

# **NEGOTIATED AGREEMENT**

## **BETWEEN**

**National Energy  
Technology Laboratory  
U.S. Department of Energy**

**American Federation of  
Government Employees  
Local #1916**

**November 19, 2018**

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## **PREAMBLE**

This Agreement is between the National Energy Technology Laboratory (NETL), United States Department of Energy and Local 1916 of the American Federation of Government Employees, AFL-CIO.

The parties mutually recognize that the Congress of the United States has expressed public policy concerning labor relations in the Federal Government as follows:

"...the right of employees to organize, bargain collectively and participate through labor organizations of their own choosing in decisions which affect them, safeguards the public interest, contributes to the effective conduct of the public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment; and the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the government."

Further, the parties envision an atmosphere at NETL where the Union and Management will work jointly in meeting the mission of NETL.

The parties recognize that it is in their mutual interest that both institutions, Management and the Union, be strong and viable. Therefore, both parties are committed to carrying out the letter and spirit of this Agreement and to building and maintaining a good working relationship.

**ARTICLE 1**  
**Exclusive Recognition**

**SECTION A:** The National Energy Technology Laboratory (NETL) (hereinafter referred to as Management) recognizes the American Federation of Government Employees (AFGE) Local 1916 (hereinafter referred to as the Union) as the exclusive representative of all employees of the unit as defined in Section B of this Article. The Union recognizes the responsibility of representing the interests of all employees in the bargaining unit with respect to personnel policies, practices and working conditions without discrimination and without regard to Union membership.

**SECTION B:** The certified unit to which this Agreement is applicable:

All professional and non-professional employees who are employed by and occupy positions at the National Energy Technology Laboratory, Pittsburgh, PA site. This Agreement excludes all supervisors, management officials, confidential employees, and all employees engaged in Federal personnel work in other than a purely clerical capacity.

## **ARTICLE 2**

### **Effective Date and Agreement Duration**

**SECTION A:** This Agreement is between AFGE Local 1916, hereafter referred to as the Union, and the National Energy Technology Laboratory, U.S. Department of Energy, hereafter referred to as Management. This Agreement is effective on the date indicated on the signature page of this Agreement.

**SECTION B:** This Agreement will remain in effect for five years from the effective date.

**SECTION C:** If at the expiration date of this Agreement, a new Agreement has not been placed into effect, the terms of this Agreement will continue in full force and effect. If neither party serves notice to renegotiate this Agreement, it will automatically renew for one-year periods. If either party wishes to renegotiate or modify this Agreement, they will give written notice to the other party at least 90 days prior to the expiration date. Negotiations will commence within the 90-day period prior to expiration date after that written notice has been received. During any negotiations on a new Agreement, this Agreement will remain in effect until such time that a new Agreement is finalized. Notwithstanding any other provisions of this Agreement, it is further agreed that in the event this Agreement terminates, the Recognition and Dues Withholding Article will remain in effect, provided the Union retains exclusive recognition status.

**SECTION D:** This Agreement and the validity of any of its provisions is subject to compliance with applicable law and government-wide regulation (5 USC 7117).

**ARTICLE 3**  
**Union-Management Relationship**

**SECTION A:** Management and the Union believe that a healthy Union-Management relationship will promote a quality work environment for employees, a more efficient administration of agency programs and this Agreement, and improved service to customers. While neither Management nor the Union waives their inherent rights and duties, both recognize the potential benefits of a constructive relationship. The Union and Management agree to work cooperatively to address workplace issues.

**SECTION B:** NETL managers and supervisors are encouraged to actively engage the Union at an early stage in resolving workplace issues, including planned changes in working conditions.

**ARTICLE 4**  
**Management Rights**

**SECTION A:** Management retains the rights set forth in 5 USC 7106 and other pertinent laws. The following is provided for information and reference to Management and the Union and is taken directly from 5 USC 7106:

“Sec. 7106. Management rights:

- (a) Subject to subsection (b) of this section, nothing in this chapter will affect the authority of any Management official of any agency –
  - (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
  - (2) in accordance with applicable laws –
    - (A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
    - (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations will be conducted;
    - (C) with respect to filling positions, to make selections for appointments from
      - (i) among properly ranked and certified candidates for promotion; or
      - (ii) any other appropriate source; and
    - (D) to take whatever actions may be necessary to carry out the agency mission during emergencies.
- (b) Nothing in this section will preclude any agency and any labor organization from negotiating
  - (1) 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;
  - (2) procedures which Management officials of the agency will observe in exercising any authority under this section; or
  - (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such Management officials.”

**ARTICLE 5**  
**Union Rights and Responsibilities**

**SECTION A:** Management recognizes that in order to perform its representational functions and duties, the Union will require officially designated Union Representatives. Management will not discriminate against Union Representatives because of the performance of their duties. Union Representatives will be defined as the Senior Union Official (typically the President), Vice President, Secretary, Chief Steward, Union Stewards, and other employees as specifically designated by the Senior Union Official.

**SECTION B:** In all matters relating to personnel policies, practices, and other conditions of employment, Management and the Union will have due regard for the obligations imposed by applicable laws and this Agreement. Management will not restrain, interfere with, or coerce Representatives of the Union in the exercise of their rights under applicable laws and this Agreement. The Union recognizes Management's rights under applicable laws. Nothing in this Agreement will be construed as abrogating the Union's right to communicate with its membership, the public, public officials, or other parties.

**SECTION C:** The Union will be notified in a timely manner and be given the opportunity to be present and to participate at any formal discussion between one or more representatives of Management and one or more employees in the bargaining unit or their representatives concerning any grievance, personnel policy or practice, or other general condition of employment. A bargaining unit employee has the right to request Union representation any time he/she is requested to participate in a meeting with Management during which the employee is being examined with respect to an investigation and the employee believes disciplinary action may occur as a result of the meeting. The employee has the right to request Union representation at any time before or during such a meeting. Management is not responsible for notifying the employee of this right in individual cases. However, Management will notify employees of the right to Union representation at least annually as prescribed by 5 USC, Section 7114 (a) (3). If any employee asserts his/her right to representation, Management will stop and reschedule the meeting to permit the employee a reasonable period of time to obtain Union representation.

**SECTION D:** Management agrees to furnish the Union with information that it is entitled to under the provisions of 5 U.S.C. 7114(b)(4). All other requests for information by the Union will be considered in accordance with this Agreement and governing laws and regulations.

**SECTION E:** The Senior Union Official will provide the Employee/Labor Relations Specialist and the Chief Operating Officer (COO), or his/her designee, with a current roster of the names of Union Officers and designated Stewards. The Union will notify the Employee/Labor Relations Specialist and the COO or his/her designee of any change in the designations of Union Officers and Stewards. The roster will indicate the Representative's position in the Union and telephone extension. No employee will be recognized as a Steward or Union Officer unless his or her name appears on this current listing.

**SECTION F:** It is agreed that the administration of this Agreement will be between the Senior Union Official and the designated Management Representative. If the two parties fail to resolve

the matter, either party may utilize the Negotiated Grievance Procedure or other available legal process to obtain resolution.

**SECTION G:** Management will notify the Senior Union official of any Management initiated team and provide the Union an opportunity to recommend a subject matter expert from the bargaining unit to participate on the team when Management concludes the cost of doing so brings tangible benefits to the agency. Management will offer a briefing to the Union prior to implementation of any recommendations originating from the team.

For purposes of the Agreement, a “Management-initiated team” is defined as:

A group of federal NETL employees that:

1. Includes members of the bargaining unit (A collaboration exclusively between Supervisors and/or managers for any purpose, is not a “Management directed team”); and,
2. Is formed at the written direction of the NETL Director or Center Director; and,
3. Is expected to collaborate on the same project for an extended time. An “extended time” is generally defined as a period of three months or more.

Consideration of whether the cost of convening a team as defined above brings tangible benefits to the agency will include, but not be limited to the following:

- Whether the anticipated result of the effort would result in a change that impacts working conditions
- The potential for early Management-Union discussions to deter litigation e.g. grievances, ULPs
- Cost of staff participation
- Whether the nature of the subject matter impacts employee morale
- Likelihood of a change in policy
- Expected duration of the effort
- Sensitivity of subject matter

Notification to the Union will include a statement of the following:

- Purpose of team and anticipated deliverable
- Timeframe
- Impact to CBA – is an article likely to be impacted by the proposal?

**SECTION H:** The Union will not strike against the Government of the United States or any agency thereof, nor assist or participate in such strike, nor impose a duty or obligation to conduct, assist, or participate in such a strike.

**SECTION I:** Management agrees that designated National Union Representatives may be admitted to the site for representational purposes, subject to reasonable security regulations.

**SECTION J:** On a quarterly basis Management will provide the Union with current listings of bargaining unit members, their position titles, series, grades, organizational unit, service computation date, date of last promotion, and supervisor of record. Management will provide the Senior Union Official with any changes to this listing.

**SECTION K:** Management will advise new bargaining unit employees during orientation of the exclusive recognition granted the Union and of their unrestrained 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 right. Management will provide a copy of this Agreement to each new bargaining unit employee at this orientation. Sufficient notice will be given to the Senior Union Official prior to any orientations of new employees and authorizing the Senior Union Official or his designee to meet with the new employee for up to 30 minutes, which would be scheduled to the satisfaction of the Senior Union Official, to explain the role of the Union and address this Agreement during this orientation with new bargaining unit employees.

**SECTION L:** Management will provide the Union adequate advance written notice of proposed changes in working conditions. The notice will describe the nature and scope of the change and the proposed implementation date. The Union has the right to request a meeting within three (3) work days on the change. Such meeting will take place within five (5) work days of the request. The Union has five (5) work days from the date of the meeting or, if no meeting is held, five (5) work days from the notice of the change to request bargaining or to notify Management that the Union does not wish to exercise their right to bargain. Management will respond to the Union's request to bargain within five (5) work days. The parties may mutually agree to extend timeframes.

**SECTION M:** Management will provide an organizational chart quarterly or upon significant changes.

## **ARTICLE 6**

### **Employee Rights**

**SECTION A:** All employees will be treated fairly, equitably, and without discrimination with respect to personnel Management and Union activity. It is therefore agreed that Management and the Union will endeavor in good faith to establish working conditions that will be conducive to enhancing and improving employee morale and efficiency. Employees will have the right to fully pursue their private lives, personal welfare, and personal beliefs without interference, coercion, or discrimination by Management or the Union, except as restricted by laws, regulations, or clear job responsibilities.

**SECTION B:** Each employee will have the right, freely and without fear of penalty or reprisal, to form, join, or assist any labor organization or to refrain from any such activity. The right to assist the Union extends to participation in Management for a labor organization when duly elected or appointed and acting for a labor organization in the capacity of a representative, including presentation of its views to officials of the Executive Branch, the Congress, or any other appropriate authorities consistent with applicable law. Each employee will have the right to exercise their First Amendment rights without fear of penalty or reprisal. This right also extends to engaging in collective bargaining with respect to conditions of employment through representatives chosen by employees in conformance with the exclusive representation rights of the Union.

**SECTION C:** Nothing in this Agreement will require a bargaining unit employee to become or to remain a member of this Union or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deduction in accordance with Article 9, Dues Withholding.

**SECTION D:** The employee has a right to be represented by the Union without discrimination and without regard to labor organization membership where provided for by law, rule, or regulation. Each employee subject to the exclusive representation rights of the Union will have the right to bring matters of individual concern, either informally or formally, in accordance with the negotiated grievance procedures or the statutory unfair labor practice procedures, to the attention of Management officials having the authority to resolve the concern. The parties agree there will be no restraint, harassment, intimidation, reprisal, or coercion against the employee in the exercise of this right. If an employee wishes to discuss a problem, potential grievance, or unfair labor practice with a Union representative, the employee will have the right to contact and meet with a Union representative on duty time.

**SECTION E:** An employee has the right to raise as a defense to a performance-based adverse action the lack of necessary training that has been previously requested and documented by the employee and denied by Management. Employee should be aware that Management retains the right to refute this defense.

**SECTION F:** The employee has the right to be represented by the Union at any examination by a representative of Management in connection with an investigation, if the employee reasonably believes the examination may result in disciplinary action against the employee and the employee requests representation. Management will inform employees of this right annually.

**SECTION G:** If the employee requests a representative under Section F above, no further questioning will take place until the representative is present. Management will delay the examination for a reasonable period of time, not to exceed three working days unless extended by mutual agreement and reconvene when the employee and representative are prepared to meet.

**SECTION H:** Management will make every good faith effort to ensure that the employees being questioned by representatives of the Employer during the course of an administrative investigation will be informed as to the identity of the investigator(s) and the investigation topics reasonably in advance of the beginning of the investigators' questioning or other investigatory efforts.

**SECTION I:** Employees will be protected against reprisal of any nature for the proper disclosure of information not prohibited by law or Executive Order, which the employee reasonably believes evidences a violation of law, or regulation; or evidences mismanagement, waste of funds, an abuse of authority; or danger to public or employee health or safety.

**SECTION J:** Employees have the right to refuse orders that would clearly require the employee to violate law, or regulation.

**SECTION K:** If an employee is to be served with a warrant or subpoena on the organization's premises, it will be done, where reasonably possible, in private and without the knowledge of other employees.

**SECTION L:** Management agrees to continue providing same-sex domestic partnership benefits identified in the Presidential Memorandum dated June 2, 2010, "Extension of Benefits to Same-Sex Domestic Partners of Federal Employees", consistent with applicable law and government-wide regulation and subject to budgetary considerations.

**ARTICLE 7**  
**Facilities and Communications**

**SECTION A: Facilities**

1. Management will provide the following facilities and resources for Union use, subject to applicable law and government regulations.
  - a. Management will provide the Union with an on-site office space for the Union to conduct the majority of its official on-site business.
  - b. Management will provide and maintain telephone service, standard office furniture and supplies in the Union office for official Union business. Management agrees to consider requests for additional equipment for use in the Union offices.
2. Management will provide one bulletin board per building for Union use. The Union bulletin board spaces will be identified as such and accessible to the bargaining unit employees. All postings on the bulletin boards must be authorized by the Union. Postings will not violate any laws nor jeopardize the operational security of the organization.
3. Management will permit the use of internal mail, computer services, photocopiers, conference rooms, and other resources and services necessary to conduct official Union business and training subject to availability and adherence to standard business and security processes. When conference rooms are reserved for Union business or training, such reservation will be cancelled only for Management related activities.

**SECTION B: Communications**

1. Publications of the Union may be distributed on Government property by Union representatives to employees in common areas designated by Management as non-work areas, and where work is not being performed, subject to applicable law. The Union will not disrupt the workplace when making distribution of Union publications.
2. The internal mail system may be used for distribution of Union mail.
3. The NETL electronic mail system may be used by the Union to distribute general announcements and for communications purposes with and between bargaining unit members. The NETL electronic mail system cannot be used for solicitation of Union membership, internal Union business, or in violation of law or regulation. Management will provide and maintain a bargaining unit employee e-mail list accessible to the Union that will be updated at least quarterly.
4. Management will provide, at no cost to each local Union, two bound copies of this Agreement, printed in at least 12-point font size. The distribution will be made within 60 days after the effective date of this Agreement. A copy of this Agreement will be posted on the Intranet or any equivalent successor.

5. The Union will be given the opportunity to author a monthly column and other articles to be published in any employee newsletter subject only to normal editorial review.
6. Communications will be professional and respectful.
7. Management will provide a direct and clear link to the local Union website from the organization's Intranet.
8. Management will provide the ability for the Union to have its own high-speed internet connection, at the Union's expense, separate from Management's network for the Union to connect its Union-owned computer located in the Union office.

## **ARTICLE 8**

### **Official Time**

**SECTION A:** For the purpose of this article, official time is defined as time granted to Union representatives to perform representational functions while otherwise in a duty status without charge to annual leave or loss of pay. Union representatives include elected officers, stewards, and Union appointees. Management and the Union recognize that time spent by Union representatives contributes to the development of orderly and effective labor-management relations.

**SECTION B:** It is understood that Union representatives while performing the assigned work duties of their position will be fairly evaluated based on the work they perform, which may include adjustments of workload based on available time. Their use of official time will not be a consideration when evaluating their performance.

#### **SECTION C: Union**

1. Union representatives will request prior approval from their supervisor for the use of official time. Each Union representative and his/her supervisor will meet to agree on the best method for the Union representative to provide Management with this advance notice and obtain approval. On an ad-hoc basis, if the requestor's Supervisor is not available to grant approval, the request will be submitted by email and deemed approved. Official time for these purposes will be granted by supervisors consistent with applicable law, this agreement, and organizational priorities. Official time will not be unreasonably denied by the supervisor. If in the opinion of the supervisor, the granting of official time will negatively impact organizational priorities, the supervisor and Union representative will seek a mutually agreeable rescheduling of official time. In any disclosure to the supervisor, the Union representative will not be required to compromise the confidentiality of any grievance, potential grievance, or other confidential Union business relating to representational activities. Management has no intent, as defined by law and regulations, to regulate Union activities.

When a Union representative leaves his/her duty station location, he/she will notify the supervisor. Requests for training will be submitted by the Union representatives in a reasonable amount of time in advance of the training. It is understood by the parties that, in circumstances where there is a mission critical activity, official time for which the Union representatives have provided notice may need to be rescheduled.

**SECTION D:** When an individual employee elects self-representation in a grievance or administrative procedure, official time will be granted consistent with 5 USC 7131.

**SECTION E:**

1. The Union and Management recognize the necessity to accurately record the amount of official time used for representational purposes. Union Representatives will report their use of their official time in the official electronic timekeeping system at the end of each pay period.
2. At the end of each quarter, Finance and Acquisition Center (FAC) will produce a report to the Union President from the official electronic timekeeping system on the use of official time, and the Union will be given ten (10) work days to review the report for accuracy. If the Union provides no response in this time period, the report will be considered to be accurate by Management.

## **ARTICLE 9**

### **Dues Withholding**

**SECTION A:** An employee officially assigned to a bargaining unit position and who is a member in good standing of the Union may authorize an allotment from his or her pay for Union dues provided that:

1. normal pay is sufficient, after legal deductions and other authorized allotments, to cover the full amount of dues; and
2. that the individual has voluntarily completed Standard Form 1187, Request for Payroll Deduction for Labor Organization Dues, and has been provided with information on the limitations on revocation of authorization as stated in Section K of this Article.

**SECTION B:** The Union, within 10 days of the effective date of this Agreement, will notify the FAC Accounting Supervisor and Labor Relations Specialist in writing of the names and titles of officials authorized to make the necessary certification of Standard Form 1187, the Union treasurer's name and the address to which remittances should be sent, and how the check should be inscribed. If any of this information should change, the Union will promptly notify the FAC Accounting Supervisor and Labor Relations Specialist in writing.

**SECTION C:** The Union will inform each of its members of the voluntary nature of the dues authorization, of the procedure for authorizing the allotment, and the conditions under which the allotment may be revoked. The Union agrees to obtain and distribute to its members Standard Form 1187 and to receive completed forms from members. The Union will receive completed forms from members, enter the amount of dues to be deducted each pay period, determine if the member is in good standing in the Union, complete the required certification including a declaration of the contractual arrangement between the Union and employee, and submit the form to the FAC Accounting Supervisor and Labor Relations Specialist.

**SECTION D:** Allotments authorized on properly completed and certified forms which are received by the FAC Accounting Supervisor and Labor Relations Specialist will be sent to the DOE's payroll office within 10 days of receipt. The authorized amount to be withheld from the employee's pay will begin the first full pay period after the date of receipt in the DOE's payroll office. Withholding of the authorized amount will continue until the allotment is terminated under one of the conditions provided in Sections H through K of this article.

**SECTION E:** The DOE's payroll office will withhold the regular Union dues from the pay of each employee for whom it has a properly executed current allotment authorization. Dues will be withheld on a biweekly basis conforming to a regular pay period. Only the regular, periodic amount required to maintain an employee in good standing with the Union will be deducted. No special assessments, fines, or similar fees will be deducted, except for dues erroneously omitted after receipt by the employer of an employee's Standard Form 1187 or a notification of dues increase as covered in Section G of this article.

**SECTION F:** After the close of each pay period, the DOE's payroll office will certify for payment the net amount to be remitted. This remittance will be provided to the Union electronically. Administrative errors in underpayment will be corrected and adjusted in the next remittance. The Union, upon discovery of an overpayment error, will promptly refund overpayment to the DOE's payroll office. The Union will also be provided with a list of Union members with current allotment authorizations, the amount withheld from each person's pay, a statement showing the total amounts withheld during the pay period, any administrative adjustments, names of those whose pay was not sufficient to cover the full amount of the deduction, and the net balance remitted.

**SECTION G:** If the amount of regular dues is to be changed, the Union will inform the FAC Accounting Supervisor and Labor Relations Specialist, who will then forward the change to DOE's payroll office within 10 days of receipt of the request for change. The change will be effective the beginning of the first pay period after receipt of the change notice by DOE's payroll office.

**SECTION H:** If the Union loses exclusive recognition, the FAC Accounting Supervisor and Labor Relations Specialist will notify DOE's payroll office, who will then terminate allotments for all members effective with the beginning of the pay period following the one in which the notification is received by DOE's payroll office. The allotment of all employees in the organization will be terminated on the effective date of the first complete pay period after the Union ceases to have exclusive recognition.

**SECTION I:** The Union will provide to the FAC Accounting Supervisor and Labor Relations Specialist in writing the name of any employee who ceases to be a member in good standing in the Union within 10 days of the date of such a determination. The FAC Accounting Supervisor and Labor Relations Specialist will forward a termination request to DOE's payroll office within 10 days of the date of receipt. The allotment of an individual employee will be terminated effective with the first complete pay period after which DOE's payroll office receives written notice from the FAC Accounting Supervisor and Labor Relations Specialist.

**SECTION J:** The allotments of an individual employee will be terminated on the effective date of his or her separation from the organization. Allotments will not be prorated, however, and full allotments will be taken from the check covering a final partial pay period.

**SECTION K:** An employee who wishes to revoke his or her dues allotment will complete Standard Form 1188 and provide this form to the FAC Accounting Supervisor and Labor Relations Specialist. Management will provide a copy to the Union. The Union will acknowledge receipt within five working days. Processing will not occur until after that five-day period. The FAC Accounting Supervisor and Labor Relations Specialist upon receiving a written revocation notice Standard Form 1188 from an employee, will notify the Union within 10 days of receipt of the request.

**SECTION L:** Within one pay period of any NETL employee separating, Management will provide notification to the Union.

**ARTICLE 10**  
**Midterm Bargaining**

**SECTION A:** Matters appropriate for mid-term bargaining are negotiable Union or Management proposals concerning matters that are not "contained in or covered by" this term agreement.

**SECTION B:** The Union or Management may initiate midterm bargaining by submitting a written proposal to the non-proposing party containing a draft of the proposed language for inclusion in this agreement. Management and Union representatives will meet within 30 work days of receipt of the draft proposal to discuss the appropriateness of mid-term bargaining for the proposal and discuss a negotiation schedule.

**SECTION C:** Mid-term agreements, by definition, change or amend this agreement and must be submitted for Agency Head review, pursuant to 5 USC 7114(c)(1) and become effective on the date they are approved under the Agency Head approval process under 5 USC 7114.

**SECTION D:** Mid-term bargaining will be held at a site selected by Management. If the site selected is outside the commuting area, the official members of the Union team will receive travel and per diem in accordance with the Federal Travel Regulations.

**SECTION E:** Nothing in this article changes or amends any right of the Union, specifically including the right of the Union to be notified regarding any Agency action impacting substantive working conditions and to engage in appropriate arrangements bargaining over impact and implementation measures for agency actions impacting working conditions/conditions of employment.

## **ARTICLE 11**

### **Contracting Out**

**SECTION A:** Management retains the right to make determinations with respect to contracting out as provided in 5 USC 7106 and 5 USC 7117 (Duty to Bargain in Good Faith). Management agrees to comply with all provisions of the FAIR Act (and with any supplements or superseding circulars or directives), the provisions of Public Law 110-28 which declared that “the Federal Employees at the National Energy Technology Laboratory will be classified as inherently governmental for the purpose of the Federal Activities Inventory Reform Act of 1998”, and Public Law 111-8, and with this Agreement. Should Management determine that contracting out is legal and necessary, Management agrees to make every effort to minimize the impact of contracting out on employees and to provide the Union and employees with frequent updates on the A-76 process.

**SECTION B:** Management and the Union understand and agree that there will be separate competitive areas for employees assigned to NETL. Any employee stationed in Albany, Morgantown, or Pittsburgh who is not employed by NETL will be considered in other competitive areas.

**SECTION C:** Management will notify the Union in writing of any decision it makes or of which it is aware involving the contracting out of work which has an adverse impact or a change in working conditions on bargaining unit members. Management will share draft statements of work for support service contracts with the Union at the same time as that draft statement of work is made available to the public for comment. In addition, if Management is using the A-76 process, Management will notify the Union of the potential for contracting out of work at the beginning of the preliminary planning process.

**SECTION D:** Management will provide the Union with copies of all notifications sent to Congress regarding contracting out activities and/or studies at the same time Management provides these notices to Congress.

**SECTION E:** Both parties will make best efforts to provide copies of additions, changes, deletions, and supplements to OMB Circular A-76; regulations and policies pertaining to direct conversions and OMB Circular A-76; regulations and policies concerning the implementation of direct conversions and OMB Circular A-76; and Federal statutory procurement provisions applicable to NETL to the other party upon receipt of any of the above.

**SECTION F:** For A-76 actions, NETL will provide the Union and affected employees with weekly briefings during preliminary planning, the duration of the competition, and the post-competition transition phase. Such briefings will include but not be limited to:

1. Update on actions taken during the previous week;
2. Action scheduled to take place during the following week;
3. Tentative schedule for the entire A-76 review and/or other process;
4. Identification of the employees' and Union's role in each action;

5. Provision of all relevant documents, including any communication sent out to the group of prospective and/or real bidders; and
6. Electronic access to all documents made available to prospective and/or real bidders.

**SECTION G:** The Union retains its statutory right to bargain over appropriate procedures and arrangements where a bargaining unit member is adversely impacted as a result of a decision by Management to contract out the work of a bargaining unit employee.

**SECTION H:** Management will request Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Program (VSIP) authority from the Office of Personnel Management as soon as Management determines that an adverse impact in the nature of elimination of positions or reduction in force may result from a potential contracting out action notification that a request was made will be made to the Union. Adverse impact may result from public-private competitions under OMB Circular A-76 or any other public-private competition rules, or the decision to review any positions for direct conversion to contractor performance without a public-private competition. If authorized by the Office of Personnel Management, Management will offer VERA/VSIP to the affected employees at the time of formal public announcement of the public-private competition, or as soon as reasonably practicable. For OMB Circular A-76 competitions, the formal public announcement occurs at the end of the preliminary planning process when a notice is posted announcing the competition.

**SECTION I:** Management will not enter into personal service contracts that establish an employer-employee relationship, as defined by appropriate laws and regulations.

**SECTION J:** Fair Act Inventories

1. Prior to development of NETL's annual Fair Act Inventory, a team will be created which will include a Union representative to assist in the development of the submission to Headquarters. Upon completion of that activity the Union will be provided a copy of that inventory in an editable spreadsheet format.
2. Once DOE's Fair Act Inventory is published, the Unions will be notified, and an intranet message will be posted which will include a link to DOE's Fair Act Inventory and information which will indicate the rights and methodologies to challenge that Inventory.

**SECTION K:** At the same time as the DOE's Fair Act inventory is made public, Management will notify the Union and all affected employees in writing of their right to challenge DOE's Fair Act inventory decisions in accordance with applicable law, rules and regulations. Such notifications will:

1. explain the challenge timeframe;
2. include the designation of the appropriate inventory challenge authority;
3. explain the parameters of inventory challenges;
4. designate the address to which challenges are to be delivered;
5. indicate the acceptable methods of delivering challenges;
6. specify all required activity information;

7. state by when challengers will receive DOE's decision; and
8. state the number of FAIR Act challenges and appeals filed since the enactment of that law, and the disposition of those challenges and appeals.

**SECTION L:** The decision on an inventory challenge will be provided to the Union and all employee challengers in writing and will:

1. explain the appeal timeframe;
2. include the designation of the appropriate inventory appeals authority;
3. explain the parameters of inventory appeals;
4. designate the address to which appeals are to be delivered;
5. indicate the acceptable methods of delivering appeals;
6. specify all required activity information; and
7. state by when appellants will receive the DOE's decision.

**SECTION M:** The Union may appoint a representative to serve on every High Performing Organization (HPO), or Performance Work Statement (PWS) and Most Effective Organization (MEO) team formed under OMB Circular A-76. In addition, Management will allow the Union to designate at least one representative to participate fully on any preliminary planning team over which Management has control. To the extent that training is provided to HPO, PWS and MEO team participants, the same training will be provided to bargaining unit members who are members of each respective team. Management has determined that the assignment of the Union's representative will be treated as an assignment of work for the purposes of duty time to participate. Time spent participating on these teams will not be considered as official time as specified in Article 8, Official Time, of this Agreement. The Union's representative assigned to these teams will sign the same non-disclosure agreement and be bound by the same obligations to protect confidential information as all other members.

**SECTION N:** Management will provide the Union advance notification of and the opportunity to fully participate in all meetings, electronic conferences, site visits, conferences, and/or debriefing sessions with actual or potential bidders of any function undergoing a commercial activities study that affects bargaining unit employees, including those related to OMB Circular A-76 competitions, on official time where such access or disclosure is not otherwise prohibited by procurement integrity requirements.

**SECTION O:** Management will provide the Union copies of all supporting documentation on bids where disclosure is not otherwise prohibited by procurement integrity requirements.

**SECTION P:** Management will release to the Union the certified standard competition form (SCF), the agency tender, and the public reimbursable tenders by no later than the competition end date, along with all other information developed by DOE as part of the contracting out process, including that supplied by prospective contractors, that is not otherwise prohibited from disclosure by procurement integrity requirements.

**SECTION Q: Competition End Dates**

Management will provide the Union and all affected employees written notification of formal announcements of the 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.

**SECTION R:** Management will conduct the debriefings required by OMB Circular A-76, Attachment B, Paragraph D6d with the Union and all affected employees by no later than the formal end date of each OMB Circular A-76 competition.

**SECTION S: Competition Cancellations**

Management will provide the Union and all affected employees written notification of formal announcements of the cancellation 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.

**SECTION T:** When competitions are cancelled, Management will provide, upon the Union's request, a debriefing on the decision to cancel to include all information that may be legally released.

**SECTION U: Competition Contests**

Once Management is apprised that there will be a competition, it will:

1. provide immediate notification to the Union and all affected employees in writing of any right they might have to contest certain decisions involved in the contracting out process; and
2. provide the Union and affected employees upon request a copy of the applicable laws, rules, and regulations governing contracting out decision contests as provided for under OMB Circular A-76, Paragraph F and Federal Acquisition Regulations (FAR) Part 33.

NETL will inform the Union of all contests filed by interested parties other than the Union within 24 hours of Management's knowledge of all such filings to the extent such disclosure is consistent with law or procurement integrity rules.

**SECTION V: Contract Out Decision/Reduction in Force**

The clause at FAR 52.207-3, Right of First Refusal of Employment, will be placed in all solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the solicitations, whether or not a cost comparison is conducted. Refusing the right of first refusal, because of displacement due to contracting out, will not deny a bargaining unit employee of any rights the employee might otherwise have under this Agreement or applicable Reduction-In-Force procedures, or any other personnel procedures.

## **ARTICLE 12**

### **Retirement**

**SECTION A:** This Article will be administered in accordance with Title 5, Code of Federal Regulations, Part 831 and this Agreement. The purpose of this Article is to clarify certain policies covering retirement for all employees in accordance with applicable law and regulation.

**SECTION B:** Within budget constraints, NETL will continue to provide at least annual access to pre-retirement seminars addressing CSRS or FERS. Management will have dialog and consult annually with the Union on the planning and feasibility for offerings of seminars. Attendance at pre-retirement seminars is considered to be training on duty time. Laboratory Operations Center will make available current contact information for retirement estimates and counseling.

**SECTION C:** Employees, who are involuntarily separated as a result of an inability to perform their assigned duties or misconduct which can be attributed to a disabling condition, will be notified by the Agency in the decision letter of their right to file for disability retirement within one year after the date of separation.

**SECTION D:** An employee may withdraw a retirement application at any time prior to its effective date, provided the withdrawal is communicated to the HRSC in writing and is received by the HRSC no later than the effective date of the retirement, unless the offer was part of a buyout opportunity accepted by the employee; there was a commitment made to fill the position of the retiring employee; or accepting a withdrawal would result in a potential RIF situation.

**SECTION E:** New employees will be provided basic information on the Thrift Savings Plan (TSP) and retirement during the initial orientation session. Laboratory Operations Center will make available current contact information for information concerning the TSP Program.

**SECTION F:** Management will consider an employee's request to utilize phased retirement, as defined by DOE Chief Human Capital Officer Policy Memorandum #39 (2015), pursuant to 5 CFR 831.1713 (d)(2) and 5 CFR 848.203 (d), in addition to other retirement options. Management will take steps to ensure NETL's ability to participate in DOE's Phased Retirement Program.

## **ARTICLE 13**

### **Use of Leave**

**SECTION A: Purpose of leave.** Correctly utilizing leave (e.g., sick, annual, without pay, or otherwise earned) is critical for maintaining a healthy workforce and achieving an Organization's mission. As such, an employee's supervisor will make every effort to approve leave requests. An employee will make every effort to submit leave requests in advance. This Article covers the use of Annual Leave, Sick leave, and Leave Without Pay (LWOP). Credit hours, compensatory time, and compensatory time for travel will be considered as annual leave in this article. Because of the personal nature of many leave requests, leave requests will be submitted only to Management. All leave usage will be subject to 5 CFR 630, Absence and Leave.

If the employee does not receive a response within five workdays after submission, the employee has the right to submit the request to the next level supervisor. Denials must be based on work requirements or as a result of official leave restrictions. Employees and/or their Union Representatives will receive written denial or revocation of pre-approved leave decisions and supporting rationale upon request. All leave usage will be subject to 5 CFR 630, Absence and Leave.

**SECTION B: Annual leave.** Employees may request use of annual leave at any time, in any duration, or in any pattern. Employees are encouraged to request annual leave in advance to allow supervisors adequate time to schedule, plan, and approve or deny in a timely manner.

Any absence must be supported by a timely request submitted through the current timekeeping system and is subject to Supervisory approval, except for the following scenarios:

- *Unforeseen Circumstances within the workday.* The parties recognize that occasionally, circumstances arise that require immediate departure from the duty station. In such cases, the employee will immediately notify their Supervisor by email, telephone or text message, as agreed upon by the Supervisor. The Supervisor may respond via email, telephone or text. If the employee's Supervisor is not on duty status and has not appointed an acting Supervisor, and the employee has a sufficient annual leave balance, request will be assumed as approved. Upon returning to duty, an electronic request must be submitted through the current timekeeping system.
- *Leave requests for one workday up to five workdays, due to exigent circumstances.* If the employee is unable to submit an electronic request prior to an absence due to exigent circumstances, they must provide notice via email, telephone or text message, as directed by the Supervisor. The Supervisor may respond via email, telephone or text. If the employee's Supervisor is not on duty status and has not appointed an acting Supervisor, and the employee has a sufficient annual leave balance, request will be assumed as approved up to one workday. Additional days may be requested via communication with the Supervisor. Upon returning to duty, an electronic request must be submitted through the current timekeeping system.

- *Leave requests for more than five workdays.* Supervisors will normally approve or deny a request within five workdays of the request. Failure to respond to a request within five workdays will not be considered as approval. If the employee does not receive a response within five workdays after submission, the employee has the right to submit the request to the next level Supervisor via email. The second level Supervisor will have five workdays to approve or deny via email and copy first level Supervisor.
- *Last minute or same day requests should be the exception.* Repeated requests of this nature may result in leave restriction.

Leave request denials must be based on work requirements or as a result of official leave restrictions. Upon request, employees and their Union representatives will receive written denial or revocation of pre-approved leave decisions and supporting rationale. With regard to annual leave:

1. Each employee will schedule annual leave so as to avoid forfeiture at the end of the leave year. When properly-scheduled annual leave is lost at the end of the leave year because of an approved exigency of public business or documented medical reasons, leave will be restored upon request of the employee consistent with applicable law.
2. If conflict arises when two or more employees cannot be granted annual leave at the same time because of workload requirements, the request that has been submitted and approved first will be honored. In the event that two concurrently submitted leave requests conflict, the leave requests will be honored on the basis of seniority determined by the service computation date reflected on the SF-50.
3. Once annual leave has been scheduled, an employee's request for a change in his scheduled leave will be honored, subject to the needs of the Organization, only if the change does not adversely affect the leave schedule of another employee.
4. Annual leave may be advanced by Management only in an amount that does not exceed the leave the employee can be expected to accrue by the end of the leave year.

**SECTION C: Sick Leave.** Authorization for sick leave use, because of its nature, is not usually obtained in advance, except for cases where the employee knows they will be unable to work because of medical examination or treatment, a period of convalescence, a lengthy illness, etc. With regard to sick leave:

1. Accrued sick leave will be granted when an employee:
  - a. is absent to receive medical treatment or examination;
  - b. is incapacitated for the performance of duties by sickness, illness, injury, or pregnancy and confinement;
  - c. is required to give care and attendance to a member of the immediate family.

2. The Union and Management recognize the insurance value of sick leave and agree to encourage employees to conserve sick leave so it will be available to them in cases of extended illness. The Union and Management also acknowledge the value of employees utilizing their leave to reduce the probability for a spread of infectious diseases, which could have a deleterious impact to achieving mission goals. For absences in excess of three days, Management may require written medical documentation signed by a qualified physician, medical practitioner, or other administratively acceptable evidence. Management may consider an employee's self-certification as to the reason for his or her absence as administratively acceptable evidence. In discussions with Management regarding the sufficiency of medical evidence submitted in support of a request for sick leave and where an employee reasonably believes that they may be the subject of disciplinary action, the employee will be entitled to Union representation. Prior to any such discussion, the employee will be notified of this right by their supervisor or other Management official, given an opportunity to contact and discuss the matter with the Union representative, and be permitted the right of representation in such discussion. Written medical documentation from a medical professional is required to approve or advance sick leave:
  - a. In excess of three consecutive work days when sufficient sick leave is not available to cover the leave period; or
  - b. May be required for any period of absence when an employee is placed on leave restriction.
3. Employees who are injured while on duty may be entitled to compensation subject to the provisions of the Federal Employee's Compensation Act (FECA); and when such a claim is approved under FECA, the employee will be entitled to continuation of pay in accordance with FECA. Human Resources will maintain information on FECA and will provide it to employees upon request.
4. Under certain circumstances, sick leave, not to exceed 30 days, may be advanced to employees in cases where an employee experiences a serious disability or ailment.

**SECTION D: Leave without pay.**

1. Employees may request leave without pay. Such requests will be approved to the extent possible subject to mission requirements. Any refusal to grant LWOP will not be made arbitrarily.
2. The Union may designate a reasonable number of bargaining unit members as delegates to any Union activity. For such purposes where that activity is not covered by official time, request for leave without pay at the option of the employee will be submitted five working days in advance. An employee who represents the Union will be granted LWOP, subject to the requirements of OPM policy.

3. Employees on approved leave without pay may return to their former position or an equivalent position in accordance with government wide. law, policy, and regulations.
4. In the event of a reduction in force during their absence, which affects their position, employees on leave without pay will be given consideration in accordance with appropriate regulations concerning reduction in force actions.

**SECTION E:** With regard to leave for parental and family responsibilities, the Union and Management recognize that family situations carry certain responsibilities that cannot be ignored or postponed, but that prolonged absences for these purposes make it harder to achieve organizational goals. It is agreed that leave to meet parental and family responsibilities will be considered as an appropriate use of annual leave, sick leave, or leave without pay as authorized by 5 CFR 630.1201.

**SECTION F:** Requests for advances of leave and voluntary leave transfers will be granted in accordance with applicable OPM regulations.

**SECTION G:** Management agrees that when, in its judgment, it becomes necessary to close the duty station because of inclement weather or any other emergency condition, employees who are not otherwise scheduled to telework will be given Administrative Leave. Management will make its best effort to give employees the earliest possible notice of closures or delays in opening for inclement weather or other emergency reasons.

**SECTION H:** When Management imposes an official leave restriction on an employee, it will be in the form of a written memorandum to the employee and will be based on conduct, performance, or mission requirements.

**SECTION I:** For other types of leave not explicitly addressed in this Article, leave will be granted in accordance with 5 CFR 630 and other applicable laws and DOE Orders, along with any position restoration rights. These types of leave may include, but are not limited to, religious leave, court-related leave, military leave, leave for bone marrow or organ donation, etc. LOC will be responsible for maintaining an Intranet link to provide employees with information.

**SECTION J:**

1. The immediate supervisor may excuse (i.e., not require a charge to leave for) nonrecurring brief periods of absence or tardiness due to circumstances beyond the employee's control (e.g., adverse weather conditions, traffic, and transportation issues).
2. If emergency conditions prevent an employee from timely arrival at work and the workplace is not closed nor is an unscheduled leave policy in effect, among other options, the employee may be granted administrative leave for absence from work. Employees are obligated to contact their supervisors as early as practicable to explain the circumstances and provide an estimated time of arrival at work. In addition, the Agency may request documentation that the employee made reasonable efforts to reach work but was prevented from timely arrival by emergency conditions.

3. Employees who are affected by a natural disaster may be eligible for a reasonable amount of administrative leave, based on the facts and circumstances of the personal emergency. An employee requesting administrative leave under this Section may be required to provide an explanation and/or documentation in support of his or her claim.

**SECTION K:** The Parties agree that the above reasons for granting administrative leave are not all inclusive and that there may be other situations supporting a request for the granting of such leave. Such requests will be considered based on the reasons presented at the time. Management may require documentation as appropriate to support the reasons for and/or the duration of such administrative leave requests. Such instances may include employee participation in teams and boards where said participation is in a NETL supported or sponsored activity.

**ARTICLE 14**  
**Details and Temporary Promotions**

**SECTION A:** Management and the Union agree that Details and Temporary Promotions are an effective mechanism to cross-train and provide career development opportunities for employees.

**SECTION B:** Details of employees will be kept to the shortest practical duration, and normally will not exceed one year.

**SECTION C:** Temporary promotions and details to a higher grade are limited to 120 days, unless competed. Competed temporary promotions will normally not exceed one year in duration but may be extended for a longer period in accordance with applicable regulations.

**SECTION D:** Employees should be recognized for the work they perform. Details shall be recorded and maintained in the Official Personnel Folder/electronic Official Personnel Folder (OPF/eOPF).

Employees detailed to a higher-graded position for a period of more than 30-consecutive calendar days must be temporarily promoted. The employee will be paid for the temporary promotion, retroactively, beginning the first day of the detail. The temporary promotion should be initiated at the earliest date it is known by the Department that the detail is expected to exceed 30-consecutive calendar days. For the purposes of this section, a GS employee, who performs the grade-controlling duties of a higher-graded position for at least 25% of his/her time for 30-consecutive calendar days or who performs higher-graded duties on a regular and recurring basis, may submit a request for consideration for temporary promotion to their supervisor, and if after 30 days there is no response or a negative response, to the COO or their designee.

**SECTION E:** Details may be used to meet temporary needs of NETL's work program. Unless competitive procedures are used, details to bargaining unit positions will be announced using the intranet. Details will not be used to reward or punish employees. The following will apply when filling non-competitive details in excess of 30 days:

1. NETL will determine the qualifications of the detailed position, as well as any task-related qualifications of the work to be performed. The NETL Management will determine the duty station where the detail is located and the eligibility to apply for the detail. Subject to budgetary constraints, Management will consider not using geography as the sole criterion for eligibility. Management will consider permitting employees to be eligible to apply for details at a different duty station. Postings for details will be done on the intranet.
2. NETL Management will use objective and job-related criteria when determining the qualifications and the areas of solicitation.
3. Postings will be for a reasonable period of time to allow all eligible employees the opportunity to become aware of and apply for details.

**ARTICLE 15**  
**Training and Career Development**

**SECTION A:** The Union and Management agree that development of an employee's knowledge, skills, and abilities through effective training is an important factor in maintaining efficient operations.

**SECTION B:** Management acknowledges its responsibility to provide training and career development opportunities for employees. Each employee is required to establish an individual development plan (IDP). An IDP is a flexible document jointly developed between supervisor and employee to be used as a roadmap for the employee's professional and career development. The emphasis of the plans will be: first, to address the competencies (or knowledge, skills, and abilities) needed by the employee in his/her current position; second, to address the competencies needed for advancement; and third, to prepare employees for new career opportunities. Each plan will establish a series of goals and will state the responsibilities of each party to realize such goals. Elements of this plan should be formulated in conjunction with the annual employee performance review.

**SECTION C:** Management will determine employee development and training that is essential to meet work force needs and will provide such training subject to the availability of training and travel funds. NETL is committed to providing employees opportunities to upgrade and improve their skills and capabilities.

**SECTION D:** Management will reimburse appropriate costs for mandatory study and testing required to obtain and/or maintain certification and/or licensure related to an employee's current position in accordance with federal regulations and subject to availability of funds. To the extent Management has established or establishes in the future a requirement that employees must be members of a particular professional society or organization, Management will reimburse employees for their dues subject to the availability of funds and in accordance with federal regulations.

1. In such instances, employees will be entitled to 100 percent payment for tuition, books, and fees, subject to available appropriations. After any course completion, employees must provide the COO or their designee with verification of successful completion of the course.
2. If an employee fails to successfully complete a class, the employee may only be eligible for tuition, books, and fees reimbursement after the successful completion of an approved class. To receive payment, the employee will be required to submit a passing grade certified by a transcript and a paid receipt.

**SECTION E:** Selection for training will be in accordance with merit procedures when such training is given primarily to prepare employees for advancement and is required for promotion.

**SECTION F:** The Union and Management agree that group training is a cost-effective method for employee development.

**SECTION G:** Employees taking courses which are relevant to the NETL mission and have been approved by Management:

1. In such instances, employees may be entitled to 100 percent payment for tuition, books, and fees, subject to available appropriations. After any course completion, employees must provide the COO or their designee with verification of successful completion of the course.
2. If an employee fails to successfully complete a class, the employee may only be eligible for tuition, books, and fees reimbursement after the successful completion of an approved class. To receive payment, the employee will be required to submit a passing grade certified by a transcript and a paid receipt.

**SECTION H:** Upon Management approval, employees in a college or graduate level program that fulfills a current need of NETL may be permitted to take such courses while on official duty time. The employee will not be reimbursed for travel expenses for college courses.

**SECTION I:** Continued Service Agreements

In accordance with 5 CFR 410.309(a), any employee selected for training at Government expense exceeding 180 hours must sign a written agreement to continue their employment with DOE.

The employee may, at any time prior to the start of the training, decline any optional training and continued service agreement without prejudice, provided that no funds have been expended.

**SECTION J:** Reassignments and New Assignments

When employees are reassigned to new positions or assigned new duties in connection with their current positions, Management and the employee will reexamine the employee's IDP to evaluate proposed training.

**SECTION K:** Nothing in this section is intended to interfere with applicable merit promotion requirements.

## **ARTICLE 16**

### **Reorganization and/or Relocation Notification Procedures**

**SECTION A:** Management and the Union agree that a stable and healthful office environment which contributes to employee comfort, productivity, and job satisfaction is an important organizational objective. When Management determines that it is necessary to reorganize or to physically relocate employees, it will provide advance notification to the Union to begin a cooperative discussion. The objectives are for the reorganization or the relocation to be thoroughly coordinated with the Union, well planned, implemented properly, in accordance with procedures outlined in this article, and to minimize any adverse impacts. This article does not apply to single individual employee actions such as merit promotions, details, or individual reassignments.

### **SECTION B: Definitions**

For the purpose of this article:

1. "Relocation" means a physical move of the employees in a work unit from one office, suite of offices, shop, or building to another. Temporary on-site relocation of less than thirty (30) days duration for office refurbishing (e.g., painting and carpeting) will not be subject to this notification procedure.
2. "Reorganization" means organizational change involving the elimination or addition of organizational elements (e.g., branches, divisions, offices) resulting in the realignment of functions and/or employees.
3. Pre-decisional Involvement (Advance Notification) means when Management determines that it is necessary to reorganize, it will provide advance notification as soon as there has been a determination to reorganize to the Union to begin a cooperative discussion.
4. Notice means written notification, submitted as much in advance of the proposed implementation date as possible.

### **SECTION C: Disclosure of Plans**

1. When Management intends to reorganize, Management will give notice to the Union, three weeks prior to initiation of reorganization. Initiation of reorganization means notice to Headquarters when Headquarters approval is required. When Headquarters approval is not required, it means when the director has approved the reorganization. The following initial information will be provided, as appropriate:
  - a. reason(s) for the reorganization;
  - b. a list with the names, position titles, and grades of all affected employees;
  - c. approved mission and function statements for the existing and the proposed organizations;

- d. the existing organization and the proposed organization charts; and
  - e. a proposed implementation schedule.
2. After receipt of the advance notification and the information described in this section, the Union may, as soon as possible, but no later than five (5) work days after receipt, request to meet with Management for a detailed briefing and to discuss the proposed change and the information supplied with the notification, or to comment or otherwise make suggestions concerning the implementation plan. Union concerns raised at the meeting regarding any adverse impacts which may result from the proposed change will be discussed. Either the Union or Management may request an extension of the time for conducting the meeting. Such an extension must be mutually agreed to. Such meeting will not preclude formal negotiations required by law, rule or regulation.
  3. Union requests under 5 U.S.C. 7114(b)(4) for additional information will be honored as required by statute.
  4. Within one working day of learning that Headquarters has approved the proposed reorganization, the Union will be notified. Once the proposed reorganization is approved by Headquarters, notice will be given to the Union no less than two weeks in advance of the implementation date.
  5. If, prior to final implementation, Management concludes that any modification of the original plan is necessary and employee assignments will change as a result, Management will notify and discuss these changes with the Union.
  6. Where Management wishes to relocate employees, Management will give Notice to the Union and provide, as appropriate, the following initial information:
    - a. reason(s) for the relocation;
    - b. (1) a list with the names, position titles and grades of all affected employees and their supervisors;
    - c. (2) a list of names, job titles, and the employer of all contractors occupying work space in existing and/or proposed sites seating charts;
    - d. whether the proposed relocation is intended to be temporary or permanent and
    - e. the expected duration of residency in temporary space; and
    - f. a proposed implementation schedule.

**SECTION D:** When allocating office space in conjunction with a relocation or, if appropriate, subsequent to a reorganization, the NETL procedure on space Management will be followed.

**ARTICLE 17**  
**Position Descriptions & Classifications**

**SECTION A:** A position description is a set of duties and requirements for the employment of a full-time, part-time, or intermittent employee. Position classification standards and functional guides define Federal occupations, establish official position titles, and describe the various levels of work. Each position covered by this Agreement that is established or changed must be accurately described in writing. The position description should include the occupational title, series, and grade. The OF-8 will contain the full career ladder promotion potential.

**SECTION B:** Each employee is entitled to a current copy of his/her position description which describes the major duties and responsibilities of the position. Management will notify the employee prior to any change in his/her position description. Employees will be furnished a current, accurate copy of the description of the position to which assigned at the time of assignment or if changed at any time throughout the employee's career.

Management and the employee will, at a minimum, review the position description:

- When the employee has earned a change in grade
- When an employee's duties have significantly changed
- Upon establishing the performance plan for each rating year

**SECTION C:** Management is responsible to ensure that an employee's position description is current and relative to the duties of the position. If the employee believes their position description is not current and relative to the duties of the position, the employee should discuss with their Supervisor.

**SECTION D:** Bargaining unit employees will be specifically assigned to one immediate Supervisor for administrative and supervisory purposes.

**SECTION E:** Employees dissatisfied with the classification of their position should first discuss the problem with their supervisors. If a Supervisor is unable to resolve the issue to the employee's satisfaction, the employee may request an official desk audit through their supervisor. If the Supervisor denies a desk audit, the employee may appeal to the Shared Service Center. Following a determination from the Shared Service Center, an employee may file a classification/job grading appeal at any time through appropriate channels.

**ARTICLE 18**  
**Unacceptable Performance**

**SECTION A:** This Article applies only to bargaining unit employees who have completed their probationary or trial period, except to the extent prohibited by laws and regulations.

Unacceptable performance is performance by an employee for which the employee receives a rating of Fails to Meet Expectations on his/her performance. Unacceptable performance may result in reduction in grade or removal of an employee.

An employee has the right to representation at a meeting between an employee and Management during which the employee reasonably believes that disciplinary action may result. If such a request is made by an employee during a performance meeting, Management will honor the request by stopping the meeting and rescheduling within a reasonable period of time.

Any action based upon unacceptable performance will be fair, equitable, and administered as timely as possible.

**SECTION B:** In cases of unacceptable performance, Management will issue a letter notifying the employee that they are being provided a reasonable opportunity to demonstrate acceptable performance. The letter will contain the following:

1. an identification of the critical elements for which performance is unacceptable;
2. a statement that the employee has a reasonable period of time, consistent with OPM guidance, in which to bring performance up to an acceptable level;
3. a meeting time and date to discuss the letter with the employee.

When the employee satisfies the requirements, a letter will be issued and the process ends.

**SECTION C:** Management will consider lateral reassignment of an employee based on unacceptable performance before it acts to reduce in grade or remove an employee for unacceptable performance.

**SECTION D:** In all cases of proposed action based on unacceptable performance, the employee will be given 30 calendar days advance written notice of the reasons and specifications of unacceptable performance on which the proposed action is based. The advance written notice proposing either to remove or downgrade an employee for unacceptable performance will include:

1. specific instances of unacceptable performance by the employee on which the proposed action is based;
2. the critical element(s) of the employee's position involved in each specification of unacceptable performance;
3. the performance standard(s) of the employee's position involved in each specification of unacceptable performance;
4. a statement of the employee's right to be represented by an attorney or representative;

5. a statement of the employee's right to answer orally and/or in writing; and
6. a statement of the employee's right to review the material relied upon to support the reasons and specifications in the notice.

The employee will be given the opportunity, but will not be obligated, to respond orally and/or in writing to Management prior to a decision on the reasons and specifications for the proposed action. Any written response by the employee must be provided within 15 calendar days of the receipt of the letter of proposed action. The employee has a right to request an extension of an additional 15 calendar days to respond, subject to the agreement of Management.

**SECTION E:** The Reviewing Official will set forth findings with respect to each reason and specification for or against the employee in the final decision letter. The final decision and subsequent action to either remove or downgrade an employee because of unacceptable performance will be completed no later than 30 calendar days after the expiration of the advance notice period and will be based only on those instances of unacceptable performance by the employee which occurred during the one-year period ending on the date of the advance notice letter. In taking an action based on unacceptable performance, Management will consider the employee's performance during the notice period. Any entry or other notification of the unacceptable performance will be removed from any Agency record relating to the employee upon completion of an acceptable level of performance earned during the notice period, and with a continued acceptable level of performance for one year thereafter.

**SECTION F:** An employee will, upon request, be furnished a copy of that portion of all written documents which contain evidence relied on by Management to form the basis for the reasons and specifications for the action. If the action is based on an investigative report, portions of all written documents from the investigative report which directly relate to the specifications and are favorable to the employee will be furnished to the employee upon request. If probable cause exists and is demonstrated to the arbitrator by the Union on appeal that favorable information provided for in this section has not been furnished by Management, upon request of the arbitrator, the report will be furnished in conformity with the Privacy Act (5 U.S.C. 552a). Material determined by the arbitrator to be favorable under the criteria of this section and not previously furnished to the Union will be furnished to the Union. Nothing in this section is to be construed as a waiver of the employee's or Union's right to request additional information under other authorities, such as the Freedom of Information Act, Privacy Act, or Federal Service Labor-Management Relations Statute.

**SECTION G:**

If Management's final decision is to affect an action based on unacceptable performance against a bargaining unit employee, the employee may appeal the decision to the Merit Systems Protection Board (MSPB) in accordance with applicable law. Decisions to remove an employee for unacceptable performance are not grievable.

**SECTION H:** Materials and documentation on which notice of a proposed action is based and which are relied upon to support the notice, including statements of witnesses, will be assembled and made available to the employee for his/her review. Employee will sign to certify receipt of materials and documentation received as part of a proposed unacceptable performance action.

Management will keep the records and receipt on file per documentation regulations. Management forfeits the right to use supporting materials or documentation not disclosed to the employee in the prescribed manner.

**SECTION I:** With the employee's written concurrence, which includes electronic mail, Management will provide to the Union a copy of the employee's unacceptable performance action proposal and decision letter at the same time as their issuance to the employee.

**ARTICLE 19**  
**Disciplinary Actions**

**SECTION A:** A disciplinary action for the purpose of this article is defined as a written admonishment, a written reprimand or a suspension of 14 calendar days or less. Employees will be advised of their grievance rights before receiving any form of disciplinary action. All disciplinary actions will be conducted at the lowest level appropriate to correct inappropriate behavior and will not be done in a retaliatory or punitive manner.

1. Corrective Actions. Verbal counseling and unofficial letters of warning are informal corrective actions intended to communicate improper conduct and correct inappropriate behavior and are not disciplinary actions. Unofficial letters of warning are instructional and provide evidence of the communication. Informal corrective actions are not part of the employee's electronic official personnel folder, but rather are intended to correct behavioral problems at the lowest level possible. Informal corrective actions may not be used in determining a level of penalty for formal disciplinary actions and are not grievable. Additionally, informal corrective actions should not be used in consideration of any other personnel actions. However, verbal counseling or unofficial letters of warning may be used to demonstrate motive, opportunity, or intent, consistent with Federal Rule of Evidence 404(b).
2. Disciplinary Actions. The deciding official for suspensions of fourteen (14) calendar days or less will be at a higher level of Management than the proposing official. For other disciplinary actions, the proposing official and the deciding official may be the same person and will be identified in the proposal.

**SECTION B:** Investigations of situations that could lead to disciplinary actions should be initiated while the information is current and readily available. Whenever possible, written notices of proposal and decisions will be delivered personally and explained to the employee. The employee will acknowledge receipt in writing on a copy of the notice.

For all disciplinary actions, Management will:

1. issue a written notice stating the specific reasons for the proposed disciplinary action at least fifteen (15) calendar days in advance of a decision on a disciplinary action;
2. allow an employee ten (10) calendar days from the receipt of the notice of proposed disciplinary action to reply in writing and, if desired, to furnish affidavits or other documentary evidence in support of his/her reply;
3. issue a written decision not less than fifteen (15) calendar days from the date of issuance of the notice of proposed discipline. This written decision will include the rationale for the decision and a notice of applicable appeal rights; and
4. inform the employee of the right to represent themselves or to be represented by the Union in the processing of the actions or with respect to grievances resulting from such actions.

**SECTION C:** Verbal counseling and unofficial letters of warning are corrective actions and do not have a permanent written record. They may include informal discussions or meetings for correcting unacceptable behavior. An employee will be informed by the supervisor that the discussion is considered a corrective action. Verbal counseling and unofficial letters of warning are not subject to the notice requirements of this article.

**SECTION D:** A written admonishment and a written reprimand are written disciplinary actions which specify the reasons for the action. The written admonishment and the written reprimand will specify that the employee may be subject to more severe disciplinary action upon any further offense or misconduct. A copy of the written admonishment will stay in the disciplinary action file for a period of six (6) months. A copy of the written reprimand will be made a part of the electronic official personnel folder for up to one (1) year.

**SECTION E:** A bargaining unit employee has the right to request Union representation any time he/she is requested to participate in a meeting with Management during which the employee is being examined with respect to an investigation and the employee believes disciplinary action may occur as a result of the meeting. The employee has the right to request Union representation at any time before or during such a meeting. Management is not responsible for notifying the employee of this right in individual cases. However, Management will notify employees of the right to Union representation at least annually. Notification will be via an email to the bargaining unit and an intranet posting for one week. If any employee asserts his/her right to representation, Management will stop and reschedule the meeting to permit the employee a reasonable period of time to obtain Union representation.

**SECTION F:** Management must advise a bargaining unit employee of their right to Union representation or representation by a third party of the employee's choice prior to the taking of a written or sworn statement or when an employee is going to be interrogated before witnesses. The employee does not have this right if such an interrogation is part of an informal meeting as defined by case law. This provision does not apply to investigations conducted by outside investigative authorities (e.g. IG, EEOC, law enforcement).

**SECTION G:** Upon the request of a bargaining unit employee, Management will grant the employee a reasonable amount of duty time and, if represented by a Union representative, a reasonable amount of official time for the Union representative to prepare and present any oral or written reply and other defense. The employee must direct the request for duty time in writing to their supervisor of record.

**SECTION H:** Management and the Union endorse the concept of progressive discipline by Management. Management retains the right to determine the level of discipline to be applied in any given situation subject to challenge consistent with applicable laws, DOE orders, and regulations.

**SECTION I:** Management and the Union agree to the timely disposition of investigations and disciplinary actions.

**SECTION J:** When appropriate, the Employee Assistance Program and other similar programs may be considered as parts of any remedial actions.

**SECTION K:** An employee who asserts as a defense the consideration of any medical condition that may contribute to a conduct, performance, or leave problem will be given a reasonable amount of time to furnish medical documentation (as defined in 5 CFR 339.102).

**SECTION L:** In cases where a disciplinary action is proposed for reasons of off-duty misconduct, Management's written notification will also contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.

**SECTION M:** In arriving at its written decision on any disciplinary action, Management will not consider any issues other than those specified in the notice of proposed action. Management will consider any answer that the employee and/or his/her representative made to a designated official and any medical documentation furnished, as well as all of the information gathered in the investigation. The written decision will explain how Management resolved any factual disputes that were raised or developed.

**SECTION N:** Management will provide the Union, within five (5) work days of issuance, a copy, which may be sanitized to meet the requirements of the Freedom of Information Act and the Privacy Act, of disciplinary action proposals and decisions issued to bargaining unit employees.

**SECTION O:** Once a final decision which involves a suspension of fourteen (14) calendar days or less has been rendered, the employee will be allowed at least one (1) work day before the start of a suspension, if appropriate.

**SECTION P:** Breaking up a suspension into non-consecutive days will not result in an increased loss in pay. For bargaining unit employees on a compressed work schedule or an alternate work schedule, to calculate the days of suspension, he/she will be placed on a five (5)-day, eight (8)-hour per day work schedule for the period of the suspension.

**ARTICLE 20**  
**Adverse Actions**

**SECTION A:** An adverse action for the purpose of this article is defined as a suspension for more than fourteen (14) calendar days, reduction in grade or pay, furlough for thirty (30) calendar days or less, or removal. The procedures of this article do not apply to the removal of any bargaining unit employee serving a probationary or trial period or an employee under a temporary appointment, except as provided by law.

For adverse actions, Management will:

1. provide the employee with notice of proposed adverse action at least thirty (30) calendar days prior to issuance of a decision on a proposed adverse action, which will include a statement of the specific reason(s) for the proposed adverse action and a statement that the employee has the choice to be represented by the Union or another individual of his/her choosing;
2. allow an employee fifteen (15) calendar days from the date of issuance of the proposed adverse action to reply orally, in writing, or both, and to, if desired, furnish affidavits or other evidence in support of his/her answer; and,
3. issue a timely written decision not less than thirty (30) calendar days from the date of the letter proposing the adverse action. The written decision will include the specific reasons for the adverse action and a notice of applicable grievance and appeal rights and options for representation under both this Agreement and the law. For suspensions for more than fourteen (14) calendar days, reductions in grade or pay, or removal actions, the deciding official will be at a higher level of Management than the proposing official.

**SECTION B:** If an employee or the Union believes Management has not issued a timely written decision in accordance with Section A.3. above, a grievance may be filed under the negotiated grievance procedure.

**SECTION C:** Adverse actions may be appealed, at the option of the employee, through the negotiated grievance procedure in this Agreement or the applicable statutory appeals procedure, but not both.

**SECTION D:** The disciplinary action file on which a notice of a proposed adverse action is based and which is relied upon to support the notice will be assembled and made available to the employee for his/her review. An employee will sign a memo certifying that they are in receipt of a copy of this file. Management will keep the original disciplinary file and the signed memo on file as per applicable law and regulations. Management forfeits the right to use supporting materials or documentation not made available to the employee.

**SECTION E:** Upon request, Management will grant a reasonable amount of duty time to the employee to prepare and present any oral or written reply and other defense. The employee must make the request for duty time in writing (which includes by e-mail) to his/her supervisor of

record. In cases where a bargaining unit employee opts to reply orally, the person who will make the final decision on the adverse action will hear the oral reply.

**SECTION F:** An employee who asserts as a defense consideration of any medical condition that may contribute to a conduct, performance, or leave problem will be given a reasonable amount of time to furnish medical documentation (as defined in 5 CFR 339.102).

**SECTION G:** In cases where an adverse action is proposed for reasons of off-duty misconduct, Management's written notification will also contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.

**SECTION H:** In arriving at its written decision on any proposed adverse action, Management will not consider any issues other than those specified in the notice of proposed action. Management will consider any answer that the employee and/or his/her representative made to a designated official and any medical documentation furnished, as well as all the information gathered in the investigation. The written decision will explain how Management resolved any factual disputes that were raised or developed. Management will also consider the Douglas factors and how each relevant factor was applied in the deciding official's determination of the imposed penalty.

**SECTION I:** Management will consider substituting either an abeyance agreement or a last chance agreement for a proposed adverse action against an employee.

**SECTION J:** Management will provide the Union, within five (5) work days of issuance, a copy, which may be sanitized to meet the requirements of the Freedom of Information Act and the Privacy Act, of adverse action proposals and decisions issued to bargaining unit employees.

**SECTION K:** Once a final decision which involves a suspension of more than fourteen (14) calendar days has been rendered, the employee will be allowed at least one (1) work day before the start of a suspension, if appropriate.

**SECTION L:** Breaking up a suspension into non-consecutive days will not result in an increased loss in pay. For bargaining unit employees on a compressed work schedule or an alternate work schedule, to calculate the days of suspension, he/she will revert to a five (5)-day, eight (8)-hour per day work schedule.

**ARTICLE 21**  
**Employee Assistance Program**

**SECTION A:** The Parties recognize alcohol abuse, drug abuse, and/or an emotional problem as treatable illnesses that may impair an employee's attendance and/or job performance. Management agrees to provide, on a confidential basis, access to counseling for employees who voluntarily acknowledge alcohol abuse, drug abuse, and/or emotional problems and seek counseling or referral assistance, subject to budget and available funding.

**SECTION B:** Management agrees to promote policies consistent with the following:

1. Employees having alcohol, drug, and/or emotional problems will receive the same consideration and offer of assistance that is extended to employees having other illnesses.
2. No employee will have his/her job security or promotion opportunities jeopardized by his/her request for counseling and/or referral assistance.
3. Records of employees with alcohol abuse, drug abuse, and/or emotional problems will be maintained confidentially in accordance with applicable regulations and DOE directives, including the guide on Federal Employee Assistance Programs.
4. Sick, annual, or leave without pay will be granted for the purpose of treatment or rehabilitation, consistent with applicable policy and regulations governing time and attendance as it would be for any other performance limiting condition.

**SECTION C:** The Union agrees that, to the extent possible:

1. It will encourage bargaining unit employees to discuss any problems they might have, such as those identified in Section A of this Article, with their supervisors and/or to seek appropriate treatment and rehabilitation.
2. It will cooperate with and support Employer alcohol and drug abuse education programs.

## **ARTICLE 22**

### **Employee Surveillance and Searches**

**SECTION A:** Searches of vehicles and packages will be done in accordance with applicable NETL Directives. It is the intention that inspection/searches at entrance gates will be done on a random basis, as determined by Management, except under unusual circumstances.

**SECTION B:** Should Management determine to modify camera location or usage, or introduce other surveillance technologies, it will notify the Union and give the Union the opportunity to bargain to the extent required by law.

**SECTION C:** Cameras used for experimental process monitoring are not covered by this Article.

## **ARTICLE 23**

### **Merit Promotion/Internal Selection Procedures for Bargaining Unit Positions**

**SECTION A:** Merit promotion and internal placement programs exist in order to develop and retain a competent work force and stimulate an employee's highest potential by offering opportunities for growth and advancement.

**SECTION B:** Merit promotion is one of several methods that may be used for filling a vacancy. Other methods include, but are not limited to, reassignment, transfer, reinstatement, appointment through delegated examining procedures, reemployment priority lists, or special emphasis appointing authorities.

**SECTION C:** All merit promotion actions will be taken without regard to political, religious, Union affiliation, marital status, sexual orientation, gender identity, race, color, national origin, sex, age, or disability.

**SECTION D:** The following steps will be followed when a vacancy in the bargaining unit is approved to be posted under merit promotion procedures: Management or their designee will send an e-mail to the Union presidents. The e-mail will include the position description. Management may ask the Unions to submit for consideration an SME. If selected, the SME will not function as a Union representative.

#### **SECTION E: Area of Consideration and Duty Station**

In its search for qualified applicants for bargaining unit positions, Management will consider the use of an area of consideration limited to NETL. Management will also consider including as a duty station all three (3) NETL sites.

#### **SECTION F: Vacancy Announcements**

All vacancy announcements will be posted on the NETL Intranet in addition to required sites such as USAJOBS. The vacancy announcement will include position, title, series, grade(s), salary range, and organizational location.

1. Vacancies will be posted for a minimum of 10 calendar days, unless the Union and Management agree to a lesser time. HRSC along with the Selecting Official will exercise the option of limiting the number of applications for administrative positions where we anticipate a large number of qualified applicants, except for those vacancies that are announced NETL only.
2. If a merit promotion vacancy announcement is canceled, all applicants will be notified electronically. The Union will also be notified and the cancellation notice will be posted on the NETL Intranet.

## **SECTION G: Receipt of Applications**

1. Applications and all forms required by the announcement will be submitted through DOE's on-line designated automated hiring system. All responses to the occupational questionnaire must be supported in the applicant's resume.
2. If the applicant is found to be minimally qualified for the position but their responses are not supported in the online resume, the HRSC will adjust the rating with a documented justification to each question that is not supported.
3. Only the material submitted by an applicant in the application package will be considered in the qualification and evaluation process.
4. All applications must be received via the automated system by the closing date of the vacancy announcement.

## **SECTION H: Evaluation of Applications**

### 1. Rating Qualified Applicants

- a. The applicants who have met all the minimum qualification requirements as determined by HRSC will be designated as qualified.
- b. The applicant is self-rated on their level of knowledge, skill and ability based upon the responses the applicant provides.
- c. Responses to the occupational questionnaire must be supported in the applicant's resume. If the applicant responses are not supported in the resume, Management, reserves the right to adjust the applicant's self-rating.

## **SECTION I: Candidate Referral and Selection**

### 1. Referral and Consideration of Candidates

- a. Once candidates are determined to be minimally qualified and the HRSC has verified that the responses to the occupational questionnaire are supported in the applicant's resume, the HRSC will designate a "best qualified" group based upon a natural break between scores.
- b. Management will provide first consideration to NETL employees for all bargaining unit vacancies.
- c. The Selecting Official will decide how or whether to interview (i.e., none, some, or all of the candidates referred on a Selection Certificate). In the event the Selecting Official decides to conduct interviews, they will decide whether to convene an interview panel. If an interview panel is used, the Selecting

Official will be the Chairperson and organize and facilitate the interview process.

- d. The Selecting Official will ask valid job-related interview questions that allow for an objective evaluation of the candidate's competencies as they relate to the position being filled. Management retains the right to determine qualifications, competencies and skills for a particular position.
- e. The Selecting Official has the right to select or not select any candidates referred. However, the Selecting Official will give consideration to the candidates' fitness and qualifications, without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, non-disqualifying handicapping condition, sexual orientation, or age. The selection shall be based solely on job-related criteria.

## **SECTION J: Post Selection**

### 1. Processing Certificates of Eligible Candidates After Selection

- a. The HRSC will update the selected and non-selected candidates through the automated hiring system which allows applicants to view their status on USAJOBS. Additionally, selections will be posted on the NETL Intranet.
- b. The Employer will maintain promotion and selection records in accordance with governing laws and regulations.

## **SECTION K: Employee Complaints**

1. Employees have the right to file a complaint relating to a promotion action. Such complaints shall be resolved under appropriate grievance procedures outlined in the Collective Bargaining Agreement.
2. All Parties are encouraged in a merit promotion-related complaint to exert their utmost effort to resolve the complaint through informal discussion and mutual understanding of the different points of view. If the complaint cannot be settled through the informal discussion or mutual understanding of the different points of view, the employee or Union may seek recourse as follows:
  - a. File a grievance in accordance with the provisions of the negotiated grievance procedure. While the procedures used by an agency to identify and rank qualified applicants may be proper subjects for formal complaints or grievances, non-selection from a group of properly ranked and certified applicants is not an appropriate basis for a formal complaint or grievance. There is no right to appeal to OPM.

- b. File a discrimination complaint in accordance with EEOC regulations if an employee believes that unlawful discrimination was practiced in the administration of the Merit Promotion Plan.

**SECTION L: Available Information**

1. All bargaining unit members will be notified whether they met minimum requirements.
2. Any bargaining unit member whose self-rated scores are adjusted will be notified within three (3) working days after the change is made.
3. Upon request, all qualified NETL applicants will be provided the following information for each vacancy applied for:
  - a. The employee's self-rated score;
  - b. What the Best-Qualified List cutoff score was;
  - c. Whether or not the employee was on the Best-Qualified List;
  - d. Upon request, a bargaining unit member will receive a career counseling session with HRSC. The session will be limited to career matters pertaining to the employee-applicant. Any discussion pertaining to any other applicant is prohibited. HRSC will provide the following information during the career counseling session:
    - The reason any adjustment to an applicant's score was made, referencing the applicant's resume and application.
    - Advice on procedures for applying, including where to obtain assistance in reviewing, researching, and/or applying, for on-line vacancies.
    - Advice on what experience, time-in grade, etc., is necessary for the employee to complete in order to meet relevant qualifications.

In addition, Management will consider approving the addition of the actions identified above to the bargaining unit member's IDP.

4. Upon request and a statement by the Union president that a bargaining unit employee has expressed a concern that merit systems principles, laws, rules, regulations or policies may have been violated in connection with a merit promotion action, the Union will be provided sanitized copies of any pertinent evaluative written material used by the ranking panel, immediate supervisor, or Selecting Official in assessing the qualifications of the eligible candidates in regard to a promotion action. The Union president will reasonably articulate the basis of his/her concern upon making the request for materials.

The Union will take all necessary steps to ensure confidentiality of this information. This information will only be reviewed by authorized Union officials and will not be used for any purpose other than those authorized under this Agreement. Any request for this information must be received within 20 (twenty) working days of the announcement selection. Management will supply this information within 5 (five) working days after the request.

## **ARTICLE 24**

### **Part-Time Career Employment/Job Sharing**

**SECTION A:** Consistent with the Federal Career Part-Time Career Employment Act of 1978, a part-time permanent employee has a career or career-conditional appointment (or a permanent appointment in the excepted service), works between 16 and 32 hours each week on a prearranged schedule, and is eligible for benefits.

**SECTION B:** Consistent with resource and mission requirements, Management agrees to give bona fide consideration to requests from employees for part-time career employment opportunities, especially in connection with:

1. Balancing routine and/or unexpected work and family demands;
2. Recovering from an illness;
3. Pursuing an education;
4. Devoting time to a volunteer activity in the community;
5. Participating in a special hobby or interest; or
6. Making time for themselves.

**SECTION C:** Consistent with resource and mission requirements, Management agrees to give bona fide consideration to requests from part-time employees to be converted to full-time.

**SECTION D:** For employees who are converted to part time from a full-time position, there is no guarantee the employees will be converted back to full time in the future.

**SECTION E:** Written requests to work part-time must be submitted from the employee to the supervisor. The request should include a proposed strategy that indicates how the full-time job can be restructured into a part-time job, and a record of the important tasks, a suggestion of how the tasks could be done in fewer hours, be discontinued, or done by someone else. The request should also include the proposed work schedule, including the days and hours proposed to work, not to exceed more than 32 hours in a week. The supervisor will review the request and determine if restructuring the job into a part-time position would meet the needs of the organization. The supervisor will inform the employee of the decision on the request within 30 working days of the request, and if the request is denied, will provide the basis for the denial.

**SECTION F:** Written requests from part-time employees to work full-time must be submitted from the employee to the supervisor. The request should include a proposed strategy that indicates how the part-time job can be restructured into a full-time job, and a record of the important tasks, a suggestion of how the tasks could be done on a full-time basis. The supervisor will review the request and determine if restructuring the job into a full-time position would meet the needs of the organization. The supervisor will inform the employee of the decision on the request within 60 working days of the request, and if the request is denied, will provide the basis for the denial.

**SECTION G:** During a part-time work assignment, an employee may request approval to work extra hours during the pay period if the work situation demands it, but the increase is not

permitted for more than two consecutive pay periods. An employee's request for temporary adjustment of an established part-time work schedule may be granted if made in advance of the pay period, and is based on personal need or to permit participation in Management-approved details, other assignments, or training. Such adjustment will not result in a permanent change of the established work schedule.

**SECTION H:** Part-time employees are not precluded from being promoted on a noncompetitive basis within the career ladder or selected for promotion through competition. Part-time employees are eligible for career ladder promotions, subject to applicable qualification requirements and the ability to perform at the next higher grade. If a position can accommodate a work schedule other than full-time, it will be noted on the vacancy announcement.

**SECTION I:** When a position is staffed on a full-time basis, the supervisor may consider job sharing as an option consistent with resources and mission requirements. Job sharing is a form of part-time employment in which one full-time position is filled with two or more part-time employees. Job sharers must be good communicators, be willing to consult and cooperate as members of a team rather than as competitors, be flexible, and have a strong commitment to the job and to making the job sharing arrangement work. They must have complementary skills, knowledge, and abilities and compatible work styles. Employees working in the same occupational series and grade, or in the same line of work, may request the opportunity to enter a job sharing arrangement.

#### 1. Dividing and Sharing Responsibilities

Written requests to job share must be submitted to the supervisor from the job team. The request should include a proposed strategy that indicates how the full-time job can be restructured into a job sharing arrangement. The request should also include the proposed work schedule for the job sharing team, including the days and hours proposed to work. The supervisor will review the request and determine if restructuring the job into a job share arrangement can be accommodated and if it will meet the needs of the organization. The supervisor will inform the employees within 30 working days of the decision, and if denied, will provide the basis for the denial. If the job sharing arrangement is approved, the job sharers with the supervisor will prepare a Job Sharing Agreement. The decision on whether job sharers should be jointly responsible for the entire position or only for separate functions depends on the job and the abilities of the job sharing team. To determine the arrangement for a particular job, the supervisor will examine the position description and decide which tasks will be shared. Most job-sharing arrangements will probably fall somewhere between the job sharers being individually responsible for certain aspects of the job and jointly responsible for other. Although they share the duties of a full-time position, job sharers are considered to be individual part-time employees for all personnel and employment purposes.

#### 2. Position Descriptions

When two job sharers at the same grade level are jointly responsible for all the duties and responsibilities of the full-time position, there is no need for the supervisor to restructure the job. Each team member will have a copy of the position description to which a statement has been

added to show that the incumbent is a job sharer jointly responsible for carrying out all the duties and responsibilities of the position. When job sharers will be individually responsible for portions of the job, or when the job sharers are at different grade levels, separate position descriptions are required to reflect the actual duties and responsibilities for each employee. Each job sharer will have a position description that accurately reflects his or her duties and responsibilities.

### 3. Scheduling Work Hours

At the supervisor's discretion and within available resources, each job sharer can work from 16 to 32 hours per week. The specific work schedule depends on the nature of the job, the needs of the organization, the job sharing team, and the supervisor's approval. A variety of different work scheduling arrangements can be used as long as each job sharer is scheduled to work no less than 16 hours and no more than 32 hours each week. For example, the arrangement can split days (one job sharer works mornings, the other afternoons), or split the week (one job sharer work some days, the other on other days), or a mix of the two. Although most job sharers split the hours of a full-time position in half, this is not a requirement. The number of scheduled hours each employee works within the team, as well as the amount of scheduled overlap time, depends on the needs of the particular position and the resources available as determined by the supervisor.

### 4. Performance Evaluations

Each member of a job sharing team will have his or her own performance standards. These will be identical if the job sharers are jointly responsible for the entire position. Each job sharer will be evaluated separately although the evaluation will often be based on the work to which both have contributed.

### 5. Shared Space and Equipment

Space and equipment will be shared by the job sharers unless additional equipment is available and would cause no undue burden on the organization. Job sharers who use the same desk, telephone, computer, etc., will need to agree on the basics so they do not lose time searching for or rearranging items.

### 6. Communications

The job sharers must have a workable communication system which serves the purpose without detracting from their ability to get the work done.

### 7. Ending or Changing a Job Sharing Arrangement

The decision to approve or to terminate a job sharing arrangement is at Management's discretion. In the event one of the job sharing participants leaves, or otherwise needs to discontinue the job sharing arrangement, and Management concludes that the needs of the position require full-time staffing, Management will make every reasonable effort to assist the remaining job sharing

partner in finding another partner. The remaining participant will be given a reasonable amount of time to find another partner. If the remaining participant is required to increase their tour of duty, they will be given as much advance notice as possible, but no less than two weeks advance notice prior to increasing the tour of duty.

## 8. Applying for Merit Promotion Vacancy Announcements

Management may not refuse to accept applications from individuals solely because they submitted their applications as a job sharing team. Each job sharer must be evaluated individually to determine eligibility. If both are among the best qualified, they must be referred as a team to the selecting official. However, in situations where a job sharing arrangement would not be appropriate, the selecting official can select a single candidate from among the best qualified. However, a member of a job sharing team must also apply as an individual to be considered on that basis.

**SECTION J:** Part-time employees under permanent appointments are eligible, on a prorated basis, for the same benefits as full-time employees.

### 1. Leave

Employees will earn annual and sick leave on a prorated basis depending on the number of hours worked per pay period. An employee with less than 3 years of service earns 1 hour of annual leave for each 20 hours worked; with 3 but less than 15 years of service, the employee earns 1 hour for each 13 hours worked; and with 15 or more years of service earns 1 hour for each 10 hours worked. Part-time employees will earn 1 hour of sick leave for each 20 hours worked. Part-time employees are also eligible for other kinds of leave and are covered by the rules governing the Family and Medical Leave Act of 1993 and the Federal Employees Family-Friendly Leave Act.

### 2. Holidays

If a holiday falls on a day the employee is scheduled to work, the employee is paid for the number of hours he or she was scheduled to work, not to exceed 8 hours. A part-time employee is not entitled to a holiday which falls on a day the employee is not normally scheduled to work.

### 3. Retirement

Retirement annuities are based on an employee's length of service and the highest annual base pay received for any three consecutive years. Each year of part-time service counts as one full year toward the length of service requirement. However, the annuity calculation for periods of part-time service after April 6, 1986, is prorated to reflect the difference between full-time and part-time service. Employees who are considering a change to a part-time work schedule should obtain an estimate of their estimated retirement benefit projection from the HRSC.

#### 4. Health Insurance

Part-time employees who participate in the Federal Employees Health Benefits Program receive the same coverage as full-time employees but pay a greater percentage of the premium because the Government's share is prorated based on the number of hours the employee is scheduled to work each week. For an example, an employee on a 20-hour-per-week schedule receives one-half the Government contribution towards the premium.

#### 5. Life Insurance

The amount of life insurance for which an employee is eligible is based on the part-time employee's annual salary applicable to his or her tour of duty.

#### 6. Qualification for Merit Promotion Determinations

Part-time work is prorated for determining qualification requirements. For example, an employee who works 20 hours a week would receive credit for 6 months of experience at the end of 12 months of work.

**SECTION K:** Before accepting a part-time position, employees should carefully consider and consult with the HRSC regarding all personnel issues that may affect part-time employment.

#### 1. Pay

Gross pay is computed by multiplying the employee's hourly rate of basic pay by the number of hours worked during the pay period. Overtime rates apply only to the hours in excess of 8 hours in a day or 40-hours in a week. Non-overtime hours above those normally scheduled are paid at the basic rate of pay (5 U.S.C. 5542 and Fair Labor Standards Act).

#### 2. Reduction In Force

In a reduction in force (RIF), part-time employees compete separately from full-time employees in accordance with the requirements of 5 CFR 351. A part-time employee can compete only for other part-time jobs and has no assignment rights to full-time positions. Similarly, a full-time employee has assignment rights only to full-time positions and cannot displace a part-time employee.

#### 3. Adverse and Performance-Based Actions

Part-time employees have the same rights as full-time employees when disciplinary actions or performance-based actions are taken against them. Adverse and/or performance-based actions include suspensions, removals, furloughs, and reductions in grade. A reduction in scheduled hours is not subject to adverse action procedures.

#### 4. Service Credit

A part-time employee earns a full year of service for each calendar year worked, regardless of schedule, for the purpose of computing dates for:

- a. Retirement eligibility;
- b. Career tenure;
- c. Completion of probationary period;
- d. Within-grade pay increases; and
- e. Time-in-grade restrictions on advancement.

**SECTION L:** Employees with a work schedule of at least 8 hours in a workday are entitled to a one-half hour, unpaid lunch break. Employees whose work schedule includes workdays of less than 8 hours are not entitled to a lunch break.

**SECTION M:** A full-time employee will not be required to accept part-time employment as a condition of employment. A vacant, part-time position may be offered to a full-time employee in lieu of separation by RIF; however, it is not considered a “reasonable offer” under the RIF assignment rights. Further, a part-time employee will not be separated to make the part-time position available to a full-time employee.

**SECTION N:** Management agrees to provide part-time employees access to employee activities, e.g., exercise facilities, and not to deny opportunities for attendance at training solely because of part-time status.

## **ARTICLE 25**

### **Performance Management System**

**SECTION A:** Chapters 43 and 45 of Title 5, United States Code (USC) provide the basis for the appraisal and recognition of Federal employees. 5 CFR Parts 430 and 451 contain the basic legal and regulatory requirements for the establishment of an agency's performance management system. Other applicable authorities related to the performance management and award system include 5 USC, Chapter 43 and 5 CFR, Part 432 (Performance Based Action) and 5 CFR Part 531 (Within-Grade and Quality Step Increases). The Union acknowledges that Management retains all their rights in accordance with law and government-wide rules or regulations to make changes to its performance management system. The Union reserves all its rights to negotiate procedures and appropriate arrangements in accordance with 5 USC 7106 (b)(2) and (3) with respect to these changes.

**SECTION B:** The Union and Management agree that the National Energy Technology Laboratory is an organization focused on results. The Union and Management agree that successful performance management requires employees, managers, and supervisors to fulfill their responsibilities under the NETL performance management system.

**SECTION C:** Employees will be notified at the beginning of the performance period, or at any time a change takes place, who will act as their rating official. Employees will also be told if other employees such as team leaders will have input into their performance rating.

#### **SECTION D: Performance Appraisal Plans**

1. Employees will be provided the opportunity to participate in the preparation of the performance plan. The performance plan is a flexible record of performance expectations that may be changed, except within the last 90 days of the appraisal period. Each performance plan should be reviewed during the appraisal period and be revised whenever meaningful changes are warranted (e.g., a change in the availability of resources, direction, or strategy may trigger the need to amend, revise, or delete portions of the employee's performance plan). Job elements and standards may be modified, deleted, or adjusted during the rating period in the same manner as the initial development of the job elements and performance standards, including employee participation. The rating official has the final authority regarding the substance of the performance plan, subject only to the plan's approval by the reviewing official. An employee who disagrees with his/her performance plan may provide written comments on the plan to the reviewing official. The reviewing official, who is the next higher level supervisor, will either approve or reject the performance plan. In the event that the plan is rejected by the reviewing official, it will be returned to the rating official. The rating official will make corrections to the plan to the satisfaction of the reviewing official. Employees will again be provided the opportunity to participate in the preparation of the performance plan. In establishing the performance plan, the rating official is responsible for ensuring that the employee understands both the substance of the performance expectations and how the employee's performance results will be assessed.

2. Critical elements will be measurable, obtainable, and mission related. Critical elements will be clear and specific to the work of the employee, and the standards will provide the employee with an understanding of what performance is expected of them.
3. Critical elements will be established (signed and dated by the employee and rating official) within 30 days following the beginning of: (1) the annual appraisal period; (2) any work assignment of 90 days or longer (e.g., temporary promotion, detail); or (3) any appointment or permanent assignment to a new position more than 90 days in advance of the end of the appraisal period.

#### **SECTION E: Frequency and Conduct of Appraisals**

1. Supervisors will conduct two formal performance progress discussions. One will be held at the end of the second quarter. The second will constitute the formal, summary annual rating discussion. NETL will notify both Management and employees that the formal review period is open by an Intranet posting. The period will remain open for a period of 30 calendar days.
2. Supervisors will conduct two informal performance progress discussions during the performance appraisal period. One will be held at approximately the end of the first quarter, with the second being held at approximately the end of the third quarter. NETL will notify both Management and employees that the informal review period is open by an Intranet posting. The periods will remain open for a period of 30 calendar days.
3. In the event that it is necessary to rate the employee for less than six months of job performance, the employee will receive the progress review at the mid-point of their rating period. The rating official and employee will document the discussion. The rating official will provide comments and assessments of the employee's performance.
4. At any time during the performance year, and, in particular, prior to the formal progress review and the annual rating discussion, the employee and the employee's supervisor are encouraged to solicit performance feedback on the employee from a variety of individuals, such as customers, peers, and stakeholders. The feedback should be solicited from individuals who can best measure the results achieved by the employee during the rating period. These individuals can be internal or external to DOE. The supervisor will provide the employee a copy of any written feedback used to evaluate the employee. Feedback received will not be maintained as an official document within the employee's e-OPF.
5. Employees are encouraged throughout the appraisal year to provide their rating officials and supervisors with information concerning their performance. Employees and supervisors are encouraged to discuss the employee's performance as regularly as needed to achieve the desired results. In addition to the formal and informal progress reviews, supervisors are expected to facilitate open communications regarding performance with the employee throughout the performance period. In the event that performance is not meeting expectations, supervisors are expected to immediately bring it to the employee's attention by providing verbal or written performance counseling. Formal performance reviews may be

conducted via videoconference if the employee and the supervisor do not work at the same location. Informal reviews may be conducted by a variety of means, e.g. telephone or videoconference.

6. When possible and subject to available budget, employees will have at least one face-to-face discussion with their immediate supervisor during each annual rating period to discuss performance.

**SECTION F: Performance Rating Requirements:**

1. Performance will be assessed solely on the accomplishments during the current rating period and not on the basis of any prior rating period. In instances of multi-year projects, quantifiable performance objectives should be developed in a way that aligns with project objectives or milestones.
2. An advisory rating is an unscheduled performance rating that consists of a rating of each critical element. An advisory rating that is prepared for an employee who is detailed or temporarily promoted to another position or specific set of duties for 90 days or more, consists of a rating of each critical element, and does not include a summary rating. The advisory rating may be completed by the detailed supervisor to whom the detailed or temporarily promoted employee reports. An advisory rating is forwarded to the supervisor of record for consideration in the rating of record for the appraisal period.
3. When a formal detail is not processed through an SF-50, an advisory rating may be appropriate.
4. When the effective date for a reassignment or promotion is on or before July 3, the losing supervisor may complete an advisory rating for the gaining supervisor to consider in determining the rating of record for the appraisal period. When the effective date for a reassignment or promotion is July 4 or later, the losing supervisor must complete a performance rating that will serve as the rating of record for the appraisal period if the employee was covered by a performance plan under the losing supervisor for at least 90 days.
5. If the supervisor has been reassigned or promoted to another organization when there are more than 90 days remaining in the performance year, the supervisor may provide advisory ratings on his/her former employees to the gaining supervisor.
6. The employee will be provided the opportunity to discuss the advisory rating with the Management official preparing the advisory rating.
7. The official rating of record is the summary appraisal prepared at the end of the appraisal period for performance of duties over the entire appraisal period.
8. The employee's signature on the appraisal indicates only that the rating has been received and discussed with the employee. The failure of an employee to sign the appraisal form does

not affect its validity. If the employee does not acknowledge receipt of the appraisal form within 5 working days of the performance rating meeting, the rating official will indicate on the form that the employee refused to acknowledge the receipt and discussion.

9. An employee may provide written comments regarding the performance rating to the rating official within 5 working days after the performance rating discussion. Also, within the 5 working days the employee can request reconsideration of the rating by the reviewing official. The reviewing official will respond to the employee within 5 working days and will grant or deny the request for reconsideration. Any comments provided by the employee will become an official part of the performance file. An employee may, upon request, be given a reasonable amount of duty time to prepare written comments.

**SECTION G:** While employees do not have the right to representation at a performance meeting, in circumstances where an employee reasonably believes that any meeting has become an examination which may lead to discipline, the employee has the right to request representation.

**SECTION H:** If Management's decision is to take an action based on unacceptable performance against a bargaining unit employee, the employee may appeal the decision to the Merit Systems Protection Board (MSPB) in accordance with applicable law or, with the consent of the Union, to binding arbitration. As noted in the Federal Service Labor-Management Relations Statute, Chapter 71, Title 5, under no circumstances may an employee appeal an action based on unacceptable performance to both the MSPB and arbitration.

**SECTION I:** The requirements and responsibilities for the administration and operation of a performance management and awards system (PMAS) for National Energy Technology Laboratory (NETL) employees, including performance appraisals, performance-related recognition, and other actions related to performance management, will be followed as prescribed in NETL Procedure 331.1-1A, Performance Management and Awards System, and its successors.

**ARTICLE 26**  
**Employee Awards**

**SECTION A:** Chapter 45 of Title 5, United States Code (USC) authorizes agencies to pay a cash award, grant time-off, and incur necessary expenses for the honorary recognition of an employee (individually or as a member of a group). Chapter 43 of Title 5, USC provides for recognizing and rewarding employees whose performance so warrants, and 5 CFR Part 531 discusses quality step increases. Management retains the right to determine whether to exercise its discretion to issue employee awards.

**SECTION B:**

1. The director has the discretion to establish award funding levels after the budget is established for each fiscal year, subject to applicable law, rule, and regulation.
2. In the event of funding limitations, the director, with HQ approval, has the discretion to eliminate any planned performance or award payouts. In addition, if the DOE secretary declares a budgetary or funding problem, any and/or all award payouts may be delayed, reduced, or canceled. If delayed, DOE retains the discretion on whether retroactive payments are appropriate. The director will notify the Union of any such actions taken in the event of funding limitations.

**SECTION C:** Should Management exercise its discretion to fund a special recognition award pot, special recognition awards will be available for use throughout the fiscal year. They are used to immediately recognize employees for a special act or service above and beyond expectations.

Supervisors are encouraged to use their special recognition award funds throughout the year as appropriate recognition opportunities arise.

**SECTION D:** If Management elects to pay performance awards:

New hires, transferees, part-time employees, and employees who are reassigned or detailed will receive a pro-rata award. Employees who have not been covered by a performance plan for the minimum appraisal period of 90 calendar days during the annual appraisal period are not eligible for performance awards.

**SECTION E:** Quality Increases (QI)

A QI is a faster-than-normal within grade increase used to reward employees at any GS grade level who display high quality performance. To be eligible for a QI, for the entire annual appraisal period, employees must:

1. be below step 10 of their grade level;
2. have received the highest rating available under the performance appraisal system;
3. have demonstrated sustained performance of high quality;
4. have not received a QI within the preceding 52 consecutive calendar weeks;

5. have not received a promotion within the preceding 52 consecutive calendar weeks;
6. be in the same pay grade or pay band level; and
7. occupy a permanent position.

The QI should be made effective as soon as practicable after it is approved.

**SECTION F:** When the director has approved the annual funding level for the total award allocation and the award distribution for each pot, the Union will be provided with the following information:

1. The approved Director's Discretionary Award Pot allocation.
2. The approved special recognition award pot allocation
3. The approved performance award pot allocation

When the individual share award amount is known it will also be provided to the Union.

**SECTION G:** On a quarterly basis, the Union will be provided with a list of bargaining unit employees who have received performance awards, special recognition awards, time-off awards, and patent awards; the type of award; the amount of the award; and the name of the organization to which the employee belongs. For performance awards, employees will be identified by their CHRIS employee ID number. Upon written request and in accordance with 5 U.S.C. 7114(b)(4), Management will provide the Union with any performance award information that is normally maintained by Management and is reasonable and necessary to pursue a grievance if the Union has not been provided such information pursuant to this provision.

**SECTION H:** The time-off awards are another potential form of employee recognition. Time-off awards are not charged to the special recognition award pool and are granted to an individual or group, without loss of pay or charge to leave, to recognize a superior accomplishment or other personal effort that contributes to the quality, efficiency, or economy of Government operations.

**SECTION I:** All employees are encouraged to make special recognition or time-off award nominations.

**SECTION J:** The requirements and responsibilities for the administration and operation of a performance management and awards system (PMAS) for National Energy Technology Laboratory (NETL) employees, including performance appraisals, performance-related recognition, and other actions related to performance management will be followed as prescribed in NETL Procedure 331.1-1A, Performance Management and Awards System and its successors.

**SECTION K:** Management will consider internally publicizing employee accomplishments on a regular basis, no less than annually.

**ARTICLE 27**  
**Equal Employment Opportunity**

**SECTION A:** Management and the Union agree to cooperate in providing equal opportunity for all qualified persons and to prohibit discrimination because of age, sex, race, religion, color, national origin, disability, or sexual orientation and to promote the full realization of equal employment through a positive and continuing effort. In all aspects of personnel management, Management will be bound by Title VII of the Civil Rights Act, the Rehabilitation Act, the Equal Pay Act, all other applicable statutes, and the regulations of the Equal Employment Opportunity Commission, including 29 CFR Part 1614.

**SECTION B:** At the first meeting with the aggrieved employee EEO will:

1. Provide the aggrieved employee with a written list of their rights and responsibilities and review this list with the employee.
2. Clearly state that:
  - a. Neither the EEO counselor nor the EEO/diversity program manager (or equivalents) are advocates for the aggrieved employee. Rather, they are advocates for the process and are expected to be a neutral party.
  - b. The aggrieved employee has the right to Union representation.
3. Obtain a signed statement from the aggrieved person that the above two items have been communicated to them. This and all documents pertaining to the case will be maintained in accordance with applicable laws and regulations.

**SECTION C:** It is agreed that the Union has the right to appoint one member to any cross organizational EEO morale or diversity committees and participate as a full committee member.

**SECTION D:** Management will notify the Union of any EEO settlement agreements which, when implemented, change working conditions of bargaining unit employees.

**SECTION E:** Management agrees to provide reasonable accommodations for employees with qualifying disabilities.

**SECTION F:** The Parties agree to honor the provisions of Article 6, Employees' Rights, of this agreement during an EEO investigation, consistent with applicable law and policy.

**SECTION G:** If Management's implementation of the NETL EEO program, plans, or reports involve changes in personnel practices or matters affecting working conditions, the Union will be given a copy of the proposed implementation and an opportunity to exercise its bargaining rights prior to implementation.

## **ARTICLE 28**

### **Environment, Safety and Health**

**SECTION A:** Management and the Union agree to cooperate in a continuing effort to avoid, reduce the possibility of, and work to eliminate accidents, injuries, and health hazards in all work areas. Management will make its best efforts to ensure that all people on NETL sites are aware of all applicable safety and environmental rules and regulations.

**SECTION B:** Management will provide a safe and healthful work environment for all employees in compliance with Occupational Safety and Health Administration (OSHA) regulations, Department of Energy (DOE) directives, and all other applicable statutes, codes, and/or regulations.

#### **SECTION C:**

1. Within sixty (60) calendar days of the effective date of this Agreement, a safety committee will be established. The safety committee will consist of Union and Management representatives and will provide recommendations to Management. The committee will be structured and function in a similar manner to an OSHA safety committee. The committee will develop its operating rules and principles. The Union may appoint up to two (2) Union members to participate on the safety committee.
2. Notice of impending inspections, investigations, and audits will be provided to the Union by the site manager. The Union may appoint up to one (1) Union members to participate in inspections if such inspections do not involve the audit or investigation of specific ES&H functions or programs. Appropriate reports of inspections, investigations, and audits will be provided to the Union. All Union representatives performing activities under this article will be on official time.

**SECTION D:** Management will ensure that site ES&H policies and directives, ES&H program activities, and general operations comply with all applicable laws, regulations, and standards.

**SECTION E:** Employees will follow all ES&H policies. If they are unable to comply with a directive, they will notify their immediate supervisor, who will resolve the issue through the appropriate process.

**SECTION F:** All employees will have the right and responsibility to report injuries, accidents, or unsafe or unhealthful conditions to their supervisor, and then may report the same to the Union. Management will not subject any employee to restraint, interference, coercion, discrimination, or reprisal for reporting injuries, accidents, or unsafe or unhealthful working conditions.

**SECTION G:** All employees and the Union have the right to request inspections of unsafe and unhealthful working conditions. Management will ensure that requested inspections will be initiated as appropriate.

## **SECTION H:**

1. All employees have the right to refuse to perform assigned tasks and suspend operations without reprisal, if the employee feels that the conditions are unsafe or unhealthy. Employees are expected to immediately notify their supervisor when they exercise this authority. Employees must return to their workstations and resume activities as assigned once Management determines that the area, equipment, and operations are free from recognized hazards and unhealthful working conditions and communicate resolutions.
2. After being provided such communication of the safety of the workplace, if an employee believes there is an imminent danger of serious bodily harm or death, the employee, at his/her peril, may refuse to continue to work.

**SECTION I:** The supervisor will take immediate and appropriate action to protect employees as soon as he/she becomes aware of hazards and unhealthful working conditions. When Management determines that hazards and unhealthful working conditions exist that may affect employee health and safety and they cannot be remedied immediately, the Union will be promptly notified.

**SECTION J:** Personal protective equipment and clothing will be supplied by Management as identified during the SARS process or a job hazard analysis. The Union will encourage employees to use proper personal protective equipment and clothing. Management has the right to refuse requests of employees for personal protective equipment and clothing, if it is determined by Management that it is not needed.

**SECTION K:** Management will provide employees with the appropriate and required orientation and training to perform their jobs safely. The Union will encourage employees to complete required training.

**SECTION L:** Upon request, Management will give the Union any ES&H information or documentation, unless doing so would violate an employee's right to privacy.

**SECTION M:** Management will notify the Union of any safety reclassification of areas and provide the Union with an opportunity to request bargaining consistent with law and this Agreement.

**SECTION N:** Application of pesticides and herbicides will be scheduled for the weekends when practical. A notice of the treatment will be posted at least one (1) day in advance on all exterior doors of the building to be treated, in the immediate area of the treatment, and/or on the Intranet, as applicable. A copy of the Material Safety Data Sheet will be linked from the Intranet and posted on the exterior doors along with the notice.

**SECTION O:** Comprehensive health examinations and flu shots will be offered, or may be required, based on DOE guidance and budgetary constraints. The health examination will be based on a hazard analysis of the employee's position, past exposure, and the health and health history of the individual.

**SECTION P:** Management and the Union agree on the need for wellness programs for employees. Therefore, Management will facilitate and/or encourage programs in such areas as weight reduction, stress reduction and management, nutritional counseling, smoking cessation, prevention of injuries, health screening, and exercise, subject to available funding.

**ARTICLE 29**  
**Hours of Work**

**SECTION A: General**

1. Regular Work Schedule – The regular tour of duty is 8:00 a.m. to 4:30 p.m., with a half-hour lunch period to be taken sometime between 11:00 a.m. and 1:00 p.m. If an employee takes a break, including a lunch break lasting more than a half-hour, the employee must make up the excess time spent on the break on the same day as the break was taken. In such cases, an employee may not earn credit hours, compensatory time, or overtime until such excess break time is made up. Alternately, an employee may take annual leave to account for the break time taken in excess of a half-hour.
2. Responsibilities:
  - a. Each full-time employee is expected to fulfill the commitment to account for a full 80-hour bi-weekly pay period. An employee may account for these hours by working a tour of duty; being on a leave status, on approved holidays, or on administrative leave; or, if applicable, the use of credit hours.
  - b. Supervisors are responsible to ensure the proper certification of attendance and the proper reporting of information to timekeepers. Supervisors are responsible for certifying that a full-time employee is in attendance for his/her 80 hours of work per pay period.
  - c. Cameras and other devices under NETL control will be used for safety and security purposes, and there is no intention to use these as time clocks or employee tracking devices, unless exceptional circumstances exist.

**SECTION B: Flexible Work Schedule (FWS) Program**

The Federal Employees Flexible and Compressed Work Schedule Acts authorize Federal agencies to allow employees the flexibility to vary their daily arrival and departure times, and, under some options, to vary the length of their workday or workweek. The FWS Program is fully supported by Management and the Union as a demonstration of the organization's commitment to offer employees a family-friendly work environment. The FWS Program offers three important benefits to the organization: 1) serves to balance the working lives of employees with their personal needs and family situations, 2) positively contributes to employee morale, and 3) allows the organization to attract and retain high quality workers who seek an employer who offers a family-friendly work environment. This section describes two flexible work schedule options, the Flexitour and Gliding schedules.

1. Eligibility - All employees, with the exception of those listed below or those excluded by statutory requirements, or as otherwise indicated by this article, are eligible to participate in the FWS Program:

- a. Employees appointed under student programs. However, they may adjust their work schedules within the allowable tour of duty start and end times with supervisory approval. They may be eligible for overtime and compensatory time subject to supervisory approval.

## 2. Policy

- a. All supervisors are encouraged to provide flexibility for their employees to voluntarily participate in the FWS Program. Supervisors have the authority and the responsibility to require work hour adjustments to meet special work situations, as well as account for the overall performance of the organization. Consequently, all FWS options are subject to supervisory approval. Supervisors may require an employee's presence during specific hours for a certain period or a particular meeting. Additionally, supervisors may, at any time and subject to notification to the affected employee, alter a previously approved schedule to accommodate other mission-related activities such as travel, training, conferences, and other essential work.
- b. For employees on a flexible work schedule, a lunch period may be optional, subject to supervisory approval. If employees on the FWS do take a lunch break, they must account for an eight (8)-hour work day.

## 3. Core Hours

- a. Each employee on an FWS is expected to be available during the core time of 9:00 a.m. – 2:30 p.m. on scheduled workdays and to fulfill the commitment to account for a full 80-hour bi-weekly period. Supervisors will make reasonable efforts to accommodate employees' requests for lunch breaks during this time. If lunch breaks are taken, they will normally be scheduled between 11:00 a.m. and 1:00 p.m. If possible, supervisors will not schedule meetings between 11:30 AM and 12:30 PM local time. Employees are expected to be present as agreed upon in the FWS and accurately document daily attendance in the timekeeping system. Part-time employees and employees under special training agreements are expected to conform to their agreed upon schedules.
- b. An FWS may start as early as 6:00 a.m. and end as late as 6:00 p.m., unless otherwise indicated in this article.

## 4. Flexitour Schedule

Eligible employees may request to work a Flexitour schedule which requires they account for eight (8) hours per day, including the core hours established in Section B (3) of this article, for a total of 80 hours each biweekly pay period. They may choose a schedule that starts between 6:00 a.m. and 9:00 a.m. and ends no later than 6:00 p.m. Starting and ending times must be in 15-minute increments. A Flexitour schedule is subject to supervisory approval.

## 5. Gliding Schedule

- a. Eligible employees may request to work a gliding schedule which requires they account for eight (8) hours per day, including the core hours established in Section B (3) of this article, for a total of 80 hours each biweekly pay period. They must have a starting time between 6:00 a.m. and 9:00 a.m. and an ending time no later than 6:00 p.m. However, they may choose a schedule with different starting and ending times for each day of their tour of duty. A gliding schedule is subject to supervisory approval.
- b. Employees on a gliding schedule will notify their supervisor of what time they started work. This can be done by e-mail or another written method as otherwise agreed to by the supervisor and employee but must be done within 30 minutes of the beginning of the employee's work day.
- c. If the employee wishes to earn credit hours, they will request pre-approval each day they wish to earn credit hours. It is understood that employees on a gliding schedule will earn credit hours on an incidental basis.

## 6. Enhanced Flexitour

- a. Management will consider individual requests to work an Enhanced Flexitour schedule and may deny such requests for any reason, arbitrary or capricious or otherwise, without limitation. Any decision to deny, terminate or suspend such a request is final and is not subject to any appeal or grievance rights.
- b. For purposes of this section, an "Enhanced Flexitour" schedule requires an employee to account for a minimum of 5.5 hours per day, up to a maximum of 10 hours per day, and 40 hours per work week, during the core hours established in Section B (3) of this Article, and between the hours of 6:00 A.M. and 7:00 P.M.
- c. In addition to the eligibility requirements established elsewhere in this Article, eligible personnel must satisfy the following criteria:
  - 1) The employee must have been rated at Significantly Exceeds or Exceeds Expectations, or their equivalent, in the most recent performance rating. Failure to maintain this performance rating may constitute grounds for immediate termination of the Enhanced Flexitour schedule;
  - 2) the employee must have served at the full performance level for at least one (1) year;
  - 3) the employee must not have been on a Performance Improvement Program (PIP), or subject to any other performance demonstration period during the last 24 months.
  - 4) Any decline in performance at any time may constitute adequate grounds for immediate termination of the Enhanced Flexitour for the employee; and,
  - 5) the employee cannot have been the subject of any formal or informal disciplinary action for a period of two (2) years preceding approval of the request to work an Enhanced Flexitour schedule.

Approval of any Enhanced Flexitour schedule request for any employee does not create any rights for the employee or the Union in maintaining such a schedule. Management retains the right, in its sole discretion, to approve, disapprove, or terminate an existing Enhanced Flexitour schedule temporarily or otherwise, for any reason, or for no reason whatsoever.

d. The provisions of subsection 7(b) through 7(e) of this Article do not apply to the processing of any request for an Enhanced Flexitour schedule.

e. Management may, at any time, temporarily suspend an approved Enhanced Flexitour agreement for any work-related reason. On a case-by-case basis, the manager may change the established schedule to meet ad hoc needs. Such an ad hoc change will be documented by an email or in writing.

## 7. Process to Request FWS

a. Employees who wish to participate in the FWS Program or change an existing FWS are responsible for submitting a proposed schedule using the appropriate NETL Flexible Work Schedule form. The supervisor is responsible for reviewing the request with the employee, resolving any issues, and, if appropriate, approving the requested schedule in the context of accomplishing the mission.

b. The supervisor has two (2) work days to approve or deny the request.

c. In cases where the supervisor and the employee cannot agree to the employee's proposed work schedule, or the supervisor has not approved or denied the request within two (2) work days, at the employee's election, each must submit a written justification within three (3) work days to the second-level supervisor. The second-level supervisor will provide copies of each justification to both parties upon receipt. The second-level supervisor must sustain or reverse the decision within two (2) work days of the receipt of both justifications. Supervisors may approve occasional immaterial variations from the established schedule based on a verbal request. The decision of the second-level supervisor is final.

d. The agreed upon schedule will remain in effect for one (1) year. When Management requests a change in schedule, another NETL FWS form will be completed and approved by the supervisor.

e. Management may deny an employee's request for or propose to change or terminate an employee's participation in a particular FWS. Denials of requests for a schedule or proposed changes to an existing FWS will not be arbitrary or capricious. Such a denial or change will be based on the following:

- 1) the employee's participation could negatively impact the work unit's coverage requirements; or

- 2) the employee's participation could negatively impact the mission of the organization; or
  - 3) Management has issued the employee a performance or conduct action; or
  - 4) Management has issued the employee a corrective action as defined in this Agreement
- f. **Travel and Training:** Employees on travel or training outside of the NETL site locations may not earn credit hours. They may, however, earn credit hours while at NETL on the same day as leaving or returning from a trip or prior to or after local training courses. Employees may use credit hours while on travel or training in lieu of pre-approved leave. Additionally, employees in a travel status may earn compensatory time for travel for those hours traveling outside of normal work hours as delineated in this Agreement.
- g. **Shift Work:** Employees who are scheduled to engage in shift work will not be allowed to participate in the FWS Program, as long as the activities which require the shift work continue. Once shift activities are discontinued, the employee may choose to participate in or return to a previously approved FWS at that time.
- h. **Team Efforts:** In those instances where team efforts are necessary, individuals on the team must coordinate their schedules in the spirit of cooperation with the team to ensure the accomplishment of the assigned mission.
- i. **Meetings:** Managers and supervisors should make every effort to schedule meetings during the core time. However, there may be occasions when employees will be required to attend meetings which, because of special circumstances, must be scheduled outside of the core time. Employees are responsible for altering their schedules and providing the appropriate input to the timekeeper when these situations arise.
- j. **Leave Usage:** Employees will accrue sick and annual leave in one-hour increments and may use sick and annual leave in fifteen (15)-minute increments. The FWS Program does not affect an employee's right to request annual or sick leave. However, it is the employee's responsibility to ensure that all use-or-lose annual leave is taken by the end of the year. At the end of the leave year, if an employee is in a situation where he/she must use annual leave or lose it, the employee must first use annual leave before using any credit hours.
- k. **Emergencies:** Delayed openings, early dismissals, or non-workdays caused by weather conditions or emergencies will usually not affect FWS. Some examples are:
- 1) If the opening of the facility is delayed because of hazardous weather, those employees scheduled to start work earlier than the revised starting period will receive credit for their full tour of duty. Since credit hours must be worked, they may not be earned prior to the employee's tour of duty, unless they are actually worked. Those employees scheduled to start their tour of duty at or later than the revised starting period will work their full tour of duty.
  - 2) If the facility closes early for hazardous weather or some other reason, those

employees scheduled to work beyond the revised closing period will receive credit for their full tour of duty. Since credit hours must be worked, they may not be earned following the end of the employee's tour of duty, unless they were actually worked.

- 3) For employees on a gliding schedule and there is a delayed opening, the employee's start time will be considered to be 9:00 a.m.

### **SECTION C: Credit Hours**

1. Credit hours means hours in excess of an employee's tour of duty which, when previously arranged with the supervisor and voluntarily worked, allow the employee to vary the length of a succeeding workweek or workday. Employees may earn credit hours in fifteen (15)-minute increments, with a maximum of three (3) hours being earned each day, not to exceed twenty (20) hours in a pay period. An employee may use credit hours in fifteen (15)-minute increments. The earning and use of credit hours will require prior supervisory approval. The FWS Program allows for carrying forward into a subsequent pay period a maximum of twenty-four (24) credit hours. Each employee is responsible for the proper use and tracking of credit hours earned and taken.
2. Credit hours may be earned between the hours of 6:00 a.m. and 7:00 p.m.
3. Credit hours may not be used prior to being earned. They may, however, be earned and used within the same pay period provided they have been earned before they are used.
  - a. Part-time Employees: Permanent part-time employees may earn credit hours in proportion to the hours worked per 40-hour week, providing that such accumulation of credit hours is not in conflict with any controlling regulation for their part-time employment. For example, a permanent part-time employee working 32 hours per week could earn 16 credit hours per pay period and carry over 19 credit hours from pay period to pay period. If the number of part-time hours being worked changes, the credit hour carry forward capacity will change proportionally; that is, hours could be lost if working hours are being reduced.
  - b. Credit hours may not be traded or exchanged in any way between employees.

### **SECTION D: Overtime/Compensatory Time**

1. If an employee is required by management to work hours which are in excess of the basic tour of duty, these hours must be compensated in accordance with the premium pay provision of Titles 5 of the United States Code and the overtime provisions of the Fair Labor Standards Act. Overtime must be scheduled and approved in advance by using NETL F535.1-2, NETL Worksheet (Overtime/Comp - Time/Extra Hours). For purposes of compensatory time that is earned and used under the overtime provisions, increments in fifteen (15) minutes are authorized.
2. Employees will be required to work emergency overtime only in cases of unforeseen

emergent circumstances and only after volunteers from available and qualified staff are sought without success and the same is documented. Such documentation will be available to the union.

3. Employees that are in an on-call status are not considered to be in a duty status. However, when an individual is called back to the place of employment on a non-work day or after completing their tour of duty for that day and have already departed the work site, they must receive a minimum of two (2) hours overtime compensation or compensatory time for call-back overtime, subject to applicable law and budget appropriations.
  - a. Compensatory time for travel: Based on the provisions of the Federal Workforce Flexibility Act of 2004, employees may now earn compensatory time off for official travel during uncompensated, non-work hours, under certain conditions. For purposes of compensatory time that is earned and used for travel purposes, increments in fifteen (15) minutes are authorized.
  - b. There is no limitation on the amount of compensatory time off for travel an employee may earn, but accrued compensatory time off for this purpose must be used by the end of the 26th pay period after the pay period in which it was earned, or it will be forfeited. If an employee separates from Federal service before the compensatory time off for travel is used, it will be forfeited.
  - c. To qualify for this purpose, travel must be officially authorized and be approved by an authorized agency official.

**SECTION E:** If it is necessary or expected for an employee to work beyond normal duty hours or more than 8 hours of work time (at a travel destination), the employee will be paid overtime or given compensatory time in accordance with applicable law (such as 5 USC or the Fair Labor Standards Act). For example, if an employee is staffing a booth at an expo or in job-related training for beyond 8 hours of working time, the employee should be credited for that extra time worked.

**SECTION F:** Compensatory time off for travel is forfeited:

1. If not used by the end of the 26th pay period after the pay period during which it was earned;
2. Upon voluntary transfer to another agency;
3. Upon separation from the Federal Government.
4. An employee may not receive payment for unused compensatory time off for travel.

**SECTION G:** Compensatory time off for travel may only be earned for time in a travel status when such time is not otherwise compensable. Compensable refers to periods of time creditable as hours of work for the purpose of determining a specific pay entitlement. For example, certain travel time may be creditable as hours of work under the overtime pay provisions.

**ARTICLE 30**  
**Telework**

**SECTION A: Policy**

1. Telework refers to a situation in which an employee is performing assigned duties at a location other than the official duty station, not to include a temporary duty station (TDY). Such an alternative duty station (ADS) can include a government or private telework center or the employee's home.
2. Telework is voluntary on the part of the employee and is subject to prior Management approval.
3. Employees may request the following types of telework arrangements:
  - a. “routine (regular)”;
  - b. “situational”, which is telework on an ad hoc or episodic basis for a specific work project or assignment, or for a situation where travel to the official duty station is problematic or unsafe, such as for hazardous weather conditions (telework to accommodate periodic medical appointments for an employee or family member will be regarded as “situational”); or
  - c. “medical”, which is to be used for definitive periods of confinement, rehabilitation, and/or recuperation from a serious illness or injury and may be a full-time and/or part-time arrangement depending on the medical situation.
4. Management and the Union strongly encourage supervisors to be creative in considering the use of telework and other workplace flexibilities. Most jobs include some duties that are considered to be “portable” in that they generally can be performed at any location.

**SECTION B: Eligibility**

1. All employees at NETL are eligible to telework as long as they meet all of the following criteria. It is important to understand that telework is not an employee right, i.e., Federal law requires agencies to establish telework programs, but does not give individual employees a legal right to telework. Telework is conditioned upon supervisor approval. Employees who are eligible must still request approval to telework using the procedure described in Section C. Eligibility criteria are as follows:
  - a. The employee is in good standing and is not on notice of unacceptable performance, as provided in Article 18, Unacceptable Performance, or otherwise in a performance demonstration period for purposes of unacceptable performance;
  - b. The employee is not on a leave restriction, as provided in Article 13, Use of Leave;

- c. The employee has the work space, utilities, equipment, and reference materials suitable for the work to be performed at the designated ADS;
  - d. The employee is willing to sign and abide by the Telework Agreement Form;
  - e. The employee has not been officially disciplined for being absent without permission for more than five (5) days in any calendar year; and
  - f. The employee has not been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.
2. Employees serving in a probationary period or formal training period may be further restricted in participating in the telework program. In such cases:
    - a. They may telework a maximum of two days per pay period; and
    - b. Supervisors will provide regular review of probationers' and trainees' work performed at an ADS to ensure that employees are meeting performance requirements.

### **SECTION C: Application and Agreement**

1. At any time, an employee may request to telework by submitting a telework application to the immediate supervisor. If the employee requests a meeting, such meeting will be held with the supervisor to discuss the request.
2. All employees who have been approved to telework must complete and sign a telework agreement. The agreement must be in place before telework may begin. This agreement will outline the specific telework arrangement. The agreement may be reviewed and adjusted during the life of the agreement. Normally, the agreement and the application will be reviewed, approved or disapproved and, if approved, finalized within ten (10) working days of the request. If the request is denied, the supervisor will respond in writing and include the reasons for the denial.
3. For situational and medical telecommuting requests, Management will attempt to expedite the review process to the extent necessary and possible.
4. Official NETL telework forms will be used for this process. The Union will be notified in advance of any proposed changes to these forms and may bargain over changes consistent with applicable law.

### **SECTION D: Call Backs or Temporary Changes**

1. Employees may be required to report to their official duty station for previously scheduled training, conferences, other meetings, or to perform work on a short term basis.

2. Employees may also be required to report to their official duty station for operational exigencies. In such cases, employees will be provided reasonable advance notice and be provided a reasonable time to report. Employees should make every effort to report as soon as possible.
3. 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.

#### **SECTION E: Removal from Telework**

Normally, employees will not be removed from participation for single, minor infractions of Telework Program requirements. In such cases, managers will make a bona fide effort to counsel employees about specific problems before cancelling an employee's participation in telework. The counseling will be confirmed in writing.

The Agency may remove an employee from the Telework Program due to one or more of the following:

1. The employee is placed on a leave restriction in accordance with Article 13, Use of Leave. The employee is eligible to re-request participation upon lifting of the leave restriction.
2. If the employee is in a performance or opportunity period in accordance with Article 18, due to Unacceptable Performance. The employee is eligible to re-request participation 60 days after expiration of the performance or opportunity period.
3. The employee's failure to adhere to the requirements specified in the signed Telework Agreement or the provisions in this article.
4. The employee has demonstrated an inability produce adequate work, non-responsiveness, non-availability, or working at the ADS has proven to place an undue burden on other office staff.
5. Conditions have changed so that all of the employee's work must now be done only at the employee's regular workplace.
6. The employee was the subject of final disciplinary action. Management will seriously consider the nature of the misconduct and its impact, if any, on the granting of permission to continue to telework

When a decision is made to remove an employee from the Telework Program, the employee must be given written notice indicating the reason(s) for removal. Unless otherwise specified, the employee may reapply for Telework Program participation ninety (90) calendar days after removal from the Program, provided that her/his performance is at least fully successful.

## **SECTION F: Temporary Inability to Perform at ADS**

Employees will promptly inform managers whenever any problems arise at the telework site which adversely affect their ability to perform work at the ADS due to no fault of the employee. Examples could include situations such as equipment failure, power outages, telecommunications difficulties, unforeseen illness, etc. In such cases, the employee may request leave or report to the regular work place, as appropriate. If an employee is unable to continue to work that day in the ADS, and it is impractical for the employee to report to the regular work place before the end of the work day, the employee may be granted administrative leave.

## **SECTION G: Hours of Work and Leave**

Employees performing work at the ADS are subject to the same workday requirements as they would be if they were performing work at the official duty station. Employees will continue to be covered by all provisions of Article 29, Time and Attendance and Article 13, Use of Leave.

## **SECTION H: Emergency Closing/Late Opening/Early Dismissals**

1. When a regular duty site is closed due to an emergency for all or part of a day, employees teleworking that day, or who could telework that day, may be required to work rather than being excused from duty.
2. If the employee wishes to telework on days of inclement weather, a situational telework agreement must be approved in advance. Employees are responsible for analyzing the weather conditions for their commute to work and deciding whether it is safe to travel to work. If weather related situational telework has been pre-approved for an employee, they may telework if they believe that the commute would be unsafe. In that event, the employee will notify the immediate supervisor by email or by phone as soon as possible that the employee will be teleworking. Situational telework may also be requested when the site has announced a closure or delayed opening or when Management has announced that an unscheduled leave policy is in effect.
3. The supervisor may grant administrative leave to a teleworking employee if there is a situation which adversely affects the alternative duty site, if the employee faces personal hardship that prevents him/her from working successfully at the alternative duty site, or if the employee's duties are such that he/she cannot continue to work without contact with the regular duty site that is closed.
4. If employees at the regular duty site are granted early dismissal for a holiday (e.g., Thanksgiving, Christmas, New Year's Eve), the employee working at an ADS is considered on duty and will also be dismissed early.

## **SECTION I: Additional Requirements**

1. In addition to adherence to all provisions of the telework agreement, employees participating in the Telework Program will be required to:

- a. Observe existing policies for requesting leave, in accordance with Article 13, Use of Leave;
  - b. Utilize any government owned/leased equipment for official purposes only and safeguard government owned/leased equipment documents as currently required at their official duty station;
  - c. Adhere to applicable government regulations governing information management and electronic security procedures for safeguarding data and data basis;
  - d. Have a way to be orally contacted during work hours as if the employee were working from a regular NETL onsite office. This would normally mean that the employee has a telephone (landline or cell phone) which will be available during working hours. The employee should also have their NETL work telephone number, if they have one, forwarded to the telephone referred to above;
2. In addition:
- a. teleworking employees are subject to the space management procedure; and
  - b. employees who telework more than two (2) days per week may be required to share office space pursuant to an onsite hoteling arrangement.

#### **SECTION J: Equipment and Support**

1. At a minimum, the Agency will provide the following as available:
  - a. call forwarding with remote access capability;
  - b. necessary software or internet-based access to servers and databases as authorized by Management;
  - c. the necessary resources for the employee to make work-related long-distance phone calls.
2. Management will, at their discretion, provide equipment and resources Management deems necessary for performing the employee's assigned duties at the employee's ADS, comparable to that provided at the workplace.
3. The Agency will furnish resources, at their discretion, along with network access permissions and associated equipment. The employee is not authorized to incur any costs to telework unless specified in the telework agreement.

4. The employee will only be responsible for costs associated with maintenance and repair of equipment and resources that the employee provides. Employee-provided equipment and services, such as an Internet provider, and any additional operating costs, such as home maintenance, insurance, or utilities, that are associated with the employee's using their home as the telework site are at the employee's expense, unless specifically authorized in the telework agreement. Upon termination of the telework agreement, all supplied resources must be returned to the Agency.

**ARTICLE 31**  
**Reduction in Force and Transfer of Function**

**SECTION A:**

1. Management and the Union recognize that bargaining unit employees may be negatively affected by a reduction-in-force (RIF), and a transfer of function (TOF). The parties recognize that available alternatives to RIF include, but are not limited to, attrition, reassignment, furlough, hiring freeze, and early retirement.
2. To the extent that NETL determines it may be necessary to conduct a RIF or TOF, NETL will first consider practicable and lawful alternatives to avoid a RIF or TOF, for example, the use of attrition or requests for buyout and early retirement opportunities, placement assistance throughout federal agencies, freezes on outside hiring, retraining, reallocation of funding, and significant cost cutting (e.g., travel, performance awards and furloughs). If Management decides to use one of these alternative methods above in order to avoid a RIF or TOF, they will notify the Union in advance, and the Union will be provided an opportunity to comment.
3. Within three (3) days of the completion of any study, a copy will be provided to the Union.
4. Whenever possible, vacancies will not be filled from outside the affected organization if employees facing separation are qualified and available for the vacancies.
5. If early retirement or buyout opportunities are offered to employees prior to the issuance of RIF notices, NETL will provide information on those opportunities to eligible employees. Eligibility requirements and the application processes will be included in this information. Questions on the effects of a buyout or early retirement on severance pay, reemployment, and continued health insurance coverage will be answered by human resources specialists.
6. Management will notify the Union at the earliest possible time when conditions arise that may result in a RIF or a TOF and will furnish information about potential RIFs as soon as information is available. The information to be provided to the Union will include:
  - a. The specific reasons why the Agency considers a RIF to be necessary;
  - b. The competitive area in which the RIF will be conducted;
  - c. The competitive levels to be initially affected;
  - d. The number and work location of employees involved;
  - e. The proposed effective date; and
  - f. All actions adopted or expressly rejected before deciding to conduct a RIF.
7. Management will continue to provide information to the Union throughout the RIF and/or TOF consideration process as it is developed and revised. The purpose of this early notification

is to allow Management and the Union the opportunity to find alternatives to the potential RIF or TOF.

**SECTION B:** If NETL places an employee(s) on furlough for more than thirty (30) continuous calendar days or twenty-three (23) discontinuous workdays in a reduction in force, NETL will consider offering the employee the option to serve the furlough on a discontinuous or continuous basis when the mission of the agency would otherwise not be negatively affected and so that the employee could qualify for unemployment compensation. Employees who are furloughed during a lapse of appropriation will be retroactively paid and otherwise compensated to the extent permitted by law and regulation when appropriations are approved. Serving a furlough on a discontinuous basis will not result in an increase in the number of work days furloughed.

**SECTION C:** Reductions-in-force and/or transfers of function will be conducted in accordance with 5 CFR 351 and appropriate Office of Personnel Management Guidelines and the applicable DOE policies and procedures. An employee's retention standing in a reduction in force is based on the requirements of the Code of Federal Regulations which include such things as years of service and retention service credit for performance. In the event of a RIF, Union and Management will negotiate over the adverse impact on any employees who may be covered by a mixed performance rating system in accordance with applicable law.

**SECTION D:** At the earliest possible date, but no less than ten (10) calendar days prior to individual employee notification, Management will notify the Union in writing of its decision to conduct a RIF or TOF. This Union notification will outline the general scope of the RIF or TOF and a final update of the information required under Section A. The notification will include the reason(s) for RIF, criteria used to identify the positions affected, number of positions affected, types and grades of positions affected, and the proposed effective date. The Senior Union Official will hold this information confidential until the official notice is issued to the affected employees. The Senior Union Official and his designated Representative(s) will have the opportunity to confidentially examine the retention registers for the Bargaining Unit employees at least 10 days before the official notice is given.

**SECTION E:** Employees separated by a RIF action will be entitled to re-employment priorities established in existing regulations. The acceptance of a temporary appointment will not affect the employee's right to be offered permanent employment. Employees affected by a RIF action and offered reassignment non-competitive promotion or change to a lower grade within NETL will be given at least ten (10) days to respond to a position offer(s), indicating a choice of accepting such offer of a position or allowing the RIF action to take place, unless Management is prevented from doing so by unusual circumstances or emergency conditions.

**SECTION F:** In the event an employee is separated due to a RIF action, Management will notify the affected employee(s) in writing of their eligibility for programs such as, but not limited, to Career Transition Assistance Program (CTAP) and Interagency Career Transition

Assistance Program (ICTAP), as well as registration on the Agency's Reemployment Priority List (RPL). The HRSC will provide guidance and support to all affected employees on application procedures for each program including assisting employees with determining the types of positions for which the employee qualifies based on his/her knowledge, skills, and abilities. Management will make available reasonable use of duty time and request HRSC to provide maximum assistance (i.e. onsite assistance) possible to affected employees. Employees who are being released from their competitive level are eligible for excused absence for the purposes described under 5 CFR § 330.601, subpart F.

**SECTION G:** In the event of a TOF without a RIF, Management will inform the Union as fully and as soon as practical (at least 30 days prior to implementation) any decision(s) for the transfer of function(s) and, provide upon request, the governing regulations. The written notice will include the reasons for the proposed transfer of function(s), the number and types of positions affected, and the anticipated date of the action. Management will identify the employees to be transferred in accordance with applicable rules and regulations. Management will explore options to avoid separating, downgrading, or transferring employees as a result of the loss of function.

**SECTION H:** Management and the Union understand and agree that there will be separate competitive areas for employees assigned to NETL. The Albany, Morgantown, and Pittsburgh sites are separate competitive areas for purposes of RIF and TOF. Any employees stationed in Albany, Morgantown, or Pittsburgh who are not assigned to NETL will be in other competitive areas.

**SECTION I:** Management will counsel the employees who decline the TOF regarding their statutory outplacement rights, placement potential, and individual rights relating to retirement and/or severance pay as well as provide assistance with application procedures for career assistance transition programs.

**ARTICLE 32**  
**Smoking**

**SECTION A:** Management and the Union, in mutual agreement as to the adverse health effects of tobacco smoke on both the user and those who breathe “second hand” smoke, agree that smoking will not be permitted at the site except for designated smoking shelters located in areas agreed to by the parties and in employees’ private vehicles.

**SECTION B:** Smoking will be governed by applicable rules, regulations, and Executive Orders.

**SECTION C:** Currently designated smoking shelters will continue to be so designated.

**ARTICLE 33**  
**Negotiated Grievance Procedure**

**SECTION A:** This article provides the sole negotiated grievance procedure for the processing of Management, Union, and employee grievances as required by the Federal Service Labor Management Relations Statute. This procedure will be the exclusive avenue available to the Union, Management and the employees in the bargaining unit for resolving grievances, except as provided in Section B of this article. Portions of this procedure may be used to attempt resolution of unfair labor practices (ULP's) as per this Agreement. All time limits in this article may be extended by mutual consent, in writing. All time limits in this article refer to "work days". Management and the Union agree that:

1. The success of their relationship depends on a spirit of cooperation. Grievances and ULP's do occur and should not be viewed as personal attacks on supervisors or other managers and should be addressed with a goal of maintaining a harmonious work environment.
2. The filing of a grievance or ULP will not reflect unfavorably on an employee's good standing, an employee's performance, or his/ her loyalty to the organization.
3. Most grievances and ULP's arise from misunderstandings or disputes that can be settled promptly and satisfactorily on an informal basis. Management and the Union agree that every effort will be made to settle grievances at the lowest possible level.
4. Management and the Union will discourage the processing of frivolous grievances or ULP's.

**SECTION B:** The parties will comply with 5 U.S.C. 7121 (d):

"(d) An aggrieved employee affected by a prohibited personnel practice under

Section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee will be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to Section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission."

**SECTION C:** A grievance means any complaint defined under 5 USC 7103(a)(9), and a substantive or threshold issue may be raised at any time during the grievance and arbitration process. All disputes of grievability or arbitrability will be deferred for decision to arbitration as a threshold issue. The Agency will take separate measures to address any legitimate issues raised by the grievance when a grievance is denied due to non-grievability, timelines are violated, and/or the grievance has procedural defects.

1. This procedure applies to bargaining unit employees and will be the exclusive procedure for resolving grievances which fall under its coverage. A grievance means any complaint:
  - a. by a bargaining unit employee concerning any matter relating to the employment of the employee;
  - b. by the Union concerning any matter relating to the employment of any bargaining unit employee(s); or
  - c. by a unit employee, the Union, or Management concerning:
    - (1) the effect, interpretation, or a claim of a breach of the collective bargaining agreement; or
    - (2) any claimed violation or misinterpretation of any law, rule, or regulation affecting conditions of employment.
2. This procedure will not apply to any grievance concerning:
  - a. any claimed violation of Subchapter III of Chapter 73, Title 5 USC (relating to prohibited political activities);
  - b. retirement, life insurance, or health insurance;
  - c. a suspension or removal under Section 7532 of Title 5 USC; annual performance ratings, performance awards, retention/relocation/recruitment payments;
  - d. any examination, certification, or appointment;
  - e. the classification of any position which does not result in the reduction in grade or pay of an employee;
  - f. the termination of an employee during his/her probationary period;
  - g. termination of temporary employees for lack of funding or expiration of appointment;
  - h. non-selection for promotion or transfer from lists of properly ranked eligibles;
  - i. any other exceptions expressly set forth in this CBA.
3. Employee Options:
  - a. A bargaining unit employee may raise matters permitted under this article under statutory procedures or the negotiated grievance procedure, assuming proper jurisdiction, but not both. For the purpose of this article, an employee will be deemed to have exercised

his/her option to grieve only when s/he files a written, timely grievance under the negotiated grievance procedures.

- b. A bargaining unit employee may present a grievance on his/her own behalf under this article, and the Union will be given the opportunity to be present during the grievance proceedings. Any resolution reached with the employee or Union will be consistent with all applicable laws, rules, regulations, and the provisions of this collective bargaining agreement. A grievance will automatically be terminated at the request of an employee, upon his/her death, or upon his/her resignation or separation for reasons not connected with the grievance, unless there is: (a) a question of pay involved; (b) other relief that could be granted to the employee or his/her estate; or (c) the grievance is a Union policy grievance that affects the working conditions of other bargaining unit employees.

#### 4. Informal Resolution of Employee Disputes

The parties agree that informal resolution of employee disputes that could lead to grievances is desirable. To this end, bargaining unit employee(s) and/or his/her Union representative(s) may present any dispute, as soon as possible after the employee knew or should have known of the incident giving rise to the dispute, to the appropriate Management level supervisor before the grievance procedure is initiated. The parties may mutually agree to extend the time limit to file a grievance to pursue informal resolution.

#### 5. Grievance Steps

##### Step 1: Initial Filing

- a. Within twenty-five (25) work days of the act or incident giving rise to the grievance or the date the employee knew or should have known of the incident giving rise to the grievance, the bargaining unit employee or his/her Union representative must present any grievance, in writing, to the HRSC director, who will refer the grievance to the appropriate manager/supervisor and provide notice of the designated manager/supervisor to the grievant and the Union.
- b. Within ten (10) work days of the date the grievance was received, the manager/supervisor will issue a written decision to the grievant with a copy to the Union.
- c. If the grievant has not received a written decision within ten (10) work days, the grievant may advance the grievance to Step 2 of this procedure.

##### Step 2: Review

- a. When the grievance has not been resolved at Step 1, the grievant or his/her Union representative will have ten (10) work days from the date of receipt of a decision in Step 1 to submit his/her grievance in writing to the HRSC director, who will refer it to a higher level deciding official with notice of the higher level deciding official to the grievant and the Union.

- b. The higher level deciding official will meet with the grievant(s) and his/ her Union representative(s), if any, within five (5) work days after receipt of the written grievance.
- c. Within ten (10) work days after the meeting, the higher level deciding official will provide the grievant(s) and his/her Union representative with a written response.
- d. If the grievant has not received a written decision within ten (10) work days, the grievant may advance the grievance to Step 3 of this procedure.

#### Step 3: Appeal

- a. Within ten (10) days either after the decision was issued or after the decision was due, the grievant or his/her Union representative may submit a formal appeal in writing to the HRSC director for referral to the NETL director or his/her designee. The NETL director or his/her designee will schedule a meeting with the grievant and his/her Union representative within ten (10) work days after receipt of the formal appeal.
- b. Within ten (10) work days after the meeting, the NETL director or his/her designee will provide the grievant(s) and his/her Union representative with a written response.

#### Step 4: Arbitration

If Management and the Union fail to settle any grievance processed under this negotiated grievance procedure, upon written request by either party within twenty (20) working days after issuance of the final decision by the NETL director or designee (Step 3), the matter will be submitted to arbitration. Only Management or the Union may invoke arbitration.

**SECTION D:** In processing matters under these procedures, employee grievants are entitled to the use of a reasonable amount of duty time.

**SECTION E:** When multiple bargaining unit employees intend to pursue an identical grievance through Union representation, the matter will be consolidated and processed as a single grievance in the name of one bargaining unit employee. All bargaining unit employees electing to participate in the consolidated grievance must be identified and must sign the grievance at the initial stage of filing. There will be only one (1) Union representative for all participants, and the final grievance decision will apply to all participants. Each participant will receive one (1) copy of the final decision.

**SECTION F:** Failure by the Union or employee to meet the time limits prescribed in this Agreement will constitute a withdrawal and termination of the grievance. Should Management fail to comply with the time limits at any step, the grievance may be advanced to the next step, up to and including arbitration. Management will provide a detailed written response to the employee and his/her Union representative at each step of the grievance that explains the reasons why the grievance is denied or sustained.

**SECTION G:** At each step of the above grievance procedure, the parties may present evidence relevant to the grievance.

**SECTION H:** It is agreed that when a grievance decision is accepted or terminated by the grievant or, if the grievant has requested Union representation, the Union representative on the grievant's behalf, at any step, it will be considered to be settled in its entirety, and no further action will be taken regarding that specific grievance.

**SECTION I:** An alternative dispute resolution process (ADRP) may be invoked when mutually agreed to by the disputing parties at any time. The use of ADRP will not automatically restrict an employee from resorting to the existing grievance process. All deadlines in the grievance process will be suspended during the pendency of an ADRP.

**SECTION J:** Management will use the following procedure for filing any grievance against the Union and by the Union for any grievance in which the Union is the grievant or the grievance arises out of a challenge of a NETL policy or practice:

1. Within twenty-five (25) work days of the incident giving rise to the grievance or the date the moving party knew or should have known of the incident giving rise to the grievance, the moving party (either the Union or Management) will inform the Human Resources Division director or the senior Union official as appropriate in writing of the grievance.
2. The senior union official and the designated Management representative will meet within ten (10) work days of such notification and make an earnest effort to resolve the matter through discussion.
3. Within fifteen (15) work days of the meeting, the responding party will reply, in writing, to the moving party on its position concerning the grievance.
4. If the matter remains unresolved, the moving party may refer the grievance to arbitration in accordance with this Agreement. Prior to submission of any such grievance to arbitration, the parties will meet in a good faith attempt to mutually agree on the issue(s) to be submitted to the arbitrator.

**ARTICLE 34**  
**Unfair Labor Practices**

**SECTION A:** The parties mutually recognize the rights of all employees to file an Unfair Labor Practice (ULP) as stated in the Federal Service Labor Management Relations Statute (5 USC 7116).

**SECTION B:** Any party intending to file an Unfair Labor Practice agrees to notify the affected party (or parties) and attempt to resolve it informally at least five (5) working days prior to formally filing the ULP.

**ARTICLE 35**  
**Arbitration**

**SECTION A: Arbitration Procedure**

Binding arbitration will be the procedure used for any grievance not satisfactorily settled under the negotiated grievance procedures set forth in this Agreement. Both parties agree that good faith resolution of all grievances will be attempted through the grievance process, settlement, and mediation procedures.

1. If Management and the Union fail to settle any grievance processed under this Agreement, such grievance, upon written request by either party within twenty (20) work days after issuance of the final decision by the director or his/her designee will be submitted to arbitration. Only Management or the Union may invoke arbitration.
2. Not later than twenty-five (25) work days after receipt of the final decision, the party invoking arbitration will submit a request to the Federal Mediation and Conciliation Service (FMCS) for referral of an arbitration panel of seven (7) names of impartial persons qualified to act as an arbitrator. Normally, within fifteen (15) work days after receipt of an FMCS referral, the Parties will select an arbitrator by alternately striking names from the referral list with the name of the last arbitrator becoming the selection. The party striking the first name will be the winner of a coin toss. Management and the Union can mutually agree to request a new list from FMCS, and the parties will share any cost associated with requesting the new list.
3. The FMCS will be empowered to make a direct designation of an arbitrator to hear the case in the event one party refuses to participate in the selection of an arbitrator.
4. With the consent of both parties, more than one arbitration case may be consolidated for review by the same arbitrator.
5. Grievances will be arbitrated in the order in which arbitration was invoked, and any grievance that is passed over for arbitration will not be considered at a later date.
6. If the parties fail to agree on a joint submission of the issue for arbitration, each will submit a separate submission and the arbitrator will determine the issue or issues to be heard. The arbitration normally will be conducted at the work site, unless Management decides otherwise. If Management decides to move the arbitration from the work site, Management will bear the travel and per diem costs for the move.

7. All bargaining unit employees who are participants in the hearing, including witnesses, will be in a duty status. The costs of any witnesses or relevant participants who are not bargaining unit employees will be borne by the party requesting their appearance.
8. The arbitrator will be requested to render his/her decision not later than thirty (30) work days after the conclusion of the hearing unless the parties mutually agree to extend the time limit.
9. The arbitrator's decisions will be final and binding subject to the Parties' right to take exceptions to an award in accordance with law, or the grievant's right, if applicable, to initiate court action. However, the arbitrator will be bound by the terms of this Agreement and will have no authority to add to, subtract from, alter, amend or modify any provision of this Agreement. The arbitrator may retain jurisdiction over a case when necessary to clarify the award and will retain jurisdiction in all cases where exceptions are taken to an award and the Federal Labor Relations Authority sets aside all or a portion of the award.
10. The cost for arbitration, including the arbitrator's fee, travel, and per diem, will be borne equally by the Union and Management. Travel and per diem cost of the arbitrator will not exceed the applicable rates authorized for U.S. Government employees in accordance with the Federal Travel Regulations. The cost of a reporter or transcript, if used, will be shared equally by the Parties if it is mutually agreed by the Parties to have one, or where requested by the arbitrator. Absent mutual agreement, either Party may unilaterally request that a transcript be prepared but must bear all costs incurred in its preparation. If one Party withdraws the grievance from the scheduled arbitration, it will bear the full costs of any arbitration costs or fees.
11. There will be no communication with the arbitrator unless both Parties are participating in the communication. Upon mutual consent of the parties, the grievance case file and current collective bargaining agreement will be sent to the arbitrator.
12. Bargaining unit witnesses will be granted a reasonable amount of official time to prepare for and testify at the arbitration hearing. The Union will request and obtain approval, in writing, for official time to prepare bargaining unit witnesses for its case. Management will promptly respond in writing to such requests. Management will notify the Union in writing of its intent to interview bargaining unit witnesses and afford the Union the opportunity to be present at such interviews.

**SECTION B: Time Limits**

1. All time limits under this procedure may be extended in writing by mutual consent and, in addition, both parties agree to make a maximum effort to comply with the time lines established in the grievance procedure in this Agreement.
2. The parties will exchange witness lists at least fifteen (15) work days prior to the date of the arbitration, and the Parties will have the opportunity to challenge witnesses.

**ARTICLE 36**  
**Alternative Dispute Resolution**

**SECTION A:** An Alternative Dispute Resolution Process (ADRP) may be invoked when mutually agreed to by the disputing parties at any time during the grievance or disciplinary process. Sharing of any costs of the ADRP will be based on mutual agreement. The use of ADRP will not subjugate the existing grievance process. If no settlement is reached in the ADRP, the grievant may continue to pursue the dispute through arbitration. This process will be executed in a timely fashion. The normal timeframes in the grievance process will be suspended during the ADRP.

**SECTION B:** The ADRP includes a variety of means to resolve disputes. Any one or combination of methods may be used to resolve disputes.

**SECTION C:** Settlements made in this process will be non-precedent setting and apply only to the specific dispute. All settlements will be binding on each party, and the dispute cannot be advanced any further in the grievance or disciplinary process. All settlements under this process will be reduced to writing and signed by both parties. An original of all ADRP settlements will be forwarded to the Chief Operating Officer or his/her designee and filed with the original grievance or disciplinary action.

**ARTICLE 37**  
**Past Practices**

**SECTION A:** Past Practices are existing workplace practices sanctioned by use and acceptance that are not specifically included in this Agreement. To qualify as an enforceable established practice, the practice cannot be in violation of law, must be a working condition, in effect for a certain time, and known or acquiesced in by Management.

**SECTION B:** Any past practices that are not unlawful or inconsistent with the terms of the contract will continue under this contract. The parties acknowledge that changes in past practices may come about as a result of such things as budgetary constraints.

**ARTICLE 38**  
**Official Travel**

**SECTION A:** All official travel will be scheduled and arranged to occur during normal duty hours whenever possible. If it is necessary to travel during non-duty hours, the employee will be paid overtime or given compensatory time in accordance with applicable law, including the Federal Workforce Flexibility Act of 2004, and Government-, Department-, and NETL-wide rules and regulations. Management will not require an employee to be subjected to any unreasonable travel arrangements in order to achieve a reduction in per diem costs. Time in travel status includes:

1. Time spent traveling between the official duty station and a temporary duty station;
2. Time spent traveling between two temporary duty stations; and,
3. The usual waiting time preceding or interrupting such travel (e.g., waiting at an airport or train station prior to departure). Extended periods of waiting time when the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, are not creditable as time in a travel status.

**SECTION B:** An employee on travel or assignment for extended periods of 30 days or more will be authorized at least one round trip transportation expenses, other allowable travel expenses, and per diem en route to return to his/her permanent-duty station on one weekend; however, Management may authorize additional periodic trips based on the length of the temporary duty travel. An employee on travel has the right to return to his/her permanent-duty station over any weekend while on temporary travel unless the request is denied due to official business considerations. In this circumstance, the employee will be reimbursed consistent with federal travel regulations. Consideration will be given in terms of scheduling the return trip home for holidays such as the Fourth of July, Thanksgiving, Christmas, and New Year's Day.

**SECTION C:** If an employee is expected to be on travel or away from his/her normal duty station for 30 calendar days or more, the employee must be given written notification of the date of departure 30 calendar days in advance, unless Management is prevented from doing so by unusual circumstances or emergency conditions.

**SECTION D:** Subject to the right to assign work, a supervisor will allow an employee to take personal days in conjunction with official travel. A supervisor denying such use of personal days will provide, in writing, the reason(s) for the denial to the employee at least three working days prior to departure. Personal days that occur during the employee's approved work schedule must be charged to the applicable leave category.

**SECTION E:** Except under unusual circumstances, requests for travel will be approved or denied in a reasonable amount of time to allow the employee to complete travel arrangements. Upon written request of an employee for the reasons for the denial of a travel request, Management will provide written reasons to the employee for the denial.

**ARTICLE 39**  
**Within Grade Increases**

**SECTION A: Policy**

Employees will receive a Within-Grade Increase (WIGI) in accordance with 5 CFR 531 Subpart D. Denial of a WIGI is not to be used as a punitive measure or for an act of misconduct in lieu of appropriate disciplinary actions.

**SECTION B: Procedures for WIGI Determinations**

1. When an employee has been assigned to a current supervisor for fewer than 90 days, the supervisor may secure the written views of the employee's prior supervisor before making a performance determination.
2. Normally, a WIGI will be effective on the first day of the first pay period following the end of the required waiting period.
3. When an employee will be denied a WIGI, he/she will be notified
  - a. During the most recent progress review, as described in Article 25, Performance Management System; or
  - b. In any event no later than 60 calendar days before the end of the required waiting period for eligibility for a WIGI that his/her performance is below an acceptable level of competence and that the WIGI may be denied.
4. If at the end of the required waiting period, the employee's performance is not at an acceptable level of competence for the purpose of approving the WIGI, the employee will be given a written notice which will include:
  - a. A statement that the employee's work has been reviewed;
  - b. A statement that the employee's work has been determined to be of less than an acceptable level of competence;
  - c. A statement which identifies the performance elements in which the employee's performance was less than fully successful;
  - d. Specific examples of how the employee's performance failed to meet the fully successful level for that particular performance element;
  - e. A statement that the employee has the right to request, in writing, a reconsideration of the negative determination, provided the request is made within 15 workdays of the

employee's receipt of the negative determination. The statement will include the name and title of the reconsideration official, normally the reviewing official, to whom the employee may submit a request;

- f. A statement that the employee may have a reasonable amount of duty time to review the materials relied upon in reaching the negative determination and to prepare a response; and
  - g. An explanation that the employee will be considered for a WIGI on a quarterly basis as to whether the employee demonstrates an acceptable level of competence.
5. A decision on reconsideration will be made within 30 calendar days from the date of the request or from the date of an oral presentation to the reconsideration official, whichever is later. If the reconsideration official determines that the employee has met an acceptable level of competence, the WIGI will be effective as of the first day of the first pay period after that determination.
6. If the reconsideration official upholds the negative determination, any available grievance rights may be asserted under Article 33, Negotiated Grievance Procedure. In matters where no new or additional arguments are being raised through the grievance that were not previously considered by the reconsideration official, the grievance may proceed directly to step 2 of the grievance process.

**SECTION C:** After a WIGI has been withheld, the Agency may grant the WIGI at any time after it determines that the employee has demonstrated sustained performance at an acceptable level of competence. The employee will be considered for a WIGI on a quarterly basis as to whether the employee demonstrates an acceptable level of competence.

**ARTICLE 40**  
**Career Ladder Promotions**

**SECTION A:** While promotions within career-ladders are neither automatic nor mandatory, career advancement is the intent and expectation in the career-ladder system.

**SECTION B:** A career ladder is a series of positions of increasing difficulty in the same line of work through which an employee may progress from the entry level to the full performance level. The full performance level is the highest grade level to which an employee may be promoted non-competitively within a career ladder.

**SECTION C:**

1. An employee is eligible for consideration for a career-ladder promotion provided all of the following conditions have been met:
  - a. the employee has demonstrated the ability to perform the higher-grade level duties;
  - b. the employee has completed at least one (1) year in the current grade;
  - c. there is sufficient work at the higher grade level position;
  - d. sufficient funds are available; and
  - e. the employee's current written performance appraisal is acceptable.
2. Management will complete its review of an employee's eligibility for a career-ladder promotion within 120 days after the employee has completed one (1) year in his or her current grade. An employee will be notified by Management if he/she has been approved or denied for a career ladder promotion within 120 days after the employee has completed one year in the current grade. If Management determines that the requirements in paragraph 1 above have not been met, an employee not promoted will be notified of the reason(s) for the decision, in writing if the employee requests that notification. Such reasons will be well-defined, clear, and understandable.
3. If it is determined that the employee is denied the career ladder promotion, the process described above will continue on a quarterly basis.
4. If it is determined that the employee should receive a career-ladder promotion, the promotion will be effective no later than the next pay period after the review.
5. Promotions to GS 14/15 sought pursuant to the formal RGEG process are not considered career ladder promotions for purposes of this article.

**ARTICLE 41**  
**Developmental Opportunities**

**SECTION A: General**

1. Management and the Union recognize the advantages of developing the overall capability and versatility of the staff. Developmental opportunities give employees experience with other functions and components within the organization to develop and diversify employee skills and create a wider and deeper understanding of NETL programs, which will assist NETL in accomplishing its mission.
2. Although developmental opportunities may directly benefit participating employees, the operating needs of NETL are of paramount concern. Management has the right to assign work, and no employee is entitled to a developmental position. However, managers and supervisors will consider developmental opportunities to develop the knowledge, skills, and abilities of staff to meet mission requirements.

**SECTION B: Internal Lateral Opportunities**

1. When Management has determined that it will announce a vacancy for a bargaining unit position, Management will consider whether there are a sufficient number of internal applicants who could be considered for a position that would otherwise be posted as an external vacancy. If Management determines that a position should be advertised for an internal opportunity, the HRSC will post the internal announcement on USAJobs and Management will post on the Intranet with specific information on how employees who are qualified and eligible can apply. The selection(s) made from this announcement will be posted on the Intranet.
2. Management will establish a procedure whereby employees can request lateral reassignments. The procedure will describe how an employee will request a lateral reassignment and Management's review and approval process.
3. Employees who are interested in a lateral reassignment to another organization are encouraged to discuss their interest with their supervisor.
4. Any employee not selected may apply to subsequent vacancy announcements for the same or similar positions.

**Section C: Rotational Assignment Opportunities**

1. Management will establish a procedure whereby employees can request rotational assignments in order to gain additional job experience and provide benefit to NETL. The procedure will describe how an employee will request a rotational assignment, how Management will create rotational assignments, and Management's review and approval process.

2. Although an employee is not entitled to a rotational assignment, Management will implement this procedure in order to develop staff knowledge, skills, and abilities.
3. An employee may also discuss their interest with their supervisor and include such interests in their individual development plans.

## **ARTICLE 42**

### **Personal Use of Facilities and Property**

#### **SECTION A: Limited Personal Use of Facilities and Property**

Limited personal use of facilities and property is governed by 5 CFR Part 2635 and DOE Order 203.1. Employees that have questions concerning the limited personal use of government equipment and/or property will consult their supervisor.

#### **SECTION B: Access to Facilities**

1. Management agrees to maintain at least one area that will be reserved for nursing mothers to express milk for infants in accordance with the requirements of the OPM Directive dated December 20, 2010.
2. Management and Union agree that for the health and efficient operation of NETL locations with more than 25 federal employees where the following do not currently exist, NETL will consider providing the following facilities consistent with applicable law and budgetary considerations:
  - a. On-site occupational health facilities
  - b. On-site fitness facility
  - c. On-site break room, and/or vending options
  - d. On-site childcare facilities
    - 1) Upon hiring of a new employee, HRSC will provide employees with information of current child care services provided on the NETL site.
    - 2) NETL will provide and maintain the real and personal property assets consistent with the scope of 40 U.S.C. 590(c), for example, space, office equipment, playground equipment, telephones, and maintenance services, and which are needed to meet state accreditation standards subject to available funding. The personal property will also not be construed to include the purchase of consumable items that have a useful life of less than five years. All such buildings, equipment and services will be maintained for the duration of this Agreement.

## **ARTICLE 43**

### **Review of NETL Directives**

**SECTION A:** Prior to the implementation of any NETL directives (including orders and procedures) or manuals, NETL will, at the appropriate time, forward to the Union new, revised, or canceled directives or manuals for review for potential changes that may affect the working conditions of bargaining unit employees. As to those dealing with national security, internal security, emergency response, or continuity of operations, or official use only information embodied in policy and procedures, only those portions of each directive which may impact working conditions will be circulated pursuant to this article. Management will forward, via e-mail, NETL's directive or manual to the Union's President and/or designee which will show additions and deletions from the current version. The e-mail will also provide a proposed implementation date. The Union has the right to request a briefing on changes to the directive or manual which may impact working conditions. Such a request will come within five (5) work days of the e-mail. The Union has five (5) work days from the date of the meeting, or if no meeting is held ten (10) work days from the date of the e-mail, to respond with recommended changes to the directive or manual or that they have no changes. If the Union does not respond to the Agency's e-mail within five (5) working days, then concurrence is granted for implementation of NETL's directive or manual. The Parties may mutually agree to extend timeframes.