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**Memorandum of Understanding
Between
Pension Benefit Guaranty Corporation
And
Independent Union of Pension Employees for Democracy and Justice
Concerning
Groundrules for the Negotiation of a Collective Bargaining Agreement**

I. Purpose

A. These ground rules (“Agreement”) shall only govern the conduct of bargaining an initial Collective Bargaining Agreement (“CBA”) between the Independent Union of Pension Employees for Democracy and Justice (“IUPEDJ” or “Union”) and the Pension Benefit Guaranty Corporation (“Employer” or, for purposes of these ground rules, “Agency”) (together, the “Parties”).

B. The ground rules shall remain in full force and effect until such time as bargaining is completed and a new (initial term agreement between these Parties) CBA becomes effective. If the new CBA contains a provision concerning bargaining that would address issues remanded to the Parties from a negotiability appeal decision directing negotiations, the new CBA will govern the conduct of those negotiations. Otherwise, these ground rules shall govern such bargaining.

C. The CBA shall be bargained in accordance with applicable law and regulation and these ground rules.

D. Upon mutual agreement, the Parties may engage in interest-based bargaining when negotiating this initial CBA or portions of it.

E. Matters not addressed or included in this agreement are not subject to enforcement by this agreement.

II. Bargaining Team

A. The Union’s bargaining team may consist of five members. These members’ activities may include the performance of any negotiation table functions on official time. Any other attendee whether claimed to be an expert, observer, alternate or otherwise may participate only by the mutual agreement of the parties. Each negotiating team shall identify a chief negotiator and team members five (5) calendar days in advance of the first bargaining session. The Union may change a team member with three (3) calendar days’ written notice to the individual’s immediate supervisor. If either party changes a chief negotiator, it shall provide the other party a five (5) calendar day notice.

B. No less than five (5) workdays prior to the agreed upon start date for bargaining, the Parties shall exchange a list of their respective team members. A Party may change a team member at any time in accordance with the terms of this Agreement.

C. Oral communications by the Agency's bargaining team with the Union's bargaining team regarding the negotiations of the CBA, shall be directed solely to the Union's bargaining team. Any written communications between the respective bargaining teams will be transmitted and delivered to the Chief Negotiator for each team and the IUPEDJ Executive Committee at IUPEDJ_Officials@pbgc.gov.

D. If a Union bargaining team member is not a PBGC employee, then a Union bargaining team member who is a PBGC employee may sign the non-employee in at the security desk. In such a case, the individual signing in the non-employee is personally responsible. The non-employee shall understand that he/she must follow all security and other rules that govern employee behavior or forfeit the privilege of access to the building.

III. Bargaining

A. Initial Proposals. The Parties shall exchange initial proposals concerning the CBA sixty (60) calendar days after the signing of this agreement. This 60-day period includes time for the Agency Head Review.

B. Additional Proposals. Both Parties will have the opportunity to prepare and submit additional proposals on other subjects and additional topics within thirty (30) calendar days of the start of bargaining. No new proposals on a subject not previously proposed in A or B of this section shall be added after such date unless mutually agreed or unless there is a change in law or governing regulations. In such instances, the Parties may make new proposals of the topics affected by these changes. Nothing in this section precludes a Party from making counter proposals in accordance with law.

C. Format of Proposals. The Parties' initial proposals will be submitted in writing by hard copy and in MSWord document format and .pdf format by email. When time permits, the Parties shall submit and exchange modifications to proposals electronically in Word format and .pdf format. Proposals shall be dated. The parties recognize that handwritten changes made at the table may facilitate bargaining.

D. Tentative Agreement. Agreement on articles, sections of articles, and other provisions that are not contained in articles or sections of articles, will be tentative pending signing of the entire tentative agreement; Union ratification; and Agency Head Review. Tentative agreement is accomplished when an entire article or sections of an article are initialed and dated on two hard copies by each party's chief negotiator at the bargaining table with at least three (3) members of the Union's bargaining team present. The Parties may mutually agree to reopen an article or section of an article that was tentatively agreed to at a previous time.

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E. Bargaining Schedule

- a. Initially, the Parties agree to engage in five (5) weeks of negotiations for twenty four (24) hours per week on Tuesday through Thursday over a nine (9) week period, one week on, one week off, commencing on a mutually agreed date no later than 30 calendar days after initial proposals are exchanged. A week in which a Federal Holiday falls will require the above schedule to be moved forward in consideration of that week.
- b. Subsequently, in accordance with law, the parties shall meet at mutually agreed upon dates and times as needed to complete negotiations.
- c. Either party may request assistance of the Federal Mediation and Conciliation Service (FMCS) or Federal Service Impasses Panel (FSIP) as it deems necessary. At the end of the 9 week period, either party may seek the assistance of a mediator from the FMCS. The other party will cooperate in obtaining FMCS assistance. **The Parties will participate in mediation.**
- d. Fourteen (14) work days before bargaining begins, each Party will provide the other with a written list of the proposals it wishes to discuss at each weekly session. For any conflicts, the order of proposals to be discussed will be decided by a coin toss.

F. The Parties will rotate in deciding which articles will be addressed each week. The Union shall start.

G. Union use of Equipment. PBGC employees who are members of the Union's negotiating team are authorized to utilize the PBGC computers assigned to them or the Union to prepare proposals and for other matters related to the negotiations.

H. The Agency shall respond to Union's data requests concerning negotiation of the CBA in accordance with 5 U.S. C. §7114(b)(4) within a reasonable time based on the scope and complexity of the request. The Agency shall provide the data to Union's chief negotiator.

IV. Official Time

- A. These ground rules are the sole and exclusive agreement allowing and governing any Union official's use of official time and/or employee use of duty time in any way related to collective bargaining to reach a term agreement.
- B. Official time for Union representatives includes preparation time, caucus time, time at the bargaining table and such time as is required to participate in mediation with the Federal Mediation and Conciliation Service, and as is required to participate in impasse proceedings before the Federal Service Impasses Panel, Federal Labor Relations

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Authority or grievance arbitrator. The length of a caucus is at the mutual agreement of the parties.

- C. Regarding proceedings before the Federal Labor Relations Authority, the Union will receive a bank of 40 hours not including any meeting with a FLRA representative or hearing, for the duration of which the representative shall receive official time.
- D. During each grievance proceeding, and each preparation for arbitration, the Union will receive a bank of 40 hours not including any grievance meeting or arbitration hearing, for the duration of which the representative shall receive official time.
- E. In accordance with 5 U.S. Code § 7131 (a), a Union representative is entitled to official time only during the time that representative "would otherwise be in a duty status".
- F. A bargaining unit employee (who is not a member of the Union's bargaining team) who is or is not a Union representative is not entitled to duty time for any purpose related to any matter related to negotiations under this agreement without the advance, express, written permission of the Human Resources Director or designee.
- G. The Agency agrees, where possible, to adjust the workload of Union representatives to participate in CBA negotiations.
- H. Concerning preparation time, the Union will receive a bank of 400 hours of official time applicable to all Union representatives who participate in one or more of the authorized functions listed below:
 - 1. Preparation of initial proposals;
 - 2. Time during a week of negotiations;
 - 3. Time between negotiation sessions;
 - 4. Preparation for mediation and/or Impasse proceedings; or,
 - 5. Time to prepare for a negotiability proceeding.
- I. One (1) year after the initial nine (9) week bargaining session, the Union may reopen the Agreement for the sole purpose of negotiating additional preparation time, unless the Parties are engaged in Impasse proceedings or in litigation before the FLRA or the courts.

V. Caucuses

Caucus sessions may be called for up to thirty minutes by either party, as needed, and may be extended by mutual agreement. Each day the time allotted for all caucuses shall not exceed two hours, except as mutually agreed. When the Union calls a caucus, the Employer will leave the bargaining room so that the Union can caucus there.

VI. Records

Each Party may take notes of the bargaining sessions it deems necessary. Audio recording, transcription, or transmitting devices/equipment of any kind shall not be permitted in the bargaining room while bargaining is in progress or the Parties are engaged in any discussion related to the bargaining.

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VII. Negotiability

Any matter of negotiability shall be addressed pursuant to 5 U.S.C. Chapter 71 and 5 C.F.R. Part 2424.

VIII. Impasse Resolution

Mediation and impasse resolution, if necessary, shall be conducted in accordance with 5 U.S.C. §7119; the procedures and regulations of the Federal Mediation and Conciliation Service (including 29 C.F.R. § 1425); and, the procedures of the Federal Service Impasses Panel (including 5 C.F.R. §2470-2473).

IX. Ratification and Agency Head Review

- A. Once the Parties have reached tentative agreement on all articles of a CBA and there is agreement on the entire contract, the parties' bargaining teams shall immediately meet and assemble two complete sets with the articles in alphabetical order. Each party's Chief Negotiator or Alternate Chief Negotiator shall then sign each tentative article, sign a table of contents, and sign a cover page stating that the attached set of articles constitutes the complete, tentative CBA.
- B. The Parties will prepare an electronic copy of the clean complete tentative agreement suitable for distribution to the bargaining unit for purposes of a ratification vote. The complete tentative CBA is subject to ratification by the Union's members. If the complete, tentative CBA is not ratified, the parties will resume negotiations at a mutually agreeable date and time but no later than 30 days after the Union notifies the Agency that it has not been ratified.
- C. Upon written and dated notification by the Union to the Agency that ratification has occurred, the agreement shall be executed. This execution triggers Agency Head review in accordance with 5 U.S.C. § 7114(c)(1) through (3). The agreement shall become effective upon the earlier of Agency Head approval or on the 31st day after execution if the Agency neither approves nor disapproves the agreement, in accordance with 5 U.S.C. § 7114(c)(1) through (3). Should the Agency Head disapprove any provision of the agreement, the remaining provisions shall be in effect.

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X. Agreement

The Parties agree to address the issues concerning the number of copies of the Agreement in CBA negotiations.

XI. Enforcement

1. Grievance.

- a. A dispute over the interpretation or application of this agreement shall be resolved by the following grievance/arbitration process. Disputes over official time under the PBGC-UPE agreement will not be resolved under this procedure. A party shall notify the other party in writing of the factual basis for the dispute and identify the provisions in dispute and identify the relief sought not later than fourteen (14) calendar days after the Party knew or should have known a dispute existed. The parties shall meet within Five (5) business days to seek to resolve the dispute. Absent resolution, the party in receipt of the grievance shall have fourteen (14) days from the time of filing to respond to the grievance. If the dispute is not resolved, either party may invoke arbitration within five (5) business days after receipt of the reply to the grievance.
- b. Nothing in this provision or in this ground rules agreement shall preclude a party from filing an unfair labor practice charge with the Federal Labor Relations Authority. This agreement confers no jurisdiction on the Federal Labor Relations Authority beyond that expressed in the law.

2. Arbitration.

a) Applicability.

I. Arbitration may be invoked only by the Union or the Agency. The Union official invoking arbitration must either be its President or an official specifically designated by its President to make such an invocation. If the Agency requests such a designation, it shall be provided prior to the Agency's acceptance of the invocation.

II. Service.

- i. When hand delivered, proof of service must accompany the invocation of arbitration.
- ii. When mailed, the appeal must arrive in an envelope with a U.S. Postal Service Postmark. The U.S. Postal Service Postmark will be used to determine the date of invocation.

III. Arbitration must be invoked within 15 days of the date of the final grievance decision. If the arbitration invocation is withdrawn or a deadline not met, the last preceding Agency written response will be considered final.

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b) Arbitrator Selection.

- I. Within seven (7) calendar days from invoking arbitration, the party that invoked arbitration shall request a list of five (5) impartial arbitrators from the Federal Mediation and Conciliation Service (FMCS) by submitting a FMCS Form R-43 entitled "Request for Arbitration Panel" with a copy of the submission to the other Party and pay any attendant costs. Within fourteen (14) calendar days from receiving a list of arbitrators from FMCS the parties shall meet to select an arbitrator.
- II. If the parties cannot agree upon an arbitrator, the parties shall each strike one (1) name from the list alternately and then repeat this procedure until only one name remains. The person whose name remains shall be selected as the arbitrator. The party striking the first name from the list in each case shall be chosen by a coin toss or when done by phone, the moving party strikes first. At any time the parties may agree to obtain a new list of arbitrators from the FMCS.
- III. If an arbitrator is not selected within thirty (30) days from the receipt of the FMCS list, the matter shall be considered withdrawn unless mutually agreed otherwise.
- IV. At the request of a party, the FMCS shall be empowered to make a direct designation of an arbitrator to hear the case in the event:
 - a) either party refuses to participate in the selection of an arbitrator; or
 - b) upon inaction or undue delay on the part of either party.
- V. Once selected, an arbitrator shall be contacted by the parties within seven (7) calendar days and the hearing scheduled. If a hearing is not held within ninety (90) days of selection, the matter shall be considered withdrawn unless mutually agreed otherwise.
- VI. The arbitrator shall be provided with a copy of this agreement at the time he or she agrees to hear the matter.

c) Pre-Hearing Matters

- I. The Parties shall communicate in advance of the arbitration hearing in an attempt to agree on a joint submission of the issue(s) for arbitration. If the Parties fail to agree on a joint submission, each Party will prepare a statement of what it believes the issue(s) to be. The arbitrator will have the final authority to determine the issue(s) to be decided.
- II. The parties will exchange lists of witnesses at least ten (10) days in advance of the hearing and indicate the nature of the testimony, e.g., direct observation of an incident, knowledge of bargaining history for each witness, within three (3) calendar days, amend its list to add rebuttal witnesses. Disputes as to the relevance of a witness or redundant testimony will be resolved by the Arbitrator.
- III. Employees who are called as witnesses will be excused from the performance of their normal duties to the extent necessary to participate in the arbitration proceedings and during such times these employees would otherwise be in a duty status shall continue in a pay status. The Union shall provide a witness list to the Agency representative ten (10) days prior to the hearing.

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- IV. The designated Union representative shall have full authority to settle, withdraw or otherwise dispose of any grievance brought on its own behalf. An agreement by the parties to settle, withdraw, or otherwise dispose of a grievance appealed to arbitration shall be binding on the parties.
- V. The Union may be represented by one (1) person on official time. The Agency's obligation to provide official time is limited to bargaining unit employees. The Union is obligated to notify the Agency in writing, no less than ten (10) days prior to the hearing of the name(s) of its representative(s) and in the case of non-bargaining unit employees, provide contact information including name, firm, if applicable, street address and email address.
- VI. Issues of grievability and arbitrability shall be resolved as specified in Section d), below.

d) Issues of Grievability or Arbitrability.

- I. Unless raised in the grievance, a party raising an issue of grievability or arbitrability may within five (5) days of the decision described in Section XI.1.a. request a separate hearing before a separate arbitrator than the arbitrator who will hear the merits to decide such issues before a hearing is held on the merits of the original grievance. In that case, the entire cost of the arbitrability hearing will be borne by the losing party as determined by the arbitrator.
- II. The hearing shall be conducted independent of the merits by an arbitrator selected for that unique purpose.
- III. If grievability or arbitrability hearing is to be held, the parties shall select two arbitrators under the selection procedures agreed above, the first will decide grievability or arbitrability. If the matter is deemed to be arbitrable, the second arbitrator shall be notified and a hearing shall proceed consistent with this article
- IV. Except as provided in above, arbitration will follow the procedures specified in this article.

e) Cost.

- I. Except as provided above, the arbitrator's fees and expenses shall be borne equally by the parties to the arbitration.
- II. In the event either party requests the cancellation or postponement of a scheduled arbitration proceeding which causes an arbitrator to impose a cancellation or postponement fee, the party requesting such cancellation or postponement shall bear the full cost of the cancellation/postponement fee. In the event the parties agree to settle or postpone the arbitration during the period of time in which the arbitrator will charge a cancellation/postponement fee, the parties will equally bear the cost of the fee, unless the parties agree otherwise.
- III. In all arbitrations, each party shall bear its own costs for transcripts and each party shall bear its own costs associated with the arbitration except that an arbitrator may award attorney fees to the Union in accordance with applicable law and regulation and to the Agency based on equity.

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f) Authority of the Arbitrator.

- I. An arbitrator selected under this article is obligated to recognize that he or she is serving within the context of Federal law and applicable regulation involving Federal service employees. The arbitrator is obligated to consider the precedence of the decisions of the Federal Labor Relations Authority and courts of competent jurisdiction in determining a ruling and a remedy for cases presented to them.
- II. An Arbitrator selected under this article agrees to be bound by the *Code of Professional Responsibility for Arbitrators* and Federal Mediation and Conciliation Service (FMCS) *Arbitration Policies and Procedures* in effect at the time of selection. At the time of this writing, these documents may be found at the website of the FMCS (<http://www.fmcs.gov>).
- III. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify or ignore in any way the provisions of this Agreement and shall not make any award that would, in effect, grant the Union or an employee or employees any terms which were not obtained in the negotiation process leading to this agreement.
- IV. This Agreement constitutes the entire agreement between the parties and there are no other agreements, written or oral, which affect the terms of this Agreement. In construing and interpreting this Agreement, the plain language contained within its four corners shall bind the arbitrator. Evidence extrinsic to this Agreement shall not be received or considered by the Arbitrator in interpreting or construing this Agreement except with respect to any particular provision that is patently ambiguous.
- V. The arbitrator may not consider any evidence or issue unrelated to the specific matter addressed in the grievance which is the subject of the matter the arbitrator has been selected by the parties to hear.
- VI. The burden of proof and production shall rest with the party bringing the case to arbitration.
- VII. The parties recognize the right of the Union to request data pursuant to 5 U.S. Code § 7114(b)(4). In addition, the arbitrator is empowered to enforce a reasonable request by the Agency for information in the possession of the Union or a Union witness to a proceeding in advance of the hearing.
- VIII. An arbitrator may engage in the mediation of the dispute only with the mutual agreement of the parties and when such agreement is in advance of any such mediation effort. Mediation, if scheduled, shall be no more than two days in duration, unless otherwise mutually agreed by the parties. If mediation does not produce a resolution of the entire dispute, the arbitrator shall begin the hearing no later the day after mediation is completed. Refusal by a party to participate in or agree to a mediated resolution may not be considered by the arbitrator in rendering an award.

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g). Arbitration Hearing.

- I. The arbitration hearing shall be closed to anyone other than the advocates and witnesses during the time of their testimony in the arbitration hearing, unless the parties otherwise agree in writing.
- II. Arbitration hearings will be held at a mutually agreed upon date no later than ninety (90) days after an arbitrator is selected. The parties may mutually agree to extend any time limit.
- III. Arbitration hearings will be held at a facility determined by the Agency unless agreed otherwise.
- IV. Stipulation of facts to the Arbitrator may be used when both parties agree to do so. In this case, data, documentation, etc., will be jointly submitted to the Arbitrator with a request for a decision based upon the stipulations and supporting materials.
- V. Any party wishing a record of the hearing shall:
 - a. be responsible for the preparation of such record by a licensed Court Reporter ;
 - b. pay all costs for such record, unless the parties agree.
 - c. provide the other party a copy if that party agrees to pay one half the cost of the record.
- VI. The parties to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.
- VII. The hearing shall be conducted expeditiously and in an informal manner.
- VIII. The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.
- IX. Ten (10) calendar days prior to its use, testimony and/or affidavits in connection with bargaining history may not be used in the mediation process or during an arbitration hearing unless one of the Parties has notified the other in writing prior to mediation and/or the hearing of its intent to use such testimony and/or affidavits, and provide such information to the other party.
- X. No interested person shall make or knowingly cause to be made to the arbitrator an ex parte communication unless agreed upon by the parties.
- XI. Either party may submit a post-hearing brief. The Arbitrator will determine the date that the briefs are due.

h). Award.

- I. The jurisdiction and authority of the arbitrator shall be confined exclusively to the record as stated in the grievance unless otherwise mutually agreed to by the Parties.
- II. The Arbitrator's authority to make an award is subject to applicable law and regulation.
- III. Any award may not include assessment of expenses against either party other than as permitted by law or as specifically provided for in this agreement. In rendering a decision, an arbitrator must demonstrate such an award is consistent with 5 U.S.C. §5596 (The Back Pay Act of 1966, as amended).

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- IV. An award of attorney fees shall not exceed comparable fees awarded by MSPB or Federal courts for similar matters and in no case shall the hourly rate compensated exceed \$150.00 per hour. The payment of Attorney fees is limited to the work of a single attorney. It is further limited to a ratio of no more than 8 hours of preparation time to each hour spent at hearing and no more than 24 hours for the preparation and submission of a brief. In no case shall an award of fees exceed \$25,000.00. A Federal employee Union representative may not claim attorney fees for work performed while in an official time status.
- V. The arbitrator shall make the award within 30 days after the close of the hearing, or the closing date of the filing of any briefs, whichever date is later, unless the parties agree to some other time limit.
- VI. The Arbitrator's decision shall be final and binding, unless it is timely appealed to a Federal court or an exception is filed with the Federal Labor Relations Authority under 5 USC Section 7122, whichever is appropriate.

For the Agency

Date:

[Signature]
NOVEMBER 24, 2015

For the Union:

Date:

[Signature]
Nov. 24, 2015