and maintaining a work environment that is free of harassment and other inappropriate conduct. Harassment, bullying, intimidation, threats, or other disruptive behaviors run counter to NIH mission and goals. NIH is committed to holding all community members accountable for such behaviors by enacting timely and appropriate action regardless of position or status.

Section 2. Management Commitment

- A. The Parties agree to work cooperatively to design and implement programs designed to achieve the fullest utilization of employee skills and potential on an equal basis. In this regard, such programs should be designed and implemented according to law and applicable higher-level regulations.
- B. The Agency is committed to providing a workplace free of a “glass ceiling” in the National Institutes of Health. A “glass ceiling” is defined as those barriers based on attitudinal or organizational bias that prevent qualified individuals from advancing upward in their organization into management –level positions. The Agency agrees to work to identify and ultimately eliminate any such workplace barriers which may exist at the National Institutes of Health.
- C. The Agency will assure the equality of opportunity in accordance with the law for current personnel and agrees that the application of equal employment principles and practices will include taking appropriate steps to assure equality for present employees. In addition, the Agency shall conduct a continuing program for recruitment of minority group members, disabled persons, and women for positions in the Department to carry out the policy of eliminating under representation. The Agencies will direct special efforts at recruiting in minority group communities; in

women's organizations; in educational institutions with significant representation of women and minorities; and from other sources from which members of minority groups and women can be recruited.

- D. The Agency agrees to provide the maximum opportunity within available resources and consistent with the Agency needs for employees to enhance their skills. The Agency will advise employees of programs and opportunities in a non-discriminatory manner.

Section 3. Harassment

- A. Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy, gender identity, transgender status, and sexual orientation), national origin, age (40 or older), disability, equal pay/compensation, or genetic information (including family medical history). Harassment is a form of employment discrimination prohibited by Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), the Rehabilitation Act of 1973 (as amended), and ADA Amendments Act of 2008 ADAAA. 42 U.S.C. ch 126 12101 et seq. Harassment becomes unlawful when:
1. enduring the offensive conduct becomes a condition of continued employment; or
 2. the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
- B. **Forms of Harassment:** The following are examples of inappropriate conduct that may meet the definition of harassment if an incident is severe or pervasive.
1. **Sexual Harassment/Harassment based on sex (including pregnancy, gender identity, transgender status, and sexual orientation).** Examples include, but are not limited to:
 - a. Unwelcome sexual advances
 - b. Requests for sexual favors
 - c. Making repeated attempts to establish an unwanted relationship
 - d. Making offensive comments or asking questions about someone's sexual history, orientation, or gender identity
 - e. Intentionally misusing a person's name or pronouns
 - f. Sharing sexually inappropriate images or videos, such as pornography, with others in the workplace
 - g. Sending suggestive letters, notes, texts, or emails or displaying inappropriate sexual images in the workplace
 - h. Telling lewd jokes or sharing sexual anecdotes
 - i. Making inappropriate sexual gestures
 - j. Staring in a sexually suggestive or offensive manner or inappropriate whistling

- k. Making sexual comments about appearance, clothing, or body parts
 - l. Inappropriate touching, including pinching, patting, rubbing, or purposefully brushing up against another person.
2. **Harassment based on race, ethnicity, color, and/or national origin.** Examples include, but are not limited to:
- a. Making derogatory epithets, slurs, remarks, stereotypes, labels, jokes, or innuendos related to a person's race, ethnicity, culture, or national origin
 - b. Making comments, jokes, teasing someone about a person's dress, personal appearance, hairstyle, speech, or other practices that are related to their race, ethnicity, culture, and/or national origin
 - c. Displaying racist or discriminatory symbols or imagery
 - d. Engaging in a pattern of unwelcome or inappropriate verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or otherwise negative prejudicial slights and insults toward an individual or group, including but not limited to individuals from historically excluded groups. These may also be referred to as microaggressions, such as touching someone's hair or skin, commenting on ability to speak English, stating and/or perpetuating stereotypes, etc.
3. **Harassment based on physical, cognitive, mental disability or "regarded as" having a disability.** For examples, see NIH Manual Chapter 1311.
4. **Harassment based on religion or creed.** For examples, see NIH Manual Chapter 1311.
5. **Harassment based on age (40 or older).** For examples, see NIH Manual Chapter 1311.
6. **Harassment based on genetic information.** For examples, see NIH Manual Chapter 1311.
7. **Inappropriate conduct:** The Agency recognizes that inappropriate conduct is a separate, broader category of misconduct that may not meet the definition of harassment listed above. This type of conduct, though inappropriate and covered under this policy, may not constitute harassment under the law. Inappropriate conduct includes any comments or conduct that disparages or demonstrates hostility or aversion towards any person that could reasonably be perceived as disruptive, disrespectful, offensive, or inappropriate in the workplace. These may also be referred to as microaggressions, as defined above. Examples include, but are not limited to:
- a. Actions or behaviors that adversely impact Agency operations, productivity, and/or work environment;
 - b. Rude comments, ridicule, disrespectful jokes, or insults;

- c. Inappropriate yelling or emotional outbursts, using expletives, throwing objects, or banging/slamming doors;
 - d. Inappropriate touching or any form of physical intimidation or aggression (e.g., holding, restraining, impeding, or blocking movement, following, inappropriate contact or advances, bullying, or any other forms of inappropriate touching);
 - e. Engaging in a personal relationship with someone in an inherently unequal position where there is a real or perceived authority or influence over the other's conditions of employment and/or has the ability to directly impact the other's career progression and not disclosing the relationship and taking steps to mitigate the risk to all parties. This may include formal and informal supervisory relationships;
 - f. Inappropriate or rude gestures, expressions, pictures, or graffiti;
 - g. Threats against others or engaging in other threatening behavior;
 - h. Psychological bullying or intimidation, such as making statements that are false, malicious, disparaging, or derogatory with the intent to hurt another's reputation;
 - i. Engaging in behaviors that may have a dampening effect on reporting workplace concerns, such as those that can be perceived as intimidating or retaliatory against individuals who report concerns or participate in an administrative inquiry or other protected activity;
- C. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.
- D. Any allegation of harassment or inappropriate conduct as described above should be reported to the NIH Civil Branch, OHR (Civil). Once an allegation is raised, Civil will initiate a prompt, thorough, and impartial administrative review into allegations of harassment. When appropriate, Civil may refer the administrative review to an outside party for completion.
- E. Participation in the Civil process does not prohibit an individual from pursuing relief through the EEO complaint process, or the grievance process.
- F. When it is determined that the NIH policy on harassment and inappropriate conduct has been violated, Civil staff will coordinate with the servicing OHR Employee and Labor Relations Specialist and the ICO Executive Officer to develop corrective administrative actions.
- G. Civil will notify the reporting party of the status of the administrative inquiry and when it has been referred to the appropriate management officials.

Section 4. Training

- A. All NIH managers will complete training in preventing and addressing sexual harassment, bullying, and inappropriate conduct in the workplace, as well as training specific to EEO compliance and non-discrimination.
- B. The Union may send seven (7) stewards per year to EEO related training sponsored by the Office of Equal Opportunity, if conducted. The costs associated with such training will be borne by the Agency. Official time for attendance will come from the bank of hours set aside for stewards in Article 6.
- C. All bargaining unit employees of AFGE Local 2419 will be given duty time to complete anti-harassment and other required EEO training.

Section 5. Employment Plans and Programs

- A. The establishment and implementation of EEO and affirmative employment is a fundamental Agency objective, mandated and reviewed by the EEOC.
- B. Affirmative employment refers to workforce analysis, training, retention, and recruitment efforts to ensure that qualified Employees and applicants from diverse groups are included in the recruitment pool for Agency vacancies, and while employed they progress at comparable rates. The Agency shall review any employment practice or policy which has a disproportionate impact on members of minority groups, women, and persons with disabilities with a view toward its elimination or validation. Affirmative employment programs cover those groups protected by Title VII of the 1964 Civil Rights Act.
- C. The Agency will continue to provide overall management support and budgetary planning to achieve affirmative action objectives and to establish and/or maintain effective EEO programs that cover all aspects of equal employment opportunity throughout the Agency, as outlined in 29 C.F.R. 1614. 102 and MD-715.
- D. The NIH Office of Equity, Diversity, and Inclusion (EDI) serves as the focal point for NIH-wide policy formulation, implementation, coordination, and management of the civil rights, equal opportunity, affirmative employment, and workforce diversity programs of the NIH.
- E. The Agency shall develop a results-oriented program for affirmative employment to resolve problems of underutilization and under-representation of members of minority groups, women, and persons with disabilities. The affirmative employment plan will be developed in accordance with Equal Employment Opportunity Commission (EEOC) and Office of Personnel Management (OPM) guidelines.
- F. Union input on the development of Agency affirmative employment plans shall be provided through the Director of the Office of Equity, Diversity, and Inclusion (EDI) or the Labor Management Relations Committee (LMRC). The Union can also use these

forums to raise any other EEO concerns such as under representation in specific workgroups or occupations. Such discussions could include possible steps to resolve these issues. Such steps may include affirmative recruiting, additional training, or goals and timetables. At the conclusion of these discussions management will provide a response to the Union concerning what appropriate action, if any, management intends to take to address the Union's concerns.

- G. The Agency will post the Agency's affirmative employment plans and its MD-715 data on the Agency website.

Section 6. Committees and Consultations

- A. Upon request, and within a reasonable amount of time, a semiannual meeting will be held between the EDI and local 2419 to discuss EEO matters and concerns. The Union will be entitled to a total of three (3) representatives at this meeting unless the Parties agree otherwise. EDI may have a total of three (3) representative at this meeting, one (1) of whom may be a representative from Labor Relations. The time and place for such meetings shall be determined by mutual agreement of the Parties.
- B. If both Agency management and Local 2419 representatives agree, a special Agency EEO Committee may be established. Where this is not done, EEO concerns shall be brought before the LMRC.
- C. Upon request, the Agency will provide Local 2419 with workforce data pertaining to employees in the bargaining unit. This data will include the workforce composition (overall and by Agency) by race, sex, and grade level and promotions.
- D. Upon request, the Agency will provide Local 2419 with an annual report each fiscal year of the numbers and types of discrimination complaints filed that year against the Agency by bargaining unit employees.

Section 7. Complaint Processing

- A. The Agency agrees to carefully, justly, and expeditiously consider and adjudicate complaints of discrimination filed through the EEO administrative complaint process of the negotiated grievance procedure. The Agency and Local 2419 agree to cooperate in attempting to bring about information resolution of complaints.
- B. Persons who allege discrimination or who participate in the presenting of such complaints will be free from restraint, interference, coercion, discrimination, or reprisal.
- C. An employee may raise a complaint of discrimination through the Department's EEO administrative complaint process or through the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised this option when the

matter that gave rise to the allegation of discrimination is made the subject of a timely filed grievance or formal EEO complaint, whichever event occurs first. Consultation with an EEO counselor pursuant to 29 C.F.R. 1613.213 does not constitute filing a formal EEO complaint.

- D. Under the EEO administrative complaint process, a complainant has the right to be accompanied, represented, and advised by a representative of their choosing at any stage of the complaint process, except where there is a conflict of interest or position.
- E. If any remedial or corrective actions are to be taken as the result of informal or formal resolution of EEO complaints filed under the EEO administrative complaint process, and such actions trigger an obligation to bargain, then, the Agency will fulfill its bargaining obligation under the Statute.

Article 53. Employee Parking

Section 1. Parking Facilities

The employer will provide parking facilities for all full-time and part-time employees. Employees who drive a personal motor vehicle to work on a regular basis will be issued a parking permit pursuant to existing NIH policies. Parking areas will provide for reasonable security and lighting.

Section 2. Negotiation of Paid Parking

The Agency will inform the Union thirty (30) days in advance of any decision to implement paid parking for employees. The parties will negotiate the decision upon a timely request from the Union pursuant to Article 2.

Section 3. Damage to Vehicles

In areas where the employer has implemented contractor controlled and/or valet parking, the Agency is not responsible for any damages to vehicles which are left in their custody (keys are left with the attendant).

Section 4. Parking for Union Visitors

Temporary parking permits for Union visitors at NIH may be obtained from the NIH Parking Office, upon request of the Union President. Union visitors must provide their name, the make, model, year, license plate number, and state of issuance of the individual's vehicle, and their destination and duration of visit on campus.

Section 5. Reserved Union Parking

AFGE 2419 will receive one (1) reserved space in the covered parking garage closest to the Union office. If no parking space is available in the area, the Employer will provide the union with a reserved parking space in a mutually agreeable location nearest to the Union office. This space will be for the sole use of the Union and its officials. Any disagreements regarding this matter will be addressed through the grievance/arbitration process.

Article 54. Alternative Dispute Resolution

- A. Policy - It is in the interest of both parties to make all reasonable efforts to resolve potential conflicts informally and to the mutual satisfaction of the employee and management. An employee may use the ADR process prior to or following the filing of an EEO complaint or grievance or to resolve any underlying issue consistent with this Article. The Agency and the Union agree that ADR should be made available to the employee and the employee's organization as soon as possible following the events that would form the basis of a complaint or grievance. The Agency will make reasonable efforts to inform employees of the availability of ADR, including but not limited to, posting information on the Agency's website.
- B. Voluntary Participation - Participation in the ADR process is entirely voluntary and does not waive any rights the employee may have under law, rule, regulation, or this Agreement.
- C. Tolling - When ADR has been requested by an employee, all time frames for filing of grievances will be tolled until conclusion of the ADR process. Participation in the ADR process does not preclude an employee from exercising any rights under the Agency's other complaint or appeals procedures, including the negotiated grievance procedures, when no resolution is reached.
- D. Third Party Tribunals - If an employee files a grievance, formal EEO complaint or appeal, once the matter has been assigned to a judge, arbitrator or other adjudicator, the Agency and the employee will consider mediation or other facilitated resolution of the matter available from the outside agency or court prior to seeking resolution through the Agency's ADR process. To the extent authorized by such third-party tribunals and if the parties (i.e., the Agency and the employee) mutually agree, the parties may utilize the ADR process after a third-party tribunal takes jurisdiction over the matter. When a judge has been assigned, the parties seeking ADR will provide appropriate notice and accord appropriate deference to the judge. The purpose of the ADR program is to facilitate the resolution of matters arising under this Article.
- E. Duty Time for ADR - All ADR sessions will occur during regularly scheduled hours of work. No ADR participant will be made to suffer loss of pay or charged leave to the extent they are otherwise in duty status.
- F. Settlement Authority and Confidentiality - The ADR Program is an informal and confidential process to assist employees and management to reach their own resolution of disputes. When an employee requests ADR, Management, within the affected Program Office, shall designate an individual with settlement authority. If the Program Official with settlement authority is not directly involved in the ADR proceeding, then he or she shall be available to provide information, make an offer of settlement, or make a decision during any ADR session.

- G. EEO ADR Program Conformance - The Department's ADR program will comply with Chapter 3 of the EEOC Management Directive MD-110.
- H. EEO complaints - For EEO complaints, ADR shall be available during both the informal and formal complaint process. If ADR is elected, it will not prevent the filing of a formal EEO complaint.
- I. Representation - The parties in the ADR process are entitled to representation of their choice.
- J. ADR Proceedings and Records - ADR proceedings are confidential and, if resolution attempts fail, offers and statements made by parties cannot be used as evidence against either party in any administrative, judicial or arbitration proceeding. All parties involved in the ADR process shall not disclose any information said or done during the ADR proceedings, except for those with a need to know in order to authorize, approve or implement a resulting resolution. There will be no recorded transcript taken of the ADR sessions. If settlement is reached, then the settlement agreement will be the record from the ADR proceeding.
- K. Mediators - Only certified ADR mediators/neutrals shall be used for the ADR mediation process. These may be contract mediators or shared interagency neutrals/mediators.
- L. Availability of Mediators - ADR mediators will be made available Agency-wide, regardless of geographical location. However, mediation may occur via teleconference or videoconference by mutual agreement.
- M. Concurrent Process - If the ADR process is requested after a formal EEO complaint has been filed, then the formal complaint process and the ADR process proceed concurrently.
- N. Alternative Solutions - The ADR process shall allow for the use of innovative alternative solutions that will be fully considered by the Agency.
- O. Settlement Agreements - The parties have significant flexibility in structuring settlement agreements. As long as the parties agree, they can settle for any relief that a court could order if the case were to go to trial. For example, the Agency and an employee may agree to a retroactive or prospective personnel action, back pay or lump sum payment, attorney's fees, costs, and/or monetary damages or other appropriate solutions. ADR settlements that are part of the EEOC statutory appeals procedure can be appealed to the EEOC Office of Federal Operations for enforcement. If the settlement agreement was made to settle a grievance or arbitration, then the employee and union could file a grievance/arbitration or ULP charge for enforcement.
- P. Binding Effect - All final ADR agreements are binding.

Q. Information to Union – Every six months, the Agency will provide the Union with summary information on employees' use of ADR, including the number of employees using ADR, the number of resolutions and the general content of settlements, if any.

Article 55. Overtime

Section 1. General

- A. Assignment of overtime will be made in light of the following considerations: special skills of the employees, skill requirements, familiarity with work assignment, nature of the work, and/or particular work requirements subject to the mission of the National Institutes of Health. Whenever possible, overtime assignments will be handled on a volunteer basis. If no volunteers are available, the supervisor will assign overtime to the employees who meet the needs of the duties to be performed in a fair and equitable manner. Overtime assignments shall be made and rotated on a fair and impartial manner, consistent with law and regulations.
- B. All overtime and compensatory time must be approved by a supervisor in advance of it being worked.
- C. Management will, on a quarterly basis, review the overtime records to ensure that the assignment of overtime is made on a fair and equitable basis. The union will be provided feedback regarding overtime trends. The review will contain information which shows overtime assignment trends such as the number of instances where employees worked or refused the opportunity to work overtime and the actual and available amount of hours employees worked overtime.
- D. No employee's schedule or tour of duty will be changed or modified in order to offset or reduce the payment of overtime to them or any other employee.

Section 2. Overtime Assignments

Overtime will be assigned in accordance with law, applicable rules, and regulation. It is understood that the Employer retains the right to hire, reassign, and detail employees in order to alleviate staffing imbalances which may occur within the bargaining unit. Employees will receive notice of overtime assignments as far in advance as possible, normally one (1) pay period in advance.

Section 3. Calculation of Overtime

- A. All hours of work in excess of eight (8) hours (or the appropriate AWS day voluntarily agreed upon by the employee in a twenty-four-hour period) will be considered overtime, or, alternatively, all hours of work in excess of the forty (40) hours in their basic workweek will be considered overtime and shall be paid at overtime rates in accordance with applicable regulations.
- B. Employees authorized to work compressed work schedules earn overtime only for work in excess of the scheduled tour of duty (i.e., over 8 hours if their scheduled day is an 8-hour day, 9 hours if it is a scheduled 9-hour day, and 24/7 operations shifts as outlined in Article 13) or for time over 80 hours for the pay period.

- C. In computing all overtime pay, the employee's hourly rate shall include any applicable shift differential.

Section 4. Planned/Scheduled Overtime

When work is planned in advance to be performed on an overtime basis on a day other than the basic workweek, the agency agrees to make a reasonable effort so as to provide at least six (6) hours of work for each employee.

Section 5. Unscheduled/Unplanned Overtime

- A. Employees may be required to report to their official duty station (ODS) for previously scheduled training, conferences, other meetings, or to perform work on a short-term basis.
- B. An employee called in to work on shifts outside their basic workweek shall be excused promptly at such time as it is determined that their services are no longer needed.
- C. Employees may be called back to the ODS when management determines that minimum staffing requirements are not met in order to maintain operations. Employees may also be required to report to their ODS for operational exigencies and emergencies. In such cases, employees will be provided reasonable advance notice of the overtime assignment and will be provided a reasonable time to report, no more than two (2) hours after notification. Employees are required to report to their ODS as soon as possible.
- D. When the Employee is called back to work unscheduled, irregular, or occasional overtime on a day on which work was not scheduled for that employee or for which the employee is required to return to their ODS, they will receive a minimum of two (2) hours at the overtime rate in accordance with government-wide rules and regulations.

Section 6. Rest Period

Bargaining Unit employees will not normally be assigned any combination of overtime and/or regular assignments that does not allow for a rest period of at least 8 hours within each 24-hour period. The employee may not waive this provision.

Section 7. Compensatory Time

Eligible Bargaining Unit employees may voluntarily elect to receive compensatory time in lieu of overtime in accordance with government-wide rules and regulations.

Section 8. Overtime Assignment Exchanges

Employees may exchange overtime assignment subject to supervisory approval and in accordance with Section 1 of this Article and Article 13.

Section 9. FLSA

Employees who are classified non-exempt by the Fair Labor Standards Act may not perform work outside normal working hours unless specifically ordered or authorized by the Employer to do so.

Section 10. Breaks

Employees who work overtime will normally receive one (1) twenty-minute (20) break per every four-hour (4) work period, in accordance with Article 13, with the exception of the CC – Nutrition Department employees who will receive one (1) fifteen-minute (15) break per every four-hour (4) work period.

Article 56. Attire and Appearance

Section 1. General

- A. The parties mutually agree to the benefit of the employees and the agency to provide uniforms to designated employees. It is agreed that uniforms are not considered protective clothing. Uniforms provide no additional protection from chemical, biological, radiological, or mechanical hazards than similar street clothes.
- B. Uniforms do provide visual identity and standard appearance for employees. Special clothing (designed to provide protection from specific risks) does provide protection for the employee and will be issued on an "as needed basis."

Section 2. Uniforms

- A. ORF wage grade employees are required to wear uniforms in order to identify the staff as ORF employees and present a standard appearance to the National Institutes of Health (NIH) community.
- B. Employees are expected to report for work in a clean government issued uniform.

Section 3. Individual Items

A. ORF (Maintenance and Boiler Plant)

1. The uniform shall be the same for all ORF units and shall consist of the following initial issue of standard items to each employee.
2. Navy blue shirts - long/short sleeve or combination (12 shirts) as appropriate for the type of work performed. Individual ORF unit patches shall be sewn above the left pocket of the shirt. Additional ORF approved patches may be sewn on other designated locations.
3. Dark blue trousers - (12 pairs)
4. Black scratch-less or garrison style belt (1 each)
5. Dark blue light weight jacket with liner (2 each)
6. Personnel approved for flame resistant clothing may not wear short sleeves.
7. Optional navy-blue t-shirt with ORF logo silk screened above the left pocket (5 each).
8. Optional dark-blue baseball style caps with ORF logo (1 summer weight and 1 winter weight). Alternatively, an optional Union baseball style cap may be worn,

but it may not be altered in any manner.

9. Optional dark blue parka (1 each) and/or dark blue insulated and/or uninsulated coveralls (1 each) (as required for specific work).
10. Additional quantities of optional items may be provided where working conditions warrant frequent changes of soiled uniforms during the shift.
11. The optional T-shirt shall not be worn as an outer garment in indoor public areas. T-shirts may only be worn as an outer garment in unoccupied construction areas, mechanical rooms, outdoor work assignments or shop areas. Regular uniform shirts are to be worn when leaving such work areas and re-entering public areas i.e., laboratories, offices, lobbies, or cafeterias.

B. ORS (911 Dispatch)

1. The uniform shall be the same for all ORS units and shall consist of the following initial issue of standard items to each employee.
2. Shirts - ECC employees must wear an issued uniform polo shirt, fleece, job shirt, or any other issued shirt as their outer layer when they report to work unless authorized by the ECC Manager. When undershirts are visible, they must be white, black, or dark blue; and may be short or long sleeved. Buttons will be securely fastened as to not expose the chest.
3. Pants - ECC employees must wear business casual navy, black, or khaki pants, skirts, or shorts. Uniform attire pants are not provided and are not reimbursable.
4. Shoes - Closed-toe and closed-heel shoes must be worn while on duty.
5. Accessories such as earrings, watches, rings, service and religious medals, medical alert bracelets, and necklaces may be worn with the uniform if they do not affect the ECC employee's ability to wear a headset or perform their job functions.
6. Non-Uniform Attire - At the discretion of the ECC Manager, shifts when ECC employees can report to work in non-uniform, business casual attire may be announced. Business casual clothing should adhere to the following standards:
 - a. Free of holes, clean, presentable, and neat in appearance
 - b. Tight fitting or revealing clothing and athletic wear are not permitted (e.g., tank tops, crop tops, sweatshirts, sports jerseys, yoga pants, sweatpants, and other exercise clothing)
 - c. Closed-toe and closed-heel shoes must be worn while on duty
 - d. Accessories must not affect the ECC employee's ability to wear a headset or perform their job functions

7. Uniform Attire Exceptions - Exceptions to uniform attire may be made on a case-by-case basis due to, for example, a medical condition or religious observance. Employees desiring an exception should submit a request in writing to their supervisor or the ECC Manager or submit a Reasonable Accommodation request with the NIH Office of Equity, Diversity, and Inclusion (EDI).
8. Uniform Inventory - ECC employees are issued six uniform shirts, one fleece, and one job shirt. The last two weeks of June each year, supervisors will take inventory of all issued uniforms and determine if replacement articles of clothing are required. ECC Employees are responsible using the approved form to report any uniform attire that is lost, damaged, or needs replacement.

C. CC - Nutrition

1. The uniforms for NDCC shall be the same for all employees engaged in food preparation and service of meals. The Agency will provide all uniform items issued to each employee.
2. The initial issue of items to each employee will consist of a choice of the following to equal 12 sets.
3. Females: (all items are white)
 - a. Dress: skirts, pants, T-shirt, short sleeve buttoned-front shirt; short jacket
 - b. Head coverings: (choice of) hairnets, surgical cap or teal-colored caps
 - c. Female cooks may choose checkered pants and a cook's coat in lieu of white pants, short sleeved shirts
 - d. Footwear - nonslip type
4. Male (all items are white)
 - a. Pants: white or checkered; shirts, buttoned front, short sleeves; short jackets
 - b. Head covering: caps, teal baseball, paper hairnet or surgical caps for head and beards.
 - c. Footwear - nonslip type
 - d. Aprons are the same for both male and female
5. Optional clean union baseball cap may be worn
6. The following personal accessories may not be worn as part of the uniform: colored head coverings and ornaments, false and/or acrylic nails, jewelry in excess of a watch and wedding ring, hoop earrings (no posts) and opened toe/heel shoes.

Section 4. Uniform Materials

All standard uniform shirts and trousers will be manufactured of cotton and polyester blended fiber. The 100 percent cotton garments shall be issued to individuals only with OMS/OS medical justification and approval based on medical documentation from the employee's personal physician. Personnel working with open flame welding equipment, high temperature steam or high voltage must, at all times, wear flame resistant clothing. As determined by the supervisor, such employees will be issued flame resistant uniforms. Flame resistant coveralls shall be provided as needed.

Section 5. Laundering and Return of Uniforms

Routine laundering of all uniform items is the employee's responsibility. Upon termination of employment or permanent reassignment to a position which does not require the uniform, Government-provided clothing, including uniforms, shall be returned to the issuing office.

Section 6. Changing in and out of Work Clothing

- A. The Government provides lockers for all employees designated to wear uniforms and provides showers and changing facilities.
- B. Since the uniform is incidental to the work, employees shall change into the uniform before regular duty hours.
- C. Only clean uniforms (properly laundered by the employee) may be worn by employees commuting to and from work.
- D. The agency will provide the employees with information related to the hazards of transmitting health hazards from work to their homes on uniforms. Employees who are working in areas with hazardous materials should change out of their work uniform before leaving their work area or should proceed directly home to launder their uniform.

Section 7. Authorized Components

- A. When wearing the uniform, only authorized uniform components or protective gear may be worn, i.e., personal hats are not permitted.
- B. No personal modifications or alterations of the uniforms are permitted, e.g., sleeves may not be cut off. The uniform is to be worn in a conventional manner as intended whenever the employee is in any NIH public area. Employees will wear uniforms in accordance with agency policies.

Section 8. Enforcement

- A. Every effort will be made to resolve dress code issues in a fair and equitable manner without the need to resort to disciplinary action.

- B. Appeal – A decision by the first line supervisor that an employee’s appearance is “inappropriate” may be appealed via email immediately to the employee’s Division Director or designee.
- C. No action will be taken against the employee until the Division Director or designee has considered and ruled upon the issue.
- D. Corrective Action – The Division Director may require the employee to take reasonable corrective action depending upon the nature of the inappropriate attire or appearance as provided below:
 - 1. First Instance: The employee shall be given verbal corrective counseling by the Division Director or their designee regarding inappropriate attire or appearance. The Division Director may authorize the employee up to a maximum of two (2) hours of Administrative Leave to correct a violation. Any additional time used by the employee will be charged to the employee’s leave.
 - 2. Second Instance: Any second instance of a similar nature, the employee may be allowed to use up to two (2) hours of their annual leave to correct the violation. If the employee is unable to correct the violation within two (2) hours, the employee shall be sent home and charged AWOL for the remainder of the day. The employee may also be subject to disciplinary action.
- D. The decision of the Division Director or designee is final but is subject to the Negotiated Grievance Procedure in Article 31 of this agreement. Any grievance shall be filed at the second step with the Division Director or designee.

Section 9. Midterm Bargaining

In accordance with Article 2 of this agreement, the Union shall be provided notice and an opportunity to bargain prior to the implementation of any new dress code and attire standards.

Article 57. Tobacco Free Policy

Preamble

The parties recognize the importance of the National Institutes of Health (NIH or Agency) mission related to scientific research and the application of that knowledge to extend a healthy life while reducing the burdens of illness and disability. A tobacco-free workplace protects the health of all employees while providing an environment conducive for tobacco users who are working to limit their use of tobacco.

Section 1. Tobacco Free Policy

- A. The use of all tobacco products, including but not limited to, cigarettes, cigars, pipes, electronic cigarettes, smokeless tobacco, is prohibited at all times:
 - 1. Inside all NIH owned buildings, on all campuses, to include Rocky Mountain, Bayview, Fort Detrick, Poolesville, and Research Triangle Park.
 - 2. On all outside property or grounds, including parking areas.
 - 3. Inside any government owned vehicle.
- B. Usage of vaping products is also prohibited in all NIH facilities, on all outside property or grounds, including parking areas, and inside any government owned vehicle.

Section 2. Smoking Cessation Programs

- A. The Agency encourages all employees who want assistance in eliminating their dependence on the use of tobacco products to enroll in authorized Smoking Cessation Programs (SCP). A SCP includes all tobacco products.
- B. To the maximum extent possible, any Agency authorized or sponsored programs, if available, will be offered during employee duty hours.
- C. Information about any smoking cessation programs will be publicized and communicated throughout the Agency via NIH websites.

Section 3. Enforcement of Tobacco-free policy

Employees who do not conform to this policy after implementation may be subject to disciplinary action.

Section 4. Management Responsibilities

The Agency assures that any SCP offered by the Agency shall be conducted in a fair, impartial, and beneficial manner for employees.

Article 58. Information Sharing

- A. The Employer recognizes the Union's right under Title 5 U.S.C. 7114 (b) (4) to request and receive certain data.
- B. All bargaining unit employees will normally have an NIH email box.
- C. The Union will be authorized to establish Bargaining Unit email lists within the restrictions of the NIH IT policy.
- D. The Agency will provide the Union with a list of Bargaining Unit employees once per year.