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MEMORANDUM OF UNDERSTANDING CONCERNING THE GROUND RULES

1) Preamble

- A. This Memorandum of Understanding ("MOU") is entered into, by and between the U.S. Immigration and Customs Enforcement (hereinafter referred to as "the Agency" or "ICE") and AFGE Council 118 ICE, American Federation of Government Employees, AFL-CIO (hereinafter referred to as "AFGE," "the Council" or "the Union"). Together, the Agency and the Union shall be referred to as "the Parties."
- B. This MOU sets forth the full and complete ground rules for the negotiation of a Master National Collective Bargaining Agreement between the Parties, covering all employees in the bargaining unit certified by the Federal Labor Relations Authority ("FLRA") in Case No. WA-RP-05-0029. Neither Party waives any of its statutory rights by entering into this MOU.

2) CBA terms in effect during negotiation and interpretation of the July 8, 2018 MOU, October 1, 2019 MOU, and January 19, 2021 MOA.

The Parties recognize that, notwithstanding its prior expiration, the provisions of the predecessor master collective bargaining agreement between the U.S. Immigration and Naturalization Service (INS) and the National Immigration and Naturalization Service Council (NINSC) signed on June 8, 2000, also known as Agreement 2000, shall, as modified by a Memorandum of Understanding in response to Case No. WA-RP-05-0029 ("2006 MOU"), generally remain in full force and effect, as if within term, and be applicable upon the Parties in accordance with relevant law until a new Master Agreement replaces it. Further, on July 8, 2018 and October 1, 2019, the Parties entered into memoranda of agreement to extend Articles 2, 5, 6, 7, 8, 9, 31, 32, 47, and 48 and Appendix 3 of Agreement 2000, as modified by the 2006 MOU, for a six (6) year term. See Attachment A, July 8, 2018 MOA; Attachment B, October 1, 2019 MOA. Then, on January 19, 2021, the Parties entered into a Memorandum of Agreement amending, only to the extent of any contradiction, Agreement 2000 with 19 Articles and 3 side letters that were attached to the MOA, all of which became effective upon execution of the MOA. These articles, appendices, and side letters shall be incorporated unmodified into the successor master agreement as stated in the three agreements. The Agency agrees to be bound by the permissive matters included in the articles, appendices and side letters mentioned above; no part of these agreements will be opened, amended or otherwise bargained without the express written consent of the Union.

3) Bargaining Teams

- A. The Parties agree that only the Chief Negotiators or Alternate Chief Negotiators shall have the authority to negotiate on behalf of their respective

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Party. The Parties agree that each Negotiating Team may include one (1) Chief Negotiator and five (5) additional members.

B. The Chief Negotiators will provide leadership and be responsible for the conduct of their members. Each Chief Negotiator is also responsible for the following, with respect to that Party's team:

1. Providing notice to the other Party of the Negotiating Team members;
2. Designating the alternate Chief Negotiator and Alternate members of the Negotiating Team;
3. Calling caucuses;
4. Determining travel, accommodations and other housekeeping matters.

C. The Chief Negotiators are jointly responsible for the following, by mutual agreement:

1. Determining the dates and starting and quitting times for all bargaining sessions (as consistent with this agreement);
2. Providing up to two (2) points of contact to receive counterproposals, emails and other communication covering all required areas of correspondence established in these ground rules;
3. Signing, Initialing, and dating all articles, on which the Parties have reached tentative agreements.

4) Conducting bargaining sessions (generally)

A. As specified below, bargaining sessions shall generally occur face-to-face unless mutually agreed upon to bargain remotely. If the Parties have mutually agreed to remote bargaining, the Union may at its election, meet in person with their bargaining team members for any remote bargaining session. During weeks where a formal bargaining session is not held, the Parties will still have the opportunity to engage through emailing questions and responses and through phone calls between the Chief Negotiators.

B. Sessions shall begin at 9:00 a.m. and end at 5:30 p.m., eastern time, Tuesday through Thursday, with a half hour unpaid lunch break, absent mutual agreement to the contrary.

C. Face-to-face bargaining sessions shall occur at a location mutually agreed to no later than four (4) weeks prior to the session. The fact that a session is face-to-face does not preclude either party from having team members attend

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remotely if mutually agreed.

- D. The Union may at its election, schedule a one-week preparation meeting with its team members prior to each bargaining session. Travel and per diem will be paid in accordance with these Ground Rules.
 - E. The Parties will meet within ninety (90) calendar days of execution of these ground rules to schedule bargaining session dates for the remainder of the calendar year. The Parties will meet each year thereafter no less than sixty (60) calendar days before the end of the calendar year to schedule bargaining sessions for the upcoming year.
 - F. Each Party may designate a note taker to keep notes and records during the sessions. The Parties further agree that they may jointly assign one person to serve in a knowledge capture role to facilitate and document certain discussions and agreements between the Parties.
 - G. The Parties shall meet at least once each day of negotiations, although these meetings may consist of as few people as the two Chief Negotiators and one additional person per Party to take notes. Cellular phones or any mobile device (i.e., incoming or outgoing emails, texting or calling) shall be placed on the silent mode during negotiations. A team requesting a caucus will leave the negotiations room to caucus in its respective caucus room. There is no limit on the number of caucuses that may be held, but each Party will make every effort to restrict the number and will provide a reasonable estimate on the anticipated length of the caucus and provide updates if more time is needed
 - H. Joint announcements of a general nature regarding the status of the ongoing negotiations may be released during negotiations. Additionally, the Union is not precluded from discussing the status of the negotiations with its bargaining unit. Neither party shall be precluded from sharing tentatively agreed Articles with its represented constituencies, so long as the Articles are labeled with a watermark indicating the Article is "not yet operative."
- 5) Conducting bargaining (substantively)
Bargaining Procedures
- A. Each Party will notify the other party two weeks prior to each bargaining session of the articles it wishes to negotiate during the session.
 - B. During bargaining sessions, the Parties will engage in good faith bargaining in an effort to reach agreement, to include the exchange of proposals. Bargaining sessions will not be restricted to question and answer periods or proposal preparation;

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C. The Parties may, by mutual agreement, mark Articles for impasse, when appropriate.

6) Bargaining specifics

A. Within one hundred and eighty (180) calendar days following execution of this agreement, the Parties will exchange:

1. a list of all previously bargained articles each Party agrees to without further negotiation;
2. a list of all previously bargained articles each Party intends to continue bargaining about.

B. Absent mutual agreement, the articles which have been tentatively agreed upon, by both parties in 6.A.1, will not be countered/updated/reopened and will be deemed accepted by the Parties. Prior to designating articles tentatively agreed upon, the parties will review and make any necessary housekeeping changes. Examples of "housekeeping" changes are updating articles such that references to agencies, sub-agencies, or job titles are accurate.

C. The Parties will continue to bargain all articles which have not been tentatively agreed to by both Parties, as well as any additional new articles proposed by the Union later during bargaining.

D. The Parties may exchange an unlimited number of counter proposals on any open article.

7) Bargaining specifics as to concluding mediation session & mediation during bargaining sessions

A. Mediated Bargaining Session(s) Prior to Impasse

1. After having exhausted bargaining, if the Parties have been unable to reach an agreement, the Parties move to mediated bargaining;
2. During the mediated bargaining session(s), the Parties will meet for a minimum of five (5) one-week sessions with the assistance of an FMCS Mediator to resolve disputes and reach agreement, unless the parties agree to fewer sessions. Dates for all mediated bargaining sessions will be mutually agreed upon.
3. Following the mediated session, all unresolved matters will be submitted for impasse to the FSIP, in accordance with the Panel's regulations. Either Party may, at its election, submit its most recent

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proposals to the impasse panel, or make changes to its last proposals, prior to submission to the Panel, so long as the parties engaged in bargaining over the proposals in question.

B. Use of Mediators Throughout the Bargaining Process

Mediators may be used at the election of either Party throughout the bargaining process. The Parties may, if mutually agreeable, adjust negotiation dates in order to have the mediator participate;

8) Travel costs

The Agency shall bear the reasonable travel costs for members of the Union and the Agency bargaining teams including any subject matter experts utilized by either team and lodging and per diem for all bargaining sessions and bargaining prep sessions.

9) Official time

All Union bargaining team members who are ICE employees will be on official time during both remote and face-to-face negotiations as well as for time spent preparing for such negotiations; management will make Union-requested shift adjustments for the Union bargaining team members so preparation and bargaining can be coordinated. This official time will not be charged against any amount of official time bank hours granted to Local or Council Union representatives.

10) Facilities for the Union during term negotiations

- A. If bargaining sessions occur remotely by mutual consent, Union officials will be provided meeting space for caucusing or communicating with the Agency. This includes the fact that VTC equipment for video communications shall be provided, upon request, if operationally available (where a VTC, rather than telephonic, bargaining session has been arranged by the Parties).
- B. At face-to-face sessions, the Agency shall provide the Union with a suitable and private room, in close proximity to the bargaining room, for purposes of caucusing and internal deliberations at no cost to the Union, as well as customary and routine office equipment, supplies and services, including, but not limited to, computers with Internet access, telephones, desks and/or tables and chairs, office supplies, color printer, and access to at least one photocopier. Access to the ICE Intranet will be limited to cleared ICE employees and contractors. All Agency equipment and unused supplies must be returned to the Agency at the end of the negotiations. Both Parties agree to abide by established DHS/ICE security protocols in accessing or using government equipment including laptops and the internet. Any issues arising

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regarding services and/or facilities will be resolved expeditiously by the Chief Negotiators.

11) Delays due to mid-term bargaining (and other delay provisions)

Effect of Mid-term Bargaining on National Term Negotiations:

- A. All timelines and deadlines throughout the term negotiation process will be tolled for federal holidays.
- B. Matters such as government shutdowns, natural disasters, pandemics, and national emergencies that impact work or bargaining sessions, likewise will toll all timelines and deadlines throughout the term negotiation process.
- C. All deadlines included in this agreement may be extended by mutual consent.
- D. If the Agency issues an Article 9.A or 9.F notice after the effective date of this agreement, the Agency will serve the notice in accordance with the collective bargaining agreement.
 - 1. Upon the service of the 9.A, at the election of the Union, either: all term negotiations will be suspended pending resolution of mid-term bargaining pursuant to the collective bargaining agreement, or the negotiation and implementation of the 9A notice will be suspended pending resolution of term bargaining, or the Union may select dates for bargaining the 9.A. that do not interfere with its participation in term negotiations.
 - 2. In the case of a 9.F Notice, all deadlines related to the 9.F notice will be tolled until a date for bargaining is selected by the Union.
- E. Upon request, the agency will make every effort to ensure AUO certified members of the Union bargaining team do not suffer loss of AUO pay due to time spent in bargaining or prep sessions.

12) Universe of articles

- A. The parties will follow the parameters described under Section 6.A.1 and 6.A.2 to determine the universe of articles for negotiations.
- B. The Agency specifically withdraws its proposed Articles titled "Fraud, Waste and Abuse in Labor-Management Relations," "Assignment of Position Duties," "Revisions to the Master Agreement," and "Construction of the Agreement," and agrees that it will not introduce any proposals for new articles during bargaining or reintroduce any concepts which were included in the articles listed above. The Union reserves the right to introduce

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proposals for new articles during bargaining.

- C. Consistent with the July 8, 2018 and October 1, 2019 MOAs, Articles 6 and 32 and Appendix 3 of Agreement 2000, as modified by the 2006 MOU, shall be incorporated into the successor master agreement as Articles 6 and 32, and Appendix 3, respectively. Additionally, consistent with the January 19, 2021, MOA, which amended, only to the extent of any contradiction, Agreement 2000 with 19 Articles and 3 side letters that were attached to the MOA, all of which became effective upon execution of the MOA, the January 19, 2021, MOA shall be incorporated into the successor master agreement. Additionally, the three MOAs shall be attached to the master agreement as appendices. The Union may at its election, create an amended, electronic version of Agreement 2000 for use by employees until the collective bargaining agreement under negotiation is completed.

13) Reopening articles

Nothing in this agreement will be construed to prevent the Parties by mutual consent to reopen for bargaining any tentatively agreed upon completed article or tentatively agreed upon article section.

14) Formatting of proposals

- A. Every proposal shall be submitted as a Microsoft Word document. Transmission shall be by email to the appropriate Chief Negotiator (and any bargaining team members the Chief designates and provides email addresses for), with the senders copying themselves (and any other persons from their own bargaining team whom they wish to be copied) for verification purposes. Proposals will have a header listing the topic and counter proposal number (e.g. Article XX- EAP - UCP 1), date and a footer with the page number and total (e.g. "1 of 3"). The general formatting and numbering scheme for all articles in the Master Agreement shall be the decimal outline style (i.e., Article 1.2.2.3), however, any revisions to comport to that formatting do not have to be tracked, colored or marked.
- B. Articles determined to be within the universe of articles for negotiation will be split equally between the Parties prior to the first bargaining session. Both Parties will be responsible for providing "cleaned" articles for the first counterproposal with changes marked as described below.
 - 1. For Agency's counters: the prior proposal will first be "cleaned" (with all highlighting removed) and any changes made thereafter will be made with any new Agency proposed language in red text and yellow highlighting. Deleted language will be "struck through" and the black text will be shaded red.

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2. Newly proposed Union language will be in blue colored text. If responding to new Agency language, the Union will leave the font coloring in the counter untouched, but will remove all yellow highlighting. The Union may strike-through any language (whether colored red or black) and shade it blue to show a proposed deletion. A proposal to revise an article that was previously tentatively agreed will similarly use a "clean" version, with the same color scheme. Any new articles will be formatted in black font.
3. Sections in Articles which have been agreed to by the Parties will be shaded in green. These sections will be considered as tentatively agreed to and further changes will not be made without mutual agreement.
4. Sections in Articles which are considered at impasse by the Parties will be shaded in orange.

15) Subject Matter Experts

- A. Either Party may request subject matter experts (SMEs) to present information and provide specific subject matter expertise deemed necessary to resolve technical questions during the negotiations. The Chief Negotiators will work together to tailor agendas for bargaining sessions to accommodate SME schedules.
- B. Whether bargaining occurs remotely or in-person, either party is permitted to bring their SME(s) to the negotiations.

16) Negotiability & Duty to Bargain

Neither Party waives its right to seek a negotiability determination from the FLRA, or Court review of such a determination. This includes Union appeals of provisions disapproved during Agency Head Review. Term negotiations over the article including the proposal at issue in negotiability proceedings will suspend during the pendency of any such negotiability proceedings. Term negotiations on affected articles will also be suspended during the pendency of any grievance or unfair labor practice proceedings arising from term or mid term bargaining.

- A. Upon a decision on a negotiability appeal by the FLRA, or Court of appropriate jurisdiction, the prevailing party may, within fourteen (14) days of the final order, initiate negotiations over the proposal at issue. Negotiations shall be in accordance with the procedures of these ground rules and supersede any inconsistent provisions either mutually agreed or imposed by the FSIP.
- B. Nothing in this section will preclude the right of judicial appeal. The Parties shall respect a final determination by the FLRA, or Court of appropriate

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jurisdiction, regarding whether a proposal is negotiable. The remaining provisions of the Agreement shall remain in full force and effect, enforceable to the extent permitted by law.

17) Ratification

- A. Within three (3) calendar days of the receipt of the resolution of all unresolved matters (including matters resolved following negotiability appeals), either by mutual agreement or through the order of the FSIP, and at such time as the Parties mutually agree they have a complete successor master agreement, the Union will submit all mutually agreed-to articles to its Locals for ratification pursuant to the Union's Constitutional procedures, as well as all articles imposed by the FSIP for context.
- B. If the Union's Locals reject the Agreement, the Union will notify the Agency in writing and the Chief Negotiators will meet to arrange for resumption of negotiations over the rejected articles under the procedures set forth in these Ground Rules but based on the date of the notification of rejection.
- A. If the Union ratifies the Agreement, the Union will notify the Agency in writing and the Chief Negotiators will execute the agreement and submit it for Agency head review.
- B. The Parties recognize that matters imposed by the FSIP are not subject to ratification. Such articles will be deemed executed upon execution of the entire Agreement.

18) Agency Head Review

- A. The head of the Agency, Department of Homeland Security, will review the agreement within thirty (30) calendar days of its execution. If the Agency Head approves, or otherwise does not disapprove the Agreement within thirty (30) calendar days of execution, the Agreement shall take effect to the extent that it is in compliance with applicable law and regulations. 5 USC § 7114(c)(3). The Master Agreement will be in effect when it has been ratified, executed and approved, and when all matters have been resolved as provided by law and these Ground Rules. The Agency will provide an email announcement to each bargaining unit employee and post the negotiated Agreement on the Agency Intranet within fourteen (14) days of the deadline to approve, unless the Department disapproves the agreement.
- B. If the Agency Head disapproves an article or provision in the Agreement, the Agency Head will notify the Parties in writing. The Chief Negotiators will meet to arrange for resumption of negotiations over the rejected articles. The Union does not waive its right to appeal the rejection to the FLRA.

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C. Consistent with section B, above, the Parties agree that any articles that do not contain provisions rejected upon Agency Head Review may go into effect 30 days after the Agency Head rejection if the Union affirmatively agrees, in writing, that the agreement on those non-rejected matters is final and the Union does not wish to engage in further bargaining on the matters. Articles that are returned to negotiation as a result of a rejection upon Agency Head Review shall be assigned a placeholder section in the master agreement that lists only the title of the article and text below it stating: "this Article is pending additional negotiations or other resolution." The Parties agree to retain the *status quo* on any matters rejected in Agency Head review until negotiations are complete.

19) Effective date of ground rules

A. This MOU shall become effective on the date that it is signed by at least one representative of each Party, or upon the date set forth through impasse procedures over these ground rules, subject to Agency Head Review.

B. The Parties may amend any provision of this MOU in writing by mutual consent.

C. The Parties agree that nothing in this MOU shall set any precedent for any substantive matters in any provision, article, or section of the collective bargaining agreement that is to be negotiated via the process set forth herein.

D. If any provisions of this MOU are determined to be non-negotiable, invalid or unenforceable pursuant to Federal law or regulation, the remaining provisions will remain in full force and effect, enforceable to the fullest extent of the law.

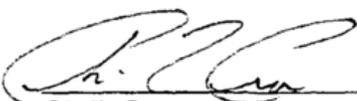
E. This MOU shall terminate when the new Collective Bargaining Agreement takes effect.

For the Agency:



Date: 1/19/2021

For the Union:


Chris Crane

Date: 1/19/2021