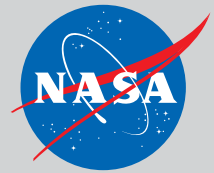


National Aeronautics and
Space Administration



Collective Bargaining Agreement

between NASA Headquarters and the NASA Headquarters
Professional Association Local #9 of the International
Federation of Professional and Technical Engineers

September 2020

Collective Bargaining Agreement

between

National Aeronautics and Space Administration (NASA)

Headquarters in Washington, DC,

and

the NASA Headquarters Professional Association Local #9 of the
International Federation of Professional and Technical Engineers (IFPTE)

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BACKGROUND AND PURPOSE OF AGREEMENT

The National Aeronautics and Space Administration (NASA) Headquarters in Washington, DC, represented in this Agreement by Management and the NASA Headquarters Professional Association Local #9 of the International Federation of Professional and Technical Engineers (IFPTE), known as the Union, establish this Collective Bargaining Agreement (CBA) under authority of Title 5 of United States Code Chapter 71 (the Federal Service Labor-Management Relations Statute, or the Statute). In the Statute, Congress finds that the recognition of labor organizations and collective bargaining safeguards the public interest and contributes to the effective conduct of public business. This CBA facilitates and encourages the amicable settlement of disputes between Management and bargaining unit employees (Employees) involving conditions of employment. It also provides a grievance procedure by which differences of opinion between Management, Employees, and/or the Union can be resolved.

Per the Statute, the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Federal Government.

As a means for effective cooperation through the appropriate discussion of matters of interest at NASA Headquarters (HQ), the CBA acknowledges that Management and the Union (the Parties) recognize the value of resolving matters of concerns at the lowest possible level and as expeditiously as possible. The Parties will meet at reasonable times to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting Employees and to execute a written agreement on these matters, which will be binding by both Parties.

The Parties agree not to discriminate or retaliate against Employees on any matter under this CBA based on any prohibited basis, including but not limited to race, color, religion, national origin, marital status, sex, sexual orientation, disability, gender identity, age, union affiliation, or political affiliation.

The CBA provides a clear mutual understanding of the rights and responsibilities of Management, the Union, and Employees to ensure NASA mission success. By endorsement of this CBA, the Parties are committed to NASA mission success and the aspirational core values of safety, integrity, teamwork, excellence, and inclusion.

ARTICLE 1: AUTHORITY AND UNIT DESIGNATION

This Agreement is entered into between Management and the Union pursuant to the authority granted in Title VII of the Civil Service Reform Act of 1978 Public Law 95-454 and the certification by the U.S. Department of Labor, dated May 15, 1970, Case Number 46-1607(RO), and amended June 7, 1983, by Case Number 3-AC-38, 12 FLRA Number 37, and Federal Labor Relations Authority (FLRA) Case Number WA-RP-14-0025.

- A. The Union is recognized as the exclusive representative of the following two Headquarters bargaining units, to be referred to in this document as Employees:
 - 1. All full-time classified General Schedule scientists and engineers in NASA class codes 200, 700, and 900 employed by Headquarters in Washington, DC, excluding management officials, supervisors, and those in supergrade (GS-16 and above), Senior Executive Service, and excepted positions.
 - 2. All nonprofessional General Schedule employees of Headquarters working in the Washington, DC, area, excluding all professional employees, except as listed above; nonprofessional employees of NASA Headquarters working outside the Washington, DC, area; and employees described in 5 U.S.C. §7112(b) (2), (3), (4), (6), and (7) of the Federal Service Labor-Management Relations Statute.
- B. Non-bargaining employees or a combination of bargaining and non-bargaining unit employees will be identified as “employees” with a lowercase “e.”

ARTICLE 2: EMPLOYEE RIGHTS AND RESPONSIBILITIES

SECTION 2.01: Employee Rights

In accordance with 5 U.S.C. § 7102, each Employee will 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 will be protected in the exercise of such rights.

- A. Except as otherwise provided under law, Employees have the right, for example,
 - 1. to act for a labor organization in the capacity of a representative and, in that capacity, the right to present the views of the labor organization to Management or otherwise appropriate authorities; and
 - 2. to engage in collective bargaining with respect to conditions of employment through representatives chosen by the Employees under this Agreement.
- B. Nothing in this Agreement may require an employee to become or remain a member of the Union or to pay money to the Union, subject to the terms and timeframes set forth in this Agreement.
- C. Nothing in this Article will be interpreted to limit the rights of employees in areas that are not within the scope of this Agreement.
- D. Employees have the right to seek their own representation in a grievance or appellate procedure established by law, rule, or regulation. Employees may be represented by
 - 1. a representative of the Union,
 - 2. a private attorney, or
 - 3. any other representative of their choosing, except as specified in the grievance or appeal procedures in this Agreement.

NASA may disallow an Employee representative if that individual will cause a conflict of interest or position or if release from their official position would give rise to unreasonable costs and/or if that individual's priority work assignments preclude their release to serve as a representative.

Article 2: Employee Rights and Responsibilities

SECTION 2.02: Voluntary Union Dues

Management agrees to withhold and remit the dues of Union members who are included in the bargaining unit and who voluntarily execute the Standard Form (SF)-1187, authorizing that this deduction be made from their pay.

- A. Voluntary Allotment for Payment of Dues: To make a voluntary allotment for the payment of Union dues, an Employee must
 - 1. be an Employee in the unit covered by this Agreement;
 - 2. be a member in good standing of the Union, as determined by the Union;
 - 3. have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues; and
 - 4. have no other current allotment for the payment of dues to a labor organization.
- B. Submit Requests: The Union will directly submit their requests to the NASA Shared Services Center (NSSC) for processing using the SF-1187. The SF-1187 will be signed by either the President, Vice President, or Treasurer of the Union, or their designee.
- C. Processing of Dues Deduction: Management, through the NSSC, will withhold dues biweekly, coinciding with the regular pay period.
- D. Allotment Revocation: Except as provided in 5 U.S.C. § 7115(b), any allotment for dues withholding provided for under this Article may not be revoked until one (1) year after start of withholding. An Employee wishing to revoke his or her dues withholding after one (1) year of withholding may do so by submitting a complete SF-1188 to the NSSC. The NSSC will immediately forward a copy to the Treasurer of the Union or the Union's designee.

ARTICLE 3: UNION RIGHTS AND RESPONSIBILITIES

SECTION 3.01: Right to Represent Employees

The Union retains the authority as the exclusive representative of the Employees represented by the Union and is entitled to act for and represent the interests of all such Employees.

SECTION 3.02: Right to Union Representation

The Union will be given the opportunity to be represented at

- A. any formal discussion between one or more representatives of the Agency and one or more Employees or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or
- B. any examination of an Employee by a representative of the Agency in connection with an investigation if
 1. the Employee reasonably believes that the examination may result in disciplinary action against the Employee; and
 2. the Employee requests representation.

SECTION 3.03: Scope of Rights Regarding Union Participation

The Union may participate in matters related to Section 3.02 by

- A. assisting the Employee in clarifying the facts,
- B. suggesting other individuals who have knowledge of the facts,
- C. surfacing other relevant facts within the scope of the matter,
- D. taking notes,
- E. advising the Employee, and
- F. conducting themselves in an orderly manner.

Article 3: Union Rights and Responsibilities

SECTION 3.04: Acknowledgment of Union Representative

The Union representative will be acknowledged at meetings related to Section 3.02.

SECTION 3.05: Responsibility Regarding Employees' Interests

The Union acknowledges its responsibility to represent the interests of all Employees without discrimination and without regard to labor organization membership.

SECTION 3.06: Responsibility Regarding Good Faith Negotiation

The Union acknowledges its duty and responsibility to negotiate in good faith with Management.

A. This responsibility includes obligations to

1. approach the negotiations with a sincere resolve to reach a collective bargaining agreement;
2. be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;
3. meet at reasonable times and convenient places as frequently as may be necessary and avoiding unnecessary delays; and,
4. if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the terms of the agreement and to take such steps as are necessary to implement such agreement.

B. This Agreement will be signed by a duly authorized representative of the Union.

SECTION 3.07: Responsibility Regarding Access to Union Constitution and Bylaws

The Union will furnish to Management a current copy of the ruling constitution and bylaws and any changes thereto.

SECTION 3.08: Responsibility Regarding Application and Administration of Agreement

Union officers and representatives are responsible for the application and administration of this Agreement for Employees.

Article 4: Management Rights and Responsibilities

ARTICLE 4: MANAGEMENT RIGHTS AND RESPONSIBILITIES

SECTION 4.01: General

Management retains the authority to

- A. determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and,
- B. in accordance with applicable laws,
 - 1. to hire, assign, direct, lay off, and retain employees in the Agency, or to suspend, remove, reduce 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 will be conducted; and,
 - 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 4.02: Permissive Bargaining

Nothing in this Article will preclude any agency and any labor organization from negotiating, at the election of the agency, on matters regarding

- A. 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 the Statute; or
- C. the appropriate arrangements for Employees adversely affected by the exercise of any authority under the Statute by such Management officials.

Article 4: Management Rights and Responsibilities

SECTION 4.03: Responsibility Regarding Good Faith Negotiation

- A. Management acknowledges its duty and responsibility to negotiate in good faith with the Union and that this responsibility includes the obligations
 - 1. to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;
 - 2. to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;
 - 3. to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays; and,
 - 4. if agreement is reached, to execute, on the request of any party to the negotiation, a written document embodying the terms of the Agreement and to take such steps as are necessary to implement such Agreement.
- B. This Agreement will be signed by a duly authorized representative of Management.
- C. Individual supervisors and management officials will be responsible for the application and administration of this Agreement in their areas of responsibility.

ARTICLE 5: UNION REPRESENTATIVES/OFFICIAL TIME

SECTION 5.01: General

Official time will be granted to Union representatives for bargaining unit representational duties covered by the Statute and this Agreement.

SECTION 5.02: Use of Official Time

Union representatives will be granted a reasonable amount of official time to accomplish bargaining unit representational duties.

- A. Union representational duties include, but are not limited to,
 - 1. attendance at Management-Union meetings;
 - 2. formal discussions between one or more representatives of the Agency and one or more Employees, or their Union representatives, concerning any personnel policy or practices or other general condition of employment;
 - 3. any examination of an Employee in the unit by a representative of the Agency in connection with an investigation if the Employee reasonably believes that the examination may result in disciplinary action against the Employee;
 - 4. Union membership on boards, committees, and panels; and
 - 5. representation in third-party proceedings involving disputes under 5 U.S.C., Chapter 71, and to conduct collective bargaining negotiations.
- B. The Union agrees to guard against excessive use of time for representational matters and will ensure that Union representatives use representational time only for matters that are authorized, such as those listed above.
- C. Union representatives will not be granted official time for the representation of Employees in grievances or in arbitration proceedings.
- D. Union representatives and Employees will not perform any activity relating to internal Union business on official time, including the solicitation of membership, elections of labor organization officials, and collection of dues. These activities must only be performed while in a nonduty status, for example during leave or lunch.

Article 5: Union Representatives/Official Time

SECTION 5.03: Designation of Union Representatives

- A. The Union President will provide the Labor Relations Officer (LRO) a list of Union representatives that will include the representative's name, Union position, NASA organization, and the name of the designated Union representative's immediate supervisor no later than ten (10) workdays after the effective date of this Agreement and will update the LRO in a timely manner when changes occur to such list.
- B. The Union representative will be granted access to the labor relations codes in the official timekeeping system no later than one (1) pay period from the Union President's notification. A copy of the LRO's designation correspondence will be forwarded to the Union President and representative.
- C. The LRO may disallow a Union representative designation for any non-bargaining unit or non-NASA employee.

SECTION 5.04: Requesting Official Time Procedures

Management recognizes the importance of official time in support of the Union's representational responsibilities. Union representatives have a responsibility to ensure that their requests are reasonable, necessary, and in the public interest. Requests for official time should be made in advance and follow established procedures.

- A. The Union representative's official time request requires
 - 1. requesting prior supervisory approval in a manner that is agreed upon (e.g., the NASA timekeeping system or e-mail);
 - 2. receiving supervisory approval before using it;
 - 3. using official time only for authorized representational duties; and
 - 4. being reasonable in their requests.
- B. The Union representative's official time requests will be provided to their immediate supervisor or appropriate Management official in writing, with details that include
 - 1. a good faith estimate of the amount of official time requested;
 - 2. the location (Union office, office location, meeting room); and
 - 3. the appropriate labor code to be recorded in the NASA timekeeping system.
- C. Each Union representative will, to the extent possible, schedule their Union representational work so as to not compromise important work assignments or impede work. The supervisor

Article 5: Union Representatives/Official Time

will, to the extent possible, schedule assignments and inform Union representatives of assignments in advance in order to reduce the likelihood of conflicting demands.

- D. A Union representative's performance will be rated based on NASA-assigned work, consistent with the critical elements identified in the respective Union representative's performance plan. Work conducted on Union activities and time spent in conduct of Union activities will not factor into performance planning or ratings. If adjustments to a representative's workload are found necessary, either due to changing NASA-assigned or Union requirements, all Parties will work collaboratively and in good faith to identify potential solutions. Management retains the right to make the final decision concerning NASA work needs.
- E. Union representatives may earn credit hours for Union activities based on their designated work schedules.

SECTION 5.05: Documenting Official Time

- A. Each Union representative will document their official time and will use the appropriate labor codes in the official timekeeping system.
- B. The Union will provide a monthly report of activities to the LRO for which official time was approved. The parameters of the report will be negotiated by the LRO and Union representative. The report will include the organizational name where the representational duties are being conducted, the type of authorized activity, and the amount of time spent.
- C. The LRO will provide an official time report to the Union quarterly.

SECTION 5.06: Training

Official time may be granted to attend labor-management-related training that is in the best interest of Headquarters.

- A. The Union President will provide to the Headquarters LRO, at least thirty (30) calendar days before the training, information that includes
 - 1. a list of the Union representatives requesting to attend the training,
 - 2. the names of the Union representatives' supervisors responsible for approving official time,
 - 3. an agenda,
 - 4. the approximate official time hours being requested for each representative, and
 - 5. any other data that is needed to make an informed decision.

Article 5: Union Representatives/Official Time

- B. The LRO will review the request for appropriateness for the official time usage.
- C. The LRO will seek official time approval from the named supervisor. If conflicts arise based on work assignments, the LRO will consult with the Union President for resolution.
- D. The LRO will respond to the Union President at least seven (7) calendar days before the training.

ARTICLE 6: SERVICES TO UNION

SECTION 6.01: Access to Facilities and Services

The Union will have access to facilities and services consistent with NASA and/or Headquarters-sponsored groups.

SECTION 6.02: Restricted Access to Facilities and Services

The Union may not use NASA resources for internal Union business (including the solicitation of membership, election of Union officials, and collection of dues) as set forth in 5 U.S.C. §7131(b).

SECTION 6.03: Access to Equipment and Services

The Union has a limited right to use NASA office equipment and services, including information technology services, for authorized purposes in accordance with NPR 2540.1H, "Personal Use of Government Office Equipment Including Information Technology."

SECTION 6.04: Website Guidelines

Management will maintain a clearly titled and appropriately positioned link from its Headquarters intranet site to the Union website. The Union will maintain the link to their website.

SECTION 6.05: Bulletin Board

- A. Management will provide the Union with a bulletin board. All Union materials must be approved by the LRO before posting, limited to the designated space, and will be properly identified as official Union notification. Any posting will be removed by the Union no later than thirty (30) calendar days from the original posting, unless an extended period is required by law, a third-party appeals decision, or if it is agreed upon by the Agency. The Union is responsible for the content of all Union materials posted or distributed.
- B. Union postings will be maintained in an orderly condition.
- C. Posted materials will be pertinent to the conduct of workplace business and not related to partisan political matters.
- D. Posted and distributed Union materials will not malign or negatively refer to the Agency, Headquarters, specific managers, or individuals.

Article 6: Services to Union

- E. No indication of official endorsement, such as the NASA insignia or name, should appear on Union postings or materials.

SECTION 6.06: Notices of Union Meetings and Events

The Union may post notices of Union representational meetings and events in Headquarters building galleys where notices by other organizations are posted. Such notices will conform to the size, quality, and style used by notices posted in the galley. The Union notices will be provided to the LRO for approval before posting. The notices will not include the NASA insignia and will include a Union point of contact.

SECTION 6.07: Access to Communication Resources

Union use of other Headquarters communication resources requires advance LRO approval.

SECTION 6.08: Document Management Procedures

Management and the Union will develop a method of appropriate document management for sharing, maintaining, and archiving joint documentation.

Article 7: Changes in Conditions of Employment**ARTICLE 7: CHANGES IN CONDITIONS OF EMPLOYMENT**SECTION 7.01: Definition of Conditions of Employment

The Parties, through appropriate representatives, will meet to negotiate in good faith to reach agreement with respect to the conditions of employment affecting Employees represented by the Union. Conditions of employment are personnel policies, practices, and other matters, whether established by rule, regulation, policy, or otherwise (e.g., by practice) affecting working conditions, which are authorized by this Agreement and 5 U.S.C., Chapter 71. If Management proposes more than a *de minimis* change to the conditions of employment, the procedures of this Article are to be followed.

SECTION 7.02: Bargaining Changes in Conditions of Employment Procedures

- A. Management will provide the Union President with reasonable advance written notice, as further defined below, prior to the proposed implementation date, of changes affecting conditions of employment subject to bargaining. The notice will contain information including
 - 1. the nature and scope of the proposed change,
 - 2. an explanation of why the proposed change is necessary, and
 - 3. the proposed implementation date.
- B. Within ten (10) workdays of Management's notice of the proposed change, the Union may
 - 1. request additional information within the scope of bargaining;
 - 2. request a briefing to seek clarification;
 - 3. request to bargain;
 - 4. submit comments in lieu of bargaining (In doing so, the Union waives its rights to bargain on the proposed change. Management will notify the Union of its decision regarding acceptance, modification, or rejection of the Union comments as well as the effective date of the change);
 - 5. concur with the proposed change; or

Article 7: Changes in Conditions of Employment

- 6. request an extension to respond in accordance with 7.02(B)(1)-(5) before the conclusion of the ten (10)-workday notice period.
- C. If the Union fails to respond to Management's notice of a proposed change by the conclusion of the ten (10)-workday advance notice period, the Union will have waived its rights, and Management will implement the change.
- D. Management will inform the Union, in writing, if circumstances require a shorter Union response time or immediate implementation of a change in conditions of employment. The notice will be given to the Union at least twenty-four (24) hours in advance, when possible, of the action and will provide the reason for the expedited process. Post-implementation bargaining may occur at the Union's request.
- E. The timeframes specified in this section will not apply in an emergency situation in accordance with 5 U.S.C. § 7106(a)(2). In such a case, the Agency will engage in post-implementation bargaining as soon as it is appropriate.
- F. If the Union elects to bargain the proposed change, the first negotiating session will be scheduled as soon as possible but no later than ten (10) workdays from receipt of the Union's written proposal. The scope of the negotiations will be confined only to the proposed change, and both Parties will bargain in good faith.
- G. The Parties recognize that the law, as construed by the FLRA, allows Management in some cases to implement a change before negotiations are completed.
- H. Proposals must be related to the proposed change and, where applicable—as in the case of an appropriate arrangement—will identify the adverse impact upon the Employees that the proposals are intended to reduce or remedy. Moreover, proposals cannot excessively interfere with Management's rights. Recognizing that the Parties may disagree about the negotiability of bargaining proposals, the Parties agree to make every effort to ensure the negotiability of their proposals in order to advance the goal of efficient and good faith bargaining.
- I. The timeframes set forth in this Article may be modified, in writing, by mutual agreement of the Parties.

SECTION 7.03: Documentation of Agreements Regarding Change in Working Conditions

Any agreement reached between the Parties regarding the implementation of a change in working conditions must be documented in writing.

Article 8: Disciplinary and Adverse Actions

ARTICLE 8: DISCIPLINARY AND ADVERSE ACTIONS

SECTION 8.01: General Provisions

- A. For purposes of this Agreement, disciplinary and adverse actions taken in accordance with Title 5 U.S.C. Chapter 75 and their implementing regulations at 5 CFR § 752 will be processed in accordance with the procedures contained in this Article. Days referenced in this Article are calendar days.
- B. A disciplinary action, for the purpose of this Article, is defined as a Reprimand or a Suspension of fourteen (14) days or less.
- C. An adverse action, for the purpose of this Article, is defined as a Removal, a Suspension for more than fourteen (14) days, a Reduction in Grade, a Reduction in Pay, or a Furlough of thirty (30) days or less.
- D. This Article applies to Employees who have completed their probationary or trial period except to the extent prohibited by law.
- E. No Employee will be the subject of a disciplinary or adverse action except for such cause as will promote the efficiency of the Federal service.
- F. Letters of counseling or warning are not considered disciplinary actions. Such letters will be issued as a means of informing an Employee of expectations.

SECTION 8.02: Employee Rights

At a meeting between an Employee and Management during which there is an inquiry/examination/investigation that has the potential to lead to disciplinary action, the Employee has the right to request Union representation. If such a request is made, a reasonable amount of time will be allowed to obtain a representative.

SECTION 8.03: Representation

Upon the issuance of a disciplinary or proposed disciplinary action, Employees may subsequently consult with their Union representative.

SECTION 8.04: Reprimands

- A. A reprimand will be documented in a letter to the Employee, which will clearly and specifically state the reason(s) supporting the reprimand. Where Management desires future

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corrective action or behavior on the part of the Employee receiving the letter, they will outline specific expectations for future behavior or conduct.

- B. A reprimand will be placed in the electronic Official Personnel Folder (OPF) on the temporary side for a period of not more than two (2) years. An Employee may request removal of the letter of reprimand from the electronic OPF at any time. Management will consider whether to remove the reprimand prior to the expiration of the two (2)-year period.
- C. An Employee has the right to grieve a reprimand in accordance with the negotiated grievance procedure in Article 10: Grievance Procedures of this Agreement.

SECTION 8.05: Suspension for Fourteen (14) Days or Less

- A. When Management proposes to suspend an Employee for fourteen (14) days or less, the following procedures will apply:
 - 1. Management will provide the Employee with fifteen (15) days advance written notification of the proposed Suspension. The proposed notification will contain the reason(s) and specification(s), with Management's rationale that supports the proposed Suspension. The letter will also include the name of the Deciding Official who will receive the oral and/or written reply. The Deciding Official will not be the proposing official. The Deciding Official will only consider the reason(s) and specification(s) outlined in the notice of proposed action and the oral and/written reply of the Employee. In deciding the outcome, the Deciding Official may sustain the proposed Suspension, mitigate it, or take no action.
 - 2. An Employee has the right to represent themselves in making an oral or written reply, or to be represented by a Union representative, a private attorney, or a personal representative of their choosing. NASA may disallow an Employee representative if that individual will cause a conflict of interest or position, if release from their official position would give rise to unreasonable costs, and/or if the Employee's priority work assignments preclude their release to serve as a representative.
 - 3. Should an Employee choose to submit a reply, it must be received by the Deciding Official within seven (7) days of the Employee's receipt of the letter of proposed notification or by a date mutually agreed upon. If no timely reply is received, the Deciding Official will issue a decision based on the proposal letter and any supporting documentation.
- B. If the final decision is a Suspension for a period of fourteen (14) days or less, the Deciding Official will determine when the Suspension will take effect.

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- C. An Employee has the right to grieve a final decision in accordance with the negotiated grievance procedure in Article 10: Grievance Procedures of this Agreement.

SECTION 8.06: Adverse Actions

- A. An adverse action, for the purpose of this Article, is defined as a Removal, a Suspension for more than fourteen (14) days, a Reduction in Grade, a Reduction in Pay, or a Furlough of thirty (30) days or less. A Removal or Reduction in Pay based on unacceptable performance may be taken under this Article rather than under Article 9: Unacceptable Performance.
- B. When Management proposes an adverse action, the following procedures will apply:
1. Management will provide the Employee with thirty (30) days advance written notification of the proposed adverse action. The proposed notification will contain the reason(s) and specification(s), with Management's rationale that supports the proposed action. The letter will also include the name of the Deciding Official that will receive the oral and/or written reply. The Deciding Official will not be the proposing official. The Deciding Official will consider only the reason(s) and specification(s) outlined in the notice of proposed action and the oral and/or written reply of the Employee. In deciding, the Deciding Official may sustain the proposed action, mitigate it, or take no action.
 2. An Employee has the right to represent themselves in making an oral or written reply, or to be represented by a Union representative, a private attorney, or a personal representative of their choosing. NASA may disallow an Employee representative if that individual will cause a conflict of interest or position, if release from their official position would give rise to unreasonable costs, and/or if that individual's priority work assignments preclude their release to serve as a representative.
 3. Should an Employee choose to submit a reply, it must be received by the Deciding Official within seven (7) days of the Employee's receipt of the letter of proposed notification or by a date mutually agreed upon. If no timely reply is received, the Deciding Official will issue their decision based on the proposal letter and any supporting documentation.

SECTION 8.07: Considerations

In deciding what disciplinary or adverse action is appropriate, Management will give due consideration to the relevance of any mitigating and/or aggravating circumstances consistent with *Douglas vs. Veterans Administration*, 5 M.S.P.R. 280 (1981).

Article 8: Disciplinary and Adverse Actions

When appropriate, progressive discipline may be considered. Progressive discipline is the imposition of the least to the most serious disciplinary action applicable to correct the issue or misconduct. The factors to be considered during discipline include, but are not limited to,

- A. the nature and seriousness of the offense and its relation to the Employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, committed maliciously or for gain, or was frequently repeated;
- B. the Employee's job level and type of employment, including fiduciary role, contacts with the public, and prominence of the position;
- C. the Employee's past disciplinary record;
- D. the Employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- E. the effect of the offense upon the Employee's ability to perform at a satisfactory level and its effect upon the Management's confidence in the Employee's ability to perform assigned duties;
- F. consistency of the penalty with those imposed upon other Employees for the same or similar offenses;
- G. the consistency of the penalty with any applicable Agency table of penalties;
- H. the notoriety of the offense or its impact upon the reputation of the Agency;
- I. the clarity with which the Employee was on notice of any rules that were violated in committing the offense or if the Employee had been warned about the conduct in question;
- J. the potential for the Employee's rehabilitation;
- K. mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, or harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
- L. the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the Employee or others.

SECTION 8.08: Supporting Documentation

An Employee may request a copy of the supporting documentation or material that formed the basis for the reason(s) and specification(s) outlined in the disciplinary or adverse action.

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SECTION 8.09: Appeals

In the event that Management sustains a disciplinary or adverse action, the final decision letter will include a statement of the Employee's right to challenge the action and will provide their appeal rights. Once an Employee has elected one of following appellate procedures, their decision is irrevocable, and the Employee may not change thereafter to the other procedure.

The Employee may elect to challenge the action in one of the ways listed below.

- A. For Appeals of Reprimands or Suspensions of fourteen (14) days or less, an Employee may elect to challenge the action through only one of two procedures. The two procedural options include
 - 1. filing a formal complaint of discrimination under the administrative EEO process pursuant to 29 CFR, Part 1614; or,
 - 2. under this Agreement, going directly to Step Two Formal Grievance, as outlined in Article 10: Grievance Procedures.
- B. For Appeals of a Suspension of more than fourteen (14) days, Reduction in Grade or Pay, or Furloughs of thirty (30) days or less against the Employee, an Employee may elect to challenge the action through only one of three procedures. The three options include
 - 1. an appeal to the MSPB in accordance with applicable laws and regulations;
 - 2. a formal complaint of discrimination filed under the administrative EEO process pursuant to 29 CFR, Part 1614; or
 - 3. under this Agreement, going directly to Step Two Formal Grievance, as outlined in Article 10: Grievance Procedures.
- C. For Appeals of Removal, an Employee may elect to challenge the action through only one of two procedures. The two procedural options include
 - 1. an appeal to the MSPB in accordance with applicable laws and regulations; or
 - 2. a formal complaint of discrimination filed under the administrative EEO process pursuant to 29 CFR, Part 1614.

Article 9: Actions Based on Unacceptable Performance

ARTICLE 9: ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

SECTION 9.01: Purpose

For purposes of this Agreement, actions based on unacceptable performance, taken in accordance with Title 5 U.S.C. Chapter 43 or Title 5 U.S.C. Chapter 75 and their implementing regulations at 5 CFR § 432 and 5 CFR § 752 will be processed in accordance with the procedures in this Article. Unacceptable performance is defined as performance by an Employee who fails to meet one or more critical job elements of their performance plan. Days referenced in this Article are calendar days.

SECTION 9.02: Rating Period

A performance-based action may be taken against an Employee who has been on a performance plan for at least the minimum rating period of ninety (90) days.

SECTION 9.03: Performance Improvement Plan

- A. Prior to initiating an action based on unacceptable performance in accordance with Chapter 43, Management will give the Employee written notice of a reasonable opportunity to demonstrate acceptable performance (this is referred to as a Performance Improvement Plan or PIP). The notice will
1. specify the critical elements in which the Employee's performance is unacceptable;
 2. provide specific examples of how the Employee's performance does not meet the requisite standards;
 3. specify ways, using objective assessment criteria, in which the Employee must improve performance to meet the requisite standards;
 4. specify a reasonable amount of time in which the Employee has to improve performance to a level above unacceptable;
 5. state that Management will provide feedback to an Employee undergoing a PIP in an effort to assist them in reaching the requisite level (this may include recommended training);

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6. inform the Employee that failure to improve performance to an acceptable level in the time period specified may result in an administrative action;
7. state that the Employee may self-identify training needs (training is subject to Management approval); and
8. include a statement that the Employee has the right to consult with the Union or other representative concerning the PIP.

SECTION 9.04: Successful Completion of Performance Improvement Plan

If, at the conclusion of the PIP period, the Employee's performance improves to the required level stated in the written notice, no further action will be undertaken at that time. The supervisor will issue a decision letter notifying the Employee of this fact. The letter will state

- A. that the Employee must maintain the improved level of performance for a period of one (1) year from the beginning of the opportunity period;
- B. that if the Employee's performance becomes unacceptable in one or more of the critical elements for which they were given the opportunity to improve during the one (1)-year period following the beginning of the opportunity period, no further opportunity to improve need be given before Management initiates an administrative action (e.g., a proposal for Reduction in Grade or Removal); and
- C. that if the Employee has performed acceptably for one (1) year from the beginning of the opportunity period in the critical elements for which the Employee was afforded the opportunity to demonstrate acceptable performance, and the Employee's performance again becomes unacceptable, Management will afford the Employee an additional opportunity period to demonstrate acceptable performance before determining whether to propose Reduction in Grade or Removal.

SECTION 9.05: Failure to Demonstrate Acceptable Performance Based on Chapter 43 of Title 5 U.S.C.

If the Employee does not meet the conditions of the PIP, Management may propose a Reduction-in-Grade or Removal action.

SECTION 9.06: Unacceptable Performance-Based Actions Under Chapter 75 of Title 5 U.S.C.

Alternatively, when appropriate, Management may propose an administrative action using the procedures outlined in Article 8: Disciplinary Actions. Under these actions, there is no requirement to place the Employee on a PIP.

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SECTION 9.07: Written Notice for Reduction in Grade or Removal

- A. When Management proposes a Reduction-in-Grade or Removal action for performance reasons, the following will apply:
1. The Employee will be afforded a thirty (30)-day advance notice period prior to taking the action.
 2. The written notice will contain the specific reasons for the proposed action. Management will provide a copy of the notice to the Union.
 3. The Employee will be given no more than fifteen (15) days from the date they receive the notice of proposed action to submit an oral and/or written reply. Reasonable requests for an extension for replying must be submitted by the Employee before the specified date. It is at the Manager/Deciding Official's discretion to approve or deny the request. Extensions based on medical reasons require documentation.
 4. The Employee will have the right to be represented in the preparation and presentation of their reply. If the Employee elects to have a Union or other personal representative, they must inform the Manager/Deciding Official, in writing, of the representative's name. The Employee will be allowed a reasonable amount of time to review the materials on which this proposal is based and to prepare and present a reply. The oral reply may be presented in person, or by phone or videoconference.
 5. In making a reply, the Employee may set forth mitigating circumstances, refute aggravating circumstances, and/or give reasons why the proposed action should not be affected.
 6. Management will provide to the Union a copy of the materials relied upon to propose the action at the request of the Employee or representative. Management reserves the right to remove or redact any material when required by law, such as personally identifiable information (PII).
- B. The decision will be issued no later than thirty (30) days after the expiration of the advance notice period. If the proposing official is the Official-In-Charge, the final decision/concurrence will be made by proposing official or another Official-In-Charge identified by Management.

SECTION 9.08: Appeals

In the event that Management sustains a Removal or Reduction in Grade, the final decision letter will include a statement of the Employee's right to challenge the action and will provide their appeal rights. Once an Employee has elected one of following appellate procedures, their decision is irrevocable, and the Employee may not change thereafter to the other procedure.

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- A. For Appeals of Removal: An Employee may elect to challenge the adverse action through only one of two procedures. The two procedural options include
 - 1. an appeal to the MSPB in accordance with applicable laws and regulations; or
 - 2. a formal complaint of discrimination filed under the administrative EEO process pursuant to 29 CFR, Part 1614.
- B. For Appeals of Reduction in Grade: An Employee may elect to challenge the adverse action through only one of two procedures. The two procedural options include
 - 1. an appeal to the MSPB in accordance with applicable laws and regulations; or
 - 2. a formal complaint of discrimination filed under the administrative EEO process pursuant to 29 CFR, Part 1614, or in accordance with Article 10: Grievance Procedures Step Two.

ARTICLE 10: GRIEVANCE PROCEDURES

SECTION 10.01: General Provisions

The purpose of this Article is to set forth the exclusive procedure available to Employees, the Union, and Management for resolving matters that fall within its coverage. Matters that are excluded from the grievance procedures are provided in Section 10.08 of this Article. Days referenced in this Article are calendar days.

Employees have the right to seek their own representation in a grievance or appellate procedure established by law, rule, or regulation. Employees may be represented by a representative of the Union, a private attorney, or any other representative of their choosing, except as specified in the grievance or appeal procedures in this Agreement. NASA may disallow an Employee representative if that individual will cause a conflict of interest or position, if their release from their official position would give rise to unreasonable costs, and/or if the representative's priority work assignments preclude their release to serve as a representative.

The Employee has the right to represent themselves or may seek the services of a Union representative to assist in the preparation and presentation of the grievance.

SECTION 10.02: Definition of Grievance

A grievance is any complaint made

- A. by any Employee concerning any matter relating to their employment;
- B. by the Union concerning any matter relating to the employment of any Employee; or
- C. by an Employee, the Union, or Management concerning
 - 1. the effect, or interpretation, or a claim of breach, of this Agreement; or
 - 2. any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Grievances may be initiated by Employees, individually or jointly, by the Union on behalf of one or more Employees, by the Union on its own behalf, or by Management.

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SECTION 10.03: Actions Covered by the Grievance Procedure

Grievances concerning the following actions may be initiated under statutory or appellate procedures by law or by this grievance procedure but not both:

- A. complaints of prohibited personnel practices under 5 U.S.C. § 2302(b)(1);
- B. Reduction in Grade for unacceptable performance under 5 U.S.C. § 4303;
- C. adverse actions under 5 U.S.C. § 7512, except Removals; or
- D. formal complaints of discrimination under 29 CFR, Part 1614.

An Employee will be considered to have exercised their option under this Article to raise the matter under either a statutory procedure or the negotiated procedure at such time as the Employee initiates an action, whichever event occurs first.

SECTION 10.04: Adverse or Unacceptable Performance Actions

A grievance involving an unacceptable performance action resulting in a Reduction in Grade or an adverse action resulting in a Suspension for more than fourteen (14) days, a Reduction in Grade, and a Reduction in Pay of thirty (30) days or less may be appealed under the appropriate statutory procedure or under this negotiated grievance procedure, but not both.

SECTION 10.05: Discrimination Complaints

A formal complaint involving a claim of discrimination based on any prohibited basis—including but not limited to the protected race, color, religion, national origin, marital status, sex, sexual orientation, disability, gender identity, age, union affiliation, or political affiliation—may be, at the discretion of the Employee, raised either under the NASA EO complaint process or through this negotiated grievance procedure, but not both. An Employee is considered to have exercised their option to raise a matter either under the NASA EO complaint process or under the grievance procedure at such time as the Employee timely files a formal complaint of discrimination or timely files a grievance, in writing, in accordance with the provisions of this Article, whichever event occurs first.

SECTION 10.06: Unfair Labor Practices

If an alleged grievance also constitutes an alleged Unfair Labor Practice, the charging Party has the option to seek redress under this Article or under the Unfair Labor Practice procedures of the Federal Service Labor-Management Relations Statute, but not both. The charging Party is considered to have exercised their option to raise a matter as an Unfair Labor Practice or as a grievance when the

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charging Party timely files an Unfair Labor Practice charge or timely files a grievance, in writing, in accordance with the provisions of this Article, whichever event occurs first.

SECTION 10.07: Group Grievances

A group of Employees with a common complaint may present a grievance under the provisions of this Agreement. The grievances will be consolidated and processed through the grievance process as a single group grievance. If Employees in the group work for different supervisors, the LRO will identify the Grievance Official to whom the Union should present its grievance.

Subject to the consent of the Employees involved, one Employee's grievance will be selected by the Union for processing. All decisions for that one grievance will be binding on the other grieving Employees.

SECTION 10.08: Exclusions

Matters that are not considered grievances for the purpose of this Agreement and that are excluded from this grievance procedure include

- A. retirement, life insurance, or health insurance;
- B. national security matters (including denial of security clearances or Suspensions or Removals in accordance with 5 U.S.C. § 7532);
- C. any examination, certification, or appointment;
- D. classification of any position which does not result in the Reduction in Grade or Pay of an Employee;
- E. separations of probationary and trial employees under 5 CFR, Parts 315 and 316;
- F. a violation of reemployment priority rights, appealable under 5 CFR, Part 330;
- G. a reduction-in-force action/Furloughs, appealable under 5 CFR, Part 351;
- H. a violation of reemployment or reinstatement rights, appealable under 5 CFR, Part 352;
- I. a Removal for unacceptable performance under 5 U.S.C. § 4303;
- J. a Removal for adverse misconduct under 5 U.S.C. § 7512;
- K. the assignment of ratings of record;
- L. the award of any form of incentive pay, including cash awards, quality step increases, recruitment, retention, or relocation payments; and
- M. the filling of supervisory positions or other positions outside the bargaining unit.

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SECTION 10.09: Extensions of Time

- A. All time limits referred to in this Article may be extended by mutual consent of the Parties prior to the expiration of such time limits.
- B. Failure of Management to observe the time limits, where no extension has been granted, will entitle the Employee/Union to advance the grievance to the next step.
- C. Failure of the Employee/Union to observe the time limits in this procedure, where no extension has been granted, will result in termination of the grievance.

SECTION 10.10: Alternative Dispute Resolution (ADR)

In accordance with Article 11: Alternative Dispute Resolution (ADR), ADR may be entered into by mutual agreement of the Parties, as appropriate. ADR may be utilized at any stage of the grievance process outlined in this Article.

SECTION 10.11: Processing Procedures for Employee Grievances

- A. Step One: Informal Grievance
 - 1. Timeframes: Grievances are to be presented to the immediate supervisor concerned within fifteen (15) days after the occurrence of the matter that gave rise to the grievance. This time limit may be extended when the Employee establishes that they were unaware of the circumstances leading to the grievance or were prevented by matters beyond their control from filing a timely grievance. In this case, the grievance must be filed within thirty (30) days from when the Employee became aware of the matter that gave rise to the grievance.
 - 2. Grievance Official: The grievance will be filed with the immediate supervisor or the lowest level Management official with the authority to grant the requested resolution. This person is referred to as the Grievance Official. If either the Union or Management believes the identified Grievance Official is not the appropriate person to address a grievance (for example, if there is a possible conflict of interest), either Party may contact the Headquarters LRO to request another Grievance Official. Management will then decide the appropriate Grievance Official.
 - 3. Grievance Submission: The grievance will be submitted in writing to the Grievance Official. The written grievance must be dated, signed by the grievant(s), and include
 - a. specific information as to the basis for the grievance;
 - b. supporting information, including law, rule, regulation, or policy alleged to have been violated, or appropriate Article within this Agreement;

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- c. the name of the Employee's Union representatives, if any; and
 - d. the requested resolution.
 - 4. Decision: The Grievance Official will accept the grievance under the informal procedure unless the grievance is untimely or the matter is excluded, as listed in Section 10.08 of this Article.
 - a. The Grievance Official will consider the issue raised by the Employee and attempt to resolve it within a reasonable time, normally within fifteen (15) days from the date it is first brought to the Grievance Official's attention. As appropriate, the designated Grievance Official will seek advice and assistance and obtain additional or clarifying information, including fact-finding, to try to resolve the matter. If the Grievance Official determines that more than fifteen (15) days are needed, the Employee will be notified of the reason for the delay and the date by which a decision should be issued. The Grievance Official will provide a written decision to the Employee.
 - b. The LRO will provide the Union a copy of the decision.
 - c. If the Employee is not satisfied with the Grievance Official's decision, the informal stage will be considered terminated, and the Employee may request consideration at the Step Two Formal Grievance level no later than fifteen (15) days from receipt of the informal decision. The Step Two Formal Grievance submission should include a copy of the original grievance filed and a copy of the Step One Informal Grievance Official's decision. If the grievance is excluded from the grievance procedure or is untimely, the Grievance Official, in consultation with the LRO, will inform the Employee and advise the Employee of the appropriate process, if any, for resolving the matter.
 - 5. Exceptions to Step One Informal Grievance Procedures: Grievances regarding the following matters will begin at the Step Two Formal Grievance process:
 - a. Reprimand
 - b. Suspension of fourteen (14) days or less
 - c. Suspension of more than fourteen (14) days
 - d. Reduction in Grade or Pay
 - e. Performance-based Actions for Unacceptable Performance, as applicable
- B. Step Two: Formal Grievance
- 1. Timeframes: If the Employee is not satisfied with the Step One decision, or if the Step One process is not applicable (see Exceptions to Step One Informal Grievance

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Procedures), the Employee may appeal the grievance in writing to the next higher-level official, or Management official with the authority to grant the requested resolution (i.e., the Step Two Grievance Official). The written grievance must be dated, signed by the grievant(s), and include specific information as to the basis for the grievance; supporting information, including law, rule, regulation, or policy alleged to have been violated or appropriate Article within this Agreement; the name of the Employee's Union representatives, if any; the requested resolution; the dates and names of the supervisor or officials with whom the complaint was discussed in Step One, if applicable. An Employee may not raise new issues after Step One. The written appeal will be filed no later than fifteen (15) days after receipt of the Step One Grievance decision. The designated Grievance Official will accept the grievance under the Step Two Formal procedure unless the grievance is untimely or the matter is excluded, as listed in Section 10.08 of this Article.

2. Grievance Official: If either the Union or Management believes the next-higher level supervisor or Management official is not the appropriate Grievance Official to address a grievance (for example, if there is a possible conflict of interest), either Party may contact the LRO to request another Grievance Official. The appropriate Grievance Official will be determined at Management's discretion.
3. Decision: Upon request, the designated Grievance Official will meet with the Employee within ten (10) days after receipt of the appeal.
4. The Grievance Official will consider the issue raised by the Employee and attempt to resolve it within a reasonable time, normally within fifteen (15) days from the date it is first brought to the Grievance Official's attention. As appropriate, the designated Grievance Official will seek advice and assistance and obtain additional or clarifying information, including fact-finding, to try to resolve the matter. If the Grievance Official determines that more than fifteen (15) days are needed, the Employee will be notified of the reason for the delay and the date by which a decision should be issued. The Grievance Official will provide a written decision to the Employee.
5. The LRO will provide the Union a copy of the decision.
6. This decision will be a final grievance decision, subject to arbitration at the election of the Union.

SECTION 10.12: Processing Procedures for Union and Management Grievance

- A. Either the Union or Management may file a grievance on matters concerning
 1. the interpretation or application of this Agreement; and/or

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2. any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

A Union- or Management-initiated grievance must be filed no later than fifteen (15) days after the occurrence of the matter that gave rise to the grievance or after the matter has been discussed informally with the other Party. This time limit may be extended when either the Union or Management establishes that they were unaware of the matter leading to the grievance or were prevented by matters beyond their control from timely filing a grievance after the matter has been discussed informally with the other Party.

- B. Union grievances over the interpretation or application of this Agreement must be submitted in writing by the Union President to the Headquarters LRO. The Executive Director, Headquarters Operations, or designee, and the Union President, or designee, will meet within five (5) days to discuss the Union's grievance. Each Party may bring additional representatives to this discussion. As appropriate, a Manager with authority to resolve the grievance may be assigned to resolve it. The Executive Director, Headquarters Operations, or designee, will give the Union President a written decision no later than fifteen (15) days after the meeting.
- C. Management grievances over the interpretation or application of this Agreement will be submitted in writing by the LRO to the Union President. The Union President, or designee, and the Executive Director, Headquarters Operations, or designee, will meet within five (5) days after receipt of the Management grievance. Each Party may bring additional representatives to this discussion. The Union President will give the Executive Director of Headquarters Operations a written decision within fifteen (15) days after their meeting.
- D. This will be a final grievance decision, subject to arbitration to be filed by either Management or the Union.

SECTION 10.13: Headquarters Operations Executive Director Review

After completion of the Step Two Formal Grievance or Union/Management Grievance processes, the Executive Director, Headquarters Operations, or designee, may consider the Union and Management positions focusing primarily on the effectiveness and efficiency of Headquarters Operations.

Participation in the review process is optional for all Parties. Participation does not delay the thirty (30)-day time limit, after receipt of a Step Two decision, to invoke Arbitration per Article 12: Arbitration or preclude either Party from invoking arbitration during the review process.

ARTICLE 11: ALTERNATIVE DISPUTE RESOLUTION FOR WORKPLACE DISPUTES

SECTION 11.01: Purpose

Alternative Dispute Resolution (ADR) is a suite of voluntary, informal processes and tools used at Headquarters to proactively address workplace issues and disputes, including Employee grievances raised under Article 10: Grievance Procedures. ADR, when practicable and appropriate, can resolve disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest organizational level.

ADR serves the interests of Employees, the Union, and Management and is widely available to resolve workplace disputes when appropriate. ADR may include several forms of conflict resolution, including but not limited to, mediation, conflict coaching, and facilitated conversations. One of the primary benefits of ADR is improved understanding and communication between the Parties. ADR may also result in a binding settlement agreement or impasse if the Parties cannot resolve their dispute.

This Article does not govern the separate Equal Employment Opportunity (EEO) ADR process, in which ADR is available for Employees.

SECTION 11.02: General Provisions

- A. ADR is available to Employees to address
 - 1. issues affecting employment of the Employee,
 - 2. disputes/conflict with Management, and
 - 3. disputes/conflict with other employees.
- B. Using or attempting to use ADR constitutes an attempt by the Employee to resolve an issue informally.
- C. The use of ADR by an Employee does not affect other Employee rights under this CBA.
- D. An Employee may request ADR at any point before or during any stage of the informal or formal negotiated grievance process.

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- E. ADR may be useful in identifying and resolving potential issues before they rise to the level of a grievance. When appropriate, NASA's formal and informal conflict resolution processes and programs (e.g., the Ombudsman, LRO, EEO) may suggest or refer Employees to ADR.
- F. Participation in ADR does not delay time limits set forth in a formal appeal or statutory process.
- G. ADR is not applicable if resolution of the issue is prohibited by policy, regulation, or law or if there is already a formal process to address the type of conflict (e.g., Prohibited Personnel Practices, EEO complaints, criminal allegations).
- H. ADR is not applicable if the Union or Management is claiming a violation, misinterpretation, or misapplication of any law, rule, regulation affecting conditions of employment, or interpretation/violation of this CBA.

SECTION 11.03: ADR Process

- A. The Employee, Union, or Management may request ADR through the NASA Headquarters ADR Coordinator. The Parties must mutually agree to participate in ADR in order to move forward with this process.
- B. If mediation is appropriate, Mediators may be chosen from the NASA certified cadre, the Federal Shared Neutrals Program, the Federal Mediation Conciliation Service (FMCS), or other sources. Whenever possible, the mediation should be scheduled within fifteen (15) calendar days of the date the agreement to pursue ADR is reached.
- C. Any request for ADR must be submitted in writing prior to the expiration of any other formal process' timeframe. Such processes with mandatory deadlines include, but are not limited to, grievances, unfair labor practice charges, or NASA EEO complaints.
- D. If ADR is accepted during the grievance process, the grievance timelines will be held in abeyance until there is a resolution or a determination is made to terminate the ADR process, as outlined below. If a matter is determined to be inappropriate for ADR or unresolved through ADR, the grievance will continue through the grievance process, beginning at the step at which grievance proceedings were stopped pending ADR efforts.
- E. The ADR meeting will include the Parties involved in the dispute and the mediator. Other mutually agreed participants, such as the Union, the Headquarters LRO, and subject matter experts may participate, as appropriate.
- F. The Parties will meet to attempt to resolve the issue until the mediator determines that further progress is unlikely or until any Party to the ADR submits written notice of withdrawal from the process.

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- G. When appropriate, if the Parties come to resolution, the terms of the Agreement will be memorialized in writing.
- H. Settlements that resolve a grievance or complaint will be binding on each Party. Therefore, the subject of the dispute may not be advanced in any other process.
- I. Settlement offers or discussions will not be used as evidence or referred to in the remaining steps of the grievance process or at arbitration if the ADR efforts do not result in agreement. Settlement constitutes agreement by the Parties and resolves the conflict and/or potentially grieved issue.
- J. ADR agreements unrelated to the Article 10: Grievance Procedures will not be precedent-setting or binding on the Parties insofar as the Agency is unable to enforce such agreements. These issues will primarily be those which affect communication or interpersonal relationships, in contrast to those issues which could enter a formal grievance or complaint process.
- K. Any costs, such as travel costs of third-party neutrals (which normally would be minimal), will be negotiated when a specific ADR process is chosen.

ARTICLE 12: ARBITRATION

SECTION 12.01: Purpose

This Article provides for binding arbitration of unresolved grievances that have been processed through the negotiated grievance procedure. Arbitration may be invoked only by Management or the Union. Days referenced in this Article are calendar days.

SECTION 12.02: Invoking Arbitration

In order to be timely, a written request for arbitration must be received by the LRO or the Union President, or their representatives, within thirty (30) days from the date of the Step Two Formal Grievance, as outlined in Article 10: Grievance Procedures.

SECTION 12.03: Selecting an Arbitrator

Within seven (7) days from the date of the receipt of the arbitration request, the invoking Party will request a list of Arbitrators from the FMCS. Failure of the initiating Party to seek this list in a timely manner will cause the initiating Party to forfeit its right to invoke arbitration without any further appeal. The invoking Party will incur the costs for the list of Arbitrators.

- A. The Parties will meet within five (5) days after receipt of this list to select an Arbitrator from the list. The Parties will alternately strike one (1) Arbitrator's name from the list of seven (7) until only one name remains. The remaining name will be the duly selected Arbitrator. The order in which the names will be struck will be decided by a coin toss, with the loser of the coin toss striking first.
- B. Either Party may request another list of seven (7) impartial persons to act as Arbitrators if the original list is unacceptable to that Party. The Party requesting the additional list will incur the costs for that additional list of Arbitrators. The time limits are the same as for the original list.

SECTION 12.04: Designating a Representative

Each Party will designate and make known a representative seven (7) days prior to the arbitration hearing for such purposes as presenting their respective Party's case at hearing and handling any related matters.

Article 12: Arbitration

SECTION 12.05: Hours of Arbitration Hearings

The arbitration hearing will be held during regular hours of the basic workweek of Monday through Friday on the premises and space provided by Management.

SECTION 12.06: Conduct of Arbitration

- A. No later than fourteen (14) days before a scheduled hearing, the Parties will meet to clarify the issues and explore possible resolution of the case.
- B. No later than ten (10) days before the hearing, the Union and Management representatives will meet to exchange witness lists, stipulate the issue or issues, and agree on joint exhibits and joint stipulations of fact. If the Parties cannot agree on a joint stipulation of the issues, the Parties will exchange separate statements of the issues at this meeting. This submission will be provided to the Arbitrator no later than five (5) days prior to the hearing.
- C. Management will make reasonable efforts to produce Agency employees as witnesses if requested by the Union. However, each Party reserves the right to question the relevance or necessity of any potential witness, and the Arbitrator will resolve any such questions prior to the date of the hearing. Each Party has the responsibility and obligation to produce its witnesses on the day of the hearing, and each Party will bear its own witnesses' expenses, including travel. If the arbitration involves an Employee's direct supervisor who is not located at Headquarters, Management will make accommodations so that the supervisor—who is key to the arbitration—can attend, as necessary, by video, phone, or in person. The Employee and all employees who are called as witnesses will be excused from duty to the extent necessary to participate in the arbitration hearing without loss of pay or charge to annual leave.
- D. The hearing will be informal, and strict rules of evidence will not apply. The Employee will have the burden of proof, except where it is allocated by statute or regulation. Management will bear the burden of proof in hearings involving disciplinary or adverse actions. Either Party may ask the Arbitrator to draw an appropriate inference when either Party fails to present facts or witnesses that the Arbitrator deems necessary and relevant. Testimony will be under oath or affirmation.
- E. Issues may not be raised for the first time at arbitration that were not raised during the grievance processing or were not raised during the processing of the adverse or performance-based action giving rise to the arbitration.
- F. The Arbitrator has the authority to make all grievability and/or arbitrability determinations. The Arbitrator will make decisions as to the arbitrability of a grievance before addressing the merits of the case. Upon mutual agreement of the Parties, such threshold issues may

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be submitted to the Arbitrator by brief and decided prior to a hearing on the merits of the case. If the Arbitrator determines that the issue cannot be resolved based on pre-hearing briefs (e.g., issues of material fact), or if, after consideration of pre-hearing briefs, the Arbitrator rules that the issue is arbitrable, a hearing will be conducted to hear the merits of the underlying grievance. Absent mutual agreement that briefs are unnecessary, the Parties will be entitled to submit pre-hearing and post-hearing briefs if all documents given to the Arbitrator are also provided to the opposing Party's representative at the same time.

- G. The Arbitrator's authority will be limited to deciding only the issue(s) unresolved in the case presented to arbitration. If the Parties fail to agree on a joint submission of the issue(s) for arbitration, the Parties will each present a separate submission, and the Arbitrator will determine the issue(s) to be heard.
- H. The Arbitrator's award will be subject to laws, regulations, the provisions of 5 U.S.C. Chapter 71, and this Agreement.
- I. The Arbitrator will have no power to add to, subtract from, or modify the terms of this CBA. The award will be limited to the issues presented at arbitration. The Parties may, by mutual agreement, stipulate the facts and the issues in a particular case directly to an Arbitrator for decision without a formal hearing.
- J. The Arbitrator will have the authority to make an aggrieved Employee whole or issue any other remedy to the extent that such remedy is consistent with controlling laws, rules, and regulations.
- K. The Arbitrator will submit their decision to Management and the Union as soon as possible, but no later than thirty (30) days following the close of the record, unless the Parties waive this requirement.

SECTION 12.07: Fees and Expenses

- A. All Arbitrator's fees and expenses will be borne equally by Management and the Union. Management and the Union agree to share equally the expenses of any mutually agreed upon services in connection with the arbitration proceedings (e.g., court reporters).
- B. Once the hearing date has been established, a Party unilaterally requesting that an arbitration hearing be postponed, delayed, or cancelled for any reason that results in fees being charged by the Arbitrator or the court reporter will pay any and all fees associated with the requested change. The fact that one Party has no objection to the request of the other Party for postponement, delay, or cancellation of the arbitration hearing will not absolve the requesting Party from the paying of all the fees being charged.
- C. If the Parties mutually agree to postpone, delay, or cancel an arbitration proceeding, the

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Parties will share equally the cost of any fees being charged by the Arbitrator or the court reporter that are associated with the requested change.

- D. In any grievance where the Parties settle the matter prior to an arbitration hearing, and there are fees being charged due to the cancellation of the hearing, both Parties will equally share any remaining arbitration costs.

SECTION 12.08: Award and Decision

The Arbitrator's award will be final and binding on both Parties, except as provided in 5 U.S.C. § 7122. However, either Party may file exception to an award with the FLRA under regulations prescribed by the Authority.

Article 13: Notices to Employees/Information to the Union

ARTICLE 13: NOTICES TO EMPLOYEES/INFORMATION TO THE UNION

SECTION 13.01: Requests for Information

The Union may request information from the Headquarters LRO in accordance with 5 U.S.C. § 7114(b)(4). Management will provide such information to the Union in a reasonable and timely manner.

SECTION 13.02: Employee Lists

Management agrees to provide the Union a list of all Employees, upon request, and a list of new Employees within ten (10) calendar days of their start date.

SECTION 13.03: Employee Orientation

All new Employees will be notified of their bargaining unit status and that the Union is the exclusive representative of the bargaining unit. The LRO will notify the Union of all new Employee orientations so that the Union may send a representative to present at the Employee orientations. The Union also may provide information to the LRO to be provided to new Employees in the orientation package.

SECTION 13.04: Position Descriptions

Employees have a right to have accurate and properly determined position descriptions consistent with OPM regulations.

SECTION 13.05: Performance Rating and Awards

Management will provide the Union an annual report(s), in an electronic format, regarding performance ratings and awards. The Parties will mutually agree on the specific data to be provided in the report(s). The report(s) will be provided to the lowest level of detail allowable and practicable in a format that protects individual Employee identities.

Article 13: Notices to Employees/Information to the Union

SECTION 13.06: Written Notices to Be Provided to the Union

When Management presents an Employee with any of the written notices listed below, a copy of that notice will be provided to the Union. Such written notices may include

- A. letters proposing disciplinary or adverse action;
- B. final decision letters on any disciplinary or adverse action;
- C. letters of proposed notice and of final decision to withhold a within-grade increase;
- D. letters of proposed notice and of final decision to downgrade an Employee's position classification; and
- E. notices of proposal and final decision to remove or demote an Employee for unacceptable performance.

SECTION 13.07: Decision Notices to Advise Employees of Certain Rights

The decision notices referenced above will advise Employees of their grievance and/or appeal rights and of their right to Union or other representation established by laws, rules, regulations, and/or this Agreement.

ARTICLE 14: TRAINING AND DEVELOPMENT

SECTION 14.01: Employee Training and Development Opportunities

In accordance with the provisions of Title 5 U.S.C. Chapter 41 and subject to budgetary and other constraints, Management agrees to provide Employees with training and development opportunities to maintain and improve the skills and professional knowledge necessary to perform their work effectively, to develop new skills and knowledge necessary to carry out NASA's mission, and to provide for career development opportunities where the needs of Management and the interests of the Employee are compatible.

SECTION 14.02: Employee Training Opportunities Rights and Information

Training and developmental opportunities will be offered to Employees, without regard to membership in a protected class, pursuant to 29 CFR, Part 1614. Training, coaching, and development information for Employees is available on the Headquarters intranet website's Human Resources page.

SECTION 14.03: Employee-Funded Training

Employees that acquire NASA-relevant skills or education through training received without NASA financial support may record such training or self-development in the NASA learning management system.

Article 15: Duration, Modifications, and Termination of this Agreement

ARTICLE 15: DURATION, MODIFICATIONS, AND TERMINATION OF THIS AGREEMENT

SECTION 15.01: Duration and Modification

This Agreement will become effective on the date it is approved pursuant to the provisions of 5 U.S.C. § 7114 (c). This Agreement will remain in effect for a period of three (3) years from its effective date and will be automatically renewable for additional one (1)-year periods unless either Party notifies the other Party, in writing, at least sixty (60) calendar days, but not more than ninety (90) calendar days, prior to the expiration date of its intention to amend, modify, or terminate this Agreement. Proposed ground rules or a statement of the provision(s) to be amended, modified, or terminated will accompany such written notice.

When notice of desire to amend, modify, or terminate is given, the Parties will schedule a meeting for the purpose of negotiating ground rules for the conduct of negotiations on a new Agreement. This meeting should occur no later than thirty (30) calendar days prior to the expiration date of this Agreement. If negotiations on a new Agreement are not concluded prior to the expiration date, this Agreement will continue in full force until a new Agreement has been approved.

SECTION 15.02: Relationship to Laws and Regulations

In the administration of all matters covered by this Agreement, the Parties will be governed by laws, Government-wide rules, and regulations, existing and future.

The Parties reserve the right to bargain over the implementation of any future laws or Government-wide rules or regulations that may conflict with any article in this Agreement. Either party may reopen affected articles.

SECTION 15.03: Termination

This Agreement will terminate automatically effective on any date on which it is determined by the FLRA that the Union is no longer entitled to exclusive recognition in accordance with the provisions of 5 U.S.C. Chapter 71.

Article 15: Duration, Modifications, and Termination of this Agreement

SECTION 15.04: Reopener

For matters not covered under Section 15.02, this Agreement may be reopened for amendment or change only by mutual agreement of the Parties.

SECTION 15.05: Memorandum of Understanding (MOU), Memoranda of Agreement (MOA), or Other Agreements

- A. Any Memorandum of Understanding (MOU), Memoranda of Agreement (MOA), or other agreements between the Parties will expire automatically upon the effective date of this Agreement unless expressly provided to the contrary in this Agreement.
- B. All MOUs, MOAs, or any other agreements that are executed after the effective date of this Agreement will be deemed a part of this Agreement, except the Headquarters Office and Workstation Space Assignment MOA, which will remain in effect until such time as the MOA is renegotiated or terminated.
- C. All subsequently executed MOAs, MOUs, or other agreements must contain a specific effective and expiration date, unless the Parties mutually agree otherwise and such agreement is reflected in the text of the document. Otherwise, the MOA/MOU or other agreements will have no legal force or effect and will be considered void.