POPA COLLECTIVE BARGAINING AGREEMENT

Management Proposals Revised

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PREFACE

The Purpose of this Agreement is to bring certainty and stability to the relationship between the United States Patent and Trademark Office (the Agency) and its employees represented by the Patent Office Professional Association (POPA) as well as the relationship between the Agency and POPA.

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ARTICLE 1: PARTIES, RECOGNITION, AND REPRESENTATION

Section 1: Parties to the Agreement

The parties to this Agreement are the United States Patent and Trademark Office (hereinafter "Agency", "PTO", or "USPTO") and the Patent Office Professional Association, (hereinafter "Union", "Association", or "POPA").

Section 2: Unit of Recognition

The unit of recognition covered by this Agreement is:

A. Included: All professional employees at USPTO other than Trademark professionals.

B. Excluded: Management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, confidential employees, Trademark professionals, non-professionals and supervisors.

Section 3: Representation

The Agency reaffirms the recognition of the Association as the exclusive representative of all employees in the bargaining unit as defined above. The Association recognizes that it is responsible for representing the interests of all such bargaining unit employees without discrimination and without regard to Association membership and in accordance with applicable laws, rules, and regulations.

Section 4: Coverage of Agreement

This Agreement covers only those employees and positions included in the bargaining unit. Where the term "employee" or "employees" is used, it is understood that it includes only bargaining unit employees unless otherwise expressly stated.

Section 5: Recognition of Representatives

The USPTO will recognize as representatives and officers, individuals who have been designated by the Association in writing. On or before

November 15 of each year, the Association must submit a list of all representatives and officers to the Chief of the Workforce Relations Division (WRD). The Association may make changes to the list, but any changes will not be effective until the Agency has been notified in writing. The list must include the name, phone number, supervisor, and association position or title if applicable, for each representative.

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ARTICLE 2: PRECEDENCE OF LAW, REGULATION, AND OTHER MATERIAL; PAST PRACTICES

Section 1: Relationship to Law and Regulations

In the administration of all matters covered by this Agreement, the Agency, the Association and bargaining unit employees are governed by:

A. Existing and future laws;

B. Government-wide and Agency rules and regulations in effect upon the effective date of this Agreement;

C. Government-wide and Agency rules and regulations issued after the effective date of this Agreement that do not conflict with this Agreement;

D. As per Section 2 below, any applicable Department of Commerce (DOC) rules and regulations in effect upon the effective date of this Agreement; and

E. As per Section 2 below, any applicable DOC rules, regulations and policies issued after the effective date of this Agreement that do not conflict with this Agreement.

Section 2: Department of Commerce Regulations and Policies

The American Inventors Protection Act of 1999 established the USPTO as an agency within the Department of Commerce and granted the USPTO control over budget and personnel matters. In areas where the USPTO has issued policy or regulations, those policies and regulations govern USPTO employees. Where the USPTO has not issued regulations or policy and where the USPTO follows (or participates in) a Department of Commerce program or policy, the terms of the DOC policy or program govern USPTO employees.

Section 3: No Additional Rights

Nothing in this Agreement provides rights to either party beyond those that are permitted by law.

Section 4: Complete Understanding of the Parties

This Agreement, including its attachments, constitutes the complete understanding of the parties. The parties agree that all of the agreements listed in the Appendix to this agreement remain in effect. In addition, any settlement agreements between the parties that resolve grievances (including arbitration) or other litigation, and in effect as of the effective date of this Agreement, remain in effect pursuant to the terms of their duration, unless contradicted by this Agreement.

Section 5: Past Practices

The parties agree that any past practice in effect prior to the effective date of this Agreement no longer constitutes an accepted past practice. This provision does not prohibit establishment of past practices going forward, to the extent permitted by law.

Section 6: Titles, Tools, and Forms

Any reference to a particular form, electronic tool, title of a management or association position, official, or organizational unit in this agreement is intended to refer to the current form, tool, or title, and to any successor forms, tools, or titles.

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ARTICLE 3: DEFINITIONS

Section 1: Day

Unless otherwise noted in this agreement, day shall mean calendar day, including Saturday, Sunday and Holiday.

Section 2: Counting of "Days"

In computing any period of time prescribed or allowed in the Contract, the day of the act, event, or occurrence from which the designated period of time begins to run shall not be included. When the day or the last day fixed by any time period for taking action falls on a Saturday, Sunday or a holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or Federal holiday.

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ARTICLE 4: MANAGEMENT RIGHTS

Section 1: Reserved Rights

Subject to the provisions of 5 U.S.C. 7106 (b)(2) and (b)(3), nothing in this Agreement shall affect the authority of any Management official--

A. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and

B. In accordance with applicable laws—

1. To hire, assign, direct, layoff, and retain employees in the Agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

2. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;

3. With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or any other appropriate source; and

4. To take whatever actions may be necessary to carry out the Agency mission during emergencies.

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ARTICLE 5: MANAGEMENT OBLIGATIONS

Section 1: Notification of Formal Discussions

Generally, the Agency will provide a minimum of four hours' notice to the Association of any formal discussion with bargaining unit members. The Association shall be allowed to send one representative. The representative must introduce him or herself to the management representative conducting the discussion (or the labor relations specialist if one is present), prior to the beginning of the discussion. The Association representative may participate in the discussion by asking questions as appropriate, but may not hinder the progress of the discussion. Association representatives must conduct themselves in a courteous, professional manner.

Section 2: Notification of Rights to Representation in Investigatory Discussions

Annually the Agency will notify bargaining unit members of their right to representation at discussions during an investigation of alleged misconduct when the employee has a reasonable belief that participating in the discussion will result in a disciplinary action against the employee directed to participate in the discussion. The notice will be posted electronically. See Article 6, section 1.

Section 3: List of POPA Bargaining Unit Employees

Not later than one calendar month after the effective date of this Agreement, and by October 31 of each year thereafter, the Agency will provide the Association with a list of all POPA Bargaining Unit employees as of September 30. This list shall set forth for each employee:

A. Their name,

B. Pay plan/series/grade,

C. Bargaining unit code, and

D. Organization/cost center.

The Association will remind the Agency if the Agency forgets to provide the list.

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ARTICLE 6: EMPLOYEE RIGHTS

Section 1: Right to Representation During Investigatory Meetings

A. When the Agency directs an employee to participate in an investigatory meeting and the employee has a reasonable belief that participation in the meeting will lead to disciplinary action against the employee, the employee may request that an association representative attend the meeting.

B. This section does not apply to meetings based solely on the performance of the employee.

Section 2: Right to Form, Join, or Assist Labor Organizations

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.

Section 3: Fair and Equitable Treatment

A. Employees will be treated fairly and equitably by management. Therefore, only employees who believe they have been personally subjected to unfair or inequitable acts shall have the right to contest such treatment by use of the negotiated grievance procedure as set forth in the collective bargaining agreement.

B. With respect to actions taken under 5 U.S.C. chapter 75, the parties acknowledge that different deciding officials may reach decisions which are slightly different from each other, even given identical factual circumstances, and that this does not constitute unfair or inequitable treatment.

C. With respect to actions taken under 5 U.S.C. chapter 43, the Agency's decision as to which action to take (no action, demotion, or removal) is not subject to challenge under this Article. However, the determination that the employee's performance was

unacceptable and other determinations underlying the performance-based action may be challenged as unfair or inequitable.

D. With respect to all other employment decisions and actions, the Agency's commitment to treat employees fairly and equitably will be interpreted as requiring similar decisions to be made under similar circumstances, absent good reason to the contrary.

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ARTICLE 7: EMPLOYEE OBLIGATIONS

Section 1: Knowledge of Law and Policy

Employees must know and comply with all laws, regulations, and policies that relate to their employment and conduct. The fact that the Agency may not call a particular law, regulation, or policy to an employee's attention will not excuse any violation thereof by the employee.

Section 2: Claiming Non-Production Time

All claims for non-production time must be approved by management in advance of the time being worked unless otherwise authorized. Failure to obtain pre-approval for the time may result in the time being denied and the employee being held responsible for production or be considered misconduct.

Section 3: Emergency Contact Information

Employees must provide and maintain accurate emergency contact information, including their current mailing address and personal telephone number. Additionally, employees must designate an emergency contact person (other than the employee) and provide a telephone number for that emergency contact person. This information must be kept up to date to make sure that the Agency has valid contact information within one week from any changes.

Section 4: Employee Safety and Welfare Checks

When possible, employees will promptly respond to requests from the agency to confirm their safety in the event of emergencies such as natural disasters, or when the Office has not had contact with the employee as expected.

Section 5: Professional Behavior

Employees must conduct themselves with courtesy, proper decorum, and with due respect for the rights of others.

Section 6: Animals in the Workplace

An employee with a disability may request to have a service animal in all areas of an Agency facility by seeking a reasonable accommodation. An employee who desires to have an emotional support/comfort animal at an Agency facility must obtain a reasonable accommodation for the animal to enter Agency facilities.

Section 7: Telephone Calls & Extended Absence Message

Employees must return business-related telephone messages within one business day, unless an element in an employee's Performance Appraisal Plan or a supervisor/appropriate management official requires a different response period. Employees must create an extended absence outgoing message on their voicemail to notify callers of planned absences from the workplace of two or more business days.

Section 8: Mandatory Use of E-mail

Employees must use the electronic mail (e-mail) system for the purpose of both receiving work related messages and information and for responding to work related inquiries made by electronic mail. Electronic messages must be viewed a few times throughout the day that the employee works. Employees must also recognize the Agency's use of electronic mail for dissemination and issuance of Agency policies and procedures. When an employee expects to be out of the office on a business day, the employee must use the "out-of-office" assistant to indicate the expected schedule unless an element in an employee's Performance Appraisal Plan directs otherwise.

Section 9: Use of Government Equipment

Employees must comply with Agency policy concerning the use of Government-owned equipment such as computers, telephones, fax machines, and copiers, etc.

Section 10: Accuracy of Reporting

Employees must record accurate information on all Agency and business records. Falsification of any Agency records may be the basis for disciplinary and/or adverse action.

Section 11: Updating Educational Status in OPF

If employees wish to make educational status changes a matter of record in their Official Personnel File (OPF), employees must provide a transcript of relevant educational achievements to the Office of Human Resources (OHR).

Section 12: No Children in Workplace

Children are not allowed in the workplace without prior supervisory approval, other than for occasional brief visits not to exceed 30 minutes and under the supervision of a parent or guardian.

Section 13: Automated Reports and Information

Employees may be required to use automated systems to access information such as docket and production reports and to use automated systems for reporting time and attendance.

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ARTICLE 8: ASSOCIATION RIGHTS AND OBLIGATIONS

Section 1: Right to Represent Employees

In accordance with 5 U.S.C. 7114, and other provisions of this Agreement, the Association shall be afforded the opportunity to be represented at –

A. Any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

B. Any examination of an employee in the unit by a representative of the Agency in connection with an investigation if – (i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and (ii) the employee requests representation. POPA must make a representative available for meetings and any requests to reschedule must demonstrate good cause and must not go beyond one week. Upon determination of good cause, management may grant request for extension.

Section 2: Right to Bargain

The Association shall have the right to bargain concerning any changes in the conditions of employment of unit members to the extent required by law. Such bargaining shall be conducted in accordance with Article 14 governing bargaining during the term of this Agreement.

Section 3: Advance Notice before Filing an Unfair Labor Practice

The Association will give the Agency advance notice of no less than 10 days, of its intent to file an Unfair Labor Practice (ULP) charge with the Federal Labor Relations Authority (FLRA) to allow the parties an opportunity to informally resolve the matter.

Section 4: Representation

The Association shall have representatives prepared to be available for all representational activity. Lack of prepared or available representatives will not be a reason to delay.

Section 5: New Employee Orientation

The Association shall have the right to either meet live or present a video to all new employees at new employee orientation. The Video may be up to fifteen minutes in length, and may provide contact information for the Association and specific association representatives for various issues. The video may not contain a solicitation for, or information on joining the Association or other internal Association business.

Section 6: Annual Association Meetings

The Association shall have the right to hold one meeting per year during duty hours to discuss working conditions and related subjects with its members. The internal affairs of the Association shall not be discussed at this meeting. The Agency will grant one hour of administrative leave to all Unit members who attend.

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ARTICLE 9: OFFICIAL TIME[1]

Section 1: Permitted Activities

Association Officials and Representatives shall be authorized official time during duty hours, not to exceed the established bank of hours per fiscal year described below, for the following activities:

A. To consult and counsel employees concerning personnel practices and policies, working conditions and employment related matters;

B. To prepare and investigate grievance;

C. Matters for the purpose of representing employees;

D. To prepare for any meeting and/or consultations with management officials;

E. To prepare for joint committee meetings;

F. To prepare for all presentations before third parties;

G. To review and respond to memoranda, letters and requests from the Agency, as well as proposed new instructions, manuals, notices, etc., which affect personnel policies, practices or working conditions;

H. To attend hearings or meetings in the capacity of an observer where an employee has elected to pursue a grievance without Association representation; and

I. To conduct any legitimate representational activity not precluded by statute and not set forth above.

[1] In a grievance settlement regarding Recruitment, Retention, and Official Time dated May 17, 2006, the parties agreed to incorporate this article in the next CBA. This article is consistent with that agreement except that the Agency has included 4000 hours of additional official time granted under the Regional Office agreements superseded by this CBA. The settlement agreement has been appended to this CBA because it contains provisions related to other topics.

Section 2: Bank of Hours

A. In any fiscal year bank time is used, the bank time shall not exceed the following:

1. Three Association Officials	3,800 hours
2. Four additional Association Officials	3,200 hours
3. All Other Association Officials	2,800 hours
4. Association Sponsored LMR Training	200 hours
5. Additional Official Time	4,000 hours*

*Originally granted under the Regional Office agreements, superseded by this CBA.

B. The Association Officials who draw from each portion of the total bank must be identified annually, in writing, to the Director of Labor Relations Division (or designee) within two calendar weeks after the conclusion of the Association's bi-annual election of officers.

C. On a quarterly basis, starting with the first full quarter after the beginning of the fiscal year or the first quarter following the implementation of this Agreement, the Association may transfer hours among the first three above described categories of bank time by written notification to the Agency, detailing such transfers, within 10 workdays after the quarter commences.

Section 3: Additional Official Time

A. In addition to the bank of hours set forth in Section 1, the Agency shall grant to Association officials reasonable time for:

1. Presentations to any agent of the FLRA, FSIP, MSPB and/or arbitrators;

2. Presentations at any third party proceeding not included in Section 1 (A) above, and ex parte presentation to other federal agencies;

3. Grievance presentations;

4. Joint committee meetings ~~and authorized activities therefore~~;

Commented [DD1]: POPA: The Agency has deleted this language so that the parties may discuss its meaning, especially in light of § 1 paragraph E above. As with § 5 below, we are not necessarily opposed to adding it back in, but we would like to clarify its meaning.

5. Meetings and/or consultations with management officials not included in Section 1 parts C and D above;
6. Addressing new employees as provided in Article 8, Section 5;
7. All activities for which official time is explicitly granted by statute, law, rule or regulation; and
8. Preparation for mid-term bargaining.

B. Any activities performed by an employee relating to the internal business of the Association, shall be performed at a time when an employee is not on duty or is on approved leave. Such activities include

1. Membership meetings;
2. Soliciting association membership;
3. Collecting association dues or assessments;
4. Campaigning for association office;
5. Distributing or posting association literature, notices or authorization cards; and
6. Any activities pertaining to the internal management of the association, including executive board meetings.

Section 4: Time Accounting

A. Official time for the activities in Sections 1 and 2 above shall be accounted and reported to the Agency on a biweekly basis. There shall be only one-time code for each of the listed categories and not subproject codes.

B. Travel time incident to a particular activity shall be included with that activity.

C. The Agency shall make available to the Association biweekly information on the time used by each Association official under each category. The information shall include 13 pay period and fiscal year to date totals.

Section 5: ~~No Adverse Effect for Using Official Time~~

~~No Association official shall be prejudiced or adversely affected by virtue of the fact that the official is authorized or required to spend time performing representational duties.~~

Section 6: No Mid-term Reopening

Notwithstanding any other provision of this agreement, this Article shall not be reopened pursuant to any mid-term reopening provision without the mutual consent of the parties.

Commented [KK2]: POPA: Included Per the 2006 settlement agreement. Not opposed to adding it but would like more clarification on the meaning.

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ARTICLE 10: USE OF OFFICIAL FACILITIES AND EQUIPMENT

Section 1: Association Office Space

The Association will be provided with approximately 450 square feet of office space to carry out its representational responsibilities. The space and equipment (as provided for in this article) will not be used for any purpose other than representational activity under Federal labor law and this Agreement. The Office of Administrative Services and the Office of the Chief Information Officer will have access to this area for cleaning, safety, and security purposes.

Section 2: Telephones

A. The Agency will make telephones available to the Association for handling representational duties and conducting labor-management relations activities. The Association will use these phones in a reasonable, prudent, and cost-conscious manner and only for purposes consistent with this Agreement. The Association will reimburse the Agency for any call for which there is a charge by the service provider.

B. The Association will not connect any Information Technology device (e.g. IT system, network device, mobile phone, removable media, or any other electronic or data storage device) to any Agency equipment without the specific advance written approval of the Agency's Human Resources Director or designee, and the Office of the Chief Information Officer.

Section 3: Equipment

A. The Association will comply with all Agency computer security policies, software licensing agreements and Agency policies governing employee computer use.

B. The Association will exercise prudence and responsibility in the use of Agency equipment.

Section 4: Interoffice Mail System

In general, the parties encourage the exchange of electronic documents, rather than paper documents through interoffice mail. The Association may, however, use the interoffice mail system as long as it is maintained by the Agency. If the Agency decides to stop providing interoffice mail, the Agency will provide two weeks' notice to POPA.

Section 5: Electronic Communications

Employees serving as association officials, while conducting representational activities, are only permitted use of the Agency's e-mail for representational purposes authorized by applicable law and regulation and by this Agreement.

A. If there are more than 50 recipients the Association will not include attachments in the email.

B. When using Agency email to communicate with bargaining unit members the Association will blind copy all recipients.

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ARTICLE 11: DUES WITHHOLDING

Section 1: Eligibility

Any bargaining unit employee may have dues deducted through payroll deductions. Such deductions will be discontinued when the employee leaves the bargaining unit, ceases to be a member in good standing of the Association (as identified by the Association), or submits a timely revocation form under the procedures of this Article.

Section 2: Association Responsibilities

A. The Association will inform management, in writing, of the following:

1. Biweekly dues amount(s) or changes in the dues amounts,
2. The names of the Association officials responsible for certifying each employee's authorization form, the amount of dues to be withheld, and
3. The name and address of the payee to whom the remittance should be made.

B. The Association will forward completed and certified dues withholding form(s) and cancelation forms to the appropriate administrative office, as designated by management within one biweek of receipt of the completed form from the employee.

Section 3: Management Responsibilities

It is the responsibility of management to:

A. Process voluntary allotments of dues in accordance with this Article and in amounts certified by the Association;

B. Withhold employee dues on a biweekly basis; and

C. Transmit remittance to the official designated by the Association in accordance with this Article, as expeditiously as possible at the end of each pay period.

Section 4: Procedures for Withholding

Bargaining unit members wishing to have their dues withheld by payroll deduction will submit their completed and certified SF 1187s (or equivalent form) to the Agency's Human Resources Office, Labor Relations Division. If the employee already has the maximum number of allotments that can be processed, the employee will inform the Agency which allotment to cancel in order to process the allotment for dues withholding. In the event a question exists concerning whether an employee is in the unit of recognition and eligible for payroll deduction of association dues, the employee's dues will not be withheld until the issue is resolved.

Section 5: Changes in Dues Amount

When there is a change in dues structure, the Association will send a memorandum to the Agency's Human Resources Director, noting the amount of the change. The memorandum must be signed by one of the Association officials designated to certify dues withholding forms. Such changes shall be limited to once per year. A copy of this memorandum must also be delivered to the Chief of Labor Relations Division and the Director of the Office of Finance.

Section 6: Revocation

Employees may revoke their dues withholding once they have paid dues for a one-year period by submitting the appropriate form to the Chief of the Labor Relations Division.

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ARTICLE 12: GRIEVANCE PROCEDURE

Section 1: Grievance Defined

A. "Grievance" means any complaint (other than those listed in paragraph B below)- where the grievant(s) challenges a party's (generally the agency's) final action(s) or inaction because the party acted or failed to act in accordance with law, rule, regulation, a negotiated agreement covering the grievant(s) or a valid past practice and the grievant(s) has suffered a tangible harm. Grievances may be filed:

1. By an employee against the Agency concerning any matter relating to the employment of that employee;
2. By a defined group of employees against the Agency concerning any matter relating to the employment of those employees;
3. By the Association against the Agency concerning an obligation owed to the Association (see paragraph C. below); or
4. By the Agency against the Association.

B. The following matters are excluded from this grievance procedure:

1. Matters excluded by 5 U.S.C. § 7121(c) relating to:
    a. Any claimed violation of subchapter III of chapter 73 of Title 5 of the United States Code (related to prohibited political activity);
    b. Retirement, life insurance, or health insurance;
    c. Suspension or removal in the interest of national security;
    d. Workers Compensation claims;
    e. Any examination, certification, or appointment; or
    f. The classification of any position, which does not result in the reduction of grade or pay.

g. Matters excluded by 5 U.S.C. § 5366 (termination of benefits after refusal to accept another job), 5 U.S.C. § 8116(c) (compensation for work injuries), or any other law;

2. Debt collection decisions;

3. Debt waiver decisions;

4. Termination of trial, term, or probationary employees;

5. Filling of supervisory positions or other positions outside the bargaining unit;

6. Non-selection for employment or promotion from a group of properly ranked and certified candidates;

7. Written proposed notices of actions which, if effected, would be covered by this procedure or any statutory appeals procedure;

8. With respect to actions taken under 5 U.S.C. chapter 43, the Agency's decision as to which action to take (no action, demotion, or removal).

C. "Association Grievance" means any complaint by the Association concerning the effect or interpretation, or a claim of a breach of provisions, of any agreement relating to the rights and benefits that accrue to the Association as the exclusive representative of bargaining unit employees. Grievances on behalf of employees, or that relate to the employment of employees, or that concern any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment of employees, are not Association Grievances within the meaning of this Agreement, and are instead group employee grievances.

D. "Agency Grievance" means any claim by the Agency against the Association concerning any claimed violation of rule, regulation, law, or agreement by the organization.

Section 2: Forum Selection

The procedure described in this Article shall constitute the sole and exclusive procedure available to bargaining unit members or the

Association for resolving grievances under this or any other negotiated agreement between the parties, unless the agreement provides a review or appeal process, such as in the case of the transit subsidy program. Matters covered under this procedure and under certain statutory procedures may, at the discretion of the aggrieved employee, be raised under either procedure but not under both. The employee will be deemed to have exercised this option at such time as the employee timely initiates an action under the applicable statutory procedures or timely files a grievance in writing under this Article, whichever event occurs first. The matters for which this option exists are:

A. discrimination based on race, color, religion, sex, national origin, age, physical or mental handicap, marital status or political affiliation under 5 U.S.C. § 2303(b)(1);

B. removal or reduction in grade based on unacceptable performance under 5 U.S.C. § 4303;

C. other adverse actions under 5 U.S.C. § 7121 (removal, suspension for more than 14 days, reduction in grade, reduction in pay and furlough of 30 days or less);

D. matters which may be raised as unfair labor practices under 5 U.S.C. § 7116.

Section 3: General Provisions

A. The parties agree that the expeditious processing of grievances is beneficial to the Agency and the employees of the bargaining unit. Thus, the parties agree to limit the extensions requested and granted. The parties may, by mutual agreement only, extend any time frame contained within this procedure, upon the requestor demonstrating good cause for an extension. The refusal to agree to an extension of the time frames set forth in this Agreement will not form the basis of any grievance under this Agreement. All requests for extensions must be made in writing and state the reasons for the request for the extension prior to the initial deadline.

B. In accordance with 5 U.S.C. § 7121(b), employees may present grievances on their own behalf. The Association has the right to be present at any meetings that are held during the processing of a grievance presented by an employee on their own behalf.

C. An employee or a group of employees processing a grievance under this Agreement shall be limited to Association representation or self-representation.

D. When two or more employees file individual grievances involving the same facts, events and issues arising out of the same incident, the grievances may be consolidated and processed through the grievance and arbitration procedure if the Association and the Agency agree. Any agreement to consolidate grievances based on particular facts, events, or issues is not precedential with respect to any other grievance(s).

E. The grievant shall be granted a reasonable amount of official time, up to eight hours total per grievance, for the preparation of all the grievance steps.

F. Failure of the grievant or the Association to observe the time limits contained in this procedure, where no extension has been granted, will result in the termination of the grievance.

G. In the event that the Agency fails to abide by the time limits contained in this procedure where no extension has been granted, the grievant, or the Association (where the Association has filed the grievance or is representing the grievant), is entitled to elevate the grievance to the next level. If the Association or grievant does not initiate elevation of the grievance to the next step by contacting the Chief, Labor Relations Division, within 14 days from the deadline by which the Agency should have issued the relevant decision, then the grievance is terminated.

H. Any meetings held pursuant to this Agreement will be held during business hours. Meetings will be held virtually unless all parties agree to meet at a location of the Agency's choosing in the Alexandria Headquarters.

I. Participants in the grievance process may participate remotely through collaboration tools if they are not working at the Alexandria Headquarters on the day of the grievance meeting.

J. In the event that the defending party asserts that the grievance is procedurally defective or that the grievance is not arbitrable, that matter will be processed through the grievance procedure, including arbitration, prior to the further processing, or the resolution, of the merits of the underlying grievance. The underlying grievance will be held in abeyance until the issue of the procedural defectiveness is resolved. If an arbitrator determines that the grievance is procedurally defective or not arbitrable, that will end the grievance in its entirety; otherwise, the underlying grievance on the merits may proceed.

K. Issues not raised by the party filing the grievance in the initial grievance filing may not be raised at arbitration except by written agreement of the parties.

L. Performance-based grievances over "lesser included" disputes will be merged into the subsequent grievance/arbitration; e.g. a grievance over a written warning will merge into the arbitration over the subsequent performance-based removal for failure to overcome the written warning.

M. Grievances concerning a specific individual may have overlapping issues, which may not be "lesser included". In these instances, the first grievance to be arbitrated will be precedential as to the overlapping issues. The parties agree that if one of the grievances concerns a removal, the removal will be arbitrated first, and those results will be binding on all other related grievances.

N. Grievances over adverse actions, other than removals, shall be filed at Step Two of the Grievance procedure.

O. A final decision issued in a removal action shall be considered the equivalent of a Step Two grievance decision issued pursuant to Section 4(C) below, therefore grievances concerning removals shall

be submitted directly to arbitration and require consent of the Association.

Section 4- Procedural Requirements and Process for Filing a Grievance

A. All initial grievances by or on behalf of employees filed at either the first or second step must be filed in writing with the Agency's Chief, Labor Relations Division's electronic filing process (currently at lrgrievances@uspto.gov, and with a copy presented to the employee's immediate supervisor).

B. A grievance must include all of the following information:

1. The name or names of the employee or employees involved, if there are multiple employees involved, the grievance must include information as to how the employees are similarly situated;
2. Statement of intent to file a grievance;
3. An account of the incident giving rise to the grievance;
4. The date of the incident; and, the date the employee(s) became aware of the incident, if different from the date of occurrence.
5. A reference to the appropriate contractual provision, law, rule or regulation alleged to have been violated;
6. A statement of the harm suffered by the grievant(s);
7. A statement of the remedy sought;
8. A statement explaining how the remedy resolves or mitigates the harm to the employee(s); and
9. If an employee is not filing a grievance on their own behalf, the grievance must include the name of the Association representative.

D. Step One

1. A grievance must be filed within twenty days of the incident giving rise to the grievance, or twenty days after the aggrieved employee knew or should have known of the incident giving rise to the grievance. In no circumstances shall a grievance be filed more than 180 days after the incident giving rise to the grievance.

2. The Agency retains the exclusive right to designate the management official to decide the grievance at the first step.

3. The grievant, one Association representative, the Step One deciding official, a representative from labor relations, and any other management representative(s) determined helpful by the Agency shall meet within seven days of the filing of the grievance to discuss the matter. The Step One meeting will be held without the Association if the Association declines to send a representative. The Step One grievance meeting may be waived by mutual agreement. If the employee or Association representative (if the employee is represented by the Association) fails to attend the meeting, the grievance is closed.

4. The Step One deciding official shall issue a written decision on the grievance within twenty days of the filing of the grievance or fourteen days after a meeting if one is held. In the event that the Association filed the grievance or the Association represents the grievant, then the decision will be delivered to the Association only. If the Association does not represent the grievant, then the Step One decision will be delivered to the grievant and the Association.

5. Employees are encouraged to informally discuss issues of concern to them with their supervisors at any time. However, any such discussions, including any requests that a supervisor reconsider a decision, will not toll the time period in which employees must file a grievance.

E. STEP TWO

1. In the event that the grievant is not satisfied with the decision of the Step One deciding official, or the adverse action decision as set out in Section 3(N). above, the grievant may appeal the decision in writing within twenty days of the delivery of the Step One decision or delivery of the adverse action decision as set out in Section 3(N) above. If the Association has filed the grievance or is representing the grievant, then it may appeal either type of the decisions in accordance with the procedures established in this section.

2. The appeal must be filed with the Chief, Labor Relations Division's electronic filing process (lrgrievance@uspto.gov, or successor email address).

3. The appeal will set forth the basis of the appeal and the remedy sought. The appeal shall also include a copy of the original grievance filed and a copy of the Step One official's decision. If the grievant or the Association wishes to have a Step Two meeting, then the appeal shall so state.

4. The Agency retains the exclusive right to designate the management official to serve as the Step Two deciding official.

5. If both parties agree that a meeting would be beneficial to the resolution of the grievance, then the grievant, one Association representative, the Step Two deciding official, a labor relations representative, and any other management representative(s) of its own choosing shall meet within seven days of the filing of the grievance to discuss the matter. If the Association fails or declines to designate a representative, then the meeting will be held without the Association. If the grievant or representative (if represented by the Association) fails to attend the meeting, the grievance is closed.

6. The Step Two deciding official shall issue a written decision on the grievance within twenty days of the filing of the appeal, or twenty days after a meeting if one is held. In the event that the Association filed the appeal or the Association represents the

grievant(s), then the decision will be delivered to the Association only. If the Association does not represent the grievant, then the Step Two decision will be delivered to the grievant and the Association.

Section 5: Association Grievance Procedure

A. The procedure contained in this section is limited to Association grievances, as defined above.

B. Association grievances will be filed with the Agency's Chief, Labor Relations Division's electronic filing process (lrgrievance@uspto.gov or successor email address). A grievance must be filed within fourteen days of the incident giving rise to the grievance, or fourteen days after the Association should have known of the incident giving rise to the grievance.

C. Association grievances shall contain the following information:

1. The provision of the Agreement alleged to have been violated;
2. A description of the alleged violation with sufficient specificity to advise the Agency of the nature of the harm;
3. A statement of the remedy sought;
4. Date of Incident; and
5. The name of the Association's representative in the matter.

D. Only the Association President (or an authorized designee) may file Association grievances.

E. Within ten days of filing the grievance, a meeting will be held between representatives of the parties to address the grievance, unless both parties agree not to hold it. The parties will be limited to four representatives per side.

F. The Agency will issue a written decision on the Association grievance within twenty days of the filing of the grievance or twenty days after a meeting, if one is held.

Section 6: Agency Grievance Procedure

A. In those instances when the Agency alleges that the Association has violated law, rule, regulation or this or any other agreement, the Agency may file a written grievance with the Association.

B. A grievance must be filed within fourteen days of the incident giving rise to the grievance, or fourteen days after the Agency should have known of the incident giving rise to the grievance.

C. The grievance will contain the following information:

1. The provision of the law, rule, regulation or agreement alleged to have been violated;

2. A description of the alleged violation with sufficient specificity to advise the Association of the nature of the harm;

3. Date of the incident; and

4. A statement of the remedy sought.

D. Within ten days of filing the grievance, a meeting will be held between representatives of the parties to address the grievance, unless both parties agree not to hold it. The parties will be limited to four representatives per side.

E. The Association will issue a decision within twenty days of the filing of the grievance, or twenty days after a meeting if one is held.

Section 7: Arbitration

In the event that Sections 4 through 6 fail to produce a satisfactory resolution, then either the Association or the Agency may proceed to arbitration as provided in this Agreement's provisions on arbitration. Employees may not invoke arbitration on their own.

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ARTICLE 13: ARBITRATION

Section 1: Invocation

A. The Agency and the Association shall each have the right to invoke arbitration within twenty days of a final performance or conduct removal decision or after a final decision has been issued under the applicable section of the negotiated grievance procedure.

B. In the event that a party has failed to provide a final decision on a grievance as required, the Agency and the Association shall each have the right to invoke arbitration within twenty days from the deadline by which the decision should have issued under the applicable section of the negotiated grievance procedure.

C. If a party who invokes arbitration fails to exercise its rights or obligations within the time frames set forth in this article, then the grievance is terminated. Termination of a grievance for any reason provided in this article shall not be the subject of a new grievance.

D. Only the Agency and Association may invoke arbitration. In accordance with 5 U.S.C. § 7121(b)(1)(C)(iii), employees have no right to invoke arbitration.

E. If the Association wishes to invoke arbitration, then it must submit such an invocation by email to the Chief of Labor Relations Division, copying the Office of General Law.

F. If the Agency wishes to invoke arbitration, then it must submit such an invocation in writing to the Association President and Vice President.

Section 2: Selection of Arbitrator

A. Within fourteen days after invoking arbitration, the Party invoking arbitration shall request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven impartial persons qualified to act as arbitrators. A copy of such a request must be served on the opposing party. If the arbitration will be held in-person pursuant to Section 4.J below, the request must state that the

arbitrators must be located in the Washington, DC metropolitan area and that the parties will not pay travel or per diem. If the arbitration will be held virtually, the request must state that the arbitrators are willing to conduct a virtual hearing. The request must also state that the arbitrators have Federal sector arbitration experience. The parties can jointly agree to tell FMCS that certain named arbitrators may not be included on the panel. The parties will maintain a list of arbitrators that they jointly agree shall be excluded from FMCS panels that will be updated as needed.

B. Within seven days of receiving the list from FMCS, the parties will jointly send a letter (by email whenever possible) asking each potential arbitrator to confirm that they will agree to serve as an arbitrator without payment of travel and per diem and possibly in a virtual format. If an arbitrator does not agree to this condition or respond within seven days of the date of the letter, the arbitrator(s) will be struck from the list. Such a strike will not be charged to either party. In the event that more than two potential arbitrators are struck in this manner, the parties will confer within seven days concerning whether to request a new list of potential arbitrators from FMCS, which will occur at the request of either party.

C. The party invoking arbitration shall bear the fee imposed by FMCS for such a service.

D. The parties shall meet within fourteen days of the receipt of the list of qualified arbitrators from FMCS to select an arbitrator to hear the grievance. If the parties cannot agree on an arbitrator at this meeting, then, at the same meeting, the parties will each strike one arbitrator's name from the list of seven and will then repeat this procedure until one name remains; that person shall be the duly selected arbitrator. The party requesting arbitration shall strike the first name.

Section 3: Scheduling

A. Once an arbitrator has been selected, the parties shall jointly contact the arbitrator within fourteen days of the arbitrator selection, inform the arbitrator of their appointment and request the arbitrator's availability.

B. The Association and the Agency shall have a telephonic conference with the Arbitrator no later than forty-five days from the date of the selection of the arbitrator. The parties agree to cooperate in good faith in the scheduling of arbitration dates. If the party defending the grievance refuses to participate in good faith in the scheduling of arbitration, then the arbitrator shall set the date for arbitration. If the party invoking arbitration fails to participate in good faith in the scheduling of arbitration within forty-five days of the date of the selection of the Arbitrator, the Arbitrator shall dismiss the grievance.

C. Arbitration will generally include a hearing, but the parties may agree to a process that involves only written submission.

D. The first date for the arbitration must be no later than 90 days following the close of the forty-five day time frame established in Section 4(B), subject to the availability of the Arbitrator.

E. Following the establishment of a date for arbitration, whether by hearing or written submission, either party may request a postponement for up to two months. Such postponements will only be granted in extraordinary circumstances and must be made at least five days prior to the hearing or due date for written submission. Indefinite extensions shall not be granted. Any fee for postponement will be borne by the party seeking the postponement.

F. In the event that the grievance settles, the parties shall equally bear any cancellation fees imposed by the arbitrator. The hearing shall not be cancelled until the Agreement is signed.

Section 4: Arbitration Procedures

A. In the event that the defending party asserts that a grievance is procedurally defective or not arbitrable for reasons other than failure to comply with the arbitration procedures set forth in this section, the arbitrator will determine that issue first, to the extent possible. If the arbitrator determines that the grievance is procedurally defective or not arbitrable, that will end the grievance in its entirety. If the arbitrator determines that the grievance is not procedurally defective and is arbitrable, and thereafter the underlying grievance on the merits proceeds to arbitration, that

same arbitrator will hear the grievance on the merits, unless the parties agree otherwise.

B. In the event that the defending party asserts that the grievance is procedurally defective or not arbitrable due to a failure to comply with the arbitration procedures set forth in this section, then the arbitrator will first hear and decide that threshold issue only. If the arbitrator determines that the grievance is arbitrable in this circumstance, then the grieving party will have fourteen days from the service of that decision to notify the Agency in writing that it intends to continue with the arbitration. All procedures contained in this section will apply to the adjudication of that grievance.

C. The issues at arbitration shall be limited to those issues raised by the grievant in the grievance procedure.

D. The parties shall make their best efforts to jointly agree on the issue(s) presented to the arbitrator. If the parties are unable to reach agreement on the issues(s) presented to the arbitrator, then each party will submit their issues presented to the arbitrator in writing, prior to the start of the hearing.

   The parties shall also meet to discuss potential joint exhibits prior to the hearing or written submission.

E. The parties shall agree in advance to the total number of hearing days. All dates shall be scheduled prior to the start of the hearing. The parties agree to expeditiously present their case, and the Arbitrator will ensure that the hearing is conducted in a fair but expeditious manner.

F. The parties shall exchange the following items at least fourteen days prior to the first date of the arbitration:

   1. Witnesses. Proposed witness lists, including a brief synopsis of the expected testimony of each witness and the curriculum vitae or resume of any expert witness, plus any expert report generated, and whether the witness is expected to testify virtually or in person.

   2. Documents. Proposed joint exhibits and proposed stipulations.

3. Issue(s). A proposed statement of the issue(s) to be submitted to the arbitrator.
4. Remedy. The party invoking arbitration will specify the remedy sought. If the remedy includes any element of monetary relief, an exact dollar amount will be specified with an itemization of each type and amount of monetary relief requested.
5. Settlement. The party invoking arbitration will specify whether it will consider settlement and provide a proposal, if any.
6. Representatives/Attendees. A list of representatives and any other proposed attendees for the arbitration.

The advance notice requirement above does not apply to any documents or witnesses necessary for rebuttal.

G. Both parties shall be entitled to call witnesses before the arbitrator. Witnesses shall be limited to a reasonable number and must have personal knowledge of facts relevant to the matter being arbitrated. Cross-examination will be permitted of all witnesses. All testimony shall be made under oath or affirmation. Only one representative per party may question each witness, and only one representative per party will be permitted to object to the questioning of each witness. Alternatively, the parties may agree to conduct the arbitration with written submissions only (without a hearing). In the event an arbitration is conducted by written submissions only, each party shall be entitled to respond to evidence and arguments introduced by the other party. The parties shall agree to a schedule for responses and replies, if any, and if they cannot agree, the arbitrator shall set a briefing schedule which should generally be initiated and completed within no more than 60 days.

H. The salary of witnesses who are Agency employees will be paid by the Agency if the employee would otherwise be in a duty status. The Agency will not pay overtime or travel costs for witnesses called by the Association. Expenses for witnesses who are not employees will be borne by the party calling that witness.

I. The arbitration hearing shall not be open to the public or the press. Attendance at the hearing, other than individual witnesses, shall be

limited to representatives of each party and any mutually-agreed observers. If the Association is represented by outside counsel at the arbitration, a member of the Association will also be present as a representative. All witnesses shall be sequestered prior to their testimony. If the grievant will testify, they shall generally be the first witness to avoid sequestration. Under no circumstances shall an individual who is serving as a representative on a case serve as a witness at the hearing on that case. Under no circumstances shall an individual who has served as a witness at a hearing on a case later serve as a representative on that same case.

J. Arbitration hearings may be held virtually or in person upon mutual agreement of the parties and the chosen option shall be put on the record by the arbitrator when the parties schedule the date(s) of the hearing. If the parties cannot agree, the hearing will be held virtually. If an arbitration hearing is to be held in person, it will be held at the Alexandria Headquarters. Each party shall be permitted to present witnesses virtually by video at any arbitration hearing. Hearings will not be postponed because a witness who could testify remotely has been asked to testify in person.

K. The grievant shall be granted a reasonable amount of official time, up to eight hours, for preparation for arbitration. The grievant, the grievant's Association representative (one employee) and all employees called as witnesses, and who are on active duty status, shall be granted official time for appearance at any arbitration hearing.

L. A verbatim transcript of the proceeding shall be made by a court reporter or digital court reporter unless the parties mutually agree that one is not needed. The Agency will schedule the court reporter or digital court reporter. Each party bears its own cost of obtaining a copy of the transcript.

M. The arbitrator shall have no authority to add to, subtract from, alter, amend or modify any provisions of this or any other agreement between the parties.

N. The arbitrator's remedy may not exceed the remedy specifically requested in the original grievance.

O. Post-hearing briefs will be exchanged unless the parties mutually agree to eliminate them on a case-by-case basis. The arbitrator shall set a date, not more than sixty days from the close of the hearing, for the submission of post-hearing briefs. Extensions may only be granted by mutual agreement.

P. Parties will request the arbitrator email their decision to the parties no later than thirty days after the conclusion of the hearing or receipt of the post-hearing briefs, whichever is later.

Q. Unless otherwise established in this Agreement, the arbitrator's fee and any other expenses (including court reporting fees) will be borne equally by the parties.

R. If a party intends to introduce bargaining history, the party must inform the other party at least fourteen days before the hearing date or written submissions are due, excluding evidence for rebuttal or that goes to the credibility of the witness.

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ARTICLE 14: MID-TERM BARGAINING

Section 1: General

This article applies to bargaining during the term of the Agreement, including any rollover term. All of these rules apply unless the parties expressly agree in writing to the contrary.

Section 2: Substantive Bargaining

For topics not covered by this Agreement, and that are mandatory subjects of bargaining, either party may submit a proposal in accordance with Section 4. Upon either party's submission of proposals for substantive bargaining, the receiving party will have seven days to request a clarification meeting with the proposing party to discuss the proposals. The meeting must be offered within seven days of the request. The meeting will last no more than two hours. If the receiving party does not request a meeting, any counter proposals must be submitted within fourteen days of the date of receipt of the proposals. If the receiving party timely requests a meeting, counterproposals must be submitted within fourteen days following the meeting. The meeting will be held during business hours. Counterproposals must be limited to the specific issue raised in the proposals.

Section 3: Bargaining Pursuant to 5 U.S.C. § 7106 (b)(2) and §7106 (b)(3) Notice and Submission of Proposals:

In the case of a change requiring negotiation under 5 U.S.C. § 7106(b)(2) and (b)(3), the Association may request a clarification meeting with management within seven days of receiving notice of the intended change. The meeting must be held within seven days of the request. The meeting will be limited to two hours. If no meeting is requested or a meeting is not timely held, a request to bargain in response to the management change must be submitted within fourteen days of notice of the change. The request to bargain must include all initial proposals. If the Association requests a meeting, the Association must submit the request to bargain and its proposals no

later than fourteen days following the meeting. Proposals must be limited to procedures and appropriate arrangements in response to the announced management change. The Association must identify whether a proposal is intended as a procedure or as an appropriate arrangement. If it is intended as an appropriate arrangement, the Association must identify the adverse impact they are trying to ameliorate as well as the employees they think will be adversely affected by the change. The Association may not raise other topics in negotiations initiated by a change proposed by management.

Section 4: Rules Applicable to All Bargaining

A. **Submission of Proposals:** All proposals must be submitted at one time, in writing, and in advance of the beginning of formal bargaining. Subsequent counterproposals from each party must be aimed at narrowing the difference between the parties, although a party does not need to put forward a counterproposal for each issue. Failure to present a counterproposal shall not be construed as agreement to the proposal.

B. **Electronic Exchange of Documents:** Notification and any other document required in these rules will be electronic. All proposals prepared during a negotiation session will be shared electronically by the end of the next business day following the session in which they are presented. A party not receiving an electronic version of the proposals shall request the document and the other party has one business day to respond. Documents shared electronically will be of the file type associated with the document preparation software officially used by the Agency.

C. **Document Delivery:** All documents provided to the Agency from the Association will be addressed and delivered electronically to the Chief of the Labor Relations Division or their designee. Agency documents shall be sent to the Association President electronically. Once chief negotiators have been appointed, documents will be exchanged through chief negotiators.

D. **Tentative Nature of Agreement to a Proposal:** Agreements on any proposals are conditional until agreement is reached on all issues.

E. **Limitation on Reopening agreed upon provisions:** No conditional agreement can be reopened without the consent of the other party, except during impasse proceedings or due to changes to: law; government-wide rules; or, government-wide regulations.

F. **Virtual Meetings:** All meetings, bargaining sessions, and mediation may be conducted virtually at the option of either party.

Section 5: Conduct of Bargaining

A. **Number of Negotiators:** No more than four people will represent each party at the table at any given time. Either party may, however, request permission to bring an observer who may not serve as note taker or participate in the session, but who may observe the process. Such requests will not be unreasonably denied.

B. **Chief Negotiators:** The parties agree to have at least one person authorized to speak for their party at every bargaining session. This authority includes the ability to sign off on proposals on which conditional agreement has been reached.

C. **Timing of Negotiations:** Bargaining will be conducted from 9:30 a.m. to 4:30 p.m. Tuesday – Thursday of each week.

D. **Duration:** Negotiations will last no more than four weeks.

E. **Counterproposals:** Counterproposals may be presented during negotiations as the parties discuss the issues raised in the notice and proposals.

F. **Declaring Impasse:** Either party may declare impasse once the parties have discussed the proposals and any timely-submitted counterproposals. Either party may also declare impasse if the time for negotiations provided in these ground rules has expired.

Section 6: Mediation, Negotiability and Impasse

A. **Requesting Assistance and Participation with FMCS:** The party who initiated bargaining must request the assistance of the Federal Mediation and Conciliation Service (FMCS) within three days after either party declares impasse. If the Association does not timely

request assistance from FMCS, management may implement its last offer, without further bargaining. Both parties must make themselves available to participate in mediation as scheduled by the FMCS.

B. **Mediation:** Mediation will last for no more than two weeks, and at the end of the two weeks both parties are required to request release from the mediator at the end of this period. The parties will be free to make a recommendation as to the procedure used by the Federal Service Impasses Panel (FSIP) to resolve the dispute.

C. **Official Time:** Association representatives may use official time as covered in Article 9 of this Agreement. Time used for this purpose must be reasonable.

D. **Negotiability Disputes:** The parties will attempt to resolve negotiability disputes informally during bargaining sessions. The Association may appeal a declaration of non-negotiability to the Federal Labor Relations Authority (FLRA). Negotiations over other unrelated issues shall continue. Negotiations on matters containing at least one proposal subject to a negotiability appeal shall not be considered as having been concluded until a decision is rendered by the FLRA on the negotiability appeal and any subsequent negotiations of the language that was the subject of the appeal, or alternative language, are complete. Once the FLRA issues a decision, negotiations will continue and agreed upon or imposed provisions will be included with other provisions.

E. **Agency Head Review:** In the event that the head of the Agency disapproves an agreement, no portion of the agreement will be implemented if the parties resume negotiations within two weeks of the Agency disapproval or until any negotiability appeal is resolved by the FLRA, unless otherwise agreed. If neither party requests bargaining over the agreement within two weeks of the disapproval and there is no negotiability appeal pending before the FLRA, the provisions of the contract that were not disapproved will be implemented by the parties.

Section 7: Pre-decisional Involvement

Both parties recognize the utility of pre-decisional involvement (PDI) in workplace matters without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. § 7106. Upon the agreement of both parties any topic may be discussed in PDI. When the parties have engaged in two or more substantive PDI discussions on a proposed change, and cannot reach agreement, they agree that the formal bargaining as required by law may be initiated by a written submission of the proposed change. There will be no clarification meeting(s). The other party will have seven days to submit a counterproposal. The parties then agree to conduct at least one bargaining session, and at any point after the first session either party may declare impasse and request mediation assistance from FMCS (or the parties may mutually agree to continue negotiations). Engaging in PDI on a topic over which the Agency is not required to negotiate creates no right to formally negotiate.

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ARTICLE 15: PILOT PROGRAMS

Section 1: Establishing Pilot Programs

The Agency may establish pilot programs to test concepts, tools, technology, examination procedures, or other initiatives for improving the efficiency and effectiveness of the Agency. Any submissions selected for testing and evaluation by the Research and Development Art Unit are not subject to this article.

Any agreements between the parties regarding pilot programs, and in effect as of the effective date of this Agreement, remain in effect pursuant to the terms of their duration, unless contradicted by this Agreement.

Section 2: Parameters

Provided that the pilot program meets the parameters described in A-C below, the Agency may implement the pilot program after giving a full biweek's notice to POPA.

A. Duration: The pilot program will last no more than one year from when the work begins, unless the time is otherwise specified, except those modeled after an existing program, without additional consultation with POPA.

B. Participation: The pilot program will operate on a voluntary basis, unless the Agency does not receive enough volunteers or the nature of the pilot is such that a patent application becomes part of the pilot as a result of a request from the patent applicant. The Agency will select the best-qualified volunteers based on its consideration of the pilot program's nature, volunteers' qualifications, and administrative considerations (e.g., TC assignment, pendency needs, etc.). Initial requests for volunteers may be limited to certain pools of candidates, depending on the nature of the pilot. If the Agency does not get enough qualified volunteers to proceed with a useful pilot, it may select additional participants to supplement the volunteers.

C. Scope: The pilot program will involve at least one of 1, 2, OR 3:

1. 20% or less of the affected members of the bargaining unit; **OR**
2. Covers 20% or less of work of employees of a particular division or office; **OR**
3. Pilots modeled after an existing (at the time the new pilot is implemented) program.

Section 3: Mid-Way Check Point

Halfway through the implementation of any pilot program covered by this Article, the Agency agrees to meet with the Union on request in order to receive feedback on the pilot program.

Section 4: Minimizing Adverse Impact

During the implementation of a pilot program covered by this Article, the Agency will endeavor to minimize the adverse impacts of the program, for example, by providing a reasonable amount of other time, training time, or a learning curve. At all times, it is within the discretion of the Agency to determine the extent of training time, other time or learning curve time.

Section 5: Information Sharing

The Agency will provide POPA with a copy of any training materials used in a pilot program, and any information pertinent to employee working conditions (redacted for privacy or other legal concerns) collected during the operation of the pilot program.

Section 6: Preserving of Bargaining Rights

Nothing in this Article will affect the extent of either party's bargaining obligations over pilot programs that do not fit the parameters of Section 2 above, or changes to a pilot program begun under this Article that cause the program to no longer fall within its coverage (e.g., making a pilot program permanent or extending its duration beyond 1 year). In these cases, both parties will retain their full and customary bargaining rights and defenses.

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ARTICLE 16: TECHNOLOGY

Section 1: New or Changes to Software

The Agency may elect to acquire new, develop new, or modify existing software (software is also often referred to as an application, a system, a product, or a product component). This may involve the use of iterative processes (e.g., agile development methods). When these changes have a substantial impact on bargaining unit members, the Agency will engage in the processes outlined in this Section.

A. The Association may request a meeting with an Agency representative within one week of the Office notifying the union of its intent to deploy new or modified software that is not otherwise covered by the article on Pilot Programs, when the deployment is expected to create an adverse impact on bargaining unit employees. The meeting will afford the Association an opportunity to learn more about the software change.

B. The Agency may elect to have bargaining unit members participate in the software development process, including tasks such as requirement development, developing training material, facilitating meetings, testing and providing feedback before deployment/implementation, i.e. User Center Design Council.

C. When the Agency determines to use bargaining unit members as part of the software development process, the Agency will select the appropriate number of bargaining unit members it determines is needed, considering expertise, workload, whether employees volunteer, and other needs of the Agency. Such selections occur through assignment of work, detail, or any other method.

D. When using bargaining unit employees for feedback in the process described in subsections B and C above, feedback from selected bargaining unit members will be shared with the Association. Once the feedback is shared, the parties will have up to one month to reach agreement on the full production use deployment of the software. Failure to reach agreement will not impede the Agency from deploying/implementing the software change, rather the parties will continue discussions post-implementation.

Section 2: New or Changes to End-User Hardware/Equipment

The Agency may elect to acquire new or modify existing end-user equipment for examiners and other bargaining unit members. If the acquisition or modification will have a substantial impact on bargaining unit employees, the Agency will consult with the association to help determine equipment requirements. In addition, the Agency will consult with the union two weeks prior to deploying the equipment for full production use. After production deployment, employees are encouraged to test out the new hardware/equipment as soon as possible, generally within three days of production deployment, and, if any issues, to contact the service desk.

Section 3: Emergency Repairs

Nothing in this Agreement prevents the Agency from addressing problems to end user functionality deemed urgent, including stopping and/or remediating cybersecurity incidents, repairing deficiencies impacting production work, or otherwise ensuring efficient operations. This may include software and/or end user hardware being unavailable for a period of time with no prior notice.

Section 4: Deployment of Software and End User Hardware

In some circumstances, production deployment of new software or end user hardware or modification to existing software or end user hardware may require an outage or other interruption (such as those requiring end user action, like a reboot). In these cases, the Agency will comply with the following schedules. New or modification deployments that do not result in an outage or customer interruption are not subject to this schedule and may occur during normal working hours where appropriate.

A. New and/or modified Software: The Agency will try to limit deployments of new or modified software that affects the user community (for example due to an outage or requirement of a user action, such as a reboot) to occur during established IT maintenance hours. This includes desktop client software and web-based software where user impact because of the deployment occurs.

B. Individual Software or End User Hardware/Equipment Requests: The Agency may deploy special need/request software or end user hardware/equipment to individual users anytime, including during core working hours, in order to fulfill and accommodate the individual need.

C. Employees that telework three days or more a week will receive their end user hardware via mail unless otherwise specified in their business unit Telework Agreement.

Section 5: Training and Practice Time to Learn New Software and End-User Hardware

A. Management will ensure necessary training and practice time that the Agency deems appropriate to bargaining unit employees when new or modified software or end user hardware deployments are deemed to have a substantial impact. Management will consider feedback pursuant to Section 1 of this Article, from the Association before deciding on the appropriate amount of practice time for new or changes to existing software and end-user hardware.

B. The Agency will share training materials or other documents related to the software or end user hardware with the Association prior to distributing it to bargaining unit employees. The Association will have no more than two weeks as part of the time listed in Section 1 of this Article to comment on the training materials or documents before the Agency may distribute the documents to bargaining unit employees.

Section 6: Full Implementation of Software and End-User Hardware

The deployment of significant changes and/or replacement (i.e. Search replacing East/West or change in Laptop Model) software and end-user hardware will be determined by the Agency and shared with the Association prior to implementation of the schedule. The Association will have one week to provide feedback as part of the discussions in Section 1 of this Article.

Section 7: Return of End-User Hardware

Bargaining unit employees will return all telework equipment replaced in an end user deployment to the Agency within five days using commercial shipment means designated by the Agency or at an in-person drop-off site designated by the Agency, unless explicit permission is granted by their immediate supervisor for a longer return time frame. Failure to return Agency equipment in a timely manner could result in discipline.

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ARTICLE 17: MERIT STAFFING

Section 1: Policy

This article establishes procedures which are designed to assure that all interested and qualified employees and applicants are systematically considered for advancement according to merit. The consideration must be without regard to race, color, religion, national origin, age, marital status, sex, physical or mental disability, sexual orientation, gender identity and/or expression, political or employee organization affiliation, or pregnancy, except as may be authorized or required by law. Personnel actions shall not be based on criteria that are not job related, including nepotism or close personal relationships.

Section 2: Employee Responsibilities and Equipment

Employees are responsible for:

A. When applying for a promotion that has been advertised in a vacancy announcement, providing all information requested on the vacancy announcement by the closing date through the automated hiring system. Information not included will not be considered.

Note: If a hardship exists preventing the employee from applying online (e.g., extended absence such as medical leave, military service, compensable job-related injury, etc.), the Agency may, on a case-by-case basis, consider other methods of applications. In such situations, the employee should contact OHR for guidance and assistance with regards to the submission of an application. The Employee must contact OHR in advance of the closing date of the announcement and the application must be received by the closing date of the announcement.

B. When applying for bargaining unit positions, employees may use USPTO-furnished computers to access, submit electronic job applications and/or establish or update their resumes on the automated application system.

Section 3: Scope of Article

A. Actions Covered: This Article covers the following actions within the bargaining unit:

1. Competitive promotions;
2. A temporary promotion of 120 days or more. All prior service at the higher-grade level during the preceding 12 months including details to higher graded positions or temporary promotions must be counted as part of the 120 days. A temporary promotion may only be made permanent without further competition if the fact that it might lead to a permanent promotion was originally made known to all potential applicants and the temporary promotion resulted from a competitive process;
3. Reinstatements to temporary or permanent positions of higher grades than last held or to ones having potential for advancing to higher grades;
4. Transfers to higher graded positions with known promotion potential;
5. Reassignments or demotions to positions with known promotion potential higher than the employee's current position;
6. Selection for training required for promotion;
7. Selection from among severely disabled employees for promotion or training of severely disabled employees under Title 5 Code of Federal Regulations (5 C.F.R. 213.3102(u) and 335.103); and
8. Details of more than 30 calendar days to a position with a greater known promotion potential.

B. Actions Excluded: This article does not apply to the following actions:

1. Promotion to a target or full performance level position from an apprentice, trainee, or understudy position;

2. Noncompetitive conversion actions on employees in Student Career Experience Program (formerly Cooperative Education Program), Federal Junior Fellowship, Presidential Management Intern, and other authorized programs, and their subsequent promotions in career ladder positions;

3. Promotion to an intermediate or full performance level in a career ladder position when competition has previously taken place or the selection was made from a civil service register and the management intent to promote is a matter of record;

4. Promotion of an employee who satisfactorily completes training under a formal training agreement when competition was involved in the selection for training;

5. Promotion of an employee whose position is reclassified at a higher grade because of the assignment of additional duties and responsibilities;

6. Position change from a position having known promotion potential to a position having no higher potential;

7. A temporary promotion of less than 120 days; and

8. Re-promotion up to a grade or position from which an employee was demoted without personal cause and not at their request.

Section 4: Vacancy Announcements

Announcements will be posted electronically for a minimum of seven days and will remain open and posted for this period, unless cancelled.

At a minimum, the vacancy announcement will contain:

A. Announcement number;

B. Opening and closing dates;

C. Position title, series, grade;

D. Organizational location and duty station;

E. Full promotion potential and/or career ladder status where appropriate;

F. Principal duties, including the amount of travel;

G. Minimum qualifications required;

H. Selective placement factors, if any;

I. Evaluation methods to be used;

J. Statement of equal employment opportunity;

K. Whether there is one or multiple positions to be filled from the announcement; and

L. Information on how to apply.

Section 5: Referral of Applicants

Applicants who do not meet the minimal qualifications will not be referred to the hiring official. Not every qualified applicant will be referred in all instances.

Section 6: Rating of Record

The applicant's most recent rating of record will be used for vacancies covered by this Article. The applicant must provide this document if required as part of the application process.

Section 7: Rating and Ranking

The criteria for, and method of, rating and ranking applicants for vacancies will be documented in the vacancy announcement case file. The criteria for rating must:

A. Be related to the job to be filled;

B. Provide adequate measure of the qualifications needed for the job to be filled;

C. Make meaningful distinctions among the applicants, i.e., indicate those who are the best qualified from the group of applicants; and

D. Distinguish between the knowledge, skills, abilities, and competencies an employee must possess at the time of promotion and those that can be quickly and easily acquired after promotion through experience or training.

Section 8: Selection

A. The selecting official will make a selection without nepotism or consideration of a close personal relationship, illegal discrimination, or for any other non-merit reason.

B. The selecting official's decision to select a particular applicant is subject to final review by OHR and to such other approvals as may be required by law, regulation, or policy. Approvals are primarily concerned with compliance with legal requirements and not the substance of the selection that is a prerogative of the selecting official.

C. OHR will arrange for the release of the selected applicant from the current Federal employing organization, as applicable. Employees will be released from the losing organization/business unit within one full pay period of receipt of the request for promotion release. Under unusual circumstances (e.g. to permit completion of essential assignments or for other acceptable reasons) the release date may be extended. If mutual agreement for release cannot be reached, OHR may negotiate the release date.

Section 9: Post Selection

After a selection has been made from a group of qualified applicants and documented by the selecting official, an employee may request feedback from an appropriate agency official to obtain information on what areas, if any, require improvement in order to increase their future prospects of advancement.

Section 10: Documentation

Each personnel action taken under this Article will be documented and records will be maintained in accordance with the requirements contained in 5 C.F.R., Part 335, and this Article.

Section 11: Corrective Action and Priority Consideration

A. When there is a failure to adhere strictly to the provisions of 5 C.F.R. or this Agreement, corrective measures shall be applied in accordance with guidance set forth in 5 C.F.R., Part 550.

B. If, as a result of a grievance being filed under this Agreement, either OHR agrees or an arbitrator decides that an employee was improperly excluded from the certificate of eligible applicants list(s), he/she will receive priority consideration for the next appropriate vacancy for which he/she is qualified.

   1. An equivalent or identical vacancy is one at the same grade level, in the same area of consideration, and which has comparable promotion opportunities as the position for which the employee received improper consideration.

   2. Priority consideration means that the selecting official must give the employee alone bona fide consideration before any other applicant is referred for the position to be filled. The employee is not to be considered in competition with other applicants and is not to be compared with other applicants.

C. If multiple applicants deserve priority consideration based on improper exclusions within the same promotion action, all deserving applicants shall be referred simultaneously for the next comparable promotion opportunity.

D. In the event that improper exclusions are made in separate promotion actions, all applicants deserving priority consideration from the first action will be referred before the applicants deserving priority consideration from subsequent promotion actions.

Section 12: Retroactive Pay

An employee will be entitled to retroactive pay in connection with an improper personnel action in accordance with applicable law, rules, regulations and/or this Agreement.

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ARTICLE 18: NONCOMPETITIVE PROMOTIONS

Section 1: Career Ladder Promotions

Employees of the Federal government may be selected through competitive or merit procedures for an entry level developmental position that progresses over a period of time and usually through a series of grade levels to a pre-established full performance level. These positions are referred to as career ladder positions. A promotion after assignment to a career ladder position is referred to as a career ladder promotion and is noncompetitive, up to the full performance level.

A. Requirements for a Career Ladder Promotion: Assignment to a career ladder position does not guarantee future advancement. Employees in a career ladder position must meet all of the following requirements to qualify for a career ladder promotion:

   1. Except as provided in Section D below, a full-time employee becomes minimally eligible to be promoted to the next grade level after 52 weeks (2080 hours for a part-time employee) in the current grade (time-in-grade requirement), and 52 weeks (2080 hours for a part-time employee) of specialized experience.

   2. The employee has demonstrated the potential for at least fully successful performance at the next higher level, and sufficient work exists at the next higher-grade level;

   3. The employee's last rating of record and current performance level must be fully successful or better; and

   4. All other requirements of law and regulations are met.

   5. Career Ladder promotions for Patent Examiners up to and Including GS 13 will be considered in accordance with this document.

B. Bargaining unit employees are entitled to timely consideration and decisions concerning the granting or denial of a career ladder promotion.

C. Accelerated Career Ladder Promotions for Patent Examiners

1. Patent Examiners at the GS-05, GS-07, and GS-09 grade levels in all disciplines and specializations who are on an Individual Development Plan (IDP) are eligible for promotion to the next higher grade after six months in their current grade, provided that they meet all the requirements in Section A. above. Examiners hired at the GS-05 or GS-07 level may be granted up to two accelerated promotions during their first two years. All promotions after the end of the second year of employment must meet the full one-year time-in-grade requirement.

2. Accelerated promotions are subject to the recommendation and approval by the SPE and TC Director. The SPE's evaluation will be based upon successful completion of at least six months of formal and on-the-job training, and the demonstrated ability to work at the next higher grade. The supervisor should carefully consider the examiner's ability to handle the added workload requirements for the examiner at the next level.

D. Career Ladder Promotions for Part-Time Employees: A part-time employee (an employee who works an approved, pre-arranged work schedule each week of between 16 and 32 hours) may receive a career ladder promotion when all qualifications discussed above are met, including time-in-grade and specialized experience requirements.

E. Credit for specialized experience is determined based upon the actual time a part-time employee spends in pay status. The computation of hours in pay status shall include all regular duty time, administrative leave, holidays, annual leave, sick leave, and other paid leave but will not include overtime or continuation of pay under Workers Compensation. One year of general or specialized experience will be credited for each 2080 hours in pay status.

F. Time in Non-pay Status and Promotion Requirements: Time spent in a non-pay status, including AWOL, LWOP, and suspension, does not count toward meeting the specialized experience requirement. Contact the Office of Human Resources if you have questions regarding this issue.

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ARTICLE 19: DETAILS AND WORK ASSIGNMENTS

Section 1: Definition of a Detail

A. A detail is a temporary move from an employee's position of record to a different position for a specified period. The employee is expected to return to the employee's position of record at the end of the specified period. Employees on detail continue to hold their official position of record and keeps the same status and pay.

B. Under a detail, an employee performs duties other than those of the position the employee currently holds. There is no formal position change. Employees may also temporarily move to a new position serving on a split detail where they may perform the work of the newly assigned duties as well as the duties of their official position of record.

Section 2: Career Development Details

A. The Agency shall designate certain recurring details within the USPTO as ''career development details." Career development details are details that not only help in meeting work requirements, but also will provide employees an opportunity to develop their skills and interests. Finally, these details will improve efficiency in administrative and technical fields so that a reservoir of developed employees will be in existence for possible selection to higher level vacancies.

B. Career development details, unless the creation of such a detail excessively interferes with management rights, shall include details to:

1. Office of the Commissioner for Patents
2. Office of a Deputy Commissioner for Patents
3. Office of Policy and International Affairs
4. Patent Trial and Appeals Board
5. Office of the Chief Information Officer

6. Office of the Solicitor

7. Office of Enrollment and Discipline

8. Outreach Programs in the Regional Offices

9. Any other detail:

    a. For which credit is given in merit promotions actions;

    b. Which is not normally assigned to the employee and is outside the employee's position description; and,

    c. Which requires at least 450 hours work time over a period of four months.

C. Assignments to career development details shall be made and administered in a fair and equitable manner among every qualified employee who submits a complete application for the detail in response to a posted vacancy announcement. The Agency and the Association encourage highly qualified individuals to participate in career development details.

D. Before selection, the skills and abilities of the employee and the specific needs of the Agency will be considered. Selection preference shall be given to those qualified applicants who have the least amount of service on career development details during the last four years, though it is not necessarily a deciding factor. Except in extraordinary circumstances, an employee shall not serve on a competitive detail a second time in the same area.

Section 3: Vacancy Announcements for Career Development Details

A. Vacancy announcements for career development details will be posted on the USPTO intranet. Employees may subscribe to receive emails when new detail vacancy announcements are posted.

B. Normally, vacancy announcements will provide at least a one-week period for interested employees to apply for the detail. The Agency may announce multiple details simultaneously and establish a roster of eligible applicants that is valid for a period of up to 12 months.

C. The announcements shall include:

- Opening and closing dates
- Organization
- Location
- Length of Detail
- Duties
- Qualifications (if applicable)
- Candidate Evaluation Criteria
- Information on how to apply
- OHR Contact Information
- Detail Interest Form (required as part of the application process)
- Whether the position can be done remotely or with partial telework
- And, if the detail is open to production employees, whether the hours on detail will be considered examining related for awards purposes.

Section 4: Crediting Time While on Detail for Awards

A. For Patent Examiners

1. Any patent examination performed while on detail will be hours of production for performance and award purposes, just as it would count if the employee were not on detail
2. Time spent performing the new duties of a detail will be considered nonproduction time unless the vacancy announcement for the detail indicates it will be considered examining related for award purposes. (See Section 3(C), above)

3. In some instances, an examiner may spend significant hours in a fiscal year on detail and earn an award from the business unit of the detail position. In these instances, the business unit to which the employee is detailed will work with Patents and the Office of Human Resources Performance and Award Division to determine the process for paying the award.

B. For Nonexaminers:

1. Time spent on a detail normally will not be considered for award purposes. The Business Unit head or Deputy Business Unit head of the employee's position of record may agree to consider the time for award purposes at their discretion and that time will be added to time in the position of record for award purposes.

2. If an employee does not serve at least 120 days in their position of record during a fiscal year, the business unit to which the employee is detailed may determine that the employee has qualified for an award based solely on the performance of the employee while on detail. In these instances, both business units will work with the Office of Human Resources Performance and Awards Division to determine the procedures for paying the award.

Section 5: Notification Requirements

A. Employees must notify their first- and second-line supervisors before applying for a detail.

B. Depending on the workload of the employee's permanent organization and the employee's current eligibility, final participation in the detail of a selected employee may be approved, denied, or postponed by the employee's supervisor in the position of record.

Section 6: Documenting Details

A. Details of 30 days or more will be documented in HRConnect.

B. Details of 120 days or more require the employee to be placed on a Performance Appraisal Plan within 15 days of beginning the detail. The supervisor (during the detail) must complete an interim rating within 30 calendar days after the end of the detail

that lasted for 120 calendar days or more in an appraisal year. An interim rating then must be considered by the employee's permanent supervisor as part of their final rating of record for the performance year even if the detail will continue into the next performance year.

Section 7: Management Assigned Details

The Agency may assign employees to work details without regard to the provisions of the article when workload requirements exist so as to make alternate assignments to details necessary to carry out the agency mission.

Section 8: External Details

Employees may participate in details outside of the USPTO. Employees should first seek and receive their supervisor's approval before beginning any detail application or selection process. Employees must also comply with the USPTO policy on external details. The outside agency will have control over the terms of the detail.

Section 9: Work Assignments

Work Assignments are career development opportunities for USPTO employees to develop skills related to their current duties or to use their expertise to assist the Agency on a project or special assignment. They are temporary assignments that the employee performs on a full-time, part-time or intermittent basis and are normally less than 120 days. There is no formal position or pay change, the employee continues to hold their official position of record and perform their regular duties when not working on the project. Work Assignments are used for a variety of reasons such as unusually heavy workloads, lack of work or special projects.

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ARTICLE 20: PROFESSIONAL TRAINING & DEVELOPMENT

Section 1: Training Selection Criteria

A. In determining which employees may be selected for training, management may consider factors such as:

1. Benefits to be derived by the Agency
2. Resource limitations
3. Enhancement of the employee's performance
4. Number and type of training sessions previously attended by the employee
5. Length of employment at the Agency
6. Maintenance of certifications required of the position
7. Employee performance

B. If management determines that it is in the best interest of the Agency and the employee, the employee may be required to repeat all or selected portions of training previously given or may be asked to take training. Management shall pay all costs of such training.

Section 2: Outside Conferences, Seminars, Meetings, and Classes

A. The Agency recognizes that attendance at certain conferences, seminars, meetings, and classes outside of the Agency may benefit professional development of the members of the bargaining unit, and is both desirable and in the best interest of the mission of the Agency.

B. This opportunity will be accorded to those members of the Unit who have demonstrated at least fully successful job performance and would most likely benefit the Agency mission by their attendance. In addition, the Agency may approve or direct bargaining unit member attendance at its discretion.

Section 3: Professional Training Program

The Agency intends to maintain a professional training Program, under appropriate laws, rules, regulations, and funding constraints. The current program includes the following types of training:

A. Office of Patent Training – Intensive in-house training program primarily for all newly hired examiners (Patent Training Academy), or refresher training for others, to teach the basic legal and procedural skills of patent examining;

B. Other duty time training;

C. Legal Training – See Non-Duty Hours Legal Studies Article 21;

D. Technical Training – See Non-Duty Hours Technical Training Article 22;

E. Specialty Training – This activity is for those professional employees lacking sufficient skill in areas such as communication skills;

F. Employee Selected Training – The Agency may designate a set bank of hours that members of the bargaining unit can use to participate in selected approved training; and

G. Offsite Agency Sponsored Training.

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ARTICLE 21: NON-DUTY HOURS LEGAL STUDIES PROGRAM

Section 1: Overview

A. A voluntary Non-Duty Hours Legal Studies Program has been established for POPA bargaining unit employees to provide additional legal training to increase the depth of legal knowledge within the Patent Corps and other Agency areas and provide a well-qualified applicant pool for positions requiring legal skills within the office.

B. This Program reflects the Agency's concern for the continuing development of patent professionalism in the POPA bargaining unit and the Agency's desire to increase the professionalism of its employees.

C. This Program is an optional segment of the overall professional training expected of employees and is not intended to supersede any other mandatory training program or encompass all appropriate legal training. This Program is not intended to be the major source of legal training required to achieve the requisite legal competency from the job positions within the POPA bargaining unit.

D. Only eligible courses that are being taken directly towards completing a Juris Doctor (JD) degree will be covered by the program.

E. Management may reduce, suspend, or terminate funding for this Program, at any time in the lifecycle of the Program, in its sole discretion when such action is necessary to carry out the Agency's mission. In making such a determination, management will consider similar cutbacks in other non-duty hours training programs in an effort to equitably distribute reductions among all employees. Such determination will take into account the nature and purpose of the training and the adverse effect on the employees and the Agency.

Section 2: Eligibility

A. This Program is available to any full-time, permanent POPA bargaining unit employee with at least two years of continuous service at the Agency immediately prior to application to the

program or an employee with at least two years of continuous service by the reimbursement application deadline (identified in Section 4(A) below) of the term the employee enters the Program.

B. An employee is eligible for participation if the legal training provided under this Program is mission-related as determined by the Agency. Only courses provided by an American Bar Association (ABA) accredited law school that will increase the depth of legal knowledge within the Patent Corps and other Agency areas will be authorized.

C. Acceptance at an ABA accredited law school is required. The legal courses for which the Agency provides tuition assistance under this article must be taken for credit at an ABA accredited law school.

D. The employee's most recent rating of record must be at least Fully Successful and the employee's current performance must be at least Fully Successful in all critical elements as determined by the employee's cumulative most recent four full quarters of work immediately prior to the Program's application due date. Each request for tuition assistance will be considered as a new request with regard to the eligibility requirements set forth under this Section.

E. The employee must not have served a suspension of seven days or more in the two years prior to the beginning of the Program's application due date.

F. Participants must remain in full-time status at the Agency during the academic term for which tuition reimbursement is requested.

G. The employee must obtain approval of their first and second line supervisors.

Section 3: Funding for the Program

A. Prior to the beginning of each fiscal year, the Agency will share with POPA the budget for the Program. The funding will be calculated to capture the estimated costs of the Program unless a lower amount of funding is determined appropriate in the Agency's discretion. The goal of the Program is to maximize reimbursement to participants within the allocated budget.

B. The allocated funding will be divided into three pools, one pool for each term: Fall, Spring, and Summer and the funding will be allocated as follows:

   1. 45% of the available funding for the Fall term;

   2. 45% of the available funding for the Spring term, and;

   3. 10% of the available funding for the Summer term.

C. Unused funding for the Fall term will be available for the Spring term. Unused funding for the Spring term will be available for the Summer term.

D. If requests exceed the allocated amount, or if funding is reduced below what is expected, reimbursements will be reduced based on the percentage that the allocated funding falls below actual costs. For example, if $2.7 million is available for a term and the costs total $3 million, each eligible participant will receive 90% of their total eligible requested funding.

Section 4: Timing of Reimbursement

A. Requests for funding must be made before the following reimbursement application deadlines:

   1. By 11:59PM eastern time on August 15th or the upcoming Fall term;

   2. By 11:59PM eastern time on January 15th for the upcoming Spring term, and;

   3. By 11:59PM eastern time on May 15th for the upcoming Summer term.

B. Receipts for materials as provided in Section 6(C) must be submitted on or before the following deadlines:

   1. By 11:59PM eastern time on September 15th for the upcoming Fall term;

2. By 11:59PM eastern time on February 15th for the upcoming Spring term, and;

3. By 11:59PM eastern time on June 15th for the upcoming Summer term.

C. Failure to submit a timely request as outlined in this Article, may result in the application being denied by the Program Administrator.

D. Employees who are currently enrolled in one law school but are on a waiting list for a different law school should submit an application based on the current enrollment, and provide a comment on the application that they are waitlisted for a different law school. The employee must notify the Program Administrator which law school will be attended prior to the first day of classes, along with documentation of the classes registered for. The number of credits covered may not exceed the initial number of credits submitted.

E. The initial application will dictate the maximum number of credits that will be covered. Classes may be dropped or changed after the initial application, but no additional credits may be added. If employees incur fees for dropped courses, those courses are not eligible for reimbursement as explained in Section 6(E).

F. Employees who attend a law school which operates on an alternative schedule such as trimesters, and who are not permitted to register by the deadlines above, must submit a written estimate of the expenses for which they expect to request reimbursement, by the closest reimbursement application deadline prior to the start of an academic term. These estimated amounts will be included in the totals to be funded in accordance with Section 3(B).

G. At the close of each of the requesting periods identified above, the Agency will total the requests to see if the amount allocated will cover the expenses.

H. If the amount allocated does not cover the amount requested, the Agency will determine what percentage of the total requested funds can be covered by allocated funding (proration).

I. Each request for funding will be reduced by the same percentage identified in paragraph Section 4(H).

J. Reimbursements to the participants will be processed by the Agency through the National Finance Center as soon as this determination can be made. For Fall terms, this reimbursement will not occur prior to October 1 due to budget availability/processing.

Section 5: Procedures

A. Applications each semester will be submitted electronically via the non-duty legal studies online system. Each participant must complete an application and submit it in the system to their first-line supervisor by the semester due date. The first-line supervisor will review the application and verify the eligibility of the applicant. If eligible, the supervisor will approve the application and the system will forward the application to the second-line supervisor for secondary-approval of eligibility. After the second approval, the application will be placed in a queue to await processing, which will not begin until after the application deadline. Fall semester applications will not be processed until after the new fiscal year begins in October.

B. Supporting documents must be uploaded into the system with each application by the deadlines set forth in Section 4(A). These documents will be proof of registration, course descriptions, invoice, and school tuition & fees information, including cost per credit. If an applicant does not have any of these documents, the applicant should notify the Program Administrator in advance of the applicable deadline.

C. If the applicant needs to make corrections, such as alter the courses/credits prior to the semester application deadline, the applicant can open the application and enter a comment with the necessary information. If changes require new supporting documentation, new documents can be uploaded in the system or submitted to the non-duty legal studies mailbox and the Program Administrator notified. Any corrections, such as courses/credits once the semester application deadline has past, must be submitted electronically to the non-duty hours legal studies mailbox and the

Program Administrator notified of the needed for a change. Such correction cannot increase the overall number of credits.

D. During the school's drop/add period, if the participant drops a course(s), the employee will submit a notification of such a dropped course electronically to the non-duty hours legal studies mailbox and notify the Program Administrator.

E. The employee will sign the Continuing Service Agreement (CSA) when the forms are submitted for processing.

F. The employee will sign and date a copy of the CSA and upload it into the online system as part of the application. By signing the CSA, the employee is certifying that the employee has received and read the Program rules set forth in this Article and the CSA, and understands the employee's obligation to the Agency as a participant.

G. The employee will submit grade(s) to the Program Administrator within six weeks after the semester ends. If the grades are not available, the employee will notify the Program Administrator within six weeks after the semester ends and will submit the grade(s) as soon as they are available. If an employee fails to provide grades for courses that the USPTO has funded, the employee will be required to repay the USPTO for tuition and course materials up to the amount reimbursed for the courses in accordance with Section 6(E).

H. If the employee resigns from the Agency, the employee will notify the Program Administrator in writing (e-mail notification is sufficient) 10 working days prior to separation so that repayment determination can be made. Failure to do so may result in a delay in processing of the employee's release papers.

I. Failure to comply with the procedures set forth in this Article may result in a denial of reimbursement or a requirement to repay previous reimbursements.

Section 6: Credits and Monetary Expenses

A. The Agency will reimburse employees for up to 24 credits per fiscal year, which coincides with the school year, not to exceed 88 total

credits under this Program. Courses must be taken within a total six years, which need not be continuous.

B. The Agency will not reimburse for the same class more than once. This includes the same class at two different schools, which will be determined at the Agency's sole discretion based on the course title and description. A request for payment after repayment per Section 6(E) does not constitute as reimbursement for the same class more than once.

C. For each approved course taken under this program, the employee may also request reimbursement for the actual cost up to $300 per course to purchase or rent required books and course materials (collectively referred to as course materials).

D. An employee may submit a request for reimbursement of the costs of course materials for courses being taken in a semester without requesting reimbursement of tuition for that course. The Program will cover course material costs for each course that would normally be approved under this Program, up to the $300 per course limit.

E. A participant who withdraws from or fails a course taken under this Program will be required to repay the Agency for tuition and course materials up to the amount reimbursed for the course.

Section 7: Approval of Courses

A. The Agency reserves the right to declare any course ineligible for funding because it is not mission-related. The Agency will make available lists of courses for which funding has historically been disapproved. These lists will be updated at least twice per year, prior to the funding request deadlines for the Spring and Fall terms set forth in Section 4(A).

B. Employees considering courses for an up-coming semester may contact the Program Administrator for review prior to requesting funding. An e-mail to the Program Administrator at legalstudiesprogram@USPTO.GOV is preferred.

C. The Agency will not reimburse for tuition or course materials for externships or internships (or similar courses that involve

experiential work). In addition, the agency will not cover any credits the employee gets for work done at the Agency.

Section 8: Continuing Service Agreement (CSA)

A. Subject to 5 U.S.C. 4108(b), an employee who participates in this Program is obligated to continue service with the federal government for 30 days for each credit paid for by the Agency. Each participate must sign a Continuing Service Agreement (CSA).

B. If the employee leaves the federal government prior to completing the length of the continued service, they will be required to repay the Agency for reimbursements made under the Program on a pro rata basis (based on thirty-day increments). Periods of suspension or LWOP excluding FMLA that occur during a covered Academic term will delay the start of the continued service by an equal amount of the time taken for LWOP. Periods of suspension or LWOP excluding FMLA that occur during service will not count towards the required continued service.

C. If the employee requests that only course material costs be reimbursed, the employee will be obligated to continue service with the federal government for 1 day for every $50 of course materials paid for by the Agency.

D. If the employee separates from the federal government prior to completing the length of the continued service, the employee's required course materials repayment obligation will be for the class(es) for which the continuing service was not completed.

E. Continued service begins with the end of the term or prior service obligation period, whichever is later.

F. The "end of the term" is defined as the day of the employee's last final examination or day the last final paper is due for that term.

G. If reimbursement for credits is prorated, the continued service requirements for the affected credits will be prorated to the same extent as the funding on a whole day basis. For example, in the scenario set out in Section 3(D) above where employees are reimbursed 90% of total eligible requested funding, an employee seeking reimbursement for 10 credits would be responsible for 270

of the 300 days: 10 credits X 30 days = 300 days. 300 days X .9=270 days CSA for the prorated term.

H. If an employee switches to a part-time status after any term (such as during Summer while not taking any classes) or after completing all coursework or uses any LWOP during any CSA, the Program Administrator must be notified and a part-time work schedule provided. If part-time schedule is ever altered, either temporarily or permanently, then the altered schedule must be provided. During such part-time status, the CSA will be based on the actual days worked during a given timeframe. Actual days worked will follow the part-time requirements that the minimum time worked on a given day is 4 hours.

Section 9: Non-Loan Financial Aid

A. If a participant in the program receives a scholarship, grant, or other non-loan financial aid (collectively referred to as scholarship funds), the scholarship funds will first be used to pay for any course not eligible for reimbursement by the Agency. Any remaining scholarship funds will be deducted from the amount of the total reimbursement for covered courses. The continuing service requirements will be adjusted to reflect only the portion of tuition expenses paid by the Agency. Participants who are charged a reduced tuition compared to the actual tuition charged by the law school will be reimbursed only for the reduced tuition amount.

B. Participants who receive a scholarship, grant, or other non-loan financial aid are required to disclose the aid received to the Program Administrator at the time of the application for reimbursement or within 1 week of becoming aware of the scholarship, grant or other non-loan financial aid.

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ARTICLE 22: NON-DUTY HOURS TECHNICAL TRAINING PROGRAM

Section 1: Overview

A. A voluntary Non-Duty Hours Technical Training Program (Program) has been established to develop and maintain a highly skilled workforce, and to promote the development and retention of POPA bargaining unit members by enhancing the employees' knowledge, skills, and abilities.

B. This Program is an optional segment of the overall professional training expected of employees and is not intended to supersede any other mandatory training program or encompass all appropriate technical training. This Program is not intended to provide remedial training with respect to the basic technological skills required for the employees' current positions, nor to supersede appropriate classroom or on the job training in foreign technological areas during duty hours. A foreign technological area may be work assigned in an area of technology foreign to an employee's training and background.

C. Supervisors are encouraged to support their employees' voluntary participation in this Program in order to further the mission and meet the performance goals of the PTO.

D. Management may reduce, suspend, or terminate funding for this Program, at any time in the lifecycle of the Program, in its sole discretion when such action is necessary to carry out the Agency’s mission. In making such a determination, management will consider similar cutbacks in other non-duty hours training programs in an effort to equitably distribute reductions among all employees. Such determination will take into account the nature and purpose of the training and the adverse effect on the employees and the Agency.

Section 2: Eligibility

A. This Program is available to all POPA bargaining unit members who are full-time, permanent, non-probationary employees.

B. The technical courses taken under this Program must be mission-related. In making a determination as to what is "mission-related", supervisors are reminded that the employee's voluntary participation in the Program is to be encouraged and the term "mission-related" is not to be narrowly construed and shall be applied as set forth in Title 5, part 410 of the code of Federal Regulations.

C. The technical courses must be taken for credit at an accredited college or university.

D. The employee's most recent rating of record must be at least Fully Successful, and the employee's current performance must be at least at a Fully Successful level in all critical elements as determined by the employee's cumulative most recent four full quarters of work immediately prior to the Programs' application due date. Each request for tuition assistance will be considered as a new request with regard to the eligibility requirements set forth under this Section.

E. The employee must not have served a suspension of seven days or more in the two years prior to the beginning of the Program's application due date.

F. If the Agency denies an employee's request to participate, the employee may submit written reasons as to why the employee's participation should be approved. Upon receipt of the written reasons, the Office of Patent Training will either grant approval or provide the employee with a written response within seven days explaining why the request was denied.

G. Participants must remain in full-time status at the Agency during the academic term for which the tuition reimbursement is approved.

H. The employee must obtain approval of their first and second line supervisors.

Section 3: Procedures

A. Applications each term will be submitted electronically via the non-duty technical training online system at least two weeks prior to the beginning of the course with copies of the (1) tuition rate and (2)

the course description from the school catalog. Each participant must complete an application and submit it in the system to their first-line supervisor. The first-line supervisor will review the application and verify the eligibility of the applicant. If eligible, the supervisor will approve the application and the system will forward the application to the second-line supervisor for secondary-approval of eligibility. After the second approval, the applicant will be prompted to upload supporting documentation.

B. Supporting documents must be uploaded into the system. The supporting documents will be: proof of registration, invoice, and school tuition & fees information, including cost per credit. If an applicant does not have any of these documents, the applicant should notify the Program Administrator.

C. If the applicant needs to make corrections, the applicant should contact the Program Administrator. Such correction cannot increase the overall number of credits.

D. During the school's drop/add period, if the participant drops a course(s), the employee will submit a notification of such a dropped course electronically to the non-duty hours technical studies mailbox and notify the Program Administrator.

E. The employee will sign the Continuing Service Agreement (CSA) when the applicant uploads their supporting documentation. By signing the CSA, the employee is certifying that the employee has received and read the Program rules set forth in this Article and the CSA, and understands the employee's obligation to the Agency as a participant.

F. The employee will submit grade(s) to the Program Administrator within six weeks after the semester ends. If the grades are not available, the employee will notify the Program Administrator within six weeks after the semester ends and will submit the grade(s) as soon as they are available. If an employee fails to provide grades for courses that the USPTO has funded, the employee will be required to repay the USPTO for tuition and course materials up to the amount reimbursed for the courses in accordance with Section 6(F).

G. If the employee resigns from the Agency, the employee will notify the Program Administrator in writing (e-mail notification is sufficient) 10 working days prior to separation so that repayment determination can be made. Failure to do so may result in a delay in processing of the employee's release papers.

H. Failure to comply with the procedures set forth in this Article may result in a denial of reimbursement or a requirement to repay previous reimbursements.

Section 4: Credits and Monetary Limits

A. Up to $10,000 per fiscal year is available to each participant for actual tuition costs. Any number of credits within this monetary limit may be taken under this Program. If the tuition costs exceed the employee's limit, the employee will be responsible for paying any overbalance to the school.

B. For each approved course taken under this Program, the employee is allocated up to $300 per course for required course materials (e.g. books and/or lab fees, etc.).

C. An employee who withdraws from or fails a course (as defined by the school) taken under this Program will be required to repay the Agency for expenses incurred from tuition and course materials payment.

Section 5: Approval of Courses

A. The Agency reserves the right to declare any course ineligible for funding because it is not mission-related. The Agency will make available lists of courses for which funding has historically been disapproved. These lists will be updated at least twice per year.

B. Employees considering courses for an up-coming semester may contact the Program Administrator for review prior to requesting funding. An e-mail to the Program Administrator at nondutytechnical@USPTO.GOV is preferred.

C. The Agency will not reimburse for PHD Dissertations, tuition, or course materials for externships or internships (or similar courses that involve experiential work).

Section 6: Continuing Service Agreement (CSA)

A. Subject to 5 U.S.C. 4108(b), an employee who participates in this Program is obligated to continued service with the federal government for 30 days for each credit or portion thereof paid for by the Agency.

B. If the employee leaves the federal government prior to completing the length of the continued service, the employee's tuition reimbursement obligation will be on a pro rata basis (based on thirty-day increments). Periods of suspension or LWOP excluding FMLA that occur during a covered Academic term will delay the start of the continued service by an equal amount of the time taken for LWOP. Periods of suspension or LWOP excluding FMLA that occur during service will not count towards the required continued service.

C. If the employee separates from the federal government prior to completing the length of the continued service, the employee's required course materials reimbursement obligation will be for the class(es) for which continuing service was not completed.

D. Continued service begins with the end of the terms or prior service obligation period, whichever is later.

E. The "end of the term" is defined as the day of the employee's last final examination or day the last final paper is due for that semester.

F. Any reimbursement to the USPTO will be based on the actual tuition cost incurred by the USPTO.

G. If an employee switches to a part-time status after any term (such as during Summer while not taking any classes) or after completing all coursework or uses any LWOP during any CSA, the Program Administrator must be notified and a part-time work schedule provided. If part-time schedule is ever altered, either temporarily or permanently, then the altered schedule must be provided. During such part-time status, the CSA will be based on the actual days

worked during a given timeframe. Actual days worked will follow the part-time requirements that the minimum time worked on a given day is 4 hours.

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ARTICLE 23: PAY-LEAVE EARNINGS STATEMENT

Section 1: Report Improper Pay and Other Monetary Issues

Employees are responsible for reviewing their earnings and leave statement each biweek to ensure the accuracy of the information. Employees who believe that they have not received the correct amount of pay or that the Earnings and Leave Statement is incorrect must contact the Compensation and Benefits Division of the Office of Human Resources as soon as possible. Employees should provide as much information as possible to expedite the investigation.

Section 2: Investigation and Response

The Office of Human Resources will investigate each claim and take corrective action, if necessary, in an expeditious manner.

Section 3: Other Documents

Employees are responsible for updating their W-4 and other documents/information related to pay, taxes, and benefits.

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ARTICLE 24: WORK SCHEDULES

SECTION 1: Definitions

A. Basic Work Requirement (BWR) - The number of hours, excluding overtime hours, compensatory time earned and credit hours earned, an employee is required to work or otherwise account for by use of approved: leave, credit hours off, holiday hours, excused absence, compensatory time off, leave without pay, or time off earned as an award. The BWR for full-time employees is eighty hours per two-week pay period (biweek). The BWR for part-time employees must be 32 to 64 hours per bi-week, as agreed to between the employee and supervisor. For part-time schedules, see Section 10 below and the POPA Part-Time Program Agreement 2021 for Patent Examiners.

B. Tour of Duty - The limits within which an employee must complete the employee's basic work requirement, as determined by the work schedule the employee has selected.

C. Alternate Work Schedules (AWS) - Schedules other than a Fixed Eight-Hour Work Schedule. AWSs include fixed work schedules such as the compressed work schedules (CWS) comprised of the "4/10" and "5-4/9", and flexible work schedules (FWS) comprised of the Flexible 8 Hour Schedule and Increased Flextime Schedule (IFS).

D. Time-Band - The specific hours of the workday within which employees participating in an FWS may complete their BWR.

E. Mid-Day Flex Hours - Time periods during which employees who participate in an FWS discontinue working in the middle of the day without being charged leave, and subsequently return and work additional hours on that day within the Time Band allowed for the employee's work schedule. The employee may "flex" (stop and start working) more than once each day.

F. Core Hours - The time periods during a workday, workweek, or pay period that are within the tour of duty, during which an employee covered by an FWS is required by the agency to be present for work, on approved leave, or use credit hours. (See 5 U.S.C. 6122(a)(1)).

G. IFS Credit Hours – Hours used to vary a workday within the same pay period as defined in Article 27. These hours must be used in the same pay period and cannot be carried over to another pay period.

H. Regular Credit Hours - For employees on an FWS, those hours that, with advance supervisory approval, an employee who is prohibited from working the maximum allowed number of compensatory time hours due to a statutory pay cap elects to work in excess of the employee's BWR so as to vary the length of a workweek or workday in the same or a different pay period.

SECTION 2: Provisions Applicable to all Work Schedules

A. All employees must meet the BWR as defined in Section 1A of this Article.

B. The core hour for POPA bargaining unit employees on a full-time schedule is from 1:00 p.m. to 2:00 p.m. (local time) each Thursday. Exceptions: the core hours for POPA bargaining unit employees in the Office of Policy and International Affairs are each Wednesday, from 2:00 p.m. to 3:00 p.m. Eastern Time; and, in the Offices of the Chief Financial Officer and Chief Information Office, each Tuesday from 1:00 to 2:00 p.m. Eastern Time.

C. Employees may work approved Regular Credit Hours, compensatory time, and overtime from 5:30 a.m. to 11:59 p.m., Monday through Friday, and from 5:30 a.m. to 10:00 p.m., Saturday through Sunday based on their local time.

D. Automated Tools and IT Support during some Duty Hours: Due to the broad range of hours and locations in different time zones available to bargaining unit employees, automated systems may not be available during some or all of an employee's tour of duty. Generally, service for all systems is available from 5:30 a.m. through 11:59 p.m. Eastern Time Monday through Thursday; from 5:30 a.m. to 10:00 p.m. Eastern Time Friday; and, from 9:00 a.m. to 10:00 p.m. Eastern Time Saturday and Sunday and holidays. Employees working outside of these hours must plan for and have alternate work available, if the automated systems are unavailable.

E. Planned system outages are generally scheduled (all Eastern Time) between 12:00 a.m. and 5:30 a.m., Monday through Thursday; between 10:00 p.m. and 9:00 a.m., Friday and Saturday; and between 10:00 p.m. and 5:30 a.m., Sunday. These outages may not be announced in advance via email. Employees may check the intranet to see whether any of the systems they intend to use are expected to be unavailable after 10:00 p.m. Eastern time. Occasionally, planned system outages may occur outside these hours, primarily during evenings and weekends. These outages will be announced as far in advance as practicable via email or similar means. Employees may need to arrange their work or their work schedules (if on a flexible schedule) to accommodate these outages.

F. 12 Hour Work Limitation: Employees, regardless of work schedule or whether the time is recorded as regular time, overtime, compensatory time earned, Regular Credit Hours earned, or IFS Credit Hours earned, are precluded from working more than 12 hours in a day. However, supervisors may approve an employee to work more than 12 hours in emergency or other rare situations such as a Computer Scientist working on a system outage, or an employee engaged in international or union negotiations.

G. Exceptions to Work Hour Requirements: Some employees may be required or asked to volunteer to work outside of the established work schedule hours for mission related reasons. Employees must be in a position that supports these exceptions, such as IT engineers working on an automated information system that requires work outside the Time Band or employees in OPIA, OIPC, or other areas of the Agency who are working outside of the normal time bands to interact with foreign stakeholders. Employees must discuss with their supervisors whether they perform any tasks that would support an exception to the established time bands before working hours outside of the time bands.

H. Employee Responsibilities: Employees are required to attend meetings and training scheduled by the Agency, managers, or supervisors, unless on previously approved leave or otherwise excused by the supervisor in advance. Employees on flexible schedules will need to arrange their schedule to attend or seek supervisory approval ahead of time to miss the meeting or training.

I. Employees are required to ensure that their approved work schedule is correctly documented in the time and attendance system.

J. Work Schedule Notification: Employees will update their work schedule in the collaboration tool as outlined in the Time and Attendance Tools, Communication, and Collaboration Policy.

K. The posted schedule should include approximate start and stop times, and extended mid-day flex periods.

L. Holiday Pay: See the Holiday Leave and Working on a Holiday Guidance.

SECTION 3: Full Time Alternate Work Schedules (AWS)

Full-time employees may opt for any of the following AWS unless schedule choices are restricted by management pursuant to other provisions of this article:

A. Flexible 8-Hour Work Schedule;

B. Increased Flextime Schedule (IFS);

C. Fixed 8 Hour Schedule; or,

D. 5-4/9 or 4/10 Compressed Work Schedule.

Each of these work schedules will be discussed in the sections immediately below.

SECTION 4: Flexible 8 Hour Schedule

A. This work schedule consists of five consecutive eight-hour days, with no set arrival and departure times. Employees on this schedule are required to work a total of eight hours on each day, Monday through Friday, between the hours of 5:30 a.m. and 11:59 p.m. local time.

B. Employees may use mid-day flex and return to complete the eight hours later on that same work day so long as the shift is completed during the hours set out above. Employees who take time off during a shift for any extended period must include the time and

duration of the absence from the workplace in the information on their work schedule as noted in Section 2(J) above.

SECTION 5: Increased Flextime Schedule (IFS)

A. This is the default schedule for employees, if an alternate schedule is not selected and approved under this article.

B. The Increased Flextime Schedule (IFS) is a flexible work schedule that allows a full-time employee to complete the basic work requirement of 80 hours for the pay period by varying the number of days and the number of hours worked each day between 5:30 a.m. and 11:59 p.m. local time Monday through Friday, and between 5:30 a.m. and 10:00 p.m. Saturday, or as modified based on business needs.

C. IFS Credit hours may be worked between the hours of 5:30 a.m. and 10 p.m. local time Sundays and holidays. Hours voluntarily worked by employees on Sunday must be recorded as credit hours in lieu of a regular workday.

D. A workweek consists of seven consecutive days, beginning Sunday and ending Saturday. An employee may not work both Sunday and Saturday of the same week unless working overtime, compensatory time or regular credit hours.

E. Employees on IFS may vary the number of hours worked each day (can be less than eight but no more than twelve) and the days worked each week, as long as they meet the BWR. Employees must work or take leave for a minimum of fifteen minutes for four days per workweek, only one of which may be a weekend day (Saturday or Sunday), including the core hour during the week. However, leave, including credit hours and compensatory time, may not be used to consistently avoid working during these periods.

F. If the employee does not meet the 80-hour requirement, overtime, compensatory time, or credit hours worked will be credited as regular time. Sick leave, annual leave, compensatory time used, and credit hours used and other approved time off count toward the 80-hour requirement.

G. An employee may choose to vary the number of hours and minutes worked each workday as long as 80 hours is accrued by the end of the pay period inclusive of the core hour requirements. For example, an employee might work: 8 hours on Monday; 8 hours on Tuesday; 4 hours on Wednesday; 9 hours on Thursday; 11 hours on Friday; and 12 hours on Monday; 12 hours on Tuesday; 12 hours on Wednesday; 2 hours on Thursday; 2 hours on Friday, for a total of 80 hours. Employees are responsible for keeping track of their own time.

H. Employees must notify their supervisor if they will be flexing for an entire weekday, prior to the absence. Employees must attempt to contact their supervisor or designee by phone or email within one (1) hour of the employee's scheduled start time, if they will be flexing on a weekday when the employee had previously indicated that they would be at work.

I. Employees without a telework agreement and working at the USPTO Headquarters in Alexandria may be excused from the Agency when the Office of Personnel Management closes government offices in the DC area (up to eight hours). If the closure occurs after an employee working IFS has arrived at the Headquarters, the employee should record the actual hours worked. If the employee has worked less than eight hours, the employee may claim administrative leave up to an eight-hour total. For example, if an employee has worked six hours and then OPM closes the government, the employee on IFS may claim two hours of administrative leave. If the employee has not arrived at Headquarters, the employee may claim a total of eight hours. Employees working in the regional offices should follow the same guidance when closures, delayed arrivals, or early dismissals are announced for their office.

J. Employees on teleworking agreements are generally expected to work during closures, delayed arrivals and early dismissals. Consult your Telework agreement for more details.

SECTION 6: Fixed 8-Hour Work Schedule

A. The Fixed 8-Hour Work Schedule requires the employee to work 5 shifts of eight hours, plus an unpaid 30-minute meal break each shift, with fixed arrival and departure times.

B. An example of this schedule is 8:30 a.m. to 5:00 p.m., Monday through Friday.

C. Because the beginning and end times and workdays are fixed, the employee cannot earn and use credit hours or use mid-day flex.

D. Employees may not choose this schedule.

E. Unless otherwise provided for in this agreement, management may only direct employees to work this schedule when the nature of the job is such that major responsibilities can only be performed during specific hours (i.e. a librarian who must be available during set hours). Management will generally determine the hours, but will consult with the employee when appropriate.

F. Beginning and Ending Times: Daily shifts will begin and end on quarter-hour increments for employees working a Fixed 8-Hour Work Schedule (Examples: 6:30 a.m. to 3:00 p.m.; 9:15 a.m. to 5:45 p.m.; but not 6:50 a.m. to 3:20 p.m.).

SECTION 7: Compressed Work Schedules (CWS)

A. Compressed work Schedules are fixed schedules that allow employees to complete the basic work requirement in fewer than ten days in a pay period. Arrival and departure times must be specified in advance and constant each biweek, but they need not be the same each day. Work must be completed during the hours of 5:30 a.m. and 11:59 p.m., Monday through Friday local time.

B. There are two options under this work schedule, both requiring an unpaid 30-minute meal break. These are:

1. 4/10 Plan: A CWS in which an employee fulfills the basic work requirement of eighty hours in a pay period in eight 10-hour days. Participants work four days each week with one scheduled day off per week. The employee must have fixed start and end times within the time bands established by this article. Employees participating in the 4/10 schedule, however, must select the same day off each week absent specific approval from the supervisor.

2. 5-4/9 Plan: A CWS in which an employee fulfills the basic work requirement of eighty hours in a pay period in nine workdays:

eight nine-hour days and one eight-hour day. Participants work five days in one week, and four days the other week, with one scheduled day off per bi-weekly pay period. The eight-hour day is always worked on the last workday of the pay period. The employee must have fixed start and end times within the time bands established by this article.

C. Each employee will arrange his or her work schedule with the supervisor in advance, identifying the day of the week which will be the employee's non-work day in the case of the 4/10 plan and the day of the bi-week which will be the non-work day in the case of the 5-4/9 plan. Subject to supervisory approval prior to the employee beginning the work schedule, the employee may select any day as a non-work day, except for Tuesday and Thursday (Wednesday also for employees in OPIA), which, during all work weeks, will be considered "required" work days. However, when a holiday falls on an employee's scheduled non-work day, Tuesday or Thursday may be used as the "in lieu of" holidays as set out below in paragraph F. Employees on established CWS schedules on the effective date of this agreement may continue to work the same schedule without the need to request approval from their supervisor for the "in lieu of" day.

D. Participating employees must take a 30-minute unpaid meal break during each day. The meal break may not be at the beginning or end of a shift.

E. Employees on a CWS who work on a holiday are entitled to holiday premium pay at their rate of basic pay, up to the number of hours of the CWS that fall on a holiday. Holiday premium pay is subject to the biweekly premium pay cap. (See 5 C.F.R. § 550.105). See the Holiday Leave and Working on a Holiday Guidance.

F. Holiday Leave: An employee on a CWS who is relieved or prevented from working on a day designated as a holiday is entitled to pay with respect to that day for the number of work hours scheduled. The following rules apply when a holiday falls on a scheduled non-work day:

1. If a holiday falls on a non-workday of an employee on a compressed work schedule - except for holidays falling on a Sunday non-workday - the employee's preceding workday is the

designated "in lieu of" holiday. (See 5 U.S.C. 6103(b)) If a holiday falls on a Sunday non-workday of an employee on a compressed work schedule, the employee's subsequent workday is the designated "in lieu of" holiday.

2. The head of the Agency may prescribe a different "in lieu of" holiday for full-time employees on a compressed work schedule when it is deemed that a different "in lieu of" holiday is necessary to prevent an "adverse agency impact." (See 5 U.S.C. 6103(d))

G. Employees choosing a compressed work schedule may not earn or use credit hours, or mid-day flex.

H. With advance supervisory approval, an employee may switch the employee's day(s) off to another day within the same pay period, including Tuesdays and Thursdays, but the employee may not routinely change their schedule.

SECTION 8: Selecting and Changing Work Schedules

A. Denial of a work schedule as well as restrictions to the work schedule shall be based on one of the reasons set out in Section 9 below.

B. Employees may change work schedules at the beginning of any quarter by notifying their supervisor of the employee's intended schedule, including fixed arrival and departure times and non-work days as appropriate (CWS). Notification should be given during the final pay period of the previous quarter. If needed, in accordance with the other provisions of this article, supervisory approval must be gained before changing schedules.

C. Upon request of the employee, supervisors may allow an employee to change work schedules at other times, based on unforeseen circumstances, but changes may be delayed until the beginning of the next biweek.

SECTION 9: Restrictions on Work Schedules

A. In accordance with the provisions below, Management may disapprove or restrict participation in certain work schedules.

B. All disapprovals, modifications or restrictions shall be in writing, and they shall clearly describe the basis used to justify the decision to deny or restrict participation in the desired work schedule. Electronic copies of the disapproval, modification or restriction, and justification therefore, shall be furnished to each employee affected at least two weeks prior to the time when the denial or restriction is to take effect. The schedule may be denied or restricted by an emergency situation, or when the nature of a business unit's work is such that the need for the presence, for short periods of time, of one or more employees cannot be anticipated, in which case the employee or employees will be given prior oral notice and justification. The two-week provision does not apply to denials, modification or restrictions based on an employee's request to change work schedules. Justification for restriction or denial shall be reviewed at the request of the employee upon a change in conditions. The appropriate supervisory official shall review the request and issue a written decision thereon within ten working days. A favorable decision shall entitle the employee to begin participation in the requested work schedule the following work day, or, if it is a different type of work schedule (e.g. employee selects a compressed schedule after working an alternate schedule), at the beginning of the next pay period.

C. Among other things, work schedule restrictions (including imposition of an eight-hour fixed schedule) may be based on one of the following:

1. Operational considerations, related to the work situation only (not related to job performance);

2. Abuse of work schedule flexibilities, or other misconduct of a serious nature that would be more easily monitored by the presence of a supervisor;

3. Participation during the hours required in a formal training program;

4. Requirements during an initial training period to understand and perform the duties of the position for example new hires in the academy or during their first year; or

D. Where operational needs do not permit an employee to work an identified flexible schedule, the employee will be permitted to work a modified flexible schedule approved by his or her supervisor.

Section 10: Part-time Work Schedules

A. For POPA bargaining unit employees working in patents, please see the part-time program. Note, work schedule hours are 5:30 a.m. to 11:59 p.m. Monday through Friday, and between 5:30 a.m. and 10:00 p.m. Saturday.

B. Requests for Part-time duties in other business units will be handled on a case-by-case basis based on the needs of the business unit and the employee's circumstances.

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ARTICLE 25: OVERTIME

Section 1: Availability of Overtime

When management deems there is a specific need for compensated overtime or that such is a proper and fit manner to expend funds, then overtime may be authorized in accordance with the following criteria:

A. the amount of work to be done;

B. the funds available to do the work;

C. the ability of the member of the Bargaining Unit to satisfy the specific need;

D. the ability of the member of the work unit to perform the work to be done in an independent manner during the period of overtime;

E. whether employee performance is at least fully successful at the time overtime is approved;

F. Employees are limited to a maximum number of hours (including overtime hours worked for pay and credit hours) or compensatory time each biweekly pay period, as determined by management, however the statutory pay cap may prevent certain employees from working the biweekly total of hours allowed by management; and

G. Group Directors or equivalent managers may authorize individual exceptions to the set hour limit to meet specific needs of the Agency, but exceptions may not be made in violation of the statutory pay cap.

Section 2: Overtime Hours and Pay Limitations

Overtime pay is pay for hours of work officially authorized by management and approved in advance for the employee. Each Business Unit Head or designee is responsible for ensuring that these procedures are enforced:

A. Business units may determine a maximum number of overtime hours, unless otherwise limited by law, rule or regulation. Management reserves the right to further reduce the amount of

overtime hours and pay due to budget limitations or in the event that workload reduces the need for overtime.

B. For Patent examiners, on a biweekly basis and in advance, each Technology Center Director or designee will approve an overtime authorization list identifying those employees authorized to work overtime hours for that pay period and the maximum number of hours authorized for each individual.

Section 3: When Overtime Hours May be Performed

A. Overtime hours may be worked on any day of the week including Saturdays, Sundays and holidays. Holiday work must comply with the agency's policy on working on a holiday.

B. A maximum of 12 hours, including the regular duty hours on a workday (or hours counting toward the 80-hour biweekly requirement for IFS) and overtime hours, may be worked on any day.

C. Overtime hours may not begin before 5:30 a.m. and must be completed by 11:59 p.m. (10:00 p.m. on Saturday and Sunday).

D. Overtime may be worked in fifteen-minute increments.

E. First-year employees will be required to demonstrate effectiveness in producing the required quality, pendency and quantity of the work product in an independent manner in order to be authorized to work overtime hours or as needed by the Agency.

Section 4: Temporary Prohibition on Working Overtime

A. An employee will be prohibited from working overtime hours during any pay period in which the employee serves a suspension.

B. If the employee is under active investigation or proposal for disciplinary or adverse action for time and attendance, work schedule or work credit abuse, an employee may be temporarily prohibited from working overtime hours.

C. On a day when an employee has requested to use sick leave due to the employee's own illness, the employee must obtain prior approval from their supervisor in order to work overtime hours.

Section 5: Overtime Eligibility for Patent Examiners

A. An employee must be performing at least at the fully successful level in all critical elements (for example, including but not limited to production, quality, and docket management) of their performance appraisal plan (PAP) before management authorizes overtime hours.

B. Biweekly authorization may be granted during the first quarter of the fiscal year based on at least fully successful performance of all critical PAP elements during the previous fiscal year, unless an employee fails to achieve the fully successful level in any critical element during the fourth quarter of the previous fiscal year. Furthermore, an authorization granted for the first quarter of the fiscal year may be rescinded during that period if the employee's performance falls below the fully successful level.

C. In the event an employee fails to achieve the fully successful level in any critical PAP element for any given quarter, he/she will be prohibited from working overtime hours for the following quarter. Additionally, on a biweekly basis during the second, third, and fourth quarters of the fiscal year, if an employee's year-to-date productivity or year-to-date docket management achievement falls below the fully successful level, he/she will be prohibited from working overtime hours. Once the year-to-date achievement is brought up to the fully successful level, upon biweekly assessment, the employee will again be authorized to work overtime hours.

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ARTICLE 26: COMPENSATORY TIME

Section 1: Compensatory Time

A. As with overtime, compensatory time worked must be approved in advance.

B. Eligibility criteria for earning compensatory time is based on the criteria for earning overtime as set out in Article 25, including any temporary prohibitions on working overtime. The same pay cap limitations that apply to paid overtime apply also to earning compensatory time, except for time earned as religious comp time or compensatory time for travel.

C. Employees are limited to a maximum number of hours (including overtime hours worked for pay and credit hours) of compensatory time each biweekly pay period, as determined by management. The statutory pay cap may prevent certain employees from working the biweekly total of hours allowed by management.

D. Group Directors or equivalent managers may authorize individual exceptions to the set hour limit to meet specific needs of the Agency, but exceptions may not be made in violation of the statutory pay cap.

E. An employee cannot carry forward more than a cumulative 80 hours of compensatory time and credit hours from one pay period to the next, including all types except religious compensatory time, compensatory time for travel, and compensatory time earned under the maternity/paternity policy.

F. Employees may earn up to 400 hours of compensatory time per fiscal year, excluding those hours earned under the maternity/paternity policy, compensatory time for travel, and religious compensatory time programs; the 400-hour total also includes regular credit hours.

G. The compensatory time worked will be added to the employee's production time for the biweekly period in which the time was worked.

H. Compensatory time must be earned in advance of being used, except as provided in Section 4(B) of this Article.

I. Supervisory approval is required to earn compensatory time on the same day an employee uses sick or annual leave due to illness.

J. An employee may not earn compensatory time on any normal business day until the employee has completed their basic work requirement.

K. The combined amount of compensatory time that may be earned on Saturdays and Sundays during any one biweek is 16 hours.

L. First year employees may be considered eligible for compensatory time when it is determined that they meet the criteria for eligibility of paid overtime in accordance with the overtime rules.

M. Compensatory time may not be earned during an employee's regularly scheduled hours on a holiday; compensatory time may, however, be earned for hours worked outside of the regularly scheduled hours on a holiday (see policy regarding working on a holiday).

N. Compensatory time may be worked between 5:30 a.m. Monday through Friday, and from 5:30 a.m. to 10:00 p.m. on Saturday, Sunday, and holidays.

Section 2: Use of Compensatory Time

A. The use of compensatory time will follow the same guidelines as annual leave in that the use of compensatory time must be approved in advance except when the government is on unscheduled leave.

B. Compensatory time earned must be used no later than 26 pay periods after the pay period in which it was earned.

C. Compensatory time not used during this period will be forfeited without pay unless the employee is covered under the Fair Labor Standards Act, in which case the forfeited compensatory time will be paid at the rate it was earned.

D. Compensatory time (except religious and travel) may not be used in the pay period in which it is earned; comp time earned prior to the pay period may be used in the same biweek that additional comp time is earned.

Section 3: Maternity/Paternity Compensatory Time

A. In addition to the compensatory time described above, subject to supervisory approval and the Office of Human Resources Maternity/Paternity (Mat/Pat) Policy, an expectant parent may elect to work maternity/paternity (mat/pat) compensatory time in order to accrue and use compensatory time for maternity/paternity reasons.

B. Mat/pat compensatory time must be used within 26 pay periods of being earned.

C. Mat/pat compensatory time not used during this period will be forfeited without pay unless the employee is covered under the Fair Labor Standards Act, in which case the forfeited compensatory time will be paid at the rate it was earned.

D. Employees may only exceed the maximum 80-hour biweek to biweek compensatory time carryover limits for mat/pat purposes; however, under no circumstance can an employee carryover more than 160 hours from one biweek to the next.

Section 4: Religious Compensatory Time

A. The employee must submit a request for religious compensatory time off in writing in advance of the religious observance. This will be done using the automated time and attendance system and/or by email to the employee's first-line supervisor or the supervisor's designee. The request should include the following information (if using the time and attendance system, include it in the remarks block):

   1. The name and/or description of the religious observance for which the employee's personal religious beliefs require him or her to be absent from work;

   2. The date(s) and time(s) the employee plans to be absent to participate in the religious observance; and

3. The date(s) and time(s) the employee plans to earn religious compensatory time off to make up for the absence within 13 pay periods before or after the religious compensatory time off will be used.

B. Religious compensatory time may be earned either before or after the absence from work. If religious compensatory time off is to be earned before the absence, it must be earned within the 13 pay periods preceding the pay period in which the targeted religious observance commences and must be linked to specific dates and times for future use, and compatible with Agency mission requirements. If religious compensatory time off is to be earned after the absence, it must be earned within 13 pay periods after the pay period in which the employee used the religious compensatory time off. The 13 pay periods are calculated beginning with the first pay period beginning after the date on which the employee used the religious compensatory time off.

C. An employee's request for religious compensatory time off should not be granted without simultaneously scheduling the hours during which the employee will work to earn the compensatory time.

D. The employee shall provide management a clear record of the employee's adjusted work schedule and appropriately code religious compensatory time off earned and used on their timesheet(s) in the automated time and attendance system.

E. An employee may only accumulate the amount of religious compensatory time off needed to cover the specific dates and times for which the employee has submitted a request for religious compensatory time off.

F. If the employee fails to earn religious compensatory time off within 13 pay periods after taking religious compensatory time off, as stated in the agency policy, the agency may take corrective action to eliminate or reduce the negative balance by making a corresponding reduction in the employee's balance of compensatory time off for travel, compensatory time off in lieu of regular overtime pay, time off awards, credit hours, and annual leave. The balance may also be adjusted by converting the religious compensatory time off to leave without pay which will result in an indebtedness that is subject to debt collection procedures.

G. If an employee does not use their earned religious compensatory time off as planned, the balance of unused religious compensatory time off may be redirected toward an approved future religious observance; however, the employee may not earn any additional religious compensatory time off until the retained amount of religious compensatory time off has been used or the need to earn additional religious compensatory time off has been properly established and documented.

H. Accumulated religious compensatory time off that is not used as planned is not subject to forfeiture; unused religious compensatory time off hours remain to the employee's credit until used, or the employee's separation or transfer.

I. In the event that an adjustment to the date(s) and time(s) of planned religious compensatory time worked is required due to unforeseen circumstances, the employee must submit a revised request to reflect changes for approval.

J. The statutory pay cap, which applies to overtime and earning regular compensatory time, does not apply to earning religious compensatory time.

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ARTICLE 27: CREDIT HOURS

Section 1: General Usage

A. Employees may work/earn credit hours within the rules or limits of a flexible work schedule program. Credit hours are worked/earned and used at the election of the employee. Once earned, credit hours may then be used in place of working regularly scheduled hours and to satisfy the 80-hour biweekly work requirement. Credit hours may be earned when the employees would otherwise be eligible to work overtime or compensatory time and may be used in the same manner as annual leave.

B. The USPTO only uses credit hours in two situations. The first, referred to as IFS credit hours, is to allow employees on flexible schedules, such as the Increased Flextime Schedule (IFS) to vary their workdays within the same pay period. Under this situation, credit hours are used during the pay period and not carried over from pay period to pay period. The second situation, referred to as regular credit hours (non-IFS credit hours), concerns those employees who are prevented, by reasons of the Federal pay cap, from earning overtime or compensatory time off in lieu of overtime. These employees must be on a flexible schedule, including the IFS, and they may carry over up to 24 credit hours (prorated for part time) from one pay period to the next.

Section 2: IFS Credit Hours

A. IFS credit hours can only be earned if an employee participates in the IFS work schedule which provides for credit hours and are earned and used at the election of the employee within the same pay period.

B. If permitted to earn IFS credit hours, the following apply to IFS credit hours:

1. Employees may only work credit hours on one weekend day per calendar week (i.e., employees may not work credit hours on the first Sunday and first Saturday);

2. Advance approval to work credit hours is not required, except for credit hours worked on a holiday;

3. Since Sunday is not a regular workday, credit hours used may not be claimed for any hours on Sunday;

4. Credit hours earned do not count toward the 80-hour requirement; only credit hours used during the biweek can be applied toward the 80-hour requirement;

5. Credit hours can be earned or used as a minimum of 15 minutes to a maximum of 12 hours per day;

6. Hours voluntarily worked by employees on Sunday should be recorded as credit hours; and

7. Credit hours are used during the pay period and not carried over from pay period to pay period.

Section 3: Regular Credit Hours (i.e., non-IFS Credit Hours)

A. To be eligible to earn regular credit hours, employees must be on a flexible schedule and the following applies to regular credit hours, unless the business unit further restricts the ability to work regular credit hours:

1. Credit hours do not have to be used within the same pay period they are earned, with a maximum of 24 credit hours that may be carried over from one pay period to the next for a fulltime schedule (the carryover limit is prorated for a part-time schedule);

2. Limited to employees who cannot work (or have reduced access to) regular overtime as a result of the Federal pay cap or business unit restriction of earning comp time and overtime;

3. Advance supervisory approval is required;

4. Credit hours earned do not count toward the 80-hour requirement; only credit hours used during the biweek can be applied toward the 80-hour requirement; and

5. Credit hours can be earned or used as a minimum of 15 minutes to a maximum of 12 hours per day.

B. Since Sunday is not a regular workday, credit hours used may not be claimed for any hours on Sunday;

1. The maximum number of credit hours that may be earned in a single biweek is the number of hours of compensatory time that the employee was prevented from earning because of pay restrictions during the biweek.

2. Total number of credit and comp hours that can be carried over is 80 hours.

Section 4: Credit Hours and Training

Credit hours may not be earned for training or homework (for training) if the training or homework is required by an agency because required training does not constitute hours that an employee elects to work with supervisory approval. [See 5 U.S.C. 6121(4).]

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ARTICLE 28: ANNUAL LEAVE

Section 1: Requesting Accrued Annual Leave

A. Scheduled Leave: An employee must submit an annual leave request in the electronic time and attendance system to the immediate supervisor or designee prior to the absence. Failure to request annual leave in advance shall not be the sole basis for a denial of the request. However, frequent failure to follow proper annual leave procedures may be the basis for denial of annual leave requests or disciplinary action. In order to address its employee coverage and coordination needs, a business unit may establish deadlines for requesting annual leave for July and August as well as for the week of Thanksgiving through the first full week of January to fairly distribute leave. If all leave requests cannot be granted, the Supervisor will first approve leave based on who worked the period last year and then by seniority. Leave requested after the deadline will be granted on a first come first served basis as allowed by customer service coverage needs.

1. Requests made the day of the absence may be made outside of the time and attendance system. Messages left for the supervisor do not ensure that the leave has been approved.

2. Once approved, the employees need to follow Section B(2) (below). The employee has a responsibility to comply with this requirement; however, in certain circumstances an employee request made immediately prior to the absence will be considered and may be approved. Failure to follow proper annual leave procedures may be the basis for denial of annual leave requests and other appropriate action.

B. Unscheduled Leave:

1. There may be emergency situations where an employee is unable to request leave in advance. When this happens, employees must contact their supervisor or authorized designee as soon as possible in order to obtain approval for their use of leave. Management retains discretion over whether to approve use of annual leave. Messages left for the supervisor do not ensure that

the leave has been approved. If the leave is denied, see Section 5 below.

2. Upon returning to work, an employee must complete a leave request in the time and attendance system to document the unscheduled annual leave.

C. Verbal requests that are denied under this section shall be memorialized in writing and communicated to the requesting employee as soon as practical through email or the time and attendance system.

Section 2: Conflicting Requests for Annual Leave

Supervisors will first consider any operational needs when evaluating conflicting requests for annual leave. After that, considerations will be given to those who requested leave earliest in writing, the number of requests for the same time period, reason for leave, seniority, and past leave usage. This process excludes periods set out in § 1 A (above) of this Article, which allows a supervisor to establish a date by which leave must be requested for certain periods of the year.

Section 3: Cancellation of Annual Leave

Management reserves the right to change or cancel approved leave of an employee due to operational needs. Similarly, an employee on approved leave deciding to work should contact his supervisor to indicate that the leave will not be used.

Section 4: Forfeiture of Annual Leave

It is the responsibility of employees to consult with their supervisors throughout the leave year to ensure that leave may be scheduled appropriately so that annual leave will not be forfeited.

Section 5: Denial of Requests for Annual Leave

When the supervisor denies an employee's request, the employee is expected to report to work as scheduled (for denied requests for scheduled leave), or as soon as possible thereafter (for denied requests for unscheduled leave). If the employee does not timely

report to work, the employee may be considered Absent Without Leave (AWOL) for the time which the employee does not report to work in increments of 15 minutes, and may also be subject to discipline.

Section 6: Substituting Sick Leave for Annual Leave

Whenever circumstances within a period of annual leave would justify the granting of sick leave rather than annual leave, the leave-approving official may grant substitution of sick leave. Application for substitution must be made not later than two working days after the employee returns to duty and must be supported by such evidence as required for a request for use of Sick Leave as set forth in Article 29, Section 2.

Section 7: Advanced Annual Leave

A. Advanced leave is approved at management's discretion. The amount of annual leave that may be advanced is limited to the amount of annual leave an employee would accrue in the remainder of the leave year. Employees do not have an entitlement to receive advanced annual leave.

B. When an employee who is indebted for advance annual leave separates from Federal service, they are required to repay the amount of advance leave for which they are indebted.

C. Requests for advanced annual leave must specifically note that the employee is requesting advanced annual leave. Simply requesting approval of more annual leave than an employee's accrued balance is not a request for advanced annual leave.

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ARTICLE 29: SICK LEAVE

Section 1: General

An employee shall earn and use sick leave in accordance with applicable laws, regulations, and this article. An employee may use sick leave for absences due to medical, dental, optical examinations or treatment, incapacitation and serious health condition due to physical or mental illness, injury, pregnancy, childbirth, adoption of a child, or certain circumstances involving communicable diseases. Sick leave may be used to care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, optical examination or treatment, as well as to care for a family member with a serious health condition, to arrange and attend funeral services for a family member.

Section 2: Requesting Sick Leave

A. Scheduled Leave: Sick leave shall be requested in advance where possible, such as for routine dental, optical, or other medical examinations. An employee must request sick leave through the time and attendance system to their immediate supervisor or authorized designee prior to the anticipated sick leave. The leave request must have a reason justifying the leave.

B. Unscheduled Leave: There may be emergency situations where an employee is unable to request leave in advance. When this happens, employees must contact their supervisor or authorized designee as soon as possible in order to obtain approval for their use of leave. Management retains discretion over whether to approve use of sick leave. Messages left for the supervisor do not ensure that the leave has been approved. If the leave is denied, see Section 5 below.

   1. Upon returning to work, an employee must complete a leave request in the time and attendance system to document the unscheduled sick leave.

   2. Verbal requests that are denied under this section shall be memorialized in writing and communicated to the requesting

employee as soon as practical through email or the time and attendance system.

C. Sickness While at the Work Site: Employees who get sick after the workday begins must request leave from their supervisor, or in the supervisor's absence, from an authorized designee prior to leaving the work site. The employee must submit a leave request through the time and attendance system prior to leaving the work site, whenever practicable, or as soon as possible thereafter, when not practicable.

D. Employees Unable to Request Leave: When employees are unable to notify their supervisor of their inability to report for duty or inability to request leave, another person may act on their behalf to notify the supervisor of the employee's absence.

E. Requesting Leave Lasting More Than One Day: Employees are required to call in to report continued sickness on each business day they are absent unless sick leave for a continued period has been approved.

F. Denial of Sick Leave Request:

1. When an employee's request for sick leave is denied, the employee is expected to report to work as scheduled or as soon as possible thereafter. If the employee does not report to work as soon as possible, the employee may be charged Absence Without Leave (AWOL). Denial of a sick leave request will not preclude a later change in leave status for good and sufficient reasons.

2. The employee is expected to report to work as scheduled, or as soon as possible thereafter (for denied requests for unscheduled leave). If the employee reports as soon as possible and is not able to flex under a flexible schedule, the period between the beginning of the work schedule or the time the employee is due to report to work and the actual reporting time will be charged to the employee’s balance of accrued annual leave, comp time off, or credit hours. If the employee does not have accrued annual leave, comp time or credit hours to use, the employee may request leave without pay. If the employee does not report to work as soon as possible, the employee may be considered

Absent Without Leave (AWOL) for the time which the employee does not report to work in increments of 15 minutes, and may also be subject to discipline.

G. Medical Certificates

1. An acceptable medical certificate is a written statement signed and dated by a registered practicing physician or other appropriate health care provider certifying the incapacitation, examination, treatment, or the period of disability of an employee while the employee was undergoing professional treatment by the physician or other health care provider.

2. Employees may be required to furnish a medical certificate to substantiate requests for approval of sick leave for an absence in excess of three workdays, or for a lesser period when the Agency determines it is necessary.

Section 3: Leave Restriction

Where the Agency has reasonable grounds to believe that an employee has abused sick leave, a warning may be issued informing the employee that if the described abuse continues, sick leave restriction may be imposed. If leave restriction is subsequently imposed, written notice will be provided explaining that, for a stated period not to exceed six months, a medical certificate must accompany requests for approval for sick leave. At the end of the stated period, the Agency shall review the employee's situation and give the employee notice of rescission or notice of renewal of the restriction due to continued abuse.

Section 4: Substituting Annual Leave for Sick Leave

Consistent with applicable laws and regulations and this Agreement, an approved absence, which would otherwise be chargeable to sick leave, may be changed to annual leave the pay period when used or no later than the following pay period at the option of the employee. Employees may not retroactively substitute annual for sick leave for sole purpose of avoiding forfeiture.

Section 5: Advanced Sick Leave

At the Agency's sole discretion employees may be granted advanced sick leave in compliance with USPTO policies. The following criteria may be considered:

A. Whether the employee is expected to return to duty for a period sufficient to repay the leave and the employee has sufficient funds in his or her retirement account or any other source of monies owed to the employee by the Government to reimburse the Employer for the advance should the employee not return to work.

B. Whether the employee has provided acceptable medical documentation.

C. Whether the employee is subject to leave restriction as described above.

D. Leave usage history.

Requests for advanced sick leave must specifically note that the employee is requesting advanced sick leave. Simply requesting approval of more sick leave than an employee's accrued balance is not a request for advanced sick leave.

Section 6: Amounts of Sick Leave

A. Using for one's own medical needs

1. No limit on use of available sick leave for own medical needs

2. Up to 240 hours (prorated for part time) advanced leave for employee medical emergency, illness, pregnancy, child birth, adoption

3. Up to 104 hours of advanced leave (prorated for part time) when using for own medical appointments

B. Using sick leave for general family care and bereavement

1. Available sick leave: 104 hours (prorated for part time) per leave year

2. Up to 40 hours of advanced leave (prorated for part time); except under the Maternity/Paternity Policy- policy which allows for up to a total of 104 hours of advanced leave.

C. Using sick leave for care of a family member with a serious health condition.

1. Available sick leave: 480 hours (prorated for part time) per leave year. Any leave taken for general family care or bereavement must be subtracted from this amount in accordance with regulations and policy.

2. Advanced: 240 hours (prorated for part time) in accordance with regulations and policy.

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ARTICLE 30: MATERNITY/PATERNITY

Section 1: USPTO Policy

Generally, the USPTO allows for absences of up to 6 months for maternity/paternity purposes (i.e., for pregnancy, childbirth, adoption, and foster care) for non-probationary, non-trial employees. However, in considering the length of the absence, the operational needs of the Agency will be taken into account. In accordance with applicable laws, regulations, Agency policy and this Agreement, employees may use any combination of available paid parental leave, sick leave, annual leave, advanced sick and/or annual leave, donated leave from the voluntary leave bank or transfer programs, compensatory time, credit hours (if applicable), or leave without pay (LWOP) for maternity/paternity purposes. The use of FMLA when combined with other leave in this section may result in a total of 9 months off. See the USPTO Policy for more information.

Section 2: Sick Leave Related to the Birth of a Child

In accordance with applicable laws and regulations, a birth mother is entitled to use accrued sick leave for her own medical appointments, hospitalization, her period of incapacitation following childbirth, and medical appointments or illness of the infant. Depending upon available sick leave balances, a family member (as defined in the Agency Maternity/Paternity Policy) is entitled to use sick leave up to a maximum of 12 work weeks (480 hours for a full-time employee) to accompany the mother to prenatal appointments, to be with her during her period of hospitalization, and/or to care for her during her incapacitation period. Supervisors may request administratively acceptable evidence of the mother's period of medical incapacitation for the use of sick leave. Employees may not use sick leave to bond with or care for a healthy baby.

Section 3: Sick Leave to Care for a Family Member

An employee is entitled to use a total of 12 weeks of sick leave each leave year to care for a family member with a serious health condition. An employee is entitled to use up to 13 days of the 12 weeks of sick

leave for general family care purposes, i.e., to care for a child who has a routine illness, to take a child to medical, dental, or optical appointments or well-baby doctor visits. An employee is entitled to no more than a combined total of 12 weeks of sick leave each leave year for all family care purposes.

Section 4: Sick Leave for Adoption of a Child

In accordance with applicable laws and regulations, an employee may use accrued sick leave for purposes relating to the adoption of a child. An adoptive parent may use sick leave for any purpose that would allow the adoption to proceed including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and for any other activities necessary to allow the adoption to proceed. Adoptive parents who voluntarily choose to be absent from work to bond with an adopted child may not use sick leave for this purpose. Parents may use paid parental leave (see Section 6), annual leave or leave without pay for these purposes.

Section 5: Family and Medical Leave Act (FMLA)

In accordance with the provisions of the FMLA, eligible employees on a full-time or part-time schedule who have worked in the Federal Service for at least 12 months (not required to be consecutive and not required to be at the same agency) are entitled to use up to 12 work weeks (480 hours for a full-time employee) of leave without pay for maternity/paternity purposes, to include bonding with the child. Paid parental, annual or sick leave, as appropriate, may be substituted for leave without pay in accordance with Agency policy and this agreement. An employee's entitlement to leave under FMLA for maternity/paternity purposes expires 12 months following the date of birth of a child or placement of a child. Employees must invoke their entitlement to leave under FMLA (i.e., a supervisor or manager may not place an employee on leave under FMLA). Unless the employee is incapacitated at the time, an employee may not ordinarily retroactively invoke FMLA.

Section 6: Paid Parental Leave

In accordance with applicable laws and regulations and Agency policy, full-time and part-time employees that are eligible for FMLA leave are eligible for paid parental leave which is triggered by the occurrence of

a birth or new placement (for adoption or foster care) event. Paid parental leave is limited to 12 weeks and may only be used during the 12-month period beginning on the date of the birth or placement. An employee will be able to use the full amount of paid parental leave (12 weeks) only to the extent that there are 12 weeks of available FMLA unpaid leave granted for a birth or placement of a child during the 12-month period commencing on the date of birth or placement. Employees are not required to use annual leave or sick leave before requesting paid parental leave. Prior to using paid parental leave, employees are required to enter into a written agreement to work for the USPTO for 12 weeks after the use of paid parental leave concludes. Employees requesting paid parental leave are required to complete and submit the Parental Leave Request Form and the Agreement to Complete 12-Week Work Obligation. Failure to complete the 12-week work obligation will result in an employee being required to reimburse the USPTO contributions paid to maintain the employee's health insurance coverage under the Federal Employees Health Benefits (FEHB) Program during the period that paid parental leave was used. See Paid Parental Leave Policy for more information.

Section 7: Voluntary Leave Bank Program (VLBP)

Employees may be eligible for the VLBP if they are a current leave bank member and have exhausted accrued sick leave and annual leave, and they expect to be on LWOP for at least 24 hours. Donated leave from the VLBP may be used during a medical emergency, such as complications during pregnancy, incapacitation after delivery, or to care for a child with a medical emergency. Donated leave may not be used to bond with or care for a healthy baby.

Section 8: Voluntary Leave Transfer Program (VLTP)

Employees may be eligible for the VLTP if they have exhausted all accrued sick leave and annual leave, and they expect to be on LWOP for at least 24 hours. Employees may only receive leave voluntarily donated by other employees under the VLTP during a medical emergency, such as complications during pregnancy, incapacitation after delivery, or to care for a child with a medical emergency. Donated leave may not be used to bond with or care for a healthy baby.

Section 9: Notice to Supervisor

Employees must request leave, using the time and attendance system when possible for maternity/paternity reasons, indicating the type of leave and the probable duration, normally at least 30 days in advance or when practicable. It is understood that unanticipated medical circumstances and issues may arise during pregnancy that will require an employee to alter their request and not allow 30-day advance notice.

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ARTICLE 31: ADMINISTRATIVE LEAVE FOR VOTING, COURT, AND BLOOD DONATIONS

Section 1: Absence for Voting and Registration

Federal regulations and agency policy may allow you to claim administrative leave for voting. See Agency memo for additional information.

Section 2: Court Leave

Federal regulations and agency policy may allow employees to claim administrative leave for jury duty or for testifying as a witness. See Agency policy for additional information.

Section 3: Blood Donations

Employees who donate blood to a blood donation facility (e.g., the Red Cross, a nonprofit blood bank, or a local hospital), including those that participate in aphaeresis (platelet donation), may be granted up to four hours excused absence from duty to make the donation. This time may be used for the time required to travel to and from the donation site (if appropriate), the actual donation, and recovery from the donation. Time in excess of four hours may be granted, at the employee's request, as annual leave, sick leave, accrued compensatory time, accrued credit hours, or leave without pay (LWOP).

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ARTICLE 32: LEAVE WITHOUT PAY AND FMLA

Section 1: In General

In most circumstances, Leave Without Pay (LWOP) is not an entitlement, however, an employee who desires leave but does not have an adequate leave balance in the appropriate leave category may request leave without pay.

Section 2: Purpose

Leave without pay (LWOP) is a temporary non-pay status and absence from duty. LWOP will only be granted at management discretion, except where provided by law.

A. LWOP may affect entitlement or eligibility for certain Federal benefits.

B. LWOP will only be implemented at an employee's request, or unless it is imposed consistent with applicable law and regulation.

C. LWOP will be administered in accordance with applicable laws and regulations.

Section 3: Requesting Leave Without Pay

Consistent with applicable regulations and this Agreement, an employee who desires to take leave but does not have enough leave in the appropriate leave category to cover the absence may request LWOP. Note, however, that an employee may be approved for LWOP even if they have a small leave balance in the category for which LWOP is being requested plus available non-religious compensatory time or credit hours. To request LWOP, employees must submit a completed USPTO approved leave request via the time and attendance system. The reason for the request must be included on the leave request. LWOP requested in lieu of sick leave is subject to the medical certificate requirements in Article 28, Section 2(G). LWOP will generally be granted only in extraordinary circumstances and not merely for the personal convenience of the employee.

Section 4: Requests for Leave Without Pay for 30 Days or More

If the employee requests LWOP for 30 days or more, it must be requested in writing and the employee's supervisor must initiate a personnel action request. The request must include a written statement fully explaining the reasons for the request, and, if the request is made for medical reasons, a statement from the physician indicating the need for the absence and the prognosis of the employee's ability to return to work at the end of the period of LWOP. Such requests will generally be granted only in extraordinary circumstances.

Section 5: FMLA

A. The Family Medical Leave Act (FMLA) allows employees to use up to a total of twelve weeks (480 hours) of leave without pay and/or accrued sick or annual leave for their own serious health condition, for the birth of a child, new adoption or fostering of a child, or the care of a spouse, son, daughter, or parent who has a serious health condition. A serious health condition includes such conditions as cancer, heart attacks, strokes, diabetes, clinical depression, severe injuries, Alzheimer's disease, pregnancy, and childbirth. The Agency would need additional medical documentation in order to determine whether the employee, or a family member as listed above, has a serious medical condition that qualifies under the FMLA.

B. If the employee feels they qualify and wish to invoke their entitlements under the FMLA, the Agency can provisionally approve a request for leave under the Family Medical Leave Act (FMLA) for up to twelve weeks (480 hours) in a twelve-month period of time, pending the employee's submission of medical documentation that supports either their incapacitation for duty for the period(s) of leave or their family member's serious health condition. If the employee decides to invoke the FMLA, they are required to provide their supervisor with administratively acceptable medical documentation within fifteen days of their invocation and first use of leave under FMLA.

C. The reference to 480 hours is for a full-time employee; the amount is prorated for employees working a part-time schedule.

D. See Article 30 on maternity and paternity leave for information on paid parental leave.

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ARTICLE 33: REORGANIZATION AND REALIGNMENTS

Section 1: Definitions

A. Reorganization means the planned change in, or redistribution of, functions or duties in an organization. Individual job functions or duties do not necessarily change.

B. Realignment is the movement of an employee and employee's position when: an organization change (such as reorganization or transfer of function) occurs, the employee stays in the same agency, and there is no change in the employee's position, grade or pay.

Section 2: Association Notification

Before implementing a reorganization or realignment of more than three people, the Agency will notify the Association of the change, indicating the positions involved and the date of the change. The notice will be given at least two weeks prior to the change when practical.

Section 3: Consultation with Association

Before implementing a change pursuant to this article, the Agency will consult with the Association, upon request. The Association must request such consultation within seven days of the notice from the Agency. Any meeting must take place within seven days of the request. The Agency will consider issues and suggestions raised by the Association and will inform the Association of the disposition of these issues before reorganizing or realigning.

Section 4: Art Unit Alignments within a Technology Center

A. Notwithstanding any other provision of this Article, the Agency may realign patent examiners within each TC to address staffing imbalances. This includes the ability to create, combine, or abolish Art Units.

B. The Agency will provide POPA a list of all art units with changes to personnel as a result of this process.

Section 5: Physical Relocations

Any physical relocation that will occur as a result of a realignment or reorganization will be handled in accordance with Article 36: Office Space.

Section 6: Changes to Performance Appraisal Plan

If a reorganization or realignment leads to the need to change the elements, major activities, or performance standards of a performance appraisal plan, the changes will be handled in accordance with the mid-term bargaining provisions of this agreement to the extent that negotiations are required by law.

Section 7: Impact of other changes such as new duties

If there is a foreseeable adverse impact, not addressed above, the Agency will authorize a reasonable period to adjust to any changes following a reorganization or realignment.

Section 8: Employee Initiated Realignments

A. At any time, employees may submit a written request for realignment which expresses their desire for voluntary movement to a new supervisor, such as moving between art units. Patent examiners must use the Examiner Requested Transfer form.

B. In making the decision on the request, the Agency will consider at least the following: the reasons for the request, if provided; the business need for the employee in both the losing organization and the gaining organization; and, the current performance of the employee.

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ARTICLE 34: REASSIGNMENTS

Section 1: Definition and Scope of Article

A. A reassignment is a permanent change in an employee's position to another without promotion, demotion, or break in service. This Article covers reassignments from one bargaining unit position to another position within the bargaining unit.

B. Decisions concerning reassignments may, among other things, take into account the goals of increasing career-related flexibility, mobility, minimizing the need for involuntary reassignment, and efficient and effective administration of programs.

C. The Agency will only make involuntary reassignments when it determines it is appropriate due to business considerations.

Section 2: Hardship

Any employee who feels a hardship will be created by a reassignment shall request and be granted a prompt meeting with their supervisor who will give fair consideration to the employee's concerns.

Section 3: Avoidance of Reductions in Force

Nothing in this Article shall preclude reassignments in lieu of reductions in force (RIF). The Agency will strive to reassign employees to appropriate positions if they are adversely affected by reductions-in-force, downsizing, or other types of displacement.

Section 4: Reducing Impact Due to Reassignment

The Agency agrees to minimize the impact of the reassignment on an individual employee caused by the introduction of new equipment, processes and workload changes including, when necessary, retraining of individual employees adversely affected.

Section 5: Notification to Employees

Normally, the Agency will inform an employee of a reassignment one week in advance of the effective date.

Section 6: Employee Requested Reassignments

A. At any time, employees may submit a written request for reassignment which expresses their desire for voluntary reassignment.

B. In making the decision on the request, the Agency will consider at least the following: the reasons for the request, if provided; the business need for the employee in both the losing organization and the gaining organization; and, the current performance of the employee.

Section 7: Agency Initiated Reassignments due to Staffing or Workload Needs

When the Agency determines that a staffing or workload imbalance or other work-related need exists, the Agency may reassign bargaining unit employees from one position to another.

A. The Agency will identify the position(s) and organization(s), as opposed to employees, from which the employees to be reassigned will come;

B. In some instances, management may need to reassign the entire group of employees.

C. In other instances, management may need to reassign one employee or a portion of the group. In these instances, the Agency will:

1. Designate the grades of the employees to be reassigned if there is a need to balance experienced employees versus more junior employees.

2. Assign employee(s) to the appropriate position(s) based on business needs.

3. When management has determined that a group of employees are equally appropriate for a reassignment, management will ask for volunteers from these employees and determine which employees to reassign. Consideration may be based on qualifications, grade level, seniority, or other appropriate factors.

Section 8: Other Agency Initiated Reassignments

Based on issues specific to an employee, the Agency may reassign employees for reasons such as reducing the likelihood of interaction between employees or avoiding the appearance of impropriety. These reassignments may be made immediately, without prior notice.

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ARTICLE 35: REDUCTION IN FORCE (RIF)

Section 1: Definition

A Reduction-In-Force (RIF) occurs when the Agency releases an employee from their competitive level via separation, demotion, furlough for more than 30 days, or reassignment requiring displacement; when lack of work or funds, reorganization, reclassification due to change in duties, or the need to make a place for a person exercising reemployment or restoration rights requires the Agency release the employee. RIF procedures do not apply to the return of an employee to their regular position following a temporary promotion or to the release of a reemployed annuitant. RIF procedures do not include reclassification of a position, other than as provided in 5 C.F.R. 351, resulting in a downgrade even though RIF procedures may be used in those situations.

Section 2: VERA and VSIP Authority

A. If the agency notices a decline in workload or other factor that could lead to a potential RIF, the Agency will request Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payment (VSIP) authority for the affected employees.

   1. The Agency will provide a copy of the VERA and VSIP request, including all supporting documents, to POPA and keep the association informed of progress.

   2. The Association will keep this information confidential until OPM responds and when the parties meet with the employees pursuant to Section 2(B) below.

B. Once OPM makes a final determination on the VERA/VSIP request, the parties will meet with the affected employees in the competitive area to discuss the issues leading to the request, OPM's disposition of the request, and provide information to employees regarding the process. If OPM approves the request:

   1. The Agency will provide the maximum VSIP incentive payment allowed by law unless the Chief Financial Officer determines that

the Agency cannot make these payments without significant harm to the operations of the Agency. In this event, the Agency will provide the maximum amount consistent with the operating needs of the Agency.

2. If the amount of funding cannot be presented to employees at the time of the meeting, it will be provided to the employees at least two weeks prior to any deadline for employees making decisions about whether to apply for VERA or VSIP.

3. Unless the Agency has a business-related reason for treating employees differently, the Agency will allow affected employees to apply for VERA and VSIP. If the number of applicants exceeds the available number of slots, applications will be accepted based on the employee's length of service computation date for leave, with the most senior employees being accepted first.

C. Management will also work to identify other areas of the office where employees can be reassigned and take other appropriate steps to avoid the need for a RIF.

Section 3: Association Notification

If there are not enough volunteers for VERA/VSIP, and the Agency cannot reassign the surplus employees, the Agency agrees to notify the Association when a final determination has been made to undergo a RIF affecting POPA bargaining unit employees. The information to be furnished to the Association will include the competitive level affected, the number of employees involved, the effective date, and the reasons for the action.

Section 4: Meeting with Employees

After presenting notice to POPA, management will meet with the affected employees to explain their rights under the statute, regulations and this Agreement.

Section 5: Provisions Applying to Employees Included in the Competitive Level

A. Employees will be given a maximum period of two weeks to review their Official Personnel Folders (OPF) to make sure that the

information contained in the OPF is accurate. This information will be used to produce the RIF register.

B. Employees receiving a RIF notice may use Agency equipment to conduct a job search.

C. Employees receiving a RIF notice may request up to 16 hours of administrative leave for interviews and job searches.

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ARTICLE 36: OFFICE SPACE

Section 1: Office Size

The Agency will continue to provide 150 sq. ft. offices to POPA bargaining unit members in existing space, including the Alexandria campus (except the concourse level) and the current regional offices.

A. All bargaining unit members GS 13 and above will be provided with private, wall enclosed offices.

B. Employees GS 12 and below:

1. The USPTO will provide separate wall-enclosed offices of approximately 150 square feet to employees GS 12 and below to the extent space permits.

2. Selection of employees to share offices shall be made in the reverse order of the priority for office selection as set out below and in accordance with the organizational footprint as discussed below.

Section 2: Moving between Offices in the same Facility

A. When required by management to move between buildings or offices at the same facility, employees will be instructed to pack personal and work-related belongings in boxes or packing crates provided by the Agency. Boxes and crates must be labeled in accordance with instructions provided by management.

1. The Agency will not be liable for personal belongings lost or damaged during the move.

2. Employees must move personal items that are too large to fit in the provided boxes or crates on their own. This includes personal furniture, pictures, and lamps.

3. Employees wishing to move their own personal belongings should remove them from the original office when packing and return them to the new office following the Agency move of work-related material.

B. The Agency will be responsible for moving all packed boxes/crates as provided by management to the employee's new office.

C. The employee will then unpack and test IT equipment to make sure it is working properly following the move.

D. Non-production Time

1. The employee may claim reasonable, actual non-production time for packing and unpacking work-related material.

2. This time does not include time for sorting material and discarding unneeded paper. These activities are considered part of the work process and not part of the office move.

Section 3: Office Selection

A. When multiple employees are being relocated, seniority will be used to determine exterior office assignments.

B. Priority shall be determined by: the grade of the employee; then by the degree of permanent signatory authority (if appropriate) the amount of time served in the employee's current and previous higher grades (as in the case of down-graded employees) while an employee of the USPTO; and finally, the length of service at the USPTO. Ties are broken by coin flip or other random process.

C. Notwithstanding paragraph B. above, if a group director (or equivalent level manager) desires to assign a room out of the agreed upon sequence of priority, the director may do so only if the variance is due either to: (i) a reasonable accommodation, or (ii) special requirements of the work.

Section 4: Move to Exterior Office

When external offices become available for employee use, employees will be allowed to move from internal to external offices based on the procedures in Section 2, above. If multiple offices are available at the same time, employees will be assigned space based on seniority of all USPTO employees as set out in Section 3 as applicable above.

Section 5: Organizational Boundaries

Organizations (excluding the Patent Examining Corps) may need employees to be collocated based on their duties to foster collaboration when space and resources allow. Management will set aside space for these organizations and the office selection and moving processes will be limited to these areas.

A. The Patents business unit has determined that patent examiners need not be collocated based on Technology Center or Art Unit designation. Thus, there will be one seniority list for all examiners and they will be assigned space, based on seniority as noted in Section 3, designated for patent examiners at the facility where they are assigned to work.

B. The Agency may determine the organizational level at which collocation is important for other business units.

C. Employees in training, including patent examiners, may be assigned to space conducive to learning and collaboration, and will be assigned a permanent work space following completion of training.

D. Space may be designated for staff when the collocation of the staff is done to support the mission of the Agency. If the location of the employee is not driven by work-related needs or reasonable accommodation, these employees will be assigned office space within the organizational footprint based on the criteria set out above.

Section 6: Prohibited Items in Personal Offices

A. The following items are a partial list of prohibited from personal offices in all USPTO facilities:

1. Refrigerators (except as part of a reasonable accommodation)
2. Space heaters (except as part of a reasonable accommodation) and other items with a heat source (coffee and tea pots, hot pots, hot plates, toaster ovens, etc.)
3. Aquariums
4. Upholstered furniture (unless provided by the office)

5. Any electronic gear with frayed cords

6. Candles or any other item that uses a flame

B. Additional items may be added by management with notice to the Association. Factors that would lead to a prohibition include items that would cause a heavy load on the electrical system or something that is considered unsafe by the lessor or the safety division.

C. The updated list of prohibited items can be found on the Office of Administrative Services website.

Section 7: Maintain Office in Good Order

Bargaining unit employees should be aware that individual work spaces may be inspected periodically for safety hazards, and that they may be required to take remedial action for items within their control.

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ARTICLE 37: REGIONAL OFFICES

Section 1: Consistency of Work Conditions

All policies and practices that apply to bargaining unit employees at the USPTO Alexandria Headquarters will also apply to the bargaining unit employees at the Regional Offices to the extent not inconsistent with location specific practices noted below. Unless otherwise specified below, the terms and conditions of this Article shall apply only to the Regional Offices. Local laws and regulations will be followed to the extent they are binding to the USPTO.

Section 2: Regional Office Location and Staffing

The USPTO has four current Regional Offices located in Detroit, Michigan; Dallas, Texas; Denver, Colorado; and San Jose, California. Management reserves its rights to establish additional offices, relocate existing offices, or close existing offices.

Section 3: Time Zones

A. Work schedule times, including core hours will be local times and all other times, unless otherwise specified in an agreement, will be Eastern Time.

B. Action counting, docket management, and OCIO maintenance times will apply to the Regional Office employees using Eastern Time.

C. In regional facilities where the USPTO can control HVAC, the USPTO will maintain the current HVAC hours. If the Regional Office moves or the USPTO opens a new office, the USPTO will provide HVAC during the same periods of the day as in the Alexandria campus, based on local time, to the extent possible.

Section 4: Site Accessibility and Security

A. POPA bargaining unit employees assigned to the Regional Offices will have access, subject to the appropriate security procedures, to the USPTO occupied areas of the Regional Offices except for areas that are normally restricted. These employees will have 24 hour

access to the facility to the extent this can be controlled by the USPTO.

B. Emergencies: Bargaining unit employees can Dial 911 (call goes to USPTO security command in Alexandria, VA, who will contact local support) or 9-911 (will contact the local police and the USPTO security command center) for help in an emergency.

C. Non-Emergencies

1. Between 7:30 AM and 5:30 PM weekdays, bargaining unit employees may contact their local USPTO Protective Security Officers or dial 2-7800 for the USPTO security command in Alexandria, VA, who will contact local support.

2. Outside of these hours, employees may contact the USPTO security command center in Alexandria, VA by dialing 2-7800 for assistance.

Section 5: Operating Status of Regional Offices

A. Weather or other Emergencies: The operating status of the Regional Offices due to weather or other emergency situations will be made and announced by USPTO management, and will consider the information from various sources including that provided by the local Federal Executive Board. Announcements relating to operating status (e.g., office closure, delayed opening, early dismissal) will be consistent with OPM's prevailing announcements for the same operating status in the National Capital Area.

B. Federal Holidays: The Federal Holiday schedule for the Regional Offices will be the same as at the USPTO Alexandria Headquarters except for holidays that are specific to the Washington, DC area such as Inauguration Day.

C. No Impact if Local or County Governments are Closed: Local or county government closures in Regional Office areas do not necessarily affect the USPTO operating status. For example, if the City of San Jose government closes for the last two weeks of December, the USPTO will continue to operate as normal.

Section 6: Facilities Issues

For facilities issues, employees will contact 571-272-2000 (x22000) or facilitieshelpdesk@uspto.gov.

Section 7: Amenities

A. Employees will have access to bicycle racks and storage if available.

B. Employees will have access to all pantries in their work areas.

1. Pantries in all locations occupied by bargaining unit employees shall be cleaned daily.

2. Refrigerators and Microwaves in USPTO controlled pantries will be cleaned each Friday.

3. Pantries shall include at least the following: full-size refrigerator, sink/disposal, microwave, counter space, cabinets and hot water.

C. The availability of fitness centers will be considered when evaluating new Regional Office locations.

D. The USPTO will provide health services to the extent practical.

E. The Agency will provide transit subsidy to eligible bargaining unit employees to the extent allowed by regulations and benefits are available at USPTO Alexandria Headquarters.

Section 8: Health and Safety Issues

A. The Agency shall ensure that the building meets environmental safety standards, and will be managed in accordance with all regulatory requirements (e.g. EPA and OSHA).

B. Local conditions may warrant temporary changes to conditions of employment that would address health, safety, and security concerns.

Section 9: Automation Tools

A. To the extent it is feasible, automated systems used by examiners in the Regional Offices will be equivalent to those used by examiners at the Alexandria Headquarters.

B. The Agency will offer a similar level of technical support, however, employees at the Regional Offices may have access to fewer on-site technicians.

C. Management will provide collaboration tools and private space for interaction between employees in the Regional Offices and Agency staff in the Alexandria Headquarters.

Section 10: Association Arrangements

A. POPA will be provided paid travel expenses and per diem, to travel to Regional Office to which bargaining unit members are assigned. The Agency will pay for up to two visits (one individual) per year per Regional Office to conduct representational activity. The timing of the trip and the traveler(s) are at POPA's discretion. The duration of this paid travel will be limited to what is reasonable to complete the representational activity. POPA will identify the nature of the representational activity when requesting paid travel. The number of trips may be used to travel to any Regional Office.

B. Appropriate space shall be provided at the Regional Offices for POPA to engage in private consultations with its bargaining unit employees on an as-needed basis. Also, private office space with access to collaboration tools will be made available to POPA representatives while they are on travel from USPTO Alexandria Headquarters. POPA representatives will be expected to take their assigned laptops.

C. The Agency shall provide one lockable bulletin board per pantry for POPA's use on floors with offices assigned to full-time bargaining unit employees. The agency may display EEO and other notices to employees in this bulletin board as mandated by law or regulation.

D. POPA may use all video conferencing and other collaboration tools for representational activities, including but not limited to, Association conferences, annual meetings and grievance meetings, meetings associated with proposed adverse actions or proposed disciplinary actions, adverse actions, disciplinary actions and investigatory meetings.

E. Video and audio communications between the parties shall not be recorded by either party without the express knowledge and

consent of the other party (this also applies to subtitles and transcripts). The parties shall inform the other party of each participant and/or attendee of any meeting held via video conferencing or desktop collaboration tools. This does not apply to training and town hall meetings with the Under Secretary or Deputy Under Secretary.

F. POPA will be provided required badges and keys, as necessary, for access to the Regional Offices' facilities.

Section 11: Visits from Employees not Stationed at the Regional Office

A. To reduce noise and other distractions, employees not stationed at a given Regional Office may only visit that office with advanced approval, including if the employee intends to work from that office, unless employees in the surrounding area are invited to participate in an event at the facility.

B. Employees teleworking near a Regional Office may request to telework from that Regional Office if there is a weather event or other emergency that prevents the employee from working at the approved alternate work site.

Section 12: Relocating Between Regional Offices and the Alexandria Headquarters

Examiners may request to change their duty station from one Regional Office to another or to or from a Regional Office and the Alexandria Headquarters (or within 50 miles of these locations) to work in the office or to be in the 50 mile radius program from that office. These changes will be handled in accordance with the Agreement on Examiner Transfers between Offices, negotiated between the parties and signed on August 14, 2017 or as updated by the parties.

Section 13: Closure of a Regional Office

If the Agency decides to close a Regional Office, the parties will follow the procedures set out in Permanent Closure of a Satellite Office agreement, which were agreed by the parties on September 25, 2014 or as updated by the parties. Note that the agreement uses "satellite

office" rather than "Regional Office." For the purpose of this Section, the terms are synonymous.

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ARTICLE 38: ACQUISITION OF NEW SPACE

Section 1: Acquiring New Space

When acquiring new space or when potentially remodeling space on the concourse level of the Alexandria campus, the Agency may provide all POPA bargaining unit members with a private, 120 sq. ft. wall enclosed office unless the nature of the employee's work requires something different.

Section 2: Location of Space

The Agency will consider transportation issues (such as location proximity to a major highway and access via public transportation systems) when acquiring new space. In addition, the Agency will consider other factors such as: cost of office space; the number and variety of restaurants; access to shopping; crime statistics in the surrounding area; availability of parking for staff and the general public; and other amenities in the area of the proposed location.

Section 3: Lighting

To the extent that space is built out to meet Agency needs, the Agency will consider both direct and indirect lighting (natural and artificial) throughout the area. Sidelights, transoms, and clerestory windows may be used around doorways to maximize daylight throughout the office.

Section 4: Avoidance or Reduction of Hazardous Material

When designing new space, the Agency will avoid the use of materials known to cause health concerns to the extent possible. The Agency will monitor and/or review industry literature to stay current on the materials that may fall into this category.

Section 5: Development of Floor Plans

When developing floor plans, the Agency will use best practices to use space efficiently to maximize productivity, air flow, and natural

lighting. Copy centers, pantries, and other similar facilities will be located on the interior to the degree possible.

Section 6: Use of Industry Standards

The Agency's agreement with the lessor will include provisions to promote the health and safety of employees, to include statements such as: cleaning, painting, general maintenance, and remodeling should be done in accordance with industry standards.

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ARTICLE 39: REPRODUCTION AND DISTRIBUTION OF THE AGREEMENT

The Office will make electronic copies of the Agreement available to all unit supervisors, management officials, and bargaining unit employees. The electronic copy will enable users to search by article and section. When the agreement becomes effective the Office will notify all bargaining unit employees concerning the location of the Agreement on the Intranet or a similar means of accessing the agreement.

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ARTICLE 40: DURATION AND RENEGOTIATION OF AGREEMENT

Section 1: Effective Date of the Agreement

This Agreement became effective on – Month/Day/Year

Commented [DD3]: Parties will agree to add the date following Agency Head Review

Section 2: Duration

This Agreement shall remain in effect until midnight on June 30th of the 4th calendar year after the effective date of the agreement (for example, if the effective date is August 12, 2020, it is effective until 12:01 am on July 1, 2024).

Section 3: Roll-Over Provision

After the initial term of this Agreement expires as set forth in Section 2 above, the Agreement shall automatically roll over for one-year periods on July 1st of each year, unless notice to terminate and renegotiate the Agreement is provided pursuant to Section 5 of this Article.

Section 4: Limited Reopening of the Agreement

A. On or before June 30th of the 2nd calendar year after the effective date of the Agreement, either party may reopen up to three articles by providing notice to the other party. The notice must include revised proposals for each article that is to be reopened.

B. If only one party requests reopening, the other party may, on or before July 31st of that year, provide notice of up to three articles that will also be reopened. Proposals for these three additional articles must be submitted to the opening party by July 31st.

C. Counter proposals may be submitted by both parties on or before August 31st of that year.

D. Bargaining will begin the first full week after August 31 and proceed pursuant to midterm bargaining procedures as set out in this agreement.

E. Any re-opened articles will remain in full force and effect until new articles are executed and Agency Head Review is completed.

Section 5: Procedures for Renegotiation of the Basic Agreement

A. In January or February of the 4th calendar year after the effective date of this Agreement, or any subsequent calendar year thereafter, either party may give notice of its desire to renegotiate this Agreement by providing notice to the other party.

B. The parties will use the same ground rules to negotiate a new agreement as used for this Agreement, except that the party reopening the agreement will deliver its substantive proposals within thirty days of the reopening notice and the responding party will have 90 days to submit counter proposals.

C. The parties will meet upon the request of either party to discuss alterations to ground rules. Revisions must be agreed to by March 15 following the notice of intent to renegotiate or the parties will use the existing ground rules plus any agreed upon change that was agreed to by March 15.

D. Neither party may insist to impasse, nor force the other party to participate in mediation or Panel proceedings on its proposed changes to the ground rules.

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APPENDIX A

The Agreements and Memoranda of Understanding listed below maintain their status as of the effective date of this agreement. Some may have been superseded in part by other MOU or Agreements, and others will be superseded in part by this agreement.

Patents Fulltime Telework Program 2022

OCFO and OCIO Telework Program for The Office of the Chief Financial Officer and The Office of the Chief Information Officer, a Memorandum of Understanding- March 03, 2022

IFP/S Work Schedule Operating Parameters for the USPTO Office of the Chief Financial Officer and Office of the Chief Information Officer, Memorandum of Understanding- March 03, 2022

Office of Policy and International Affairs (OPIA) Telework Program, Memorandum of Understanding - April 29, 2022

Patent Trial and Appeal Board (PTAB) Telework Program - March 24, 2022

Office of General Counsel (OGC) Telework Program - March 25, 2022

Internet Service Provider Reimbursement Program: A Memorandum of Understanding (MOU) between the United States Patent and Trademark Office (USPTO), The Patent Office Professional Association (POPA) - May 12, 2022

Supplemental Agreement on Awards between the Patent Office Professional Association (POPA) and the Office of the Chief Financial Officer- September 2015

United States Patent and Trademark Office (USPTO) Public Transportation Subsidy (PTS) Program (Effective October 2018)

Implementation of Increased Examination Time, Portfolio-Based Routing, and New Utility Examiner Performance Appraisal Plan- January 2019

MOU on Time and Attendance Tools, Communication, and Collaboration (TACC) - January 19, 2017

Regarding Recruitment Retention and Official Time – May 17, 2006

Agreement on Examiner Transfers between Offices – August 14, 2017

Permanent Closure of Satellite Office – September 25, 2014

Agreement Between the Patent Office Professional Association and the United States Patent and Trademark Office on the Permanent Closure of a Satellite Office - September 23, 2014

Research and Development MOU (Add when signed, stays on this page and Direct link)