

## 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:

<u>Title Code</u>	<u>Title Name</u>
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
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
1652	Lecturer Continuing Appointment – Temporary Augmentation
1653	Lecturer Continuing Appointment – Temporary Augmentation – Academic Year 1/9 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. 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, religion, gender, sexual orientation, ethnic origin, national origin, ancestry, marital status, medical condition, 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 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.

**C. 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.** 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, sexual orientation, physical or mental disability, medical condition (according to the California Fair Employment and Housing Act), HIV status, status as a covered veteran, or any other veteran who served on active duty during a war or in a campaign for which a campaign badge has been authorized, age, citizenship, political affiliation, or union activity.
- B.** 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.
- 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 an NSF has been incorrectly appointed to a non-unit title shall be pursued solely through the Public Employment Relations Board.

## **ARTICLE 6 ACADEMIC YEAR – APPOINTMENT**

- A.** NSF appointed for the entire academic year will be paid on a 1/12th basis. The pay period dates are July 1 through the following June 30. This pay period is to be used regardless of the percent time of the appointment or the date the appointment is made. For appointments made prior to July 1, paychecks commence August 1 and end the following July 1. For appointments made on or after July 1, paychecks will commence on the nearest paycheck release date and end the following July 1. 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.
- B.** NSF appointed for a full year at some percentage of time in each quarter/semester will be considered to be on a variable time appointment for benefits purposes. The percentage of appointment for benefits purposes for variable time appointments will be determined by averaging the appointment percentage for each quarter/semester for the year. The provisions of this Section do not modify or alter the provision of Article 11 – Benefits.

**ARTICLE 7a**  
**NSF APPOINTMENTS**

**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 does not create an entitlement to reappointment.

1. An NSF appointment may be terminated prior to the established ending date only in accordance with Article 17, Layoff, or Article 30, Discipline and Dismissal.
2. 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.
3. 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.
4. Except as provided for in this MOU, the University has the sole discretion to make determinations regarding: 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.
5. One (1) year of employment is defined as three (3) quarters or two (2) semesters for academic year appointees, and four (4) quarters or equivalent for fiscal year appointees, at any percentage in any unit title in the same department, program or unit at the same campus. For the purposes of this MOU, Summer Sessions are not considered part of the regular academic year, and are neither an academic quarter nor semester, nor portion thereof.
6. The UC-AFT and the University agree that the University will allow pre-six year NSF who do not have a continuing appointment on a campus to make a request for a one-time allocation of additional credit for quarters or semesters taught in other departments on the same campus. The program details are outlined in Appendix G.
7. Whenever possible, the University will consult with an NSF before making course assignments or reassignments.

**B. LETTERS OF APPOINTMENT**

1. Letters of appointment or reappointment shall be issued on June 15th or as soon as practicable for courses being offered the next academic year and shall be consistent with this Agreement.
2. 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; and
- h. the Web Site addresses of both the University and the UC-AFT.

### **C. INITIAL APPOINTMENT AND REAPPOINTMENT**

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 Appointment status. 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 Appointments. Nevertheless, the University will not engage in activities or establish practices and/or programs for the purpose of denying to pre-six year NSF access to 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 regular consultative processes;
  - b. the need to infuse new perspectives or pedagogy, insofar as such need does not preclude giving consideration to NSF on an individual basis and passes through regular consultative processes; and/or
  - c. the need to employ other academic appointees in order to accomplish the University's academic goals as long as any actions taken in furtherance of such requirements do not violate this MOU and pass through regular consultative processes.
3. Initial Appointment
  - a. The initial appointment may be for a period of up to two (2) academic years.
  - b. 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.
  - c. The NSF is expected to perform her/his duties in accordance with the provisions of Article 3, Academic Responsibility.
4. Reappointment
  - a. When the University is considering an NSF for a reappointment, the following procedures shall apply:
    - 1) 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 post-six year NSF in the assessment process is encouraged, but not required.

- 2) NSF shall be notified of the review criteria, the form of assessment that the department, program or unit will follow for reappointments, and when the assessment will occur.
  - 3) 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.
  - 4) 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.
- b. 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.
  - c. Upon reappointment to a fourth year of service within the same department, the University shall grant a salary increase of at least two steps to any NSF who has not received a prior within-range salary increase of at least two steps. The University is not precluded from granting an NSF an increase of more than two steps.
  - d. 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.

#### **D. 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 post-six year avoidance in Section C.1., or C.4.d., 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 or Article 4, 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

The following provisions apply to grievances alleging that the University has violated Section C.1. and/or C.4.d., above. Only the UC-AFT, and not individual NSF, may submit grievances alleging a violation of C.1. and/or C.4.d., above.

- a. In any grievance involving Section C.1., the Union shall have the burden to provide:
  - 1) Evidence of a policy or practice the purpose of which is to restrict access to Continuing Appointments in violation of Section C.1., above; or
  - 2) Evidence of a pattern of non-reappointment of Lecturers in their sixth year, that demonstrates a deliberate intent to deny access to Continuing Appointments in violation of Section C.1., above.
- b. When the UC-AFT alleges a violation of section C.1., and the University asserts that its decision comported with C.2.a., b., and/or c., the arbitrator may consider if the University's action was not in conformance with section C.2.a., b., and/or c., and therefore was only a pretext for post-six year avoidance.
- c. In any grievance involving Section C.4.d., the Union must provide the following information within forty five (45) calendar days of the date on which the AFT 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 post-six year avoidance set forth in Section C.1., or the provisions of C.4.d., 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 INITIAL CONTINUING APPOINTMENTS**

### **A. GENERAL PROVISIONS**

1. This article contains the policies and procedures that govern the process by which NSF become Continuing Appointees. Any continuing appointment shall be preceded by a University determination that 1) there is instructional need in accordance with Section B., and 2) the individual under consideration is excellent following an academic review.
2. One (1) year of employment is defined as three (3) quarters or two (2) semesters for academic year appointees, and four (4) quarters or equivalent for fiscal year appointees, at any percentage in any unit title in the same department, program or unit at the same campus. For the purposes of this MOU, Summer Sessions are not considered part of the regular academic year, and are neither an academic quarter nor semester, nor portion thereof.

3. Except as provided for in this MOU, the University has the sole discretion to make determinations regarding: appointments and reappointments, 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.

## **B. INSTRUCTIONAL NEED**

1. Instructional need to establish a continuing appointment shall exist when the University determines the following with respect to the initial year of the Continuing Appointment:
  - 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 Employees (ASEs) whose training is in the same department or related discipline, or where the assignment is made pursuant to an academic plan for pedagogical training, are designated to teach the course(s) during the next academic year previously assigned to the NSF;
  - 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; or
  - e. other courses in the area in which the NSF has taught and for which the NSF is currently qualified are neither available nor taught during the initial appointment year.

## **C. REVIEW FOR AND NOTICE OF CONTINUING APPOINTMENTS**

1. When the University has determined, consistent with this MOU, that an instructional need exists, UC will review an NSF who has completed six years of service for the University, as defined in Section A.2., to determine if s/he meets the excellence standard required for an appointment to a Continuing Appointment. The University shall conduct the review in accordance with this Article.
2. As soon as practicable, but prior to the initiation of a review, the University shall notify the NSF in writing of the review, its timing, criteria, and the procedure that will be followed.
3. If as a result of this review, the University determines that the NSF is qualified to perform anticipated responsibilities at an excellent level in the area in which the University has determined that instructional need exists, the NSF shall be appointed to a Continuing Appointment in accordance with this Article.

4. 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 area in which the University has determined that instructional need exists, the NSF will be released at the end of her/his appointment.
5. As soon as practicable, the University shall complete the review for a continuing appointment and provide notice to the NSF of the results following the completion of the review.
6. The NSF may submit a written response to her/his evaluation, which shall be included in her/his academic review file.

#### **D. 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.

#### **E. EVALUATION OF TEACHING EXCELLENCE**

1. The following exemplify excellence in teaching. All relevant materials shall be given due consideration:
  - 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.

2. An NSF may provide a self-statement or self-evaluation of her or his teaching objectives and performance.
3. 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.
4. 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.
5. 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.
6. 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.
7. The reviewing entity (e.g. Department Chair or Committee on Academic Personnel) shall determine the weight to be given the materials/information provided, and may solicit input from persons not identified by the NSF being reviewed.
8. The NSF may submit written comments that shall be included in her/his personnel 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.

## **F. 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 B.2.a.-e.
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 to the performance review was based on factors not included in the 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 tainted the review process, 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 re-do the performance review process.

## **ARTICLE 7c CONTINUING APPOINTMENTS**

### **A. GENERAL PROVISIONS**

1. This Article applies to NSF appointments that commence following the completion of six years of University employment in the same department, program or unit at the same campus. One (1) year of employment is defined as three (3) quarters or two (2) semesters for academic year appointees, and four (4) quarters or equivalent for fiscal year appointees, at any percentage in any unit title in the same department, program or unit at the same campus. For the purposes of this MOU, Summer Sessions are not considered part of the regular academic year, and are neither an academic quarter nor semester, nor portion thereof.
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, 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. The University may reduce the initial appointment of a Continuing Appointee only in accordance with the provisions of Section B.2.b of this Article. The University may terminate or reduce the appointment of a Continuing Appointee only in accordance with the provisions of Article 17 – Layoff; or Article 30 – Discipline and Dismissal.
4. Whenever possible, the University will consult with an NSF before making course assignments or reassignments.

5. It is not the intent of the University to reduce appointment percentages in the sixth (6<sup>th</sup>) year to avoid continuing appointment levels that reflect actual need.

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

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

1. **Continuing Appointment:** A Continuing Appointment does not create entitlement to tenure or security of employment nor does it guarantee specific teaching assignments.
2. **Continuing Appointment Base:** The University will make all appointments at a specific appointment base percentage, in accordance with this section. The Continuing Appointment Base is the percentage appointment as initially set by the department in which the NSF is appointed to a Continuing Appointment. The department will provide the NSF with written confirmation of her/his appointment percentage before the beginning of the academic term.
  - 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.
  - c. Nothing shall preclude the University from establishing a higher initial continuing appointment percentage.
3. **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 4., below.
  - a. The department, program or unit may only reduce this new appointment percentage pursuant to the provisions of Article 17, Layoff.
  - b. 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.

4. **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.
5. Any augmentations outside the department, program or unit in which the NSF received a continuing appointment will be treated as a separate appointment.
6. 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.
7. 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 Continuing Appointee who is less than one hundred percent (100%), if the University determines that such Continuing Appointee is fully qualified to teach the course. The determination of who is assigned is at the sole discretion of the University.
8. 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 already teaching a section of the course;
  - 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; and
- h. the University and UC-AFT Web Site address where the contract can be found.

**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.**
  - 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. a computer;
    - c. storage space;
    - d. office, laboratory, and instructional equipment;
    - e. mailbox;
    - f. office supplies;
    - g. text, and/or reading materials;
    - h. photocopying equipment.
  - 2. The University will fill NSF requests for Teaching Assistant and Reader support, based on department procedures and available resources (personnel and budget).
- B.** 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.
- C.** 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.
- D.** The University shall forward to the UC-AFT a list of each campus' instructional improvement grants for the preceding academic year no later than October 1. The information provided shall consist of the number of requests by bargaining unit members and actions on those requests.

- E. At the sole discretion of the University, a NSF may be granted Principal Investigator status in accordance with Contracts and Grants Policy.
- F. 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 B. The arbitrator shall have no authority to modify University procedures in Section A.2., or to substitute her/his judgment for that of the University with regard to the determination of whether resources are or are not available, as described in Section A. 2.

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

- A. 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.
- B. 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.
- C. 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, but not required, are not "required" within the meaning of this Article.
- D. During the period of leave, the NSF shall be responsible for the submission of any course reports, etc. required during the period of the leave. The NSF, whenever possible, agrees to consult with and assist the University in securing a replacement.

**E. 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.

**F. 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. This Professional Development Fund Pool will be established and administered as follows:

1. The Professional Development Fund Pool will be funded annually, and each campus will allocate \$135 per NSF Full Time Equivalent (FTE), based on the October 1, 2002 FTE count. The University shall place these funds in a special campus account for this purpose no later than October 1, 2003 or the first day of the month following ratification of this MOU, whichever comes later. 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 committee is voluntary.
  5. 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.
- G.** 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.

## **ARTICLE 10 PERSONNEL 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. Personnel Review Files

Personnel review files are developed in preparation for the performance assessment of the NSF undertaken in accordance with the MOU. Personnel review files may contain both confidential and non-confidential academic review records, as described below. An individual's personnel review file shall contain only material relevant to consideration of personnel actions under the criteria of this MOU and for the relevant review period. Correspondence involving potential disciplinary actions that do not result in disciplinary actions shall not be included in the personnel review file. Materials involving final disciplinary action may be included only to the extent that such material is relevant, according to the standards 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 personnel review file. No materials excluded by this article from personnel files may be included in personnel 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 file 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/personnel review file, NSF shall have the right to inspect all non-confidential reports, documents, correspondence, and other material in their official personnel file(s)/personnel 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)/ personnel 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 UC-AFT 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 FILE**

NSF may have responses or documentation attached for the purpose of challenging or responding to materials in the personnel file. Any response shall, unless the NSF requests otherwise, become a part of the file of the NSF. NSF may request, in writing to the designated administrative officer, deletions and/or corrections of materials from their file. 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 academic personnel records in accordance with the preceding provision, 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 personnel file, 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 file. 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 file contains 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 file 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 file.

##### **2. Personnel 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 personnel 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. The University may, at its sole discretion during the term of this Agreement, alter in any way its health and welfare programs, 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 meet and confer with the AFT prior to implementation when it proposes:
    - 1) any proposed alterations that affect only faculty, or
    - 2) any alterations in University policy regarding mandatory retirement age affecting NSF. Criteria regarding mandatory retirement age will be as set forth in statute and University policy.
4. 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.

### **B. 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. NSF in an ineligible class are excluded from coverage, regardless of appointment percent and average regular paid time. For details on specific eligibility for each program, see the applicable documents, agreements, regulations, or contracts.

**C. 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.

**D. 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.

**E. 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.

F. It is understood that if the UC-AFT does not request to meet and confer within thirty (30) calendar days regarding alterations arising pursuant to Section A.3.b., the University may implement the proposed changes for NSF.

**ARTICLE 12  
LEAVES**

**A. GENERAL LEAVES WITH AND WITHOUT PAY**

1. NSF may apply for leaves for illness, injury, personal emergency, childbearing leave, vacation leave, military leave, jury duty, witness leave, governmental service leave, leaves to attend professional meetings, and other leaves with and without pay. Descriptions of these leaves and the eligibility criteria for them are attached as Appendix C of this MOU. The UC-AFT further understands and agrees that the University may at its option during the term of this MOU make changes in leave policy. If the University does so, such changes will apply to eligible NSF to the same extent as they apply to other academic employees. The University shall, if feasible, provide the UC-AFT with at least thirty (30) calendar days advance notice of changes in leave policy. The parties agree to make reasonable efforts to meet in advance of implementation to discuss any changes; failure to meet will not affect the implementation of any changes. Any alterations proposed by the University which affect only NSF shall be subject to meet and confer with respect to the proposed changes before implementation of said changes. Whenever possible, NSF on leave agree to assist and consult with colleagues who, with the approval of the department chair, are able and willing to carry on the duties which the NSF is unable to perform while on leave.
2. 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.

3. No NSF shall be denied reappointment, promotion or merit increase as a result of application for, or receipt of, requested leaves.
4. 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 reassignment. For the purpose of review for reappointment the following provision shall apply:  
  
For NSF not on continuing appointments who have been granted child bearing leave, parental leave, or active service modified duties, for at least one quarter/semester, the time need not be counted towards years of service as defined in Article 7. a. 5. and Article 7. b. 2., at the request of the NSF.
5. No leave will be for a period beyond the ending date of appointment.
6. A paid leave of absence shall not be granted at a percentage of time greater than that of the appointment.
7. NSF on an approved leave of absence without pay may elect to continue University provided benefits in accordance with the University's benefits regulations. NSF who so elects must make arrangements with the University, prior to commencement of the leave, to pay the entire premium amount her/himself.
8. If the eligible NSF is on leave without pay more than half a calendar month, sick leave, vacation, seniority credit and retirement credit do not accrue.
9. The University, at its sole discretion, may place an individual 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) 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.
10. The University shall not retaliate against NSF as a result of their requesting or being granted leave under this article.

**B. GRIEVABILITY AND ARBITRABILITY**

1. The provisions of this Article are subject to Article 32 – Grievance Procedure.
2. Only sections A2, A3, A4 and A10 and the procedural issues of this article are subject to Article 33 – Arbitration.

**ARTICLE 13  
TRAVEL**

- A.** The University shall reimburse NSFs 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 NSFs 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)  
Christmas Day  
December 31 (or announced equivalent); and,  
one administrative holiday to be celebrated as Cesar Chavez Day to be designated by the University.
- 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.** NSFs 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. A layoff is an involuntary separation from employment for an academic year, or a reduction in the percentage of appointment during an academic year, which occurs because of lack of work, budgetary considerations or programmatic change that results in a lack of work. 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.
  - a. Continuing Appointees - A layoff can occur at any time during a Continuing Appointment.
  - b. Pre-six year Appointees - A layoff can occur prior to the expiration date of the appointment.
2. The University shall not apply the provisions of this Article in an arbitrary, capricious or unreasonable manner.
3. Consistent with this MOU, all layoffs, and reemployment from layoff status, must be made in accordance with the provisions of this Article.
4. Seniority is based on the full-time equivalent number of months of service in the bargaining unit, in the department, on pay status. For purposes of this Article, full-time equivalent months of service will be calculated on the basis of an appointment at 50% or more.

**B. SELECTION AND ORDER OF LAYOFF**

1. All provisions of Section B., C., and D. pertain to actions taken within the unit of layoff.
2. The layoff unit shall be the department, program or equivalent unit. The provisions of this section do not nullify or modify the applicable University and campus policies or procedures that exist or may be developed pertaining to disestablishment.
3. When there is no substantial difference in the degree of special skills, knowledge or ability essential to the department, program, or unit as determined by the University, the order of layoff or reduction in time shall be in inverse order of seniority.
4. When a Pre-six year NSF and a Continuing Appointee are teaching the same course in the same department, program or unit, if Alternatives to Layoff (as provided in Section C.1. below) cannot be implemented, the University shall lay off the pre-six year NSF before laying off a Continuing Appointee.
5. If the University reduces an NSF's percentage appointment, the University shall inform the NSF in writing of its anticipated instructional need for the courses being taught by the NSF. The information provided by the University shall include the basis for its determination that the NSF's percentage appointment required a reduction.

**C. PRE-SIX YEAR APPOINTEES – RESPONSIBILITY FOR LAYOFF AND REDUCTION IN TIME**

1. Alternatives to Layoff

When the University has determined that NSF staffing cuts are necessary, in accordance with this Article, above, it will consider attrition, retirement, the non-reappointment of pre-six year NSF, and voluntary reductions in NSF staffing within the department, program or unit in order to avoid a layoff.

2. Notice/Pay in Lieu of Notice

a. Notice

- 1) NSF with pre-six year appointments shall be given written notice of the effective date of any layoff. Whenever practicable, notice will be given as follows subject to the provisions below:
  - a) Such NSF on quarter or semester appointments or initial one-year appointments will be given at least thirty (30) calendar days advance written notice.
  - b) Such NSF with an appointment of at least one year with four (4) through nine (9) quarters or equivalent of University service at the campus will be given at least sixty (60) calendar days advance written notice.
  - c) Such NSF with an appointment of at least one year with ten (10) or more quarters or equivalent University service at that campus will be given at least ninety (90) calendar days advance written notice.
- 2) When a single course is cancelled due to lack of enrollment, advance notice of layoff or reduction in time shall be provided as soon as practicable, but no later than thirty (30) calendar days prior to the date of the first scheduled class meeting.
- 3) When the University notifies the NSF of the University's layoff intent, the University will mail notice to the UC-AFT of the effective date of any layoff and the identity of the affected NSF as soon as practicable.
- 4) Nothing in this Article shall preclude the department chair or unit head from consulting with the affected NSF. If the department chair or unit head chooses not to consult, the University shall upon request, meet within a reasonable period of time with the UC-AFT to discuss the effects of a layoff.

b. Pay in Lieu of Notice

- 1) The period of notice will not extend past the expiration date of an appointment. Pay in lieu of notice will not be greater than the amount of pay the NSF would have received through the last day of appointment.
- 2) Where advance written notice of layoff is not given, such as in emergency situations, pay in lieu of notice will be provided subject to the above provisions.
- 3) Where advance written notice of reduction in time is not given, thirty (30) calendar days pay in lieu of notice will be provided.

c. Re-employment

Pre-six year NSF who have been subject to layoff shall have one year re-employment rights. Reemployment shall be conducted in accordance with the provisions of Section F. of this Article.

**D. CONTINUING APPOINTEES – RESPONSIBILITY FOR LAYOFF AND REDUCTION IN TIME**

The provisions of this section apply only to NSF who have been appointed as Continuing Appointees. In addition to the reasons for a layoff set forth in Section A., the parties acknowledge that the University may layoff a Continuing Appointee as a result of assigning the course(s) taught by the Continuing Appointee to Senate Faculty or to a graduate academic student employee. Nevertheless, the University may not layoff 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.

1. Alternatives to Layoff

- a. When the University has determined that NSF staffing cuts are necessary, in accordance with this article it will consider attrition, retirement, the non-reappointment or layoff of pre-six year NSF, and voluntary reductions in NSF staffing within the department that may make layoffs unnecessary.
- b. When a Continuing Appointee has received a layoff notice, and the Continuing Appointee or the AFT 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 the less senior NSF.

2. Notice and Pay in Lieu of Notice

- a. NSF with Continuing Appointments shall be given written notice of the effective date of any layoff including a reduction in time as soon as practicable after the decision is made. When notice is not provided in accordance with this section, the University will provide pay in lieu of notice. Pay in lieu of notice will not extend past the notice period provided.
  - 1) Continuing Appointees will be given at least twelve (12) months written notice of full separation from employment resulting from layoff.
  - 2) When a single course is cancelled due to lack of enrollment, or a Continuing Appointee's initial appointment percentage is reduced by a single course for any reason in accordance with Article 7c., Section B.2.b., written notice of layoff or reduction in time shall be provided as soon as practicable, but no later than thirty (30) calendar days prior to the date of the first scheduled class meeting.

- 3) Continuing Appointees will be given at least sixty (60) calendar days written notice of reduction in time when the reduction in time exceeds one (1) course.
- b. When the University notifies the NSF of the University's layoff intent, the University will mail notice to the UC-AFT of the effective date of any layoff and the identity of the affected NSF.
- c. Nothing in this Article shall preclude the department chair or unit head from consulting with the affected NSF. If the department chair or unit head chooses not to consult, the University shall, upon request, meet within a reasonable period of time with the UC-AFT to discuss the effects of a layoff.

#### **E. SUMMER SESSION**

NSF on summer session appointments will be given at least seven (7) calendar days advance written notice of layoff, or pay in lieu of notice. Pursuant to the provisions of Article 23, Summer Session, no other provisions of the Layoff Article apply to NSF appointed to Summer Session.

#### **F. REEMPLOYMENT**

1. Whenever the University decides to fill a vacancy at the campus in the same department, program or unit and title code from which an NSF has been laid off, the University shall reemploy or increase the time of a laid off NSF provided the University determines that the NSF on layoff status is qualified for the position and is available to begin work within a reasonable amount of time, and
  - a. The pre-six year NSF has not been laid off for more than a period equivalent to the duration of the NSF's appointment prior to the layoff; or
  - b. The Continuing Appointee has not been laid off for more than two years.
2. If more than one qualified person is on layoff 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.
3. In the event the University decides to offer temporary reemployment opportunities of no more than one quarter or semester in the same department, program or unit and title code from which an NSF has been either laid off or has had his/her percentage of appointment reduced, the temporary reemployment does 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 status. Should instructional need exist beyond this temporary period, the NSF's reemployment status previous to the layoff will be reinstated.
4. Termination of the Right to Reemployment
  - a. The right to reemployment terminates if an NSF:
    - 1) does not respond affirmatively within fourteen (14) calendar days to University inquiries concerning the desire of the NSF to return to work, provided that such response is feasible. The

fourteen (14) calendar day response period shall begin immediately upon personal notice or seven (7) calendar days from the date written notice is postmarked. If the University is attempting to fill a vacancy on an urgent basis and if a laid-off or reduced in time NSF 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;

- 2) refuses a second offer of reemployment at the same or higher percentage of time; or
- 3) accepts another appointment in the unit at the same or higher percentage of time at the University.
- 4) For purposes of Article 7a NSF Appointment, and 7b Process for Continuing Appointment, and this Article only, layoff periods of less than one quarter or semester count towards University service and seniority.

- b. In the event the NSF is unable to resume employment because of other employment commitments made in response to the layoff, the right to re-employment does not terminate, and the NSF shall remain eligible for reappointment to the next available position for which s/he is qualified.

#### **G. 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.

#### **H. BENEFIT COVERAGE**

An NSF on layoff 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. Time on layoff of more than one-half of the working days of a month does not count towards University service for benefit purposes.

#### **I. GRIEVANCE AND ARBITRATION**

1. A grievance alleging a violation of this article must be filed within thirty (30) calendar days of the date on which the NSF received the written notice of layoff or within thirty (30) days of the date on which the NSF knew or should have known of the alleged violation if evidence of same is not apparent when the written notice of layoff is received.
2. In any arbitration involving layoff, the arbitrator shall not have the authority to substitute her/his judgment for that of the University regarding the necessity for the layoff, or the functions/programs or titles affected by the layoff. Consistent with the provisions of this MOU, the Arbitrator shall defer to the University's judgment regarding an NSF's academic qualifications unless the AFT 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 AFT (pursuant to Section D.1.b), 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 AFT 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. Whenever 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 submission. Otherwise, notice may not be withdrawn except by written 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 REHABILITATION**

- A. When appropriate, the University will provide special assistance to NSFs who become disabled when such disabilities substantially limit their work activities. This assistance shall include information about vocational rehabilitation services and reasonable accommodation.
- B. After receipt of medical documentation from the disabled NSF, the University will determine what assistance, if any, will be offered to the NSF. The University shall consult with the NSF and if so requested, her/his representative. Medical documentation provided by the NSF shall be subject to confirmation by a University-appointed medical practitioner. When feasible, the University will present the NSF with a list of authorized medical practitioners from which the NSF may

select one. The University shall pay the cost of the services of a University-appointed medical practitioner.

- C. NSF's who become disabled and who have received vocational rehabilitation services may be selected, if determined by the University to be qualified, for a University position without the requirement that the position be advertised/ searched as long as this selection does not conflict with any MOU or University policy in effect at the time. NSF's who are determined by the University to be not qualified for a vacant position will be provided with a statement outlining the qualifications the NSF lacks. This provision shall not extend beyond the ending date of an appointment.
- D. No provision of this Article is intended to waive any rights of the NSF under state and federal statutes.

## **ARTICLE 21 SALARY**

### **A. SALARY ADJUSTMENTS**

1. When this Agreement is in effect:
  - a. NSF shall receive general range adjustments in an amount and on the dates consistent with the general range adjustments for non-represented academic employees.
  - b. NSF are eligible to receive merit increases when they are provided to non-represented academic employees. Merit increases are provided in accordance with the provisions of Article 22, Merit Review Process.
2. When the Agreement is not in effect, the University agrees that it is required to meet and confer over the provision of merit and range adjustments covering the period of time that the contract is not in effect.

### **B. ADDITIONAL SALARY SCALE ADJUSTMENTS**

Effective July 1, 2005, the University shall increase the minimum of the salary scale for pre-six NSF to \$37,572, and the minimum of the salary scale for Continuing Appointees to \$41,712.

### **C. NON-GENERAL RANGE ADJUSTMENTS**

In addition to general range adjustments, the UC-AFT acknowledges that the University may allocate funds to provide non-general range adjustments to non-represented academic employees. Such adjustments will not be provided to members of this unit except through bargaining.

### **D. MERIT INCREASES**

1. For those NSF who are eligible for merit increases, such increases are based on academic attainment, experience, and performance, and are not automatic.
2. The University retains the sole discretion to decide to grant or not grant a merit increase.
3. The process for conducting merit review is outlined in Article 22, Merit Review Process.

## **E. SPECIAL PROVISIONS**

1. Above-scale annualized salaries may be paid to NSF at the sole discretion of the University.
2. Positions and/or titles, in the unit, 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, and general range adjustments are provided pursuant to A.1. above if the annualized full time equivalent salary for the "By Agreement" NSF's salary is below the maximum of the salary range.
3. 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.
4. In the event that the University proposes to restructure the salary scales/schedules for any title(s), in the unit, the University will provide notice to the UC-AFT and upon request will meet and confer prior to implementation.

## **F. 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 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 will 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 MOU, 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 a merit increase, the University will include an explanation for its decision with the merit review determination.
- C.** NSF will 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, will 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 will be considered for a merit review at the time of the initial continuing appointment, and at least once every three (3) 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. A lecturer 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 two (2) steps on the NSF salary scale. The University is not precluded from granting merit increases of greater than two steps.

**D.** Demonstration Teachers, Supervisors of Teacher Education, or any NSF whose salary is paid on a "By Agreement" basis may 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 UC-AFT shall be provided copies of applicable campus merit guidelines and departmental review procedures as they exist or as they are developed. An individual NSF 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 UC-AFT proposed changes to campus merit guidelines at least a month 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 UC-AFT proposed changes to departmental review procedures at least a month prior to finalization. Upon request of the UC-AFT, the University shall meet with the UC-AFT to discuss the effect of the proposed merit procedure changes before the University implements such changes.
3. No later than November 15<sup>th</sup> of each year, each campus will provide the UC-AFT with a list of NSF who were reviewed for merit 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.

**F.** The provisions of this Article are not intended to preclude consideration for merit review for the members of this bargaining unit.

**G.** An arbitrator shall have no authority to substitute her/his judgment for the University's judgment regarding an NSF's performance or qualifications, 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**

1. For purposes of this MOU, summer sessions are not considered part of the regular academic year, and are neither an academic quarter nor an academic semester, nor portion thereof.
2. An NSF appointed to teach summer session shall be appointed as Lecturer in Summer Session, title code 1550. Appointment as a Lecturer in Summer Session does not confer eligibility status for benefits or retirement.
3. When an NSF is offered an appointment in summer session, she or he 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; and
- h. whether the appointment is a contingency appointment and the criterion on which a withdrawal of the appointment would be based.

Letters of appointment shall be consistent with this MOU. If conflicts exist, this MOU shall be controlling.

4. 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 section (A.4.) is not subject to the provisions of Article 17 - Layoff, Reduction in Time, and Reemployment and/or Article 33 - Arbitration of this MOU.
5. The provisions of Article 7 - Appointment are not applicable to this Article.
6. The appointment or reappointment shall have a definite ending date and shall terminate on the last day of the appointment set forth in the letter of appointment. The appointment or reappointment may be terminated prior to the ending date of the appointment in accordance with the provisions of this MOU.
7. 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.
8. 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.
9. By October 1 of each year, the University shall provide the UC-AFT with operating budgets for the immediately preceding summer session for each campus.
10. In the event the University academic calendar converts to a year-round calendar, the parties shall meet and confer over the applicability of this article to the new academic calendar.

## **B. 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. Commencing with the 2004 Summer Session, 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.
  - b. In unusual circumstances, the University may determine that it is necessary to provide lower compensation than set forth in B.1.a. on an individual or campus-wide basis.
    - 1) 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.
    - 2) Under such circumstances, the University will provide to the AFT advance notice of the need to provide lower compensation, with the relevant factors to support its position.
  - c. The University may provide higher compensation to individual NSF, or on a campus-wide basis at any time.
2. Total monthly compensation for an NSF with a fiscal year (11 month) appointment who teaches in the summer session may not exceed 100% of the monthly salary rate.

### **C. PAYMENT**

The University pays summer session compensation, as provided in Section B., above, via a by-agreement pay code. By-agreement payments do not provide for benefits or retirement. The University will provide notification of by-agreement arrangements, including schedule of payments, at least three (3) months, whenever possible, prior to the beginning of the session.

## **ARTICLE 24 INSTRUCTIONAL WORKLOAD**

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

1. The full-time (100%) instructional workload standard for NSF for an academic year shall not exceed nine (9) instructional workload courses over three (3) quarters or six (6) instructional workload courses over two (2) semesters, or the equivalent. Instructional workloads may be lower, based upon the instructional workload standard of the department, program or board.
2. For purposes of this Article, a course as referred to in Section A.1. above, shall be called an instructional workload course and shall be defined as 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.
3. It is recognized that some instruction does not fit the definition of an instructional workload course as defined in Section A.2. above. Examples of instructional offerings that do not conform to the definition in Section A.2., above, are laboratory supervision, supervision of teaching assistants, studio instruction, clinical instruction and independent studies that the University requires the Lecturer to perform. The University shall determine whether a

course conforms to the definition of an instructional workload course in Section A.2. above, and shall establish the equivalencies for the instructional offerings which do not conform to the definition of an instructional workload course. Equivalencies for these instructional offerings will be defined proportionate to the instructional workload course as defined in Section A.2. above.

4. 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.
5. 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.
6. In determining workload, the University shall provide workload equivalencies to an NSF whenever s/he is required to perform duties in addition to her/his assigned teaching duties, as set forth in Section A.3., above, such as serving as a dissertation advisor or performing committee work.

#### **B. CHANGES TO EXISTING WORKLOAD**

If the University proposes to change the workload value assigned to an existing 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 AFT and offer to meet and discuss prior to implementing any proposed changes.

#### **C. 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 may establish an IWC or equivalency according to the formula 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.

#### **D. 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.

#### **E. UNASSIGNED DUTIES**

Any duties not assigned to the NSF shall not be considered as part of the instructional workload.

#### **F. SUMMER SESSION**

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

#### **G. OFFICE HOURS**

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

## **H. ENFORCEMENT**

1. The following matters shall be subject to Article 32 Grievance and Article 33 Arbitration:
  - a. Alleged violations in regard to the procedural applications of this article, if any, and/or;
  - b. Claims by an NSF with 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.
  - c. Claims by an NSF that s/he is entitled to a workload equivalency pursuant to A.6, above.
2. In the event that an NSF believes that the workload value that has been assigned to a course or offering is inadequate in light of the actual work required, the NSF shall perform the duties as assigned and may pursue the issue through the grievance procedure as specified in Article 32 - Grievance Procedure.
3. 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 or equivalency to a course or instructional offering.

## **ARTICLE 25 UNION RIGHTS**

### **A. MEETINGS**

1. The UC-AFT 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 UC-AFT 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 UC-AFT 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 assures or prohibits participation by unit members on campus or systemwide committees.

## **B. MEMBERSHIP LISTS**

1. The University shall provide the UC-AFT 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. Effective February 1, 2003, 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.

## **C. COPY OF UNION DOCUMENTS**

1. Unless otherwise agreed, following negotiations, ratification and approval by the parties, the University shall prepare a draft of the revised MOU as soon as practicable for review by the UC-AFT.
2. The cost of printing copies for distribution to NSF will be borne equally by the Union and the University. The requesting party will pay for additional copies.
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 and in a specified University office. The University's and AFT's web site addresses shall be included in the appointment letter.
4. The parties understand and agree that during the term of this MOU, the information described in the Appendices will be subject to modification to maintain currency. The parties further understand and agree that the University will provide to the UC-AFT the updated information and will have the MOU updated.

## **D. USE OF FACILITIES**

1. Access
  - a. Subject to the campus policies and procedures in effect at the time the use is requested, the UC-AFT 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 UC-AFT 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 UC-AFT 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 UC-AFT 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 UC-AFT of the proposed and final changes to the APM and the web address where the changes can be viewed.
- 2. The University shall fulfill UC-AFT requests for information and reports relating to employment conditions of NSF to the extent required by law. The UC-AFT will bear all appropriate costs associated with additional copies or other information requests.

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

- 1. The UC-AFT may pursue, through the grievance procedure allegations that the University has violated a union right afforded by this contract.
- 2. The UC-AFT 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 UC-AFT 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 one (1) NSF per campus to attend University-wide negotiating sessions. The UC-AFT may designate up to one NSF per campus to attend University-wide negotiations as a “release-time” member 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.
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. DUES DEDUCTION**

1. General Conditions

Upon receipt of a written authorization from UC-AFT or an employee covered by this Agreement, the University will deduct from the employee's pay the monthly amount certified by UC-AFT to be the dues required for the employee's membership in the Union. The employee's authorization shall be provided on a form agreed upon by the parties. Such individual authorization shall be effective only as to dues becoming due after the dates of delivery of the authorization form and accomplishing of the appropriate programming/payroll information on the employee requesting deduction; however the time for appropriate programming shall in no case exceed 45 calendar days from the date of delivery of the authorization form. Any change in the percent or maximum amount of dues shall be in accordance with

Section B. below. Such deduction, unless there are insufficient net earnings to cover said deduction, shall be made monthly or, where applicable, more frequently than monthly in accordance with University payroll procedures in existence at the time and location the deduction is made. The amount of the deduction shall be certified to the University in writing, by UC-AFT.

2. Dues Amount Change

UC-AFT may change the certified dues amount once per calendar year, and all costs associated with accomplishing such changes in the dues amount (machine, programming, etc.) shall be paid by UC-AFT at the same rates that apply to other employee organizations described in the University Accounting Manual. Any annual changes in the amount to be deducted for UC-AFT dues shall be certified to the University, in writing, at least 45 calendar days prior to the effective date of the dues amount change. The University shall provide UC-AFT with estimated costs and an estimated time of completion and UC-AFT shall pay the agreed-upon costs before the University makes the change.

3. New Deductions

New individual authorizations for a UC-AFT payroll dues deduction must be presented to the designated office at the employee's campus location and the appropriate deduction will commence as soon thereafter as the authorization for such deduction is entered into the locations' payroll system, but in no case later than 45 calendar days.

4. Cancellation of Deductions

Bargaining unit members who are members of UC-AFT on or after the effective date of this Agreement who wish to withdraw from Union membership may do so during a period of thirty (30) days after the effective date of this Agreement, and during the window period which shall be thirty (30) days prior to the expiration date of the Agreement by filing a written notice with the University. Withdrawal notices received by the University at other times during the effective contract dates shall be returned to the bargaining unit employees by the University.

**B. ORGANIZATIONAL SECURITY FEE**

1. Organizational Security

University employees in the bargaining unit who are not members of UC-AFT and not paying dues through payroll deduction shall, as a continued condition of employment, be required to pay a fair share service fee. The amount of the fair share service fee shall not exceed the monthly dues that are payable by members of UC-AFT. The amount of the fee shall be deducted by the University from the wages or salary of the employee and paid to UC-AFT.

2. Organizational Security Fee Change

UC-AFT may change the certified fair share service fee amount once during the calendar year, or as may be required by law, and all costs associated with accomplishing such changes in fair share service fee amounts (machine, programming, etc.) shall be paid by UC-AFT. Any changes in the amount to be deducted for the fair share service fee shall be certified to the University in writing by the President of UC-AFT at least 45 calendar days prior to the proposed effective date of the fee change. Estimated costs and time of completion shall be provided to

UC-AFT within 30 days of UC-AFT's written request. Following agreement on the cost and time, UC-AFT shall pay the cost and the University shall complete the changes.

3. Exemption From Organizational Security Fee

Any employee of this unit who claims conscientious objections to joining or financially supporting any public employee organization may apply, pursuant to UC-AFT's fair share fee appeals process, for conscientious objector status. UC-AFT shall be responsible for determining whether the employee is entitled under applicable law to conscientious objector status. An employee deemed by UC-AFT to be entitled to conscientious objector status shall be required to pay sums equal to the amount of the fair share service fee to a non-religious, non-labor charitable fund exempt from taxation under the Internal Revenue Service code, chosen by the employee from a list of at least three funds designated by the University and UC-AFT. UC-AFT will, upon request, provide the UC with a list of approved conscientious objectors.

**C. OTHER DESIGNATED DEDUCTIONS**

1. Payroll deduction shall be made for UC-AFT-sponsored insurance programs pursuant to the provisions of the University's Accounting Manual requirements as specifically set forth in "Regulations for Non-University Insured Benefit Programs".
2. Upon presentation of a signed authorization form, executed by the employee, the University agrees to an additional voluntary check off for UC-AFT COPE Fund, a UC-AFT special contribution program.

**D. INFORMATION TO ACCOMPANY REMITTANCE**

Each campus shall remit at least monthly to UC-AFT in the form of a remittance to an address designated by UC-AFT an amount representing the authorized dues deductions, fair share service fees, and other designated deductions. The University shall submit a standard deduction report which shall contain, by campus, an alphabetical list of the UC-AFT members and fee payers for whom payroll deductions were made. 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 UC-AFT-requested changes in the deduction report referenced above shall be fully paid by UC-AFT.

**E. FEES FOR PROVIDING PAYROLL DEDUCTIONS**

1. Each campus, for each remittance to UC-AFT, shall charge UC-AFT and deduct from the dues/fair share service fee total being remitted \$.07 per employee for whom fee deductions are being made and \$10.00 for each remittance. These costs shall continue to be charged to UC-AFT for check remittance unless the parties agree otherwise. If electronic transfer is accomplished and no check is provided, the cost to initiate the process and cost per transfer shall be paid by UC-AFT according to the University Accounting Manual with respect to employee organizations.
2. For the purpose of voluntary deductions for UC-AFT, COPE fees charged to UC-AFT shall not exceed the actual costs incurred by the University to establish such deductions.

## **F. CORRECTION OF ERRORS**

1. If the University fails to make authorized deductions of union dues, fair share service fees, or other authorized deductions, or any part thereof, or fails to remit to UC-AFT such authorized deductions or any portion thereof, or erroneously withholds deductions or any part thereof, the University shall correct the errors. The University shall refund to UC-AFT any deductions it has erroneously failed to remit. From the time UC-AFT notifies the University in writing of any such errors, or if the University becomes aware of such errors, the University shall have 45 days to make the corrections. If after an additional 45 days the University does not make the agreed-upon corrections and UC-AFT incurs direct costs, the University will reimburse UC-AFT for reasonable, documented costs incurred to make corrections for only University errors. If there is not agreement on the correction or the costs, UC-AFT may grieve the matter only as a union grievance.
2. It is expressly understood and agreed that UC-AFT shall refund to the employee any deductions erroneously withheld from the employee's wages by the University and paid to UC-AFT.

## **G. INDEMNIFICATION**

It is specifically agreed that the University assumes no obligations or liability, financial or otherwise, pursuant to payroll deduction other than those specified in this article and in applicable law.

## **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 or unit head determines, based upon the evaluation criteria set forth in this section, that there has been a significant decline in the quality of the Continuing Appointee's performance, the department chair or unit head shall discuss the matter with the Continuing Appointee. The Department Chair's determination may occur during the normal review process or at any other time.
2. Following the discussion, the Department Chair or 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 Continuing Appointee fails to meet the requirements set forth in the written remediation plan, the University may conduct an academic review.
4. If the NSF meets the requirements set forth in the written remediation plan, no out of cycle academic review will be conducted.
5. Evaluations of the academic qualifications or performance of NSF 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.
6. 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.
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 the NSF should be judged with proper reference to assigned teaching responsibilities.
8. The following exemplify excellence in teaching. The University shall give all relevant materials due consideration.
- a. Student evaluations, provided 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, 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.
9. An NSF may provide a self-statement or self-evaluation of her or his teaching objectives and performance.
10. 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.

11. Review Committees

- a. If a Continuing Appointee does not meet the requirements set forth in her/his written remediation plan provided for under Section B.2 and an academic review takes place, a committee shall review and make recommendations about NSF performance. 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.
  - 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 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.
12. 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 personnel review file.
  13. At each level of the process, the review entities shall determine the weight to be given the materials/information provided, and may solicit input from persons not identified by the NSF being reviewed.
  14. The NSF may submit written comments that shall be included in her/his personnel file.
  15. An evaluation of an NSF shall be based on a personnel review file. The personnel review file shall contain only material relevant to consideration of personnel action.
  16. The NSF shall receive a copy of the evaluation indicating the sources of evidence on which its appraisal of teaching excellence was based prior to the recommendation of the department chair or unit head.
  17. The NSF may submit a written response to her/his evaluation, which shall be included in her/his personnel file.
  18. Following the departmental review and recommendation, the NSF's personnel review file shall be forwarded to a UC official outside the department for final decision.
  19. The designated University official shall provide the NSF with a written notice of the final decision specifying the outcome of the academic review.
  20. 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: written censure, 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 local UC-AFT if so requested by the affected NSF.
- 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 UC-AFT.

### **3. Written Authorization**

The University shall accept an NSF's advance written authorization for notice to the UC-AFT in the event of any proposed disciplinary or dismissal action. The NSF shall provide such notice through the designated Campus official.

## **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 Grievance and Article 33 Arbitration.

#### **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 SEXUAL HARASSMENT**

- A.** Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
- 1. submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activity;
  - 2. 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,
  - 3. such conduct could reasonably be assumed to have the purpose or effect of interfering with an individual's performance or creating an intimidating, hostile, or offensive working environment.
- B. SEXUAL HARASSMENT COMPLAINTS BY NSF IN THE UNIT:**
- 1. may be processed in accordance with Article 32 - Grievance Procedure; or,
  - 2. may be processed in accordance with the pre-grievance complaint resolution process of the sexual harassment complaint resolution procedures in effect at the time at the location of the NSF. (For informational purposes only, see Appendix D for identification of the current campus Complaint Resolution Officer(s) and information regarding access to the current campus procedure.) If the sexual harassment complaint is not resolved through the local pre-grievance complaint resolution process, the complaint may be taken to Step 3 of Article 32 - Grievance Procedure.

- C. Disciplinary action taken against an NSF resulting from a sexual harassment complaint will be considered to be for misconduct and will be taken in conformance with the procedures set forth in Article 30 - Discipline and Dismissal.

## **ARTICLE 32 GRIEVANCE PROCEDURE**

### **A. GENERAL PROVISIONS**

1. Definition. A grievance is a claim that a 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 UC-AFT. The University may not bring a grievance through this procedure.
3. Filing Deadline. A formal grievance must be filed in writing within forty-five (45) calendar days from the date on which the NSF or the UC-AFT knew or could be expected to know of the event or action which gave rise to the grievance, or within fifteen (15) calendar days from the date of the separation of the NSF from University employment, whichever occurs first. Formal grievances shall be filed with the campus office and/or officer designated in Appendix A.
4. 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.
5. 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 supervisory, 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 UC-AFT of any formal grievances filed where the UC-AFT 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 UC-AFT representative.
6. Settlement Offers. Settlement offers shall be confidential and inadmissible at subsequent steps. The settlement shall become final so long as the adjustment is not inconsistent with the terms of this MOU and provided that the UC-AFT, if not involved in representation, has been given ten (10) calendar days to file a response.
7. 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 files.

8. Time Limits and Extension of Time Limits.
  - a. Deadlines which fall on days that are not business days at the campus at which the grievance is filed will be automatically extended to the next business day. If a University official fails to meet a deadline, the grievant may move the grievance to the next step in the process.
  - b. 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.
9. 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.
10. 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. INFORMAL RESOLUTION**

1. Within thirty (30) calendar days after the grievant became 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 ten (10) calendar days of the informal discussion, the individual with whom the grievant discussed the grievance pursuant to B.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 C., below.
4. Attempts at informal resolution do not extend the forty-five (45) calendar day time limit to file at Step 1 unless an extension of the time limit has been agreed to as set forth in Section A.8.

## **C. STEP 1 – FORMAL GRIEVANCE PROCEDURE**

1. Consistent with the provisions of this MOU, a grievant or the UC-AFT 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 UC-AFT.
  - b. Time limits for initial filing:

- 1) Grievances must be filed within forty-five (45) calendar days from the date on which the NSF or the UC-AFT knew or could have been expected to know of the event or action which gave rise to the grievance, or within fifteen (15) calendar days after the date of the NSF's separation from University employment, whichever occurs first. Any grievance which is filed out of compliance with the time limits provided in this Section, is considered withdrawn by the grievant and/or UC-AFT, as applicable.
- 2) The grievant or the UC-AFT may file a written grievance by facsimile transmission to the campus designated grievance officer. However, for the University to accept the facsimile filing as timely, the University must receive an original signed hard copy of the grievance within five (5) business days of the facsimile transmission date. The date and time registered by the University's facsimile machine shall constitute the official date of receipt by facsimile transmittal. If the registered date on the facsimile falls outside the campus' business hours, the following business day shall constitute the official date of receipt.
- 3) Attempts at informal resolution do not extend the time limits for initial filing, unless the grievant, or the grievant's representative if any, and the University have agreed to such extension in writing.

c. A valid written 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.

If the University determines such grievance ineligible for processing, the UC-AFT 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.

## D. 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 one observer to the meeting.
3. The grievant and/or the grievant's representative must present all known evidence and contentions relevant to the grievance at this Step 2 review. Contentions not made known by the parties at this time are not subsequently admissible.
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 UC-AFT represents the grievant:
    - 1) If no Step 2 meeting is requested, the University shall mail 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 mail the written decision to the grievant and/or the grievant's representative within fifteen (15) calendar days following the meeting.

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

- b. For grievances where the UC-AFT does not represent the grievant:
  - 1) If no Step 2 meeting is requested, the University shall mail a copy of the grievance and proposed resolution to the UC-AFT 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 UC-AFT requested a Step 2 meeting, the University shall mail a copy of the grievance and proposed resolution to the UC-AFT within fifteen (15) calendar days following the meeting.
  - 2) The UC-AFT 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 UC-AFT's written comments, if any.
- 4) Following receipt of the UC-AFT's comments or ten (10) calendar days from date of issuance, whichever occurs first, the University will mail its decision to the grievant and/or the grievant's representative and will mail a copy to the UC-AFT.
- 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 mailing of the decision to the grievant and/or the grievant's representative, unless within that time, the UC-AFT 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. The decision will be issued to the grievant when self-represented, or to her/his representative.

**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 2 answer, or the University's Step 3 answer if the grievance is appealed to Step 3, the grievance shall be considered resolved on the basis of the University's final response.

- G.** 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.8., such meetings do not extend the timeframes outlined in this Article.

**ARTICLE 33  
ARBITRATION**

**A. GENERAL PROVISIONS**

1. Only the UC-AFT 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 mailing of the final University decision to the UC-AFT (Article 32 - Grievance

Procedure). The written appeal must be signed by the UC-AFT President and/or the UC-AFT Executive Director and must include:

- a. name, mailing address and campus location of the grievant(s);
  - b. name and address of the UC-AFT 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, and the remedy requested; and
  - e. a completed proof of service form.
2. Appeals to arbitration which are not processed within the above time limit and/or which do not contain the appropriate UC-AFT signature are ineligible for arbitration. If a grievance is not appealed to arbitration, the University's written Step 2 decision, or Step 3 decision, if appealed to Step 3, shall be final.
3. 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 UC-AFT of the University's agreement to proceed to arbitration within thirty (30) calendar days of the date of mailing of the appeal to arbitration. The University's response will include a proof of service and the name and mailing address of the University's representative who is responsible for the appeal to arbitration and to whom all correspondence should be addressed.

## **B. SELECTION OF ARBITRATOR**

1. Within fifteen (15) calendar days of the mailing of the University's response to the UC-AFT's appeal to arbitration, the UC-AFT 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 as a withdrawal of the arbitration appeal.
2. 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.
3. The selection of the arbitrator shall be accomplished no later than thirty (30) calendar days from the issuance of the University's response to the appeal to arbitration.
4. Upon selection of an arbitrator, the University, following consultation with the UC-AFT regarding hearing dates, will notify the arbitrator and request hearing date(s) no earlier than twenty-one (21) calendar days from the date of mailing of the letter to the arbitrator. A copy of this letter shall be sent simultaneously to the UC-AFT representative responsible for the appeal to arbitration.

## **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 grievance was originally appealed to arbitration. 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 UC-AFT 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, the arbitrator shall conduct a hearing and issue a decision first on arbitrability. The parties may agree to conduct the hearing on arbitrability pursuant to Section C. of this Article.
8. An appeal to arbitration shall not inhibit efforts by the University and UC-AFT to resolve the grievance. The UC-AFT 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 UC-AFT 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 UC-AFT 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, AAA 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 arbitrator, court reporter or AAA.

#### **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 UC-AFT;
  - 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 UC-AFT; 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 UC-AFT representative, if the representative is a 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 a standing panel of thirteen (13) arbitrators 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 panel 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 thirteen (13) 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 up to and including termination of employment. 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 UC-AFT 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 will no longer apply to NSFs, except as specifically set forth below or elsewhere in this MOU.
- C. The University and the UC-AFT agree that the applicable parts of the following policies and procedures continue to apply to NSFs:
  - Patent
  - Copyright
  - Indemnity
  - APM 190, A-1 – Whistleblower Policy
  - APM 190, A-2 – Whistleblower Protection Policy
  - APM 520 – Employment of Near Relatives
  - APM 660 - Additional Compensation/General
  - APM 662 - Additional Compensation/University Extension Teaching
  - APM 663 - Additional Compensation/University Extension Correspondence Courses
  - APM 664 - Additional Compensation/Services as Faculty Consultant
  - APM 665 - Additional Compensation/Reading Manuscripts
  - APM 666 - Additional Compensation/Lecturers and Similar Service
  - APM 667 - Additional Compensation/Extra-Murally Funded Research

Only changes in the above policies and procedures applicable to NSFs 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 UC-AFT 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 UC-AFT 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.
- 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 UC-AFT, 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 August 25, 2005, and shall terminate at 11:59 p.m. on August 24, 2010.

## **B. REOPENER BARGAINING**

1. In accordance with the provisions of paragraphs 3, 4, and 5 of this section, one year following the date on which the parties conclude the 2005 reopener negotiations, the UC-AFT and the University shall reopen Article 21 – Salary and Article 24 – Instructional Workload. Each side shall also have the right to select an additional article for reopener bargaining. Neither party shall reopen Article 11 - Benefits until the parties enter into reopener negotiations in 2008.
2. In accordance with the provisions of paragraphs 3, 4, and 5 of this section, three years following the date on which the parties conclude the 2005 reopener negotiations, the UC-AFT and the University shall each have the right to select up to three articles for reopener negotiations.
3. By no later than October 1, of the year in which negotiations occur, the parties shall meet and discuss their plans with respect to reopener negotiations. Any agreement reached between the parties, including an agreement to forego or limit reopener bargaining shall be reduced to writing by no later than October 15.
4. In the years that the UC-AFT and the University wish to bargain over reopened articles, the parties must exchange written notice of the articles selected to be reopened no later than November 1. The UC-AFT and the University shall exchange written contract language proposals no later than November 15. By December 15, the parties shall agree upon a start date for negotiations.
5. During the period of reopener negotiations, reopened articles remain in full force and effect until either final settlement, exhaustion of impasse procedures or expiration of the entire agreement.
6. The University will lift the contractual prohibition against strikes and concerted activities provided for in the No Strikes Article following conclusion of the impasse fact finding process.

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

On August 25, 2010 the entire contract may be open for the purpose of negotiating amendments to any Article. 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, 2010 the University and the UC-AFT shall meet for one day, or as mutually agreed, to discuss each Article of the contract and present issues of interest for the 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 must provide the other with written notice of its selected article(s) and a list of bargaining team members by no later than March 1, 2010. Included in such notice shall be each party's written contract language proposals for the articles subject to negotiations.
3. By April 15, 2010 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 MOU shall remain in effect on a year-to-year basis. In the event that the MOU continues in this manner, the parties shall provide written notice of selected articles and a list of bargaining team members for a successor MOU 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 NSF's 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. PARKING AND TRANSPORTATION RATES FOR FISCAL YEAR 2005-2006**

The University and the UC-AFT agree that the parking rate increase for FY 2005-2006 will be the same amount paid by other campus employees effective the same date on which the increases are effective at the campus. However, in the event a more favorable increase structure is negotiated for a particular group of employees than the increases implemented for the general campus population, the more favorable negotiated increases will also be effective for NSF at that location. The resulting rates will be effective for NSF on the same date that the rates are effective for the other campus group(s).