

**University of California**

**And**

**University Council, American Federation  
of Teachers**

**AGREEMENT**

**February 29, 2016 – January 31, 2020**

## **PREAMBLE**

- A.** This Memorandum of Understanding, hereinafter referred to as "MOU", is entered into by The Regents of the University of California, a corporation, hereinafter referred to as the "University" and the University Council, American Federation of Teachers at the University of California, hereinafter referred to as "UC-AFT."
  
- B.** The purpose is to establish mutually the terms and conditions of employment and the rights of the parties to this MOU. It is the intent and purpose of the parties hereto that this MOU constitutes an implementation of the provisions of HEERA and provides for harmonious and constructive employment relations in the interest of the public, the students, the University, and the employees represented by UC-AFT.
  
- C.** The parties recognize that good faith collective bargaining is a means of achieving this purpose through a process which gives legitimate expression to the concerns of the unit members as represented by the University Council, American Federation of Teachers and of the University of California.

## **ARTICLE 1 RECOGNITION**

- A.** The University recognizes the University Council - American Federation of Teachers as the exclusive representative for matters within the scope of representation for all employees within the PERB-certified Non-Senate Instructional Unit (SF-HR-18 and SF-UM-371-H), as amended, at the University of California, excluding employees designated as managerial, supervisory, or confidential.
  
- B.** The unit includes all titles listed in this Section. The term "NSF" used throughout this contract applies to instructional faculty and non-faculty employees in the bargaining unit in any of the following titles and title codes:

Title Code	Title Name
1550	Lecturer in Summer Session
1600	Senior Lecturer - Potential Security of Employment - Academic Year – Part Time
1602	Senior Lecturer - Potential Security of Employment Academic Year 1/9 payment – Part Time
1605	Lecturer - Potential Security of Employment - Academic Year – Part Time
1606	Lecturer - Potential Security of Employment - Academic Year 1/9 payment – Part Time
1610	Senior Lecturer - Potential Security of Employment - Fiscal Year – Part Time

1615 Lecturer - Potential Security of Employment - Fiscal Year – Part Time  
1630 Lecturer - Academic Year  
1631 Lecturer - Academic Year – Continuing Appointment  
1632 Lecturer - Academic Year 1/9 payment  
1633 Lecturer - Academic Year 1/9 – Continuing Appointment  
1634 Lecturer - Fiscal Year  
1635 Lecturer - Fiscal Year – Continuing Appointment  
1636 Lecturer – Academic Year 1/10 payment  
1637 Lecturer – Academic Year 1/10 payment – Continuing Appointment  
1640 Senior Lecturer - Academic Year  
1641 Senior Lecturer - Academic Year – Continuing Appointment  
1642 Senior Lecturer - Academic Year 1/9 payment  
1643 Senior Lecturer - Academic Year - 1/9th Continuing Appointment  
1644 Senior Lecturer - Fiscal Year  
1645 Senior Lecturer - Fiscal Year – Continuing Appointment  
1646 Senior Lecturer – Academic Year 1/10 payment  
1647 Senior Lecturer – Academic Year 1/10 payment – Continuing Appointment  
1652 Lecturer Continuing Appointment – Temporary Augmentation  
1653 Lecturer Continuing Appointment – Temporary Augmentation –  
Academic Year 1/9 payment  
1654 Continuing Appointment – Temporary Augmentation 1/10 payment  
2210 Demonstration Teacher  
2211 Demonstration Teacher – Continuing Appointment  
2220 Supervisor of Teacher Education – Academic Year  
2221 Supervisor of Teacher Education – Academic Year – Continuing Appointment  
2222 Supervisor of Teacher Education – Fiscal Year  
2223 Supervisor of Teacher Education – Fiscal Year – Continuing Appointment  
2240 Coordinator of Field Work - Academic Year  
2241 Coordinator of Field Work - Academic Year – Continuing Appointment  
2245 Coordinator of Field Work - Fiscal Year  
2246 Coordinator of Field Work - Fiscal Year – Continuing Appointment  
2250 Field Work Supervisor - Academic Year  
2251 Field Work Supervisor - Academic Year – Continuing Appointment  
2255 Field Work Supervisor - Fiscal Year  
2256 Field Work Supervisor - Fiscal Year – Continuing Appointment  
2260 Field Work Consultant - Academic Year  
2261 Field Work Consultant - Academic Year – Continuing Appointment  
2265 Field Work Consultant - Fiscal Year  
2266 Field Work Consultant - Fiscal Year – Continuing Appointment  
2284 Child Development Demonstration Lecturer – Continuing Appointment  
2285 Child Development Demonstration Lecturer  
2427 Substitute Teacher  
2428 Substitute Teacher – Continuing Appointment  
2460 Teacher - Special Programs  
2461 Teacher - Special Programs – Continuing Appointment  
2650 Teacher - Lawrence Hall of Science

2651 Teacher - Lawrence Hall of Science – Continuing Appointment

- C.** The recognized unit may be modified by agreement of the parties to this MOU, pursuant to the rules and regulations of the Public Employment Relations Board. Any approved modification automatically becomes part of this MOU.
- D.** When the University establishes a new non-student, non-Senate instructional title/title code, it shall provide written notice to the UC-AFT of the bargaining unit designation. Within thirty (30) days following the UC-AFT's request, the University and the UC-AFT shall meet to discuss the unit status of the new title/title code. Any disputes regarding the proper bargaining unit status of such titles/title codes may be resolved through the existing PERB procedures.
- E.** If the University proposes to move a title/title code out of the bargaining unit, it shall give at least ninety (90) calendar days' notice of such action to the University Council - American Federation of Teachers, and upon request, shall meet and discuss concerning the bargaining unit status within thirty (30) calendar days of receiving such a request. If the parties are unable to reach agreement regarding the University's proposal to remove the title/title code, either party may submit the dispute to PERB for resolution.

Until the bargaining unit assignment is either agreed to by the parties or finally resolved through the PERB unit modification procedures, the affected title(s) shall remain covered by all provisions of this MOU.
- F.** If the University proposes to move an individual out of the unit during that individual's term of appointment, the University shall provide thirty (30) calendar days' notice to the AFT and upon request will meet and discuss regarding the individual's unit status. If the parties cannot agree on the individual's unit status, either party may pursue the designated PERB procedures for determining unit status. Until the dispute is resolved, the individual shall remain within the unit. The provisions of this section shall not apply in cases where the individual elects to accept a position outside the unit.
- G.** If the Academic Senate approves membership in the Senate to any appointees in the above titles, those appointees shall cease to be members of the Non-Senate Instructional bargaining unit.

- H. If an abolished unit title/title code is re-established, the University agrees that the title will be included in the unit.

## **ARTICLE 2 ACADEMIC FREEDOM**

- A. Academic freedom will extend to NSF through applicable provisions of the Academic Freedom Policy in effect at the time at the location of the NSF.
- B. Complaints alleging violation(s) of academic freedom may be reviewed in accordance with the procedures of the Academic Senate at the location of the NSF.

## **ARTICLE 3 ACADEMIC RESPONSIBILITY/DUTY**

### **A. STANDARDS OF CONDUCT**

The standards in this article will be applied to NSF in their role as teachers in the same manner as all other faculty in their role as teachers.

### **B. UNIVERSITY OF CALIFORNIA DUTIES AND RESPONSIBILITIES**

1. Academic freedom safeguards must be accompanied by an equally demanding standard of academic responsibility, requiring responsible service, consistent with the objectives of the University.
2. NSFs are responsible for the effective instruction of students. Aspects of effective instruction include but are not limited to teaching classes in accordance with course objectives and published schedules at locations approved by the University. The NSF is expected to be competent in her/his chosen field and be able to communicate effectively with students in a way that creates an environment that stimulates imaginative thinking and encourages critical and analytical skills. NSFs are expected to advise students on academic matters, and maintain a responsible, professional relationship with students. NSFs will carefully insure equal application of class standards and requirements. The NSF should maintain an active interest in the advances and current thinking in her/his subject area, and be able to relate such information to her/his teaching in an organized manner

through incorporation into course materials. By accepting responsibilities in all of the aforesaid areas, the NSF commits to excellence in education and dedication to student needs. Nothing in this section shall modify the provisions of Article 24 — Instructional Workload.

3. As members of the community of scholars at the University of California, NSF are expected to sustain an environment conducive to sharing, extending, and critically examining knowledge and values, in support of the department's academic mission. In addition, they are expected to exhibit respect and professionalism in the mutual exchange of ideas, opinions, and criticisms with colleagues and to strive to be objective in their professional communications and interactions. Examples of conduct inconsistent with these expectations include, but are not limited to:
  - a. Making evaluations of professional competence based on criteria other than professional performance;
  - b. Discrimination, including harassment, against other members of the community of scholars on political grounds, or for reasons of race, color, religion, sex (including gender, pregnancy, childbirth, medical conditions related to breastfeeding), sexual orientation, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, medical condition (cancer related or genetic characteristics), physical or mental disability, genetic information (including family medical history), HIV status, status as a covered veteran, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons;
  - c. Breach of established rules governing confidentiality in personnel matters and/or procedures.
4. The parties agree that certain conduct by NSFs is unacceptable and is inconsistent with their role as instructional faculty. Such unacceptable conduct includes but is not limited to:
  - a. arbitrary denial of access to instruction;
  - b. significant intrusion of material unrelated to the course;

- c. significant failure to adhere, without legitimate reason, to the rules of faculty in the conduct of courses, to meet class, to keep office hours, or to hold examinations as scheduled;
- d. evaluation of student work by criteria not directly reflective of course performance;
- e. undue and unexcused delay in evaluating student work;
- f. discrimination, including harassment, against a student on political grounds, or for reasons of race, color, religion, sex (including gender, pregnancy, childbirth, medical conditions related to breastfeeding), gender, sexual orientation, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, medical condition (cancer related or genetic characteristics), genetic information (including family medical history), HIV status, status as a covered veteran, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons;
- g. discrimination against students on the basis of physical or mental disability;
- h. use of the position or powers of a faculty member to coerce the judgment or conscience of a student, to cause harm to a student for arbitrary or personal reasons; and/or
- i. participating in or deliberately abetting disruption, interference or intimidation in the classroom.

## **OTHER RESPONSIBILITIES**

1. Academic responsibility also includes the requirement that the NSF abide by the following:
  - a. No compensation shall be paid to any NSF of the University unless actively engaged in the service of the University;

- b. No one in the service of the University shall devote to private purposes any portion of the time due to the University nor shall any outside employment interfere with the performance of University duties; and
  - c. University regulations regarding disclosure of financial interest (Political Reform Act of 1974).
2. When the University makes significant changes or amendments to the above regulations set forth in C.1.c. that are within the scope of representation as they apply to NSF, the University will meet and confer with the AFT over such changes or amendments. Any meeting and conferring with the AFT shall not delay the implementation of such changes or amendments with respect to non-unit employees.

## **ARTICLE 4 NON-DISCRIMINATION IN EMPLOYMENT**

### **A. NON-DISCRIMINATION**

Within the limits imposed by law or University regulations, the University shall not discriminate or harass any NSF on the basis of race, color, religion, marital status, national origin, ancestry, sex, (including gender, pregnancy, childbirth, medical conditions related to pregnancy and childbirth, breastfeeding, and medical conditions related to breastfeeding), sexual orientation, gender expression, gender identity, physical or mental disability, medical condition, cancer-related condition or genetic characteristics, genetic information (including family medical history), HIV status, status as a covered veteran (special disabled veteran, recently separated veteran, Vietnam era veteran, or any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized), service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Act of 1994, state military and naval service,) age, citizenship, political affiliation, or union activity.

### **B. SEXUAL HARASSMENT**

1. Unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature constitute sexual harassment when:
- a. submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activity;



- b. submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual; or,
  - c. such conduct interferes with an NSF's work performance or creates an intimidating, hostile, or offensive work environment.
2. Nothing in this Article is intended to conflict with University Policy on Sexual Harassment/Sexual Violence.

### **C. RESOLUTION PROCEDURES**

1. If an NSF files a timely grievance that includes an alleged violation of this article, the University shall forward such a complaint to the campus office responsible for formally investigating allegations of discrimination and/or sexual harassment. The grievance shall be held in abeyance during the time the investigation is ongoing. Unless the deadline for completion of the investigation is extended for good cause, the report of findings will be issued within 60 working days from the initiation of the investigation.
  2. The NSF shall have the right to be represented by the Union in the complaint procedure.
  3. The University Step 1 response will be issued within 10 calendar days after the designated campus official receives the report of findings.
  4. This procedure shall be in place for grievances alleging sexual harassment and/or discrimination in accordance with Section A and B above.
  5. Nothing in this section shall preclude an NSF from filing a sexual harassment complaint and/or other complaint alleging discrimination directly with the campus office responsible for formally investigating allegations of discrimination and/or sexual harassment in accordance with established timelines.
  6. The Title IX Offices and the Offices of Equal Employment Opportunity responsible for investigations are listed in Appendix D.
  7. No provision of this Article is intended to waive any rights of the NSF under state and federal statutes.
- D.** If the UC-AFT appeals a grievance to arbitration which contains allegations of a violation of this article which are not made in conjunction with the provision of

another article that is arbitrable, the UC-AFT's notice must include an Acknowledgement and Waiver Form signed by the affected NSF. The Acknowledgement and Waiver Form will reflect that the NSF has elected to pursue arbitration as the exclusive dispute resolution mechanism for such claim and that the NSF understands the procedural and substantive differences between arbitration and other remedial forums in which the dispute might have been resolved, including the differences in the scope of remedies available in arbitration as compared to other forums. The timeline to appeal to arbitration as set forth in Article 33 — Arbitration, will be extended by 30 days for said grievances to enable the NSF to make an informed decision.

## **ARTICLE 5 DESCRIPTION OF UNIT TITLES**

### **A. GENERAL**

This article provides a general description of the duties that correspond to the titles identified in Article 1 — Recognition. The definitions are for purposes of illustration and not limitation, and are not full descriptions of all duties and responsibilities assigned to members of the bargaining unit during the course of their employment. No appointees to these titles are members of the Academic Senate. Further, registered University of California students may not be appointed to these titles.

### **B. DEFINITIONS**

1. The title Lecturer, whether used as an only title or as an additional title, shall be assigned to a professionally qualified appointee not under consideration for appointment in the Professorial series (in contrast to the usual expectation of Acting Appointees) whose services are contracted for certain teaching duties.
2. Coordinators of Field Work (2240, 2241, 2245, 2246) are academic appointees who are charged with the primary responsibility for the maintenance of the education standards and effective functioning of the field work course/practicum. Other academic duties may include serving on academic and administrative committees.
3. Field Work Consultants (2260, 2261, 2265, 2266) are academic appointees whose principal duties normally consist of consulting with social welfare agencies about arrangements for the field work course, advising and counseling graduate professional students about their programs, consulting

with field work supervisors about the students' field work experience, and determining the field work grade. Other academic duties may include serving on academic and administrative committees.

4. Field Work Supervisors (2250, 2251, 2255, 2256) are academic appointees who normally are based in a social welfare agency where the appointee teaches the essentials of professional social work practice. Field work supervisors are responsible to the social welfare agency for the caseload assigned to the student unit and for such other duties and responsibilities as may be mutually agreed upon by the agency and the school. Other Field Work Supervisors are responsible for the supervision of the clinical practicum of students. Other academic duties may include serving on academic and administrative committees.
5. Demonstration Teachers (2210, 2211) are teachers who are employed in University Elementary Schools, in cooperating schools, or in other University-sponsored educational programs to demonstrate teaching procedures and practices to University student observers. Demonstration teachers also may assist these students in other assignments they may have.
6. Child Development Demonstration Lecturers (2284, 2285) are responsible for planning the teaching and activity programs of the nursery school. Child Development Demonstration Lecturers may supervise the work of several nursery school assistants, cooperate with individual faculty members and research staff in integrating the programs of the nursery school, administer standardized tests as part of the maintenance of research records, and confer with parents.
7. Substitute Teachers (2427, 2428) are teachers employed on a short-term basis to provide instruction in the absence of regularly assigned teachers, on a by-agreement basis, in the University Elementary School on the Los Angeles campus.
8. Teacher-Special Programs (2460, 2461) are teachers who normally teach non-regular classes to University and non-University students usually on a part-time by-agreement basis.
9. Teacher - Lawrence Hall of Science (2650, 2651) teach community based classes through the Lawrence Hall of Science to non-University students on a by-agreement basis.

10. Supervisors of Teacher Education (2220, 2221, 2222, 2223) are responsible for teacher education and teaching method programs. Supervisors of Teacher Education supervise the work of University students doing student teaching in elementary and secondary school classrooms. Supervisors of Teacher Education may also conduct teaching seminars, methods courses and other regular University courses. They shall be required to comply with state law(s) regarding active classroom participation.
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- C. The term “NSF or instructional faculty” shall be used throughout this MOU to refer to all instructional faculty and non-faculty employees within the unit. The use of the term “NSF or instructional faculty” shall not be understood to alter in any way the definition of the term “faculty” as used outside of the MOU, including in APM 110 and in reference to the Academic Senate.
  - D. In reviewing claims that an individual has been misclassified within the unit, or that a member of the unit has been assigned duties inappropriate for the position, an arbitrator shall interpret the above descriptions in the light of generally accepted normal duties associated with the position.
  - E. Claims that the University has appointed an instructional academic appointee to an Adjunct Professor or Visiting Appointment title in violation of an express provision of the contract or the August 21, 2003 Switkes letter, but do not involve allegations that the University has changed agreed-upon terms and conditions of employment that have a generalized effect or continuing impact on the bargaining unit, shall be subject to the grievance procedure (Article 32) and the arbitration procedure (Article 33). As the moving party, the UC-AFT shall retain the burden of proof in each case. This provision does not apply where the Public Employment Relations Board (PERB) has issued a complaint that includes Article 5.E allegations.
  - F. The UC-AFT shall pursue allegations that the University has changed agreed-upon terms and conditions of employment for Adjunct Professors or Visiting Appointment titles that have a generalized effect or continuing impact on the bargaining unit solely through PERB (unfair practice charge (UPC) or unit modification). If PERB declines to exercise jurisdiction (or issues a final ruling in which they determine they have no jurisdiction), because PERB determines that the challenged appointment does not constitute or arise out of a change to agreed-upon terms and conditions of employment that have a generalized effect or continuing impact on the bargaining unit, the UC-AFT may pursue the claim through contractual grievance and arbitration provisions provided that the Unfair Practice Charge originally filed with PERB would have satisfied the time limits for a grievance filed pursuant to the Grievance Article.

**G.** With the exception of Adjunct Professor and Visiting Appointment titles, claims that an NSF has been incorrectly appointed to a non-unit title shall be pursued solely through the Public Employment Relations Board (PERB) as either a unit modification or an unfair practice charge. Should PERB decline to exercise jurisdiction by either dismissing the charge or issuing a final ruling over the unfair practice charge, the UC-AFT may file a grievance within thirty (30) days from PERB dismissal or final ruling. Under no circumstances will a dispute that could be properly filed as a petition for unit modification be subject to the Article 32 — Grievance Procedure, or Article 33 — Arbitration Procedure, processes.

**H.** A final decision on the merits in one forum shall act as collateral estoppel in the other forum.

**I. PROVISIONS APPLICABLE TO ARBITRATIONS UNDER SECTIONS E, F, G AND H ABOVE**

In addition to the provisions in Article 33 — Arbitration, the following provisions shall apply:

1. The decision of the Arbitrator shall be final and binding but shall not be precedential in any other case.
2. The Arbitrator's authority shall be limited to determining whether the individual should be in the bargaining unit. The Arbitrator shall have no authority to make a decision involving academic judgement.
3. The Arbitrator has no authority to decide whether classifications should be in or out of the bargaining unit.
4. Should the Arbitrator find that the individual should be in the bargaining unit, the remedies described in E.3. of Article 33 — Arbitration, may apply. Additionally, an arbitrator may determine whether the University is responsible for dues/fees for the duration of the back award, if any.

**J.** The processes described in Section E, F, G, H and I above shall expire with the expiration of the Agreement in accordance with the Duration article and shall only be renewed by mutual agreement of the parties.

**ARTICLE 6  
ACADEMIC YEAR – APPOINTMENT**

**A. 9/12 ACADEMIC YEAR APPOINTMENT**

1. When, prior to the commencement of the fall quarter/semester service period, it is the University's intention to appoint an NSF for all three quarters or two semesters of the academic year in a single department, program, or unit, the University shall appoint the NSF to an academic-year appointment (9/12 payment) title code.
2. The service period for academic-year appointments shall be the start of the fall quarter or semester through the end of the spring quarter or semester. The pay period for academic-year appointments shall be July 1 through June 30. NSF shall not be eligible for benefits prior to their enrollment in benefits programs for which they are eligible and will not contribute for months of ineligibility.

**B. "1/9 PAYMENT" AND "1/10 PAYMENT" ACADEMIC YEAR APPOINTMENT**

1. When, prior to the commencement of the fall quarter or semester service period, it is the University's intention to employ an NSF for one quarter, two quarters, or one semester of the academic year in a single department, program, or unit, the University shall appoint the NSF to a quarter-based appointment with a 1/9 payment title code or a semester-based appointment with a 1/10 payment title code.
2. The service period for quarter-based appointments shall be the start of the quarter through the end of the quarter dates, or the end of the subsequent quarter dates in two quarter appointments. The service period for semester-based appointments shall be the start of the semester through the end of the semester dates. The pay period for such appointments shall be the quarter or semester dates associated with the appointment made. NSF will not be eligible for benefits prior to their enrollment in benefits programs for which they are eligible and will not contribute for months of ineligibility.

**C. APPOINTMENTS MADE AT VARIABLE PERCENTAGES OF TIME**

NSF appointed for a full academic year at a variable percentage of time in each quarter/semester will be considered to be on a variable time appointment for benefits purposes in accordance with Article 11 — Benefits.

**ARTICLE 7a  
PRE-SIX APPOINTMENT AND REAPPOINTMENT**

## **A. GENERAL PROVISIONS**

This Article applies only to NSF with appointments that commence within the first six years of employment at the same campus. An appointment in the first six (6) years of employment neither creates an entitlement to nor precludes reappointment.

1. The appointment or reappointment of NSF shall have a definite beginning and ending date. Such appointments shall terminate on the last day of the appointment set forth in the letter, as provided in Section B., below.
2. Except as provided for in this MOU, the University has the sole discretion in regard to appointment and reappointment decisions and has no obligation to reappoint an NSF following the expiration of an appointment.
3. Except as provided for in this MOU, the University has the sole discretion to make determinations regarding: the regularly scheduled time and location of a course, who teaches a course, the duration of an appointment, the assignments of an individual, and the assessment of performance. Such decisions are not subject to the grievance or arbitration provisions of this Agreement except to the extent they reflect or result from University actions that are, themselves, grievable and arbitrable.
4. An NSF appointment may be terminated prior to the established ending date only in accordance with Article 16 — Medical Separation, Article 17 — Layoff, or Article 30 — Discipline and Dismissal.
5. NSF may be appointed to a quarter or semester-based appointment or to an academic year appointment, in accordance with Article 6 — Academic Year — Appointment.
6. Whenever possible, the University will consult with an NSF before making course assignments or reassignments.
7. Upon request, a department, program or unit shall provide an NSF access to her/his classroom observation reports, if any, and student evaluations in a timely manner.
8. When an NSF teaches a course that is cross-listed with another department, program, or unit, the NSF may request to receive credit toward continuing status in either, but not both, department, program, or unit. The granting of this request shall be at the sole non-grievable discretion of the University, following consultation with both department chairs, chair equivalent, or designee.

9. At the sole, non-grievable discretion of the University, a campus may establish joint appointments, such that an NSF teaching in two (or more) departments at a campus can receive employment credit towards continuing review in the home department for work done in either or both departments.
10. When practicable, the University shall electronically post NSF job opportunities at: <http://www.ucop.edu/academic-personnel-programs/programs-and-initiatives/academic-job-openings/index.html>.

**B.** 1. At the sole, non-grievable discretion of the University, a campus may accept, at the written request of an NSF, up to a maximum of three (3) quarters, two (2) semesters, or four (4) quarters for fiscal year appointees from another UC campus in the same or similar discipline, on a one-time basis, as credit toward excellence review eligibility, in accordance with the following criteria:

- a. The NSF shall not have concurrent appointments at multiple UC campuses.
- b. The NSF shall make the request at the time of hire at the new campus, but no later than twelve (12) months from the date of hire.
- c. If such credit is granted, no further consideration for subsequent transfer to another campus by the same NSF would be considered by the University.

2. The term credit, if granted, will be considered for no other purpose including consideration for the 4<sup>th</sup> year increase in Article 7a.

3. The chair or designee retains the sole, non-grievable authority to determine whether to accept any term(s) for credit, whether partial or whole, and has the right to review past materials, including evaluations, from the NSF's file at the former campus.

4. This provision is prospective and not retroactive.

**C. LETTERS OF APPOINTMENT**

1. Letters of appointment or reappointment shall be issued to academic year appointees by June 1<sup>st</sup> or as soon thereafter as practicable for courses



being offered the next academic year and shall be consistent with this Agreement.

2. Letters of appointment or reappointment shall be issued to appointees with quarter or semester appointments no later than thirty (30) calendar days prior to the commencement of the service period, or as soon as practicable thereafter, and shall be consistent with this Agreement.
3. When the University appoints or reappoints an NSF, s/he shall be informed in writing of:
  - a. the title of the position;
  - b. the salary rate;
  - c. the name of the employing department, program, or unit;
  - d. the period(s) for which the appointment is effective;
  - e. the percentage of time;
  - f. the nature of the appointment and the general responsibilities;
  - g. the name of the department chair, program head or other person to whom the NSF reports;
  - h. the fact that NSF are represented by a union, the UC-AFT;
  - i. the fact that the terms and conditions of the appointment are contained in the Agreement; and
  - j. the website addresses of both the University and the Union, including a link to the MOU.

#### **D. PRE-SIX APPOINTMENTS**

1. When the University appoints NSF in their first six years of employment, the parties recognize that it does not do so intending that they will or will not achieve Continuing status or Continuing Appointments. The parties also recognize that legitimate practices or programs or needs may exist, or be established (including time-limited positions) that may have an effect of limiting pre-six year lecturer access to Continuing status or Continuing Appointments. Nevertheless, the University will not engage in activities or establish practices and/or programs that preclude Pre-Six year NSF access to Continuing status or Continuing Appointments.

2. The University has the right to make appointment and reappointment decisions based on considerations that include but are not limited to:
  - a. the implementation of programs that have time-limited positions, insofar as such programs adhere to their stated academic goals and pass through documented regular academic consultative processes;
  - b. a pedagogical program dependent upon varied perspectives or pedagogy, insofar as the program does not deny consideration to NSF on an individual basis and passes through documented regular academic consultative processes; and/or
  - c. The employment of other academic appointees in order to accomplish the University's academic goals as long as any actions taken pass through documented regular academic consultative processes and do not violate this MOU.

#### **E. INITIAL APPOINTMENT**

1. The initial appointment may be for a period of up to two (2) academic years.
2. The duration of an appointment or augmentation of the existing appointment is at the sole discretion of the University, unless otherwise provided for in this MOU. Reductions of the existing appointment percentage shall be in accordance with Article 17 — Layoff.
3. The input of qualified Continuing NSF in the appointment process is encouraged, but not required.
4. The NSF is expected to perform her/his duties in accordance with the provisions of Article 3 — Academic Responsibility.

#### **F. REAPPOINTMENT**

1. When the University is considering an NSF for a reappointment, the following procedures shall apply:
  - a. Provided need exists for pre-six year NSF, a decision to reappoint or not to reappoint an NSF who has requested consideration shall be preceded by an assessment of the performance of the NSF. This assessment shall be undertaken in accordance with each department's applicable procedures for assessment of pre-six year appointees in effect at the time of the assessment. The input of qualified continuing NSF in the assessment process is encouraged, but not required.

- b. NSF shall be notified of the form of assessment that the department, program, or unit will follow for reappointments, and when the assessment will occur. The University will post the review criteria from Article 7a.F.1.c. online on a central campus website.
    - c. Assessments of individual NSF for reappointment are to be made on the basis of demonstrated competence in the field, ability in teaching, academic responsibility and other assigned duties that may include University co-curricular and community service.
    - d. An NSF may provide letters of assessment, including letters from NSF or Senate Faculty, and other relevant materials to the department chair or her/his designee as part of the assessment process. Due consideration will be given to all relevant materials in the academic review/personnel file, if any.
2. Reappointment(s) during the first six (6) years of employment at the same campus may be for a period of up to three (3) academic years.
3. Upon reappointment to a fourth year of service within the same department, program or unit, the University shall grant a salary increase of at least six percent (6%) to any NSF who has not received a prior within-range salary increase of at least six percent (6%). The University is not precluded from granting an NSF an increase of more than six percent (6%).
4. When making a reappointment decision, the University will not replace an individual NSF who has received a within range salary increase with a lower paid NSF solely to reduce salary costs. This subsection shall only apply to those instances where the lower paid NSF is teaching the same courses as the higher paid NSF.

## **G. GRIEVABILITY AND ARBITRABILITY**

1. Subject to the limitations set forth in this Article, allegations of procedural violations of this Article shall be subject to the full Grievance and Arbitration provisions of this Article. An arbitrator reviewing procedural violations shall have the authority to order the University to redo the procedure.
2. Non-reappointment decisions are not grievable unless the grievance alleges a procedural violation or a violation of the prohibition on Continuing status or Continuing Appointment avoidance in Section D.1., or F.4., above. Allegations that the University made a reappointment decision in violation of an NSF's academic freedom rights or for a discriminatory reason may only be pursued through Article 2 — Academic Freedom or Article 4 — Non-discrimination in Employment, respectively.

3. An arbitrator reviewing a grievance under this Article shall have no authority to order the University to appoint or reappoint an NSF. An arbitrator reviewing a non-reappointment decision shall not have the authority to substitute her/his judgment for the University's judgment with respect to the University's academic needs or an individual NSF's performance or qualifications. In those instances where the University's decision or action was based on an NSF's performance, the arbitrator shall have jurisdiction to review the NSF's academic review/personnel files, if any.
4. Special Enforcement Provisions For Allegations of Continuing status or Appointment Avoidance

The following provisions apply to grievances alleging that the University has violated Section D.1., or F.4., above. Only the Union, and not individual NSF, may submit grievances alleging a violation of Sections D.1., or F.4., above.

- a. In any grievance involving Section D.1., the Union shall have the burden to provide evidence of a policy or practice that restricts access to Continuing status or Continuing Appointments in violation of Section D.1., above.
- b. When the Union alleges a violation of section D.1., and the University asserts that its decision comported with D.2.a., b., and/or c., the arbitrator may consider if the University's action was only a pretext for Continuing status or Continuing Appointment avoidance.
- c. In any grievance involving Section F.4., the Union must provide the following information within forty five (45) calendar days of the date on which the Union knew or should have known a violation occurred:
  - 1) the name of the NSF who was not reappointed;
  - 2) the department where the NSF has an appointment;
  - 3) the courses taught by the NSF who was replaced;
  - 4) the name of the lower-paid NSF who replaced the higher-paid NSF; and
  - 5) the courses taught by the lower-paid NSF.
- d. Arbitrator's Remedial Authority

If an arbitrator finds that the University has violated the prohibition on Continuing Appointment avoidance set forth in Section D.1., or the

provisions of Section F.4, above, her/his remedial authority shall not exceed ordering the University to immediately discontinue the practice or policy and consider the adversely affected NSF(s) for a reappointment. Upon the request of either party, the arbitrator may retain jurisdiction to ensure that the University has complied with her/his award.

**ARTICLE 7b**  
**PROCESS FOR ACHIEVING CONTINUING STATUS AND CONTINUING**  
**APPOINTMENTS**

**A. GENERAL PROVISIONS**

1. This Article contains the policies and procedures that govern the process by which NSF achieve Continuing status.
2. When an NSF receives an appointment that includes an 18th quarter, 12th semester or 24th fiscal quarter of service in the same department, program, or unit, the University shall conduct the excellence review in accordance with this Article.
3. The University shall conduct the excellence review in the academic year in which the 18th quarter, 12th semester or 24th fiscal quarter of service occurs, and the University shall complete the excellence review prior to the commencement of the 19th quarter, 13th semester or 25th fiscal quarter. However, the University shall not be obligated to complete an excellence review if the NSF does not perform service in an eighteenth (18th) quarter, twelfth (12th) semester or twenty-fourth (24th) fiscal quarter. Following completion of the excellence review, the University shall notify the NSF of the results.
4. If as a result of the excellence review the NSF is deemed excellent, and the NSF has performed service in the 18th quarter, 12th semester or 24th fiscal quarter in the same department, program, or unit, the NSF shall have Continuing status
5. Conversely, if, as a result of this review, the University determines that the NSF is not qualified to perform anticipated responsibilities at an excellent level in the department, program, or unit, the NSF will be released at the end of her/his appointment.
6. For NSF who have achieved Continuing status and for whom there is instructional need in the 19th quarter, 13th semester or 25th fiscal quarter as defined in Section B below, the University shall provide notice of a

Continuing appointment in accordance with Article 7c by the end of the 18th quarter, 12th semester or 24th fiscal quarter, or as soon as practicable.

7. For NSF who have achieved Continuing status but for whom there is not instructional need in the 19th quarter, 13th semester or 25th fiscal quarter as defined in Section B below, the University shall notify the NSF by the end of the 18th quarter, 12th semester or 24th fiscal quarter, or as soon as practicable, that they have the right of first refusal for two years for NSF work for which they are qualified. This right of first refusal shall not abridge the reemployment rights of another NSF, as specified in Article 17 — Layoff.
8. Either Continuing status or a Continuing appointment, if any, shall commence at the start of a 19th quarter, 13th semester or 25th fiscal quarter, regardless of when the excellence review is completed.
9. Nothing in this MOU shall preclude a department, program, or unit from hiring an NSF who has achieved Continuing status after the period of right of first refusal has expired. In such a hiring, the NSF shall be hired as a Continuing Appointee.
10. If an NSF is not deemed excellent, the University shall provide the NSF timely notice.

**B. FISCAL YEAR APPOINTEES**

When an NSF receives an appointment to a 6<sup>th</sup> full calendar year in the same department, program, or unit, the University shall conduct an excellence review to be completed by the end of the 6<sup>th</sup> calendar year, provided the NSF performs service in the 4<sup>th</sup> quarter of the 6<sup>th</sup> year.

**C. INSTRUCTIONAL NEED**

1. Instructional need to establish a continuing appointment shall exist when the University determines the following with respect to the nineteenth (19<sup>th</sup>) quarter, thirteenth (13<sup>th</sup>) semester, or 25<sup>th</sup> fiscal quarter:
  - a. there is a departmental need for courses to be taught by NSF in the area in which the NSF member has taught; and
  - b. the NSF member is qualified to teach those courses; and

- c. a Continuing Appointee is not already expected to teach the course(s).
2. Instructional need to establish a continuing appointment will not exist when:
  - a. Senate Faculty is designated to teach the course(s) during the next academic year previously assigned to the NSF;
  - b. graduate Academic Student Employee (ASE) whose training is in the same department or related discipline, or where the assignment is made pursuant to an academic plan for pedagogical training of the ASE, are designated to teach the course(s) previously assigned to the NSF during the next academic year;
  - c. an unanticipated distinguished Visiting Professor, or Adjunct Professor, is designated to teach the course(s) during the next academic year previously assigned to the NSF;
  - d. the assignment of the NSF to teach the course(s) conflicts with established departmental academic program requirements for intellectual diversity, as outlined in Article 7a.D.2.b.

**D. SPECIAL NOTICE REQUIREMENT FOR ANTICIPATED REDUCTION OF INITIAL CONTINUING APPOINTMENT**

If, prior to the issuance of the Letter of Continuing Appointment, the University determines that an NSF who has been appointed to an 18<sup>th</sup> quarter, 12<sup>th</sup> semester or 24<sup>th</sup> fiscal quarter will have an initial continuing appointment percentage that is less than that of the previous year, the University will provide notice to the NSF as soon as practicable, with a copy to the Union.

**E. EVALUATION CRITERIA**

Evaluations of the academic qualifications or performance of NSF for purposes of consideration for a continuing appointment shall be made on the basis of demonstrated excellence in the field and in teaching, academic responsibility, and other assigned duties which may include University co-curricular and community service.

1. Instructional performance is measured by evaluation of evidence demonstrating such qualities as:

- a. command of the subject matter and continued growth in mastering new topics;
  - b. ability to organize and present course materials;
  - c. ability to awaken in students an awareness of the importance of the subject matter;
  - d. ability to arouse curiosity in beginning students and to stimulate advanced students to do creative work; and
  - e. achievements of students in their field.
2. Due attention should be paid to the variety of demands placed on instructors by the types of teaching called for at various levels, and the total performance of the NSF should be judged with proper reference to assigned teaching responsibilities.

## **F. EXCELLENCE REVIEW**

1. The University shall notify the NSF in writing of the review, its timing, criteria, and the procedure that will be followed. Such notice shall be no less than thirty (30) calendar days, when practicable. Should the University provide less than thirty (30) calendar days notice, the University shall not unreasonably deny an extension to the NSF to submit her/his materials for the review file.
2. All relevant materials shall be given due consideration. These may include:
  - a. student evaluations, provided that the quantitative measure in the student evaluation is not the sole criterion for evaluating teaching excellence;
  - b. assessment by former students who have achieved notable professional success;
  - c. assessments by other members of the department, program or unit, and other appropriate faculty members;



- d. development of new and effective techniques of instruction and instructional materials; and
  - e. assessments resulting from classroom visitations by colleagues and evaluators.
3. An NSF may provide a self-statement or self-evaluation of her/his teaching objectives and performance.
4. An NSF being evaluated may provide letters of assessment from individuals with expertise in her/his field, and/or other relevant materials to the evaluation file prepared by the University, which shall be included as part of the evaluation process. Those from whom letters may be provided include but are not limited to:
  - a. departmental NSFs;
  - b. departmental Academic Senate Faculty;
  - c. other academic appointees;
  - d. students; and/or
  - e. others external to the University of California.
5. A committee shall review and make recommendations about NSF performance pertaining to the Excellence Review for Continuing Appointments. The committee shall be at the departmental level, except where not practicable, in which case it will be as close to the departmental level as is practicable (e.g., school, division or college). Such committees will be comprised of academic appointees with sufficient knowledge of the NSF's field of expertise. The membership of the Excellence Review committee is not confidential.
6. The University shall make reasonable efforts to ensure that a qualified NSF will participate on such review committees although no individual shall be required to serve on the committee. Unless the NSF on the committee is a standing appointment, the NSF being reviewed shall be consulted about the NSF appointment on the committee. Care shall be taken to ensure that the committee is composed of faculty who can offer a neutral assessment

of the NSF's performance. The NSF on the review committee shall be under the same obligation as any other member of the personnel committee with respect to the confidentiality of the review process.

7. The NSF being reviewed may provide a written list of suggested peers from whom input may be solicited and/or identify qualified persons from whom input may be solicited. The NSF being reviewed shall be afforded an opportunity to raise concerns about possible bias on the part of individuals involved in their review. Any such statement provided by the NSF shall be included in the academic review file.
8. The NSF may submit a written response to the recommendation from the department, program, or unit, which shall be included in her/his excellence review file.
9. An evaluation of an NSF shall be based on an academic review file. The academic review file shall contain only material relevant to consideration of personnel action. Performance-based decisions concerning appointment to a Continuing Appointment and termination for non-excellence shall be based upon the material contained in the academic review file.

## **G. GRIEVABILITY AND ARBITRABILITY**

1. Allegations of procedural violations of this Article shall be subject to the full grievance and arbitration provisions of this Article. An Arbitrator reviewing procedural violations shall have the authority to order the University to redo the procedure.
2. An Arbitrator shall not have the authority to substitute her/his judgment for the University's judgment with respect to instructional need, academic qualifications or determinations of excellence or non-excellence and thereby compel the University to make or continue an appointment. Nevertheless, the Arbitrator shall have the authority to resolve factual disputes related to Section C.2.
3. The Arbitrator shall have jurisdiction to review the performance review process and the academic review file. If the Arbitrator finds that the performance review process was flawed, or that the decision related academic review file, and that such flaw/decision had a material adverse impact on the review results, the Arbitrator's remedy shall be limited to an order that the University re-do the performance review process. Where the arbitrator determines that an individual involved in the academic review has in any way materially violated the MOU, the Arbitrator may

order the University to designate different individuals to conduct the subsequent performance review.

4. Upon the request of either party, the Arbitrator may retain jurisdiction to ensure that the parties have complied with her/his award. When the Arbitrator retains jurisdiction, the Arbitrator's remedy shall be limited to an order that the UC redo the performance review process.

## **ARTICLE 7c CONTINUING APPOINTMENTS**

### **A. GENERAL PROVISIONS**

1. This Article applies to NSF who have Continuing status and for whom instructional need has been established in a department, program, or unit.
2. Except as provided for in this MOU, the University has the sole discretion to make determinations regarding instructional need for courses to be taught by NSF, the regularly scheduled time and location of a course, who is assigned to teach specific courses, and evaluation of NSF performance. Such decisions are not subject to the grievance or arbitration provisions of this MOU except to the extent the grievance alleges a violation of a provision of this Article that is otherwise grievable and arbitrable.
3. Whenever possible, the University will consult with an NSF before making course assignments or reassignments.
4. The University may reduce the initial appointment of a Continuing Appointee in accordance with the provisions of Section B.1.b of this Article. The University may terminate or reduce the appointment of a Continuing Appointee only in accordance with the provisions of Article 16 — Medical Separation, Article 17 — Layoff; or Article 30 — Discipline and Dismissal.
5. The University shall not reduce the appointment percentage in the academic year prior to the year in which the Excellence review is conducted or in the review year itself solely in order to avoid continuing appointment levels that reflect actual need.
6. A Continuing Appointment does not create entitlement to tenure or security of employment nor does it guarantee specific teaching assignments.

## **B. ESTABLISHING THE CONTINUING APPOINTMENT PERCENTAGE**

The appointment percentage for a continuing appointment shall be in accordance with the following provisions:

1. Continuing Appointment Base: The University will make all appointments at a specific appointment base percentage, in accordance with this section.
  - a. Normally, the NSF's initial continuing appointment percentage shall be at least equal to the NSF's appointment percentage during the previous academic year. However, the initial continuing appointment percentage may be lower than the percentage appointment of the previous academic year if the University determines that the courses taught by an NSF in the previous academic year will not be offered or taught by the NSF because:
    - 1) Instructional Need does not exist pursuant to Article 7b., Section B.2., or
    - 2) The courses will be taught by an NSF with more service and there are no other courses taught by less senior NSF in the area within the department, program or unit where the candidate for continuing appointment has been teaching and is qualified to teach.
  - b. When the initial continuing appointment percentage is reduced by no more than a single course after the NSF received the written confirmation of her/his initial appointment percentage pursuant to Section C.2., below, the University will provide the NSF thirty (30) days notice or pay in lieu of notice. The University shall also inform the NSF in writing of the specific reasons for the lower appointment percentage, with a copy to the Union.
  - c. Nothing shall preclude the University from establishing a higher initial continuing appointment percentage.
  - d. The University will provide the NSF with written confirmation of her/his appointment percentage before the beginning of the academic term.

2. Augmentation: The department, program or unit in which the NSF has the Continuing Appointment may permanently augment a Continuing Appointee's appointment base. Augmentations to the base appointment shall become part of the base appointment except as provided in this section and Section 3. below.
  - a. Augmentations or appointments made by a department, program or unit other than the one in which the NSF has a continuing appointment shall not be added to the continuing appointment base.
  - b. The department, program or unit may only reduce this new appointment percentage pursuant to the provisions of Article 17 — Layoff.
3. Temporary Augmentation: Augmentations made to continuing appointments which are of a distinct and finite period of one year or less shall not be added to the NSF's continuing appointment base. Temporary augmentations meet temporary academic instructional needs. These temporary academic instructional needs may result from:
  - a. faculty leaves;
  - b. circumstances which require emergency course coverage;
  - c. the need to deliver instruction until newly hired ladder rank faculty are scheduled to begin teaching;
  - d. temporary and/or unanticipated fluctuations in enrollment; or
  - e. programmatic change designed to meet the academic mission of the University.
4. Any augmentations outside the department, program or unit in which the NSF received a continuing appointment will be treated as a separate appointment.
5. If an NSF is laid off or otherwise separated from the department, program or unit in which s/he has a continuing appointment, another department may employ her/him.

6. The parties recognize that there will be instances in which additional courses become available to which the University has decided it will assign NSF. In such instances, the University will give consideration to a qualified Continuing Appointee who is less than one hundred percent (100%). The determination of who is assigned is at the sole discretion of the University.
7. The parties recognize that there will be instances when the University will need to add sections of courses that are currently being taught by Continuing Appointees. If the University adds such a section, it will give consideration to assigning the section to a Continuing Appointee under the following conditions:
  - a. the Continuing Appointee is qualified to teach and has previously taught the course in the department, program or unit;
  - b. the augmentation to the Continuing Appointee's appointment will not cause the appointee's workload to exceed 100%.

Notwithstanding the University's obligation in this section, the University retains the sole discretion to assign the course to another academic appointee.

### **C. LETTER OF CONTINUING APPOINTMENT**

1. Letters of Continuing Appointment shall be consistent with this MOU.
2. When an NSF is offered a continuing appointment, s/he shall be informed in writing of:
  - a. the title of the position;
  - b. the salary rate;
  - c. the name of the employing department, program or unit;
  - d. the date upon which the appointment commences;
  - e. the percentage of time;

- f. the nature of the appointment and the general responsibilities;
- g. the name of the department chair, program head or other person to whom the NSF reports;
- h. the fact that NSF are represented by a union, the UC-AFT;
- i. the fact that terms and conditions of the appointment are contained in the Agreement; and
- k. the Web Site addresses of both the University and the Union, including a link to the MOU.

#### **D. GRIEVABILITY AND ARBITRABILITY**

- 1. Allegations of procedural or factual violations of this Article shall be subject to the full grievance and arbitration provisions of this Article.
- 2. An arbitrator reviewing procedural violations shall have the authority to order the University to redo the procedure.
- 3. An arbitrator shall not have the authority to substitute her/his judgment for the University's with respect to instructional need, academic qualifications, or determinations of excellence or non-excellence and thereby compel the University to make or continue an appointment or assign an NSF to a particular course/assignment.

### **ARTICLE 8 INSTRUCTIONAL SUPPORT**

#### **A. INSTRUCTIONAL RESOURCES**

- 1. The University shall provide access to facilities, services, texts, and instructional support that is reasonably necessary for NSF to complete their assigned duties and responsibilities, including but not limited to:
  - a. office and desk space, telephone, and answering equipment;

- b. computer and internet connection;
  - c. training and support for web-based tools;
  - d. storage space;
  - e. office, laboratory, and instructional equipment;
  - f. mailbox and email;
  - g. office supplies;
  - h. text, and/or reading materials;
  - i. photocopying equipment.
2. NSF shall have access to email and online course databases fourteen (14) calendar days before the start of the assigned teaching responsibilities, whenever practicable, but never later than one business day after the NSF begins his or her assigned teaching responsibilities.
  3. NSF shall have access to University email in accordance with local campus policies and procedures in effect at the time of separation.
  4. To the extent that infrastructure and/or resources are available:
    - a. NSF teaching courses and sections shall be listed by name on the updatable online schedule of classes;
    - b. NSF shall be listed in the campus online directory;
    - c. NSF may be listed on the departmental web site, and may be provided access to their own faculty web page; and
    - d. NSF may be included in physical directories, e.g. building signage, where it exists.
  5. The University will fill NSF requests for Teaching Assistant and Reader support, based on department procedures and available resources (personnel and budget).

## **B. SUBSTITUTE FOR INSTRUCTIONAL DELIVERY**

If an NSF is unable to fulfill her/his instructional duties with respect to a scheduled class and a suitable arrangement cannot be made to provide for the delivery of necessary instruction, the NSF may request University assistance



in arranging a substitute to satisfy the instructional obligations of the course. If the University decides that a substitute is appropriate and necessary, the University shall assume all related expenses, if any, for the substitute.

### **C. GRANTS AND TEACHING AWARDS**

1. NSF may apply for grants for instructional improvement and course development and may apply or be nominated for teaching awards. NSF are eligible for and may request course support funds, and such requests shall not be capriciously denied, or denied solely on the basis of bargaining unit membership.
2. Information pertaining to available campus instructional grants and awards shall be made available to NSF by the same means as those used for other instructional appointees.
3. At the sole discretion of the University, an NSF may be granted Principal Investigator status in accordance with Contracts and Grants Policy.

### **D. INFORMATION REQUESTS**

If the Union files an information request for a campus' instructional development grants for the preceding academic year, the University shall include the names, funding request amounts, and actions on those requests for all Unit 18 NSF.

### **E. ARBITRATOR'S AUTHORITY**

In any grievance alleging a violation of this Article, the Arbitrator shall have no authority to review the University's decisions whether or not to provide grants for instructional improvement and/or course development, or to bestow a teaching award under Section C.1. The arbitrator shall have no authority to modify University procedures in Section A. or to substitute her/his judgment for that of the University with regard to the determination of whether infrastructure or resources are or are not available, as described in Section A.

## **ARTICLE 9 PROFESSIONAL CONCERNS, MEETINGS, AND PROGRAMS**

### **A. ATTENDANCE AT PROFESSIONAL MEETINGS**

1. All NSF are eligible to apply for professional leaves in accordance with other leaves with or without pay. NSF may be granted leave to attend professional meetings and programs. In each case payment of fees,

payment of related costs, and pay status are at the sole discretion of the University.

2. When the University requires attendance at a professional meeting or program, the University will notify the NSF in writing and will pay the fees and related costs. Programs which are suggested or recommended are not "required" within the meaning of this Article.
3. When a leave has been granted pursuant to this Article, the University will notify the NSF in writing of the period of the leave, the pay status of the NSF during the leave, and which fees or related costs, if any, will be paid.
4. During the period of leave, the NSF shall be responsible for fulfilling instructional duties other than providing instruction and meeting student contact hours. The NSF, whenever possible, agrees to consult with and assist the University in securing a replacement for providing instruction and office hours, or alternatively fulfilling those duties.

## **B. COMMITTEES**

1. In an effort to encourage and facilitate unit member participation on University and/or Academic Senate committees, the Union hereby authorizes its members to participate in any and all Academic Senate committees and hereby specifically agrees not to accuse or charge the University with violations of HEERA in relation to said participation. This express waiver does not waive or modify in any way the Union's right to meet and confer with the University.
2. In the event either the University or the Union seeks to pursue unit member participation on University committees dealing with terms and conditions of employment the parties will meet and discuss such participation on a case-by-case basis. In the event no agreement is reached, the Union retains all of its rights under HEERA.

## **C. PROFESSIONAL DEVELOPMENT FUND POOL**

Campuses will establish a Professional Development Fund Pool dedicated to providing support for professional development of NSF. This Development Fund and program is separate from the program referenced in Article 8 — Instructional Support. This Professional Development Fund Pool will be established and administered as follows:

1. The Professional Development Fund Pool will be funded annually on October 1 and shall be placed in a special campus account. Each campus will allocate \$200 per NSF Full Time Equivalent (FTE), based on the October 1, 2015 FTE count. The University shall adjust the Full Time Equivalents on October 1, 2019. This allocation is a minimum amount and shall not preclude the allocation of additional funds at the discretion of the University.
2. Individual NSF will be eligible to submit requests for funding to support proposals for professional development, including but not limited to professional meetings, training seminars, software, and paid leave, all of which should be in support of pedagogical endeavors. Only those NSF with continuing appointments will be eligible to submit requests for paid leave.
3. The University will establish on each campus a NSF Council on Professional Development. The Council shall be comprised of five (5) NSF. The appropriate University official will appoint the Council members from a list of nominations provided by the UC-AFT. The Council shall develop guidelines and procedures in accordance with campus protocol for awarding professional development funds. The Council will review applications and make recommendations to the appropriate University official.
4. NSF participation on the NSF Council on Professional Development is voluntary.

#### **D. COPYRIGHT**

1. The same University policies that apply to all faculty, including Senate Faculty, in the areas of intellectual property and distance education shall apply to NSF.
2. NSF are "Designated Instructional Appointees" as this term is used in the Policy on Ownership of Course Materials.

#### **E. ENFORCEMENT**

In any grievance alleging a violation of this Article, the Arbitrator shall have no authority to review or modify the University's decisions whether or not to provide funds to a particular NSF for professional development.

**ARTICLE 10  
PERSONNEL AND REVIEW FILES**

**A. GENERAL PROVISIONS**

1. Personnel Files

- a. The University shall designate an office in which the personnel file shall be maintained. The University shall also designate an office with overall responsibility for personnel files. Where necessary for administration of the NSF's employment, materials may be kept in other offices.
- b. Personnel files shall, except with the written consent of the NSF, contain only those records necessary and appropriate to the administration of the NSF's employment at the University. It is recognized that some routine information (e.g. payroll and benefits information) may be kept in forms other than that included in the personnel file. Personnel actions may not be based on any material that is not part of the official personnel file.
- c. Any non-confidential item placed in a personnel file shall be clearly identified as to its source or originator and its date of receipt by the University.

2. Review Files

Review files are developed in preparation for the performance assessment of the NSF undertaken in accordance with the MOU. Review files may contain both confidential and non-confidential academic review records, as described below. An individual's review file shall contain only material relevant to consideration of personnel actions. Correspondence involving potential disciplinary actions that do not result in disciplinary actions shall not be included in the review file. Materials involving final disciplinary action may be included only to the extent that such material is relevant, according to the standard of this MOU, to the personnel action for which the review file has been assembled. Personnel actions based upon a review of the performance of NSF, such as reappointment/non-reappointment and merit actions, shall be based solely upon the material contained in the individual's review file. No materials excluded by this article from files may be included in review files.

3. Grievance Materials

Grievance documents and documents referring to, or arising out of, a grievance shall not be contained in the official personnel file. Grievance materials shall be kept separately.

**B. ACCESS BY INDIVIDUALS OTHER THAN THE NSF**

Access by University representatives and employees to confidential and non-confidential material in personnel files and personnel review records (synonymous with confidential academic review records as referenced in Appendix F Definitions of Confidential and Non-Confidential Academic Review Records), and other confidential information shall be strictly limited to those representatives and employees who need access to information in the personnel filed in the performance of their officially assigned duties, provided that such access is related to the purpose for which the information was acquired. Members of the public and non-governmental entities shall not have access to confidential personnel files except as required by law.

**C. RIGHT TO INSPECT**

1. Upon reasonable notice to the office designated to maintain the official personnel file/ review file, NSF shall have the right to inspect all non-confidential reports, documents, correspondence, and other material in their official personnel file(s)/review file(s) and in personnel files maintained at the departmental level. NSF shall be entitled to copies of confidential material, if any, in their personnel files(s) and review files, which may be redacted to the extent necessary to maintain the anonymity of the sources of the information. NSF shall have the right to have a Union representative or another person of her or his choice accompany her or him to inspect the NSF's file(s), so long as the person chosen is not a supervisor, manager or confidential employee.
2. NSF may give written authorization to a representative to review their file(s) in their absence. The written authorization shall be valid for thirty (30) calendar days from the date of the signature of the authorization or within a written time limit specified by the NSF, whichever is shorter. The representative shall be entitled to examine all non-confidential material. Records protected by recognized legal privilege and records exempted from disclosure by law may be withheld from the NSF and her/his representative. Subject to these exceptions, unsolicited documents which request confidentiality shall be returned to the originator or destroyed.

#### **D. RIGHT TO COPY MATERIAL**

Under normal circumstances, within ten (10) working days of a written request, an NSF shall be given a complete copy of the requested non-confidential items in the personnel file and a listing of the types of confidential material within the file. If a written request for a redacted copy of confidential material is received by the University, the request shall be fulfilled within thirty (30) working days, under normal circumstances. The University will provide the first copy of such material at no cost to the NSF. Subsequent copies will be provided at a cost of ten cents (\$.10) per page.

#### **E. RESPONSES TO MATERIALS IN PERSONNEL AND REVIEW FILES**

In accordance with established academic review policies and procedures, NSF may have responses or documentation attached for the purpose of challenging or responding to materials in the personnel and review files. Any response shall, unless the NSF requests otherwise, become a part of the NSF's personnel and/or review files, as applicable. NSF may request, in writing to the designated administrative officer, deletions and/or corrections of materials from their personnel and/or review files. Within 30 calendar days, the appropriate administrative officer shall determine whether a requested correction in a statement of fact or a requested deletion will be made. If material is deleted from the personnel and/or review files, in accordance with this section, care shall be taken to ensure that the same material is also deleted from copies of those records in all locations where such copies are maintained.

#### **F. DISCIPLINARY MATERIALS**

##### **1. Personnel Files**

- a. Copies of documents, including letters, that relate to final disciplinary action taken by the University shall, upon being placed in the NSF's personnel files, be provided to the NSF. The NSF's written comments, if any, regarding such documents shall, upon request of the NSF, be placed in their personnel files. Documents concerning disciplinary action that do not result in final disciplinary action shall not be included in the files.
- b. When it comes to the attention of the University (e.g. through a review of files, or at the request of the NSF) that an NSF's personnel

files contain documents older than two years that pertain to disciplinary action not related to the NSF's performance, such documents will be removed from the NSF's personnel files if there have been no other warnings or discipline pertaining to the same or similar conduct that resulted in the earlier disciplinary action during the two-year period.

- c. Notwithstanding the above provisions, copies of documents, including letters, that the University is required to maintain to fulfill its legal obligations, may be retained in the NSF's personnel files.

## 2. Review Files

Copies of any letters or documents that are otherwise permitted under this MOU and University policy, including documents pertaining to disciplinary actions, may be included in the NSF's review file, insofar as the letters or documents pertain to the NSF's performance under the criteria of this MOU during the review period.

## **G. MATERIAL EXEMPTED FROM GRIEVANCE AND ARBITRATION PROCEDURES**

Confidential material, personal information, legal privilege, and records, to the extent that each of these is exempted by law from disclosure under the California Evidence Code or by other statutes and relevant case law, shall not be subject to disclosure through Article 32 - Grievance Procedure or Article 33 - Arbitration. In disputes concerning whether material is exempted by law from disclosure, the Grievance Hearing Officer or Arbitrator may, if necessary to resolving such controversy, examine the material in camera (outside the presence of the parties) and rule on the confidentiality of the material, unless examining the material in camera would be prohibited by law. Where confidential material is relevant to resolving a grievance or arbitration, the material may be examined in camera by the Hearing Officer or Arbitrator.

## **ARTICLE 11 BENEFITS**

### **A. GENERAL CONDITIONS**

1. Eligible NSF may participate in the retirement, medical, dental, and other benefit programs to the same extent as other eligible faculty, including Senate Faculty, at the University.
2. NSF covered by alternative retirement plans are subject to the provisions of those retirement plans.
3. NSF shall pay costs in excess of University contributions, and employee costs for plans to which the University does not contribute, normally through payroll deduction.
4. The University may, at its sole discretion during the term of this Agreement, alter in any way its health and welfare programs, including the retiree health benefit program, retirement system plans, and/or other benefits. Such alterations include, but are not limited to, adding new program or plan benefits, altering eligibility criteria, establishing new coverage, altering or deleting current coverage, altering employee and University rates of contribution, or changing the carrier for established plans or programs.
  - a. If the University alters the health and welfare programs, retirement system plans benefits, or other benefits, the alterations will apply to eligible NSF in the same manner as they apply to other faculty, including Senate Faculty, at the same campus.
  - b. The University shall provide written notice and shall meet and confer with the AFT prior to implementation if any of the following circumstances are met:
    - 1) proposed alterations that affect only NSF;
    - 2) alterations in the University policy regarding mandatory retirement age affecting NSF. Criteria regarding mandatory retirement age will be as set forth in statute and University policy; or
    - 3) establishment of an additional new pension plan or tier, with the exception of the 2016 tier of UCRP; or
    - 4) reduction of Health and Welfare benefits in a manner that disproportionately impacts benefits eligible part-time bargaining unit members.



- c. It is understood that if the UC-AFT does not request to meet and confer within thirty (30) calendar days of receiving notice regarding alterations arising pursuant to Section A.4.b., the University may implement the proposed changes for NSF.

## **B. UNIVERSITY OF CALIFORNIA RETIREMENT PLAN (UCRP)**

### **1. Employee Contribution Rates**

- a. All unit employees that are members of the 1976 Tier shall contribute at a rate of 8% of covered compensation (minus \$19 per month).
  - b. All unit employees that are members of the 2013 Tier shall contribute at the rate of 7% of covered compensation.
  - c. All unit employees that are members of the 2016 Tier shall contribute at the same rate as the 2013 Tier.
2. If a 1/9 or 1/10 Academic Year NSF becomes UCRP eligible, based on his/her appointment percentage and duration, or via the 750-hour rule as outlined in the UCRP Plan Document and Regulations, the 1/9 or 1/10 Academic Year NSF will receive accelerated UCRP Service Credit, in accordance with UCRP Plan Regulations.

## **C. HEALTH AND WELFARE**

### **1. Benefits Bridge**

NSF shall be eligible to maintain their current UC-sponsored health and welfare benefits (the "Benefits Bridge Period") when they are not on active pay status and are between NSF appointments if they satisfy the following conditions:

- a. The first day prior to the commencement of the Benefit Bridge Period, the NSF is a member of a University Group Insurance Plan;
- b. The NSF has a written commitment for reemployment in the bargaining unit at the end of the Bridge Period;
- c. The NSF pays the regular Group Plan Rate for the entire gross benefits premiums (employee plus UC cost); and
- d. Such payment shall be paid in advance each month, directly to the campus payroll office.

The standard benefits eligibility rules shall apply during the Benefit Bridge Period. While the Benefits Bridge Period is not considered a leave of absence, Group Insurance Regulations applicable to an approved leave without pay will apply during the Benefits Bridge Period.

2. NSF appointed for a full academic year at a variable percentage of time in each quarter/semester will be considered to be on a variable time appointment for health and welfare benefits purposes. The percentage of appointment for determining initial eligibility for health and welfare benefits for variable time appointments will be determined by averaging the appointment percentages of all quarters/semesters for the academic year.
3. NSF who teach in Summer Session shall not be disadvantaged with respect to eligibility for health and welfare benefits.

#### **D. ENUMERATION OF UNIVERSITY BENEFITS**

For informational purposes only, a brief outline of benefit programs is listed in Appendix B. More information can be found in general University benefits publications and individual summary plan descriptions. Specific eligibility and benefits under each plan are governed entirely by the terms of the applicable Plan Documents, custodial agreement, University of California Group Insurance Regulations, group insurance contracts, and state and federal laws. For details on specific eligibility for each program, see the applicable documents, agreements, regulations, or contracts.

#### **E. HOUSING PROGRAMS**

A broad set of housing programs are available on the campuses. These programs include faculty rental housing, mortgage assistance programs, faculty home loan programs, housing allowance, short-term housing loan programs, salary differential housing allowance, and housing for sale on University land. The eligibility and availability of each of these programs vary substantially from campus to campus and are in accordance with local rules and procedures. Specific eligibility and benefits are governed entirely by the terms of the applicable campus plan.

#### **F. MEETINGS**

The University agrees to hold meetings twice per year to provide information to the UC-AFT regarding University-wide benefit plans, coverage, benefit schedules, carriers, providers, premium rates, eligibility criteria, and the amounts, if any, or

University/NSF contributions. At these meetings, the UC-AFT may provide information and comment to the University regarding University-wide benefits.

## **G. LOCAL BENEFITS**

Except as provided above regarding housing programs, NSF are eligible, according to local campus procedures, for local benefits to the same extent as are other eligible faculty, including Senate Faculty, at the same campus, including but not limited to, parking, child care, etc. The University may alter in any way, at its sole discretion, any aspect of local benefits, and if the University does so, such changes will apply to NSF eligible for these benefits to the same extent as they apply to other eligible faculty, including Senate Faculty at the same campus.

## **ARTICLE 12**

### **LEAVES OF ABSENCE AND ACTIVE SERVICE MODIFIED DUTIES**

#### **A. GENERAL PROVISIONS**

Subject to the provisions of this Article and any applicable law, leaves of absence may be with or without pay, may be for medical purposes and/or non-medical reasons, and are subject to the approval of the University.

1. NSF shall be advised in writing of the reason(s) for denial of a leave request, and the reasons shall not be capricious or unreasonable.
2. No NSF shall be denied reappointment, promotion, continuing status or appointment, or merit increase as a result of application for, or receipt of, requested leaves.
3. No NSF shall have his or her duties unreasonably modified upon return from leave. The NSF, whenever possible, agrees to consult with and assist the department chair in the determination of the NSF'S assignment upon return from leave. For the purpose of review for reappointment the following provision shall apply:
  - a. For NSF not on continuing appointments who have been granted child bearing leave, parental leave, for at least one quarter or semester, the time need not be counted towards years of service as defined in Article 7b.A.2, at the request of the NSF.
4. No leave will be granted for any period beyond the ending date of the NSF's current appointment.
5. A paid leave of absence shall not be granted at a percentage of time greater than that of the NSF's appointment.
6. NSF on approved leaves of absence without pay may elect to continue University provided benefits in accordance with the University's benefits

regulations. NSF who so elect must make arrangements with the University, prior to commencement of the leave, to pay the entire premium amount her/himself.

7. If the eligible NSF is on leave without pay for more than half of a calendar month, sick leave, vacation, seniority credit, and/or retirement service credit do not accrue in that month.
8. The University, at its sole discretion, may place an NSF on administrative leave with pay. The University will communicate the reason for the administrative leave to the NSF as soon as feasible. If the administrative leave lasts longer than twenty-one (21) calendar days, a written explanation of the intent, reason for, and expected duration of the leave will be provided no later than the twenty-first day.
9. The University shall not retaliate against NSF as a result of their requesting or being granted leave under this Article.
10. The University will provide the same assistance to NSF that it provides to other UC academic appointees with regard to obtaining disability benefits.

11. Definitions

- a. Non-medical leaves of absence, with or without pay, may include: Family and Medical Leave ("FML") taken for certain purposes (to care for the NSF's parent, child, spouse or domestic partner with a serious health condition, to care for the NSF's newborn child or a child newly placed with the NSF for adoption or foster care, Parental Leave/Baby Bonding, Military Caregiver Leave, and Qualifying Exigency Leave), as well as leave for jury duty, voting, blood donations, administrative or legal proceedings, emergencies, and professional development, including attending professional meetings and programs (See Article 9 for professional leaves).
- b. Medical Leaves, with or without pay, may include: FML taken because of the NSF's own serious health condition or the NSF's pregnancy disability, Pregnancy Disability Leave (whether or not it qualifies as FML), Paid Medical Leave, and Other Leaves/Personal Leaves.
- c. FMLA is the federal Family and Medical Leave Act of 1993.
- d. CFRA is the California Family Rights Act of 1995.
- e. PDLL is the California Pregnancy Disability Leave Law, which is part of the California Fair Employment & Housing Act.

## **B. FAMILY AND MEDICAL LEAVE (FML)**

The provisions of Section B and the terminology used in B.1., apply only to NSF who are eligible for FML under FMLA and/or CFRA. NSF who do not meet FMLA and/or CFRA eligibility requirements may be granted leave for purposes described in this section by applying for a Paid Medical Leave or Other Leaves/Personal Leaves. The same certification requirements apply to Section D Paid Medical Leave and/or Section P Other Leaves/Personal Leaves requested for the purposes described in Section B.

### **1. Definitions**

- a. Family and Medical Leave (FML) is defined as a qualifying leave taken for any of the following six (6) reasons:
  - 1) Leave due to the NSF's own serious health condition.
  - 2) Leave taken by the NSF to care for a family member, as defined in section B.1.b. below, with a serious health condition.
  - 3) Parental Leave/Baby Bonding, which is leave to bond with the NSF's newborn or newly placed child, as described in section B.9. below.
  - 4) Pregnancy Disability Leave, as described in section C. below, when the NSF is also eligible for leave under the FMLA.
  - 5) Military Caregiver Leave, as discussed in greater detail in section H below.
  - 6) Qualifying Exigency Leave, as discussed in greater detail in section I below.
- b. A "Family Member" for the purposes of FML is the NSF's parent, child, spouse, or domestic partner. Child means the NSF's biological child, adopted child, foster child, stepchild, legal ward, or a child for whom the NSF stands in loco parentis, who is under 18 years of age or incapable of self-care because of a mental or physical disability. Parent includes the NSF's biological parent, foster parent, adoptive parent, stepparent, legal guardian, or an individual who stood in loco parentis to the NSF when the NSF was a child. Spouse includes same or opposite sex spouse. Domestic partner includes same or opposite sex domestic partner.
- c. A "Serious Health Condition" for the purposes of FML is an illness, injury, impairment, or physical or mental condition that involves either inpatient care (as defined in B.1.d.1. below) or continuing treatment (as defined in B.1.d.3. below) and that warrants the participation of the NSF to provide supervision or care (which may include psychological care or comfort) during the period of treatment or incapacity (as defined in B.1.d.2. below).

- d. The NSF's "Own Serious Health Condition" is an illness, injury, impairment, or physical or mental condition that renders the NSF unable to perform any one or all of the essential functions of the NSF's position and involves either inpatient care or continuing treatment.
  - 1) "Inpatient care" means a stay in a hospital, hospice, or residential health care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity. A person is considered an "inpatient" when a health care facility formally admits him or her to the facility with the expectation that he or she will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.
  - 2) "Incapacity" means the inability to work, attend school, or perform other regularly daily activities due to a serious health condition, its treatment, or the recovery that it requires.
  - 3) "Continuing treatment" means ongoing treatment or supervision by a health care provider.
- e. A "Health Care Provider" is an individual who is a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices, or who is duly licensed as a podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to the treatment of the spine to correct a subluxation as demonstrated by x-ray to exist), physician assistant, nurse practitioner or nurse mid-wife performing within the scope of her/his duties, or Christian Science practitioner or any health care provider that the NSF's health plan carrier recognizes for purposes of payment.
- f. "1,250 Hours Of Actual Service" means time actually spent at work and does not include any paid time off or sick leave. For NSF granted military leave, all hours that would have been worked had the NSF not been ordered to military duty shall be used to calculate the 1,250 actual hours of work requirement.

## 2. Eligibility Criteria And Duration

- a. Except as set forth in this section, NSF who have at least twelve (12) cumulative months of University service (all prior University service, including service with UC-managed Department of Energy Laboratories, shall be used to calculate the 12-month service requirement) and have at least 1,250 hours of actual service during the twelve (12) month period immediately preceding the commencement of the leave, are eligible for and shall be granted up to a total of twelve (12) workweeks of FML in the calendar year.

- b. FML is unpaid leave, except as otherwise provided in this Article.
  - 1) Except as set forth below, time off used for FML purposes, including Work Incurred Injury and Illness leave that qualifies as FML, shall be deducted from the NSF's twelve (12) workweek FML maximum entitlement. For Military Caregiver Leave, the maximum entitlement is twenty-six (26) workweeks in a single 12-month leave period, as defined in §H.3.g. below. For Pregnancy Disability Leave, the maximum entitlement is four (4) months per pregnancy.
  - 2) FML shall not exceed twelve (12) workweeks in any calendar year, except in the case of Military Caregiver Leave, Pregnancy Disability Leave, or combined leaves for Pregnancy Disability Leave and Parental Leave/Baby Bonding.
  - 3) If the NSF has exhausted her/his entitlement to FML or is otherwise ineligible for FML, the NSF may still be eligible for a leave to cover the absence from work for verifiable medical reasons as referenced in section D, Paid Medical Leave / Sick Leave, and/or section, P Other Leaves/Personal Leaves, which may be paid or unpaid.

3. FML Notification

- a. If the NSF learns of the event giving rise to the need for FML more than thirty (30) calendar days in advance of the leave's anticipated initiation date, the NSF shall give the University at least thirty (30) calendar days notice of the need for leave. An NSF who fails to give thirty (30) days' notice for a foreseeable leave with no reasonable basis for the delay may have the FML delayed until thirty (30) days after the date on which the NSF provides notice.
  - 1) If the need for FML is foreseeable due to the planned medical treatment of the NSF or that of her/his family member the NSF shall make reasonable efforts to schedule the treatment so as to not unduly disrupt the University's operations.
  - 2) If the need for FML is unforeseeable or actually occurs prior to the anticipated date of foreseeable leave, the NSF shall provide the University with as much notice as practicable.
- b. The University shall determine whether the NSF meets the eligibility requirements to qualify for FML and shall, within five days of that determination, notify the NSF whether the NSF is eligible for FML. The designation notice shall include the start date of the leave, the anticipated return date from the leave, and other terms of the leave. If the leave is being denied, the designation notice will so indicate.
- c. Extensions to the FML, up to the applicable aggregate maximum for the calendar year, may be granted in accordance with section B.4.e.

4. Certification

- a. For FML taken due to the NSF's Own Serious Health Condition - When FML is requested for the NSF's own serious health condition, the University may, at its discretion, require that the NSF's request for leave be supported by written certification issued by the NSF's health care provider. When certification is required by the University, such requirement shall be made to the NSF in writing. Certification may be provided by the NSF on a form given to the NSF by the University and shall be provided within fifteen (15) calendar days following the University's request. Regardless of the format in which it is provided, the certification shall include:
- 1) certification that the NSF has a serious health condition as defined in section B.1.d, above, and
  - 2) a statement as to whether the NSF is unable to perform one or more of the essential assigned functions of her/his position due to the serious health condition, and
  - 3) the date on which the NSF's serious health condition began, if known, the probable duration of the condition, and the NSF's probable date of return, and
  - 4) whether it will be medically necessary for the NSF to take leave intermittently or to work on a reduced work schedule, and if so, the probable frequency and duration of the NSF's need for leave.
- b. For FML taken to care for the NSF's Family Member - When an NSF requests FML to care for a family member with a serious health condition, the University may, at its discretion, require that the NSF's request for leave be supported by written certification issued by the family member's health care provider. When certification is required by the University, such requirement shall be made to the NSF in writing. Certification may be provided by the NSF on a form given to the NSF by the University and shall be provided within fifteen (15) calendar days following the University's request. Regardless of the format in which it is provided the certification shall include:
- 1) certification that the NSF's family member has a serious health condition as defined in section B.1.c., above, and
  - 2) a statement that the family member's serious health condition warrants the participation of the NSF to provide supervision or care (which may include psychological care or comfort) during the period of treatment or incapacity, and
  - 3) whether it is medically necessary for the NSF to take leave intermittently or on a reduced work schedule to care for the family member and the probable frequency and duration of the NSF's need for leave to provide such care.



- c. Confirmation of Family Relationship – The University may require an NSF requesting FML to care for a family member with a serious health condition or requesting FML as Parental Leave/Baby Bonding, Military Caregiver Leave, or Qualifying Exigency Leave, to provide a declaration confirming the familial relationship. The University may, at its sole discretion, delay or deny a request for leave, or discontinue a leave which is in progress, if the NSF fails to provide this declaration within fifteen (15) calendar days of the University's request.
- d. Questioned Medical Opinions – If the University has reason to doubt the NSF's certification for her/his own serious health condition, the University may require that the NSF obtain a second medical opinion from a second health care provider selected by the University.
  - 1) Should the second medical opinion differ from the opinion of the NSF's own health care provider, the University may require a third medical opinion from a third health care provider, jointly agreed to by the NSF and the University.
  - 2) The University shall bear the cost of the second and third opinions, and the third opinion shall be final.
  - 3) The second medical opinion shall be in the same format as the original certification. No medical records may be required to be released to the University, although a limited release of the medical records between the two health care providers may be necessary. The University will provide a copy of the second and, if applicable, third medical opinion to the NSF at no cost to her/him.
- e. Additional Certification and/or Recertification – If additional leave is requested or should the circumstances of the leave change, the University may require that the NSF obtain recertification. Such requests for subsequent certification and/or recertification shall be in writing.
  - 1) If the University requires certification and/or recertification the NSF shall return the certification within fifteen (15) calendar days of the University's request, where practicable.
  - 2) The University may deny or delay a request for an extension or change in the leave until the NSF provides the required certification.
- f. Failure to Provide a Complete and Sufficient Certification and/or Recertification – If the NSF fails to provide a complete and sufficient certification and/or recertification, the University shall provide the NSF fifteen (15) calendar days to perfect the certification and/or recertification.

- 1) Failure to perfect an incomplete or insufficient certification and/or recertification within the requested time may result in delay of the leave or discontinuance of the leave until the NSF provides the required certification and/or recertification.
- 2) If the NSF fails to provide a complete and sufficient certification and/or recertification, the leave is not considered FML and will be denied in accordance with the provisions of section B.3.b. However, the University may grant a Personal Leave of Absence to the NSF at its discretion.

5. Return From FML Taken For Own Serious Health Condition

- a. The NSF shall provide reasonable notice to her/his department of her/his anticipated return to work.
- b. An NSF who has been granted FML for her/his own serious health condition may be required to provide a written medical release to return to work prior to returning to work.
- c. The NSF who has been medically released to perform the essential assigned functions of her/his job, with or without reasonable accommodation, shall be returned to the same position or an equivalent position.
- d. Failure to provide a medical release to return to work may result in the delay of reinstatement until the NSF submits a required medical release certification.

6. Use Of Paid Leave – FML is unpaid except for the use of accrued sick leave or accrued vacation leave (for those NSF who accrue sick leave and vacation leave) and/or the use of Paid Medical Leave as provided in this Article:

- a. An NSF on FML for her/his own serious health condition:
  - 1) if eligible for University disability benefits, shall use accrued sick leave or Paid Medical Leave in accordance with section D below and in accordance with the University's disability plan requirements;
  - 2) if not eligible for University disability benefits, may elect to use accrued sick leave or Paid Medical Leave in accordance with section D below instead of taking FML leave without pay; or
  - 3) if on leave due to a work-incurred injury or illness, an NSF may use accrued sick leave or Paid Medical Leave in accordance with section D below.
- b. An NSF on FML for her/his own serious health condition may use accrued sick leave, accrued vacation leave, and/or Paid Medical Leave in accordance with section D below.

- c. An NSF on FML to care for a family member with a serious health condition may use accrued sick leave and/or accrued vacation leave.
  - d. An NSF taking FML as Parental Leave/Baby Bonding may use accrued sick leave, accrued vacation leave or FML leave without pay.
  - e. An NSF's use of accrued sick leave and/or accrued vacation leave when taking FML as Military Caregiver Leave is addressed in section H.7 below.
  - f. An NSF's use of accrued sick leave and/or accrued vacation leave when taking FML as Qualifying Exigency Leave is addressed in I.5 below.
7. Duration - Although the use of FML need not be consecutive, in no event shall an NSF's aggregate use of FML exceed a total of twelve (12) workweeks within a calendar year, except as provided above in section B.2. The number of FML hours to which the NSF is eligible shall be prorated in accordance with the percentage of her/his appointment and with her/his normal weekly work schedule.
8. NSF Requests for Reduced Work Schedule/Intermittent Leave - When medically necessary and supported by medical certification, the University shall grant an eligible NSF's request for a reduced work schedule or intermittent leave including absences of less than one (1) day. When granted, the University will count only the time actually spent on leave pursuant to the intermittent or reduced work schedule against the NSF's FML entitlement.
9. FML Parental Leave/Baby Bonding - Parental Leave/Baby Bonding must be initiated and concluded within one (1) calendar year of the birth or placement of the child. The University may also grant Non-FML Parental Leave Without Pay, pursuant to Section K below.
- a. If requested and taken immediately following a Pregnancy Disability Leave, an NSF eligible for FML under the FMLA/CFRA at the beginning of her Pregnancy Disability leave shall be granted the unused portion of FMLA/CFRA leave for Parental Leave/Baby Bonding purposes, up to a maximum of twelve (12) workweeks in a calendar year. The amount available for use is determined by the amount of FMLA/CFRA time that the FMLA/CFRA eligible NSF has previously used in the calendar year.
    - 1) Requests for Parental Leave/Baby Bonding - The NSF shall request Parental Leave/Baby Bonding sufficiently in advance of the expected birth date of the child or placement date of an adopted or foster care child to allow the University to plan for the absence of the NSF, but the NSF shall not be required to provide more than thirty (30) days advance notice. The anticipated date of return from Parental Leave/Baby Bonding

shall be set at the time such leave commences, or if requested in conjunction with a FML taken as Pregnancy Disability Leave, shall be set at the time such Pregnancy Disability Leave commences. In the event Pregnancy Disability Leave is extended beyond the anticipated date of return by the NSF's health care provider, then the NSF is expected to communicate with the University about her/his new anticipated date of return. Parental Leave/Baby Bonding, when taken for the adoption of a child or placement of a child with the NSF, could commence prior to the date of placement to take care of matters related to the adoption or placement of the child.

- 2) Duration – Parental Leave/Baby Bonding, alone, shall not exceed twelve (12) workweeks within a calendar year as defined in Section B.2.b.2. and B.7., above. However, when Parental Leave/Baby Bonding is combined with FML taken as Pregnancy Disability Leave, the total amount of FML shall not exceed seven (7) months in a calendar year.
  - a. The University shall grant a Parental Leave/Baby Bonding of less than two (2) weeks duration on any two (2) occasions during a calendar year.
  - b. The University may require that any additional Parental Leave/Baby Bonding requested during this same time period be for a minimum duration of two (2) weeks, unless otherwise required by law.
10. Continuation Of Health Benefits while on FML - An eligible NSF who is on an approved FML (when FML is taken for her/his own serious health condition, to care for a family member with serious health condition, as Parental Leave/Baby Bonding, or as Qualifying Exigency Leave), with or without pay, shall be entitled to continue participation in health plan coverage (medical, dental, and vision) as if the NSF were on pay status for the period of the leave, up to twelve (12) workweeks in a calendar year. If FML is taken as Military Caregiver Leave, the NSF will be entitled to such benefits continuation for up to twenty-six (26) workweeks in a single 12-month leave period, as defined in §H.3.g. An NSF on an approved Pregnancy Disability Leave, shall be entitled to such benefits continuation for up to four months in the twelve (12) month period that begins on the date that the Pregnancy Disability Leave begins, regardless of whether she is eligible to have any portion of this leave counted as FML under the FMLA. Other group insurance coverage shall be administered in accordance with the provisions of the applicable group insurance regulations.
11. Return To Work - When an NSF has been granted an approved FML for any reason other than Pregnancy Disability Leave and returns within twelve (12) workweeks of the initiation of the leave (or within twenty-six (26)

workweeks if FML is taken as Military Caregiver Leave), the NSF shall be reinstated to the same or an equivalent position upon expiration of the leave. For reinstatement immediately after Pregnancy Disability Leave, see §C.5. below. NSF who return to work at the conclusion of their combined Pregnancy Disability Leave and Parental Leave/Baby Bonding shall be reinstated to their same or an equivalent position. If the position has been abolished or otherwise affected by layoff and an equivalent position is not available, the NSF shall be afforded the same considerations which would have been afforded had the NSF been on pay status when the position was abolished or affected by layoff. Return to work provisions do not apply to the NSF if return is sought after the ending date of the NSF's current appointment.

### **C. PREGNANCY DISABILITY LEAVE**

1. Duration - An NSF is entitled to, and the University shall grant, up to four (4) months of Pregnancy Disability Leave for disability related to pregnancy, childbirth, and related medical condition. Pregnancy Disability Leave may also be used for prenatal care. If the NSF is eligible for FML under the FMLA, pursuant to Section B. above, such leave shall be deducted from an NSF's FMLA entitlement.
  - a. If the disability related to pregnancy, childbirth or related medical condition continues beyond four (4) months, a medical disability leave of absence may be granted in accordance with Section B.2.b.3.
2. Pregnancy Disability Leave is normally without pay. However, an NSF may receive pay during the Pregnancy Disability Leave according to the following:
  - a. An NSF who does not accrue sick leave and who has served in her title or any other UC academic title for at least for at least 12 consecutive months will receive at least her approved base salary for up to six (6) weeks while she is unable to perform her normal University obligations.
  - b. A NSF who does not accrue sick leave and who has not served in her title or any other UC academic title for at least 12 consecutive months will receive at least her approved base salary for approximately the period which would be accrued during the appointment in accordance with the accrual rates as follow:
    - 1) Eligible academic-year appointees accrue sick leave only during the months of their service period, at the rate of one working day per month for full-time service, including leaves with pay.

- 2) Eligible appointees at 50 percent or more time accrue sick leave at a proportionate rate; appointees at less than 50 percent time do not accrue sick leave.
    - c. Any NSF who accrues sick and/or vacation leave may use accrued sick leave and/or accrued vacation leave to substitute her pay during the Pregnancy Disability Leave.
    - d. The NSF is eligible to receive Short-Term Disability coverage during this leave in accordance with the provisions of that benefit, including being required to use available accrued sick leave in accordance with the University's Disability Plan.
  3. Reduced Work Schedule - When medically necessary, and supported by medical certification, the University shall grant an NSF Pregnancy Disability Leave on a reduced work schedule or on an intermittent basis including absences of less than one (1) day. Only the time actually spent on the intermittent or reduced leave schedule shall be counted against the NSF's entitlement of four (4) months of pregnancy disability leave.
  4. Return To Work - An NSF who has been granted Pregnancy Disability Leave shall be reinstated to the same position from which the leave was taken provided that the NSF returns to work immediately upon termination of the Pregnancy Disability Leave and provided that the aggregate duration of all leaves granted for a given pregnancy does not exceed four (4) months. If the same job has been abolished or affected by layoff, the NSF shall be reinstated to a comparable position. If a comparable position is not available, the NSF shall be afforded the same considerations which would have been afforded had that NSF been on pay status when the position was abolished or affected by layoff. The date of reinstatement is generally determined when the leave is granted but may be adjusted, as necessary, given the length of time the NSF is actually disabled. Return to work provisions do not apply if return is sought after the ending date of the NSF's current appointment.
  5. Continuation Of Health Benefits - An NSF on an approved Pregnancy Disability Leave shall be entitled to continue participation in health plan coverage (medical, dental, and vision) as if on pay status for up to four (4) months in the twelve (12) month period that begins on the date that the Pregnancy Disability Leave begins, regardless of whether she is eligible to have any portion of this leave counted as FMLA under the FMLA. Other group insurance coverage shall be continued in accordance with the provisions of the applicable group insurance regulations.

#### **D. PAID MEDICAL LEAVE / SICK LEAVE**

1. NSF who have a full-time appointment for at least a full academic year (three quarters or two semesters) who are unable to work for reasons of

personal illness, injury, or disability shall be granted paid medical leave as follows:

- a. Eligible NSF with fewer than ten (10) years of employment in the bargaining unit at the same campus who do not accrue sick leave shall be eligible for a maximum of two (2) quarters or one (1) semester of consecutive or intermittent paid medical leave within a ten-year period for personal injury, illness or disability.
- b. Eligible NSF with ten (10) or more years of employment in the bargaining unit at the same campus who do not accrue sick leave shall be eligible for a maximum of three (3) quarters or two (2) semesters of consecutive or intermittent paid medical leave within each subsequent 10-year period, for personal injury, illness or disability.
- c. The University will not grant paid medical leave beyond the end date of an NSF's term appointment except in cases of reappointment.
- d. Paid medical leave does not accrue and, if unused within the 10-year period, is not carried over to any subsequent 10-year period, nor is the unused portion used to calculate University of California Retirement Plan (UCRP) service credit.
- e. University of California Retirement Plan (UCRP) service credit accrues while an NSF is on a UC-paid medical leave in accordance with UCRP provisions.
- f. NSF may also be eligible for employer-paid Short-Term Disability Plan benefits and, if enrolled, for University of California employee-paid Supplemental Disability Plan benefits.

## 2. Sick Leave for Fiscal Year Appointees

- a. Eligibility  
NSF in Fiscal year appointments on pay status for at least fifty percent (50%) of full time are eligible to accumulate sick leave credit based on the percentage of time on pay status up to a maximum of one (1) working day per month for full time service. Sick leave may be accrued without limit. Sick leave is earned during leave with pay. Sick leave is credited at the end of the month it is earned.
- b. Use of accumulated sick leave
  - 1) NSF are expected to use sick leave in keeping with normally approved illness of a family member or bereavement. Accumulated sick leave may be used for temporary disability related to pregnancy, childbirth, and recovery there from.
  - 2) NSF may be required to submit satisfactory proof of illness or disability.

- 3) Sick leave shall not be used prior to the time it is credited nor shall sick leave be used beyond a predetermined separation date.
- 4) Regularly scheduled days off and University administrative holidays shall not be charged against sick leave.
- 5) While receiving injury or health compensation under the Worker's Compensation Act, an absent NSF may also receive sick leave benefits provided the total of the sick leave pay and worker's compensation does not exceed the employee's regular salary for the period.

3. Reporting

Once a month, each NSF shall report sick leave used to the appropriate office. Once a month, the University shall report to each NSF on the accrual and use of sick leave.

4. Sick leave retirement credit

Upon retirement, accumulated sick leave shall be converted to retirement service credit in accordance with retirement system policies in effect at the time of the NSF's retirement.

**E. BEREAVEMENT LEAVE**

1. The University shall grant an NSF's request for bereavement leave due to the death of a family member as defined in section E.2., below. The period of such leave shall be up to three (3) days per occurrence, and NSF shall receive up to three (3) days' pay for bereavement leave. Nothing in this section shall preclude the University from granting a longer period of unpaid bereavement leave.
2. Family member (including step-family member) for the purpose of bereavement leave is defined as one's mother, father, sister, brother, parent-in-law, spouse, domestic partner, parent of domestic partner, grandparent, grandchild, child, son/daughter-in-law, adopted or foster child (including children of a domestic partner or legal ward who is under 18 years). Parent includes a biological, foster, or adoptive parent, step-parent, legal guardian, or an individual who stood in loco parentis to the NSF when the NSF was a child.



## **F. JURY DUTY**

An NSF shall be eligible for paid jury duty leave when summoned for required jury duty service. The NSF shall provide the University with verification of jury duty service. The University will not provide paid jury duty leave absent verification of service.

## **G. MILITARY LEAVE**

The University shall provide military leave for NSF who are called to active U.S. military service according to applicable University military leave policy or as required by applicable law.

## **H. MILITARY CAREGIVER LEAVE**

1. Military Caregiver Leave is an additional type of FML available to eligible NSF. An NSF may take Military Caregiver Leave to care for a family member or “next of kin” who is a “covered servicemember” undergoing medical treatment, recuperation or therapy for a serious injury or illness.
2. An eligible NSF is entitled to up to twenty-six (26) workweeks of Military Caregiver Leave during a single 12-month leave period. The NSF must be a spouse, domestic partner, parent, son, daughter or next of kin of the covered servicemember to be eligible for this type of leave.
3. Definitions
  - a. “Covered servicemember” means
    - 1) A current member of the United States Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary retired list; or
    - 2) A “covered veteran” who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. A “covered veteran” is an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible NSF takes FML to care for the covered veteran.
  - b. “Outpatient status” means the status of a servicemember assigned to (a) a military medical treatment facility as an outpatient; or (b) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

- c. "Serious injury or illness" means (a) for a current member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred or aggravated by the covered servicemember in the line of duty on active duty in the Armed Forces that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating; and (b) for a veteran of the Armed Forces, an injury or illness that was incurred or aggravated in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran.
  - d. "Parent of a covered servicemember" means a covered servicemember's biological, adopted, or foster parent, stepparent, or any other individual who stood in loco parentis to the covered servicemember when the covered servicemember was a child. The term does not include parents "in-law."
  - e. "Son or daughter of a covered servicemember" means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis when that person was a child, and who is of any age.
  - f. "Next of kin" means either (a) the nearest blood relative of the covered servicemember (other than the covered servicemember's spouse, domestic partner, parent, son or daughter) or (b) the person who the covered servicemember has designated in writing as his or her nearest blood relative for purposes of Military Caregiver Leave.
  - g. "Single 12-month leave period" means the period beginning on the first day the NSF takes leave to care for the covered servicemember and ends 12 months after that date. (This leave period differs from the calendar year definition of the leave year used for determining eligibility for other types of FML at the University.)
4. Eligibility - An NSF who is a spouse, domestic partner, son, daughter, parent or next of kin of a covered servicemember is eligible for Military Caregiver Leave if the NSF meets the eligibility requirements for FML set forth in Section B.2.a.
5. Counting Leave
- a. Leave is applied on a per-covered servicemember, per-injury basis. Eligible NSFs may take more than one period of twenty-six (26) workweeks of leave if the leave is to care for a different covered servicemember or to care for the same servicemember with a subsequent serious injury or illness, except that no more than twenty-six (26) workweeks of leave may be taken within any "single 12-month period."
  - b. If an eligible NSF does not use all of his or her twenty-six (26) workweeks of leave entitlement to care for a covered servicemember

during this single 12-month leave period, the remaining part of the twenty-six (26) workweeks entitlement to care for the covered servicemember for that serious injury or illness is forfeited.

- c. As with most other types of FML, this leave may also be taken on an intermittent or reduced schedule basis. If the need for intermittent or reduced schedule leave is foreseeable based on the planned medical treatment of the covered servicemember, the NSF may be required to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, to an available alternative position for which the NSF is qualified and which better accommodates recurring periods of leave than does the NSF's regular position.
6. Documentation and Certification - NSF may be required to provide a certification completed by an authorized health care provider of the covered servicemember that provides information necessary to establish entitlement to Military Caregiver Leave. In addition, NSF may be required to provide certain information (or have the covered servicemember provide that information) establishing that the servicemember is a covered servicemember for purposes of Military Caregiver Leave, his or her relationship with the NSF, and an estimate of the leave needed to provide the care.
7. Substitution of Paid Leave - Military Caregiver Leave is unpaid leave, except an NSF who accrues sick leave and vacation leave may use accrued sick leave, accrued vacation or take leave without pay. .
8. Advance Notice - Whenever possible, an NSF shall provide at least 30 days advance notice. If thirty (30) calendar days notice is not practicable, notice shall be given as soon as practicable. Failure to comply with this notice requirement may result in postponement of leave.
9. Reinstatement - Reinstatement shall be to the same position from which the leave is taken or, at the department's discretion, to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment provided that the NSF returns to work immediately following termination of the leave. If the NSF would have been laid off or terminated had the NSF remained on pay status during the leave period, the NSF shall be afforded the same considerations afforded to other NSFs who are laid off or terminated. Reinstatement provisions do not apply if return is sought after the ending date of the NSF's current appointment.
10. Continuation of Health Benefits - An NSF on an approved Military Caregiver Leave shall be entitled to continue participation in health plan coverage (medical, dental, and optical) as if on pay status during the leave.

## I. QUALIFYING EXIGENCY LEAVE

Qualifying Exigency Leave is an additional type of FML available to eligible NSF's. An eligible NSF who is the spouse, domestic partner, son, daughter or parent of a "military member" may take Qualifying Exigency Leave to attend to any "qualifying exigency" when the military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).

### 1. Definitions

- a. "Covered active duty or call to covered active duty status" means (1) in the case of a member of the Regular Armed Forces, duty during the deployment to a foreign country or (2) in the case of a member of the Armed Forces Reserve, duty during the deployment to a foreign country under a Federal call or order to active duty in support of a contingency operation, during a war, or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation as defined by the FMLA.
- b. "Parent of a military member" means a military member's biological, adopted, or foster parent, stepparent, or any other individual who stood in loco parentis to the military member when the military member was a child. The term does not include parents "in-law."
- c. "Son or daughter of a military member" means a military member's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the military member stood in loco parentis when the person was a child, and who is of any age.
- d. "Qualifying exigency" is defined as any one of the following, provided that the activity relates to the military member's covered active duty or call to covered active duty status:
  - 1) Short notice deployment to address issues that arise due to a military member being notified of an impending call to active duty seven (7) or fewer calendar days prior to the date of deployment
  - 2) Military events and activities, including official ceremonies
  - 3) Childcare and school activities for a child of the military member who is either under age 18 or incapable of self-care
  - 4) Financial and legal arrangements to address the military member's absence or to act as the military member's representative for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status and for the ninety (90) days after the termination of the military member's covered active duty status

- 5) Counseling (provided by someone other than a health care provider) for the NSF, for the military member, or for a child of the military member who is either under age 18 or incapable of self-care
  - 6) Rest and recuperation (up to fifteen (15) days of leave for each instance) to spend time with a military member who is on short-term, temporary rest and recuperation leave during deployment
  - 7) Post-deployment activities to attend ceremonies sponsored by the military for a period of ninety (90) days following termination of the military member's covered active duty and to address issues that arise from the death of a military member while on covered active duty status
  - 8) Parental care for the parent of the military member when the parent is incapable of self-care
  - 9) Additional activities related to the military member's covered active duty or call to covered active duty status when the University and the NSF agree that such activity qualifies as an exigency and agree to both the timing and duration of the leave.
2. Eligibility - An NSF who is the spouse, domestic partner, son, daughter, or parent of a military member is eligible for Qualifying Exigency Leave if the NSF meets the eligibility requirements for FML set forth in section B.2.a. above.
  3. Counting Leave - Eligible NSF are entitled to up to twelve (12) workweeks of Qualifying Exigency leave during a calendar year. As with most other FML Qualifying Exigency Leave may be taken on an intermittent or reduced schedule basis.
  4. Documentation and Certification - NSF may be required to provide a copy of the military member's active duty orders. NSF may also be required to provide certification of: (1) the reasons for requesting Qualified Exigency Leave, (2) the beginning and end dates of the qualifying exigency, and (3) other relevant information.
  5. Substitution of Paid Leave – Qualifying Exigency Leave is unpaid leave, except an NSF who accrues vacation leave may use accrued vacation leave or take leave without pay. Qualified Exigency Leave is unpaid leave.
  6. Notice - The NSF shall provide notice of the need for leave as soon as practicable.
  7. Reinstatement - Reinstatement shall be to the same position from which the leave was taken or, at the department's discretion, to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment provided that the NSF returns to work immediately following

termination of the leave. If the NSF would have been laid off or terminated had the NSF remained on pay status during the leave period, the NSF shall be afforded the same considerations afforded to other NSF who are laid off or terminated. Reinstatement provisions do not apply to NSF if return is sought after the ending of the NSF's current appointment.

8. Continuation of Health Benefits - An NSF on an approved Qualified Exigency Leave shall be entitled to continue participation in health plan coverage (medical, dental, and optical) as if on pay status for a period of up to 12 workweeks in a calendar year.

## **J. MILITARY SPOUSE/DOMESTIC PARTNER LEAVE**

An NSF who is a spouse or domestic partner of a member of the Armed Forces, National Guard, or Reserves may take this leave during a "qualified leave period" when the NSF's spouse or domestic partner is on leave from a period of military conflict. "Qualified leave period" means the period during which the "qualified member" is on leave from deployment during a period of military conflict. An eligible NSF shall be entitled to up to a maximum of ten (10) days of unpaid leave during a qualified leave period.

1. Eligibility - To be eligible, an NSF must satisfy all of the following criteria:
  - a. Be a spouse or domestic partner of a "qualified member" (defined below),
  - b. Perform services for the University for an average of 20 or more hours per week,
  - c. Provide the University with notice of the NSF's intention to take the leave, within two (2) business days of receiving official notice that the qualified member will be on leave from deployment, and
  - d. Submit written documentation certifying that the qualified member will be on leave from deployment during the time that leave is being requested by the NSF.
2. Definitions
  - a. "Qualified member" means a person who is any of the following:
    - 1) A member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States, or
    - 2) A member of the National Guard who has been deployed during a period of military conflict, or
    - 3) A member of the Reserves who has been deployed during a period of military conflict.

- b. "Period of military conflict" means either of the following:
  - 1) A period of war declared by the United States Congress, or
  - 2) A period of deployment for which a member of a reserve component is ordered to active duty, as defined in California Military & Veterans Code section 395.10.
- 3. Substitution of Paid Leave – This leave is unpaid leave, except that an NSF who accrues vacation leave may use accrued vacation leave or take leave without pay.

## **K. NON-FML PARENTAL LEAVE WITHOUT PAY**

### **1. Description and Eligibility**

An NSF is eligible for a full-time or part-time parental leave without pay for up to one year to care for a child. The child may be the NSF's child or that of a spouse or domestic partner.

The University will not grant a parental leave without pay beyond the end date of an NSF's term appointment.

### **2. Interaction with Family and Medical Leave Entitlement**

An NSF who is eligible for FML shall be granted an unpaid leave to care for a newborn child or a child newly placed for adoption or foster care. Up to 12 workweeks of the parental leave shall run concurrently with FML. Parental leave under State and Federal law has the following additional obligations and benefits.

#### **(a) Timing**

Parental leave granted pursuant to the FMLA and/or the CFRA must be concluded within 12 months following the child's birth or placement.

#### **(b) Effect on Benefits**

A benefits eligible NSF on a FML, with or without pay, shall be entitled to continue participation in health coverage (medical, dental, and vision) as if on pay status for a period of up to 12 workweeks during a calendar year. Other group insurance coverage and retirement benefits shall be administered in accordance with the provisions of the applicable group insurance and retirement system regulations.

3. An NSF on a parental leave not covered by State or Federal family and medical leave law is responsible for the continuation of benefits during any unpaid portion of the leave.

## **L. VACATION**

### 1. Definition

Vacation is paid time off from University obligations for the purpose of rest and rehabilitation.

### 2. Eligibility

- a. NSF on academic year appointments do not accrue vacation.
- b. NSF on fiscal year appointments at fifty percent (50%) of full-time or more for at least six months accrue vacation.

### 3. Accrual and Use

- a. Eligible full-time NSF accrue vacation at the rate of two (2) working days a month. Eligible part-time NSF accrue vacation at a proportionate rate of full time credit.
- b. Vacation allowance shall not accrue during a leave of absence without pay. Vacation credit shall be accrued by the NSF on a leave of absence with pay.
- c. Accrued vacation shall be used at a time or times in keeping with the program of work being conducted by the NSF, and approved by the designated University official.
- d. Regularly scheduled days off and the University administrative holidays shall not be charged against vacation time.
- e. Except when a campus allows the use of anticipated vacation in times of holiday closures, and NSF may not anticipate vacation, that is, vacation is limited to the vacation time actually accrued by the date set for the NSF's vacation.
- f. Records showing accrual and usage of vacation leave credit will be maintained for the NSF.

## **M. VOTING**

An employee shall be granted leave with pay, up to a maximum of two (2) hours, for voting in a statewide primary or general election if the employee is scheduled to work eight (8) hours or more on that day and does not have time to vote outside of working hours.

## **N. BLOOD DONATIONS**



An employee may be granted leave with pay, up to a maximum of two (2) hours, for donating blood during regularly scheduled hours of work.

**O. WITNESS LEAVE**

Witness Leave is leave with pay for time spent attending administrative or legal proceedings on behalf of the University or appearing as a subpoenaed witness in an administrative or legal proceeding. Leave shall be granted for the actual time spent in proceedings and in related travel not to exceed the NSF's normal workday and work week. Leave with pay will not be granted when a NSF is a plaintiff or defendant in a proceeding unrelated to University employment, is called or subpoenaed as a paid expert witness not on behalf of the University or is called or subpoenaed because of duties for another employer. All NSF are eligible to apply for leaves in accordance with other leaves with or without pay.

**P. OTHER LEAVES/PERSONAL LEAVES**

1. Other leaves/Personal Leaves may be granted with or without pay at the University's sole discretion or if required by applicable law.
2. NSF who wish to take a leave of absence shall submit a timely request for leave to the appropriate University administrator with sufficient specific information to allow the University to make a decision. The application shall identify the period of the leave and whether the leave requested is with or without pay.
3. Such leaves shall normally not exceed one calendar year. In exceptional circumstances, such leaves may be extended at the sole discretion of the University.

**Q. ACTIVE SERVICE-MODIFIED DUTIES – FAMILY ACCOMMODATIONS FOR CHILDBEARING AND CHILDREARING**

1. Definition: Active service-modified duties is a period during which normal duties may be reduced so that an NSF can prepare for and/or care for a newborn child or a child under age five newly placed for adoption or foster care. During a period of active service modified duties, the NSF is on active service and is expected to perform some portion of his or her normal duties. A period of active service-modified duties is not a leave of absence.
2. Eligibility:
  - a. To be eligible for active service-modified duties, an NSF must be responsible for 50 percent or more of the care of a child. The child may be the NSF's child or that of a spouse or domestic partner. An

NSF is eligible for a period of active service-modified duties for each event of birth or placement. The birth or placement of one or more children at the same time constitutes a single event of birth or placement. Eligibility for a period of active service-modified duties shall normally extend from 3 months prior to 12 months following the birth or placement.

- b. An NSF who is a birth mother and who has a full-time appointment for at least one full academic year (three quarters or two semesters) or for the entire fiscal year (four quarters) is eligible for a total period of active service-modified duties of two quarters (or two semesters), which includes any time taken for paid childbearing leave (up to 6 weeks), to enable her to recover fully from the effects of pregnancy and childbirth and to prepare for and/or care for the newborn child. If she gives birth during the summer or an off-duty term, she is eligible for a total period of active service-modified duties of two quarters (or two semesters).
  - c. An eligible NSF who is not the birth mother and who has a full-time appointment for at least one full academic year (three quarters or two semesters) or for the entire fiscal year (four quarters) is eligible for active service-modified duties of one quarter (or one semester).
3. Submission of Request: An NSF shall submit a written request to the department chair or unit head of the need for a period of active service-modified duties. The request must include a written statement by the NSF certifying that he or she is responsible for 50 percent or more of the care of a newborn child or a child under age five newly placed for adoption or foster care. The department chair and/or equivalent will discuss the proposed modifications with the NSF. The determination of the modified duties, such as assignment of additional resources, is at the sole non-grievable discretion of the University.
4. The University will not grant any active service-modified duties beyond the end date of an NSF's term appointment.

## **R. GRIEVABILITY AND ARBITRABILITY**

1. The provisions of this Article are subject to Article 32 — Grievance Procedure.
2. Only sections A.1, A.2, A.3, and A.9, and the procedural issues of this article, are subject to Article 33 — Arbitration.

**ARTICLE 13  
TRAVEL**

- A.** The University shall reimburse NSF's for related per diem and expenses for required travel on official University business. Reimbursement rates and methods shall be those provided in general to other University employees.
  
- B.** When NSF's on requested and approved travel are reimbursed in whole or in part for per diem and expenses, the same criteria for payment as are currently applied to other University employees will be used.

**ARTICLE 14  
HOLIDAYS**

- A.** The University observes the following days as administrative holidays:
  - New Year's Day
  - Third Monday in January
  - Third Monday in February (or announced equivalent)
  - Last Monday in May
  - Fourth of July
  - Labor Day
  - Veterans Day
  - Thanksgiving Day
  - Friday following Thanksgiving Day (or announced equivalent)
  - December 24 (or announced equivalent)
  - December 25 (or announced equivalent)
  - December 31 (or announced equivalent); and,
  - Last Friday in March (or announced equivalent).
  
- B.** Official holidays for both academic-year and fiscal-year appointees are those administrative holidays as set forth annually in the University calendar and which occur during the appointee's period of service with the University. Periods of academic recess are not regarded as holidays.
  
- C.** Unless alternate days are designated by the University, when a holiday falls on a Sunday, the following Monday is observed; and when a holiday falls on a Saturday, the preceding Friday is observed.

- D. NSF working at non-University locations shall observe the official holidays observed at those locations in lieu of the holidays listed above.

## **ARTICLE 15 MOVING EXPENSES**

- A. A NSF who accepts a position at a different campus may be provided with covered moving expenses.
- B. Determinations regarding eligibility for reimbursement and determinations regarding which expenses, if any, will be covered are made at the sole discretion of the University.

## **ARTICLE 16 MEDICAL SEPARATION**

- A. When NSF is unable to perform essential assigned functions satisfactorily because of any medical (including psychological) condition, that NSF may be medically separated pursuant to this Article. NSF who is medically separated is eligible for special reemployment procedures as set forth in Section G. Except by mutual consent an NSF shall not be separated under this Article while on any authorized leave. A medical separation may be based on the receipt of long term disability payments from a retirement system to which the University contributes, such as UCRS.
- B. The University shall pay the reasonable costs of any medical and psychiatric examinations requested by the University. When feasible, the University will present the NSF with a list of authorized medical practitioners from which the NSF may select one.
- C. A medical separation shall be based on:
  - 1. a statement describing the essential functions the NSF is not performing satisfactorily;
  - 2. a statement comparing the essential functions the NSF is not performing satisfactorily to the benefits to the University created by the disability;

3. a description of any reasonable accommodations considered and why these have not enabled the NSF to perform essential assigned functions satisfactorily; and,
  4. any medical, psychiatric or other pertinent information presented by the NSF, the NSF's medical examiner(s), or the University.
- D.** When the University intends to medically separate an NSF, the NSF shall be given written notice of the intent to separate for medical reasons. The notice shall:
1. be given to the NSF either by delivery of the notice to the NSF in person, or by mail with proof of service;
  2. state the reason for the medical separation;
  3. include copies of pertinent material considered, except that excluded by medical privilege or applicable statute;
  4. state that the NSF or representative has the right to respond, and to whom, within ten (10) calendar days from the date of issuance of such notice of intent, either orally or in writing, regarding the medical separation; and,
  5. state the proposed effective date of the action, which shall be no earlier than thirty (30) calendar days from the date of this notice.
- E.** Upon request, copies of medical records from a University appointed medical examiner will be forwarded to the physician of record or choice of the NSF.
- F.** If there is a disagreement as to the appropriateness of the medical separation, the NSF may request a meeting with a designated University official within fifteen (15) calendar days of the date of the notice. If the University determines that a medical separation is appropriate and that no reasonable accommodation can be made, the NSF will be given written notice of the medical separation. The notice shall:
1. specify the effective date of the medical separation;
  2. state the reasons for the medical separation; and,

3. state the right of the NSF to grieve the action to the fullest extent provided by this MOU.

- G.** For a period of one year following the date of a medical separation, an NSF may be selected for a position within the unit without the requirement that the position be publicized. However, if the NSF is receiving disability benefits from a retirement system to which the University contributes, the period shall be three (3) years from the date benefits commenced. If an NSF separated under this Article is reemployed in the unit within the allowed period, a break in service shall not occur.

## **ARTICLE 17 LAYOFF, REDUCTION IN TIME AND REEMPLOYMENT**

### **A. GENERAL PROVISIONS**

1. Consistent with this MOU, all layoffs and reductions in time, and reemployment from layoff status, must be made in accordance with the provisions of this Article.
2. This Article does not apply to Summer Session appointments.
3. Consistent with this MOU, the University has the sole discretion to determine when a layoff or reduction in time is necessary, and to determine the function(s) and the title code(s) on a particular campus within which the staffing level(s) are to be reduced.
4. The provisions of this Article do not nullify or modify the applicable University and campus policies or procedures that exist or may be developed pertaining to disestablishment.
5. The provisions of this Article pertain to actions taken within a layoff unit.
6. The University shall not apply the provisions of this Article in an arbitrary, capricious or unreasonable manner.
7. For purposes of Article 7a and 7b and this Article only, layoff periods of less than one quarter or semester count towards eligibility for Continuing Appointment status and seniority.

## **B. DEFINITIONS**

### **1. Layoff**

- a. A layoff is an involuntary separation from employment in a layoff unit, due to a programmatic change, budgetary considerations, or a lack of work for the NSF.
- b. Pre-Six Appointees are considered to be separated from employment at the expiration of their appointment. Such separation does not constitute a layoff.

### **2. Reduction in Time: A reduction in time occurs when an NSF's appointment in a layoff unit is involuntarily reduced due to a programmatic change, budgetary considerations, or a lack of work for the NSF.**

### **3. Layoff Unit**

The layoff unit shall be the department, program or equivalent unit.

### **4. Seniority**

- a. Seniority is based on the number of terms of service (quarters or semesters) on pay status in the bargaining unit, in the same layoff unit. If two or more NSF have the same number of terms of service, the number of terms at 50% or greater shall be used to determine which NSF has greater seniority. If two or more NSF have the same number of terms of service and the number of terms at 50% or greater, the tie breaker shall be earliest hire date in the department, program, or unit.
- b. When a pre-six NSF and a Continuing Appointee are teaching the same course in the same layoff unit the University shall lay off or reduce the appointment percentage of the pre-six NSF before laying off or reducing the appointment percentage of a Continuing Appointee.
- c. NSF who hold Continuing Appointments shall have seniority over NSF who have achieved Continuing status but who have not yet begun a Continuing Appointment. NSF who achieved Continuing

Appointee status but who have not yet begun a Continuing Appointment shall have seniority over Pre-six year NSF.

### **C. CONSIDERATIONS PRIOR TO LAYOFF OR REDUCTION IN TIME**

1. When the University has determined that NSF staffing cuts are necessary, it will consider attrition, retirement, the non-reappointment of pre-six year NSF, and voluntary reduction in NSF staffing within the layoff unit in order to avoid a layoff or reduction in time.
2. At its sole discretion, the University may accept any NSF's written request to volunteer for layoff or reduction in time. However, the University shall not solicit volunteers for layoff or reduction in time. The University will transmit a copy to the Union of the acceptance, if any, of the NSF's request no later than the next business day.

### **D. IMPLEMENTATION OF LAYOFF AND REDUCTION IN TIME**

1. When there is no substantial difference in the degree of special skills, knowledge, or ability essential to the layoff unit as determined by the University, the order of layoff or reduction in time shall be in inverse order of seniority.
2. In addition to the reasons set forth in B.1. and B.2. above, the University may lay off or reduce the appointment percentage of a Continuing Appointee as a result of assigning the course(s) taught by the Continuing Appointee to Senate Faculty or to graduate academic student employee. Nevertheless, the University may not lay off or reduce the appointment of a Continuing Appointee in order to assign the course(s) taught by the Continuing Appointee to a graduate academic student employee who is studying in a different department and unrelated discipline, unless such assignment is in accordance with the department's or division's academic plan for the pedagogical training of its graduate students.
3. When a Continuing Appointee has received a notice of layoff or reduction in time, and the Continuing Appointee or the Union on behalf of the



Continuing Appointee alleges that s/he is equally qualified to perform the work being done by one or more less senior NSF(s) in the same layoff unit, the University shall evaluate the qualifications of the less senior NSF(s) named by the Continuing Appointee. If the University determines that the more senior Continuing Appointee's qualifications are substantially equal to those of the less senior NSF, the University shall lay off or reduce in time the less senior NSF.

## **E. LAYOFF AND REDUCTION IN TIME- PRE-SIX APPOINTEES**

### **1. Written Notice of Layoff or Reduction in Time**

NSF with pre-six year appointments shall be given written notice of the effective date of any layoff or reduction in time. The notice shall identify whether the layoff or reduction in time is due to a programmatic change, budgetary considerations, or a lack of work for the NSF. Notice will be given subject to the provisions below:

- a. NSF on quarter or semester appointments or initial one-year appointments shall be given at least thirty (30) calendar days advance written notice.
- b. NSF with an appointment of at least one year with four (4) through nine (9) quarters or three (3) through six (6) semesters of University service in the layoff unit shall be given at least sixty (60) calendar days advance written notice.
- c. NSF with an appointment of at least one year with ten (10) or more quarters or seven (7) semesters or more of University service in the layoff unit shall be given at least ninety (90) calendar days advance written notice.
- d. Notwithstanding the foregoing, any pre-six NSF whose appointment is reduced by up to one (1) IWC (or one course if valued at greater than one IWC) shall be entitled to only thirty (30) calendar days advance written notice.
- e. When the University provides written notice to the NSF, the University shall transmit a copy of the notice to the Union no later than the next business day.

### **2. Pay in Lieu of Notice for Layoff or Reduction in Time**

- a. Where advance written notice of layoff or reduction in time is not given thirty (30) calendar days pay in lieu of notice will be provided.
- b. Pay in lieu of notice shall never exceed the pay the NSF would have received absent the layoff or reduction in time.

**F. LAYOFF AND REDUCTION IN TIME – CONTINUING APPOINTEES**

1. Layoff

a. Written Notice

- 1) Continuing Appointees shall be given at least twelve (12) months written notice of layoff. The notice shall identify whether the layoff is based on programmatic change, budgetary considerations, or a lack of work for the NSF.
- 2) When the University provides written notice to the NSF, the University shall transmit a copy of the notice to the Union no later than the next business day.

b. Pay in Lieu of Notice for Layoff

- 1) Where advance notice is not given, pay in lieu of notice will be provided.
- 2) Pay in lieu of notice will not result in the NSF receiving greater pay than would have been received absent the layoff.

2. Reduction in Time That Does Not Exceed One “Instructional Workload Credit” (IWC) or One Course

a. Written Notice

- 1) Continuing Appointees shall be given at least thirty (30) calendar days written notice of reduction in time when the reduction does not exceed one IWC or one course (if course is valued greater than one IWC). The notice shall identify whether the reduction in time is based on programmatic change, budgetary considerations or lack of work for NSF.

- 2) When the University provides advance written notice to the NSF, the University shall transmit a copy to the Union no later than the next business day.

b. Pay In Lieu of Notice

- 1) Where advance notice is not given, pay in lieu of notice shall be provided.
- 2) Pay in lieu of notice shall not exceed the pay the NSF would have received absent the reduction in time.

3. Reduction in Time that Exceeds One Instructional Workload Credit (IWC) or One Course

a. Written Notice

- 1) Continuing Appointees shall be given at least sixty (60) calendar days written notice of reduction in time when the reduction in time exceeds one IWC or one course (if the course is valued at greater than one (1) IWC). The notice shall identify whether the reduction in time is based on programmatic change, budgetary considerations, or lack of work for NSF.
- 2) When the University provides written notice to the NSF, the University shall transmit a copy of the notice to the Union no later than the next business day.

b. Pay In Lieu of Notice

- 1) Where advance written notice is not given, pay in lieu of notice shall be provided.
- 2) Pay in lieu of notice shall not exceed the pay the NSF would have received absent the reduction in time.

4. Reduction in Time that Impacts Health and Welfare Benefits

- a. Whenever possible, Continuing Appointees shall be given additional advance notice when the reduction in time can reasonably be

expected to affect their eligibility for health and welfare benefits. The notice shall identify whether the reduction in time is based on programmatic change, budgetary considerations, or lack of work for NSF.

- b. When the University provides written notice to the NSF, the University shall transmit a copy of the notice to the Union no later than the next business day.

## **G MEET AND DISCUSS / CONSULT**

1. Within fifteen (15) calendar days of the date of the issuance of the layoff notice, the Union may request to meet with the University to discuss the effect of the layoff or reduction in time.
2. However, nothing in this Article shall preclude the department chair or unit head from consulting with the affected NSF.

## **H. REEMPLOYMENT**

1. Duration
  - a. Pre-six year NSF: Pre-six year-NSF have reemployment rights for the remaining duration of the NSF's appointment prior to the layoff or reduction in time.
  - b. Continuing Appointee: Continuing Appointees have reemployment rights for two years from the effective date of the layoff or reduction in time.

2. Order of Reemployment

If more than one qualified NSF is on layoff or reduced time status from the same department, program or unit, the order of reemployment shall be on the basis of special skills, knowledge or ability essential to the department or unit. When there is no substantial difference in the degree of special skills, knowledge and ability essential to the department or unit as determined by the University, the order of reemployment shall be in inverse order of layoff or reduction in time, according to the definition of seniority as set forth in B.4. above.

3. Temporary Reemployment

In the event the University decides to offer temporary reemployment opportunities of no more than one quarter or semester in the same layoff unit and title group, the temporary reemployment shall not constitute a recall for reemployment purposes. Further, an NSF's acceptance of temporary reemployment of no more than one quarter or semester will not nullify said NSF's layoff or reduced time status. Should instructional need exist beyond this temporary period, the NSF's reemployment status previous to the layoff or reduction in time shall be reinstated.

#### 4. Termination of the Right to Reemployment

- a. The right to reemployment terminates if an NSF:
  - 1) accepts an appointment at the same or higher percentage of time in the same title and layoff unit from which the NSF was reduced in time or laid;
  - 2) refuses or fails to respond within fourteen (14) days to a second written offer of reemployment at the same or higher percentage of time sent to the NSF's last known address. However, the right to reemployment does not terminate if the two offers are for courses/work within the same academic year or if the NSF is unable to resume employment because of other employment commitments made in response to the layoff.
- b. If the University is attempting to employ an NSF on an urgent basis and if a laid-off or reduced in time NSF who has reemployment rights cannot be reached and/or does not respond within seven (7) calendar days, the University may fill the position. In this instance or when failure to respond was due to extraordinary circumstances, a laid off or reduced in time NSF will not have waived any future reemployment rights.

#### **I. PLACEMENT ASSISTANCE**

To the extent available at each department or campus, the University will, upon request, provide assistance in seeking placement to any NSF who has been laid off.

**J. BENEFIT COVERAGE**

An NSF on reduced time may continue, if previously enrolled, in certain group insurance programs for the length of time provided by the University's Group Insurance Regulations, subject to the payment of full premiums by the NSF. A reduced time appointment of more than one-half of the working days of a month does not count towards University service for benefit purposes unless the reduced time appointment continues to qualify the NSF for such benefits.

**K. GRIEVANCE AND ARBITRATION**

1. A grievance alleging a violation of this article must be filed within thirty (30) calendar days of the transmission of notice to the Union. With respect to grievances based on alleged violations that would not be apparent when the written notice is issued, such grievances must be filed within thirty calendar (30) days of the date on which the NSF/Union knew or should have known of the alleged violation, whichever is earlier.
2. In any arbitration involving layoff or reduction in time, the arbitrator shall not have the authority to substitute her/his judgment for that of the University regarding the necessity for the layoff or reduction in time, or the functions/programs or titles affected by the layoff or reduction in time. Consistent with the provisions of this MOU, the Arbitrator shall defer to the University's judgment regarding an NSF's academic qualifications unless the Union demonstrates that there was no reasonable basis for the University's decision.
3. If the arbitrator determines that the University failed to consider the qualifications of a Continuing Appointee relative to a less senior NSF identified by the Continuing Appointee or the Union (pursuant to Section D.3., the arbitrator's remedial authority shall be limited to ordering such consideration. Upon the request of either party, the arbitrator may retain jurisdiction to ensure that the procedural flaws have been addressed.
4. When the Union has alleged that the University's stated reason(s) for a decision to lay off is pretextual or factually incorrect, the arbitrator will consider all the evidence submitted by the parties and may reverse a University decision when s/he determines that the decision is contrary to the weight of all the evidence.

5. Allegations of procedural violations of this Article shall be subject to the Grievance and Arbitration provisions of this MOU.

## **ARTICLE 18 RESIGNATION**

- A.** A resignation is a voluntary separation from the University by an NSF. Wherever possible, the NSF who resigns from a position with the University prior to the ending date of an existing appointment shall submit a letter of resignation at least thirty (30) calendar days prior to the first day of instruction of the next semester/quarter in which the NSF is scheduled to teach.
- B.** A letter of resignation that has been submitted at least thirty (30) calendar days prior to its effective date may be withdrawn within five (5) calendar days of its agreement of the University and the NSF.
- C.** The University shall not threaten an NSF with dismissal in an attempt to force the NSF to resign. The university may offer the NSF the opportunity to resign whenever it has a bona fide basis for dismissal.

## **ARTICLE 19 REASSIGNMENT**

- A.** Reassignment is defined as a change of a department of an NSF on the same campus during the term of an appointment. Reassignment is not a form of corrective action. Reassignment shall be initiated by the University in consultation, whenever possible, with the NSF involved. The University, upon request, will meet with the NSF and/or the UC-AFT to discuss the reassignment and will meet and confer regarding any impact not addressed in the provisions of this MOU.
- B.** A NSF who applies for and accepts an appointment in a different department is not considered to have been reassigned.
- C.** The provisions of this Article do not nullify or modify the applicable University and campus policies or procedures which exist or may be developed pertaining to disestablishment.

## **ARTICLE 20 REASONABLE ACCOMMODATION**

### **A. GENERAL PROVISIONS**

1. It is the responsibility of the NSF to inform the University of the need for an accommodation, unless the disability or need for accommodation is known to the University.
2. In a manner that is consistent with applicable law, the University provides reasonable accommodation to qualified NSF who are disabled or become disabled and need assistance to perform the essential functions of their jobs. This section shall not be construed as a guarantee of a specific form of accommodation nor shall accommodation in one case establish a precedent for similar or dissimilar circumstances, since all accommodations will be determined in accordance with the specific functional abilities of the employee in coordination with the requirements of the employee's job. The interactive process shall be used to determine what, if any, reasonable accommodation will be made.
3. No provision of this Article is intended to waive any rights of the NSF under state and federal statutes.

### **B. MEDICAL DOCUMENTATION**

When requested by the University, the employee is responsible for providing the University disability manager or other appropriate University representative with medical documentation regarding the employee's disability and how it limits the employee's ability to perform the essential functions of the job. The University may require that a University-appointed licensed healthcare provider examine the employee and/or confirm the documentation provided by the employee. In such a case, the University shall pay the costs of the University-appointed healthcare provider.

### **C. THE INTERACTIVE PROCESS**

1. When an employee requests reasonable accommodation for a disability or the University has reason to believe that a reasonable accommodation is needed, the parties will engage in the interactive process, which is an ongoing dialogue between the employee and appropriate University representatives about possible options for reasonably accommodating the employee's disability. Both the University and the employee are expected to participate in the interactive process in good faith, which includes engaging in timely communications regarding possible reasonable accommodation.



2. During the interactive process, the University considers information related to: the essential functions of the job, the employee's functional limitations; possible accommodations; the reasonableness of possible accommodations; and issues related to the implementation of a reasonable accommodation. This information will be used by the University to determine what, if any, reasonable accommodation will be made. While the University will consider the employee's suggestions regarding which accommodation(s) to implement, the University will determine which accommodation(s) will be implemented.
  3. If the University determines that the employee cannot be reasonably accommodated in his or her current position, reassignment to an available alternative position for which the NSF is qualified will be considered.
  4. The University will not implement an accommodation that would present an undue hardship.
- D.** If the University determines that the NSF cannot be reasonably accommodated without undue hardship, the NSF may be separated in accordance with Article 16 – Medical Separation.

## **ARTICLE 21 COMPENSATION**

### **A. GENERAL PROVISIONS**

1. All Pre-Six NSF shall have an annualized salary rate within the established salary range as referenced in Table 15, except as provided in Section D below.
2. All Continuing Appointees shall have an annualized salary rate within the established salary range as referenced in Table 16, except as provided in Section D below.
3. NSF shall receive annual general range adjustments as provided in this article.
4. Merit increases shall be provided in accordance with the provisions of Article 22 — Merit Reviews.
5. Pre-six NSF shall be provided salary increases in accordance with the provisions of Article 7a, Section E.3. — Pre-Six Appointment and Reappointment.

6. In the event that the University proposes to restructure the salary scales/schedules for any title(s), in the unit, the University shall provide notice to the Union and upon request shall meet and confer prior to implementation.
7. The University may provide non-general range adjustments to other academic employees and such adjustments will not be provided to members of this unit.

**B. 2015 RANGE ADJUSTMENT**

Effective the first full pay period following 60 days from the date of ratification, the University shall adjust all NSF salary ranges by three and 2/10ths percent (3.2%).

**C. GENERAL RANGE ADJUSTMENTS FOR 2016, 2017, 2018 and 2019**

1. Effective July 1, 2016, the University shall adjust all NSF salary ranges by three (3.0%).
2. Effective July 1, 2017, the University shall adjust all NSF salary ranges by two and a half percent (2.5%).
3. Effective July 1, 2018, the University shall adjust all NSF salary ranges by two and a half percent (2.5%).
4. During Fiscal Year 2019-20, NSF shall receive general range adjustments in an amount equal to and on the same date as any general range adjustments provided for non-represented academic employees, including Senate Faculty.

**D. SPECIAL PROVISIONS**

1. Above-scale annualized salaries may be paid to NSF at the sole discretion of the University.
2. Positions and/or titles paid on a "By Agreement" basis may continue to be paid on a "By Agreement" basis insofar as the amount paid to each "By Agreement" NSF is at or above the minimum of the salary range for her/his position.

3. NSF appointed to a Supervisor of Teacher Education title shall be paid in accordance with Tables 32 and 33.
4. Positions and/or titles that are or become eligible to participate in the University's health science compensation plans may participate in those plans in accordance with the policies and procedures in effect at the time.
5. For the duration of this Agreement, salary increases, if any, for the Demonstration Teachers at the Lab School shall be subject to separate, local negotiations.

#### **E. RATIFICATION 2016 LUMP SUM PAYMENT**

1. The University shall provide a one-time, non-base building, non-UCRP eligible payment of \$215.00 to each eligible NSF in accordance with the criteria below:
  - a. employed at ten percent (10%) or greater in the bargaining unit on April 1, 2016, and;
  - b. on payroll on the date of payout on June 1, 2016.
  - c. For semester campuses, although the service period ends in May, this lump sum payment shall be paid on the last paycheck of the term.
2. Dues or fees shall not be deducted from the Ratification Lump Sum Payment.

#### **F. SPECIAL LUMP SUM PAYMENTS**

1. General Provisions
  - a. "Service Year" shall refer to the fiscal year in which the annual appointment percentage is used, as described in Section 2.b. below, to calculate the base earnings, which is the fiscal year that immediately precedes the payout year.
  - b. "Payout Year" shall refer to the year in which the payout of the lump sum occurs, which is the fiscal year that is immediately subsequent to the service year.
  - c. Dues or fees shall not be deducted from the Special Lump Sum Payments.

2. Eligibility

- a. The NSF must have an average annual bargaining unit appointment percentage of at least 25% and less than 50% in the Service Year. Summer Session and non-bargaining unit appointments shall not count towards eligibility;
- b. The NSF must have accrued six (6) quarters, four (4) semesters or eight (8) fiscal quarters of service in the bargaining unit between January 1, 2000 and the end of the Service Year;
- c. The NSF must have an active bargaining unit appointment in one or more academic terms, or fiscal quarters for fiscal year appointees, during the Payout Year;
- d. The NSF may not be an active UCRP member nor accrue UCRP service credit at any point during the Service Year, and;
- e. If the NSF has appointments at multiple campuses, the NSF shall only be eligible for one lump sum payment through the home campus.

3. 2017 Lump Sum Payment

For eligible NSF who have an active bargaining unit appointment during the 2016-2017 Payout Year, the University shall provide a lump sum payment on June 1, 2017 for semester campuses and July 1, 2017 for quarter campuses. The one-time, non-base building, non-UCRP eligible lump sum payment shall be equal to five percent (5%) of the NSF's base earnings in the bargaining unit for Service Year: July 1, 2015 – June 30, 2016.

4. 2018 Lump Sum Payment

For eligible NSF who have an active bargaining unit appointment during the 2017-2018 Payout Year, the University shall provide a lump sum payment on June 1, 2018 for semester campuses and July 1, 2018 for quarter campuses. The one-time, non-base building, non-UCRP eligible lump sum payment shall be equal to five percent (5%) of the NSF's base earnings in the bargaining unit for Service Year: July 1, 2016 – June 30, 2017.

5. 2019 Lump Sum Payment

For eligible NSF who have an active bargaining unit appointment during the 2018-2019 Payout Year, the University shall provide a one-time, non-base

building, non-UCRP eligible lump sum payment on June 1, 2019 for semester campuses and July 1, 2019 for quarter campuses. The lump sum payment shall be equal to five percent (5%) of the NSF's base earnings in the bargaining unit for Service Year: July 1, 2017 – June 30, 2018.

6. The terms of Section F, Special Lump Sum Payments, shall expire following the June 1, 2019 payout and shall not be renewed.

## **G. GRIEVABILITY**

Decisions related to the amount and timing of general range adjustments, merit adjustments, and all aspects of the non-general range adjustment provided to other academic employees are not grievable. The implementation of the amount and timing of the general range adjustments, one-time adjustments and special salary adjustments is subject to grievance and arbitration.

## **ARTICLE 22 MERIT REVIEW PROCESS**

- A. For those NSF who are eligible for merit increases, such increases are based on academic attainment, experience and performance, and are not automatic. NSF shall be eligible for merit increases in accordance with this Article in those years when the University provides merit increases to non-represented academic employees.
- B. Consistent with this Agreement, decisions to grant or not grant a merit increase to individual NSF are at the sole discretion of the University. In the event an NSF is not awarded an increase following a merit review, the University shall include an explanation for its decision that shall accompany the merit review determination.
- C. NSF shall be subject to merit reviews as follows:
  1. Pre-Six year NSF merits – For pre-six year NSF, consideration for merit reviews, and decisions regarding the timing and amount of individual increases if any, shall be at the sole discretion of the University.
  2. Continuing Appointee merits – The University retains sole discretion in the evaluation of an NSF's performance.
    - a. A Continuing Appointee shall be considered for a merit increase at the time of the initial continuing appointment, and at least once

every three years thereafter. At the sole discretion of the University, a merit increase may be considered and awarded before the completion of three years, after appropriate review. An NSF may request that his or her merit review be deferred for up to one year.

- b. Upon review, if the NSF's performance since the last merit review is deemed excellent, the NSF shall receive a merit increase of at least six-percent (6%). The University is not precluded from granting merit increases of greater than six-percent (6%), with such increases being in intervals of three-percent (3%) only, e.g., 9%, 12%, and so on.

- D. Demonstration Teachers, Supervisors of Teacher Education, or any NSF whose salary is paid on a "By Agreement" basis shall be considered for a merit review at the sole discretion of the University in accordance with procedures established by the University at each campus.

#### **E. MERIT GUIDELINES AND PROCEDURES**

1. The Union shall be provided copies of applicable campus merit guidelines and departmental review procedures as they exist or as they are developed, and provide copies to the Union. An individual may request a copy of the applicable campus merit review guidelines or departmental procedure(s).
2. The University may change campus merit guidelines and merit review procedures according to the normal campus processes for revising such procedures.
  - a. The University shall provide to the Union proposed changes to campus merit guidelines at least thirty (30) days prior to finalization. The University will begin to apply changed guidelines to individual NSF only with the beginning of the NSF's merit review cycle.
  - b. The University shall provide to the Union proposed changes to departmental review procedures at least a month prior to finalization. Upon request of the Union, the University shall meet with the Union to discuss the effect of the proposed merit procedure changes before the University implements such changes.
3. At the request of the UC-AFT, each campus will provide the Union with a

list of NSF who were considered for merit increase during the previous academic year. The information will include the campus, the NSF's name, department, whether the individual was granted a merit increase or not, and the amount of any such increase. The information shall be provided within thirty (30) calendar days of the Union's request.

- F.** The provisions of this Article are not intended to preclude consideration for merit increases for the members of this bargaining unit.
- G.** An arbitrator shall not have authority to substitute her/his judgment for the University's judgment regarding and NSF's performance or qualification, nor shall the arbitrator have the authority to order the University to provide a merit increase. If the arbitrator finds a procedural violation, the arbitrator's authority shall be limited to ordering the University to repeat the merit review from the point at which the violation occurred. At the request of either party, the arbitrator may retain jurisdiction.

## **ARTICLE 23 SUMMER SESSION**

### **A. GENERAL PROVISIONS**

1. For purposes of this MOU, Summer Session is not considered part of the regular academic year, and does not constitute an academic quarter nor an academic semester, nor portion thereof.
2. An NSF appointed in Summer Session shall be appointed as Lecturer in Summer Session title code 1550. The University pays Summer Session compensation, via a by-agreement pay code. By-agreement payments do not provide for retirement or benefits except as otherwise required by law.
3. The provisions of Articles 7a, 7b, 7c are not applicable to Summer Session appointments.
4. All Summer Session appointment decisions shall be made at the sole discretion of the University except as provided herein and shall not be subject to Article 32 — Grievance Procedure except for procedural violations.
5. Summer Session appointments shall have a definite ending date and shall terminate on the last day of the appointment set forth in the letter of appointment.

6. The University has the sole right to assign employees to teach courses offered by the University, and to assign other duties. Whenever possible, the University should consult the NSF in advance of these assignments.
7. Beginning with Summer Session 2012, an NSF will receive the equivalent of one quarter or semester toward continuing appointment eligibility on the following conditions:
  - a. that a course(s) taught by an NSF during the academic year is moved to Summer Session and the course is no longer offered during the academic year; and
  - b. that students are required by their academic program to take such a course(s);
  - c. regardless of these provisions, no NSF may earn more than a total of three quarters or two semesters of such eligibility credit during any 12-month period.
8. In the event the University or campus converts the current academic calendar into a year-round calendar, or a department program or unit moves entirely to summer session, the parties shall meet and confer over the applicability of this article to the new academic calendar.

## **B. SUMMER SESSION APPOINTMENTS**

### 1. Letters of Appointment

When an NSF is offered an appointment in Summer Session, the NSF shall be informed in writing of:

- a. the title of the position;
- b. the salary amount and salary arrangements;
- c. the name of the employing department;



- d. the period for which the appointment is effective;
- e. the course(s) assigned;
- f. any other duties that have been assigned;
- g. the name of the department chair, program head or other person to whom the NSF reports;
- h. the fact that NSF are represented by a union, the UC-AFT;
- i. the fact that the terms and conditions of the appointment are contained in the Agreement; and
- j. the Web Site addresses of both the University and the Union, including a link to the MOU; and
- k. whether the appointment is a contingency appointment and the criterion on which a withdrawal of the appointment would be based.

2. Insufficient Enrollment

The University may offer an appointment in summer session contingent upon sufficient enrollment in the course(s). If sufficient enrollment is not attained, the University may, at its sole discretion, withdraw an appointment that has been offered on a contingent basis, and will provide the NSF the reasons, in writing, for the withdrawal. This paragraph is not subject to the provisions of Article 17 — Layoff, Reduction in Time, and Reemployment and/or Article 33 — Arbitration of this MOU.

3. Layoff or Reduction in Time

Except as provided in section B.2.above, NSF will be given at least seven (7) calendar days advance written notice of layoff/reduction in time, or pay in lieu of notice.

**C. COMPENSATION**

1. Subject to the provisions of the MOU, compensation for summer session

appointments shall be determined by one of the following methods at the sole discretion of the University:

- a. Normal compensation will be based on the annual salary of the NSF in effect as of June 30 of the calendar year in which summer session begins. The University shall pay NSF the same percentage of salary provided to Senate Faculty at the same campus, generally, for the assigned Summer Session course responsibilities. In limited circumstances, the University may determine that it is necessary to provide lower compensation on an individual or campus-wide basis. In doing so, the University will consider such factors as, but not limited to, the number of course units, enrollment, special nature of the course or session, availability and qualification of instructional staff, curriculum requirements or budgetary considerations. Under such circumstances, the University will provide to the AFT advance notice of the lower compensation, with the relevant factors underlying its decision.
  - b. The University may provide higher compensation to individual NSF, or on a campus-wide basis at any time.
2. Additional compensation limits shall apply to NSF with Summer Session appointments to the same extent and in the same manner as they apply to other academic appointees, including Senate Faculty. Should the University make changes to additional compensation limits, they shall apply to NSF to the same extent and in the same manner as they apply to other academic appointees, including Senate Faculty.

#### **D. MAINTENANCE OF BENEFITS**

NSF who teach in Summer Session shall not be disadvantaged with respect to eligibility for health and welfare benefits, in accordance with Article 11 — Benefits.

### **ARTICLE 24 INSTRUCTIONAL WORKLOAD**

#### **A. INSTRUCTIONAL WORKLOAD STANDARD, COURSE DEFINITION AND EQUIVALENCIES**

1. Full Time Instructional Workload Standard

The full-time (100%) instructional workload standard for NSF for an academic year shall not exceed nine (9) instructional workload credits over three (3) quarters or six (6) instructional workload credits over two (2) semesters, or the equivalent. Instructional workloads may be lower, based upon the instructional workload standard of the campus, department, program or unit. A full-time course load for a 100% NSF who teaches writing and foreign language courses will not exceed eight (8) instructional offerings/classes/courses/sections on a quarter campus or five (5) instructional offerings/classes/courses sections on a semester campus.

2. Definition of a Course with One Instructional Workload Credit (IWC)

For purposes of this Article, a course shall be valued at one instructional workload credit (IWC) when it meets the following definition: an instructional offering that is regularly scheduled, requires significant academic preparation, office hours, and/or grading outside the class by the instructor, and meets a minimum of three (3) hours per week. Two or more sections of a course taught by one NSF shall have the same IWC as two or more sections of a course taught by multiple NSF.

3. Courses Values At Other Than One IWC

- a. It is recognized that some course offerings may warrant IWC valuation greater than one (1) IWC. Factors that may be considered in determining that a course warrants a valuation greater than one IWC include the following: laboratory supervision, extensive supervision of academic student employees, very large lecture courses, grading-intensive classes, studio instruction, and clinical instruction that the University requires the Lecturer to perform. The above list is not exhaustive.
- b. It is recognized that some course offerings may warrant IWC valuation less than one (1) IWC. Such examples include but are not limited to a course that meets *two or fewer* hours per week, independent study classes, partial term classes.

4. Determining Relative Workload Values

In determining the relative workload value of instructional offerings and course equivalencies, the University shall consider the instructional and evaluation methods employed, the nature of the courses assigned, the preparations required, the number of students expected to enroll, and the availability of support employees. In addition, the University may consider other factors.

## **B. OTHER ASSIGNED DUTIES**

1. In determining workload, the University shall provide workload equivalencies to an NSF whenever s/he is required or clearly expected by the University to perform duties in addition to her/his assigned teaching duties, as set forth in A.2., A.3., and A.4. above, and that are neither provided for in the NSF's appointment percentage, the IWC assigned to the course, or compensated for under another title. Normally, an NSF employed at less than 100% appointment shall be compensated via equivalencies. Such equivalencies shall be based on the NSF's annual salary rate. However, should a campus practice be to acknowledge these duties by other forms of compensation, then it may continue to do so instead of providing an equivalency. Below is a representative list of such duties:
  - a. Committee work for department or program, e.g., standing personnel committee, curriculum development committee, exam committee. (It would not include review committees such as an excellence review committee.)
  - b. Designated service as an advisor or mentor to undergraduate students and graduate students, e.g. thesis or dissertation adviser, undergraduate majors, honors work, or training of Teaching Assistants.
  - c. Provision of independent study courses.
  - d. Administration of placement examinations, e.g., writing, languages, arts, or music.
  - e. Coordination and supervision of extracurricular activities, e.g., student publications, student organization, field trips, performances, exhibits, fundraising, and special events.
  - f. Development and coordination of internships.
  - g. Course coordination for instructional offerings that are delivered via multiple instructors and sections, e.g., administrative scheduling for locations and times of sections, coordination of laboratory facilities, development, compilation and management of common course materials.
  - h. Course, curriculum or program development, e.g., on-line instructional materials, course redesign, or website content.
  - i. Special advising, tutoring and coaching, or community outreach programs sponsored by a program or department, e.g. interactions

or meetings between language and music faculty and students outside of office hours.

This list of duties is not exhaustive. Equivalencies may be awarded in any situation where an NSF is required or clearly expected by the University to perform duties in addition to his or her assigned teaching duties.

**C. WORKLOAD AVERAGING ACROSS QUARTERS OR SEMESTERS**

The University may, at its sole, non-grievable discretion, average an NSF's workload over two or more adjacent quarters or semesters. Although the NSF's workload in a term may exceed 100%, the total appointment shall not exceed 100%. Under no circumstances shall an NSF teach more than three courses in a term.

**D. CHANGES TO EXISTING WORKLOAD**

If the University proposes to change the workload value assigned to an existing instructional course or offering or the maximum Instructional Workload Credit (IWC) for a department or campus, the University shall provide at least 30 calendar days written notice to the Union and offer to meet and discuss prior to implementing any proposed changes.

**E. ESTABLISHING IWC'S FOR NEW COURSES OR INSTRUCTIONAL OFFERINGS**

For new courses that have been approved by the campus Committee on Courses and Instructional Offerings for which there is no IWC or equivalency, the University will establish an IWC or equivalency according to the factors set forth in Section A above. The University shall offer to meet and discuss prior to implementing the IWC or equivalency for a new course or instructional offering. NSF may consult by providing written or oral comments and suggestions regarding workload values to their departments.

**F. MEET AND DISCUSS SHALL NOT DELAY IMPLEMENTATION**

The University's obligation to meet and discuss under Sections B. and C, shall not delay the assignment of an NSF to the course or offering or the commencement of actual instruction.

**G. UNASSIGNED DUTIES**

Any duties not assigned to, or clearly expected by the University of, the NSF shall not be considered as part of the instructional workload.

**H. WORKLOAD FOR NON-LECTURER TITLES**

The workload of the unit member in non-lecturer titles as defined in Article 5 — Description of Unit Titles, shall continue to be determined in accordance with

current campus procedures. Should the University propose changes to these campus procedures, the University will meet and discuss over the changes.

**I. SUMMER SESSION**

The instructional workload for Summer Session is established under Article 23 — Summer Session.

**J. OFFICE HOURS**

NSF shall maintain office hours in accordance with the policies of the department, program or unit.

**K. ENFORCEMENT**

1. The following matters shall be subject to Article 32 — Grievance through Step 2 but not Article 33 — Arbitration:

Allegations by the Union and/or an NSF that the workload value that has been assigned to a course or workload equivalency is inadequate in light of the actual work required. Until the grievance is resolved, the NSF shall continue to perform the duties as assigned.

2. The following matters shall be subject to Article 32 — Grievance and Article 33 — Arbitration:

- a. Alleged violations in regards to the procedural applications of this article if any;

- b. Claims by an NSF with a 100% appointment that the total IWC established by the department or campus for those courses that comprise her/his assigned workload exceeds the department or campus maximum IWC. In any arbitration involving such a claim, the arbitrator's authority shall be limited to determining whether the NSF's assigned workload exceeds the department and/or campus maximum. The arbitrator shall have no authority to review whether the University allocated the proper IWC to a specific course or instructional offering;

- c. Claims by an NSF that s/he is entitled to a workload equivalency pursuant to Section B., above

3. The following matter shall be subject to Article 32 — Grievance and Article 33 — Arbitration, both of which can only be filed by the Union, with limitations as outlined below:

- a. Allegations that the University materially increased the amount of work associated with an instructional offering or other assigned duty

and the University failed to direct a modification that addresses such increase in workload. Until the grievance is resolved, the NSF shall continue to perform the duties as assigned.

- b. The specific charge of the arbitrator shall be to make a quantitative assessment of the sufficiency of the modification mandated by the University.
  1. The arbitrator shall not substitute his or her judgment for the academic judgment of the University.
  2. The arbitrator shall not have the authority to designate the appropriate IWC for an instructional offering or other assigned duty.

## **ARTICLE 25 UNION RIGHTS**

### **A. MEETINGS**

1. The Union and the University, at the request of either party, shall meet at a mutually agreeable time and place to discuss matters of mutual concern. When practicable, meetings concerning a local campus problem will be held on the affected campus.
2. Topics for discussion at the meeting shall be communicated to the other party at the time the meeting is requested. The parties will attempt to finalize an agenda at least seven (7) calendar days prior to the scheduled date of the meeting.
3. Each party shall designate a chair for the meeting, who shall coordinate the agenda and arrangements for the meeting. Whenever possible, such meetings shall be scheduled so as not to conflict with the Union representatives' course meetings or other duties. If such conflict should occur, representatives shall be without loss of compensation.
4. When issues of concern to NSF arise which are not appropriate for labor-management discussions, any written comments which the Union wishes to submit will be forwarded by the University to the relevant University official or committee. Labor-management meetings shall not preclude or substitute for appropriate consultation with NSF through normal academic channels.

5. No provision of this MOU prohibits participation by unit members on campus or systemwide committees.

## **B. MEMBERSHIP LISTS**

1. The University shall provide the Union with an annual list of bargaining unit members electronically, via the FTP site.
2. The employee list on the FTP site shall contain the following information: name, employee identification number, title, title code, monthly salary, campus address, and home address unless the NSF has requested that her/his home address not be released, most recent date of hire, department/organizational unit, percent of appointment, type of appointment, and appointment end date where applicable. The FTP site shall include the NSF e-mail address contained in the campus e-mail directory. The University will update the e-mail addresses in the FTP site on a quarterly basis.
3. The University and the Union agree to hold annual working meetings during the duration of this agreement to discuss the Union's access to other pertinent information.

## **C. PUBLICATION OF THE MEMORANDUM OF UNDERSTANDING**

1. The University shall prepare a draft final version of this Agreement and provide it to the Union in an editable electronic format within fourteen (14) calendar days following ratification. Following sharing of the final version of the draft, The University and the Union shall jointly determine a timeline for finalizing any and all changes. The parties shall use best efforts to finalize the Agreement within thirty (30) days of ratification.
2. Within seven (7) calendar days of the finalization of the Agreement, such final version shall be posted on the University's website.
3. Appointment Letters provided to bargaining unit employees shall include a paragraph that states that the MOU governs the terms and conditions of their employment and that the MOU is available via the University website. The University's and AFT's web site addresses and a URL or link to the UC-AFT website shall be included in the appointment letter.



## **D. USE OF FACILITIES**

### **1. Access**

- a. Subject to the campus policies and procedures in effect at the time the use is requested, the Union shall be able to use bulletin boards, general classrooms, information tables and meeting rooms when not otherwise in use.
- b. During formal meet and confer sessions held at University facilities, the University shall provide reasonable access to any on-site copy machine.
- c. The Union and its members shall not conduct internal union business on work time such as membership solicitation, grievance solicitation, campaigning for union office, hand billing or other distribution of literature. All other union activities, except direct contact with and/or response to the University, or as specifically set forth in this MOU, shall take place during non-work time and without the use of University resources, such as telephones, copy machines, e-mail, fax, etc.
- d. Local union officers may use existing University telephones to conduct business with the University pertaining to the administration of this MOU and/or to communicate with NSF to attempt to resolve and/or process grievances under this MOU. This does not include the conduct of any research or investigation regarding filed grievances. No calls shall be made that result in costs to the University; for example, calls involving tolls, long distance, ATSS, Fax, etc. The frequency and duration of permitted phone calls shall not interfere with or disrupt completion of work assignments or impair the efficiency of University operations. In the event phone use interferes with or is disruptive to the accomplishment of assigned work or to University operations, the University may terminate access to the University's telephone facilities as provided herein.
- e. The Union shall not list work telephone numbers in any union publication.
- f. The University policy concerning the use of electronic communications shall apply to NSF in the same manner as it applies to Senate Faculty and staff.

2. U.S. Mail Delivery

The University will distribute in the normal manner United States mail that it has received, on which postage has been paid, and which bears the name and correct specific campus address of NSF.

3. Use of Mailboxes

In locations where NSF mailboxes exist, the Union may reasonably use such boxes in accordance with existing campus procedures in effect at the time of the use. Where such mailboxes are in restricted work areas, the Union may make arrangements with the responsible campus official in the restricted work area to have the Union mail placed in the employee mailboxes by the normal method. Where mailboxes do not exist for employees, the University will distribute union mail to employees by the normal method.

**E. REGENTS MATERIAL**

The University shall post at the University website the agendas for the meetings of the Board of Regents.

**F. INFORMATION REQUESTS**

1. When the University makes updates and/or changes to the Academic Personnel Manual, and/or changes to local campus manuals or regulations related to NSF, it posts those changes on the University's web site. The University will provide notice to the Union of the proposed and final changes to the APM and the web address where the changes can be viewed.
2. The University shall fulfill the Union requests for information and reports relating to employment conditions of NSF to the extent required by law. The Union will bear all appropriate costs associated with additional copies or other information requests.

**G. The Union shall retain any union rights expressly guaranteed by HEERA except as specifically limited by this MOU.**

1. The Union may pursue, through the grievance procedure allegations that the University has violated a union right afforded by this contract.

2. The Union may pursue, through the PERB process, allegations that the University has violated a union right afforded under HEERA which is not specifically addressed in this MOU.
3. Any allegation by the Union that one of its rights has been violated shall be addressed through one but not both of the above dispute resolution processes/procedures.

**ARTICLE 26**  
**RELEASE TIME for UC-AFT BUSINESS**

**A. RELEASE TIME FOR BARGAINING**

1. The University shall provide paid release time for ten (10) NSF, with no more than one (1) per campus department, to attend University-wide negotiating sessions as members of the UC-AFT bargaining team. The UC-AFT shall provide the University with its roster of bargaining team members for whom it is requesting release time at least 45 days prior to the end of the academic term immediately preceding the term in which bargaining is scheduled to commence.
2. In the event a team member receiving paid release time gives up her/his seat on the team and is replaced during a semester/quarter, the University is under no obligation to modify the replacement's work schedule for the remainder of that semester/quarter, although the University shall make a reasonable effort to do so.
3. Alternates and replacements for any of the UC-AFT bargaining team members receiving paid release time shall not be eligible for paid release time unless the UC-AFT designates them permanent, and the University has received written notice of such designation at least thirty (30) calendar days in advance of the first scheduled bargaining session to be attended by the permanent replacement. The University shall make reasonable efforts to provide preferential scheduling to Alternates and Substitutes.
4. The UC-AFT bargaining team representatives on paid release time shall be in a without-loss-of-salary and benefits-status only for the time spent at scheduled negotiating sessions, including reasonable travel time to and from scheduled negotiating sessions. Payment to the team member for such status shall be included as wages in the team member's regular paycheck for the pay period during which the scheduled negotiating session occurred. These wages shall be subject to the same taxes and other

deductions normally associated with payment of salary for hours worked. In coordination with UC-AFT bargaining team members, the University shall provide and compensate substitute classroom instructors or offer other means of providing classroom instruction.

5. The Chief Negotiator for the UC-AFT will be granted course relief of a maximum of one (1) regularly scheduled University course per quarter/semester during negotiations, provided that the Chief Negotiator has at least a 67% time appointment in an NSF title. For a Chief Negotiator whose primary responsibilities do not involve course instruction, the University shall provide the equivalent of one (1) IWC release time per quarter/semester from their NSF responsibilities. Should the period of negotiations not encompass an entire quarter/semester for which course relief has been provided, the department chair may assign other duties for the remainder of the quarter/semester.
6. If the designated UC-AFT Chief Negotiator is an NSF appointed from the same campus as an NSF who is a designated "release-time" member of the UC-AFT bargaining team, the Chief Negotiator shall become the team member receiving release-time and the campus' other team member's release time shall not be paid.
  - a. The UC will provide, where practicable, a work schedule that accommodates the bargaining schedule of the team member who was displaced by the UC-AFT Chief Negotiator.
  - b. In the event the University modifies the bargaining team member's work schedule and such modification affects the assignment of another NSF, the NSF whose schedule was modified to accommodate the bargaining team member's participation in negotiations has no right to grieve the modification.

## **B. RELEASE TIME FOR STEWARDS**

1. The UC-AFT may designate an NSF Union steward for each UC campus.
2. The University will provide no less than the relief equivalent of one course for each academic year to designated stewards.
3. The UC-AFT shall reimburse the University for the costs of providing such course relief. When practicable, the UC-AFT shall provide the University

with at least a one semester/quarter advance written notice of the NSF who it will designate as a campus steward.

### **C. RELEASE TIME FOR THE UNION PRESIDENT**

In the event that Unit 18 members elect an NSF to be statewide President of the UC-AFT, the University will provide no less than the course relief equivalent of one course per academic year, provided that, when practicable, the President requests such relief at least one semester/quarter in advance of the anticipated relief. All costs (salary and benefits) shall be reimbursed by the UC-AFT during the period the University provides relief.

### **D. MISCELLANEOUS**

1. The parties agree that it is their intent that the purposes of this provision be fulfilled in such a way so as not to interfere with the effectiveness of the instructional program or the progress of the students which it serves.
2. In the event the UC-AFT steward or President does not provide the University with at least one quarter/semester notice of her/his need for course relief, the University may deny course relief for that quarter/semester.
3. Any release time for UC-AFT business granted under the provisions of this Article will result in a commensurate release from assigned work expectations.

## **ARTICLE 27 PAYROLL DEDUCTIONS**

### **A. DEDUCTIONS**

1. General Conditions
  - a. The UC-AFT has the exclusive privilege of dues deduction for all employees in Unit 18.
  - b. The UC-AFT shall establish its dues amount and shall certify its amount to the University. The University shall deduct from the Non-Senate Faculty gross earnings, and from non-unit

voluntary members' retirement gross earnings, membership dues in the amount certified by the UC-AFT.

- c. The University shall deduct COPE as a flat dollar amount, for those Non-Senate Faculty identified by the UC-AFT.
- d. The University shall remit deductions to the UC-AFT on a monthly basis.
- e. The University shall make every effort to redirect bargaining unit employees or non-unit voluntary members to the UC-AFT regarding dues related inquiries.

2. Dues Amount Change

a. The Union may change the certified dues amount once in a twelve month period without cost to the UC-AFT. Any annual changes in the amount to be deducted for union dues shall be certified to the University, in writing, at least thirty (30) calendar days prior to the effective date of the dues amount change.

b. All costs associated with accomplishing additional changes in the dues amount (machine, programming, etc.) shall be paid by the Union at the same rates that apply to other employee organizations described in the University Accounting Manual. The University shall provide the Union with estimated costs and an estimated time of completion and the Union shall pay the agreed-upon costs before the University makes the change.

**B. ELECTRONIC TRANSMISSION OF DEDUCTION INFORMATION**

1. Certification and Maintenance of Deduction Information

- a. The Union will certify to the University to begin deductions or to cease deductions. For bargaining unit members, deductions shall be from in unit earnings based on gross earnings. For non-unit voluntary members, deductions shall be from retirement gross earnings.
- b. The UC-AFT will either deliver an electronic file in Excel (\*.xls) format to the University's campus appropriate office or upload files to the FTP website, in accordance with Section 2 below. The University shall

provide notice of the changes to the administrative process at least thirty (30) calendar days in advance of the change.

- c. For employees who are paid monthly, the dues file shall be transmitted electronically no later than the 20<sup>th</sup> of each month. For employees who are paid bi-weekly, the dues file shall be transmitted no later than the Friday before the end of the pay period.
  - d. The University agrees the changes will be made in time to affect the next payroll with a pay begin date that falls on or after the date the deduction certification is received.
  - e. The Union will solely maintain the dues deduction authorization, signed by the employee from whose salary or wages the deduction is to be made. The Union shall not be required to provide a copy of an individual authorization to the University unless a dispute arises about the existence or terms of the authorization.
  - f. If an employee is separated from the University or transferred out of Unit 18 and is still employed by the University in a non-unit title code, or if the employee holds appointments in a Unit 18 title code and a non-unit title code simultaneously, the University shall not deduct dues from the non-unit earnings unless explicitly authorized by the Union to do so as a non-unit voluntary member.
  - g. The University shall maintain the last known payroll deduction authorization status for Unit 18 dues paying members for no less than sixty (60) months from the UC-AFT certification for all former Unit 18 employees with records in the payroll system. If an employee is separated from the University or transferred out of Unit 18 and is later re-employed in a Unit 18 title code, their dues deduction status shall be resumed with the first payroll immediately upon rehire or transfer back into a Unit 18 title.
2. The UC-AFT list to be submitted in the format provided in Appendix \_\_\_ and shall include:
- a. Location/Business Unit Code
  - b. Campus Name
  - c. Bargaining Unit or unrepresented
  - d. Employee Identification Number
  - e. Employee Name (Last, First)
  - f. Action Codes: "A" = Add; "C" = Change; "S" = Stop
  - g. Deduction Codes: "D" = Dues; UD = Non-Unit Voluntary Member Dues; "PA" = COPE

h. COPE amount - new or changed amount.

**C. FEES FOR PROVIDING PAYROLL DEDUCTIONS**

1. The University shall charge the UC-AFT \$.07 per employee for calculation and reporting and \$10.00 for each monthly union payroll deduction remittance. Such charges shall be deducted from the total check remittance.
2. For the purpose of voluntary deductions for the Union, COPE fees charged to the Union shall not exceed the actual costs incurred by the University to establish such deductions.

**D. INFORMATION TO ACCOMPANY REMITTANCE**

The University shall submit a monthly standard earnings (based on retirement gross where applicable) and deduction report which shall contain, by campus, an alphabetical list of all employees in the bargaining unit and non-unit voluntary members on dues deduction status. The report shall include the employee identification number, employee name, amount withheld, and earnings that are the basis for the deduction. The report shall be provided electronically via the FTP site. Any costs associated with union-requested changes in the deduction report referenced above shall be fully paid by the Union.

**E. CORRECTION OF ERRORS**

1. If the University's error resulted in deductions less than the correct amount, the University shall make the additional required deductions to make up the difference between the actual and correct amounts in accordance with current payroll policy regarding additional deductions. However, additional deductions shall not exceed two times the normal dues amount in any given pay period.
2. If the error results in payment of more than the correct amount and the Union has received the funds, the Union shall reimburse the employees accordingly.
3. If the parties cannot agree on the amount of the appropriate deduction only the Union may file a grievance concerning the same.
4. The University shall include a communication to the NSF if deducting two times the normal contributions in accordance with E. 1 above with concurrent notice to the UC-AFT.

**G. INDEMNIFICATION**



The Union shall indemnify the University for any claims made by the employees for deductions made by the University in reliance on the Union's certification or on the Union's representation as to whether deductions for the Union were properly canceled or changed. The University shall promptly provide notice to the Union of any claim, demand, suit or other action for which it is seeking indemnification.

## **ARTICLE 28 MANAGEMENT RIGHTS**

- A.** Except as otherwise limited by this MOU, the UC-AFT agrees that the University has the right to establish, plan, direct, and control the University's missions, programs, objectives, activities, resources, and priorities, including Affirmative Action plans and goals; to establish and administer procedures, rules and regulations, and direct and control University operations; to alter, extend, or discontinue existing equipment, facilities, and location of operations; to determine or modify the number, qualifications, scheduling, responsibilities and assignments of NSF; to establish, maintain, modify or enforce standards of performance, conduct, order and safety; to determine the processes and criteria by which NSF performance are evaluated; to establish and require NSF to observe current University rules and regulations; to discipline or dismiss NSF; to establish or modify the academic calendars; to assign work locations; to schedule hours of work; or to recruit, hire, or transfer NSF. Such management of the University is vested exclusively in the University, its officers, agents and bodies as delegated by the Board of Regents.
- B.** The foregoing enumeration of management rights is not inclusive and does not exclude other management rights not specified, nor shall the exercise or non-exercise of rights retained by the University be construed to mean that any right is waived.
- C.** The foregoing provisions shall not preclude consultation with NSF through normal academic channels.
- D.** No management right shall be subject to Article 32 — Grievance Procedure or Article 33 — Arbitration or exclusive claim in a collateral suit unless the exercise thereof violates an express written provision of this MOU.

## **ARTICLE 29 ACADEMIC CALENDARS**

The academic calendar for each campus shall be developed at the sole discretion of the University. An academic year normally shall not contain fewer than 146 days of instruction. This provision shall not preclude the establishment of an academic calendar containing fewer than 146 days of instruction. The University agrees, upon request, to meet with the UC-AFT to discuss any changes in the number of days of instruction. However, if the University proposes to increase the number of days of instruction to more than 150 days, the University agrees to meet and confer with the UC-AFT regarding the impact of such an increase. Negotiations regarding the impact shall not delay the implementation of the calendar.

## **ARTICLE 30 DISCIPLINE AND DISMISSAL**

### **A. GENERAL PROVISIONS**

1. Discipline is a written censure, suspension without pay, or reduction in pay for misconduct and/or dereliction of academic duty.
2. Dismissal is the termination of employment, initiated by the University, prior to the stated ending date of appointment (if applicable), for serious misconduct, serious dereliction of academic duty, or the failure to maintain the academic standards for Continuing Appointees established in Article 7b, Sections D. and E., demonstrated by a significant decline in performance.
3. Any discipline or dismissal of an NSF pursuant to this Article shall be for just cause.

### **B. PROCESS FOR DISMISSAL BASED ON ACADEMIC PERFORMANCE**

1. If the department chair, unit head, or program director (hereinafter "unit head") determines that there has been a significant decline in the quality of the Continuing Appointee's performance, the unit head shall discuss the matter with the Continuing Appointee. The unit head's determination may occur during the normal review process or at any other time.
2. Following the discussion, the unit head shall provide the Continuing Appointee with a written remediation plan that sets forth the required areas

of improvement and a reasonable time period within which the improvement shall be accomplished.

3. If the unit head determines that the NSF meets the requirements set forth in the written remediation plan, no review for potential dismissal will be conducted and the NSF and the union will be notified in writing of that decision.
4. If the unit head determines that the Continuing Appointee fails to meet the requirements set forth in the written remediation plan, the University may conduct a review for potential dismissal, and the NSF and the union will be notified in writing.
5. If a review for potential dismissal is conducted, a committee shall review and make recommendations about such a potential dismissal.
  - a. The committee shall be at the departmental level, or as close to the departmental level as practicable. Such committee will be comprised of academic appointees with sufficient knowledge of the NSF's field of expertise.
  - b. The University shall make reasonable efforts to ensure that a qualified NSF will participate on such review committees, although no individual shall be required to serve on the committee. Unless the NSF on the committee is a standing appointee, the NSF being reviewed for potential dismissal shall be consulted about the NSF appointment on the committee.
  - c. Care shall be taken to ensure that the committee is composed of faculty who can offer a neutral assessment of the NSF's performance. The NSF on the review committee shall be under the same obligation as any other member of the review committee with respect to the confidentiality of the review process.
  - d. The NSF being reviewed shall be afforded an opportunity to raise concerns about possible bias on the part of individuals involved in her/his review for potential dismissal. Any such statement provided by the NSF shall be included in the review file.
6. An evaluation of an NSF shall be based on a review file. The review file shall contain only material relevant to consideration of the potential dismissal.
  - a. The file will contain material that demonstrates:
    - 1) the NSF's command of the subject matter and continued growth in mastering new topics;

- 2) the NSF's ability to organize and present course materials;
    - 3) whether or not the NSF has met the requirements identified in the remediation plan created by the unit head.
  - b. An NSF may provide a self-statement or self-evaluation of her or his teaching performance and her or his ability to satisfy the requirements set forth in the remediation plan.
  - c. An NSF being evaluated may provide letters of assessment from individuals with expertise in her/his field, and/or other relevant materials to the review file for potential dismissal. Those from whom letters may be provided include but are not limited to:
    - 1) Department NSFs;
    - 2) departmental Academic Senate faculty;
    - 3) other academic appointees;
    - 4) students; and/or
    - 5) others external to the University of California.
  - d. The NSF being reviewed may provide a written list of suggested peers from whom input may be solicited and/or the NSF can identify qualified persons from whom input may be solicited.
7. Due attention should be paid to the variety of demands placed on instructors by the types of teaching called for at various levels and the total performance of NSF should be judged with proper reference to assigned teaching responsibilities.
  8. The department shall provide the NSF with a copy of its recommendation and the evaluative documents on which the recommendation was based.
  9. The NSF may submit a written response to her/his departmental committee's recommendation, which shall be added to her/his review file.
  10. Following the departmental review and recommendation, the NSF's review file shall be forwarded to a UC academic official outside the department, and at a higher level than the unit head.
  11. The designated academic official shall provide the NSF and the union with a written notice of the final decision.
  12. If the outcome of the review results in a recommendation for dismissal, the University will take action in accordance with Section C., below.

## **C. WRITTEN NOTICE OF INTENT TO DISCIPLINE OR DISMISS**

The University shall provide Written Notice of Intent, as described in this Section C., for the following actions: suspension without pay, reduction in pay, or dismissal.

### **1. Issuance**

- a. The University shall give a Written Notice of Intent to the affected NSF, either by delivery in person, or by placing the Written Notice of Intent in the United States Mail, first-class, postage-paid, in an envelope addressed to the NSF at her or his last known home address. The NSF shall be responsible for informing the designated University office in writing of his or her current home address and of any change in such address. The information so provided shall constitute "the employee's last known home address." The University will also send a copy of the Notice to the NSF through campus mail to her/his campus office address.
- b. The University will send a copy of the notice to the Union.
- c. Whether the University delivers the Written Notice of Intent in person or by mail, the Notice of Intent shall contain a statement of delivery or mailing indicating the date on which the University personally delivered or deposited the Notice of Intent in the U.S. Mail. Such date of delivery or mailing shall constitute the date of issuance of the Written Notice of Intent.

### **2. Content**

The Written Notice of Intent shall:

- a. inform the NSF of the disciplinary or dismissal action intended, and the effective date of the action;
- b. provide an explanation of the reason for the action, including, where appropriate, illustrative materials;
- c. inform the NSF of the right to respond, to whom to respond, and the applicable time frame for responding in accordance with Section D; and
- d. inform the NSF of the right to representation by a representative of her/his choice, including the union.

#### **D. RESPONSE TO WRITTEN NOTICE OF INTENT**

The NSF or her/his designated representative shall be entitled to respond, either orally or in writing, to the Notice of Intent described above. If the University delivers the written Notice of Intent to the NSF in person, the University must receive the response within fourteen (14) calendar days from the date on which it delivered/issued the written Notice of Intent. If the University mails the written notice to the NSF, the University must receive the response within thirty (30) calendar days from the date on which the written Notice of Intent was mailed. The University shall establish the date on which it mailed the Notice of Intent by sending the Notice via registered mail.

#### **E. WRITTEN NOTICE OF ACTION**

1. A Written Notice of disciplinary or dismissal action must specify the action the University intends to take and the effective date of the action.
2. The University's action may not include discipline more severe than that described in the written Notice of Intent; however, the University may reduce such discipline without the issuance of a further written Notice of Intent.
3. The University shall provide the NSF and (if applicable) her/his designated representative a written Notice of Dismissal, or Notice of Disciplinary Action, within thirty (30) calendar days after the issuance of the written Notice of Intent, unless the NSF has elected an Academic Senate review of the Intent to Dismiss in accordance with Section G., below. This notice must consider any response that the NSF has provided to the Notice of Intent described in Section D., above.

#### **F. ALTERNATIVES FOR REVIEW OF DISCIPLINE AND DISMISSAL**

##### **1. Discipline**

Any NSF may grieve and arbitrate discipline actions taken pursuant to this Article. Grievances must be filed in accordance with the provisions of Article 32 — Grievance and Article 33 — Arbitration.

##### **2. Dismissal**

NSF in faculty titles may request a Senate review of a dismissal action in accordance with the Academic Senate regulations in effect at the time of the action at the NSF's campus, or may elect review of the same action in accordance with the provisions of the Grievance and Arbitration articles. NSF in non-faculty titles identified in Article 5, Section B., may only seek a review of dismissal actions in accordance with the provisions of Article 32

**G. PROCEDURE FOR REVIEW OF PROPOSED DISMISSAL**

1. Senate Review - Within the Senate Review procedures, the scope of the review shall be limited to determining whether there was procedural irregularity, and/or whether the action taken was for good cause.
  - a. A faculty NSF who has received a Notice of Intent to Dismiss may elect to have the proposed dismissal considered for advisory review under the applicable Senate Review Procedures in effect at the time. An NSF who chooses to use the Senate Review Procedures must provide written notification to the designated University official within fourteen (14) calendar days from the date of the University's Notice of Intent to Dismiss.
  - b. The Senate may choose, in accordance with its procedures, to review a proposed dismissal action through the applicable procedures in effect at the time, if any, for hearings before the Academic Senate. The Senate may also decline to review a proposed dismissal action.
  - c. When the Academic Senate Review option has been selected, the University shall not initiate a final dismissal action until the earliest of the following has occurred.
    - 1) The Senate has elected not to review the action, or
    - 2) The Senate has elected to review the proposed dismissal and
      - a) the review process is complete or
      - b) twelve (12) months have lapsed following the issuance of the Notice of Intent to Dismiss.
  - d. When the Senate accepts the review, the University shall consider the Senate recommendations in making its decision. The University decision shall be final, and is not subject to grievance and arbitration.
  - e. If the Senate declines to review the proposed dismissal, the University shall provide a Written Notice of Action to the NSF and her/his designated representative, if any.
2. Grievance and Arbitration - An NSF who has received a Written Notice of Action, including dismissal action, may file a grievance in accordance with the procedures of Article 32 — Grievance Procedure, unless the NSF has pursued a Notice of Intent through the Academic Senate Review, and the Academic Senate has agreed to review the proposed dismissal action.
  - a. The imposition of disciplinary or dismissal action shall not extend the

time limits for the filing of a grievance on any other matter under Article 32 — Grievance Procedure.

- b. In any arbitration, the arbitrator shall have the authority to determine whether the discipline or dismissal was for just cause and if so, to determine the remedy, but s/he may not reevaluate the academic performance or qualifications of the NSF.

## **ARTICLE 31 PRE-SIX YEAR MENTORING MEETING**

### **A. GENERAL PROVISIONS**

1. The University supports providing feedback to Pre-Six Year NSF. This article provides a model of the timing and process for providing such feedback.
2. This article is not intended to preclude a department, program, or unit from developing or continuing more extensive procedures for providing feedback, whether through assessment, reviews, or other mentoring.
3. Feedback shall be for mentoring purposes only. Mentoring feedback given in the meeting, positive or negative, shall not be considered in a reappointment decision or excellence review. However, any materials or documentation upon which feedback is based may be considered in reappointment decisions and/or excellence reviews.

### **B. FEEDBACK PROCESS**

1. The University shall notify the NSF no later than thirty (30) days in advance of the mentoring meeting.
2. The mentoring meeting shall take place during the academic year in which the ninth (9<sup>th</sup>) quarter or sixth (6<sup>th</sup>) semester of service in the same department, program, or unit occurs.
3. Performance feedback shall be based on performance of assigned duties from at least the most recent six (6) quarters or four (4) semesters of previous work.
4. The Chair, Chair equivalent, or designee shall provide feedback on an NSF's performance; such feedback will be provided in order to mentor the NSF.



5. Performance feedback shall be provided based on materials readily accessible to the Chair, Chair equivalent, or designee. Such materials may include:
  - a. Student evaluations;
  - b. Classroom visits, if conducted; and
  - c. Syllabi and examples of instructional materials.

The Chair, Chair equivalent, or designee has no obligation to examine other materials.

6. A form documenting the occurrence of the mentoring meeting shall be signed by the NSF and the Chair, Chair equivalent or designee and placed in the NSF's personnel file.
7. If an NSF declines the meeting, such declination shall be in writing. Declining a meeting shall not be considered in a reappointment decision or excellence review.
8. Should either party postpone the scheduled meeting, the party who postponed is responsible for rescheduling the meeting within 30 calendar days.
9. Nothing in this article shall be grievable or arbitrable except the University's failure to conduct the Pre-Six Year Mentoring Meeting.

**ARTICLE 32  
GRIEVANCE PROCEDURE**

**A. GENERAL PROVISIONS**

1. Definition of a Grievance  
A grievance is a formal written claim submitted at Step 1 of this grievance procedure alleging certain article(s) of this MOU has (have) been violated by the University during the term of this MOU.
  
2. Standing  
Except as otherwise provided in this MOU, a grievance may be filed by an NSF or the Union. The University may not bring a grievance through this procedure.
  
3. Non-Business Days  
Deadlines which fall on days that are not business days at the campus at which the grievance or appeal is filed will be automatically extended to the next business day
  
4. Filing Deadline  
Any grievance which is filed out of compliance with the time limits provided in this Article is considered withdrawn by the grievant and/or the Union, as applicable.
  
5. No University Response  
If a University official fails to meet a deadline, the grievant may move the grievance to the next step in the process.
  
6. Extensions of Time Limits  
Time limits set forth in this Article may be extended only by written agreement between the grievant or the grievant's representative, if any, and the University, in advance of the expiration of the time limit.
  
7. Informal Meetings and Time Limits

Nothing in this Article or MOU prohibits informal meetings at any step of the grievance procedure upon agreement of the parties. Except by mutual agreement pursuant to A.6. above, such meetings do not extend the timeframes outlined in this Article.

8. Consolidation

Grievances brought by, or related to, two (2) or more NSF, and multiple grievances by or related to the same NSF, which concern the same incident, issue or course of conduct, may be consolidated for the purposes of this procedure provided that the time limits described in this Article shall not be shortened for any grievance because of the consolidation of that grievance with other grievances. Consolidated grievances may be severed. A grievance shall be consolidated or severed only by agreement between the grievant or the grievant's representative and the University.

9. Representation

An NSF shall have the right to be represented at all steps of the Grievance Procedure by her/himself or by any person of her or his choice other than a University employee who has been designated as supervisorial, managerial or confidential within the meaning of the Higher Education Employee-Employer Relations Act (HEERA). The grievant shall provide the University written notice of the name and address of her/his representative. The University shall notify the Union of any formal grievances filed where the Union is not chosen as the representative of the grievant. The grievant's representative may be assisted in grievance meetings by another NSF or, if applicable, a union representative.

10. Release Time

As professional exempt employees, NSF shall be allowed reasonable flexibility with their time in order to investigate and pursue grievance handling. Reasonable efforts will be made by the University not to call meetings during scheduled class hours of the grievant or the grievant's representative. Time spent by grievants or their representatives outside their normal schedules in University-called meetings shall not be counted as time worked. Unit members will not lose salary as a result of attendance at meetings called by the University pursuant to this Article.

11. Settlement Offers  
Settlement offers shall be confidential and inadmissible at subsequent steps. If the union is not involved in representation, the settlement shall become final so long as the adjustment is consistent with the terms of this MOU and the Union, has been given ten (10) calendar days to file a response.
  
12. Documents  
Except by agreement between the grievant or the grievant's representative and the University, documents and communications that are filed with the University and are related to the processing of a grievance shall be kept separate from the grievant's personnel and review files.
  
13. Authority of the Designated University Administrator  
The Designated University Administrator at each step of the process has the authority to modify the decision of a Designated University Administrator provided at an earlier step of the grievance process.

## **B. LOCATION AND MANNER OF FILING**

1. Location of Filing  
Grievances and subsequent appeals shall be filed with the University office and/or officer designated in Appendix A.
  
2. Manner of Filing Grievances and Appeals  
The grievant or the Union may file a written grievance and submit appeals to the designated office at each step of the grievance process using any one of the following methods:
  - a. **EMAIL:**  
When emailed, grievances and subsequent appeals must be submitted to the designated email address and must include PDFs of all documents, information and signatures necessary to be in compliance with the provisions of the Agreement. The date and time indicated on the University server shall constitute the official date of receipt by email submission. If the registered date on the University server falls outside the campus' business hours, the following business day shall constitute the official date of receipt.

- b. **US MAIL:**  
When mailed, the initial filing and subsequent appeals must arrive in an envelope with a U.S. Postal Service Postmark. The U.S. Postal Service Postmark will be used to determine the initial filing and subsequent appeals.
  
- c. **HAND DELIVERY:**  
The date of hand delivery shall be the date of the stamp or handwritten acknowledgement of receipt as noted by the Labor Relations office. The University shall acknowledge receipt by dating the form, and providing a copy of the dated form to the grievant or his/her representative.

**C. INFORMAL RESOLUTION (OPTIONAL)**

- 1. Within fifteen (15) calendar days after the grievant becomes aware of the event that is the subject of the grievance, the NSF may discuss the grievance with her or his immediate supervisor. However, if a University representative outside the department initiated the incident or action that gave rise to the grievance, the grievant may discuss the grievance with the Dean, or individual who supervises the person who initiated the action, rather than the immediate supervisor. Informal resolutions, although final, shall not be precedential or inconsistent with this MOU.
  
- 2. Within five (5) calendar days of the informal discussion, the individual with whom the grievant discussed the grievance pursuant to C.1., above, shall provide the grievant with an oral response.
  
- 3. If the grievance is not resolved through informal discussion, or if the grievant does not seek remedy through informal resolution, the NSF may seek review as set forth in Section D., below.
  
- 4. Attempts at informal resolution do not extend time to file at Step 1 unless an extension of the time limit has been agreed to as set forth in Section A.6.

**D. STEP 1 – FORMAL GRIEVANCE PROCEDURE**

- 1. Consistent with the provisions of this MOU, a grievant or the Union may file

a written grievance as set forth below.

- a. A written grievance must be filed with the campus designated Grievance Officer listed in Appendix A on the grievance form agreed to by the University and the Union.
- b. Time limits for initial filing:
  - 1) Unless otherwise specified elsewhere in this MOU, grievances must be filed within thirty (30) calendar days from the date on which the NSF or the Union knew or could have been expected to know of the event or action which gave rise to the grievance, or, in the case of separation, within thirty (30) calendar days after the date of the NSF's separation from University employment, whichever occurs first.
- c. A valid grievance must contain the following information:
  - 1) the specific article or section of the MOU alleged to have been violated;
  - 2) the date(s) and nature of the action grieved and how it violated the above described provision of the MOU;
  - 3) how the NSF was adversely affected; and
  - 4) the remedy requested.
- d. If the University determines a grievance is procedurally ineligible for processing as written, the University shall inform the Union of the procedural deficiencies and provide seven (7) calendar days to permit the Union to resubmit the grievance.
- e. If the University determines such grievance ineligible for processing after it has been resubmitted, the Union may file a grievance over the University's decision, in accordance with the provisions of this Article.

2. Within ten (10) calendar days of receiving the written grievance, the University shall schedule a review between the grievant and her/his representative if any, and the designated campus representative.
  - a. The University shall provide a written response at the review or within ten (10) calendar days of the review. Resolution at this step, although final, shall not be precedential or inconsistent with this MOU.
  - b. If the grievance is not resolved, the grievant may seek further review in the manner described below in Section D.
3. Step 1, except for the written filing of the grievance in accordance with Section C.1. b) and c), may be waived by agreement of the parties.

#### **E. STEP 2**

1. If the grievance has not been resolved at Step 1, the grievant or the grievant's representative may submit a written request to the campus designated grievance officer for a Step 2 review. Such request must be made within fifteen (15) calendar days from the date of the University's written response at Step 1, or if no University answer was issued, within fifteen (15) calendar days from the date the Step 1 response was due.
2. If either the grievant or the grievant's representative or the grievance officer requests a meeting to discuss the merits of the grievance, one shall be conducted within fifteen (15) calendar days of the request for the Step 2 review. If a meeting occurs, the grievant and/or the grievant's representative may be present. Also, the grievant or the grievant's representative shall be able to bring people to the meeting who have information to present about the grievance. With the agreement of the parties, each party may bring an observer(s) to the meeting. Such requests regarding an observer(s) shall not be unreasonably denied.
3. If the Union discovers information or the University produces information after the filing of the original grievance and that information gives rise to additional article(s) or section(s) alleged to have been violated, the Union may amend the pending grievance to allege violation of such specific article(s) and section(s) as soon as practicable, but in no case any later than at the time the parties hold the Step 2 meeting. If the Union submits an amendment to the Step 2 appeal, they must file the amended appeal in writing on the grievance form at the Step 2 meeting. Such amendment shall automatically extend the University's time to issue the Step 2 decision by

an additional fifteen (15) calendar days. Contract violations not alleged in the Step 2 meeting are not subsequently admissible or arbitrable.

4. A campus administrator with the authority to modify the decision of the University representative at the previous step shall participate in the meetings and University response on appealed grievances.
5. Notice to the grievant of the University's Step 2 decision will be as set forth below.
  - a. For grievances where the Union represents the grievant:
    - 1) If no Step 2 meeting is requested, the University shall mail issue the written decision to the grievant and/or the grievant's representative within fifteen (15) calendar days following the date of receipt of the request for a Step 2 review.
    - 2) If a meeting is requested, the University shall issue the written decision to the grievant and/or the grievant's representative within fifteen (15) calendar days following the meeting or thirty (30) calendar days if the Union files an amended Step 2, in accordance with Section D.3. above.

The University's decision shall become final within forty-five (45) calendar days following the issuance of the Step 2 decision, unless within that time, the Union has appealed the decision to Step 3.

- b. For grievances where the Union does not represent the grievant:
        - 1) If no Step 2 meeting is requested, the University shall transmit a copy of the grievance and proposed resolution to the Union within fifteen (15) calendar days following the date of receipt of a request for a Step 2 review. The University decision shall address the issues raised in the written grievance, and shall present the facts known to the University related to the issues alleged in the grievance. If the Union requested a Step 2 meeting, the University shall transmit a copy of the grievance and proposed resolution to the Union within fifteen (15) calendar days following the meeting.



- 2) The Union shall be given ten (10) calendar days from the date of issuance of such copy to comment in writing on the proposed resolution.
- 3) The University shall not implement the proposed resolution of the grievance until timely receipt and review of the Union's written comments, if any.
- 4) Following receipt of the Union's comments or ten (10) calendar days from date of issuance, whichever occurs first, the University will issue its decision to the grievant and/or the grievant's representative and will transmit a copy to the Union.
- 5) The decision of the University shall become final, so long as the decision is not inconsistent with the terms of this Agreement, within forty-five (45) calendar days of the issuance of the decision to the grievant and/or the grievant's representative, unless within that time, the Union has appealed the decision to Step 3.

#### **E. STEP 3 – APPEAL TO OFFICE OF THE PRESIDENT**

1. Grievances that are not satisfactorily resolved at Step 2 may be appealed to Step 3. The appeal must be filed with the Executive Director of Labor Relations Operations in the Office of the President within fifteen (15) calendar days of the date the University's Step 2 written decision was issued or, if no University answer was issued, within fifteen (15) calendar days of the date the Step 2 decision was due.
  - a. The Step 3 appeal shall identify all unresolved issues, alleged violations, and remedies, and shall be signed and dated by the grievant or her/his representative.
  - b. The subject of the grievance as stated at Step 2 shall constitute the sole and entire subject matter of the appeal to Step 3.
2. The Labor Relations office in the Office of the President shall issue the University's written decision to a Step 3 appeal within thirty (30) calendar days of the receipt of the appeal. Where a grievance has been filed by the Union, the Union shall review the University's Step 3 response and shall notify the University if it has determined that the University's step 3 response satisfactorily resolves the grievance.

3. The decision will be issued to the grievant when self-represented, or to her/his representative. A copy of the decision will be sent to the Union.

## **F. APPEALS TO ARBITRATION**

If an Appeal to Arbitration is not received by the Office of Labor Relations at the Office of the President within forty-five (45) calendar days of the issuance of the University's Step 3 answer, the grievance shall be considered resolved on the basis of the University's final response.

### **ARTICLE 33 ARBITRATION**

#### **A. GENERAL PROVISIONS**

1. Only the Union may make an appeal to arbitration and only after the timely exhaustion of the Grievance Procedure of this MOU. The written appeal to arbitration must be received by the designee of the Office of Labor Relations of the Office of the President within forty-five (45) calendar days of the issuance of the final University decision to the Union (Article 32 — Grievance Procedure). The written appeal must be signed by the Union President, the Union Vice President for Grievances, the Union Executive Director, the Union Legal Director, or equivalent designee. The written appeal must include:
  - a. name, contact information, and campus location of the grievant(s);
  - b. name and contact information of the Union representative who is responsible for the appeal to arbitration and to whom all correspondence is to be sent;
  - c. a copy of the completed grievance form;
  - d. a statement setting forth the unresolved issue(s), the Articles of the MOU alleged to have been violated as identified in the written Step 2 appeal, and the remedy requested; and
  - e. a completed proof of service form.

2. Within seven (7) business days, the University will provide an electronic acknowledgement that it received the appeal to arbitration.
3. Appeals to arbitration which are not filed within the above time limit and/or which do not contain the appropriate union signature, are ineligible for arbitration. If a grievance is not appealed to arbitration, the University's last written decision shall be final.
4. Absent resolution of the grievance during this time, the designee of the Office of Labor Relations of the Office of the President shall notify the Union of the University's agreement to proceed to arbitration within thirty (30) calendar days of the date of receipt of the appeal to arbitration. The University's response will include a proof of service and the name and contact information of the University's representative to whom all correspondence should be addressed.

## **B. Selection of Arbitrator**

1. Within fifteen (15) calendar days of the issuance of the University's response to the Union's appeal to arbitration, the Union will contact the University's representative responsible for the appeal to arbitration to initiate the selection of an arbitrator. Failure to contact the University's representative within the established time frame will be considered a withdrawal of the arbitration appeal.
2. Within thirty (30) calendar days after the Union contacts the University's representative responsible for the appeal to arbitration about selection of an arbitrator, the University will reply to the Union and engage in the selection process.
3. If the parties cannot mutually agree to the selection of an arbitrator from the panel, the parties shall alternately strike one name each from the list of panel members. Unless the parties agree otherwise, the party selecting first shall be determined by the flip of a coin. The remaining name shall be designated as the arbitrator.
4. The selection of the arbitrator shall be accomplished no later than thirty (30) calendar days after the University's representative has contacted the Union to begin the process for selecting the arbitrator.

5. Upon selection of an arbitrator, the University and the Union shall electronically transmit a joint letter to the arbitrator requesting hearing dates that are no earlier than thirty (30) calendar days from the date of transmission of the letter to the arbitrator.
6. The arbitrator shall respond to each party with available hearing dates.
7. Within thirty (30) calendar days of receipt of the arbitrator's availability, each party shall electronically notify the arbitrator (with a cc to the other party) which of the dates, if any, are acceptable.
8. If either party fails to respond to the arbitrator's letter pursuant to paragraph 6, the arbitrator shall schedule the hearing on the date(s) identified by the responding party; however, in such case, the initial hearing date selected by the arbitrator must be at least 45 days from the date of the arbitrator's initial letter offering hearing dates.

### **C. EXPEDITED ARBITRATION**

If the parties agree to use an expedited form of arbitration, the following will occur:

1. the arbitrator will be selected in accordance with Section B. above;
2. the case shall be heard on the arbitrator's earliest available date, unless otherwise agreed by the parties;
3. there shall be no transcript of the proceedings;
4. post-hearing briefs will be waived; and
5. the arbitrator will issue a written decision within seven (7) calendar days following the close of the hearing record unless the parties agree, prior to the commencement of the arbitration, that the arbitrator rule on the issues at the close of the hearing in lieu of a written decision.

### **D. ARBITRATION PROCEDURE**

1. In order for grievances to be considered timely and arbitrable under this Article, the scheduling of the arbitration hearing date must be accomplished no later than ninety (90) calendar days from the date the arbitrator is

contacted by the parties. Should the parties be unable to agree to a hearing date, the authority to schedule the hearing rests with the arbitrator.

2. Prior to the arbitration hearing, the Union and the University shall attempt to stipulate as to the issue(s) to be arbitrated and to as many facts as possible. At least seven (7) calendar days prior to the arbitration hearing the parties shall exchange lists of known witnesses.
3. During the arbitration proceeding, the parties shall have an opportunity to examine and cross-examine witnesses under oath and to submit relevant evidence. Issues and allegations shall not be introduced at the arbitration hearing which were not introduced during Step 2 of the grievance procedure of this MOU. Settlement offers made during the grievance procedure shall not be introduced as evidence in arbitration.
4. The arbitrator shall have the authority to subpoena witnesses or documents, subject to the limitations set forth in Article 10 — Personnel Files, but only upon the request of either party.
5. Either or both parties may, at its discretion, file briefs with the arbitrator. The order and time limits of briefing shall be either as agreed to by the parties or as specified by the arbitrator. Briefing time limits may be extended if agreed upon by the parties. Prior to the commencement of the Arbitration, the parties may agree to waive the filing of briefs, and in lieu of a written decision, the parties may also agree that the arbitrator will rule at the close of the hearing.
6. The arbitration hearing shall be closed unless the parties otherwise agree in writing.
7. Unless the parties agree otherwise, where arbitrability is an issue, one arbitrator shall conduct a hearing and issue a decision on the question of arbitrability, and the merits of any arbitrable claim will be heard by a different arbitrator in a separate hearing.
8. An appeal to arbitration shall not inhibit efforts by the University and the Union to resolve the grievance. The Union shall have authority to withdraw a grievance or enter into an agreement with the University to settle a grievance appealed to arbitration. An agreement to settle or withdraw a grievance appealed to arbitration reached between the University and the Union shall be binding on unit employees.

9. In all cases appealed to arbitration, except for actions taken pursuant to Article 30 — Discipline and Dismissal, the Union shall have the burden of proceeding.
10. The arbitrator shall consider the evidence presented and render a written decision within thirty (30) calendar days of the close of the record of the hearing. The arbitrator's decision will set forth the findings of fact, reasoning, and conclusions on the issues submitted by the parties.
11. The arbitrator's fees and the costs of transcripts requested by the arbitrator or both parties shall be shared equally by both parties. Costs for transcripts requested by only one party, shall be borne by the requesting party.
12. A party that cancels or postpones an arbitration will be liable for any cancellation/postponement fees charged by the arbitrator and/or court reporter.

#### **E. AUTHORITY OF THE ARBITRATOR**

1. The arbitrator's authority shall be limited to determining whether the University has violated arbitrable provisions of this MOU. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this MOU.
2. Except to the extent provided in this MOU, the arbitrator shall not have the jurisdiction or authority to review the University's evaluation of an NSF's academic qualifications or performance, or whether courses shall be offered.
3. If the grievance is sustained in whole or in part, the remedy shall not exceed restoring to the NSF the pay, benefits, or rights lost as a result of a violation of the MOU, less any compensation from any source recognized by law as appropriate to offset such a remedy. The decision and award of the arbitrator shall be final and binding upon the parties to this MOU and the NSF. The University will not be liable for back wages or other monetary reimbursement for:
  - a. any period of time during which an extension of time limits has been granted at the request of the Union;
  - b. any period of time between the first date the arbitrator is available for an arbitration hearing and the date of the hearing, when the first date is rejected by the Union; and

- c. any period of time greater than thirty (30) calendar days prior to the date the grievance was filed pursuant to Article 32 — Grievance Procedure.

#### **F. EXTENSION OF TIME LIMITS**

Time limits set forth in this Article may be extended by agreement of the parties in writing in advance of the expiration of the time limit.

#### **G. RELEASE TIME**

Upon advance request, the grievant and the Union representative, if the representative is an NSF, s/he shall be granted leave with pay to attend arbitration hearings and related settlement meetings convened by the University. Unit members who are called by the parties to testify shall be granted leave with pay upon advance request for the period of time required to testify.

#### **H. PANEL OF ARBITRATORS**

1. The parties agree that there will be two (2) standing panels of eleven (11) arbitrators, one designated North and one designated South, to hear arbitration cases scheduled for hearing pursuant to the provision of this Article.
2. The procedure for modifying the panel shall be as follows:
  - a. Each party shall have the right to eliminate up to two (2) arbitrators from the North panel and up to two (2) arbitrators from the South once each calendar year. The party exercising this right shall notify the other party in writing of the name(s) of the arbitrator(s) to be stricken from the panel.
  - b. In replacing an arbitrator who has been eliminated, declined to participate or who has resigned, or in adding an arbitrator(s) to complete the panel, the parties will exchange lists of nominations within sixty (60) calendar days. If agreement cannot be reached on

all eleven (11) arbitrators, the remaining number needed to complete the panel will be selected alternately by the parties. The party selecting first shall be determined by the flip of a coin. Any arbitrator eliminated in a., above, may not be placed on the panel again.

- c. The parties shall jointly send letters to arbitrators chosen for placement on the standing panel and shall request that they agree to participate and comply with the provisions of the MOU.

### **ARTICLE 34 IMMIGRATION REFORM AND CONTROL ACT**

- A.** Letters of appointment/reappointment or other appropriate appointment documents will include a statement that the individual must provide verification of employment eligibility pursuant to University requirements established in accordance with the Immigration Reform and Control Act of 1986 (IRCA). Letters of appointment/ reappointment will also include notification of any proposed University assistance in complying with IRCA. The offer of the appointment, continued eligibility to complete the appointment term and the pay will be contingent on compliance with these requirements.
- B.** All appointments/reappointments will be contingent upon the employee's completion of an I-9 form and provision of the employment eligibility documents required by the University to comply with IRCA. Failure to provide the necessary documentation within the required time limitations or failure to remain eligible will constitute grounds for release from employment for failure to comply with University requirements implementing the IRCA.
- C.** Nothing in this Article prohibits the reappointment of an NSF upon compliance with the requirements of IRCA.
- D.** Any employment relationship which is terminated for failure to comply with the requirements set forth herein will not be subject to Article 30 — Discipline and Dismissal.
- E.** When the University intends to release an NSF for failure to comply with University requirements implementing the provisions of IRCA, the NSF shall be given written notice of the intent to release.



The notice shall:

1. be given to the NSF either by delivery of the notice to the NSF in person, or by mail with a Proof of Service;
  2. state how the NSF has failed to comply with University requirements implementing IRCA;
  3. state that the NSF has the right to respond, and to whom, within ten (10) calendar days from the date of issuance of such notice of intent, either orally or in writing; and,
  4. state the effective date of the action.
- F.** The University will consider any response from the NSF. If the NSF can provide the University with proof of complete compliance with University requirements implementing IRCA, the University will withdraw the letter of intent.
- G.** If no response is received by the University or the NSF does not comply with University requirements implementing IRCA, the NSF will be released on the date set forth in the letter of intent to release.

### **ARTICLE 35 NO STRIKES/NO LOCKOUT**

- A.** The University, on behalf of its officers and agents, agrees that during the life of this MOU or any written extension thereof there will be no lockouts of NSFs. A lockout shall be defined for members of this unit as an action taken by the University to obtain for the University more desirable terms and conditions in the Agreement being negotiated, the result of which is the cessation of furnishing work and pay to NSFs or withholding work and pay from them.
- B.** The UC-AFT, on behalf of its officers, agents, and members agrees that there shall be no strikes, stoppages or interruptions of work, sympathy strikes or other concerted activities by members of this unit which interfere directly or indirectly with University operations during the life of this MOU or any written extension thereof. The UC-AFT, on behalf of its officers, agents, and members, agrees that it shall not in any way directly or indirectly authorize, assist, encourage, participate in, sanction, ratify, condone, or lend support to any activities by members of this unit in violation of this Article.

**C. SHOULD A VIOLATION OF THIS ARTICLE OCCUR:**

1. The University shall immediately take whatever affirmative action is necessary to prevent and bring about an end to the lockout activity in violation of this Article. Such affirmative action shall include written notice to the UC-AFT and to each affected NSF at her/his mailing address that the prohibited activity will cease.
  2. The UC-AFT shall immediately take whatever affirmative action is necessary to prevent and bring about an end to any concerted activity in violation of this Article. Such affirmative action shall include written notice to the mailing address of each NSF engaged in the prohibited activity informing her/him that the concerted activity is in violation of this Article, that engaging in such activity may lead to disciplinary action, and that NSFs engaged in prohibited activity must cease such activity and immediately return to work.
- D.** The UC-AFT will refuse to honor any and all picket lines established by NSFs engaged in activity violative of Section B. of this Article.
- E.** If the UC-AFT performs in good faith and in a timely way all of the obligations of Section C. above, the UC-AFT shall not be liable to the University for damages suffered as a result of the strike, except for such damages as are caused by the activities of officers of the UC-AFT or with their assistance or consent.
- F.** When an NSF is absent from work without permission or abstains wholly or in part from the full performance of her or his duties without permission on the date or dates when a strike occurs, there shall be a rebuttable presumption that the NSF has engaged in such strike activity on such date or dates; and the NSF shall not be on pay or benefit status. Any NSF who violates this Article shall be subject to discipline as outlined in Article 30 — Discipline and Dismissal. The UC-AFT shall have the right to grieve any action constituting discipline and dismissal as defined in Article 30.
- G.** Nothing herein constitutes a waiver of the University's or the UC-AFT's right to seek appropriate legal relief in the event of the violation of this Article.

**ARTICLE 36  
PAST PRACTICE NOT COVERED BY AGREEMENT**

Practices and policies relating to wages, hours, and terms and conditions of employment now existing, not raised in the bargaining process and not in conflict with this MOU, may remain in effect. The University agrees to meet and discuss, upon request, with the UC-AFT regarding the elimination or modification of these practices and policies. Application, elimination, or modification of these practices and policies is not grievable.

**ARTICLE 37  
WAIVER**

- A.** The University and the Union acknowledge that during the negotiations which resulted in this MOU, each had the right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this MOU and that this MOU constitutes the agreement arrived at by the parties.
- B.** The rights granted and the policies and procedures set forth in the Academic Personnel Manual shall not apply to NSFs, except as specifically set forth below or elsewhere in this MOU.
- C.** The University and the Union agree that the applicable parts of the following policies and procedures, including presidential and regental policies, continue to apply to NSFs:

Patent  
Copyright  
Indemnity  
Sexual Harassment/Sexual Violence  
Whistleblower  
Whistleblower Protection

APM 015, A.6 and 7 – The Faculty Code of Conduct  
APM 520 – Employment of Near Relatives  
APM 663 - Additional Compensation: University Extension  
APM 664 - Additional Compensation: Services as Faculty Consultant  
APM 666 - Additional Compensation: Honoraria

## APM 667 - Additional Compensation: Extramurally Funded Research

Only changes in the above policies and procedures applicable to NSF's will be subject to notice and the meet and confer process. Implementation of any of these proposed policies, procedures, rules or regulations, will not be delayed for other employees by the failure of the parties to complete the meet and confer process or the failure to reach agreement.

- D.** The University and the Union agree that the University may, during the life of this MOU, establish and administer policies, procedures, rules and regulations. In the event the University proposes the establishment of a policy, procedure, rule or regulation that is systemwide in nature and has significant impact on the terms and conditions of employment of NSF's, the University agrees to meet and confer upon timely written request with the Union regarding the significant impacts on members of the unit. Implementation of any of these proposed policies, procedures, rules or regulations, will not be delayed for other employees by the failure of the parties to complete the meet and confer process or the failure to reach agreement. The UC and the UC-AFT shall execute in writing the agreement resulting from such negotiations, and the agreement shall become an addendum to this Agreement. If the parties do not reach agreement in the negotiations, the impasse procedures pursuant to HEERA shall apply.
- E.** Except as otherwise provided for in this MOU, or upon mutual consent of the parties to seek written amendment thereto, the University and the Union, for the life of this MOU, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered in this MOU, or with respect to any subject or matter not specifically referred to or covered by this MOU, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this MOU.

### **ARTICLE 38 SEVERABILITY**

In the event that any provision of this MOU becomes invalid or void by statute, legislative action or final judicial decision by a court of competent jurisdiction, or in the event that any provision conflicts with the provisions of a statute or the Constitution of the United States or California, according to such final judicial decision, such action shall not invalidate the entire MOU. It is the express intention of the parties that all other provisions

not declared invalid or void shall remain in full force and effect. In the event that any provision of this MOU becomes invalid or void, the parties agree to meet within thirty (30) calendar days upon request of either party in an attempt to reach an agreement on a substitute provision.

### **ARTICLE 39 SUCCESSORS**

- A.** If a University location in which there are NSF's is to be sold or transferred, the University agrees to provide notice to the UC-AFT and to meet and confer regarding the impact on NSF's.
- B.** If The Regents of the University of California is replaced by a different governing body, the terms and conditions of this MOU will continue in full force and effect for its duration.

### **ARTICLE 40 DURATION**

#### **A. DURATION**

The terms and conditions of this Agreement shall remain in full force and effect commencing at 12:00 midnight on February 29, 2016 and shall terminate at 11:59 p.m. on January 31, 2020.

#### **B. CONDITIONAL REOPENER NEGOTIATIONS**

The parties will engage in re-opener bargaining if the circumstances outlined in Article 11 — Benefits, Section A. 2.b. or Article 21 — Salary, Section.A.7 are satisfied. Obligations to meet and confer shall be made in accordance with the following:

1. The UC-AFT shall, no later than thirty (30) calendar days of receiving written notice of the circumstances triggering the conditional re-openers above, serve upon the Office of the President, Director of Labor Relations, written notice of its intent to negotiate those triggered sections of the Agreement.

2. Upon receipt of the UC-AFT's written notice of intent to negotiate those identified triggered sections of the Agreement, the parties shall meet within thirty (30) days of the notice to negotiate.
3. In the event an agreement on the subject reopener(s), if any, is not achieved, the parties will conform with HEERA mandated impasse procedures, including state mandated mediation, factfinding, unilateral implementation of a contract, and the right to strike.

### **C. NEGOTIATIONS OF A SUCCESSOR AGREEMENT**

Timely notice, as provided below, shall impose the duty to engage in meeting and conferring for the purposes of negotiating amendments to the Article(s) specified. Neither party shall have any obligation or requirement to negotiate any provisions of any Article(s) not timely noticed.

1. No later than February 1, 2019, the University and the Union shall meet for one day, or as mutually agreed, to discuss each Article of the contract and present issues of interest for successor bargaining. During this meeting, the parties shall alternate being the first party to present its issues of interest on each article.
2. Each party shall provide the other with written notice of its selected article(s) and a list of bargaining team members by no later than April 1, 2019. Included in such notice shall be each party's written objectives regarding those terms and conditions of employment subject to negotiations.
3. By April 15, 2019 the parties shall set a mutually agreeable start date for the negotiations.

- D.** In the event that neither party gives timely notice as set forth in this section, this Agreement shall remain in effect on a year-to-year basis, from February 1<sup>st</sup> to January 31<sup>st</sup>.

In the event that the Agreement continues in this manner, the parties shall provide written notice of selected articles and a list of bargaining team members for a successor Agreement no later than January 1 of the applicable year. Thereafter, the parties shall follow the requirements for negotiations of a successor agreement as set forth in C., above.

## **ARTICLE 41 PARKING**

### **A. GENERAL PROVISIONS**

1. The University shall provide to NSFs parking and parking-related services at each campus or the Laboratory to the same extent and under the same conditions as normally provided for other University employees at the employee's location.
2. It is understood and agreed that parking spaces designated for employees may from time to time be eliminated or reassigned due to construction, special events, and/or operational needs of the University.

### **B. MEET AND DISCUSS PARKING AND TRANSPORTATION RATE CHANGES**

At least forty-five (45) calendar days prior to a campus' implementation of changes in parking and/or transportation fees affecting employees of this unit, the University shall provide written notice to the Union of its intent to make such change. The parties shall meet and discuss upon request of the Union.

## **ARTICLE 42 ONLINE INSTRUCTION**

- A. All terms and conditions of this MOU apply to NSF who perform online instruction.
- B. The University shall not lay off or reduce the appointment of an NSF who is qualified to teach a course solely because he or she requires training to teach the course in an online format.
- C. At the request of the UC-AFT, the parties shall meet and discuss issues related to online instructions with the Office of the President up to four (4) times per year.

