

# MEMORANDUM OF UNDERSTANDING

Frostburg State University ("FSU")

and

the American Federation of  
State, County and Municipal Employees  
("AFSCME")

Exempt Bargaining Unit

Effective  
February 14, 2014 to June 30, 2016



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## **PREAMBLE**

This Memorandum of Understanding (MOU) is entered into by Frostburg State University (Employer or University) and the American Federation of State, County, and Municipal Employees (Union or AFSCME). It is understood that the Board of Regents of the University System of Maryland (USM) must approve this MOU and that agreements on issues requiring funding or approval by the General Assembly of Maryland are tentative pending approval and funding by the General Assembly of Maryland. The provisions of this MOU shall in no way diminish or infringe any rights, responsibilities, powers or duties conferred by the Constitution of the State of Maryland, or the Annotated Code of Maryland, including State Personnel and Pensions Article (SPP), Title 3, Annotated Code of Maryland. In the event of an inconsistency between this MOU and the law, the law shall prevail.

## **ARTICLE 1. RECOGNITION**

### **1.1 Exclusive Representative**

The University recognizes the Union as the exclusive representative of the employees, as defined in Section 1.2 of this Article, for the purpose of negotiating collectively with the University pursuant to SPP, Title 3, with respect to wages, hours, and other terms and conditions of employment. For employees covered by this MOU, the University will not negotiate with any other Union or employee organization on matters recognized by the State Higher Education Labor Relations Board (SHELRB) as subjects of bargaining.

### **1.2 Definition of Exempt Bargaining Unit**

The term "employees", "bargaining unit employees" and "employees covered by this MOU" as used in this MOU shall mean all Exempt employees in the Exempt Employees Bargaining Unit at FSU, exclusive of managerial, supervisory and confidential employees as certified by the SHELRB.

### **1.3 Positions**

Should any new Exempt positions be created, the Employer shall notify the Union at least thirty (30) days prior to the intended date of implementation.

If it is believed that the bargaining unit status of a position has changed, the University or the Union, whichever is proposing the change, shall notify the other. Following such notice, if the parties are in disagreement over whether or not the position should be included in the unit, they will meet and attempt to resolve the issue.

Any unresolved dispute between the parties regarding whether or not a position or positions should be included in the bargaining unit covered by this MOU may be submitted to the SHELRB by either party pursuant to its regulations. The decision of SHELRB shall be final and binding on both parties subject to any appeal rights provided by law.

## **ARTICLE 2. NON-DISCRIMINATION**

It is the policy of the University and AFSCME to prohibit discrimination in employment against any employee because of race, age, color, religion, creed, gender, sexual orientation, country of national origin, disability, marital status, or labor organization affiliation or lack of affiliation, and to promote and implement a positive and continuing program of equal employment opportunity.

## **ARTICLE 3. MANAGEMENT RIGHTS**

### **3.1 Scope of Rights**

The Employer retains the sole and exclusive authority for the management of its operations and may exercise all rights, powers, duties, authority and responsibilities conferred upon and invested to it by all laws including, but not limited to, Title 3, SPP. It is agreed by the parties that any section

of this MOU that conflicts with current law, in particular Title 3, SPP, can be changed by the Employer after providing the Union with an opportunity to bargain over the proposed change. It is understood and agreed by the parties that, except as limited by specific sections of this MOU, the Employer possesses all other rights, powers, duties, authority and responsibilities to operate and manage all aspects of its operations, including but not limited to, its departments, agencies and programs and carry out constitutional, statutory, and administrative policy mandates and goals, including, but not limited to, the right to:

- A. Determine the mission, budget, organization, numbers, types and grades of employees assigned, the work projects, tours of duty, methods, means and personnel by which its operations are to be conducted, technology needed, internal security practices, relocation of its facilities;
- B. Maintain and improve the efficiency and effectiveness of operations;
- C. Determine the services to be rendered, operation to be performed, and technology to be utilized;
- D. Determine the overall methods, processes, means and classes of work or personnel by which governmental operations are to be conducted;
- E. Hire, direct, supervise, and assign employees;
- F. Promote, demote, discipline, discharge, retain, and layoff employees;
- G. Terminate employment because of lack of funds, lack of work, under conditions where the Employer determines continued work would be inefficient or nonproductive, or for other legitimate reasons;
- H. Set the qualifications of employees for appointment and promotion, and set standards of conduct;
- I. Promulgate and/or implement State, USM, University or department rules, regulations, policies or procedures;
- J. Provide a system of merit employment according to the standard of business efficiency; and
- K. Take actions, not otherwise specified in this Article necessary to carry out the mission of the Employer.



## ARTICLE 4. UNION RIGHTS

### 4.1 Right of Access

Union representatives shall have reasonable access to areas in which employees work with prior notice and approval by the Employer for the purpose of administration of this MOU. It is understood that such representatives will not disturb the work of employees while visiting the Employer's facilities. Approval for access described in this section shall not be unreasonably denied.

### 4.2 Means of Communication

The Union shall be permitted to use internal University mail systems, including computer/electronic mail/fax for mailings to the employees covered by this MOU, provided that such use does not interfere with the Employer's operations and is for legitimate Union purposes. If the Employer can illustrate that the Union is not using equipment or services in a manner consistent with this section, the Employer shall notify the Union and provide the specific usage(s) it finds in violation of this section. A meeting between the Employer and the Union shall take place within two (2) business days in which the parties shall attempt to resolve the matter. If no agreement is reached, the Employer may revoke the Union's use of the equipment and services. The Union may submit to the Grievance Procedure outlined in this Agreement the issue of whether the Employer's revocation is in compliance with this Article. Confidentiality shall be maintained subject to the Employer's security needs. Mass mailings, through the Employer's mail processing department, shall be limited to four (4) per calendar year.

### 4.3 Bulletin Boards

The Employer shall provide space for a lockable bulletin board, provided by the Union, at the Physical Plant, the Hitchins Administration Building, the Guild Center, Frampton Hall, Compton Science Center, the Lewis J. Ort Library, Pullen Hall, Sand Spring, the Physical Education Center, and the Lane Center. These bulletin boards shall be for the exclusive use of the Union. The Union shall be responsible for the posting of all items on the bulletin board. Each item posted shall be dated and initialed by the Union official approving the posting. The Union shall ensure that posted items are not illegal, defamatory, factually inaccurate, partisan, or political and that no item is detrimental to the safety and security of the University. At the time of posting, the Union shall provide an informational copy of all items to the Employer. The Union may also, subject to the aforementioned limitations and in accordance with University policies on distribution of information and solicitation, display information on any other University bulletin boards used for the dissemination of public information.

### 4.4 Right to Information

- A. The University shall provide to the Union the following information: new hires, including contractual employees hired into a permanent position, separations, promotions, transfers and reclassifications, for all bargaining unit employees. New hire employee information shall be provided at the beginning of each month and will include actions processed during the preceding month. Other personnel actions listed above will be provided to the Union on a quarterly basis. The above information shall be provided on a computer tape or disk.

- B. Upon request by the Union, the Employer will also provide, in accordance with the Maryland Public Information Act, any other relevant and necessary information that the Union is entitled to as the exclusive representative of bargaining unit employees.

#### **4.5 New Employee Orientation**

One (1) Local 239 Union officer or job steward, shall be granted twenty (20) minutes during new employee orientation sessions organized by the Employer to meet with new bargaining unit employees and to make a presentation on behalf of the Union. In the event the Employer does not provide for an employee orientation, a Local 239 Union officer or job steward and the new bargaining unit employee will be allowed twenty (20) minutes without loss of compensation, to meet during work time to discuss information pertaining to the role of the Union. The Union officer or job steward shall notify and obtain approval from his/her own supervisor as well as the new employee's supervisor. Approval of the twenty (20) minutes of release time for the purpose stated in this Section 4.5 will not be unreasonably denied and in no event shall be withheld for more than five (5) working days after notification has been provided.

#### **4.6 Union Job Stewards**

The Union may appoint or elect certain bargaining unit employees to serve as Union job stewards. There will be a total of two (2) stewards representing employees covered by this MOU. Consistent with operational needs, the Employer will allow reasonable release time as defined in Article 16, Grievance Actions of this MOU, without loss of compensation, to job stewards for the purpose of attending grievance meetings with the Employer. Typically, a complaint will have no more than one (1) Union representative (President or job steward) in attendance at a grievance hearing. Exceptions may be granted by mutual agreement of the parties. This limitation does not apply to non-University employee staff representatives. The Union will submit a list of job stewards to the Employer within ninety (90) days after the ratification of this MOU, and thereafter will notify the Employer in writing as to any changes to the job steward list.

#### **4.7 Meeting Space**

The Employer agrees to provide, at no cost to the Union, available meeting space to conduct Union related meetings provided that the Union submits a written request for the use of facilities at least five (5) working days in advance of the date of the meeting and complies with University reservation procedures. The University will respond to a written request within two (2) business days. When a request for use of meeting space is denied, the Employer will also follow-up with a written notification. The Employer shall not discriminate against the Union or its members when assessing the feasibility of providing meeting space for Union business, nor shall the Employer unreasonably deny a request.

## **ARTICLE 5. EMPLOYEE RIGHTS**

#### **5.1 In General**

In addition to all rights granted under this MOU, all employees in the bargaining unit shall enjoy the protections and rights codified in Section 3-301, Title 3, of the State Personnel and Pensions, Annotated Code of Maryland.

## ARTICLE 6. SCOPE OF AGREEMENT

- 6.1 The specific provisions of this MOU supersede the corresponding specific terms of previously established policies and procedures maintained by the University. This MOU may be modified only by the written agreement of the University and AFSCME. All Board of Regents (BOR) and University policies and procedures shall remain in full force and effect unless modified specifically by this MOU or changed as provided below.
- 6.2 The Employer and the Union acknowledge that during the negotiations that resulted in this MOU, each had the unlimited right and opportunity to make demands and proposals with respect to any subject of bargaining as provided in Title 3, SPP, and applicable SHELRB regulations and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this MOU. The Employer and the Union agree that for the life of this MOU, each waives the right, and neither shall be obligated to bargain collectively with respect to: 1) any subject specifically referred to in this MOU; 2) subjects on which the Union made, or could have made, proposals during bargaining, but about which no agreement was reached, so long as the Union was aware or reasonably should have been aware of the subject during the bargaining process. The parties further agree and intend that the waiver set forth herein shall be construed as consistent with the provisions of the preamble to this MOU and enforceable.
- 6.3 The University and the Union acknowledge their mutual obligation to negotiate as defined and limited by law and this MOU over Employer proposed changes in wages, hours and other terms and conditions of employment that affect bargaining unit employees and that are not specifically covered by this agreement and not reserved to the University as a management right. In such circumstances, the obligation to bargain is limited to those changes that will affect the working conditions of bargaining unit employees and that are subject to bargaining under applicable law. The minimum notice to the Union of the intended change in working conditions subject to this obligation is thirty (30) calendar days prior to the proposed implementation of the change. If required to meet a legislative mandate or an emergency situation (including an emergency fiscal management issue), management will notify the Union as soon as possible prior to the proposed implementation of the change. This notification must indicate the legislative mandate or emergency situation as well as any known timeframes in conjunction with this mandate. The Union may request bargaining within this notice period. Where the Union does not request bargaining, the University is free to implement the changes. Where the Union does request bargaining, but does not request information, the Union shall submit proposals in response to the Employer's intended changes within ten (10) calendar days of its request to bargain, and the parties will meet promptly to discuss the changes and any proposals submitted by the Union. This ten (10) day time limit may be extended by written agreement of the parties. It is understood and agreed by the parties that, in the event the Union requests information relevant to the proposed change(s), the timeframe associated with the submission of proposals shall commence upon the University providing to the Union the information to which the Union is entitled. The Union agrees that it will tailor its information requests so as not to unduly delay this process.
- 6.4 The Union's ability to negotiate does not provide the Union with a "veto" power over Employer-initiated changes, and it shall not unduly delay the implementation of such changes. The University may implement the proposed changes that are subject to this process even if after good faith

negotiations there has not been mutual agreement. Where bargaining is required and requested by the Union over changes necessary to meet a legislative mandate or emergency condition, the parties will negotiate in good faith, and the Employer may implement any changes necessary to meet the legislative mandate or emergency condition, including any applicable timeframes, even if no agreement is reached with the Union.

6.5 This article is also subject to Article 25 - Severability.

## **ARTICLE 7. LABOR-MANAGEMENT COMMITTEE**

### **7.1 Purpose of the Committee**

The University and the Union agree to create a Labor-Management Committee for the purpose of identifying issues of concern to either party and to jointly procure solutions to such concerns. The Committee shall also serve as a forum of discussion for any issues associated with the implementation of any aspect of this MOU. However, the Committee shall not serve as a substitute for formal negotiations when such is necessary and required.

### **7.2 Composition of the Committee**

The University and AFSCME shall appoint two (2) members each to the Labor-Management committee. The committee shall meet at least once a month for the first six months and every other month or as needed after that. Each of the parties shall alternate as chair.

## **ARTICLE 8. HOURS OF WORK AND COMPENSATORY TIME**

### **8.1 Purpose and Applicability**

This article identifies the work schedule requirements for regular employees in Exempt positions.

### **8.2 Schedule Requirements**

Employees covered under this MOU shall be assigned a reasonable work schedule. The work of employees in exempt positions is not measured solely by the hours worked. Employees in exempt positions are expected to work the hours necessary to complete assignments on a schedule that satisfies the requirements of the job. A full-time commitment typically requires a minimum of eighty (80) hours per bi-weekly payroll period.

### **8.3 Timekeeping**

Consistent with the Fair Labor Standards Act (FLSA), exempt employees will note on their timesheets "D" (duty day) to record workdays.

### **8.4 Breaks**

Based upon the exempt status of bargaining unit employees, employees shall be allowed to take work breaks and lunch breaks at the option of the employee so as not to interfere with the operational needs of the University.

## **8.5 Copy of Job Description**

The Employer retains the right to change an employee's job-related duties. Upon initial employment and upon each significant change in duties and/or position thereafter, each full-time or part-time bargaining unit employee shall be furnished a copy of his/her job description.

## **8.6 Compensatory Time Off**

- A. Employees are not entitled to compensatory pay or compensatory leave in accordance with the Fair Labor Standards Act. However, although not required, a limited amount of compensatory leave may be granted to an employee, with the prior written approval of his or her supervisor, in consultation with the appropriate vice president and the Vice President of Human Resources.
- B. Compensatory time records shall be approved and monitored by the employee's supervisor.
- C. All compensatory leave must be taken within one (1) year of the date it is earned. Requests for the use of earned compensatory leave shall be consistent with the procedures used to request annual leave. Such compensatory leave requests shall not be unreasonably denied by the supervisor.
- D. No compensation shall be paid for unused compensatory leave at the time of separation and such leave shall not be restored upon reinstatement.

## **8.7 Workload**

- A. If an employee believes he/she is asked to manage an unreasonable workload on a regular and consistent basis, he/she shall, by written request, schedule a meeting with his/her supervisor to address the matter. Prior to the meeting, the employee shall document and be prepared to discuss the specific workload issues which he/she wishes to bring to the supervisor for potential adjustment.
- B. Following the meeting, the supervisor shall review the information presented and then meet with the employee to inform him/her of the action, if any, to be taken. If the employee finds the supervisor's solution unsatisfactory, he/she may file a written appeal to the Vice President of Human Resources or designee. Within fifteen (15) work days the employee, the employee's supervisor and the Vice President or designee will meet to discuss the matter. The Vice President or designee shall issue a final decision, in writing, within thirty (30) days.
- C. Requests for review of workload shall be limited to one request per twelve-month period.

## ARTICLE 9. WAGES AND COMPENSATION

### 9.1 Merit Pay Adjustment for FY 2014 & FY 2015

To be eligible for a merit pay adjustment in FY 2014 an employee covered by this MOU must be rated "Meets Standards" or above. For eligible employees, merit pay adjustments are as follows for FY 2014.

- |    |                 |                          |
|----|-----------------|--------------------------|
| a. | Meets Standards | 2.5% base pay adjustment |
| b. | Above Standards | 2.5% base pay adjustment |
| c. | Outstanding     | 2.5% base pay adjustment |

Eligible employees will receive the appropriate adjustment effective as of the pay period that includes April 1, 2014.

### 9.2 Cost of Living Adjustment for FY 2014

Employees covered under this Memorandum of Understanding shall receive a cost of living adjustment for FY 2014 that is equal to the cost of living adjustment negotiated in the USM Nonexempt Coalition MOA three percent).

### 9.3. FY 2015 and FY 2016 Reopeners

FY 2015 and 2016 cost of living adjustments, if any, and amounts of merit pay adjustments, if any, are addressed in Article 28–Duration, Renewal and Reopener. Any merit pay provided for FY 2015 and FY 2016 may include variable amounts tied to performance, subject to agreement of the parties.

### 9.4 Parking

Employees covered by this MOU may utilize campus parking facilities, subject to availability, provided that they comply with all applicable parking rules and regulations and pay whatever parking fees are charged to University employees.

## ARTICLE 10. HOLIDAYS

### 10.1 Recognized Holidays

A. All employees in the bargaining unit earn the following recognized holidays:

- New Year's Day
- Dr. Martin Luther King Jr.'s Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Election Day (General and/or Congressional)

- Veterans Day
- Thanksgiving Day
- Friday after Thanksgiving Day
- Christmas Day

- B. In addition, employees receive three University holidays, which shall be scheduled during Winter Recess each year. The actual dates of observation for paid holidays and University holidays vary from year to year. The current year's listing of observed dates for holidays may be found on the University personnel web page and in the campus directory.
- C. Part-time employees on at least a 50 percent basis of fulltime employment shall earn holiday leave on a prorated basis.
- D. Employees covered by this MOU may also earn any other holiday that is granted to all other University employees during the term of this MOU.

**10.2 Day of Observance**

When a holiday falls on a Saturday, it is observed the Friday before, and when a holiday falls on a Sunday, it is observed on the following Monday. The Employer reserves the right to assign holidays.

**10.3 Use of Holidays**

Employees are required to use holiday leave on the day the University observes the holiday unless other arrangements are made with management.

**10.4 Holiday Termination Payment**

Employees, who leave their employment at the University for any reason, are entitled to be paid for any unused holiday leave that has been earned as of the date of separation. If a holiday is taken and the employee severs employment before the holiday is earned, the employee will pay back the holiday upon severance.

**ARTICLE 11. LEAVE**

**11.1 Annual Leave**

- A. Annual Leave for employees covered by this MOU is governed by [USM Policy VII 7.01, Policy on Annual Leave for Regular Exempt Employees](#), (approved 12/3/99), and is subject to all the terms and conditions set forth therein with the following modification:

Annual leave with pay shall be available only to the extent earned, provided that dates of such leave have been approved in advance by the employee's supervisor. A maximum of 55 workdays of annual leave may be carried into a new calendar year by all full-time exempt employees in the bargaining unit. This maximum will be pro-rated for bargaining unit employees working 50 percent or more.

- B. *Exempt employees* – Full-time exempt employees earn 22 days of annual leave per calendar year that shall accumulate on a bi-weekly basis from the beginning of employment. Beginning with the 21<sup>st</sup> year of USM and/or State of Maryland employment annual leave shall be earned at the rate of 25 days per calendar year. Part-time exempt employees working 50 percent or more shall earn annual leave on a pro-rated basis.
- C. Time taken as annual leave shall have the approval of the supervisor. Employees shall submit their request in writing (email or Leave Request Form) and based upon operational needs, supervisors have the right to decline a request for annual leave.

## 11.2 Sick Leave

### A. Purpose and Applicability

This Article governs the accrual and use of sick leave for all employees covered by this MOU. When a provision of Section 11.2 provides an employee with the eligibility to use sick leave that is also covered by the Family and Medical Leave Act (FMLA), the sick leave and the leave under the FMLA run concurrently. Also, employees must use their accrued sick leave in accordance with the specific provisions of Section 11.2 and exhaust all accrued annual leave and personal leave prior to using unpaid FMLA leave.

### B. General

1. Sick leave is paid leave granted to employees in an effort to provide some protection against the loss of earnings due to absences for health reasons.
2. A full-time employee shall earn sick leave at the rate of 15 workdays per year. Employees who are appointed at least 50 percent time shall earn sick leave on a pro rata basis. Sick leave is accumulated and carried forward from year to year without limit.
3. An employee may request that his/her illness, injury, or disability occurring during a period of annual or personal leave be charged to sick leave. Verification of such illness, injury, or disability may be required by the Office of Human Resources as provided in Section 11.2D, Verification of Absences Charged to Sick Leave.
4. An employee may use on a continuous basis, subject to the terms and conditions of this MOU dealing with such leaves, earned leave (sick, annual and personal leave), advanced sick leave, extended sick leave, leave granted through the leave reserve fund, or unpaid family medical leave, as needed for personal illness.
5. Earned sick leave is granted by the Department Head or designee (normally the immediate supervisor) pursuant to the terms and conditions of Section 11.2 when an employee is absent because of:
  - a. Illness, injury, or disability of the employee.



- b. A pre-scheduled medical appointment, examination, or treatment for the employee with an accredited, licensed or certified medical provider listed in Section 11.2D.6 that cannot be scheduled during non-work hours. Employees will provide three working days' advance notice if possible, but in no event less than one day's advance notice. Employees shall make every effort to schedule the appointment either at the beginning or the end of the scheduled workday in order to reduce time away from work. However, the University shall not unreasonably deny medical appointments when the time available overlaps with the employee's regular work hours.
- c. Illness or injury in the employee's immediate family and medical appointments, examinations or treatments for the immediate family member with an accredited, licensed or certified medical provider listed in Section 11.2D.6 that cannot be scheduled during non-work hours and are not taken pursuant to Section 11.3, Family and Medical Leave.
  - 1. Immediate family as used in this Section means a spouse, child, step-child, foster child, grandchild, mother, father, mother-in-law, father-in-law, brother, sister, grandparent, or legal dependent of the employee irrespective of residence. Use of sick leave may also be granted to care for any other relative who permanently resides in the employee's household for whom the employee has an obligation to provide care. The Office of Human Resources may require an employee to provide certification by a medical provider listed in Section 11.2D.6 to demonstrate this obligation or to authenticate the need for the employee to care for the ill family member. Certification from a medical provider does not need to include information about the specific illness or health condition of the family member or relative.
  - 2. Up to 15 days of accrued sick leave shall be granted by the Office of Human Resources pursuant to the terms and conditions of Article 11 during any one calendar year for medical care of a family member when the need for such care is not pursuant to Section 11.3, Family and Medical Leave. When the need for such leave is pursuant to Family and Medical Leave, sick leave may be used to the extent it is accrued and available.
- d. Death of a relative
  - 1. For the death of a close relative, the Department Head or designee (normally the immediate supervisor) may grant the use of up to five days of accrued leave. If the death of a close relative requires an employee to travel requiring staying away from home overnight, upon request the Department Head or designee

(normally the immediate supervisor) may grant the use of up to a maximum of seven days of accrued leave for this purpose.

2. Close relative as used in this Section means a spouse, child, step-child, foster child, mother, father (or someone who took the place of a parent), mother-in-law, father-in-law, grandparent of the employee or spouse, grandchild, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, or other relative who permanently resided in the employee's household.
3. The Department Head or Designee (normally the immediate supervisor) or designee may grant the use of up to a maximum of one day of sick leave for reasons related to the death of the employee's or his/her spouse's aunt, uncle, niece, or nephew.

e. Integration of Sick Leave and Family and Medical Leave

When an employee requests and is granted leave for reasons defined as "qualifying events" under the Family and Medical Leave Act (FMLA), the employee may use accrued sick leave, to the extent it is available, for any portion of that leave pursuant to the provisions of this MOU on FMLA. In all instances where leave is granted pursuant to the FMLA, employees must exhaust all accrued paid leave, including sick, personal, and annual, prior to moving to unpaid Family and Medical Leave. Advanced sick leave shall only be granted for the illness of the employee. Leaves under FMLA will not be considered when determining if any employee has a satisfactory attendance record.

f. Pregnancy, Childbirth and Adoption

Pregnancy, childbirth and adoption are considered "qualifying events" under the FMLA and as such are governed by "e" above. Advanced sick leave shall only be granted for the portion of leave during which the employee is incapacitated.

**C. Directed Use of Sick Leave/Medical Examinations**

1. The Office of Human Resources, in accordance with the provisions of this MOU dealing with Family and Medical Leave, may direct an employee to use accrued sick leave if it believes that an employee is unable to perform the essential responsibilities of his/her position due to illness, injury or disability.
2. While either in active work status or on any type of employee-related sick leave, an employee may be required to undergo a medical examination(s) and evaluation(s), and may be required to provide verification of fitness for duty, as directed by the Office of Human Resources to ascertain whether the employee is able to regularly and routinely perform the responsibilities of his/her position. Such

determination will be made in writing by a certified medical provider as defined in Section 11.2D.6 with a copy provided to the Office of Human Resources and to the employee.

- a. If the examination is conducted by a certified medical provider selected by the USM institution, the institution shall bear the costs of such medical examination. The employee may, however, see his/her own physician at the employee's own cost.
- b. If the examination(s) reveal(s) that an employee is unable to regularly and routinely perform the responsibilities of his/her position, action may be taken by the Office of Human Resources in accordance with policies on voluntary separation, termination, reasonable accommodation, modified duty or disability retirement, if applicable.
- c. In cases where there is a conflict between the evaluation, prognosis, diagnosis or recommendation of the employee's personal health care provider and the certified medical provider selected by the USM institution, the President or designee may choose which health care provider's report to follow or may require subsequent medical examinations and evaluations in deciding what steps should be taken regarding the employee's sick leave status or continued employment. If subsequent medical examinations and evaluations are required, the employee's medical provider and the University's medical provider shall by agreement select the third medical provider who will render an opinion. In the event they are unable to reach agreement on a third medical provider, the third provider will be selected by the University. In selecting the third provider, the University shall not select a provider that has been under contract, or that at the present time is under contract with the University. The decision of the President or designee regarding the employee's fitness for duty will take into account the medical opinions rendered. The decision of the President or designee is final. The expense of obtaining the third medical provider's opinion will be borne by the University.

#### **D. Verification of Absences Charged to Sick Leave**

1. In order to verify that the employee's use of sick leave is in accordance with this Section, to assure medical attention for an employee or to prevent the abuse of sick leave usage, the University may require an employee to submit verification of the reason for the use of accrued sick leave, advanced or extended sick leave.
2. Verification of Illness for Absences for Five or More Consecutive Days.

The University may require an employee to provide an original certificate of illness or disability in cases where an absence is for five or more consecutive workdays. The certificate required by this Section shall be signed by a certified medical provider as defined in Section 11.2D.6.

3. Verification of Illness for Absences for Less than Five Consecutive Days.

The University may require an employee to submit an original certificate of illness or disability for absences of less than five consecutive days on the following conditions:

- a. Where an employee has a consistent pattern within a 12 month period of maintaining a zero or near zero sick leave balance without documentation of the need for such relatively high utilization.
- b. Where an employee has unusual absence patterns such as Monday/Friday, or the day before and/or the day after a holiday.
- c. Where an employee has five or more occurrences of undocumented sick leave usage within a 12 month period.
- d. Where an employee has three or more occurrences of undocumented sick leave usage of two or more consecutive days in a 12 month period.

4. Procedures for Certification Requirement

Prior to imposing a requirement on an employee for documentation of sick leave use, under Sub-Section D above, the University shall orally counsel the employee that future undocumented absences may trigger a requirement for certification of future occurrences of sick leave. If the employee has another undocumented absence after such counseling, the University may, subject to the concurrence of the Office of Human Resources, then put the employee on written notice that he/she must certify all sick leave usage for the next six months if the undocumented absence accumulated in accordance with Section 11.2D.3. At the conclusion of the six months, the certification requirement will be rescinded provided the employee has complied with the certification requirement and is in compliance with this Article. If the employee has not complied with the certification requirement and is not in compliance with this Article, the requirement shall be extended for six months from the date of the lack of compliance with the requirement. Although a requirement for certification is not a disciplinary action, an employee may grieve allegations of misapplications of this procedure. Failure of the employee to provide certification as described in this Section 11 may subject the employee to disciplinary action.

5. Verification may include but may not be limited to:

- a. A written statement from the medical provider (as listed in Section 11.2D.6) indicating that the employee is required to be absent from work due to illness;
- b. The duration of absence from work;
- c. Prognosis of employee's ability to return to work;

- d. Title and original signature of an accredited, licensed or certified medical provider; and
- e. Any other information necessary to verify that the employee's use of sick leave is in accordance with Article 11. Such information does not need to include information about the specific illness or health condition of the employee.

6. Medical verification as outlined in Section 11.2D may be obtained from an accredited Christian Sciences practitioner, or from the appropriate of any of the following licensed or certified medical providers:

- a. Physician;
- b. Physical Therapist;
- c. Clinical Psychologist;
- d. Dentist;
- e. Oral Surgeon;
- f. Chiropractor;
- g. Podiatrist;
- h. Certified Nurse Practitioner;
- i. Certified Nurse-Midwife; or
- j. Licensed Certified Social Worker-Clinical
- k. Licensed Clinical Professional Counselor

E. Advanced Sick Leave for the Employee's Own Illness

1. An employee who sustains a temporary, recoverable illness, injury or serious disability may request advanced use of sick leave subject to the following four conditions:

The employee shall:

- a. have completed six months of continuous USM service;
- b. have completed an original probation period, if applicable;
- c. have exhausted all other types of accrued leave; and
- d. has performed at a "meets standards" or better level of performance and has not been placed on a sick leave certification requirement as provided in Section 11.2D or been disciplined for a sick leave related offense during the past 12 months.

2. Advanced sick leave is not an entitlement. The granting of requests for advanced sick leave is at the discretion of the Office of Human Resources.

3. Advanced sick leave shall not be granted in instances where the illness or injury or disability occurred on the job, and the employee has been granted accident leave or temporary total disability benefits by the Workers' Compensation Commission.
4. Written requests for advanced sick leave shall be submitted to the Office of Human Resources and shall be supported by written verification by an accredited, licensed, or certified medical provider as outlined in Sections 11.2D.1 and 6.
5. Sick leave may be advanced at the rate of 15 working days per year of service to a maximum of 60 working days in any one calendar year.
6. The use of advanced sick leave constitutes a debt for which payment shall be enforceable upon the employee's return to work or upon the employee's separation from employment, whichever is earlier. Upon return to work the minimum rate of payback for advanced sick leave shall be at one-half the rate that sick leave and annual leave is earned. An employee may elect to pay back advanced sick leave by applying any earned leave or by reimbursing the USM with cash.
7. Annual, sick and holiday leave earned, and personal leave credited while on advanced sick leave shall be applied as earned/credited.
8. Additional requests for advanced sick leave will not be granted until all previously granted advanced sick leave has been repaid. The only exception to this provision is in cases where the maximum amount of advanced sick leave had not been requested originally and additional advanced sick leave, consecutive to that already granted, is needed to cover the employee's continued absence arising from the original illness, injury or disability.
9. The Office of Human Resources may refer an employee who is on advanced sick leave as follows:
  - a. The employee may be referred to a FSU-named certified medical provider paid for by the institution for periodic examinations to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work.
  - b. If there is a conflict between the employee's physician and the FSU-named physician, the provisions of Section 11.2C.2.c. shall apply.

**F. Extended Sick Leave for the Employee's Own Illness**

1. An employee who sustains a temporary, recoverable illness, injury or serious disability may request extended sick leave, subject to the three following conditions:

The employee shall:

- a. have been in USM and/or State service for at least five years;
  - b. have exhausted all types of accrued leave and advanced sick leave; and
  - c. has performed at a "meets standards" or better level of performance and has not been placed on a sick leave certification requirement as provided in Section 11.2D or been disciplined for a sick leave related offense during the past 12 months.
2. Extended sick leave is not an entitlement. The granting of requests for extended sick leave shall be at the discretion of the Office of Human Resources.
  3. The maximum cumulative total of extended sick leave available to an employee in USM or State service is 12 work months (52 work weeks).
  4. Annual, sick and holiday leave earned, and personal leave credited while on extended sick leave shall be applied as earned/credited.
  5. Written requests for extended leave shall be submitted to the Office of Human Resources and shall be supported by written verification by an accredited, licensed or certified medical provider as outlined in Sections 11.2D.1 and 6.
  6. The Office of Human Resources may refer an employee who is on extended sick leave as follows:
    - a. The employee may be referred to a FSU-named certified medical provider paid for by the institution for periodic examinations to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work.
    - b. If there is a conflict between the employee's physician and the FSU-named physician, the provisions of Section 11.2C.2.c. shall apply.

### 11.3 Family and Medical Leave ("FMLA" Leave)

- A. Family and Medical Leave for employees covered by this MOU is governed by [USM Policy VII-7.50 Policy on Family and Medical Leave](#), (approved 8/27/93; amended 4/16/04; and 10/22/04) and is subject to all terms and conditions set forth therein with the following modification:
- B. This type of leave is based on federal law as described in *the Family and Medical Leave Act of 1993* (FMLA). The University shall make FMLA leave available to employees in

accordance with the FMLA and USM policies. The University shall administer Family and Medical Leave on a calendar year basis.

- C. FMLA leave is not a separate form of accrued leave, like sick or annual leave. FMLA leave allows a qualifying employee to take employment-protected leave (by first using available sick and annual leave and then unpaid leave) for up to 12 weeks for any of the following reasons.
  - 1. To care for the employee's child after birth, or placement for adoption or foster care;
  - 2. To care for the employee's spouse, son, daughter, or parent who has a serious health condition;
  - 3. For a serious health condition of the employee, including pregnancy and recovery time, that renders an employee unable to perform his or her job; or
  - 4. Any other reasons stated in [USM Policy VII-7.50](#) as of October 22, 2004.
- D. To qualify for FMLA Leave:
  - 1. The employee must have worked for the University for at least 12 months, and
  - 2. The employee must have worked at least 1040 hours in the 12 months immediately preceding the date the leave is to commence.
- E. In addition to [USM Policy VII-7.50](#), the Sick Leave Article contains specific provisions dealing with Family and Medical Leave.

#### 11.4 Leave Reserve Fund

- A. Leave Reserve Fund for employees covered by this MOU is governed by [USM Policy VII-7.11 Policy on Leave Reserve Fund for Exempt and Nonexempt Staff Employees on Regular Status](#) (approved 4/25/91; amended 12/6/02; amended 1/1/03) and is subject to all the terms and conditions set forth therein with the following clarification:
- B. Section III C. should read as follows  
*Used all available sick leave, advanced sick leave, extended sick leave, annual leave, personal leave, and compensatory leave; and*
- C. Personal leave unused by an employee shall be remitted to the Leave Reserve Fund available for University employees. The Leave Reserve Fund provides paid leave to full-time and part-time employees who become temporarily medically disabled. A person authorized to act on the employee's behalf may make the leave request on behalf of the employee when the employee is unable to do so. A request for leave under the Leave Reserve Fund shall be submitted directly to the Office of Human Resources.



## 11.5 Personal Leave

- A. Personal Leave for employees covered by this MOU is governed by USM Policy VII-7.10, Policy on Personal Leave for Regular Exempt Employees (approved 12/3/99). Full-time employees shall receive three days (not to exceed 24 hours) of personal leave in each calendar year. Part-time employees working 50 percent or more shall receive personal leave on a pro-rated basis.
- B. Personal leave must be used by the end of the first pay period that ends in the new calendar year. Any personal leave that is unused as of that time shall be forfeited by the employee and shall be contributed to the USM Leave Reserve Fund in accordance with the then current USM Policy on Leave Reserve Fund. No employee shall be paid for unused personal leave.
- C. The use of personal leave shall require prior notification to the employee's supervisor.

## 11.6 Jury Service and Legal Actions Leave

- A. Jury service and legal actions leave for employees covered by this MOU is governed by USM Policy VII-7.21, Policy on Jury Service, (approved 2/28/92; amended 5/7/93); and USM Policy VII-7.22 Policy on Leave for Legal Actions (approved 2/28/92) and is subject to all the terms and conditions set forth therein with the following modification to USM Policy VII - 7.21:
- B. Employees who are dismissed from jury duty will be expected to return to work for the balance of their scheduled workday if the amount of time left in the employee's work day exceeds three hours.

## 11.7 Educational Leave and Professional Improvement Leave

Employees may be granted educational or professional leave for up to two years pursuant to USM Policy VII-7.12, Policy on Leave of Absence Without Pay (approved 5/1/92; amended 11/12/93), subject to all of the terms and conditions therein.

## 11.8 Administrative Leave

- A. Administrative Leave for employees covered by this MOU is governed by USM Policy VII - 7.20 Policy on Administrative Leave, (approved by the Board of Regents February 28, 1992)
- B. Administrative Leave may be granted when emergency conditions exist.
- C. The institution Chief Executive Officer (CEO) may approve a request for administrative leave or may require an employee to take administrative leave for any purpose considered to be in the best interests of the institution.

## 11.9 Military Leave With Pay

- A. Military Leave for employees covered by this MOU is governed by [USM Policy VII-7.23 Policy on Military Leave](#) (approved 2/28/92; amended 12/6/02, 10/17/03; and 9/10/04) and is subject to all the terms and conditions set forth therein.
- B. An employee is entitled to Military Training Leave with pay for military training purposes for a period of not more than 15 workdays (pro-rated for part time employees) in any calendar year. Military Training Leave applies to employees who are members of the organized militia or the Army, Navy, Air Force, Marines or Coast Guard Reserves.

## 11.10 Call-up to Active Military Duty During a National or International Crisis or Conflict

Military leave for call up to Active Duty during a national or international crisis or conflict for employees covered by this MOU is governed by [USM Policy VII-7.24, Policy on Call-Up to Active Military Duty During a National or International Crisis or Conflict for USM Exempt and Nonexempt Staff Employees on Regular Status](#), (approved 10/5/01; amended 12/6/02 10/17/03; and 9/10/04), and is subject to all the terms and conditions set forth therein.

## 11.11 Leave of Absence Without Pay

- A. Leave of Absence Without Pay for employees covered by this MOU is governed by [USM Policy VII-7.12, Policy on Leave of Absence Without Pay](#) (approved 5/1/92; amended 11/12/93) and is subject to all the terms and conditions set forth therein.
- B. Employees may request full or partial leave without pay for a two-year (24 month) period in accordance with the provisions of the [USM Policy VII 7.12](#). Approval of unpaid leave will be at the discretion of the University President or designee. No employee shall be denied unpaid leave unreasonably.

## 11.12 Leave for Disaster Service

Disaster Service Leave for employees covered by this MOU is governed by [USM Policy VII 7.26, Policy on Leave for Disaster Service](#) (approved 10/11/02) and is subject to all terms and conditions set forth therein.

## 11.13 Accident Leave

Accident Leave for employees covered by this MOU is governed by [USM Policy VII - 7.40 Policy on Accident Leave for Exempt and Nonexempt Personnel](#) (approved 5/1/92; amended 11/12/93; 12/13/96; and 4/16/04) and is subject to all terms and conditions set forth therein.

## 11.14 Leave Liquidation

- A. An individual leaving employment shall be paid for any earned but unused annual leave, which has been credited and is available for use on the day of separation.
- B. At the end of the calendar year, if an employees' annual leave balance exceeds 55 days, and if his/her request for annual leave was made in a timely manner and was denied, the employee may request through the supervisor, payment for annual leave in excess of the

maximum accumulation. Such requests shall be accompanied by the employee's written request for leave as well as the written response from the supervisor stating why the leave was denied. The Vice President of Human Resources shall review all requests for payment of denied annual leave and shall make a recommendation to the Vice President of Administration and Finance who shall make the final decision regarding payment. Denial of payment by either the Vice President of Human Resources or Vice President of Administration and Finance shall be confirmed in writing.

- C. When an employee transfers to another institution within the University System of Maryland, (USM) or to another department, or from the state of Maryland to FSU, all unused accumulated leave shall be transferred with the employee.

#### 11.15. Parental Leave

- A. Parental leave for employees is governed by USM Policy VII – 7.49 Policy on Parental Leave and Other Family Supports for Staff (Approved by the Board of Regents on June 22, 2012) and is subject to all the terms and conditions set forth therein.
- B. To support employees in balancing professional and family demands during and after the birth or adoption of a child, each eligible employee is assured a period of up to eight weeks (i.e., 40 work days) of paid parental leave to care for a new child, as follows:
  - 1. The parental leave period will consist of any form of annual, sick, personal, holiday or leave reserve fund leave accrued or otherwise available to the employee under this Agreement and USM policies, to be supplemented as necessary by the Institution with additional paid leave days to attain an eight week period of paid parental leave.
  - 2. The eight week paid leave assurance is available during a six month period surrounding:
    - a. The birth of a newborn;
    - b. The recent adoption of a child under the age of six; and
    - c. At the discretion of the Institution's President or designee and subject to any limitations established by the Institution, the assumption of other parenting responsibilities, such as foster parenting or legal guardianship of a child under the age of six.
  - 3. The paid leave assurance will apply as follows:
    - a. Leave shall be pro-rated for eligible .50 or greater full time equivalent staff.
    - b. If a child's parents are employed by the same institution, both may be eligible for paid parental leave up to the eight week maximum as follows:
      - i. Both parents may use accrued annual, sick or personal leave concurrently with the birth of a child or adoption of the child under age six;

- ii. A parent may use additional guaranteed paid leave under this policy only during a period when that parent is the child's primary caregiver.
- c. An employee shall be eligible for assured minimum paid parental leave after one year of employment with the Institution, except to the extent that Institution's policies permit a lesser eligibility period.
- d. An employee may be eligible for paid parental leave under this policy on one occasion in a given 12 month period, and on two separate occasions during the duration of the staff member's employment within the USM. Any additional periods of paid parental leave require the approval of the President, or the President's designee.
- e. The employee must have a satisfactory record of sick leave usage and work performance.

## ARTICLE 12. UNION LEAVE

- 12.1 AFSCME may request that bargaining unit employees be released from their normal duties for the purpose of participating in approved Union activities.
- 12.2 The total amount of Union leave granted at the University during a fiscal year may not exceed one day for every 30 of its bargaining unit employees of that institution as of July 1 of the current fiscal year, provided that a minimum of five days Union leave will be granted by the University each fiscal year covered by this MOU. No employee outside of the bargaining unit will be counted in the leave calculation under this Article.
- 12.3 All requests for Union leave shall be submitted to the Vice President of Human Resources in writing by Council 92, 15 working days in advance of the day on which the leave is to begin and shall include:
- A. A general description of the activity and its purpose;
  - B. The date and location of the activity;
  - C. The name (s) of the employee (s) for whom Union leave is being requested.

Where the leave request is for eight hours or less, the minimum notice required is seven working days.

- 12.4 After verifying the validity of the request with a staff Union representative and the accuracy of the time being requested, the Vice President of Human Resources may approve Union leave if the employee's services can be spared without impairing the services of the department(s) involved and Union leave is available pursuant to Section 12.2 of this Article. Approval of leave under this section shall not be unreasonably denied.
- 12.5 If the employee organization needs to substitute an employee or employees for those previously granted Union leave, or substitute new dates, such requests will be submitted as soon as possible to the Vice President of Human Resources for approval. Such substitutions may be approved if the

substitution will not impair the services of the unit. Approval of substitutions or dates shall not be unreasonably denied.

## **ARTICLE 13. PERFORMANCE EVALUATIONS**

### **13.1 Performance Ratings**

- A. Employees shall receive a written performance review at the end of their probationary period and every March/April thereafter. The purposes of the performance evaluation are to establish a communication tool to ensure that employees are performing at acceptable levels and to provide a means by which to document performance and to establish a procedure for correcting performance problems should they occur. An employee shall be rated on the achievement of performance goals and objectives established by the employee and supervisor during the annual expectations meeting as well as employee performance related to an established set of performance factors, established by the Employer and discussed with the employee at the expectations meeting.
- B. The goal of the performance evaluation is thoroughness and objectivity. Goals and objectives should be specific and measurable. Performance factor ratings are impacted by and should take into account increased workload/responsibilities, training taken and/or certifications received by the employee, volunteer efforts, awards received, as well as any disciplinary actions which have occurred or problems which have arisen, and any or all factors which have impacted the employee, positively or negatively, during the review period. An employee shall receive one of the following ratings:
  - 1. Outstanding
  - 2. Above Standards
  - 3. Meets Standards
  - 4. Below Standards
  - 5. Unsatisfactory

### **13.2 Expectations Meeting (Establish Goals and Objectives)**

- A. During March or April of each year, an employee will meet with the Department Head or designee who will be responsible for conducting the employee's performance review for the upcoming year.
- B. At the expectations meeting, the Department Head or designee and the employee will discuss the specific performance factors for which the employee will be held accountable and the employee and supervisor will establish the employee's performance goals and objectives for the upcoming year. Performance factors and performance goals and objectives should be reasonably specific, attainable, measurable, and job-related. The expectations meeting will be documented in writing and signed by both the Department Head or designee and the employee.

### 13.3 Probationary and Mid-Year Performance Evaluations

- A. An expectations meeting, in accordance with Section 13.2 or this Article, will be held with each employee at the time of hire.
- B. When the employee's probationary period ends, the Department Head or designee, with input, if applicable, from the lead worker or "supervisor" to whom the employee is assigned, will prepare a written performance evaluation of the employee. The end of probationary period performance evaluation may include a self-assessment prepared by the employee, and shall address both an evaluation of the employee's performance and suggestions for ways that the employee and the Department Head or designee can work to address issues that have arisen.
- C. The employee and the Department Head or designee will meet to discuss the end of probationary period performance evaluation, and will document in writing the results of the evaluation and will include in that documentation:
  - 1. Any modifications made to the employee's job description;
  - 2. Specific tasks and standards established by the employee and the Department Head or designee that will assist the employee in accomplishing the employee's overall objectives for the next evaluation period;
  - 3. Any training needs established.
- D. In addition, although optional, supervisors are strongly encouraged to conduct mid-year performance evaluations, according to the aforementioned protocol, for all employees. Where an employee receives a year-end performance evaluation that is "Below Standards" or is exhibiting performance below "Meets Standards" during the first half of the evaluation period and the employee remains employed, the Employer will conduct a mid-year performance evaluation and take other appropriate remedial measures until the employee's performance "Meets Standards" or the employee is terminated or demoted.

### 13.4 Year-End Performance Evaluation

- A. The end-of-year evaluation shall be based on those performance factors and goals and objectives established at the expectations meeting and shall include the following:
  - 1. An overall performance rating;
  - 2. Modification of the employee's job description (if applicable);
  - 3. Recommendations for training as appropriate.
- B. Where an employee did not have an opportunity to perform work described by a performance standard or goal and objective, that standard or goal and objective will not be considered in the year-end performance evaluation. All applicable performance factors

and goals and objectives will be applied fairly and objectively. The University should take into account any equipment and resource problems, lack of training, frequency of work interruptions, and other matters outside of an employee's control when applying performance factors and goals and objectives. Time off on approved leave (sick, personal, annual, etc.) and authorized time for Union representational purposes and other authorized activities will not be considered negatively in the application of performance factors and performance goals and objectives, provided that where an employee has been placed on notice regarding a sick leave usage problem, the employee's sick leave usage may be taken into account.

- C. The performance evaluation requires a second signature. An individual superior to the individual preparing the performance evaluation and with knowledge of the department and the employee must review and approve the employee's end-of-year evaluation. This approval must be secured prior to the end-of-year evaluation meeting with the employee.
- D. The Department Head or designee shall meet with the employee, discuss the performance evaluation, and give the employee a copy of the end-of-year evaluation. The employee must sign the evaluation and a copy will be placed in the employee's personnel file.
- E. A statement of an employee's comments and/or objections to an evaluation may be attached and put in the employee's personnel file. Overall performance evaluations of "Meets Standards" or above may only be grieved through Step 2 of the grievance procedure; overall performance evaluations of "Below Standards" or below may be grieved through the entire grievance process.
- F. The Employer will not apply forced distributions or other limitation to employee ratings.
- G. The Office of Human Resources (OHR) will work with supervisors and employees so that the processes detailed in this article are understood and carried out in a timely manner. Performance evaluations are tracked by OHR as completed. Supervisors who fail to complete the process by the due date will be contacted and provisions of the article will be enforced.

### **13.5 Deficient Performance**

In the event management concludes that an employee's job performance is at a level that will result in an evaluation below "Meets Standards," therefore jeopardizing his/her eligibility to receive a merit increase, management will notify the employee. The employee will be given a reasonable amount of time to correct the performance deficiencies before a year-end performance evaluation is conducted unless the deficient performance warranting the denial of merit increase occurs late in the evaluation period. Failure to notify the employee pursuant to this provision shall not entitle the employee to a merit increase if the employee's performance does not warrant it.

### **13.6 Evaluation of the Department Head or Designee**

Employees may anonymously evaluate on an annual basis, in writing, on a form provided by the Employer, the Department Head or designee.

### **13.7 Performance Evaluation Pay Adjustment**

Merit pay adjustments for employees with an annual rating of "Meets Standards" or above shall be governed by provisions of Article 9, Wages, of this MOU. Employees who receive ratings of "Below Standards" or "Unsatisfactory" are not eligible for merit increases, and may be subject to other corrective measures.

## **ARTICLE 14. DISCIPLINARY ACTIONS**

### **14.1 Progressive Discipline**

- A. The University subscribes to the tenets of progressive discipline where appropriate and will administer discipline in an evenhanded fashion. However, the University reserves the right to administer any discipline deemed appropriate by the University, and nothing contained in this Article limits or otherwise affects the University's right and authority to separate an employee pursuant to Article 15, Separation, of this MOU. No employee shall be disciplined without cause.
- B. Investigations of alleged infractions of University rules and regulations will begin as soon as possible, but no longer than 30 days after the University has knowledge of or reasonably should have known of a work rule violation or unacceptable behavior. Disciplinary action, if warranted, will be imposed as soon as possible but no later than 30 days after completion of the investigation.
- C. Disciplinary actions shall be documented in writing and signed by the supervisor and the employee. The purpose of the employee signature shall be to ensure that the employee has received the document and shall not be interpreted as agreement with the action taken. Disciplinary actions are subject to appeal/grievance.
- D. Upon the agreement of both Union and Management, the timeframes listed above may be extended.

### **14.2 Right to Union Representation**

- A. An employee shall have the right to Union representation if requested by the employee, only as provided below. There will be no exceptions to this rule.
  - 1. In any investigatory interview or discussion with an employee who is the subject of the investigation.
  - 2. At any conference where the Employer intends to discuss a proposed disciplinary action with the employee.
  - 3. At each step of the Grievance Procedure in conjunction with the disciplinary action.
- B. The foregoing does not apply to a meeting where the Employer is notifying the employee of the disciplinary action being taken. Where an employee elects to be represented by the



Union in one of the circumstances set forth above, the employee is entitled to be represented by whichever Union representative is available, not a specific representative. Under no circumstances will an employee's election to be represented by the Union cause a delay in the investigatory interview, disciplinary conference, or grievance step at issue, if the delay will cause the interview, conference or grievance step to be untimely.

- C. An employee shall not have the right to a Union representative in attendance during a non-disciplinary discussion solely related to performance or during a performance review. For a performance based disciplinary action an employee may request Union representation, and once requested, the employee shall be allowed Union representation as provided in Section 3, A and B above. The right to representation does not include a criminal investigation, but the employee may request Union representation at a disciplinary hearing that results from the investigation, and once requested, the employee shall be allowed Union representation as provided in Section 14.2, A and B above.
- D. An employee is required to give prompt, accurate answers to any and all questions concerning matters of official interest put to the employee by the Employer.
- E. The role of the Union representative is to assist in the clarification of questions and otherwise advise the employee of the employee's rights. Under no circumstances may the Union representative dominate the hearing or interfere with the Employer's investigative process.

## ARTICLE 15. SEPARATION

- A. Separation procedures for employees covered by this MOU are governed by USM Policy VII-1.22, Policy on Separation for Regular Exempt Employees, (approved 12/3/99). The period of notice shall be modified as follows:

<u>Years of Institutional Service</u>	<u>Period of Notice</u>
Less than one year	One month
One year but less than five years	Three months
Five full years or more	12 months

- B. In the event an employee is to be separated from service, the affected employee and a Union representative, if requested, will meet with the Divisional Vice President or designee who will explain the circumstances which have led to the employee's separation. The employee will be given an opportunity to ask questions and/or present reasons why the separation should not occur. At the discretion of the Vice President or designee, the action may be upheld or reversed. The employee will be advised of the Vice President's decision in writing, in a timely manner, not to exceed five working days. In the event of lay-off, this article will not apply. Lay-off is covered by Article 26.

## ARTICLE 16. GRIEVANCE PROCEDURE

### 16.1 General

Subject to any limitations otherwise provided in this MOU, or applicable policy, as of the effective date of this MOU, in the event of an alleged violation or disagreement over any of the provisions of this MOU, a bargaining unit employee represented by AFSCME, which shall be the exclusive employee organization to represent the employees, shall have the right to file and process a grievance in accordance with the following procedure:

### 16.2 Definitions

- A. Day. A working day, Monday through Friday, regardless of work schedule, weekend work, or midweek days off.
- B. Grievance. Any cause of complaint arising between a member of the bargaining unit and the Employer on a matter concerning discipline, alleged discrimination, promotion, assignment, or interpretation or application of University and/or USM rules or departmental procedures and this MOU. However, if the complaint pertains to the general level of wages, wage patterns, fringe benefits, or to other broad areas of financial management and staffing, it is not a grievable issue.

### 16.3 Filing and Processing Grievances

#### A. Step One

Step one is the initiation of a complaint. Grievances shall be initiated within 30 calendar days of the action involved, or within 30 calendar days of the employee having reasonable knowledge of the act. An employee or the employee's designated representative may present the grievance in writing to the immediate supervisor or designee for formal consideration. If the grievance is presented to the immediate supervisor or designee, within five days after the receipt of the written grievance a conference shall be held with the employee or the employee's designated representative, and within five days after the conclusion of the conference a decision shall be rendered in writing to the employee or the employee's designated representative. If the employee is not satisfied with the decision rendered at this step, the employee or the employee's designated representative may appeal in writing to step two within five days.

#### B. Step Two

The appeal shall be submitted to the department head or, if the department head is the immediate supervisor, the divisional vice president or the divisional vice president's designated representative within five days after the receipt of the written decision at step one. The vice president or the vice president's designated representative shall hold a conference with the employee or the employee's designated representative within ten days of receipt of the written grievance appeal and render a written decision within 15 days after the conclusion of the conference.

If the divisional vice president is the immediate supervisor, the employee shall move to step three of this procedure.

**C. Step Three**

An employee shall be allowed to appeal the decision rendered at step two utilizing one of the following two options:

**i. Option One: Appeal to the Vice President of Human Resources**

Within five workdays after the receipt of the written decision at Step Two, an employee or the employee's designated representative acting on behalf of the employee may file an appeal with the Vice President of Human Resources. The Vice President or the Vice President's designee shall hold a conference with the employee and the employee's designated representative, if applicable, within ten days of receipt of the written grievance appeal and render a written decision within 15 days after the conclusion of the conference to the employee and the employee's designated representative, if applicable. Such findings shall be final and binding upon all parties. Nothing in this article prohibits the aggrieved employee from seeking judicial review of any finding to the extent such judicial review is otherwise provided by law.

**ii. Option Two: Appeal to a Joint Committee and University President or Designee**

Within five work days after receipt of the written decision at Step Two, an employee or the employee's designated representative, acting on behalf of the employee may file an appeal with a joint committee consisting of four individuals, two selected by management and two selected by the union, (no two of whom shall have a broad functional area of responsibility encompassing the sphere of activity engaged in by the employee. The joint committee, within ten) work days after its appointment, shall hold a conference with the employee and the employee's designated representative and, within five work days after conclusion of the conference, shall render its advisory opinion in writing to the President of the University or the President's designee. For purposes of this provision, the President's designee must be a member of the University's senior executive staff reporting directly to the President. Within seven work days after receipt of the advisory opinion, the President or designee shall report his/her findings in writing to the employee and to the employee's immediate supervisor, if applicable. Such findings shall be final and binding upon all parties. Nothing in this article prohibits the aggrieved employee from seeking judicial review of any finding to the extent such judicial review is otherwise provided by law.

The Committee should attempt to reach a unanimous opinion but may also render a majority opinion (3:1) or a deadlocked opinion (2:2). When a unanimous opinion is reached, only one written opinion on behalf of the prevailing view will be forwarded to the

President; when the opinion is by majority, a minority opinion may also be forwarded. When the Committee deadlocks, two opinions, one representing each view, will be forwarded. Opinions at all times are advisory to the President and must be brief, concise and signed by all individuals on whose behalf they are being filed.

#### **16.4 Time Limits**

The time limits set forth in this Article may be extended only by written agreement of the parties.

Appeals within the grievance procedure shall be timed from receipt of the written opinion of management or from when such opinion is due, whichever comes first.

Failure by the institution to respond to a grievance at a particular step within the time limit specified for response at that step shall not affect the institution's right to act with respect to the grievance.

Failure by the employee to appeal a grievance at a particular step shall constitute acceptance of the decision or recommendation made by management.

### **ARTICLE 17. PROBATIONARY PERIOD**

#### **17.1 Original Probationary Period**

- A. Each employee who voluntarily applies for and accepts an Exempt position is in a probationary status during the first year of appointment to that exempt position. A new hire into an Exempt position shall serve a one year probationary period. Employees shall earn and be able to use sick, annual, personal and holiday leave during the probation period.
- B. If an incumbent has completed a probationary period for a Nonexempt position and the position is changed to Exempt, the incumbent will be considered to have completed the probationary period for the Exempt staff position.
- C. If an incumbent is serving a probationary period for a Nonexempt position and the position is changed to Exempt, the incumbent will be required to serve the balance of a probationary period to equal one year.
- D. If an incumbent has completed at least one (1) year in a faculty position and the position is changed to the Exempt category, the incumbent will be considered to have completed the probationary period for the Exempt position. If an incumbent has completed less than one (1) year in a faculty position and the position is changed to the Exempt category, the incumbent will be required to serve the balance of a probationary period to equal one (1) year.
- E. During the probationary period, the responsible administrator may, at his/her discretion, reject an employee. The employee to be rejected shall be given at least a thirty (30) calendar days written notice of the rejection or, at the discretion of the responsible

administrator, shall be placed on administrative leave as described in section 16.2 below. The notice is to be provided to the employee no later than 30 calendar days prior to the expiration of the probation period. The notification period requirement does not apply if the rejection is the result of a breach of discipline or of such gross incompetence as to jeopardize essential services. An employee may grieve the rejection on probation for the purpose of showing that the rejection is procedurally deficient or in violation of law.

**17.2 Notice of Separation during Original Probation**

At the option of the University President or designee, an employee who has been notified of a period of notice separation, may be placed in an administrative leave with pay status for any part or all of the period of notice. In this case, the employee shall not earn other paid leave (annual, sick, holiday, personal) during the period of administrative leave. Alternatively, the University President or designee may assign alternate duties and responsibilities to an employee who has been notified of a period of notice separation for any part or all of the period of notice.

## **ARTICLE 18. MISCELLANEOUS**

**18.1 Access to Campus Facilities**

Subject to University rules and regulations, employees and their dependents have access to and use of all appropriate campus facilities, including but not limited to all health and fitness facilities, sports complex, dining facilities, the library, and computer facilities that are otherwise open to employees.

**18.2 Release Time for Campus-Sponsored Committees**

Employees shall be allowed paid release time with the approval of the supervisor based upon operational needs to serve as members of employment-related, campus-sponsored committees to which they are appointed or elected.

**18.3 Attendance at Job-Related Trainings**

Employees will be paid for time spent in University required training consistent with the provisions of this MOU and the FLSA. The Employer will make reasonable efforts to have employees attend regular training during their regularly scheduled work hours. All travel undertaken in conjunction with approved University required training must be documented by the employee and pre-approved by management. All out-of-state travel must have a pre-approved travel request form. Expenses properly incurred in conjunction with approved University required training are reimbursable to the extent allowed by and as provided by University regulations.

**18.4 Attendance at Job Interviews**

Employees shall be allowed reasonable paid release time to attend job interviews on the University campus for University job opportunities.

## 18.5 Job Vacancy and Promotion

- A. Employees who wish to pursue an internal job vacancy or promotional opportunity must satisfy the following qualifications:
1. Meet a performance level of "meets standards" or better;
  2. Meet the minimum qualifications as outlined in the employment ad and/or job specification;
  3. Have at least one year of continuous service in their current position; and
  4. Follow appropriate application procedures as detailed in the position posting.
- B. Meeting minimum qualifications does not guarantee an internal applicant an interview. However, if an internal candidate is not selected for interview or hire, the candidate may request a meeting with the Vice President of Human Resources or designee to discuss the decision.

## ARTICLE 19. INSURANCE AND BENEFITS

Employees covered by this MOU who are otherwise eligible may participate in the health and other insurance plans as offered by the State of Maryland and the University System of Maryland, as they may exist from time to time, on the same basis and subject to the same terms and conditions including the payment of all applicable premiums, co-pays, deductibles and other fees and expenses as established for other University and State employees.

## ARTICLE 20. RETIREMENT

Employees covered by this MOU who are otherwise eligible may participate in the Maryland State (Employees' and Teachers') Retirement Systems and the Maryland State (Employees' and Teachers') Pension System, or other optional retirement programs as offered by the State and University, as appropriate, subject to all of the terms and conditions of those Systems and their respective Plans, including any modifications made to those Systems and Plans during the term of this MOU. All disputes or grievances regarding the Retirement and/or Pension Systems shall be resolved in accordance with the procedures specified in the plan or by applicable law.

## ARTICLE 21. TUITION REMISSION

- 21.1 Tuition remission shall be administered by FSU consistent with FSU Procedure and [\*USM Policy VII-4.10, Policy on Tuition Remission for Faculty\*](#) and [\*Policy VII-4.20, Policy on Tuition Remission for Spouses and Dependent Children of Faculty and Staff\*](#) and/or any USM successor tuition remission policies that may be adopted during the duration of this MOU.
- 21.2 In the event that during the duration of this MOU, the Board of Regents adopts a policy, which rescinds or modifies in whole or in part the afore-referenced tuition remission policies, the University may implement those changes after consultation or bargaining, if required, with the

Union. The parties further agree that the University's tuition remission program must at all times comply with applicable law and that the University may implement any modifications necessary to come into compliance with applicable law. Where the modifications or changes that the University intends to implement are subject to the obligation to bargain collectively under SPP 3-101 et. seq., the process outlined in Scope of Agreement of this MOU applies.

## **ARTICLE 22. STAFF PROFESSIONAL DEVELOPMENT**

### **22.1 Continuing Education Units (CEUs)**

In the event an employee's duties require an employee to complete periodic Continuing Education Units (CEUs), the employee's attendance at CEUs shall be considered as work time and the cost of the course and travel and lodging expenses, if any, shall be borne by the University. To be eligible for University payment, the course must be directly related to the employee's current position and attendance must be pre-approved by the supervisor. Employees are expected to choose the most cost-efficient mode of obtaining the required CEU's.

### **22.2 Licensing, Certifications and Professional Fees**

The cost of license renewal(s), certificate(s) or professional fee(s) required or necessary for an employee to maintain job qualifications shall be borne by the University upon proof of requirement and submission of invoice by the employee.

## **ARTICLE 23. HEALTH AND SAFETY**

### **23.1 General Duty**

The Employer and all employees covered by this MOU shall comply with all safety rules and regulations established by the Employer, as well as all applicable safety-related laws and regulations.

### **23.2 Unsafe Conditions**

Where an unsafe condition is alleged to exist, the affected employee shall first notify his/her immediate supervisor who shall take whatever necessary corrective action the supervisor deems appropriate. Employees are encouraged to bring forth their safety concerns and are not subject to adverse actions for doing so. Where the matter is not resolved to the satisfaction of the employee, the matter will be submitted to the University's Safety Officer for review. The Safety Officer will advise the employee of the results of his investigation and any corrective action taken or proposed to be taken within thirty days of receiving notice of the employee's concern. Nothing in this Article requires the Employer to take any specific corrective actions proposed by an employee. However, corrective actions shall be implemented in accordance with the judgment of the University.

### **23.3 Joint Health and Safety Committee**

As a way to promote and maintain safe and healthy working conditions in the workplace, the Employer and the Union agree to maintain the campus-wide Health and Safety Committee comprised of representatives from all areas of the campus community. The Union shall select one representative from the Exempt bargaining unit to act as a representative to the Health & Safety

Committee. The Health and Safety Committee shall be the primary advisory group on matters pertaining to accident and injury prevention, reduction, and management. The committee shall be chaired by the University Safety Officer and shall meet once a month.

#### **23.4 Duties of the Health and Safety Committee**

The Health and Safety Committee is responsible for:

- A. Recommending that adequate health and safety rules and regulations are implemented and monitored.
- B. Reviewing and monitoring potential risks and hazards that exist in the work environment, including unsafe work practices, and making recommendations for their elimination or reduction.
- C. Monitoring and evaluating the need for health and safety training for employees.
- D. Reviewing accident records and statistics in order to determine the need for corrective action.
- E. Promoting health and safety education.
- F. Reviewing the availability and adequacy of first aid supplies and equipment and recommending improvements as necessary.
- G. Maintaining and reviewing minutes of all committee meetings.

#### **23.5 Investigative Reports**

The committee shall be entitled to copies of any investigative report produced by any State, County or Federal agency or any report prepared by any member or sub-committee of the Committee as a result of investigating any situation described under Section 4 above.

#### **23.6 No Loss of Compensation**

Members of the Health and Safety Committee will receive paid administrative leave while performing approved duties associated with the responsibilities of the Committee, and/or attending training or conferences required by the Employer. All time spent by the employee on Committee activities must be consistent with operational needs and pre-approved by the employee's supervisor.

#### **23.7 Personal Protective Clothing and Equipment**

The Employer shall provide personal protective clothing and equipment (not including safety shoes) that, as determined by the Employer, are required by applicable state laws and regulations. In the event the Employer requires an employee to wear safety shoes on the job, the Employer, upon proof of purchase shall, on an annual basis, reimburse the employee for the cost of one pair of safety shoes as identified by the Employer. The Employer will make available non-prescription safety glasses to employees who are required to wear them as part of their job.



**23.8 Communicable Diseases**

Employees will be provided with information on all communicable diseases to which they may have routine workplace exposure. Training by a certified entity shall be provided, at least once a year, to educate employees in the area of recognition and prevention of such diseases and blood borne pathogens. The training shall be based on the standards established by OSHA.

**23.9 Hepatitis B**

Employees who have any contact with blood and other body fluids shall be offered Hepatitis B vaccination at the Employer's expense.

**23.10 Cardiopulmonary Resuscitation (CPR) Training**

Employees assigned to job positions where, as determined by the Employer, training in CPR may be a valuable skill, shall be offered CPR training.

**23.11 Asbestos**

All employees who work with or around asbestos shall have the proper required training and personal protective equipment. When an asbestos hazard is discovered, employees shall be immediately notified of the existence and location of the hazard and the Employer shall take precautionary measures to protect the employees from exposure. The Employer shall conduct periodic inspection and monitoring to detect the presence of asbestos at least once a year.

**23.12 Medical Monitoring**

Medical monitoring shall be provided for Level II Asbestos Workers according to the schedule set by the Maryland Asbestos Program. Medical monitoring shall also be provided as specified in the Frostburg State University Chemical Hygiene Plan, Blood Borne Pathogens Plan, and the Respiratory Program.

**23.13 Inspection by Governmental Agencies**

A copy of any investigation report prepared by any government agency, which conducted an investigation on the premises of the Employer, shall be furnished to the Union upon request.

**ARTICLE 24. NO STRIKES AND NO LOCKOUTS**

**24.1** Consistent with State Personnel and Pensions Article Section 3-303, employees are prohibited from engaging in any strike. The Employer may take disciplinary action, including termination of employment, against any employee who participates in a strike. "Strike", as defined in Section 3-303, means any concerted action to impede the full and proper performance of employment duties in order to induce, influence, coerce, or enforce demands for a change in wages, hours, terms, or other conditions of employment, and includes a total or partial refusal or failure to report to work; refusal or failure to perform employment duties; withdrawal from work; work stoppage; or, work slowdown. The Union agrees that it will not engage in or encourage any strike activity and agrees that it shall take all necessary steps to obtain immediate compliance with this Article by employees covered by this MOU. The Union is subject to all penalties and remedies under law for a violation of this Article or Section 3-303.

24.2 Consistent with State Personnel and Pension Article Section 3-304, the University may not engage in any lockout. "Lockout", as defined in Section 3-304, means action taken by the University to interrupt or prevent the continuity of the employees' usual work for the purpose and with the intent of coercing the employees into relinquishing rights guaranteed by Title 3 of the State Personnel and Pensions Article, or any action taken by the University to bring economic pressure on employees for the purpose of securing the agreement of their exclusive representative to certain collective bargaining agreement terms.

## **ARTICLE 25. SEVERABILITY**

This MOU is subject to all applicable laws. Should any part of this MOU be declared invalid by operation of law, the part at issue will be unenforceable and the remainder of the MOU shall not be affected but shall remain in full force and effect. In the event a provision is thus rendered invalid, upon written request of either party, the Employer and the Union shall meet promptly and attempt to negotiate a substitute for the invalid provision.

## **ARTICLE 26. LAYOFF AND RECALL**

### **26.1 Layoff Notice**

- A. When the University decides to layoff an employee or employees, a notice shall be given to the affected employee(s) and the Union at least 90 calendar days in advance of the effective date of such layoff. Notices of layoff shall be in writing and shall be acknowledged in writing by the employee. The written notice shall include the reason for the layoff (i.e., position abolished, discontinued or vacated because of a lack of supporting funds, program change, change in departmental organization or stoppage or lack of work). The Employer may place an employee who receives a notice of layoff on administrative leave for any portion of the 90 calendar day notice period. Administrative leave will not be unreasonably denied.
  
- B. In cases in which grant funds are reduced or terminated with less than 90 days notice, the Department Head shall notify the affected employee(s), as soon as possible, but no later than five (5) working days following the department's receipt of the notice and shall specify the period of notice which shall conclude with the date of fund termination or reduction.

### **26.2 Displacement**

No exempt employee who has been notified of layoff shall have the right to displace another employee in any employment category within University service.

### **26.3 Administrative Employees with Faculty Tenure**

The layoff of an exempt employee from an exempt administrative position shall not affect any tenure rights which that employee may hold in an academic department at the University.

## 26.4 Recall Rights

- A. An employee who is laid off from an exempt position shall be recalled for reappointment following a layoff if, within one calendar year from the effective date of layoff, the specific position from which the layoff occurred is reestablished.
- B. A person who is appointed to any position in the USM within three years of being laid off shall be considered in a reinstatement status as provided for in Section C below.
- C. Former employees are eligible for reinstatement status for three years from the date of separation from regular USM and/or State service.
- D. A reinstated employee shall receive full credit for prior USM and/or State service as it applies to service time and sick leave balance.

## 26.5 Severance Package

Laid off employees who are eligible may receive the following severance package:

### A. Tuition Remission:

- 1. Employees who are laid off, and have completed less than ten years service with the University and who are receiving tuition remission at the time of layoff may complete the semester in which the lay-off occurs at whatever qualifying institution they are attending at that time, and they may receive tuition remission for one additional full-time semester or two additional part-time semesters, not to exceed a total of 18 credit hours, at FSU campuses only.
- 2. Employees who are laid off, who have completed ten years service with the University and who are receiving tuition remission at the time of layoff, may complete the semester in which the lay-off occurs at whatever qualifying institution they are attending at that time, and they may receive tuition remission for two additional full-time semesters or four additional part-time semesters, not to exceed a total of 36 credit hours, at FSU campuses only.
- 3. For purposes of this Section, full-time shall be considered 12 credit hours or more. Part-time shall be considered to be less than 12 credit hours.
- 4. The tuition remission benefit described in this Section is for the employee only, with the exception that any employee dependent enrolled in coursework in the semester in which the employee is laid-off and receiving tuition remission may continue to receive tuition remission for the balance of that semester.

## **B. Employment Assistance**

1. The Office of Human Resources will be available to assist employees laid off with the following:
  - a. Developing a resume
  - b. Composing a cover letter
  - c. Interviewing skills
  - d. Conducting a job search
  - e. Employment agency contacts
  - f. Recommended readings
  
2. The Office of Career Services offers at no cost to the employee:
  - a. Individual Career Counseling
  - b. Job/Internship Posting & Searches
  - c. Resource Library
  - d. On campus recruitment and interviews
  - e. Career Fairs
  - f. Resume and cover letter assistance
  - g. Mock Interviews
  - h. Free access to College Central
  
3. Laid off employees may use the University's computer labs, facsimile machines and copiers for purposes of developing a resume and conducting job searches. Employees availing themselves of these services agree to comply with all University rules and regulations.

## **ARTICLE 27. SECONDARY EMPLOYMENT**

University employment is the primary employment of employees covered by this MOU. Employees may also hold secondary employment unless the University determines that such employment impairs the employee's University job performance, the employee's availability to perform his/her employment obligations with the University, or causes a conflict of interest or the appearance of a conflict of interest with the employee's primary employment or otherwise with the University. In order to ensure that any secondary employment conforms at all times with this Article, the employee has the obligation to inform his/her supervisor before accepting or engaging in any type of secondary employment, and after initial approval, the employee must also immediately notify his/her supervisor of any changed circumstance which may raise questions about the continued suitability of the secondary employment. The University shall be the sole judge as to whether the secondary employment conforms with this article. Secondary employment is not a valid reason for declining or inadequate job performance. Nothing in this Article is intended to affect the applicability of any law, decision, policy, procedure or regulation dealing with ethics and/or conflicts of interest and otherwise applicable to employees covered by this MOU. Secondary employment as used herein includes all forms of self-employment such as serving as a consultant or advisor. The University agrees to administer this Article reasonably. The purpose of this Article is to make certain that an employee's secondary employment is consistent with the employee's primary employment obligations with the University and not to unduly restrict an employee's secondary employment.

## **ARTICLE 28. DURATION, RENEWAL AND REOPENER**

### **28.1 Duration**

This MOU shall become effective February 14, 2014. No portion of this MOU shall be implemented until all of its provisions are effective. Except as provided in Article 9 - Wages and Compensation, Section 9.1, no provision of this MOU has retroactive application unless required by law. This MOU expires at 11:59 p.m. on June 30, 2016. The parties shall ensure that their respective ratification processes are completed as promptly as possible after the conclusion of negotiations.

### **28.2 Renewal**

Should either party desire to renew this MOU, they may only do so by providing written notification of its intent to do so to the other party at any time prior to the last twelve (12) month period of its duration. After notification is provided, the parties shall then commence negotiations for a successor MOU, during the last year of this MOU at dates and times agreed to by the parties.

### **28.3 Limited Reopener for 2015 and 2016**

Notwithstanding the provisions of Section 28.1-Duration, either party may reopen this MOU during the month of September of each preceding year (2014 and 2015) for the sole and limited purpose of negotiating over the subjects of what cost of living adjustment, if any, what merit pay amount if any, and what funding conditions and requirements, if any, for both items shall be included in the USM budget request submitted to the Governor for the next fiscal year. All other terms and conditions of this MOU shall remain in full force and effect during any such reopener and throughout the duration of this MOU.

### **28.4. Conditional Reopener**

In the event that applicable law governing grievance procedures for exempt employees is changed during the first two (2) years of this MOU, then notwithstanding Section 28.1-Duration, either party may reopen this MOU by serving notice on the other during the 30 day period following the effective date of such law. The reopener will be for a period of 30 days beginning on the day the written notice is served.

## **ARTICLE 29. PROTECTION AGAINST LIABILITY**

Employees covered by this MOU must discharge their duties in a competent and proper fashion. Employees are entitled to assert whatever limitations in liability are provided by applicable law for claims made against them and arising out of the scope of the proper performance of their employment with the University. Additionally, at the sole discretion of the Office of the Attorney General, the State may provide legal counsel to the employee when the employee has acted in the scope of his/her employment or his/her official capacity pursuant to the provisions and limitations of Title 12, State Government Article, Annotated Code of Maryland.

EXEMPT SIGNATURE PAGE

FROSTBURG STATE UNIVERSITY

AMERICAN FEDERATION OF  
STATE, COUNTY & MUNICIPAL EMPLOYEES

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## USM REFERENCE

*The parties have agreed to publish, for convenient reference, certain policies and procedures in this Appendix Reference. The parties specifically agree and understand that publication of these policies and procedures here is not intended to, and does not, make these policies and procedures part of this MOU.*

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[USM Policy VII – 1.22](#), *Policy on Separation for Regular Exempt Employees*

[USM Policy VII-4.10](#), *Policy on Tuition Remission for Faculty*

[Policy VII-4.20](#), *Policy on Tuition Remission for Spouses and Dependent Children of Faculty and Staff*

[USM Policy VII 7.01](#), *Policy on Annual Leave for Regular Exempt Employees,*

[USM Policy VII–7.10](#), *Policy on Personal Leave for Regular Exempt Employees)*

[USM Policy VII–7.11](#), *Policy on Leave Reserve Fund for Exempt and Nonexempt Staff Employees on Regular Status*

[USM Policy VII-7.12](#), *Policy on Leave of Absence Without Pay*

[USM Policy VII-7.21](#), *Policy on Jury Service*

[USM Policy VII-7.22](#), *Policy on Leave for Legal Actions*

[USM Policy VII–7.23](#), *Policy on Military Leave (*

[USM Policy VII–7.24](#), *Policy on Call-Up to Active Military Duty During a National or International Crisis or Conflict for USM Exempt and Nonexempt Staff Employees on Regular Status*

[USM Policy VII 7.26](#), *Policy on Leave for Disaster Service*

[USM Policy VII - 7.40](#), *Policy on Accident Leave for Exempt and Nonexempt Personnel*

[USM Policy VII-7.45](#), *Policy on Sick Leave for Exempt and Nonexempt Staff Employees*


[Policy VII-7.49](#), *Policy on Parental Leave and Other Family Supports for Staff*

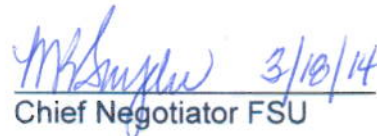
Memorandum of Understanding  
Frostburg State University (FSU)  
And  
The American Federation of  
State, County, and Municipal Employees  
(AFSCME)

Effective February 14, 2014 to June 30, 2016

Side Letter # 1

All references within this document, to AFSCME Maryland, Council 92, shall be interpreted to pertain to AFSCME Maryland, Council 3. AFSCME Maryland Council 92 is no longer in existence and has been replaced by AFSCME Maryland, Council 3.

  
Chief Negotiator AFSCME

  
Chief Negotiator FSU

Side Letter #2

Sick Leave, Article 11.2, shall be amended in accordance with *USM Policy on Sick Leave for Exempt and Nonexempt Staff Employees VII-7.45*, approved by the Board of Regents on Friday, February 14, 2014, and accessible at <http://www.usmd.edu/regents/bylaws/SectionVII/VII745.pdf>

  
Chief Negotiator AFSCME

  
Chief Negotiator FSU

