

## **VA-AFGE SETTLEMENT AGREEMENT**

The American Federation of Government Employees, National Veterans Affairs Council ("AFGE" or "Union"), and the Department of Veterans Affairs ("VA" or "Agency"), collectively "the Parties", mutually desire to resolve their disputes arising from the May 25, 2018 issuance and subsequent implementation of Executive Orders 13836, 13837, and 13839 ("Trump EOs"), the implementation of limitations on official time for employees described in 38 U.S.C. § 7421(b) ("Title 38 employees"), the renegotiation of a draft successor master agreement ("Successor Master Agreement"), and other specifically identified or related matters set forth in this settlement agreement ("Settlement Agreement").

The Parties, without admission of any facts in dispute between them and solely to resolve this matter amicably and without further litigation, agree and stipulate as follows:

**I. In consideration of the obligations delineated below, the Parties agree to the following terms and conditions:**

**A. AFGE-VA Master Agreement**

- (1) **2011 Master Agreement:** The Parties agree to be bound by the Master Agreement between the U.S. Department of Veterans Affairs and the American Federation of Government Employees (2011) dated March 15, 2011 ("2011 Agreement") and national Memoranda of Understanding.
- (2) **Withdrawal and Release of Claims:** The Parties agree to withdraw all pending litigation concerning or arising out of the Agency's notice of intent to renegotiate the 2011 Agreement, dated December 15, 2017, including all pending litigation concerning the negotiation of a Successor Master Agreement, the proposals and tentative agreements related thereto, and the decision and order issued by the Federal Service Impasses Panel ("FSIP") concerning those negotiations. This includes those matters specifically identified in Section I(E) of this Settlement Agreement. The Parties hereby acknowledge and agree that the FSIP Decision and Order, 2020 FSIP 022, dated November 5, 2020, shall have no legal effect on the Parties and will not be followed.
- (3) **Ground Rules Revision:** The Parties agree to revise and replace the Parties' Ground Rules Memorandum of Understanding, dated April 2, 2019, with the Ground Rules document in Exhibit 1 to this Settlement Agreement ("Revised Ground Rules"). The Parties' Revised Ground Rules will be jointly executed by the Chief Negotiators, and the effective date of the Revised Ground Rules will be the effective date of this Settlement Agreement. As set forth in the Revised Ground Rules, the Parties have agreed to a limited reopener of the 2011 Agreement, which requires the Parties to bargain over the following articles from the 2011 Agreement: Article 12 (Details and Temporary Promotions), Article 14 (Discipline and Adverse Action), Article 16 (Employee Awards and Recognition), Article 22 (Investigations), Article 23 (Merit Promotion), Article 27 (Performance Appraisal), Article 29 (Safety, Health, and Environment), Article 39 (Upward



Mobility), Article 46 (Local Supplement), Article 47 (Mid-Term Bargaining), Article 48 (Official Time), and Article 66 (Technology for Administering, Tracking, and Measuring VBA Work).

(4) **Sidebar Agreements:** The Parties agree to delete, as reflected by the stricken language, or edit, as reflected by the non-stricken language, the following provisions from the 2011 Agreement which will take effect on the effective date of this Settlement Agreement:

- A. Article 36, Section 3 – Special Payments (“Whenever a Department error results in the failure of an employee to receive less than 90% of their basic pay and allowances, Special pay can be authorized upon request from the employee or local payroll office. Corrective actions should begin immediately upon identification of the pay affecting error. Special pay authorizations can only be submitted upon completion of the corrective action(s). The processing of Special pay requests is made by VA's payroll provider and normally take 3-5 business days. Special payments will be made in the same form normally issued to an employee (i.e., EFT or check) or in other forms of payment. On an annual basis, the Department shall provide the Union with a report of AFGE bargaining unit employees who received authorizations for Special pay due to an employee receiving less than 90% of the basic pay and allowances.”)
- B. Article 61, Section 1 – General (“All Title 38 bargaining unit positions will be announced facilitywide with posting and/or distribution a proper subject for local bargaining. If facilities are consolidated, positions will be posted at each geographic location. These announcements must be readily available for review by employees. ~~The posting/application period will run for a minimum of 14 calendar days.~~”)
- C. Article 35, Section 10 – Leave Without Pay, Para F.(2) (“When requested by a reservist or National Guard member for military duties, ~~in accordance with appropriate military orders and/or documentation,~~ employees may request such leave after their military leave has been exhausted (38 USC 4316(d)");
- D. Article 35, Section 13 – Military Leave, Para B. (“Full-time permanent and part-time permanent employers who are members of the National Guard or the Armed Forces Reserves are entitled to 15 calendar days of regular military training leave in a fiscal year for active duty or inactive duty for training.”)
- E. Article 21, Section 2 – Work Schedule Options (AWS and Credit Hours), Para G.(3) Miscellaneous (“The parties understand and agree that Credit Hours for FWS are initiated by the employee, subject to approval by the supervisor. In contrast, the parties understand and agree that overtime and compensatory time (with the exception of religious compensatory time) are initiated by the Department. Flextime will be requested and bargained locally.”)

#### **B. Title 38 Official Time & Trump EOs**

- (1) **Rescission of Title 38 Official Time Decisions:** Within ten (10) calendar days of the effective date of this Settlement Agreement, the Agency shall rescind the following determinations: the November 7, 2018 notice of repudiation from Jacquelyn Hayes-Byrd, former Acting Assistant Secretary for Human Resources



and Administration, concerning official time allocations for Title 38 employees under certain collective bargaining agreements with AFGE; and, the April 26, 2019, decision letter signed by Richard A. Stone, MD, Executive in Charge, that excluded official time usage under 5 U.S.C. § 7131(d) from collective bargaining for Title 38 employees pursuant to 38 U.S.C. § 7422 (d) (collectively "the Title 38 Official Time Decisions").

- (2) **Compliance with EO 14003:** Pursuant to Executive Order 14003, the Agency shall suspend, revise, or rescind existing agency actions related to or arising from the Trump EOs under the terms and conditions described herein as soon as practicable.
- (3) **Abeyance Agreement:** The Parties agree to hold all local grievances and arbitrations related to the VA's implementation of the Trump EOs and/or the Title 38 Official Time Decisions that are not listed in Section I(E) of this Settlement Agreement in abeyance while the Parties work to implement this Settlement Agreement, including obtaining final resolution of any arbitration under Section I(C)(9) of this Settlement Agreement.
  - A. Following completion of the Claim Submission Procedure described in Section I(C) of this Settlement Agreement and final resolution of resulting arbitration, if any, the Agency may contact AFGE Locals to confirm that claims for relief in the local grievance were resolved at the national level, thereby rendering the local grievance moot. Designated AFGE Representatives and AFGE Locals who submit claims for corrective action under the Claim Submission Procedure in this Settlement Agreement will be precluded from pursuing claims for the same type of corrective action or relief under any local grievance.
  - B. For the purposes of this Settlement Agreement, a designated AFGE representative ("Designated AFGE Representative") is an AFGE bargaining unit employee who was designated as a local union official pursuant to Article 49, Section 6, or a national or district union official pursuant to Article 48, Section 2(D) who timely (i.e., within sixty (60) calendar days) submits a flat payment claim under the Claim Submission Procedure in Section I(C)(6)(A) of this Settlement Agreement. Designated AFGE Representatives and AFGE Locals that have already received corrective action at the local level are precluded from pursuing claims for the same type of corrective action related to or arising from the Agency's implementation of the Trump EOs or the Agency's refusal to approve official time in reliance on the Title 38 Official Time Decisions.
- (4) **Corrective Action:** The Agency shall, under the terms and conditions described in Sections I(B) and I(C) of this Settlement Agreement, take the following corrective action related to or arising from the Agency's implementation of the Trump EOs or the Agency's refusal to approve official time in reliance on the Title 38 Official Time Decisions: (a) rescind and expunge actions taken against the Designated AFGE Representatives identified below; (b) provide compensation for time spent in a leave status by Designated AFGE Representatives to perform duties appropriate for official time; (c) provide compensation to Designated AFGE Representatives for time spent in a non-duty status to perform duties appropriate for official time; (d) reimburse out-of-pocket expenses incurred by AFGE Locals



(or representatives listed in Article 51, Section 1(C) of the 2011 Agreement) for office space and storage space; and, (e) reimburse out-of-pocket expenses incurred by AFGE Locals (or representatives listed in Article 51, Section 1(C) of the 2011 Agreement) for equipment and technology. Claims for corrective action must be submitted in accordance with the Claim Submission Procedure in Section I(C) of this Settlement Agreement or they will be denied.

A. **Discipline:** Within thirty (30) calendar days of the effective date of this Settlement Agreement, the Agency shall rescind and expunge the following actions taken against Designated AFGE Representatives as a result of the Agency's implementation of the Trump EOs:

- i. Andrew Scherzinger (AFGE Local 1822): 30-Day Suspension;
- ii. Donald Allen Rogers (AFGE Local 1687): 15-Day Suspension;
- iii. Ira Kedson (AFGE Local 310): Written Counseling;
- iv. Jennifer Gum (AFGE Local 85): 3-Day Suspension;
- v. Jonay McCall (AFGE Local 96): 14-Day Suspension;
- vi. Kevin Ellis (AFGE Local 2338): 7-Day Suspension;
- vii. Richard Anderson (AFGE Local 2400): 7-Day Suspension;
- viii. Tatishka Thomas (AFGE Local 548): Admonishment.

The Agency shall take this action without the need for AFGE or a Designated AFGE Representative to submit a claim under the Claim Submission Procedure in Section I(C) of this Settlement Agreement.

B. **Compensation for Representational Duties Performed in Leave Status:**

The Agency shall, under the terms and conditions described in Sections I(B) and I(C) of this Settlement Agreement, provide compensation for time spent on Leave Without Pay, Annual Leave, and Compensatory Time by Designated AFGE Representatives between the date the Agency first implemented the Trump EOs, July 17, 2018, and the effective date of this Settlement Agreement to perform representational duties due to the Agency's refusal to approve official time as a result of the Agency's implementation of the Trump EOs or due to the Agency's refusal to approve official time in reliance on the Title 38 Official Time Decisions.

- i. Consistent with the terms and conditions set forth in this Settlement Agreement, Designated AFGE Representatives must produce records from VATAS showing they were in an approved leave status to support their claims. For separated or retired employees, local VA payroll staff will assist Designated AFGE Representatives in obtaining VATAS records, if requested. For current employees, local VA payroll staff may assist Designated AFGE Representatives in obtaining VATAS records, if requested. Ultimately, it is the responsibility of the Designated AFGE Representative to produce the required VATAS records. Instructions on how to obtain leave records in VATAS are attached as Exhibit 2 to this Settlement Agreement. As of the effective date of this Settlement Agreement, the Agency has provided AFGE with a listing of contact information for VA local payroll offices.



- C. Compensation for Representational Duties Performed in Non-Duty Status:** The Agency shall, under the terms and conditions described in Sections I(B) and I(C) of this Settlement Agreement, compensate Designated AFGE Representatives for representational duties performed in a non-duty status between the date the Agency first implemented the Trump EOs, July 17, 2018, and the effective date of this Settlement Agreement due to the Agency's refusal to approve official time as a result of the Agency's implementation of the Trump EOs or due to the Agency's refusal to approve official time in reliance on the Title 38 Official Time Decisions.
- D. Office Space and Storage Space:** The Agency shall, under the terms and conditions described in Sections I(B) and I(C) of this Settlement Agreement, restore and provide all office space and storage space that AFGE formerly occupied, or other appropriate space consistent with applicable negotiated agreements if that formerly occupied office space and storage space is not available, as soon as practicable.
- i. To be eligible for reimbursement for out-of-pocket expenses for costs incurred to secure and maintain office space and storage space between the date the Agency implemented Section 4(a)(iii) of Executive Order 13837, November 15, 2019, and the effective date of this Settlement Agreement, AFGE must provide an executed lease/similar agreement, if applicable, and proof of payment. AFGE is required to provide additional documentation (e.g., a vendor form (VA Form 10091) in order to receive reimbursement under this Section.
- E. Equipment and Technology:** The Agency shall, under the terms and conditions described in Sections I(B) and I(C) of this Settlement Agreement, provide all equipment and technology to AFGE consistent with negotiated agreements as soon as practicable.
- i. To be eligible for reimbursement for out-of-pocket expenses incurred for equipment and technology between the date the Agency implemented Section 4(a)(iii) of Executive Order 13837, November 15, 2019, and the effective date of this Settlement Agreement, AFGE must provide a receipt of purchase and proof of payment. AFGE is required to provide additional documentation (e.g., a vendor form (VA Form 10091) in order to receive reimbursement under this Section.
- (5) Claims for Corrective Action:** Claims for corrective action under Section I(B)(4) of this Settlement Agreement (i.e., compensation owed to Designated AFGE Representatives between July 17, 2018 and the effective date of this Settlement Agreement as a result of the Agency's implementation of the Trump EOs and/or the Title 38 Official Time Decisions, as well as reimbursement of out-of-pocket expenses for office space, storage space, equipment, and technology incurred by AFGE between November 15, 2019 and the effective date of this Settlement Agreement as a result of the Agency's implementation of the Trump EOs) must be submitted in accordance with the Claim Submission Procedure in Section I(C)



of this Settlement Agreement. Claims for corrective action that do not meet the requirements set forth in Section I(C) of this Settlement Agreement will be denied.

### **C. Claim Submission Procedure**

- (1) **Purpose:** The purpose of the Claim Submission Procedure is to provide an expedited process by which AFGE may request, and VA may provide, the corrective action set forth in this Settlement Agreement. It shall not be used to resolve claims for corrective action not provided for in this Settlement Agreement.
- (2) **Declaration or Affidavit Under Penalty of Perjury:** To be eligible for corrective action under this Settlement Agreement, all AFGE Designated Representatives must submit a signed and dated Declaration or Affidavit to AFGE, certifying that the contents of the claim and any supporting documentation are, under penalty of perjury, true and accurate to the best of their knowledge. By submitting a claim, AFGE Designated Representatives acknowledge and agree that VA may take disciplinary or adverse action against employees who knowingly submit false or fraudulent information or supporting documentation through the Claim Submission Procedure. Upon request, AFGE shall provide actual copies of the claim forms with the required Declarations or Affidavits to the Agency. The agreed-upon language to be used in the Declarations or Affidavits is set forth in Exhibit 3 to this Settlement Agreement.
- (3) **Incomplete Claims:** The Parties agree that incomplete claims will be denied. Designated AFGE Representatives must provide all required information and supporting documentation, if required under the terms and conditions of this Settlement Agreement, to be eligible for corrective action under this Settlement Agreement.
- (4) **Duplicate Relief Exclusion:** The Parties agree that Designated AFGE Representatives and AFGE Locals are not entitled to duplicate corrective action (i.e., double recovery) under this Settlement Agreement. Claims for compensation or reimbursement will be denied if the VA already provided official time for the same date and time or reimbursement for the same expense to the Designated AFGE Representative or AFGE Local. The Parties further agree that claims for compensation covering periods in which Designated AFGE Representatives were in an approved leave status during which representational duties should not have been performed will be denied (e.g., Sick Leave, Family and Medical Leave Act, Office of Workers Compensation Pay, Disabled Veteran Leave, Military Leave, Education Leave, Court Leave, Families First Coronavirus/COVID-19, Weather and Safety Leave, Emergency/Voluntary Leave Transfer Program, Furlough, Religious Leave, Law Enforcement Leave).
- (5) **Duties Appropriate for Official Time:** The Parties agree that claims for compensation may be submitted only for representational duties appropriate for official time as set forth in statute, government-wide regulations, or applicable negotiated agreements. Internal union business is not appropriate for official time. Internal union business includes, but is not limited to, the following: solicitation of membership, elections, and collection of dues. Representational duties appropriate for official time include, but are not limited to, the preparation,



presentation, and pursuit of the following matters on behalf of AFGE or as the designated representative of an AFGE bargaining unit employee:

- A. Grievances and arbitration hearings;
  - B. Weingarten investigations, formal discussions, and fact-findings;
  - C. Proceedings before the Equal Employment Opportunity Commission (EEOC), Merit Systems Protection Board (MSPB), Occupational Health and Safety Commission (OSHA), Office of Workers' Compensation Programs (OWCP), Office of Special Counsel (OSC), Office of Inspector General (OIG), Office of Accountability and Whistleblower Protection (OAWP), and the Federal Labor Relations Authority (FLRA), and Administrative Investigation Boards (AIB);
  - D. Alternative dispute resolution (ADR);
  - E. Mid-term bargaining and local supplemental agreements;
  - F. Title 38 Board and Hearings, such as Summary Review Boards, Professional Standards Boards, and Disciplinary Appeals Boards;
  - G. Local committees and labor-management relations forums;
  - H. Training for labor relations and collective bargaining; and,
  - I. Representational assistance to bargaining unit employees.
- (6) **Claim Forms:** AFGE will establish an electronic claim submission procedure (Claim Submission Procedure) for Designated AFGE Representatives and AFGE Locals to submit claims and supporting information for corrective action, where required, under this Settlement Agreement. The Parties agree that the Claim Submission Procedure will be electronic to the maximum extent possible. When possible, AFGE will provide claims and supporting documentation to VA in Microsoft Excel format (.xlsx) and declarations or affidavits in Portable Document Format (.pdf), if requested. When possible, VA will provide claims decisions to AFGE and a copy of the return file received from the Defense Finance Accounting System in Microsoft Excel format (.xlsx).
- A. **Compensation (Flat Payment; 66 Hours Only):** The Agency will provide sixty-six (66) hours of straight pay compensation to all Designated AFGE Representatives who file a claim attesting that they performed representational duties in a leave or non-duty status, from July 17, 2018 through the effective date of this Settlement Agreement as a result of the Agency's refusal to approve official time in reliance on the Trump EOs and/or the Title 38 Official Time Decisions. The applicable rate of pay shall be the Designated AFGE Representative's basic rate of pay on the date payment is made, if an active employee, or the Designated AFGE Representative's basic rate of pay at the time of separation, if separated or retired. Required fields on this claim for corrective action (i.e., Flat Payment; 66 Hours Only) include:
- i. Name;
  - ii. Last 4 SSN;
  - iii. AFGE Local Number;
  - iv. AFGE Position;
  - v. Home Address;
  - vi. VA Station Number;
  - vii. Most Recent VA Supervisor Name;
  - viii. Email;



- ix. Telephone.
- x. Declaration Under Penalty of Perjury.

**B. Compensation (Additional Payment; 66+ Hours):** Designated AFGE Representatives may also elect to pursue claims for straight pay compensation in excess of 66 hours for time spent in a leave status or non-duty status to perform representational duties appropriate for official time, from July 17, 2018 through the effective date of this Settlement Agreement as a result of the Agency's refusal to approve official time in reliance on the Trump EOs and/or the Title 38 Official Time Decisions. Designated AFGE Representatives must have first submitted a timely claim under Section 1(C)(6)(A) of this Settlement Agreement (i.e., the Flat Payment; 66-hour section) to be eligible for corrective action under this section. The applicable rate of pay shall be the Designated AFGE Representative's basic rate of pay on the date the representational duty was performed. Designated AFGE Representatives must submit supporting documentation to demonstrate the performance of representational duties while in a non-duty status (e.g., emails, meeting minutes, calendars, etc.) to support their claims. If a Designated AFGE Representative is unable to provide supporting documentation for a specific representational duty performed in a non-duty status because of the nature of the duty performed, the Designated AFGE Representative must provide sufficient information on the claim for the Agency to attempt to verify the claim. If the Agency cannot verify the claim based on the information provided by the Designated AFGE Representative, the Agency will deny the claim. Required fields on this claim for corrective action (i.e., Additional Payment; 66+ Hours include:

- i. Name;
- ii. Last 4 SSN;
- iii. AFGE Local Number;
- iv. AFGE Position;
- v. Home Address;
- vi. VA Station Number;
- vii. Most Recent VA Supervisor Name;
- viii. Email;
- ix. Telephone;
- x. Claim Date;
- xi. Claim Time (Hours);
- xii. Type of Representational Duty Performed;
- xiii. Name, Subject, Office related to Representational Duty.
- xiv. Whether Representational Duty Performed On: Leave Without Pay, Annual Leave, Compensatory Time, or Non-Duty Status;
- xv. Affidavit Under Penalty of Perjury.

**C. Reimbursement of Expenses:** When submitting claims for reimbursement of expenses related to office space, storage space, equipment, and technology incurred by AFGE between November 15, 2019 and the effective date of this Settlement Agreement as a result of the Agency's implementation of the Trump EOs, AFGE shall submit a claim for corrective action. Each AFGE Local (or representative listed in Article 51, Section 1(C) of the 2011 Agreement) may



only submit one claim for reimbursement of expenses. To be eligible for reimbursement for out-of-pocket expenses, AFGE must provide proof of payment. Proof of payment must include the payment date, amount paid, and purpose/subject of payment. AFGE is required to provide additional documentation (e.g., VA Form 10091) in order to receive reimbursement under this section. Required fields on this claim for corrective action (i.e., Reimbursement of Expenses) include:

- i. Name;
- ii. AFGE Position;
- iii. AFGE Local Number;
- iv. AFGE Local Address
- v. VA Station Number;
- vi. VA Duty Station Name;
- vii. Email;
- viii. Telephone;
- ix. Amount of Claim for Office Space and Storage Space Expenses;
- x. Amount of Claim for Equipment and Technology Expenses;
- xi. Declaration Under Penalty of Perjury.

(7) **Deadlines:** The Parties agree to comply with the following deadlines for AFGE to request, and VA to provide, corrective action under the terms of this Settlement Agreement.

A. **Flat Payment Claims (66 Hours):** AFGE will provide electronic records and supporting documentation to the VA Financial Services Center for all claims submitted under Section I(C)(6)(A) of this Settlement Agreement within sixty (60) calendar days of the effective date of this Settlement Agreement. VA will approve or deny these claims and submit payment information to DFAS within ninety (90) calendar days of receipt the claims. At that time, VA will notify AFGE of the basis for any denied claims.

B. **Additional Payment Claims (66+ Hours):** AFGE will provide electronic records and supporting documentation to the VA Financial Services Center for all claims submitted under Section I(C)(6)(A) within one-hundred and eighty (180) calendar days of the effective date of this Settlement Agreement. VA will approve or deny these claims and submit payment information to DFAS within two-hundred and seventy (270) calendar days of receipt of the claims. At that time, VA will notify AFGE of the basis for any denied claims.

C. **Expense Reimbursement Claims:** AFGE will provide electronic records and supporting documentation to the VHA Office of Finance for all claims submitted under Section I(C)(6)(C) within ninety (90) calendar days of the effective date of this Settlement Agreement. The Agency will verify these claims and process approved payments to AFGE Locals and representatives listed in Article 51, Section 1(C) of the 2011 Agreement, consistent with the information submitted in VA Form 10091, within ninety (90) calendar days of receipt of the claims. At that time, VA will notify AFGE of the basis for any denied claims.

(8) **Joint Review Panel:** The Parties shall each appoint up to two (2) representatives to a Joint Review Panel ("JRP") for the purpose of reviewing, discussing, and attempting to resolve disputes concerning claims denied under the Claim



Submission Procedure in Section I(C). The JRP will meet face-to-face for one (1) calendar week to attempt to resolve any remaining disputes. The Parties may alter this timeframe by mutual agreement. If there are still disputes as to whether claims under the Claim Submission Procedure were properly denied, AFGE may proceed to arbitration by providing a written notice to invoke arbitration to VA within thirty (30) calendar days of the conclusion of the JRP meeting. Each party will be responsible for its own travel and per diem for the JRP meeting.

(9) **Arbitration:** Arbitration invoked under Section I(C)(8) of this Settlement Agreement will proceed in accordance with Article 44 of the 2011 Agreement. VA waives any claims as to the arbitrability of this proceeding. Any relief provided in arbitration must be consistent with the terms and conditions of this Settlement Agreement. AFGE reserves its right to present additional testimony in support of claims for corrective action under this Settlement Agreement. Designated AFGE Representatives may not supplement their claims with supporting documentation that was not submitted as part of the Claim Submission Procedure. Should the Parties proceed to arbitration, AFGE further reserves the right to petition for additional attorney fees related to the pursuit such an arbitration.

(10) **Defense Finance Accounting System (DFAS):** DFAS provides payroll services for VA and will issue payments under sections I(C)(6)(A) and I(C)(6)(B) of this Settlement Agreement. The Parties acknowledge that DFAS is a separate entity, and the Agency exercises no control over and is not the principal of DFAS. The Agency has agreed to provide certain payment information to DFAS pursuant to this Settlement Agreement, but the Agency makes no representation concerning when DFAS will complete the agreed-upon payments. The Agency will make reasonable efforts to ensure timely payments by DFAS under this Settlement Agreement. The Parties acknowledge that payments that require submission of a remedy ticket may be delayed beyond the agreed-upon period for payment and are subject to the limitations set forth in this Settlement Agreement concerning DFAS.

#### **D. Attorney Fees**

(1) Within thirty (30) calendar days of the effective date of this Settlement Agreement, the Agency shall pay reasonable attorney fees to AFGE in the amount of \$295,898.90 for attorney fees incurred in the handling of the cases resolved by and listed in Section I(E) of this Settlement Agreement. The Agency will issue payment via electronic deposit/check to AFGE as follows:

AFGE c/o  
AFGE Legal Rep Fund (amount of deposit: \$274,123.90)  
Amalgamated Bank  
275 Seventh Avenue  
New York, NY 10001  
Accounting Number: 81019974  
Routing Number: 026003379  
Caging Code: 490Z5



Tax Identification Number: 53-0025740

AFGE c/o  
Roberts Labor Law and Consulting, LLC (amount of deposit: \$21,775.00)  
PNC Bank  
Acct. No. 5426102816  
Bank Routing Transfer No. 054000030  
390 Main Street  
Laurel, MD 20707  
Tax ID No. 85-201371

**E. Withdrawal of Litigation and Waiver of Claims**

- (1) Upon execution of this Settlement Agreement, the Union, on behalf of all AFGE bargaining unit employees ("BUEs"), shall withdraw the following national and local grievances, complaints, and lawsuits filed by AFGE concerning VA's implementation of the Trump EOs, the issuance of limitations on official time for VA employees, and the negotiation of the Successor Master Agreement:
- A. Consolidated cases pending in the United States District Court for the District of Columbia, Civil Action No. 18-2847 (DLF);
  - B. United States District Court for the District of Columbia, Civil Action No. 20-cv-02084 RJJ;
  - C. National Grievance, NG 10-3-18; Arbitration over failure to bargain in good faith over ground rules, FLRA Case No. 191120-01702; exceptions pending;
  - D. National Grievance, NG 12-7-18; Arbitration invoked over repudiation of Official Time for Title 38 Employees; arbitration panel has not been requested;
  - E. National Grievance, NG 8-8-18; Arbitration over implementation of Executive Order 13837, FLRA Case No. 180928-08817; exceptions pending;
  - F. National Grievance, NG 12-10-19; Arbitration over implementation of Executive Order 13836, 13837 and 13839, FMCS Case No. 200203-03580; exceptions pending;
  - G. National Grievance, NG 6-18-19; Bad Faith Term Bargaining 1.0, FMCS Case No. 190805-09758; arbitration decision issued;
  - H. National Grievance, NG 8-28-19; Bad Faith Term Bargaining 2.0, FMCS Case No. 201024-00740; arbitration pending;
  - I. National Grievance, NG 10-15-19; Bad Faith Term Bargaining 3.0, FMCS Case No. 201024-00740; arbitration pending;
  - J. National Grievance, NG 10-31-19; Bad Faith Term Bargaining 4.0, FMCS Case No. 201024-00740; arbitration pending;
  - K. National Grievance, NG 12-11-19; Bad Faith Term Bargaining 5.0, FMCS Case No. 201024-00740; arbitration pending;
  - L. National Grievance, NG 1-10-20; Bad Faith Term Bargaining 6.0, FMCS Case No. 201024-00740; arbitration pending;
  - M. National Grievance, NG 2-12-21; Bad Faith Mediation, FMCS Case No. 210409-05662;



- N. Local Grievance, FMCS Case No. 200219-04164, Dayton VAMC and AFGE Local 2209; exceptions pending;
  - O. Local Grievance, FMCS Case No. 200310-04728, VA Central Office and AFGE Local 17; exceptions pending;
  - P. Local Grievance, FMCS Case No. 210629-08009, VA Central Office and AFGE Local 17; arbitration pending;
  - Q. Local Grievance, FMCS Case No. 200327-05175, Eastern Oklahoma HCS and AFGE Local 2250; exceptions pending.
- (2) The Parties further agree that any arbitration awards pertaining to the matters listed in Section I(E)(1) have no legal effect on the Parties.
  - (3) Within thirty (30) calendar days of the effective date of this Agreement, the Agency shall withdraw all pending Exceptions filed with the Federal Labor Relations Authority concerning matters identified in Section I(E)(1) of this Settlement Agreement.
  - (4) The Union, on behalf of all AFGE BUEs, past and present, agrees to release and waive its right to file any complaint, claim, lawsuit, grievance, appeal or proceeding of whatever nature arising from VA's implementation of the Trump EOs, the issuance of limitations on official time for VA employees in connection with the Trump EOs and/or the Title 38 Official Time Decisions, and the negotiation of the Successor Master Agreement as set forth in Section I(E)(1) of this Settlement Agreement against VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission, regarding VA's implementation of the Trump EOs, the issuance of limitations on official time for VA employees, and the negotiation of the Successor Master Agreement as set forth in Section I(E)(1) of this Settlement Agreement against VA with the exception of any claims that may arise by reason of breach of any term in this Settlement Agreement. The Union further agrees that it will not arbitrate or litigate any claims asserted in the matters identified in Section I(E)(1) of this Settlement Agreement against VA with the exception of any claims that may arise by reason of breach of any term in this Settlement Agreement.

**II. The Parties further agree as follows:**

- A. The Parties may mutually agree in writing to extend any time limits in this Settlement Agreement.
- B. This Settlement Agreement does not constitute an admission of guilt, fault, or wrongdoing by either party.
- C. The Settlement Agreement constitutes a joint effort by the Parties and should not be construed against any party.



- D. The Parties agree to fulfil their obligations under this Settlement Agreement in good faith.
- E. This Settlement Agreement addresses unique circumstances and shall not serve as precedent or past practice for resolving any other matter involving the Agency.
- F. The terms of this Settlement Agreement, the negotiations leading up to this Settlement Agreement, the data, documents, or information exchanged between the parties in the course of negotiations of this Settlement Agreement, may not be offered, taken, construed, or introduced as evidence of liability or as an admission or statement of wrongdoing by either party in any subsequent proceeding of any nature.
- G. The obligations of the Parties specified above constitute consideration sufficient to render this Settlement Agreement enforceable by either party.
- H. Both Parties accept the terms of this Settlement Agreement as the full settlement and satisfaction of the cases described in Section I(E)(1) above. The Parties may submit the Settlement Agreement as evidence of withdrawal of the actions, claims, complaints, grievances, appeals, or proceedings of whatever nature arising from the matters identified in Section I(E)(1).
- I. This Settlement Agreement represents the full, complete, and final understanding between the Parties. There are no other agreements between or among the Parties, expressed or implied, oral, or written unless placed in writing and signed by all Parties.
- J. The Parties will not institute any legal and/or administrative proceeding in any forum, or any sort, against any other party to this Settlement Agreement, based on the claims related to or arising from the allegations underlying this matter, other than in the case of an alleged breach of this Settlement Agreement.
- K. All the time limits in this Settlement Agreement are in calendar days. If a time limit expires on a Saturday, Sunday, or a Federal Holiday, then the time limit shall expire on the next business day.
- L. If a binding determination is made that any term(s) of this Agreement is/are unenforceable, such unenforceability shall not affect any other provisions of this Agreement, and the remaining terms of this Agreement shall, unless prohibited by law, remain effective as if such unenforceable provision(s) was/were never contained herein.
- M. The Parties shall designate representatives to whom required notice shall be provided under the terms of this Settlement Agreement within ten (10) days of the effective date of this Settlement Agreement.



N. Effective Date: The effective date of this Settlement Agreement is the date upon which this Settlement Agreement has been signed by all Parties identified below and is the date the Settlement Agreement is deemed executed and effective (a faxed or electronically scanned signature shall be valid as an original).

By their signatures below, the signatories hereby acknowledge and affirm that they have the authority to enter into this Settlement Agreement with a complete and thorough understanding of its terms, meaning, and effect and bind their respective principals to the terms herein. The Parties have read this Settlement Agreement, and each of the undersigned is signing the agreement voluntarily and freely, without coercion.

FOR VA:



Tanya Bradsher  
Chief of Staff  
Department of Veterans Affairs

Dated: 7-19-2021

Channing D. Phillips  
D.C. Bar No. 1014003  
Assistant United States Attorney  
555 4th St., NW, Washington, DC 20530

Brian P. Hudak  
Acting Chief, Civil Division

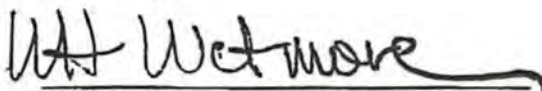
Katherine B. Palmer-Ball/JMF

Katherine B. Palmer-Ball  
D.C. Bar No. 1014003  
Assistant United States Attorney  
555 4th St., NW, Washington, DC 20530

Counsel for Defendants in Civil Action No. 18-2847 (DLF) (D.D.C.)

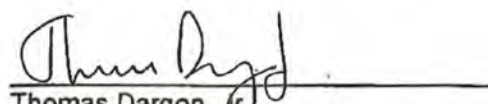
Dated: July 19, 2021

FOR AFGE:



William Wetmore  
Chair, Grievance & Arbitration Committee  
AFGE/NVAC

Dated: 7/20/2021



Thomas Dargon, Jr.  
Supervisory Attorney, NVAC  
Office of the General Counsel  
AFGE, AFL-CIO

Dated: 7/20/21



Dedra S. Curteman / JMF

Dedra S. Curteman  
Assistant United States Attorney  
555 4th St., NW, Washington, DC 20530

Counsel for Defendants in Civil Action No. 20-2084 (RJL) (D.D.C.)

Dated: July 19, 2021



# Exhibit 1



## **MEMORANDUM OF UNDERSTANDING VA/AFGE 2021 GROUND RULES MOU**

### **I. Preamble**

- A) This Memorandum of Understanding (MOU) constitutes an agreement between the Department of Veterans Affairs (hereinafter referred to as the Department or VA) and the American Federation of Government Employees, AFL-CIO, National Veterans Affairs Council (hereinafter referred to as AFGE or Union) (collectively, the Parties). The Parties agree that the ground rules set forth in this MOU (Ground Rules) replace and supersede the prior Ground Rules Memorandum of Understanding, dated April 2, 2019.
- B) The purpose of this MOU is to govern the procedures for negotiations of a new national collective bargaining agreement (Successor Master Agreement) between the VA and AFGE for employees included in the consolidated VA-AFGE bargaining units, as certified by the Federal Labor Relations Authority (FLRA) and successor certifications.
- C) By entering into this MOU, neither Party waives any of its rights under the Federal Service Labor-Management Relations Statute (the Statute).

### **II. Procedures**

- A) This MOU will remain in full force and effect until such time as the negotiations are complete and the Parties' new Successor Master Agreement is signed into effect by the Agency head.
- B) The Parties agree that each Chief Negotiator shall come to the table with full authority to make decisions and bind their respective Party. Only the respective Chief Negotiators, or their designated alternates, have the authority to bind the Department and the Union on the finality of an article.
- C) The Parties agree that all members of the Master Bargaining Teams, as defined in this MOU, have the requisite authority to fully participate/negotiate on behalf of their respective Party.
- D) The Parties agree that the participation of any subject matter experts shall be selected by mutual agreement of the Chief Negotiators on an issue-by-issue basis, subject to the following:
  - 1. One subject matter expert may be mutually agreed upon. In such an instance the VA will cover any travel related expenses for this individual.
  - 2. If the use of one subject matter expert cannot be mutually agreed upon, the Parties may mutually agree to each call their own subject matter expert. The party calling the subject matter expert will then be responsible for all expenses (travel and per diem) for their expert.



**MEMORANDUM OF UNDERSTANDING  
VA/AFGE 2021 GROUND RULES MOU**

- E) In addition to providing leadership and being responsible for the conduct of their members, each Chief Negotiator is responsible for the following with regard to that Party's team:
1. Determining the Master Bargaining Team members and, if required, subgroup members (10).
  2. Designating their alternate Chief Negotiator and Master Bargaining Team Alternates (10).
  3. Calling caucuses.
  4. Requesting mediation assistance through the Federal Mediation and Conciliation Service (FMCS).
  5. Requesting assistance from the Federal Service Impasses Panel.
  6. Addressing any other appropriate logistical issues.
- F) The Chief Negotiators, by mutual agreement, are jointly responsible for the following:
1. Changing the starting and ending time for bargaining sessions.
  2. For rolled articles, determining the need for any formatting or non-substantive edits to a rolled article.
  3. Expanding the negotiating team.
  4. Initialing when tentative agreement has been reached by them on all articles.
  5. Agreeing to the presence of observer(s).
- G) When an entire article is fully negotiated, and tentative agreement is reached on the article, each Chief Negotiator will initial each page of the article and sign and date the last page of the article. No signed article may be reopened without mutual consent of both Parties. No article shall become effective until the entire Successor Master Agreement is executed by the Parties consistent with the Statute and this MOU. The Chief Negotiators, or their designees, may engage in mutual review of tentatively agreed to articles for grammatical or typographical errors. The Chief Negotiators must mutually agree to any resulting corrections. The Parties shall address cross-referenced language in rolled-over articles that are impacted by or inconsistent with reopened articles (e.g., the Parties will collaborate to make sure that language in rolled-over articles is revised to conform with new agreements reached on reopened articles).



**MEMORANDUM OF UNDERSTANDING  
VA/AFGE 2021 GROUND RULES MOU**

**III. Participants**

- A) Each Party will select a total of ten (10) representatives to be members of the Master Bargaining Team, including the Chief Negotiator. Either Party may designate one of their Master Bargaining Team members as a note-taker to keep notes during the sessions. Note-takers are considered part of the Master Bargaining Team and may participate as a team member at the bargaining table during negotiations. Each Party must serve, in writing, the names and contact information of their respective representatives within sixty (60) calendar days of signing this MOU.
- B) No more than eight (8) members of each Master Bargaining Team may be seated at the bargaining table at the same time. The remaining Master Bargaining Team Members may attend as non-speaking members only. The Chief Negotiators may select and substitute seated members and non-speaking members as they choose.

**IV. Role of Observers**

- A) The Chief Negotiators may, by mutual agreement, permit observers to attend negotiation sessions. These observers will remain silent, will not participate in discussions, and will otherwise abide by all ground rules agreed to by Negotiating teams. Observers may attend caucuses with their respective team. Each Party will pay travel and per diem for its own observers.

**V. Role of Alternates**

- A) Each Chief Negotiator may substitute alternates for any members of his or her bargaining team, including the role of Chief Negotiator. The alternate will have the full rights, responsibilities, and authority of the Master Bargaining Team member for whom they are substituting.

**VI. Bargaining Locations and Schedules**

- A) The Department will be responsible for paying travel and per diem expenses for ten (10) Union Master Bargaining Team Members or their alternates during the bargaining sessions addressed by this MOU.
- B) The Department will supply, at its own expense, one conference room suitable for negotiations and one conference room suitable for caucuses at a location(s) to be determined by the Department. The Parties agree to travel and bargain at VA facilities in each of the following locations at least once: Houston, TX; Long Beach, CA; Dallas, TX; San Antonio, TX; Orlando, FL; Phoenix, AZ; Loma Linda, CA; Boston, MA; Charleston, SC; Pittsburgh, PA. The VA will determine when each location will be utilized based on availability of space and other resources. All other bargaining sessions will occur in space provided by the VA in Washington DC or in other locations as determined by the VA after consultation with the Union, so long as it is at a location where AFGE represents bargaining unit employees. Virtual bargaining



## **MEMORANDUM OF UNDERSTANDING VA/AFGE 2021 GROUND RULES MOU**

will occur with written mutual agreement of the Chief Negotiators or if necessitated by federal travel restrictions.

- C) If bargaining occurs at a VA facility, the Department will also supply a laptop, projector, screen, tables, chairs, conference-ready telephone, and access to printer/photocopier, if not already available.
- D) The initial bargaining session dates will be determined by mutual agreement of the Chief Negotiators no later than sixty (60) calendar days after Ground Rules are signed and the first bargaining session will commence no later than one-hundred and eighty (180) calendar days after Ground Rules are signed.
- E) The Master Bargaining Team requesting a caucus will leave the negotiation room to caucus in the caucus room. The Parties agree that caucus time will not be used to delay the bargaining process. Each Party will make every effort to restrict the number of caucuses and will provide a reasonable estimate on the anticipated length of the caucus.
- F) The Parties will meet for no less than four (4) weeks per reopened article (i.e., 12 reopened articles will require a total minimum of forty-eight (48) weeks of table bargaining) and will meet for no more than a total maximum of fifty-two (52) weeks of table bargaining as set forth in Article XVIII of these Ground Rules.

### **VII. Proposals**

- A) Either Party may propose to reopen up to six (6) articles (reopened articles) addressed by FSIP Decision and Order, 2020 FSIP 022, dated November 5, 2020. The Department proposes to reopen the following articles: Article 14 (Discipline and Adverse Action), Article 23 (Merit Promotion), Article 27 (Performance Appraisal), Article 46 (Local Supplement), Article 47 (Mid-Term Bargaining), and Article 48 (Official Time). The Union proposes to reopen the following articles: Article 12 (Details and Temporary Promotions), Article 16 (Employee Awards and Recognition), Article 22 (Investigations), Article 29 (Safety, Health, and Environment), Article 39 (Upward Mobility), and Article 66 (Technology for Administering, Tracking, and Measuring VBA Work). No additional articles may be proposed after this date.
- B) The Parties agree to rollover the following articles from the 2011 Master Agreement in their entirety with the exception of the Sidebar Agreements identified below, which are effective immediately, and any reopened articles that require specific revisions to specific sections or provisions therein:
  - Preamble
  - Article 1 (Recognition and Coverage)
  - Article 2 (Governing Laws and Regulations)
  - Article 3 (Labor-Management Cooperation)
  - Article 4 (Labor-Management Training)



## **MEMORANDUM OF UNDERSTANDING VA/AFGE 2021 GROUND RULES MOU**

- Article 5 (Labor-Management Committee)
- Article 6 (Alternate Dispute Resolution)
- Article 7 (Quality Programs)
- Article 8 (Child Care)
- Article 9 (Classification)
- Article 10 (Competence)
- Article 11 (Contracting Out)
- Article 13 (Reassignment, Shift Changes, and Relocations)
- Article 15 (Employee Assistance)
- Article 17 (Employee Rights)
- Article 18 (Equal Employment Opportunity)
- Article 19 (Fitness for Duty)
- Article 20 (Telework)
- Article 21 (Hours of Work and Overtime)
  - Article 21, Section 2 – Work Schedule Options (AWS and Credit Hours), Para G.(3) Miscellaneous (“The parties understand and agree that Credit Hours for FWS are initiated by the employee, subject to approval by the supervisor. In contrast, the parties understand and agree that overtime and compensatory time (with the exception of religious compensatory time) are initiated by the Department. Flextime will be requested and bargained locally.”)
- Article 24 (Official Records)
- Article 25 (Official Travel)
- Article 26 (Parking and Transportation)
- Article 28 (Reduction in Force)
- Article 30 (Occupational Health)
- Article 31 (Occupational Health)
- Article 32 (Staff Lounges)
- Article 33 (Temporary, Part-Time, and Probationary Employees)
- Article 34 (Job Sharing)
- Article 35 (Time and Leave)
  - Article 35, Section 10 – Leave Without Pay, Para F.(2) (“When requested by a reservist or National Guard member for military duties, ~~in accordance with appropriate military orders and/or documentation,~~ employees may request such leave after their military leave has been exhausted (38 USC 4316(d)");
  - Article 35, Section 13 – Military Leave, Para B. (“Full-time permanent and part-time permanent employers who are members of the National Guard or the Armed Forces Reserves are entitled to 15 calendar days of regular military training leave in a fiscal year for active duty or inactive duty for training.”)
- Article 36 (Timely and Proper Compensation)
  - Article 36, Section 3 – Special Payments (“Whenever a Department error results in the failure of an employee to receive less than 90% of their basic pay and allowances, Special pay can be authorized upon



## **MEMORANDUM OF UNDERSTANDING VA/AFGE 2021 GROUND RULES MOU**

request from the employee or local payroll office. Corrective actions should begin immediately upon identification of the pay affecting error. Special pay authorizations can only be submitted upon completion of the corrective action(s). The processing of Special pay requests is made by VA's payroll provider and normally take 3-5 business days. Special payments will be made in the same form normally issued to an employee (i.e., EFT or check) or in other forms of payment. On an annual basis, the Department shall provide the Union with a report of AFGE bargaining unit employees who received authorizations for Special pay due to an employee receiving less than 90% of the basic pay and allowances.”)

- Article 37 (Training and Career Development)
- Article 38 (Uniforms)
- Article 40 (Within-Grade Increases and Periodic Step Increases)
- Article 41 (Workers' Compensation)
- Article 42 (Affiliations)
- Article 43 (Grievance Procedure)
- Article 44 (Arbitration)
- Article 45 (Dues Withholding)
- Article 49 (Rights and Responsibilities)
- Article 50 (Surveillance)
- Article 51 (Use of Official Facilities)
- Article 52 (Title 38 Advancement)
- Article 53 (Clinical Research)
- Article 54 (Title 38 Nurse Pay/Survey)
- Article 55 (VHA Physician and Dentist Pay)
- Article 56 (Title 38 Hybrids)
- Article 57 (Physical Standards Board)
- Article 58 (Professional Standards Board)
- Article 59 (Proficiency)
- Article 60 (Title 38 Representation at Boards or Hearings)
- Article 61 (Title 38 Vacancy Announcements)
  - Article 61, Section 1 – General (“All Title 38 bargaining unit positions will be announced facilitywide with posting and/or distribution a proper subject for local bargaining. If facilities are consolidated, positions will be posted at each geographic location. These announcements must be readily available for review by employees. ~~The posting/application period will run for a minimum of 14 calendar days.~~”)
- Article 62 (Veterans Canteen Service)
- Article 63 (Research Grants)
- Article 64 (Research Programs and Demonstration Projects)
- Article 65 (Wage Surveys)
- Article 67 (Skills Certification)



**MEMORANDUM OF UNDERSTANDING  
VA/AFGE 2021 GROUND RULES MOU**

- C) The Parties agree that the Duration of Agreement from the 2011 Master Agreement will be rolled-over in its entirety, subject to a new effective date in Section 1 (Effective Date).
- D) The Parties' proposals must include the existing 2011 Master Agreement language and newly proposed language for each existing article in the 2011 Master Agreement. As such, AFGE's proposals will have any newly proposed language identified in red font. The Department's proposals will have newly proposed language identified in blue font. Existing, unchanged contract language from the 2011 Master Agreement will remain in black font. Any current language from the 2011 Master Agreement that is proposed to be deleted will be identified by being struck through. When a Party strikes non-original text, it will be highlighted in that Party's respective color.
- E) Counters to language will be followed by a parenthetical notation setting forth the Party making the change and the date.
- F) Each Party will submit a complete set of electronic proposals for the reopened articles in Microsoft Word format, no later than thirty (30) calendar days prior to the first bargaining session.
- G) During bargaining, the Chief Negotiators will each select two proposals to present and then alternate presenting proposed articles. The Parties will introduce each proposed article before any discussion of the article takes place. Neither Party will read the article to the other Party during their presentation. The Party introducing the proposal will identify any changes made and provide the meaning, objectives, and interests related to the proposal. The Parties agree to bargain in good faith, while working efficiently and diligently.
- H) The record of the Parties' proposals and agreement for each article and any other joint bargaining documents will be in Microsoft Word format. At the end of each day, when the Parties break for caucus and upon request during the bargaining sessions, the Neutral will provide an electronic copy of the working document to the Parties.
- I) The Chief Negotiators may mutually select a private Party (non-governmental employee) designated the "Neutral" to memorialize the Parties' proposals and tentative agreements during the bargaining sessions. This person will attend all negotiations and be responsible for typing and sharing the work of the Parties during table bargaining. The Neutral is not considered part of either bargaining team and may not participate as a team member at the bargaining table during negotiations or in caucuses. Should the Chief Negotiators not agree to a private Party, each team will designate a member to present their proposals and provide working documents at breaks, caucuses, or at the end of each day, upon request and as appropriate.
- J) All bargaining will be traditional unless a different approach is mutually agreed to by the Parties but the Parties, while presenting proposals, may incorporate both traditional and Interest Based Bargaining (IBB) bargaining techniques.



**MEMORANDUM OF UNDERSTANDING  
VA/AFGE 2021 GROUND RULES MOU**

**VIII. Mediation & Impasse**

- A) Either Party, through their Chief Negotiator and subject to the limitations in these Ground Rules, may request assistance from FMCS or the FSIP at any time in accordance with law or regulation.

**IX. National Level Mid-Term Negotiations**

- A) By mutual agreement, the Master Negotiating Team Chief Negotiators may determine that matters subject to national level midterm bargaining will be completed during the term bargaining for the new Successor Master Agreement.

**X. Local Supplemental Negotiations**

- A) Local supplemental negotiations may not be initiated after the effective date of these Ground Rules.

**XI. Bargaining Session Protocol**

- A) No electronic recording or transcripts will be made during the negotiations. However, each Party may make and keep its own notes and records. Master Bargaining Team members may use non-voice activated laptops at the table.
- B) Mobile Devices: Cellular phones and other mobile devices will be placed on vibrate or silent mode. Team members who repeatedly fail to honor this request will be asked to leave the bargaining room.

**XII. Negotiability Before Agency Head Reviews/Appeals**

- A) Any dispute concerning these negotiations, including any negotiability disputes, will not delay bargaining on issues not in dispute while the action is pending, except by mutual agreement. The Parties agree that, until the Department Head (or his or her designee) approves a new Successor Master Agreement between the Parties, or the new Successor Master Agreement becomes otherwise effective pursuant to 5 U.S.C. § 7114(c)(3), the lawful provisions of the 2011 Master Agreement are controlling.

**XIII. Ratification**

- A) The Union will have 60 calendar days after a tentative agreement has been reached to ratify the Master Agreement and notify VA of such ratification. Ratification shall be limited to reopened articles only. In the event that the Union fails to notify the Department within 60 calendar days that it has ratified the Master Agreement, the Union agrees that the tentative agreement is ratified and agency head review will begin on the 61<sup>st</sup> calendar day after the tentative agreement was reached.



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VA/AFGE 2021 GROUND RULES MOU**

- B) If the Union notified VA, within 60 calendar days, that it has failed to ratify the tentative agreement, either Party may contact FMCS to request a mediator. The Parties will have a total of 30 calendar days to hold FMCS-facilitated concentrated mediation, starting on the date the Parties begin FMCS facilitated concentrated mediation on the date(s) scheduled by the mediator, and for the Union to re-ratify the tentative agreement. Thereafter, either Party may request the assistance of FSIP.
- C) If the Union ratifies the Tentative Master Agreement, it will so notify the Agency and the Chief Negotiators will meet within five (5) calendar days to execute the Successor Master Agreement and mutually submit it for Agency Head Review pursuant to 5 U.S.C. § 7114(c).
- D) In the event a negotiability or bargaining dispute arises concerning the Successor Master Agreement and the issuance of a final third-party decision concerning that negotiability or bargaining dispute does not result in an obligation to further bargain, the Union will proceed to ratification.

**XIV. Agency Head Review and Effective Date**

- A) Pursuant to 5 USC 7114(c), the Department Head shall approve the Master Agreement within 30 calendar days from the date the agreement is executed if the agreement is consistent with the Labor Relations Statute and any other applicable law, rule or regulation. Agency Head Review shall be limited to reopened articles only.
- B) If the Department Head disapproves any agreed upon article of the Master Agreement, the Department Head shall cite the specific law which the agreement violates and provide with specificity the articles and sections so disapproved.
- C) If the Department Head does not approve or disapprove the Master Agreement within the thirty (30) calendar day period, the Master Agreement shall take effect.
- D) The Master Agreement will be in effect when it has been executed and approved under this section.
- E) If the Department Head disapproves the Master Agreement, the Parties will only reopen for negotiations the section(s) that have been disapproved and those sections that were expressly agreed upon, in writing and initialed by both Chief Negotiators at the time the Article is signed, as related concessions for the disapproved section(s) in the same Article. Within ten (10) calendar days after the notice of disapproval is sent, and subject to the requirements in Section VII(A) of these Ground Rules, the Parties will meet face to face in Washington, D.C. with the assistance of an FMCS mediator for a concentrated mediation that will last no more than thirty (30) calendar days. Virtual meeting will occur with written mutual agreement of the Chief Negotiators or if necessitated by travel restrictions imposed due to the pandemic. If



## **MEMORANDUM OF UNDERSTANDING VA/AFGE 2021 GROUND RULES MOU**

an agreement is not reached by the end of the thirty (30) calendar days, either Party may request the assistance of FSIP.

### **XV. Amendments to these Ground Rules**

- A) The Chief Negotiators may amend in writing any provisions of these Ground Rules by mutual consent.

### **XVI. Disputes over these Ground Rules**

- A) If a dispute arises under this MOU concerning the interpretation of these Ground Rules, the Chief Negotiator for the Party declaring the dispute shall notify the other Chief Negotiator immediately and the Chief Negotiators will attempt to resolve the dispute within 48 hours. If the dispute is not resolved within the 48 hours, neither party waives its statutory rights or its rights under the 2011 Master Agreement between the Department of Veterans Affairs and the American Federation of Government Employees.
- B) Time spent resolving any dispute related to these Ground Rules shall not extend the timeline established in Article XVIII of the Ground Rules for bargaining. Subject to the minimum bargaining period set forth in Article VI(F) of these Ground Rules, nothing in the Ground Rules shall be construed to limit either Parties' ability to request assistance from FMCS or FSIP at any time during bargaining over the reopened articles of the collective bargaining agreement.

### **XVII. Official Time for Bargaining**

- A) This section applies to Union representatives on the Master Bargaining Team who are employed by the Department. In accordance with 5 USC 7131(a), ten (10) Union representatives on the Master Bargaining Team shall be granted official time to attend bargaining sessions as set forth in Section XVIII. In accordance with 5 USC 7131(d), Union representatives on the Master Bargaining Team will be granted official time to prepare for bargaining sessions. For Union representatives on the Master Bargaining Team who are not allocated 100% official time, the approval of official time to prepare for bargaining sessions will be subject to the requirements set forth in Article 48. Master Bargaining Team members will not be scheduled to work by the Department on weekends of the entire bargaining process. Master Bargaining Team members and sub-group members will not receive this statutory official time under 5 USC 7131(a) during non-bargaining weeks. In the event the parties are unable to reach agreement, official time to Union Master Bargaining Team members shall be granted to attend meetings scheduled by the FMCS or FSIP, consistent with this MOU.

### **XVIII. Bargaining Schedule**



**MEMORANDUM OF UNDERSTANDING  
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- A) The Parties will meet for no less than forty-eight (48) weeks of table bargaining and for no more than a total maximum of fifty-two (52) weeks of table bargaining sessions as follows:
- i. Two (2) consecutive weeks of table bargaining followed by a two (2) week interval away from the table; and
  - ii. If a Tentative Master Agreement is not reached within fifty-two (52) weeks of table bargaining sessions, the Parties will have thirty (30) calendar days in which to hold FMCS concentrated mediation and reach a Tentative Master Agreement. The Chief Negotiators may mutually agree in writing to extend FMCS concentrated mediation, if desired.
- B) The maximum period of fifty-two (52) weeks of table bargaining may be extended by written mutual agreement of the Parties.
- C) The schedule for the weeks of bargaining, with the exception of the concentrated mediation weeks, will be as follows: week one: travel on Monday, bargaining Tuesday through Friday; and week two: bargain Monday through Thursday and travel on Friday.
- D) During bargaining weeks, the Parties will meet from 8:00am to 5:00pm with one (1) hour lunch break. During concentrated mediation, the weekly schedule shall be set by the mediator.
- E) The parties will not bargain during the weeks of June 20, 2022, October 31, 2022, and November 7, 2022. Sub-groups may meet during and between table bargaining sessions. Table bargaining will not occur on a Federal holiday, but those days shall be counted as bargaining days for the purpose of the above timeline.
- F) Subject to the minimum bargaining period set forth in Article VI(F) of these Ground Rules, either party may request assistance from the FMCS or FSIP at any time in accordance with appropriate law and regulations. Observers will not be permitted at FMCS or FSIP sessions. Any mediation assistance requested by the parties individually or jointly will be completed by the end of the final sessions of concentrated mediation unless altered by the mutual consent of the parties.

The MOU is negotiated by the following individuals with authority to bind their respective party and constitutes the Ground Rules between VA and AFGE for the negotiation of a Successor Master Agreement:



**MEMORANDUM OF UNDERSTANDING  
VA/AFGE 2021 GROUND RULES MOU**

For the Union:

For the Department:

\_\_\_\_\_  
Alma Lee, Chief Negotiator, AFGE

\_\_\_\_\_  
Kurt Main, Chief Negotiator, VA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



# Exhibit 2

First, you will log into VATAS and click [Reports Server](#) on the Main Menu.



#### Employee Main Menu

Time	
Timesheet	
Timesheet Summary	
Leave Requests	
Premium Pay Requests	
Leave Balances	
Schedule	
Reports	
Archive/Reports server (opens in new window)	
Continuation of Pay(COP)	
COP Recipients	

After you've been redirected to the reports site, you will follow these steps:

1. Go to the Main Menu for your role in VATAS
2. Choose **Reports**




#### Employee Main Menu

Time	
Timesheet	
Timesheet Summary	
Leave Requests	
Premium Pay Requests	
Leave Balances	
Schedule	
Reports	
Reports	
My Saved and Scheduled Reports	
Adhoc Report Management	
Continuation of Pay(COP)	
COP Recipients	



3. Then select "Leave Used Summary"



EmployeeTimekeeperSupervisorVACO Admin ▼

Employee Main Menu >

Reports

Name	Description
Leave Correction Report - Entire Agency Listing	This report lists, by employee and pay period, adjustments to leave hours
Leave Time Expiration Report	This report lists employees who have leave that is due to expire.
Leave Used Summary	Shows leave used on timesheets
My Ad-Hoc Reports	Shows Ad-Hoc Reports Built or Copied by You
Organization Assignment	This report lists employees assigned to TL UNITS
Published/Approved Ad-Hoc Reports	Shows Ad-Hoc Reports that are Published/Approved for VA-wide use
Timesheet Summary	This report lists a summary of timesheet and leave activity
Unposted Leave/Premium Pay Requests	Shows leave/premium pay requests that were not posted to a timesheet

My Saved and Scheduled Reports

Cancel

4. Select the Pay Periods you wish to include in the report. Increments of one year for each summary.

July 17, 2018- July 16, 2019  
July 17, 2019- July 16, 2020  
July 17, 2020- July 16, 2021

## Leave Used Summary

### Report Parameters

Run Off Hours: ☐

From PP: 2018-14: Jul 08, 18 - Jul 21, 18

To PP: 2019-14: Jul 07, 19 - Jul 20, 19

Employee:  Search for the Employee

Select TL Stations: (10 allowed, 0 selected) Remove All Stations Search for Station

TL Units: (10 allowed, 0 selected) Remove All TL Units Search for TL Unit

Run Report Cancel

5. Select Search for The Employee or Leave this field blank to pull your name.

## Leave Used Summary

### Report Parameters

Run Off Hours: ☐

From PP: 2018-14: Jul 08, 18 - Jul 21, 18 ▼

To PP: 2019-14: Jul 07, 19 - Jul 20, 19 ▼

Employee:  **Search for the Employee**

Select TL Stations: (10 allowed, 0 selected) **Remove All Stations** **Search for Station**

TL Units: (10 allowed, 0 selected) **Remove All TL Units** **Search for TL Unit**

**Run Report**

**Cancel**

## Select User - Employee

User Name:

**Search**

**Clear**

☐ Select all Users

⬆ User Name

**Select**

KEY, GRACIELA I - GRACIELA KEY

1-1 of 1 Records

1

View

**Cancel**



## Leave Used Summary

### Report Parameters

Run Off Hours: ☐

From PP: 2018-14 Jul 08, 18 - Jul 21, 18 ▼

To PP: 2019-14 Jul 07, 19 - Jul 20, 19 ▼

Employee: KEY, GRACIELA I - GRACIELA KE Search for the Employee

Select TL Stations: (10 allowed, 0 selected) Remove All Stations Search for Station

TL Units: (10 allowed, 0 selected) Remove All TL Units Search for TL Unit

Run Report

Cancel

6. Leave these fields blank for Select TL Stations and TL units.
7. Once you are ready to run the report, you will click the blue Excel link in the top right corner.

PDF | Excel | HTML | CSV Background Execution ▼

8. Go back to the Main Menu and choose **My Saved and Scheduled Reports**



Employee

Timekeeper

Supervisor

VACO Admin ▼

Employee Main Menu >

## Reports

		Reports
Name	Description	
Leave Correction Report - Entire Agency Listing	This report lists, by employee and pay period, adjustments to leave hours.	
Leave Time Expiration Report	This report lists employees who have leave that is due to expire.	
Leave Used Summary	Shows leave used on timesheets	
My Ad-Hoc Reports	Shows Ad-Hoc Reports Built or Copied by You	
Organization Assignment	This report lists employees assigned to TL UNITS.	
Published/Approved Ad-Hoc Reports	Shows Ad-Hoc Reports that are Published/Approved for VA-wide use	
Timesheet Summary	This report lists a summary of timesheet and leave activity	
Unposted Leave/Premium Pay Requests	Shows leave/premium pay requests that were not posted to a timesheet	

My Saved and Scheduled Reports

Cancel

9. When the report has finished generating, there will be a **Download** button on the right-hand side. When you select that, it will open an Excel spreadsheet with the report. Repeat steps 4 thru 8 to update each year of leave.

My Saved and Scheduled Reports

States: All Search Clear

<input type="checkbox"/> Select All Reports	Name	Report Name	Submitted	Completed	Next Scheduled Date	Format	Status	Pages	Size (Bytes)	Message	Download	ReRun	Delete
<input type="checkbox"/>	Leave Used Summary	Leave Used Summary	Jun 30, 2021 12:24:03 PM	Jun 30, 2021 12:24:03 PM	No Schedule	XLS	Complete	1	29488		<a href="#">Download</a>	<a href="#">ReRun Now</a>	<a href="#">X</a>

1-1 of 1 Records

1

DeleteEmailCancel

View 3254100



# Exhibit 3

### Claim Form #1 (Flat Payment; 66 Hours)

- I make the following declaration in lieu of an affidavit, as permitted by Section 1746 of Title 28 of the United States Code. I submit this Declaration to receive sixty-six (66) hours of straight pay compensation for union representational duties performed while on leave without pay, annual leave, compensatory time, or in a non-duty status. I attest that I performed these representational duties at some time between July 17, 2018 through July 20, 2021. During the time period, I was a Designated AFGE Representative for the American Federation of Government Employees, and I performed representational duties eligible for official time as provided for in 5 U.S.C. 7131 or applicable negotiated agreements between VA and AFGE. I am providing this information to the best of my knowledge and acknowledge and agree that VA may take disciplinary or adverse action against me if I knowingly make or provide a false or fraudulent statement or provide false or fraudulent information in making this this claim. I make this statement of my own free will. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

### Claim Form #2 (Additional Payment; 66+ Hours)

- I hereby attest to the following:  
I am over eighteen years of age, and if called to do so, would testify consistent with this Affidavit.  
I am now, or was previously, employed by the U.S. Department of Veterans Affairs.  
As a result of the Agency's refusal to approve official time in reliance on its implementation of Executive Order 13837, dated May 25, 2018, or the administrative determinations made pursuant to 38 U.S.C. §7422(d), dated November 7, 2018 and April 26, 2019, I performed representational duties that were otherwise appropriate for official time while in a leave status or non-pay status. During this time, I was also a Designated AFGE Representative for the American Federation of Government Employees.  
An accounting of the representational duties that I performed while in a leave status or non-pay status, as well as supporting documentation or sufficient information to verify my claim, is contained with my claim.  
But for the Agency's refusal to approve official time as set forth above, I would have performed these representational duties during official time as provided for in 5 U.S.C. 7131 or applicable negotiated agreements between VA and AFGE.  
I declare, under penalty of perjury, that the information and documentation submitted in connection with this case are true and accurate to the best of my knowledge. I acknowledge and agree that VA may take disciplinary or adverse action against me if I knowingly make or provide a false or fraudulent statement or provide false or fraudulent information in making this this claim. I make this statement of my own free will. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

### Claim Form #3 (Reimbursement of Expenses)

- I make the following declaration in lieu of an affidavit, as permitted by Section 1746 of Title 28 of the United States Code. I am a Designated AFGE Representative for the American Federation of Government Employees. I submit this Declaration to receive reimbursement of out-of-pocket expenses AFGE incurred as a result of the Agency's implementation of Trump Executive Order 13837. I attest that AFGE incurred these expenses at some time between November 15, 2019, through July 20, 2021. During this time period, AFGE incurred out-of-pocket expenses for office space, storage space, equipment, and/or



technology the Agency was otherwise required to provide pursuant to applicable negotiated agreements, including Article 51 of the VA-AFGE Master Agreement between the U.S. Department of Veterans Affairs and the American Federation of Government Employees dated March 15, 2011. These out-of-pocket expenses for office space, storage space, equipment, and/or technology are supported by the documentation I have submitted in support of this claim. I understand that the information and documentation I submit will be subject to verification by the Agency. I am providing this information and documentation to the best of my knowledge and acknowledge and agree that VA may take disciplinary or adverse action against me if I knowingly make or provide a false or fraudulent statement or provide false or fraudulent information in making this claim. I make this statement of my own free will. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.