

Collective Bargaining Agreement

Between

**National Oceanic and Atmospheric Administration
National Ocean Service
Office of Response and Restoration
Emergency Response Division**

And

**International Federation of Professional and Technical Engineers
Local 8A
ERD Chapter**

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ARTICLE 1 - Preamble

This Collective Bargaining Agreement (CBA) is entered into by and between the National Oceanic and Atmospheric Administration (NOAA) Office of Response and Restoration (OR&R) Emergency Response Division, hereinafter referred to as Management, and the International Federation of Professional and Technical Engineers (IFPTE), Local 8A, as the exclusive representative of all full-time and part-time non-supervisory personnel of the Emergency Response Division of OR&R, hereinafter referred to as the Union.

The Parties mutually recognize that the Congress of the United States has expressed public policy concerning labor relations in the Federal Government as follows (5 U.S.C. §7101):“...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.”

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

Management and the Union agree to abide by the Federal Labor-Management Relations Statute. Both Parties agree to recognize the rights of the other as established by this Statute. Both Parties also recognize the rights of the bargaining unit employees as established by this statute. The Parties acknowledge the importance of free and open communications and the importance of building a partnership that enables the workforce to develop its full potential and be aligned with NOAA objectives. The Parties endorse the use of formal and informal meetings to promote the exchange of information and the discussion of appropriate matters of concern. The Parties do not intend by this CBA to discourage or impede in any way open communications among the Union, individual employees, and Management representatives. Management and the Union share in building an organization that can successfully meet NOAA goals and objectives. The partnership that is needed for a high-performing organization requires the ability to demonstrate:

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- 1) a genuine concern for people, whether employees, environmental stakeholders, or the public;
- 2) an unflagging desire to improve in every possible way;
- 3) a clear alignment of all strategies, processes, and activities with visions and missions;
- 4) a wise use of data and information to measure and improve performance; and,
- 5) a strong position as leaders in our fields.

The Parties agree that should the IFPTE request certification to include subsequently organized groups of employees in OR&R; Management will not oppose such certification if the groupings would be considered an appropriate unit under the law.

ARTICLE 2 - Governing Laws and Regulations

Section 1. In the administration of all matters covered by this Agreement, the Parties are governed by government-wide rules and regulations in effect on the effective date of this Agreement and not in conflict with existing Agreements between the parties. Where the terms of this Agreement conflict with government-wide rules and regulations issued after the effective date of this Agreement, the terms of this Agreement shall be controlling. All applicable Federal laws also govern this Agreement. Such laws will take precedence over this Agreement.

Section 2. This Agreement supersedes all previous Agreements between Management and the Union and any past negotiable practices in conflict with this Agreement. Any prior benefits and practices and understandings which were in effect on the effective date of this Agreement and are not specifically covered by this Agreement and do not detract from it will not be changed except in accordance with this Agreement and 5 U.S.C. 71.

ARTICLE 3 - Terms of Agreement

Section 1. This Agreement will be implemented and become effective when it has been approved, ratified, and signed by the Parties, including review pursuant to 5 U.S.C. §7114. The effective date and the anniversary date of this Agreement shall be the date of approval by the U.S. Department of Commerce at Agency Head Review (AHR).

Section 2. This Agreement will remain in effect for three (3) years from its effective date. It will be automatically renewed on the anniversary date of the Agreement for one (1) year period unless either Party gives notice to the other Party of intention to amend and/or renegotiate the Agreement. If notice is given by either Party to amend and/or renegotiate the Agreement, the Agreement will be automatically extended until a new Agreement is in effect. The present Agreement will remain in full force and effect until a new agreement passes ratification and AHR.

Section 3. Either Party shall give notice to the other Party within 120 calendar days of the anniversary date of the Agreement of their intention to amend and/or renegotiate the Agreement. The proposed Articles to be renegotiated shall be identified by Article Name and Number with such notice and shall be accompanied by a statement describing the Party's interest which the proposal(s) are seeking to address. The notice to amend and/or renegotiate the Agreement must be acknowledged in writing by the other Party within fifteen (15) calendar days of receipt.

Within 30 calendar days of such notice, the initiating Party will provide the other Party with written proposals for identified Articles for amendment or renegotiation. The other Party will provide their counter-proposals, if any, within 30 calendar days from receipt of the written proposals.

Section 4. Management will ensure that this Agreement will be available electronically to all bargaining unit employees.

ARTICLE 4 - Management Initiatives and Mid-term Bargaining

Section 1. The Union recognizes that Management has the right to exercise its management rights as set forth in the Federal Service Labor-Management Relations Statute, this Agreement, and in accordance with applicable law, rule, and regulation to initiate changes in operational and administrative procedures and programs when Management determines it is in the interest of the program to do so. In accordance with the law, management recognizes that the Union has the right to receive timely advance notice and engage in good faith negotiations, when applicable, with Management on any changes in the conditions of bargaining unit employees' employment.

Section 2. The Union and Management agree to follow applicable existing law with regard to labor management relations. In this regard, Management has the sole right to make changes in the exercise of its management rights pursuant to 5 U.S.C. §7106 or for any other reason associated with the accomplishment of its mission. Management does recognize its potential obligation, consistent with applicable laws, rules, and government-wide regulations, to notify the Union of such changes and to negotiate, upon request of the Union, pursuant to 5 U.S.C. §7106(b) (2) and (3). Management agrees to provide notice and, if the Union requests, will complete negotiations before implementing a change to any personnel policy, practice, or condition of employment not specified by this Agreement, except as provided by law or existing Agreements between the Parties or existing government-wide regulations. Management recognizes its duty to fulfill its statutory bargaining obligations regardless of whether or not the change in conditions of employment affecting bargaining unit employees are directly under the control of ERD management.

These changes may be Management initiated and/or may result from implementation of future laws, Department-wide or Management regulations, Department-wide or Management directives, Department-wide or Management policies; and government-wide regulations, as deemed necessary or appropriate by Management. Management will endeavor to engage the Union in pre-decisional discussions on proposed changes in conditions of employment.

Section 3. Notification Procedure

In issuing, revising, or canceling rules and regulations relating to personnel policy, practices, procedures and matters affecting working conditions, Management shall give due regard to the obligations imposed by applicable laws, rules, regulations, and this

Agreement. Before making changes to Employees' conditions of employment, or otherwise changing personnel policy, practices, or working conditions, Management shall provide the Union with written notice of the proposed change(s). Such notice may be provided to the Union by mail, hand delivery, or e-mail. All other correspondence under this Article shall be provided to the Union using similar means.

- a. Management's notice to the Union shall include the following:
 - (1) a description of the desired change;
 - (2) an explanation of how this change shall be implemented;
 - (3) the proposed implementation date, if known; and,
 - (4) the identity of Management's representatives if someone other than the designated management official. Management's representative shall be someone who has the authority to negotiate in good faith and enter into a binding agreement with the Union. This does not affect the right of Management's representative, prior to entering any such Agreement, to confer with higher-level management, legal advisors, and others as the representative deems appropriate.
- b. The Union will have ten (10) business days to advise Management, in writing, of the Union's intent to negotiate over procedures and appropriate arrangements regarding the change pursuant to 5 U.S.C. §7106. The written request to negotiate shall be signed by the designated official and include the following:
 - (1) a description of any adverse impact created by the change;
 - (2) a list of negotiable proposals intended to mitigate the adverse impacts;
 - (3) an explanation as to how each proposal mitigates the adverse impacts created by the change.

During the ten (10) business days, the Union may request a Clarifying Discussion and/or request additional information regarding the proposed change with the appropriate Management Representatives. Within five (5) business days following the Clarifying Discussion and/or response to the information request, the Union will provide

Management with proposals, if any, relating to the impact and implementation of the proposed change.

- c. The Parties will then schedule a date and time to begin negotiating. Negotiations will begin within seven (7) business days after Management's receipt of the Union's proposals unless the Parties mutually agree to extend the period.

Section 4. Bargaining Procedure

Upon written notification and proposals being presented, as discussed in Section 3. above, Management and the Union will bargain, as appropriate and in accordance with applicable law, rule, regulation, and government-wide regulation over procedures and appropriate arrangements for the change(s).

- a. Management will provide a site for negotiations.
- b. The Union will be authorized the same number of bargaining representatives on official time as Management has representatives participating in the negotiations.
- c. Management will not reimburse the Union or pay for travel expenses for Union officials attending mid-term bargaining sessions.
- d. Either Party may have a subject matter expert (SME) present as necessary who can provide information necessary for the successful completion of bargaining. Any SME for the Union may be granted appropriate official time for participation in the bargaining sessions. Management will not reimburse or pay for travel expenses for the Union's SME.
- e. Bargaining will occur during regular duty hours unless otherwise mutually agreed by the Parties. The Parties will endeavor to reach agreement and conclude bargaining within ten (10) business days from the start of negotiations, but that period may be extended by mutual agreement of the Parties.
- e. The Union may raise no additional proposals or subjects of bargaining after submission of its initial proposals except by mutual agreement.

Section 5. Procedures for Federal Mediation and Conciliation Service and Federal Service Impasses Panel

If the Parties fail to reach an agreement within sixty (60) calendar days after notification of the proposed change, either Party may request mediation with the Federal Mediation and Conciliation Service (FMCS). If agreement is not reached during mediation, either Party may declare impasse and pursue an appeal with the Federal Service Impasses Panel (FSIP). If this procedure is invoked, Management shall postpone the implementation of any change until the impasse is resolved, except where the implementation is otherwise permitted by law. Management retains the right to implement its last, best, and final offer in the event the Union fails to seek timely assistance from the Federal Service Impasses Panel but will give advance notice to the Union of at least ten (10) business days of its intent to do so. The Union may invoke its right to pursue an appeal with the Federal Service Impasses Panel within these ten (10) business days of notification.

Section 6. Agency Head Review

Agreements negotiated pursuant to this Article will be subject to Agency Head Review (AHR) pursuant to 5 U.S.C. 7114(c). In the event of disapproval at Agency Head Review, the Union will have the option of renegotiating the proposals that did not pass AHR. The option to renegotiate must be exercised by the Union by notice to Management within ten (10) business days of notice of disapproval.

ARTICLE 5 - Employee Rights

Section 1. Employee rights are codified in the FLSMRS at 5 U.S.C. § 7102: Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right –

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

Section 2. Both Parties recognize that Employees have the right to refrain from participation in bargaining unit activities and to do so freely, without fear of penalty or reprisal. Therefore, both Parties agree that there will be no undue pressure placed on Employees to become active members of the Union. This section is not intended to limit the reasonable recruiting efforts of the Union in their attempts to increase active membership.

Section 3. All Employees shall be treated fairly and equitably in all aspects of personnel management, and without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, handicapping condition, Union membership, and with proper regard and protection of their privacy and constitutional rights.

Section 4. Employees will be protected against reprisal for the disclosure to NOAA officials, members of Congress, or appropriate legal authorities, information that the Employee believes evidences a violation of law, rule, or regulation, or evidences mismanagement a waste of funds, or an abuse of authority. However, in the case of misconduct associated with the disclosure of information, Employees may be subject to disciplinary action.

ARTICLE 6 - Management Rights

Section 1. Management rights are codified in the FLSMRS as 5 U.S.C. § 7106: Management Rights:

- a) Subject to subsection (b) of this section, nothing in this chapter shall 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 shall 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 shall 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 7 - Representational Rights and Duties

Section 1. Consistent with 5 U.S.C. § 7114 (a)(2)(B), the Union shall be given an opportunity to be present at any examination of an Employee in the unit by a Management representative in connection with an investigation if the Employee reasonably believes that the examination may result in disciplinary action against the Employee and the Employee requests representation. At any examination of an Employee as part of an investigation which may lead to disciplinary action against that Employee, the Management representative will explain the purpose of the meeting to the Employee prior to the examination.

Section 2. If the Employee being interviewed requests representation, no further questioning will take place until the Employee has been given a reasonable amount of time, normally one (1) work day, to contact an appropriate representative.

Section 3. Consistent with 5 U.S.C. § 7114 (a) (2) (A), the Union will be afforded an opportunity to be represented at any formal discussion between one (1) or more representatives of Management and one (1) or more Employees or their representatives concerning (a) any grievance (a meeting concerning a grievance is, by definition, a formal discussion), or (b) any personnel policy or practice or other general condition of employment. For formal discussions as in (b) above, the Union will be given advance notice of the meeting via electronic mail and/or telephonically by contacting the designated Union representative, when practicable, at least five (5) business days in advance of the discussion. The Union representative need not be present at routine informational meeting during which no discussion occurs regarding changes in personnel policy, or practices, or general conditions of employment.

Section 4. At those meetings where the Union is represented, Management will acknowledge the attendance of the Union representative at the start of the meeting. Furthermore, Management will permit the Union representative to ask questions and to present a brief statement before the end of the meeting outlining the Union position concerning the issues. The Union representative will refrain from activities designed to disrupt the meeting. All issues to be discussed at the meeting by Management will be listed in a written agenda, where practicable, which will be forwarded to the Union at the same time that the Union receives prior notice of the meeting.

ARTICLE 8 - Official Time

Section 1. Consistent with 5 U.S.C. § 7131(d), Management shall authorize official time in any amount that Management and the Union agree to be reasonable, necessary, and in the public interest.

Authorized Official Time will be granted to elected Union officials (President, Vice-President, and Secretary) and the appointed Union Steward(s). The noted Union officials may use four hours per week without a written explanation and eight hours per week with a written explanation to Management.

Employees who are not elected or appointed Union officials in the bargaining unit representing the Union in official representational duties (e.g., for special projects or short-term duties) must request in writing and receive approval for Official Time in advance from their supervisors.

All Employees serving as Union representatives and using official time will document the official time used with the appropriate code in the Department's WebTA system.

In the event the supervisor is unavailable or in emergency situations, the Union representative may proceed to use a reasonable amount of official time as provided by this contract and provide to the supervisor a record of the amount of official time used. No more than eight (8) hours will be approved in these instances.

Section 2. Official time may only be used on the days and during the times that a Union official would be otherwise in a duty status. The Union shall provide Management with the names of the Union officials authorized to use official time within 10 business days of Union elections or appointments. The Employee will enter on their timesheet, per standard time and attendance procedures, official time used for Union covered representational activities. The term official time shall include the purposes set forth in 5 U.S.C. § 7131, as well as other representational activities including:

- a. attendance at formal meetings;
- b. attendance at meetings involving unfair labor practice charges or unit clarification petitions and preparation time for such meetings;

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- c. representation of Employees in disciplinary matters in which Employees are entitled to representation;
- d. presentation of appeals in connection with statutory or regulatory procedures in which the Union is a party or is designated as the representative, (e.g., Merit System Protection Board (MSPB) and Equal Employment Opportunity Commission (EEOC) proceedings);
- e. attendance at Employer examinations of any bargaining unit Employee, in connection with an investigation at which an Employee requests such representation;
- f. attendance at grievance meetings and arbitration hearings;
- g. attendance at meetings of committees or workgroups when the Employer has given authorization for Union attendance;
- h. attendance at negotiations as a member of the negotiations team;
- i. to confer with Employees with respect to any matters for which remedial relief may be sought pursuant to the terms of this Agreement wherein the Employee has elected to have a representative and is entitled to such representation;
- j. to complete research in preparation for labor-management related meetings, negotiations, and hearings;
- k. to prepare and maintain records and reports required of the Union and its representatives by any Federal Agency;
- l. to respond to Congressional contacts relative to representational matters;
- m. time spent in preparing replies to Employer proposals and proposed Employer policy changes submitted to the Union for comment or consideration; and,
- n. time spent in labor-management meetings or special projects mutually agreed to by the Parties.

Section 3. Internal Union business will be conducted on non-duty time. The term internal Union business shall include the purposes set forth in 5 U.S.C. § 7131(b), including such actions as

- a. the solicitation of membership,
- b. elections of labor organization officials, and
- c. collection of dues.

Section 4. Employees covered by this Agreement will be accorded reasonable official time to consult with a Union representative for representational purposes or for representing themselves consistent with the terms of this Agreement and applicable regulations and law. This includes time for preparation, attendance (at meetings and/or hearings), and travel of the Employee for matters such as grievance/arbitration, Federal Labor Relations Authority (FLRA), MSPB or other disciplinary actions, adverse action proceedings, and Unfair Labor Practice (ULP) charges and/or complaints. The Employee will make every reasonable effort to request and have advance approval of such use of official time. The Employee will continue to administer and control his/her work-load in a manner that is in the best interest of the Division.

Section 5. It is understood that nothing in this Agreement is intended to limit the statutory rights to official time provided pursuant to 5 U.S.C. § 7131 or any other statute or regulation.

ARTICLE 9 - Communications

Section 1. Management agrees that the Union may have reasonable use of telephone service, fax machines, e-mail, photocopy machines, computers and printers, and regular mail/postage (including priority, express, or overnight mail) for the purpose of preparing for or facilitating labor-management relations, or any other purpose for which official time is permitted under this Agreement. The Union will ensure that its use of the above-listed equipment does not unduly interfere with the normal operations of the office.

Section 2. The above-listed equipment may not be used to conduct internal Union business. Furthermore, the Parties agree that Employees using the above-listed equipment shall be in non-duty or official time status and shall not impede the work of the Agency.

Section 3. Management will make a 3' x 4' bulletin board near the staff offices in Seattle available to the IFPTE Local 8A to post information. Management will also provide a link to the IFPTE Local 8A website on the OR&R Intranet site, provided such a site exists.

Section 4. Management will use a checklist job aid for ensuring new bargaining unit employees to the Division are oriented satisfactorily. A Union representative may take up to 15 minutes of official time to meet with new Employees in the bargaining unit to provide appropriate orientation information. Management will provide new bargaining unit employees with a copy of their position description and a pre-approved, single sheet (8.5" x 11") piece of literature for the IFPTE Union.

Section 5. Employees will be annually informed of their rights to have Union representation in connection with an investigation, as specified in Federal Service Labor-Management Relations Statute, § 7114(a)(3).

ARTICLE 10 - Dues Withholding

Section 1. General

In implementing the dues deduction program, Management and the Union will be governed by the provisions of 5 U.S.C. 7115 and this Article. Employees who occupy positions represented by the Union may have their dues withheld through payroll deduction. Dues withholding is to be voluntary on the part of the individual Employee. The Union is responsible for informing the Employee of the voluntary nature of dues withholding and the conditions governing an Employee revocation of dues withholding.

The Union will pay no fee for the services set out in this Article. Management is responsible for all costs associated with this payroll deduction allotment or revocation of dues processing.

Section 2. Supply of Forms

The Union will be responsible for the distribution of Standard Form 1187 (SF-1187) for the use by an eligible Employee of the Union who wishes to authorize the deduction of his/her dues. Standard Form 1188 (SF-1188) will also be available through the Union and Management for Employees who wish to revoke the allotment as described in Section 8. of this Article.

Section 3. Requesting Dues Withholding

Standard Form 1187 may be completed at any time by an Employee certified by only the Union President, Vice President, or Treasurer of the Union, and forwarded to the Management representative for concurrence. The Management representative will in turn forward the approved dues allotment form to the Office of Human Capital Services (OHCS), Employee and Labor Relations Branch for processing. Dues will be withheld beginning with the first complete pay period following receipt of SF-1187.

Section 4. Dues Schedule

The Union certifies that the dues schedule applicable to its members will be provided to each Employee prior to membership enrollment. Employee's dues schedule may be changed pursuant to Section 7. of this Article.

Section 5. Union Members Not In Good Standing.

If the Union suspends or expels a Union member, it will notify the Management representative by email of that determination. The Management representative will subsequently notify OHCS, Employee and Labor Relations Branch with an SF-1188 to cease dues deduction for that Employee and copy the Union Chapter President.

Section 6. Dues Withholding Fees and Accounts

NOAA/OHCS will remit by Electronic Funds Transfer (EFT) the net amount of dues withheld. OHCS, Employee and Labor Relations Branch, will also send to the Union a listing of names and amounts withheld.

Section 7. Change in Amount of Dues

Changes to the amount of Union dues cannot occur until 12 months have passed since the latest change. When the amount of regular dues changes, the Union President or designee will notify the Management representative of that change in writing using an SF-1187. The Management representative will acknowledge and forward by email to the OHCS, Employee, and Labor Relations Branch for inclusion in future allotments, and the Union Chapter President will be copied. This should take effect within two bi-weekly pay periods of notification to the OHCS, Employee, and Labor Relations Branch.

Section 8. Automatic Termination of Dues Withholding

All dues allotments of Union dues withholding will be automatically terminated in the event of loss of exclusive recognition. If the Employee is on a temporary assignment to a non-bargaining unit position, Management will notify the OHCS, Employee, and Labor Relations Branch to cease the allotment of Union dues deduction and so inform the Union President. The Employee will be responsible for submitting a new SF-1187 upon returning to a bargaining unit position if he/she elects to voluntarily continue to pay Union dues through payroll deduction.

Any individual allotment for dues withholding shall automatically terminate upon the separation of the Employee from the Department or transfer of the Employee from the bargaining unit. The Union will certify to Management any member who ceases to be a member in good standing.

Section 9. Correction of Errors.

Administrative errors in remittance amounts will be corrected and adjusted in the next remittance to be issued to the Union. Management agrees that the total error in the amount of dues withheld from the Employee shall be adjusted as soon as practicable after it has been discovered by OHCS or OHCS has received written notification from the Union of the error.

If an Employee has been improperly separated and is ordered reinstated by the appropriate authority to a bargaining unit position, the Employee is required to initiate a new SF-1187 to restart dues withholding if they voluntarily elect to do so.

ARTICLE 11 - Information Requests

Section 1. The Union will make all requests for information, in accordance with 5 U.S.C. 7114 (b) Federal Service Labor-Management Relations Statute, in writing. The written request will include a description of the specific information needed and an explanation of the particularized need for the information that explains how the Union intends to use the requested information and how that use of the information relates to the Union's role as the exclusive representative.

Section 2.

- a. Management will provide a written response to the Union within ten (10) business days. The response will include the information or a detailed explanation as to why the information is not being provided. If Management is unclear about the Union's stated reason for needing the requested information, Management will, within five (5) business days, ask the Union to clarify the request.
- b. The Union will agree to any reasonable Management written request for delay in providing any or all of the requested information provided such a delay does not interfere with the timeliness of the underlying issue. Such a request must include an explanation for the delay and expected delivery date.

Section 3. In order to encourage exchange of information, Management may, but is not required to, have Union representation or observers on management committees that recommend changes in workplace conditions affecting the bargaining unit.

ARTICLE 12 - Grievances

Section 1. The grievance procedure is pursuant to the Federal Service Labor-Management Relations Statute (FSLMRS), subchapter III, 5 U.S.C. § 7121 et. seq.

Section 2. Both Parties recognize the importance of prompt and equitable disposition of any grievance at the lowest organizational level possible using flexible and informal procedures. The Union or any bargaining unit employee shall have the right to present a grievance and have it promptly considered on its merits. The initiation of a grievance by any bargaining unit employee shall not cast any adverse reflection on his or her standing as an Employee, and Management will refrain from any reprisal or adverse action to the Employee or Union representative due to the initiation of a grievance. Likewise, the initiation of a grievance by Management shall not cast any adverse reflection on Management, and bargaining unit employees will refrain from any reprisal or adverse action to Management due to the initiation of a grievance.

Section 3. A grievance is defined as any complaint by any bargaining unit employee concerning any matter relating to the employment of the Employee; a complaint by the Union concerning any matter relating to the employment of any bargaining unit employee; or, a complaint by any Employee, the Union, or the Management concerning the effect or interpretation, or a claim of a breach of, this Agreement. The Union also has the right to file, as a grievance under this contract, any alleged unfair labor practices. When it does so, however, it waives its right to file an unfair labor practice charge over the same issue with the appropriate authorities under law and regulation.

Section 4. Excluded from this grievance procedure are the following:

- a. Any claimed violation of subchapter III of Chapter 73 of Title 5, United States Code, relating to prohibited political activities;
- b. Retirement, life insurance, or health insurance;
- c. A suspension or removal under Section 7532 of Title 5, United States Code (national security);
- d. Any examination, certification, or appointment;

- e. The classification of any position that does not result in the reduction in grade or pay of an employee;
- f. Termination of a probationary employee in accordance with Office of Personnel Management regulations and appropriate United States Code.
- g. Notice of proposed personnel action;
- h. Matters excluded by law or government-wide rule not in conflict with this Agreement; and,
- i. Complaints or appeals from persons outside the bargaining unit.

Nothing in these exclusions is intended to prevent any Employee from filing an EEO complaint using the established protocols for such complaints.

Section 5. Any bargaining unit Employee or group of Employees may present such grievances to Management and have them adjusted, without involvement of the Union, as long as the adjustment is not inconsistent with the terms of this Agreement. In these cases, the Union must be given an opportunity to be present at any meeting with the grievant regarding adjustment of the grievance. A bargaining unit employee or group of Employees proceeding without the involvement of the Union must follow the negotiated grievance procedure. When an Employee files a grievance and does not designate the Union as his or her representative, if the Union requests, Management shall furnish the Union with a copy of the filed grievance, and the response issued at each step.

Section 6. For discussions with bargaining unit employees concerning grievances, the Employee will be given reasonable time to notify a Union representative.

Section 7. Under circumstances involving EEO complaints, a bargaining unit employee has the option of filing a grievance under the negotiated grievance procedure or an EEO complaint under the EEO complaint procedure, but not both. For the purpose of this Article, a bargaining unit employee shall be deemed to have exercised his/her option at such time as the bargaining unit employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing in accordance with the provision of the procedure in this Article, whichever occurs first.

Section 8. The Parties acknowledge that this negotiated grievance procedure neither expands or contracts the jurisdiction of the Merit Systems Protection Board (MSPB) as provided by law. Further, nothing in this Article is intended to limit the arbitrator's authority to determine questions of arbitrability.

Section 9. The grievance shall be filed at the step at which the subject matter of the grievance arose, except in the case of grievances involving disciplinary actions that may be filed at the next higher supervisory level. In the event that Management decides that the grievance can effectively be resolved at a lower level than that at which it was initiated, Management may remand the grievance to the appropriate level and the remand shall be accomplished in a timely manner. In such cases the time requirement for an answer shall be fifteen (15) business days from the date of the remand.

The grievance procedure shall consist of the following steps:

STEP ONE. Any Employee may refer a grievance to the Union if he or she desires. At step one in accordance with this Article, a grievance is to be presented to the first level supervisor of the grievant, or his or her designee, in writing. The grievance must be received not later than thirty (30) business days following the date on which the grieving party knew or should have known of the facts giving rise to the grievance. When the basis for the grievance is a continuing practice or condition then the grievance can be filed at any time. The Employee or his/her representative may request an oral presentation of the written grievance. If requested, the oral presentation will take place within ten (10) business days following the date the grievance was received. A written grievance answer will be issued by the first level supervisor, or his or her designee, within thirty (30) business days following the date on which the grievance was received.

The written grievance shall include:

- a. The name and office address of the bargaining unit member;
- b. A statement with details of the issue and the grounds for the grievance, including, any law, rule or regulation violated, if known;
- c. Corrective action requested and the reasons for such action; and,
- d. The name of the designated representative, if any.

STEP TWO. Absent resolution of the grievance at step one, the bargaining unit employee and/or his or her representative may present the grievance at step two. The step two grievance must be in writing and signed by the grievant or his or her representative, and received by the second level supervisor, or his or her designee, within twenty (20) business days of the issuance of the Step One answer. The bargaining unit employee or his/her representative may request an oral presentation in the written grievance. If requested, the oral presentation will take place within ten (10) business days following the date the grievance was received unless the Parties mutually agree otherwise. The Step Two answer will be issued in writing within twenty (20) business days following the date on which the Step Two grievance was received.

Section 10. In computing time periods for Steps 1 and 2 of this Article, should the time to either file a grievance or respond to a grievance fall on a weekend, a holiday, or during a shutdown or furlough, the time limit will automatically be extended to the next business day.

Section 11. Failure on the part of Management to meet any of the time requirements of this procedure during Step One will permit the grievance to advance to Step Two upon written initiation by the bargaining unit employee or designated representative.

Failure on the part of Management to meet any of the time requirements of this procedure during Step Two will mean that Management agrees to the position of the bargaining unit employee or designated representative, provided that the position is consistent with applicable law or government-wide regulation.

If the bargaining unit employee or representative fails to meet the requirements in Section 10 and prosecutes the grievance within the stated time frames, the grievance will be terminated by Management.

Section 12. Management grievances must be filed within thirty (30) business days of the date Management knew or should have known about the matter, unless the matter is a continuing practice or condition, which may be filed at any time. Management grievances shall be in writing addressed to the Chief Steward. In the event the Chief Steward is the subject of the grievance, the grievance shall be addressed to the Local Chapter President. The Chief Steward or his or her designee, shall issue a written answer addressed to the Employer representative who signed the grievance. The answer shall be

provided within thirty (30) business days after receipt of such grievance. Management may request an oral presentation of the written grievance. If requested, the oral presentation will take place within ten (10) business days following the date the grievance was received.

Section 13. Nothing herein should be deemed as foreclosing either the Union or Management from attempting to adjust the grievance by using alternative dispute resolution procedure.

Section 14. Any of the foregoing time requirements can be extended by mutual written consent of all Parties. During response emergencies any of the foregoing time requirements can be extended up to 30 business days upon reasonable written request by either Party. All correspondence between the Parties for grievance and arbitration processing shall be by United States Postal Service, a commercial delivery service, fax machine, electronic mail, or delivered in person. Time limits under this Article shall commence on the date of receipt.

ARTICLE 13 - Arbitration

Section 1. If the answer at the final step of the grievance procedure does not resolve the grievance, the Union or Management may refer the grievance to binding arbitration by mailing or otherwise transmitting written notice to the other party within twenty (20) business days after receipt of the last answer. If Management fails to issue a timely decision at the last step of the grievance procedure, or fails to deliver the decision to the Union, the Union may invoke arbitration under Section 7. below within forty (40) business days of the date when a decision should have been issued by Management.

Upon referral of a grievance to arbitration, the Party invoking arbitration shall request the Federal Mediation and Conciliation Service (FMCS) to submit a list of five arbitrators having federal sector experience. The party requesting the list of arbitrators shall pay the fee charged by the FMCS for production of the list. The Parties will meet within ten (10) business days of receipt of the list of arbitrators.

If the Parties cannot mutually agree upon one of the listed arbitrators, they shall alternately cross off one name at a time until one arbitrator remains, who shall then be the arbitrator selected by the Parties. The right to be the first to cross off the name of an arbitrator shall be determined by coin toss.

Section 2. The Parties agree that arbitrations will be held in Seattle unless mutually agreed otherwise. To the extent available, the arbitrators will be from the Seattle area.

Section 3. The Parties may mutually agree to consolidate grievances containing substantially common issues of law and fact. The Parties will endeavor to accomplish any mutually agreed upon consolidation five (5) business days after a grievance has been referred to arbitration.

Section 4. The Arbitrator will be requested by the Parties to render a decision as soon as possible, but no later than thirty (30) business days after the conclusion of the hearing unless the Parties agree otherwise.

Section 5. The Arbitrator is bound by applicable law and applicable government-wide rule or regulation. Further, the Arbitrator shall have no authority to alter the terms of this

Agreement. The decision of the Arbitrator will be final and binding on the Parties, subject to the right of appeal set forth in the FSLMRS.

Section 6. Any arbitration involving alleged prohibited personnel practices will allow the Arbitrator to order a stay of any personnel action in a manner similar to the manner described in 5 U.S.C. 1221 (c) with respect to the Merit Systems Protection Board (MSPB); and the taking, by an agency, of any disciplinary action identified under 5 U.S.C. 1215 (a) (3) that is otherwise within the authority of such agency to take.

Section 7. Should either Party refuse to participate in arbitration or should either Party fail to respond in a timely manner at the last step of the grievance procedure, the other Party may unilaterally employ an Arbitrator and present the case to the Arbitrator. The Arbitrator will have the authority to render a decision. At least ten (10) business days before an Arbitrator is contacted by a Party under this section, that Party will send written notice to the Party refusing to participate in arbitration of its intention to contact an Arbitrator. The Parties acknowledge that refusal to participate does not include reasonable requests for postponements made by either Party.

Section 8

- a. The Union and Management will share the Arbitrator's fees and expenses equally, and the cost, if any, of a mutually agreed upon hearing facility if government space is not available.
- b. A transcript of the proceedings will be made unless the Union and Management mutually agree that one is not needed. The cost of the transcript will be shared equally.
- c. Each Party will be responsible for the costs of their own representation unless otherwise directed by the Arbitrator.

Section 9. In the event the Party invoking arbitration fails to contact the Arbitrator selected by the Parties for the purpose of scheduling a hearing date(s) within 60 calendar days of the date the Party invoked the arbitration process, the arbitration shall be deemed dismissed with respect to subject grievance, unless the Parties agree otherwise. The Parties will cooperate in agreeing upon arbitration dates in an effort to resolve the dispute.

ARTICLE 14 - Official Travel

Section 1. Laws and Regulations

The Division shall follow Federal law and the Federal Travel Regulations (FTR) in effect at the time of this Agreement.

Section 2. Employees shall not be required to travel except under conditions and procedures prescribed by pertinent laws and regulations, including the FTR/DOC/NOAA/NOS Travel Regulations. Unless organization needs require otherwise, when practical, time spent on travel status will be scheduled during duty hours of the traveling Employee. However, Employees may travel at other times provided it does not impede the mission or increase costs to the Division.

Section 3. Management will make a reasonable attempt to ensure that travel assignments are made in a fair manner. When practical, Management will solicit volunteers from among qualified Employees for travel assignments. Both Parties understand that Management has the final authority to determine all the qualifications necessary to perform all assignments and to assign work to individual Employees. Upon an Employee request, Management will provide an explanation in writing as to why an Employee was not selected for a specific assignment involving travel.

Section 4. Employees will use government issued travel cards for official travel expenses unless such use is impractical or would cause exceptional inconvenience to the traveler or where exemption from use of the travel card is specified in the FTR. Upon request, supervisors will help Employees overcome any administrative issues that may delay reimbursement for any timely submitted travel voucher.

Section 6. Employees will not be required to use privately owned vehicles (POVs) for official travel. However, an Employee may elect to use a POV if the Agency mission is not impeded. Employees will be responsible for any additional cost, beyond what is authorized, that is incurred by their use of their POV.

Section 7. Employees will not be required to share lodging accommodations unless emergency conditions require this. Management will make every reasonable effort to find individual lodging. If sharing of lodging is required, this will be discussed with the Employee as a condition of, and prior to, the travel.

Section 8. The Union may request travel and per diem expenses related to any official time activities listed in Article 8: Official Time of this Agreement. Such requests must explain the need for the Union's physical presence and the unavailability of local representation. The Union shall make every practicable effort to rely on Employees who are locally available for participation in such activities. The Parties agree to utilize teleconferencing capabilities to minimize travel cost whenever practicable. Management will approve, on a case-by-case basis, any reasonable request that is consistent with the objectives and goals of the organization.

Subject to budget constraints, Management will fund travel and per diem expenses, not to exceed five (5) business days or one trip per year, for one (1) Union official to attend training related to official representational duties of the Union. This training may not be for internal Union business.

When the Union files a grievance, and the Parties agree that travel is necessary (i.e., alternative forms of meeting such as conference calling would fail to provide for an effective grievance meeting and no local representative is available), Management and the Union agree to equally share the travel costs and per diem for one Union representative when necessary to represent the bargaining unit.

In the event of Arbitration, Management and the Union agree to pay for travel for their own witnesses.

ARTICLE 15 - Computer Security and IT Policy

Section 1. Personal entertainment files, such as music files and movie files, may not be downloaded to government owned computers. Such files that are for official government business may be downloaded to government-owned computers or transferred to personal computers subject to the restrictions in this Article.

Section 2. Software that is to be used on government computers is to be purchased by the government. Employees that need such software for the performance of their official duties should make the purchase request through their supervisors. Management should respond to any Employee's software request within 10 business days.

Employees shall request permission from Management prior to installing applications on government-supplied IT equipment. Management will respond to such requests within 10 business days and will provide, in writing, an explanation for any installation refusal.

Section 3. Employees may elect to use their own personal mobile IT devices to perform their work provided such devices are not directly connected to a government internal network or contain PII or classified documents and comply with all existing DOC, NOAA and NOS policies concerning the handling of data and information provided such policies do not contradict this CBA or other existing Agreements between the Union and Management. The employee agrees to pay for all costs required to use such personal IT devices and maintain reasonable anti-virus protection on them. The Employee will allow access to the devices to respond to legitimate discovery requests for civil or criminal proceedings and shall comply with all directives of the Agency with respect to litigation holds, data preservation (including backups), data integrity, and protection.

Section 4. Should Management require the Employee to use government provided IT equipment in the office, field, or at an alternative worksite, Management will be responsible for the cost of all such equipment and supplies. Management is not responsible for any employee supplied IT equipment.

Section 5. Employees may use government-provided mobile IT devices in-off duty time for limited, personal, non-commercial use provided such usage does not increase the cost to the government, threaten IT security, or access inappropriate material.

ARTICLE 16 - Research Programs and Demonstration Projects

Section 1. Any research or demonstration project as defined under 5 U.S.C. § 4701, approved by OPM and affecting the bargaining unit employees, will be negotiated with the Union and not implemented until agreement is reached. Terms of this CBA will take precedence over any provision of the research or demonstration project unless specified by law or otherwise agreed to by Management and the Union.

Section 2 Employee participation in research and demonstration projects under this Article will not be construed as a forfeiture of an Employee right provided for by law, regulation, or this Agreement.

ARTICLE 17 - Public and Scientific Communication

Section 1

- a.
 - 1. Management supports employees in conducting, presenting, and publishing scientific and technical research consistent with Division priorities and will not unreasonably restrict or interfere with employees' opportunity to do so.
- b.
 - 1. Subject to budget and mission constraints, employees are encouraged to participate in and give technical presentations at scientific and technical conferences. Permission to submit a paper to a conference does not obligate management to send the employee to the conference. However, Management will consider acceptance of a paper at a conference as a criterion in determining who may attend the conference.
 - 2. Employees may request annual leave before and after the conference, provided that it does not add to the expense of attending the conference or impede the Agency mission. Management may not use conference location as a reason to deny annual leave.
- c. There are a number of overarching policies and regulations addressing public and scientific communications. Particularly relevant documents include:
 - 1. Information Quality Act (Public Law 106-554) and associated Departmental and subordinate policies;
 - 2. Office of Management and Budget memorandum of December 16, 2004 "Issuance of OMB's 'Final Information Quality Bulletin for Peer Review'";
 - 3. Department of Commerce Administrative Order DAO 219-1 "Public Communications";
 - 4. Department of Commerce Social Media - Web 2.0 policy (2011); and,
 - 5. NOAA Administrative Order 202-735D "Scientific Integrity." Dec 7, 2011.
 - 6. White House Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity. Dec 17, 2010.

Section 2.

NOAA - OR&R CBA

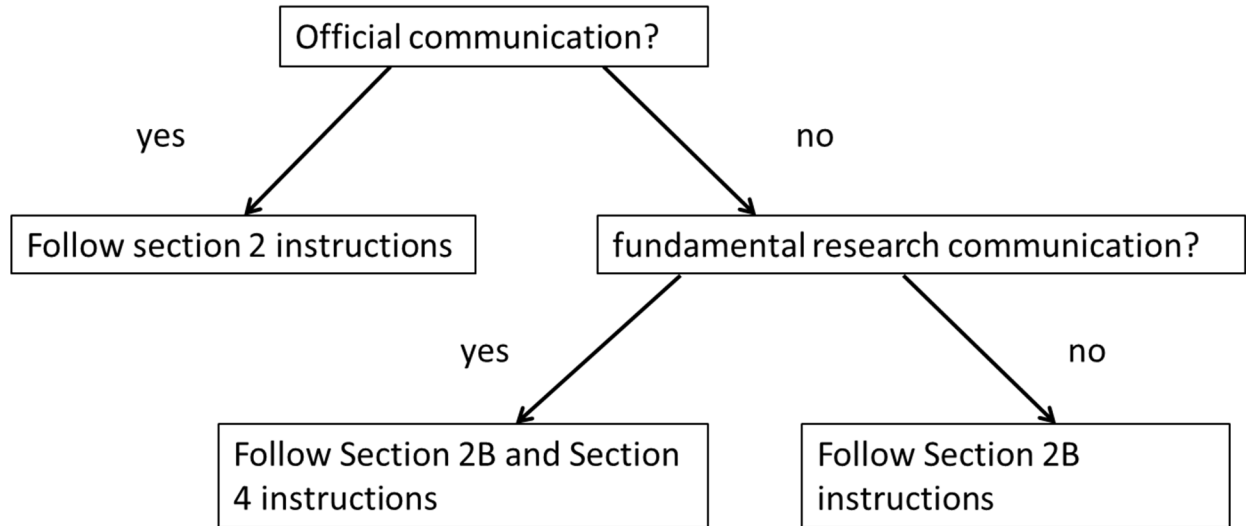
- a. All scientific publications or presentations that represent an official view of the Agency will follow the guidelines contained in the Information Quality Act (Section 515 of Public Law 106-554) and Office of Management and Budget (OMB) Bulletin M-05-03. Information products that do not represent an official view of the Agency are not covered by the IQA and OMB guidelines.
- b. No public communication may:
 - 1. contain classified or other material restricted by law or regulation;
 - 2. violate ethics regulations and statutes; or,
 - 3. improperly attribute personal views of the employee to the Department or views that could reasonably be perceived by the public as doing so.
- c.
 - 1. Official communications are public communication by an employee that relates to the Department's programs, policies, or operations and takes place or is prepared:
 - a. at the direction of their superior;
 - b. substantially during official working hours of the employee;
 - c. with substantial use of U. S. government resources; or,
 - d. with substantial assistance of U.S. government employee(s) on official duty.

Typically, official communications involve matters of policy, budget, or management. Official communications are subject to agency pre-approval.
- d. Employees may remove their names as author or contributor from any official report or communication if the employee concludes that it does not represent their best professional judgment or conclusions on the subject matter covered by the report or communication.

Section 3.

NOAA - OR&R CBA

- a. To be open and transparent about their work, and consistent with the NOAA Scientific Integrity Policy NAO 202-735D (Dec 7, 2011) and their official duties, ERD bargaining unit members may freely communicate to the media, their peers, and the public about scientific and technical matters based on their official work, including scientific and technical ideas, approaches, findings, and conclusions that are based on their official work, provided such communication does not violate the restrictions of Section 2(b) of this Article.
- b.
 - 1. If a bargaining unit employee finds it difficult to distinguish between an official communication and non-official communication, they should consult with their supervisor or other appropriate Management official for a determination.
 - 2. If adverse action is proposed against an employee for activities that involve the determination of whether a communication is an official or non-official communication, then the employee may request a management-appointed independent advisory review of that determination.
 - 3. Any employee who foregoes submitting a non-official and non-emergency communication to Management for approval assumes sole responsibility for adherence to the restrictions in Section 2(B) of this Article. Unless impractical, the employee will inform their supervisor or other appropriate Management official prior to the nonofficial communication if the communication involves Agency programs, policies, or operations.
 - 4. The following diagram is to be used only as an aid to assist in understanding this article.



Section 4.

- a. A brief definition of a Fundamental Research Communication is a public communication prepared as part of the employee's official work regarding the products of basic or applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. Matters of policy, budget, or management are not considered Fundamental Research Communications.
- b.
 1. Management may require peer review and/or a disclaimer for fundamental research communications.
 2. Fundamental research communications that have undergone peer review by reputable scientific journals or conferences, as recognized by Agency past practice, will be assumed to have met the peer review requirement unless Management specifies otherwise in advance and provides reasonable justification for any additional peer review.
 3. Such additional review should be based solely on assessment of scientific suitability and merit and be consistent with the timely release of the communication. The employee will submit the draft fundamental research communication material to the approving official in a timely manner and confirm they have received it. The approving official will inform the employee of the expected date of reply. If the approving official fails to respond by the specified

date and further delay would prevent or impede the fundamental research communication, then the employee may take this failure as approval of the fundamental research communication.

- c. An example of an acceptable disclaimer notice for a fundamental research communication, as per DAO 219-1 Section 7.03 is "The information in this document reflects the views of the author, and does not necessarily reflect the official positions or policies of the National Oceanic and Atmospheric Administration or the Department of Commerce." Upon Management approval, alternative disclaimers may be used.

Section 5. Responders engaged in communicating on-going spill incident information to those outside the U.S. Government will be considered to be engaged in emergency official communications governed by the requirements of Section 10 of DAO 219-1.

ARTICLE 18 - Promotion and Hiring

Section 1. If a bargaining unit employee is promoted to a position in the bargaining unit, and within one year after the promotion, is demoted for inability to perform at the higher level, Management agrees to make reasonable efforts to return the Employee to a position equivalent to the one held before the promotion occurred, whenever practical.

Section 2. In filling an existing position as per H. R. Bulletin #210, FY17, the selecting official may, at his or her discretion, limit the area of consideration for ERD competitive personnel actions to members of the bargaining unit. When conducting a competitive personnel action drawing on applicants from outside of the bargaining unit, the selecting official will give first consideration to any bargaining unit employees listed on the certificate. The selecting official will expand consideration to other candidates listed on the certificate when, in the judgment of the selecting official, it would be in the best interests of the government to do so.

Section 3.

With respect to the NOAA Merit Assignment Plan:

- a. A vacancy announcement will be open for a minimum of 10 business days.
- b. Job vacancies (including competitive promotions) within the bargaining unit will be announced to bargaining unit employees via email as early as practical.
- c. If a ranking panel is established by NOAA's Office of Human Capital Services to evaluate candidates for a position within the bargaining unit, the Union will be given the opportunity to designate a representative to be an observer. The Union representative's purpose will be to help prevent foreseeable adverse effects in the selection process by helping to ensure that bargaining unit employees are rated accurately based on the written application. The Union representative will not: 1) participate in determining the ranking criteria, nor 2) participate in the final ranking discussions.

Section 4.

If an appropriate authority decides there was an unjustified or unwarranted personnel action as defined by the Back Pay Act (5 U.S.C. 5596) and applicable decisional law, and the Employee would have been selected for promotion, the employee will receive appropriate compensation and allowances as pursuant to the Back Pay Act.

ARTICLE 19 - Details and Temporary Positions

Section 1. A detail is a temporary assignment of an Employee, without an official personnel action to change his/her position assignment of record, to perform duties other than those of the position he holds under his/her current appointment. An Employee may be detailed only when there is statutory authority for such a detail. Proper use of details is specified in DAO 202-334, Section 2.04. If management determines that more than one Employee possesses the requisite qualifications for a particular detail, it will request volunteers unless it determines that there are strong programmatic reasons not to do so. Management will provide a written explanation of their choice if requested by the Union or affected Employee. If temporary relocation is required for an involuntary detail, Management will approve payment of Employee relocation expenses as provided by law and regulation. If temporary relocation is required for a voluntary detail, Management may approve payment of Employee relocation expenses as provided by law and regulation unless stated in the detail announcement that relocation funds are not available.

Section 2. Employees recovering from a serious illness or injury may submit a written request to their supervisor requesting temporary assignment commensurate with their illness or injury and qualifications. Management will consider such requests in accordance with applicable rules, regulations, and medical recommendations.

Section 3. Employees will not be assigned to details exceeding 120 days unless authorized as per DAO 202-334, government-wide regulation, or law. Selection for details of more than 60 days to a higher grade position or a position of known promotional potential will be done through the competitive process.

Section 4. Any Employee detailed to a higher graded position will receive a temporary promotion to that higher grade, pursuant to government wide regulation, existing Department of Commerce policy, and the Employee's qualifications for holding a higher graded position. An Employee being temporarily assigned to a lower-graded position will not have his/her salary or classification adversely affected.

Section 5. Temporary work assignments, particularly those of a higher grade, may be rotated among qualified Employees to the extent practicable.

Section 6. Work that, as a result of the detail, is distributed to other Employees of the bargaining unit will be parceled out in a fair and equitable manner.

ARTICLE 20 - Part-time Employment and Job Sharing

Section 1. Job sharing involves an arrangement between two or more Employees under which they share a full-time job. Employees wishing to job-share must make a written request to Management, including requested work-schedules. Management agrees that entry into job-sharing should be strictly voluntary and initiated by the Employee without coercion. Employees who are job-sharing are considered part-time.

Section 2. Part-time career employment is regularly scheduled work from 16-32 hours a week in either the permanent competitive or excepted service in Tenure Group I or II. Employment on a temporary or intermittent basis is not included. Any full-time Employee wishing to convert to part-time must submit a written request to his/her supervisor. Management will make a good faith effort to accommodate the request and will provide a written explanation to the Employee within 10 business days if the request is denied. Management will notify the Employee that this action may affect Employee benefits, and the Employee should inform himself/ herself of the expected impact on benefits. There is no guarantee that an Employee converting to part-time employment may subsequently convert back to a full-time employee.

Section 3. Management will notify the Union when recruiting for a temporary employee to staff a bargaining unit position that was previously filled with a permanent employee. Employees with temporary appointments will be considered members of the bargaining unit and are entitled to representation.

ARTICLE 21 - Incident Response

Section 1. Response, for the purposes of this Article, is construed to mean answering telephone calls, faxes, or emails on technical queries with respect to actual spill events or other emergencies or reacting to said events in person by reporting to the Employee's place of work or on scene to perform work. Compensation means one of the many forms of pay or benefits that are afforded to Employees for their time, to include, but not limited to: pay, premium pay, credit hours, and compensatory time.

Section 2. When practical, Management will solicit volunteers from among qualified Employees for field assignments involving emergency response and try and provide opportunities to all qualified staff. Management may consult with the appropriate Scientific Support Coordinator with regards to needed skills for the response but Management retains the right to determine qualifications necessary to perform any particular field assignment.

Section 3.

- a. If an Employee, either in a duty status or on an unannounced recall, responds to an emergency response incident outside of his/her scheduled working hours, the Employee may claim a minimum of 1 hour of compensation. If the Employee is required to travel from his/her present location to his/her office or alternative work location to fulfill the duties of the response, a minimum of 2 hours of compensation may be credited to the Employee.
- b. Although Employees are encouraged to choose overtime rather than compensatory time off, they may choose either as a premium pay compensation option except as noted in this Article.
 - 1) Supervisors may approve bargaining unit employees to earn premium pay compensation only during an emergency or to meet extraordinary program needs. The determinations of "emergency" and "extraordinary program needs" will be made by the Employee's supervisor. Incident response will generally meet the definition of "emergency."
 - 2) Employees shall not exceed the 80-hour cap for unused compensatory time off.

- 3) Management may put a time limit on the use of any accrued compensatory time off not less than 26 pay periods. Compensatory time that is not used within the time limit or that exceeds the 80 hour cap in 3 b.(2) may revert to overtime pay at the rate at which it was earned.
- 4) Nothing in this section applies to the earning or use of travel compensatory time.

Section 4. If an employee is away from his/her residence while on approved leave and is recalled into duty status, travel from his/her present location, he/she will be compensated as per Federal Travel Regulations and the Department of Commerce Travel Handbook.

ARTICLE 22 - Awards

Section 1. Management and the Union believe that there should be transparency in award procedures and that all Employees should have a fair and equitable opportunity to receive awards. Employees will be considered for performance based awards in accordance with the Department and NOAA guidelines and any applicable rules, laws, regulations, and government-wide regulations.

Section 2. Management may establish and chair a committee (ERD Awards and Recognition Team (ART)) to make recommendations to management to reward ERD Employees' accomplishments not related to their performance. The team consists of a total of two members each from management and the bargaining unit, with one of the managers as the chair. The Chair may choose to include an advisor from the OR&R Business Services Group. The management team members are appointed by the Chief, ERD and the employees are appointed by the Union. Employees will rotate on an annual basis.

ARTICLE 23: Time and Leave

Section 1.

Employees will accrue annual and sick leave in accordance with government-wide rules and regulations. Employees should apply in advance for approval of all anticipated leave. All leave requests will be responded to by the approving official in a timely manner. Leave will not be denied as a disciplinary measure but may be denied based on the needs of the organization. Management will not force employees to use personal leave against their will.

Section 2.

The use of accrued annual leave is a right of the employee and will not be denied for frivolous reasons or in an inequitable manner. Employees should apply in advance for approval of all anticipated annual leave to permit orderly scheduling. It is understood by Management and the Union that although Employees have a right to use annual leave but only with Management's approval. Annual leave may also be granted when it is not scheduled in advance and operational needs allow. Leave for personal emergencies will be granted unless there is an operational exigency that requires the employee presence. Employees should request leave through the Department's WebT&A system and Management shall approve or disapprove the Employee's request through the Department's WebT&A system. Management will provide the basis for disapproval of an Employee's leave request in the comment section of the request for leave.

Management shall notify Employees when there is potential "use or lose" leave, and Employees shall take appropriate action to ensure that they use this leave prior to the end of the leave year. When scheduling conflicts arise, Management should attempt to allow Employees to resolve the conflict themselves. Unresolved conflicts will be settled on a fair basis.

Section 3.

The use of sick leave is an employee benefit. Grants of, requests for, and substantiation of sick leave must be done in accordance with federal law and government-wide rules and regulations. Employees will not be required to substantiate a request for sick leave unless the sick leave exceeds three days or Management has identified a pattern of leave abuse. An employee with a chronic medical condition that results in periodic absences from work of more than three days will not have to substantiate individual absences if the employee provides every six months an updated medical certificate that clearly states the continuing need for periodic absences, unless Management has a

credible reason to suspect that the leave request is not valid. At the discretion of the Agency, sick leave of up to 30 days may be advanced in cases of serious disability or ailment when required by the exigencies of the situation as determined by the approving official. The employee must request advanced sick leave through the Department's WebT&A system. Sick leave cannot be advanced when it is likely that the Employee will be separated from government employment before the advanced leave will be earned.

Section 4.

Employees are entitled to leave without pay (LWOP) under situations covered by the Family and Medical Leave Act of 1993 and situations covered under other applicable laws and government wide regulations. At the discretion of Management, leave without pay may be granted for other reasons. Employees should consider consequences to retirement and other benefits before requesting such leave.

Section 5.

Administrative leave is an Employee's authorized absence from duty without charge to leave or loss of pay. Management and the Union recognize and agree to follow the statutory types of leave (administrative leave, investigative leave, notice leave, and weather and safety leave) established by the Administrative Leave Act of 2016, government-wide regulations, Department and NOAA policy and guidelines. Excused absences may also be granted for activities that are in the government interest. These include, but are not limited to, blood, organ or tissue donation, military leave and jury duty. Employees called to jury duty must give to the government any compensation earned for jury duty but may retain reimbursement for expenses accrued.

Section 6.

Definition of Terms:

Core Hours: The time periods during the workday, workweek, or pay period during which an Employee covered by a flexible work schedule is required to be present for work. Core hours are not required for the OR&R workforce.

Flexible Time Band: The times during the workday, workweek, or pay period during which an Employee covered by a flexible work schedule may choose to vary his or her times of arrival to and departure from the work site, consistent with the duties and requirements of the position. The flexible time band is 6:00am to 7:00pm local time, Monday through Friday.

Credit Hours: Extra hours an Employee works in excess of the basic work requirement under a flexible schedule. Credit hours are distinguished from overtime hours in that Management has not officially ordered the Employee to work. The Employee, by choice, and with proper supervisory approval, has decided to work additional hours. Full-time Employees may not carry more than 24 credit hours from one pay period to the next. Credit hours must be earned within the flexible time-band. The use of credit hours, as with other leave, must be approved in advance by the supervisor.

Lunch Periods: On any workday of five hours or more, Employees must include a 30-minute lunch period, which is uncompensated. Lunch periods cannot be used at the beginning or ending of a day.

Tour of Duty: The hours of the day (including specific start and end times) and the days of the workweek that constitute an employee's regularly scheduled workweek.

Workday: A workday is any day Monday through Friday inclusive and does not include Saturday or Sunday.

Work Schedules:

Alternate Work Schedule (AWS) – an umbrella term that refers to both compressed and flexible work schedules.

Compressed: Involves longer but fewer workdays. An Employee completes 80 hours during each biweekly pay period in less than 10 workdays. These schedules are fixed with no flexibility in arrival and departure times each day, relative to the employee's established tour of duty. Once established, the schedule does not change. Hours must be worked within the flexible time band with no more than 10 hours worked on any given day to meet the 80 hours biweekly requirement. Employees cannot earn credit hours.

An Employee may choose one of the following compressed schedules:

- (1) Four 10-hour day work week for each week in a pay period; or,
- (2) Eight 9-hour days and one 8-hour day for a total of nine days (5/4-9) in a pay period.

In each case, an employee will work a total of 80 hours during each biweekly pay period.

With supervisory approval based on consideration of office and work requirements, Employees may establish arrival and departure times for each day, Monday through Friday, and select their day(s) off. Once selected, the schedule is fixed and does not change. An Employee may not vary the daily or weekly schedule in any way.

If an Employee has a need to change their schedule it must be discussed and approved by the supervisor at least one pay period in advance of beginning the new schedule.

Not more than 20% of Employees may use a compressed work schedule, known as "four ten", at any one time during the term of this Agreement. Employees interested in working such a schedule will submit a request to their supervisor to be placed on the program when an opening(s) is (are) available. Management will determine the eligibility of an Employee and inform said Employee within 10 workdays of receipt of a request. Employees have the right to grieve any eligibility rejection within 30 calendar days pursuant to Article 11 - Grievances. Should there be more eligible Employees than openings, a lottery system will determine the Employees selected for the four ten compressed work schedule.

Should an Employee selected for the four ten schedule choose to terminate his/her four ten schedule, and subsequently desires to return to a four ten schedule they must follow the process above for a new four ten schedule. If the Employee seeks to change or alter his/her schedule or if Management exerts any option to alter the Employee's schedule otherwise, the Employee's subsequent placement on the four ten schedule will revert to the process described above.

Flexible: Involves flexibility for each workday with variable arrival and departure times. An employee will work a total of 80 hours during each biweekly pay period (within the established flexible time band) with the advantage of extra days off. Credit hours can be earned. Within OR&R, employees are limited to no more than two work days off per pay period, with no more than 10 hours worked on any given day to meet the 80 hours biweekly requirement.

Standard: A traditional, non-AWS schedule in which employees work a fixed schedule, with no flexibility in arrival and departure time, of eight hours a day, five days a week (Monday-Friday) to meet the 80 hours biweekly requirement. No credit hours are earned.

Employees must have supervisory approval to establish a schedule and for any changes to that schedule.

Management is committed to providing maximum work schedule flexibility to Employees consistent with the full execution of the mission. In order to effectively implement that flexibility, clear work schedules must be established, documented, and time accurately reported.

Section 7. Establishing Work Schedules (compressed, flexible, standard)

The hours of work are established for OR&R employees from 6:00 AM to 7:00 PM local time, Monday through Friday. No Employee may have a regular recurring schedule that has one or more days that start prior to 6:00 am or end after 7:00 pm. Further, Employees may not have a regular, recurring schedule that includes more than 10 work hours on any given day to meet the 80 hour per pay period requirement. Supervisors have the discretion to deny employee schedule requests that may prevent the office from effectively carrying out its functions.

Employees may select an alternate work schedule (which includes flexible and compressed work schedules), or a standard/basic work schedule. Schedules must be consistent with the requirements set forth in the paragraph above.

Employees do not have a right to establish an alternate work schedule. An Employee's schedule shall not preclude attendance at necessary meetings or functions related to his/her positions/responsibilities. Employees are expected and required to make adjustments should the need arise for their attendance at meetings, participation in group projects, mandatory training, or similar work-related events.

Section 8. Documenting the Schedule

Once a schedule is agreed upon, the employee is required to document their choice of schedule and work hours in a designated Google form. Any changes to the agreed upon schedule will require supervisory approval. Except in special cases, subject to supervisor discretion, one full pay period's notice is required to change a work schedule.

Management does not require formal requests within WebT&A to earn credit hours, only to use them. Approval to earn credit hours can be done through a brief email to the supervisor a minimum of once a pay period, indicating when, why and how many credit hours are sought.

Section 9. Recording Arrival/Departure and Time Worked:

All Employees must record their arrival and departure time and number of hours worked each day in the Department's WebT&A system. Employees recognize that Management must account for Employees hours of work as required by law. Employees' failure to accurately and daily record their hours of work in the Department's WebT&A without a reasonable explanation may be subject to discipline.

No changes are required or intended to procedures already in place for Employees to validate and supervisors to certify time/attendance in the Department's WebT&A each pay period. Further, apart from the approval of accrual and use of credit hours discussed in the section above, all other processes related to leave use and approval remain unchanged.

No additional methods for documenting time and attendance are required by OR&R, though Division Chiefs (or equivalent level supervisors) have discretion to require additional documentation for monitoring Employees' time and attendance, and may delegate this decision to the Branch Chief level.

Section 10. Removal of Employees from an AWS Schedule:

If employees fail to comply with OR&R policy and/or procedures concerning alternate work schedules, NOS/NOAA requirements, or the organization's mission is adversely impacted by the schedule, then the supervisor has the discretion to remove employees from participation in alternative work schedule options and place the employee on a standard/basic work schedule. In such cases, the employee must wait at least six months before seeking supervisor approval to reestablish an alternate work schedule.

The following are examples of situations where a supervisor may remove an employee from participation in AWS:

Employee is not adhering to all rules, regulations, government-wide regulations, and law for AWS

Employees' participation results in serious adverse impact to mission activities or objectives of the organization; and/or

Employees' duties must be performed on a set schedule which are inconsistent with AWS;

In situations in which all Employees or a specific group of Employees must work together as a team, or when participation will adversely affect customer service or daily operations.

When an Employee is on official travel or training for three (3) workdays or more, the AWS can be temporarily changed to a standard schedule (e.g., 8:30-5:00) for the duration of the travel or training. In such instances, Employees are not subject to the six month ban on reapplying for AWS. Employees may be given one pay period advance notice of this scheduling change, when such notice is possible.

Section 11.

Any Employee who knows he/she will be out of the office when timesheets are due should validate his/her timesheet in the Department's WebT&A system prior to the period of absence or make arrangements with his/her timekeeper to validate his/her timesheet in the Department's WebT&A system. If a valid extenuating circumstance occurs that prevented the Employee from documenting his/her hours of work on a daily basis in the Department's WebT&A system (e.g. an employee is on official travel or has a

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personal emergency the timekeeper will record the Employee hours of work as an eight (8) hour workday, 40 hours a week, 80 hours a biweekly pay period. The affected employee will then have one pay period (two weeks) in which to correct the original timesheet. If the employee does not meet the due date for correction of the timesheet, the supervisor will have the option of exerting disciplinary action on the employee.

ARTICLE 24 - Dependent Care

Section 1. Management recognizes that Employees may have childcare, dependent-care, or other family-care needs during normal working hours. The Parties also recognize the need for such Employees to secure adequate child, dependent, and family care arrangements.

Management agrees to reasonably accommodate the child-care and dependent-care needs of Employees in accordance with applicable laws, rules, and regulations in effect at that time (e.g., leave, hours of work, overtime, part-time employment, and alternative workplace arrangements).

Section 2. Management agrees to consider initiatives by Federal government agencies to establish or improve availability of childcare to bargaining unit employees. The Union is responsible for bringing such initiatives to the attention of Management.

Management agrees to promote the mutual interests of bargaining unit employees and Management to the appropriate Federal contract officer(s) or management contact when aware of bargaining unit issues with childcare providers. For issues outside of Management's purview, Management agrees to convey the Union's interests to the parties mentioned in this Section.

ARTICLE 25 - Outside Activities and Employment

Section 1. Employees may pursue outside employment or business opportunities except under the following conditions:

1. Conflict of interest (as described in 18 U.S.C. §§ 201-203, 205, 207-209)
2. Activities inconsistent with the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635)
3. Adverse effect on performance of an employee's official duties
4. Prohibited by Federal statute.

Section 2. Management encourages employees to jointly review proposals for outside activities or employment with the Department of Commerce Ethics Law and Programs Division prior to engaging in such actions.

ARTICLE 26 - Employee Assistance Program

Healthy Employees and healthy work environments are important to the Department and NOAA. Good relationships at work, and at home, allow Employees to focus on the tasks at hand and to accomplish more. If difficulties occur, professional counselors are available through NOAA's Employee Assistance Program (EAP) to provide guidance and support to Employees and their families. The EAP is a counseling service offered to NOAA employees. Through this program, Employees are offered a certain number of free counseling sessions. For more information regarding this program, please contact your servicing Human Resources Advisor.

ARTICLE 27 - Parking and Transportation

Section 1. Commuter parking will be provided to Seattle-based Employees according to NOAA Western Regional Center (WRC) regulations. Commuter parking for field Employees may be provided on a case-by-case basis, subject to available facilities, leases and/or other allowable resources (e.g., subsidies) specific to each location.

Section 2. Both the Management and the Union agree to promote alternative commuting options. These may include advertising ridesharing opportunities, telecommuting when appropriate, and taking advantage of any NOAA transportation subsidies available to Employees.

ARTICLE 28 - Health and Safety

Section 1. Management and the Union agree to work together to provide a work environment free of recognized hazards and to prevent and eliminate accidents and injuries. It is both the Union's and Management's goal to comply with applicable federal, state, and local laws and regulations protecting the working environment, health, and safety of the Employees covered by this Agreement.

Section 2. Employees will report unsafe and/or unhealthy conditions or incidents to their supervisor or other appropriate authority. If requested, the anonymity of the Employee will be protected to the extent possible. No reprisal will be taken against the Employee for reporting suspected health and safety violations.

Section 3. Employees will be provided at no cost to them the necessary safety equipment and clothing to perform their assigned duties. Requests for safety equipment may be made by bargaining unit employees to their supervisor. This may be done in consultation with the OR&R Health and Safety Officer. The bargaining unit employee's supervisor will then determine the best way to meet the request.

Section 4. When confronted with unsafe working conditions, an Employee should let his or her supervisor know about the problem and discuss solutions before refusing to work. The Employee has the right to decline to perform assigned tasks because of a reasonable belief that, under the circumstances, the tasks pose an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures.

Section 5. Stress and/or exhaustion can create an unsafe working environment through both direct and indirect impacts on an Employee's health and safety. Extended overtime or lengthy deployments during response operations may increase the likelihood and severity of the risks associated with stress and exhaustion. Employees are encouraged to monitor and assess their continued ability to perform during such activities. If an Employee notifies his/her supervisor or the lead Scientific Support Coordinator (SSC) on-scene that stress and/or exhaustion from ongoing response operations are either creating a potentially unsafe working environment or affecting his/her ability to perform his/her duties, he/she may request and may be granted either

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- a. leave for a short duration (e.g. one to two days) using appropriate work leave options, or
- b. a temporary reprieve from field deployment, with proper documentation.

Many unique personal factors can affect an individual's susceptibility to stress and/or exhaustion. If the Employee needs to be absent or unavailable for response deployment for a longer period of time, he/she will be required to provide documentation from a licensed health care professional. This documentation should address any limitations on the employee's assignments or working conditions and any requested job modifications, if applicable. Stress and exhaustion will be considered to be significant mitigating factors should the Agency take any adverse action against an Employee whose availability for field deployment or for overtime work has become limited due to lengthy or repeated field deployments.

Management agrees to consider and address Employee stress and exhaustion in staffing response activities and will address documented stress hazards when they are identified by Employees.

Section 6. The policy and procedures established in NOAA Aviation Safety Policy, NAO 209-124 will be followed. Requests for aviation safety equipment beyond that required by the NOAA Aviation Safety Policy may be made by bargaining unit members to their supervisor. This may be done in consultation with the OR&R Safety Officer. The bargaining unit employee's supervisor will then determine the best way to meet the request. Upon request, supervisors will help Employees overcome administrative issues related to certifications to the extent possible.

ARTICLE 29 - Position Classification

Section 1. When Management changes Position Descriptions (which are more than de minimis) for Employees, Management will notify the Union. Management will provide affected Employees and the Union with copies of their modified Position Description a minimum of 15 calendar days in advance of implementation. The Union may bargain the impact of a substantial change that affects working conditions by a position description revision of all positions within a series group within the bargaining unit.

Section 2. Any Employee, who believes that his/her position is inaccurately described, may request, through their Rating Official, that a job audit be conducted. If the Rating Official concurs with the Employee, the Rating Official may request a job audit of that position. If the Rating Official does not concur, the Employee may officially submit a classification appeal to the Department's Office of Human Resources Management or to the Office of Personnel Management (OPM) in accordance with Department Administrative Order, DAO 202-511 (Position Classification). The Employee may seek the assistance of the Union in formulating this appeal.

Section 3. When a job audit is conducted for any reason, the affected Employee may request Union assistance. Any written evaluation statement prepared by Office Human Capital Services following a job audit shall be furnished to the Employee prior to the resolution of the classification appeal. The employee shall have the right to make written comments within ten (10) business days after receipt of the evaluation statement, and those comments shall be attached and forwarded with the written evaluation statement.

ARTICLE 30 - Contracting Out and Outsourcing

Section 1. Management shall ensure that contracting out civil service work does not contradict Employee rights and protections under this Agreement or the law.

Section 2. If it becomes necessary to contract out bargaining unit work, Management will make every reasonable effort to minimize impacts to bargaining unit employees. Management will consider allowing current Employees to take on duties as career enhancements, prior to making the decision to contract out work. Management will adhere to all government wide regulations regarding placement of affected Employees as specified in Federal statute and regulations (including OMB Circular A-76 and Federal Acquisition Regulations).

Section 3. Management agrees to review and respond to concerns that the Union may wish to raise with regard to the utilization of contractor personnel on-site work similar to, or formerly performed by, bargaining unit employees.

The Union recognizes Management's right to assign work. Management will not direct contractors to perform inherently governmental work. Management will direct contractors to perform work only within the scope of their contracts.

In the event that Employees witness defective, deficient or unethical work being performed by a contractor working within the Division they are encouraged to report it to ERD management. If Employees disagree with the technical decision of a contractor, Employees may express their concern either orally or in writing to ERD Management. Within 10 business days, ERD Management will follow-up with the concerned Employee.

Section 4. Upon request, Management shall provide the Union with a sanitized, i.e. no Privacy Act Information, copy of the FAIR Act Inventory for bargaining unit employees. The Union copy shall include the position, series, and status of bargaining unit employees (inherently Government or Contract position).

ARTICLE 31 - Reduction in Force and Transfer of Functions

Section 1. Management will give the Union at the earliest possible date a written notice of its intention to submit a Reduction in Force (RIF) request to NOAA or conduct a transfer of function that involves geographical relocation of Employees (TOF). The notice will include the reason for the RIF or TOF, the approximate number of Employees who may be affected by the action, and anticipated effective date that the action will be taken.

After the notice has been given, but before Management has submitted its input to an NOAA request to DOC for a RIF/transfer, Management agrees to a discussion with the Union. This is not a bargaining session.

- a. Management will provide to the Union a copy of that portion of its input to the NOAA request for a RIF/transfer that pertains to the ERD bargaining unit. Thereafter, Management will provide to the Union a copy of the Department's approval of the request.
- b. Management will provide the Union, at the earliest possible date, with the notice list containing the names of Employees who are affected by the RIF/transfer and will be receiving RIF/transfer notices and, if applicable, a list of any Employees who received Certificates of Expected Separation.
- c. Before the issuance of specific RIF's notices, the Union will be provided with a copy of the annotated retention register(s) to be used to issue any notices that could go to Employees. Amended registers will be provided to the Union as soon as they are prepared. The retention register will include: the Employee's tenure group, competitive level, and service computation date, and the adjusted service computation date. Employees and/or their designated representative(s) will be permitted to review the applicable retention register so that the Employee may consider how the retention register competitive level was constructed and how the relative standing of the Employee was determined.
- d. Management will give a specific notice in writing to Employees who will be affected by a RIF, with a copy to the Union. This notice period will be no less than 90 calendar days prior to the implementation date except when a RIF/transfer is caused by circumstances that are not reasonably foreseeable, the Office of Personnel Management (OPM) at the request of the Department of Commerce,

may authorize a notice period of less than 60 days but at least 30 full calendar days before the effective date of release. The Parties agree to be bound by the OPM decision.

Section 2. Management will consider using vacancies, to the maximum extent possible and practicable, to avoid or lessen the impact of the RIF within the affected competitive area at the onset of and during the RIF, by making job offers to an individual within the competitive area who is affected by position abolishment, and who meets the qualifications for the position.

Section 3. Whenever possible and to the extent practicable, and before conducting a budget-driven RIF/transfer, Management will attempt to avoid the use of a RIF by considering other cost-saving methods, including attrition. At the request of the Union, Management will provide a cost study of savings methods considered in order to avoid a RIF /transfer. A cost study, for the purposes of this section, may comprise a summary of cost saving methods Management may have developed, used, or considered in arriving at its decision.

Section 4. Management will make a reasonable effort to train an Employee affected by a RIF, where necessary upon reassignment in lieu of separation.

Employees subject to transfer have mandatory and discretionary relocation expenses paid under applicable government-wide regulations.

An Employee offered a vacant position may decline the offer without any prejudice, except as specified by law or by government-wide regulations, to the Employee's other RIF rights and options. An offer of a vacant position shall be held open for seven (7) business days to allow the offeree time to evaluate the offer and accept or reject it.

Section 5. Eligible Employees separated by a RIF may apply for placement on a reemployment priority list (RPL). Former Employees on an RPL will receive first consideration for ERD vacancies for up to two (2) years.

Section 6. Management will make a good faith effort to provide outplacement assistance to Employees adversely affected by RIFs. This includes Employees who are unable to accept assignments to another commuting area. Management also encourages

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Employees subject to a RIF to apply to Employee placement programs such as ICTAP, CTAP and RPL.

Employees may use additional assistance provided by the Department of Commerce to the RIF/transfer affected individual. This may include information on the placement assistance programs available through OPM; individual job counseling and referral; stress and mental health counseling through the Employee Assistance Program; job testing, assessment, and evaluation; training on self-directed job search, resume preparation, and interviewing; and financial planning.

Section 7. The Union reserves its statutory rights to negotiate on the impact or implementation of any individual RIF/transfer with respect to matters not specifically covered by this Agreement.

Section 8. Employees who are relocated as a result of a transfer of function are entitled to reimbursable expenses allowable under the Federal Travel Regulation (FTR), Department of Commerce (DOC) Travel Regulation, and NOAA Travel Regulations (NTR).

ARTICLE 32 - Furloughs

Section 1. This Article applies only to those Employees covered under 5 CFR 752.401(c), Employees Covered. Except as provided for under 5 CFR 752.404(d) (2), Exceptions, the Agency will take no action to furlough Employees until the Union has been notified.

The Parties agree that furloughs of more than thirty (30) consecutive days or more than twenty-two (22) discontinuous workdays shall follow the provisions of Article 30, Reduction in Force and Transfer of Functions.

Section 2. Management will seek to identify cost saving actions that could reduce or eliminate the need for potential furloughs. Management will engage the Union, if practicable, in discussions prior to the announcement of any administrative furloughs. Management will consider any reasonable suggestion by the Union on cost saving actions that could reduce or eliminate the need for potential furloughs.

Administrative Furlough is a planned event by the Agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations.

- a. An Employee will be given a furlough notice of at least thirty (30) days in advance of the effective date of an administrative furlough unless there is reasonable cause to believe the Employee has committed a crime for which a sentence of imprisonment may be imposed. Advance written notice and an opportunity to answer are not required for a shutdown furlough which occurs without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.
- b. The furlough notice will:
 - i. State the specific reason for the proposed furlough
 - ii. Allow at least seven (7) calendar days to respond orally and in writing;
 - iii. To the proposal notice and furnish evidence in support thereof;

- iv. The right to be represented by an attorney or other representative;
- v. Inform the Employee of his/her right to review the material, which is relied upon to support furlough notice;
- vi. Inform the Employee of his/her right to receive a written decision with the specific reasons for its action at the earliest time practicable; and,
- vii. Inform the Employee of his/her appeal rights according to applicable laws, rules, statutes, and the terms of this Agreement and their right to respond.

Shutdown Furlough (emergency) occurs when there is a lapse in appropriations and can occur at the beginning of a fiscal year, if no funds have been appropriated for that year, or upon expiration of a continuing resolution, if a new continuing resolution or appropriations law is not passed.

- a. Exempt Employees are not affected by a lapse in appropriations. This includes Employees who are not funded by annually appropriated funds. Employees performing those functions will generally continue to be governed by the normal pay, leave, and other service rules.
- b. Excepted Employees refers to employees who are funded through annual appropriations but are excluded from furlough because they are performing work that, by law, may continue to be performed during a lapse in appropriations or authorization. Excepted Employees include employees who conduct emergency work involving the safety of human life or the protection of property, or certain other types of excepted work. Emergency Employees are not automatically deemed excepted Employees for the purpose of shutdown furloughs. NOAA legal counsel working with senior agency managers, determine which Employees are designated to be handling “excepted” and “non-excepted” functions.

Section 3. Management has the right to determine the total number of furlough days for the bargaining unit. When requested by the Union. Management will provide written explanation if some, but not all, of the Employees in a competitive area were selected for furlough. The Union may grieve such selective furlough exclusion through the negotiated grievance procedure in the CBA.

Section 4. When it is necessary to furlough some, but not all, Employees in an organization unit, DOC/NOAA may solicit volunteers at the affected work site. The volunteers may request Leave without Pay (LWOP) for the furlough days. If a sufficient number of volunteers do not come forth, DOC/NOAA will select Employees for furlough utilizing lowest service computation date (SCD). Employees not furloughed must be qualified to perform the functions (as determined by the Agency) that are to continue to be performed during the period of furlough.

Section 5. When DOC/NOAA have made a decision to furlough Employees for a specified number of days during a specified period of time, Employees will be provided an opportunity to submit a schedule of their preferred furlough day and date(s) unless Management determines that doing so would adversely impact the Division's ability to manage its workload with a reduced workforce. Any schedule conflicts amongst Employees will be resolved by utilizing SCD. DOC/NOAA's operational needs will take precedence.

In the case of an administrative furlough affecting Employees for more than five (5) consecutive days total, Management agrees to explore opportunities for providing Employees leave prior to the furlough to apply for unemployment benefits, and/or to contact job placement, and/or employment agencies.

Section 6. The Employee will be given seven (7) calendar days to respond to the furlough notice. Once the Employee has submitted a written and/or oral reply, DOC/NOAA will issue a decision in writing. The written decision will be delivered to the Employee on or before the effective date of the furlough.

Section 7. In accordance with appropriate regulations, when an Employee is designated to go into furlough status, any annual or sick leave that has been approved is canceled. Canceled or interrupted annual or sick leave is not forfeited, but may be used at a later date.

Section 8. Allowances for the effects of a furlough on Employees regarding assigned work will be made when conducting Employee performance appraisals.

Section 9. DOC/NOAA will normally provide sufficient notice of expected return to duty to Employees to avoid any instances of Employees losing pay and/or being placed in an AWOL status. However, these notices advising Employees when they should return to work at the conclusion of a shutdown or administrative furlough would have to be tailored to the specific situation, which may include advising Employees to monitor OPM's website, and media outlets for notification that a continuing resolution or appropriation has been signed by the President.

ARTICLE 33 - Equal Employment Opportunity (EEO)

Section 1. Management and the Union agree that there shall be no discrimination against any Employee on the basis of race, color, national origin, age, sex, sexual orientation, disabilities, or religion. Toward this end, Management will administer an EEO program in accordance with applicable laws, government-wide regulations, Department and NOAA policies.

Section 2. Management agrees to meet at the request of the Union to review and discuss specific issues relating to equal opportunity as they arise. The Parties further recognize that EEO plans and reports are developed in accordance with guidelines and instructions promulgated from the Equal Employment Opportunity Commission (EEOC). Management agrees to provide copies of such plans and reports at the request of the Union.

Section 3. The OR&R may have one representative on NOAA's NOS Equal Employment Opportunity and Diversity Advisory Committee contingent upon the continuing approval of the NOS Assistant Administrator. Selection of the candidate representative will be at the discretion of the Union. If a bargaining unit employee is chosen by the Office to serve, Management agrees to fund travel costs for one representative for the purposes of training related to committee membership, not to exceed one trip per year.

Section 4. Any meeting requested by or initiated by the Department of Commerce Office of Civil Rights or NOAA Office of Inclusion and Civil Rights is not considered a formal discussion as described in 7114 (a)(2)A of 5 U.S.C Chapter 71. Management is not obligated to notify the Union of such a meeting. However, the Employee may elect to be accompanied by a representative, who may be a Union representative.

ARTICLE 34 - Disciplinary or Adverse Action

Section 1. Purpose

Discipline or adverse action is intended to correct unacceptable conduct, attitude or work habits, and poor performance. The goal is not to punish the Employee, but to encourage acceptable conduct and work habits through corrective action. Discipline should be fair and reasonable in its degree of severity to the offenses. Disciplinary and/or adverse actions should be initiated in a timely manner. Management shall determine when the need arises for disciplinary and/or adverse actions and shall be taken in accordance with applicable laws, rules, and government-wide regulations in effect at the time of this agreement.

Management may take adverse actions for misconduct and/or performance in accordance with 5 U.S.C. Chapter 75 and 5 CFR 752, for just cause as will promote the efficiency of the Service and may not take disciplinary and/or adverse actions against an employee for any reason prohibited by 5 U.S.C. 2302, Prohibited Personnel Practices.

Disciplinary and/or adverse actions will be taken in such a way as to respect the Employee's privacy and to avoid embarrassment to affected employees.

Management will generally conduct fact-finding to collect evidence to determine whether misconduct has occurred requiring consideration of disciplinary or adverse action. Nothing in this Article shall limit the right of the Union to request information in accordance with 5 U.S.C. 7114.

Section 2. Penalty Determination

The specific penalty for an instance of misconduct and/or poor performance shall be tailored to the facts and circumstances of the situation and in consideration of the Department Administrative Order, DAO-202-751, Discipline. To aid in the selection of an appropriate disciplinary action, consideration shall be given to the Table of Offenses and Penalties included in Appendix B of DAO-202-751. The penalties are guidelines only and are not mandatory. Each situation shall be considered on its own merits and the penalty should be fair and reasonable in its degree of severity.

- a. In order to determine the appropriate penalty for an Employee's misconduct or poor performance, Management will consider the relevant factor and applicable law, rule, and government-wide regulations.

- b. The Parties recognize that discipline may be progressive in nature, however, the progressive sequence of discipline is not required. It is understood, however, that progressive discipline need not follow any specific sequence and that some offenses may be cause for severe action, including removal, irrespective of whether previous disciplinary or adverse actions have been taken against the offending Employee.
- c. The proposing official (generally the first level supervisor) will rely upon all the information collected during the fact-finding referred to as the evidence relied on file relevant to the disciplinary or adverse action, both favorable and unfavorable to the Employee, in making decisions about whether to take action and the severity of any action taken.

Section 3. Reprimands

A reprimand is a written letter to an Employee based on unacceptable conduct or poor performance. Prior notice is not required before the issuance of a reprimand. A reprimand shall state the specific reasons for the action. If requested by the Employee or Representative, Management will provide the Employee or their representative with a copy of the evidence relied on file that contains all relevant documents supporting the action. A reprimand will remain in an Employee's Electronic Official Personnel Folder (e-OPF) for up to two years, but may be removed by the management official, at its sole discretion, anytime within the two-year period. A reprimand shall inform the Employee of his/her grievance rights as stated in this Agreement.

Any written reprimand persisting in the file past the specified purge date will be considered as purged. Purged records may not be relied upon or referred to in subsequent actions or transferred to any subsequent supervisor of the Employee.

Section 4. Adverse Actions

Management may take an adverse action, including performance-based adverse action, as for such a cause that will promote the efficiency of the service.

The proposing official is generally the first level supervisor, and the deciding official is generally the second level supervisor.

A. Suspensions of 14 calendar days or less:

Suspensions require a proposing and deciding official. An Employee against whom a suspension of 14 calendar days or less is proposed is entitled to;

1. Advance written notice of the proposed action that specifies the reasons for the proposed action. If requested by the Employee or Representative, Management will provide the Employee with a copy of “the evidence relied on file” that contains all relevant documents supporting the action.
2. The Employee will have 10 business days to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response. Reasonable official time will be given to the Employee or his/her representative to prepare a defense to any proposed adverse action. The proposal notice will designate the deciding official to hear the Employee’s oral and/or written response. The deciding official has the authority to make a final decision on the proposed adverse action. If the Employee requests an extension to the reply period before the expiration of the stated reply period, the deciding official may extend the reply period if he/she determines that good cause exists for an extension based on extenuating circumstances. The right to answer orally and/or in writing does not include the right to a formal hearing with an examination of witnesses;
3. Be represented by an attorney or other representative; and,
4. A written decision at the earliest practicable date, containing the specific reasons for the decision and notifying the Employee of his/her right to file a grievance under the provisions of this Agreement except that the grievance will be initially filed at the next organizational level above the deciding official.

B. Suspensions of more than 14 calendar days, Reductions-in-Grade or Pay, Removals; and Furloughs:

Suspensions of more than 14 calendar days, Reductions -in-Grade or Pay, Removals; and Furloughs of 30 days or more, require a proposing and deciding official. An Employee against whom an adverse action is proposed for one of the above is entitled to:

1. Thirty (30) calendar days advance written notice of the proposed action, which specifies the nature of the proposed action. If requested by the Employee or Representative, Management will provide the Employee with a copy of the evidence relied on file that contains all relevant documents supporting the action. Reasonable official time will be given to the Employee or his/her representative to prepare a defense to any proposed adverse or disciplinary action. If there is reasonable cause to believe that the Employee has committed a crime for which a sentence of imprisonment may be imposed, the proposed action may be effected less than 30 calendar days from the receipt of the advance written notice;
2. The Employee will have 15 business days to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response. If the Employee requests an extension to the reply period before the expiration of the stated reply period, the deciding official may extend the reply period if he/she determines that good cause exists for an extension based on extenuating circumstances.
3. Be represented by an attorney or other representative; and
4. A written decision at the earliest practicable date, containing the specific reasons for the decision and informing the Employee of his/her appeal rights.

C. Appeal and Grievance Rights.

The Employee has the right, rather than filing a grievance, to appeal the Management action to the Merit System Protection Board but may not do both. If the Employee's appeal is based, in whole or part, on allegation of discrimination, the employee may file an EEO complaint with NOAA's Office of Inclusion and Civil Rights under statutory procedures.

ARTICLE 35 - Performance Evaluation

Section 1.

- a. Employee performance will be rated following all applicable laws, government-wide regulations, regulations, and the Department's rules and the general policy listed in Department of Commerce Administrative Order, DAO 202-430, Performance Management System and accompanying Department of Commerce Performance Management Handbook, except where Department of Commerce Administrative Order, DAO 202-430 Performance Management System and accompanying Department of Commerce Performance Management Handbook conflicts with this Agreement. In such a circumstance, the Agreement will prevail but not over Government-wide regulations implemented before the Agreement.
- b. Employee's critical elements and standards will be compiled into the Employee's performance plan and uniform for like duties in like circumstances and be related to the duties of the position. Management will provide Employees with guidance and materials necessary to perform their jobs in a satisfactory manner.
- c. External factors beyond the control of the Employee, but that affect performance results of the Employee, will be taken into consideration by the rating official (supervisor) when evaluating the Employee's performance. Performance measures should be objective, measurable, realistic, and stated clearly. If Employees have concerns regarding any of the measures in their performance plan, they should raise them to their supervisor at the beginning of the performance rating cycle or promptly as they arise.
- d. The Employee may share his/her performance plan with a Union representative. During the performance of representational duties, a Union representative may request and obtain a copy of the Employee's performance plan from the Employee's supervisor after presenting the supervisor with written documentation from the affected Employee that identifies the Union representative.
- e. Documentation of success in completion of milestones by the Employee is voluntary and highly recommended. Failure of the Employee to submit documentation to the supervisor shall not be cause for an adverse rating of the Employee. The supervisor will provide written justification for the employee.

Section 2.

- a. Employee evaluation will begin with a pre-appraisal meeting between the Employee and his/her supervisor. The appraisal meeting is where the Employee will receive his/her Rating of Record. At the appraisal meeting, the Employee will state if they agree or disagree with the supervisor's appraisal in order to provide management with an indication of potential disagreements. Employees or Union officials considering disputing a performance rating should inform Management of that intention as soon as possible and may file a Request for Reconsideration either orally or in writing to the rating official (supervisor) within 5 calendar days of receipt of the appraisal from the rating official. The rating official must provide a written decision back to the Employee within 5 calendar days of receipt of the Request for Reconsideration. Employees seeking to dispute their ratings are strongly encouraged to utilize the request for reconsideration process.
- b. The Employee may formally grieve the rating of record under Article 12, the negotiated grievance procedure, if the matter is not resolved through the Reconsideration process.
- c. Notice of unacceptable performance after all other regulatory requirements are met, will be given to the Employee at least 30 calendar days prior to the issuance of any proposed notice of corrective action (demotion or removal). If a notice of proposed corrective action is issued, the Employee or Employee's designated Union representative will have fifteen (15) business days to respond under the negotiated grievance procedure or take other appropriate action.
- d. Employees may utilize the Department's Commerce Learning Center for available web-based training on the 5- Level Performance Management System. ERD will ensure that supervisors are familiar with their responsibilities under the 5-Level Performance Management System.

Section 3.

- a. When either a regular appraisal period or an extended appraisal period ends and the Department's established deadline for providing ratings of record passes or a subsequent rating of record is issued, the Department/NOAA shall not produce or change retroactively a rating of record that covers that earlier appraisal period except that a rating of record may be changed —

- 1) Within 60 days of issuance based upon an informal request by the Employee;
 - 2) As a result of a grievance, complaint, or other formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed or as part of a bona fide settlement of a formal proceeding; or
 - 3) Where the agency determines that a rating of record was incorrectly recorded or calculated.
- b. In a RIF, an Employee will receive service credit based on an average of the Employee's three most recent ratings of record received during the four-year period prior to the date of the issuance of a specific RIF notice (or an officially designated performance credit cut-off date) and will be used to determine eligibility for additional credit toward an employee's service computation date. Law, government-wide regulations, and Department's policy, at the time of this contract will be used to determine the additional service credit allowed from the performance ratings.

Section 4.

- a. Performance based awards will be issued in accordance with applicable laws, government-wide regulations, and the Department's policy on the Performance Management Recognition System. Performance-based awards will be based solely on the Employees' performance ratings. No Employee with a lower summary performance rating than another Employee will receive a greater performance-based award (as measured by percentage of salary) than the Employee with the higher summary performance rating.
- b. Provided funds are available, ERD will allocate funds each fiscal year for performance-based awards under the Department's Performance Management Recognition System. Funds set aside for performance-based awards to Employees, but not actually spent for this purpose, may be used for other awards or other Division purposes provided such awards or purposes are not in conflict with applicable law, regulations, this Agreement, or the intent of this Article. The performance-based award amount set aside represents the maximum amount

- that may be awarded to Employees; the total actually awarded will be based on performance ratings of records.
- c. If requested in writing by the Union, Management will provide to the Union within 10 business days after such information becomes available, or 10 business days after the request is received, whichever is later, annual reports on the amount of money allocated to the 5 tier performance award pool, the CAPS bonus pool percentage, the estimated ERD bargaining unit labor costs, and the amount of money actually awarded for performance bonuses to the bargaining unit.

ARTICLE 36 - Telework

Section 1. Foundational Policies

Telework procedures will be governed in order of precedence by applicable law, government-wide regulations at the time of this Agreement, this Agreement, and the NOAA Telework Implementation Plan October 2021, dated November 4, 2021.

Section 2. Union Duties While Teleworking

Union representatives may perform representational duties while teleworking on Official Time (see Article 8). That time will be recorded in the Department's WebTA (see Article 23, Time and Leave) as Official Time. Internal Union business will not be conducted on official time regardless of the Employee's worksite.

Section 3. Availability of an Employee's Residence for Telework

An Employee's residence or other pre-approved location may be used as an alternate worksite for telework provided it is conducive for telework and is deemed safe. Use of an Employee's residence for telework requires the mutual consent of both Management and the Employee as documented in the signed telework agreement. If an Employee is using their residence as an alternative worksite (AW), it is the Employee's responsibility to ensure a proper and safe work environment is maintained.

The availability of an Employee's personal property, including their residence, to perform government functions is at the discretion of the Employee. An Employee who teleworks from their residence will provide their supervisor with a timely notice if their residence becomes unavailable or unsuitable as a telework location and, if possible, will provide an estimate of how long it will remain unavailable. If an employee's only approved AW is their residence and this location becomes unavailable, the Employee is not considered to be "telework ready" until the Employee notifies management that their residence is once again available as a telework location. During this period, the Employee is expected to work from their traditional worksite or request appropriate leave.

Section 4. Mandatory Telework during Unusual Circumstances

When advance notice (no less than 2 hours prior to the end of an Employee's work shift) is given of a closure or potential closure of the traditional worksite due to an emergency situation, "telework ready" bargaining unit employees will telework even if not scheduled to do so provided they are able to perform their normal work assignments at the telework

location. If the Employee is unable to perform their normal work assignments at the alternative work location, they will be excused (i.e. placed on Weather & Safety Leave) for the same time period as non-teleworking employees.

During any single emergency (non-COOP) closure, telework ready Employees will be required to telework at the alternate worksite designated in their telework agreement for up to six days of unscheduled telework. Following the sixth day of such unscheduled telework, Employees will not be required to telework at the alternative worksite designated in their telework agreement. Rather, if and once management provides an alternate worksite, Employees will be required to work at that site. Following the sixth day of unscheduled telework during the single emergency closure, to the extent management is not able to find an alternate worksite, Employees will not be required to perform unscheduled telework and will be excused (i.e., placed on Weather & Safety Leave) for the same time period as non-teleworking employees.

Employees are not responsible for ensuring that they will always have sufficient assigned work to accomplish while on mandatory telework. An employee will notify their supervisor if they have insufficient assigned work that can be accomplished while teleworking or lack the necessary equipment or supplies due to circumstances outside of the Employee's control. If this lack of work cannot be resolved, the Employee will be excused (i.e., placed on Weather & Safety Leave) for the same time period as non-teleworking employees.

Routine maintenance and construction activities are not considered to be emergency situations that trigger mandatory telework even if they result in the closure of the primary worksite.

ARTICLE 37 - Training

Section 1. Appropriate and relevant training and career development are in the best interests of NOAA, NOS, ERD, and the Employee. Maintaining proficiency in connection with assigned duties as stated in the position description and performance plan is among the responsibilities of all Employees. The assigned training and developmental activities for Employees are the responsibilities of Management.

Section 2. Management will provide and make known to Employees general training information external, internal, and webinars offered through the Department of Commerce Learning Management System Center (currently the CLC). Additionally, Management will advise individual Employees of appropriate and relevant training opportunities that meet their individual training needs.

Section 3. Employees are encouraged to develop an Individual Development Plan (IDP) in coordination with their respective supervisors. If requested, Management will provide access to IDP training.

Section 4. Employees are encouraged to participate in technical, scientific, career, and individual development conferences and meetings that are relevant to their positions and career development objectives and consistent with their IDPs. At Management's discretion, Management will provide funds for registration, travel, and fees, resources permitting, for Employees to attend such events. Attendance priority will be given to Employees who will be presenting papers or posters, or speaking at such conferences/meetings.

Section 5. In accordance with DOC and NOAA policies, Administrative Orders, 5 U.S.C. 5757 allows, but does not require, the payment for expenses related to professional credentials. This authority may not be used to qualify an applicant (Employee) for a position. So long as the expense directly supports identified strategic interests of OR&R and ERD, appropriated funds can be used to pay for:

- a. Expenses for employees to obtain professional credentials, including expenses for professional accreditation, State-imposed and professional licenses, and professional certification.
- b. Examinations to obtain such credentials.

- c. Organizational membership in the association or society so long as the primary benefit of membership is a prerequisite to obtaining the professional license or certification.
- d. Membership for a specific agency position that the incumbent uses to improve the conduct, supervision, or management of his/her function. Additionally, appropriated funds may be used to pay for attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities in accordance with 5 U.S.C. 4110.

Section 6. Employees are encouraged to participate in long-term training which supports the work of ERD. Employees may discuss long-term training with their supervisors and include such training in their IDPs. Approval of long-term training will be done in accordance with applicable DOC and NOAA policies and Administrative Orders.

Section 7. In the event that multiple employees are interested in a similar training opportunity and resources restrict the number that can participate, those not selected to participate will receive consideration, for one calendar year, when the same or similar opportunity arises again. It is the responsibility of the Employee to reapply for the training opportunity to receive this consideration.

Section 8. When practical, management will schedule formal work related, in house training courses. For purposes of this training, Employees' alternative work schedules will be temporarily suspended and Employees will conform to a regular work schedule, 8:30 to 5 for the duration of the training. Employees will be allowed a lunch period, local time to the host venue.

Section 9. The Employee recognizes his/her individual responsibility to keep his/her personal personnel training records current and complete to fully reflect total employment experience, training and education.

ARTICLE 38 - Labor-Management Activities

Section 1. Management will consider requests for official time for ERD employees who are officially designated Stewards or elected/appointed Union officials, workload permitting, to attend Union-sponsored or labor related training which management and the Union agree are of mutual concern and benefit.

Section 2. No employee may receive more than forty (40) hours every twelve (12) months for Union-sponsored or labor related training and the total hours allocated to the Union may not exceed one-hundred twenty (120) hours per calendar year unless agreed to by both management and the Union. Travel and per diem to the training venue may be considered for reimbursement on a case by case basis and in accordance with government-wide travel regulations.

ARTICLE 39 - Office Space

Section 1. General Principles and Shared Offices

- a. To the extent practical, each employee of the bargaining unit shall be furnished with office/work space that facilitates productivity and employee satisfaction.
- b. Management will usually attempt to assign individual offices to staff but may require shared offices or community (hotel) workspaces in future circumstances. In the case of a shared office, the Employees in the office to be shared may be consulted by Management on the shared office space. Employees in a shared office should be reasonable and flexible regarding their concerns about potential office mates. At an Employee's request, the Union may represent either or both Employees during this consultation.

Section 2. Individual assignments at Western Regional Center (WRC)

- a. For the purpose of this Article, Vacant Staff Office Space is defined as non-temporary NOAA WRC office space that is to be allocated to or is presently used by ERD and is vacant (not used as primary office by any Employee for greater than 90 days) or is occupied less than 3 days a week due to telework or soon to be vacant and either:
 1. Management has determined that the office space qualifies as vacant ERD staff office space, i.e., space available for occupancy by bargaining unit employees; or
 2. Meets all of the following criteria:
 - a. is adjacent to or very near existing office space occupied by bargaining unit employees; and
 - b. could be available to bargaining unit employees without interfering with Management's exercise of its right to determine the methods and/or means of performing work; and
 - c. is not intended to be occupied by managers or other federal employees who are not part of the bargaining unit.

Section 3. Formula for use at the WRC

Unless there is a clear and justifiable reason for locating specific staff close to a common area or resource needed by Management to achieve its mission, Vacant Staff Office Space will be assigned as follows:

- a. Management will notify the Union and all Employees within that commuting area about the availability of office space and request notification from all Employees who are interested in occupying the office.
- b. If no Employee applies for the space, then the method of this Section does not apply. If only one Employee applies, he/she will be assigned the office space. If more than one Employee applies, Management will select the Employee to be assigned to the vacant office space based on the highest applicant score given by the following formula:

Score = 5 times General Schedule grade level + years of service as determined by the Service Computation Date in employee's electronic official personnel folder.

- c. The Union will be notified in writing of the selection; this notification will include a list of staff who expressed interest in the vacant office and a brief rationale of the assignment based on the process and the criteria used. The Union reserves the right to grieve the selection with Management if factors other than the formula in Section 3(B) were used to make the assignment.

Section 4. Vacant office space outside of ERD's allotted space at the Western Regional Center (WRC)

In some instances, office space in the WRC allocated to the Office of Response and Restoration, that is neither to be allocated to nor in use by ERD, may become vacant. Where such office space meets all of the criteria in Section 2(a)(2) (other than the requirement that the office space "is to be allocated to or is presently used by ERD") and the Union would like for the space to be assigned to an employee, the Union may, in writing, notify Management of the specific office space it seeks. Management will thereafter raise the request with the division manager responsible for the office space at issue. Management will then provide an answer to the Union and the reason for its answer. Should ERD be able to secure the office space the Union requests, Management will assign the relevant office space in accordance with Section 3 of this Article. When

vacant space is available, Management recognizes that it is generally in the interest of both Management and the Union to secure office space that the Union finds desirable.

Section 5. Preservation of rights

Nothing in this Article should be interpreted as abridging the rights of Management or the Union under 5 U.S.C. §7106.

Section 6. Union records

Management shall provide the Union Chief Steward a secure storage location for Union documents in an office space dedicated to a Union officer chosen by or designated by the Union.

ARTICLE 40 - Phased Retirement

Section 1. Management and the Union agree that it can be beneficial to both the Employee and NOS/ERD to facilitate the transfer of knowledge and experience of senior Employees in succession planning and implementation. Therefore, Management and the Union support voluntary use of “phased” retirement as defined under section 100121 of Public Law 112-141 and OPM regulation 79 FR 46608. Rules for phased retirement will follow Department of Commerce, Office of Human Resources Management, Human Resources Bulletin, HR Bulletin #192 dated 3/21/16 except where that Bulletin conflicts with this Agreement in which case the Agreement will prevail.

Section 2. No Employee will be forced to take phased retirement. Phased retirement is voluntary but not an employee’s right. Employees must complete the Department of Commerce Phased Retirement Request/Agreement and submit it to the first line supervisor for recommended approval or disapproval to the second line supervisor. The second line supervisor maintains authority to approve or disapprove the phased retirement application and mentoring activities. If approved, the second line supervisor submits the application to the Agency Head (or designee) (OHCS) for final approval. The first and second line supervisor will provide a reason for disapproval as required on the application. Management will respond to the Employee’s phased retirement request in a fair and timely manner. The employee understands that the mentoring program must be fully vetted before the phased retirement can receive final approval by the Agency Head (or designee). If a decision is not reached by Management within 30 business days of receipt of the Employee’s application, Management will notify the Employee of its status. Denial of any application to otherwise qualified staff will be based on the operational needs only, and the Employee will be offered an explanation in writing.

Section 3. Any Employee who transitions to a phased or partial retirement status will remain a member of the bargaining unit.

Section 4. Employees may grieve any denial or dismissal of the phased retirement agreement using the negotiated grievance procedure.

Section 5. The DOC/NOAA will temporarily suspend mentoring requirements for phased retirement Employees involved in an emergency response if DOC/NOAA determines that it is impracticable for the Employee to meet the mentoring requirement

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during the spill emergency. Management reserves the right to approve who the retiree mentors as part of the requirements for the program.