ARTICLE XI - GRIEVANCE PROCEDURE

# Introduction

The Board of Higher Education, acting through the Council of Presidents, and the Association recognize that Chapter 150E, §8, of the General Laws provides a mechanism for arbitration of disputes between the parties to a collective bargaining agreement and further provides that the parties to an agreement may establish an independent grievance procedure culminating in final and binding arbitration. It is the intent of the parties to this Agreement to use their best efforts to encourage the informal and prompt settlement of grievances which may arise between the Association or a member or members of the bargaining unit and the Board of Higher Education. Therefore, the parties agree, for themselves and for all those whom they represent, that they shall use the procedures set forth in this Article, and no other procedures, for the resolution, strictly pursuant to the terms of this Agreement, of all disputes involving the interpretation of this Agreement and of any other matter that is or may become the subject of a grievance as hereinafter defined.

# Definitions

## Grievance - a grievance is an allegation by the Association or by a member or members of the bargaining unit that an express provision of this Agreement has been breached in its application to it, him/her, or them, respectively. The Association may seek resolution of a grievance only if initiation of the procedure for such resolution has been duly authorized by the Association and so certified by its President. A grievance shall aver all the known facts material to the alleged breach on which the grievance is based, including the date when such breach is alleged to have occurred and the specific contractual provisions alleged to have been breached, and shall set forth the remedy requested.

## Grievant - grievant shall mean the Association or any member or members of the bargaining unit, as the case may be, who, pursuant to the terms of this Agreement, seeks resolution of a grievance.

## Academic Judgment - for the purposes of this Article, every decision made pursuant to Article VIII, Article IX, Article XX, or any or all of them, as the case may be, to renew or fail to renew an academic appointment, to terminate any such appointment, to grant or refuse to grant tenure, or to grant or refuse to grant a promotion, and no other decision, shall be deemed to have been made pursuant to an exercise of academic judgment; and every grievance that, explicitly or by implication, questions the merits of any such decision, but of no other decision, shall be deemed to be a grievance that questions an exercise of academic judgment.

## Board of Higher Education - the Board of Higher Education is the Board of Higher Education acting through the Council of Presidents.

5. Business Judgment – the exercise of a managerial prerogative that is vested exclusively in a public employer in Massachusetts, and a decision made pursuant to Article X that cost savings are necessary. An exercise of business judgment cannot be be the subject of a grievance, and an arbitrator or the individual presiding over a grievance hearing lacks the authority to supplant their judgment for the employer’s business judgement.

# Procedures for Filing a Grievance

The Association or any member or members of the bargaining unit having a grievance, as defined above, shall seek its resolution only in accordance with the grievance procedure set forth in this Article.

## Extension of Certain Time Periods

The parties may agree, providing such agreement is recorded in writing, to extend any time period of the grievance procedure contained in this Article.

## Inspection of Record

At any reasonable time during any step of these procedures the grievant shall be permitted to inspect all or any part of the grievance record, and, where appropriate, shall be permitted to make copies of all or any parts of such record.

## Introduction of Evidence

Evidence may be introduced into the grievance record only in compliance with the following provisions:

### Within the time limits hereinafter prescribed for the initiation of Step 2 of these procedures, the grievant shall introduce all evidence in his/her possession and on which he/she relies or intends to rely as supporting his/her claim for relief;

### Notwithstanding the foregoing, the grievant may introduce additional evidence for the sole purpose of rebutting any finding of fact or any determination as set forth in any decision rendered pursuant to the provisions of this Article; provided, however, that such additional evidence, if any, shall be introduced within the time period allowed for the initiation of the Step next following such decision;

### The President shall introduce at Step 2 all evidence in his/her possession and on which he/she relies in making any finding of fact and any determination as set forth in the decision rendered by him/her pursuant to the provisions of this Article; provided, however, that nothing herein contained shall be deemed to require the President to introduce any evidence otherwise introduced by the grievant pursuant to the foregoing provisions; and

### Notwithstanding the foregoing, the grievant, the President or any of his/her agents, or the Chair of the Council of Presidents may introduce any evidence material and relevant to the grievance the existence or relevance of which evidence he/she or they did not and should not have known at the times otherwise provided herein for the introduction of evidence.

All evidence introduced pursuant to the foregoing provisions shall form a part of the grievance record.

## Request for Evidence

Whenever the grievant wishes to introduce evidence pursuant to the provisions of this Article and such evidence is or may be in the possession of the Administration, the grievant may, within the time period allowed for the initiation of the Step at which such evidence is permitted to be introduced, file with the President a written request for such evidence. Whenever such request shall have been so filed, the President shall, within eleven (11) days after the filing of such request, convey to the grievant any and all such evidence possessed by him/her so requested; provided, however, that notwithstanding the foregoing, the President may refuse to convey any such evidence not deemed by him/her material and relevant to the grievance set forth in the said grievance; and provided, further that whenever the President shall have refused to convey any such evidence, such refusal and the reasons therefor shall be communicated in writing to the grievant and shall thereafter form a part of the grievance record. Such request when so filed and such evidence when so conveyed shall form a part of the grievance record.

## Notice to the Association

Whenever any grievant shall have initiated the grievance procedure of this Article or shall have proceeded to Step 2, notice thereof shall be given to the Chapter President by the person charged at such Step with resolution of the grievance.

## Determination to Be Made Pursuant to Resolution of Grievance

At Step 2 of these procedures, the President shall, within the time limits prescribed, determine:

### whether the grievant has complied with the procedures for seeking resolution of a grievance as set forth in this Article;

### whether the grievance alleges a breach of an express term of the Agreement; and

### whether an express provision of this Agreement has been breached in its application to the grievant as claimed.

## Expedited Grievances

Any grievance involving non-reappointment, the denial of promotion to an Instructor in his/her fourth (4th) year of employment or the denial of tenure may, at the discretion of the grievant, initially be filed and heard at Step 2 if the breach of the Agreement the grievance alleges is attributed to the Vice President, the President or the Board of Trustees. Any grievance involving termination or retrenchment may, at the discretion of the grievant, initially be filed and heard at Step 2.

## Optional Electronic Filing of Grievances and Other Communication

### Step 1 and Step 2 grievances may be filed by e-mail by the Chapter grievance representative, other MSCA officer, or an individual unit member provided that it is identified explicitly as a Step 1 or Step 2 grievance and has the appropriate case number as assigned by the chapter (consolidated grievances may be filed by e-mail by the Grievance Committee Chair on behalf of the Association President using the wording now used to identify them as consolidated grievances);

### The appropriate management representative shall acknowledge receipt by e-mail;

### On or before the day of the Step 1 or Step 2 hearing, the grievant shall follow up with a signed paper copy of the grievance form, which shall include the correct grievance number and any relevant documents as required by the collective bargaining agreement. The management representative shall continue to notify the Chapter President of hearings scheduled with *pro se* grievants;

### The management grievance hearing officer at Step 1 or Step 2 may respond via e-mail to an e-mailed grievance, sending it to the grievant and the Chapter grievance representative; and

### As soon as possible thereafter, the management hearing officer shall follow up with a paper copy of the decision.

### All other communications between the parties under this Article XI may be exchanged electronically, and such electronic communications shall be considered to be “in writing” or “written” provided that paper copies can be made available.

## Steps

STEP 1: THE VICE PRESIDENT (INFORMAL)

Save as is provided in Section L, a grievant shall initiate the grievance procedure of this Article by filing with the Vice President, during the term of this Agreement or an extension thereof, a written notice that a grievance exists. The notice need only briefly describe the subject of the grievance. No such notice may be filed more than fifteen (15) days from the date of occurrence of the event upon which the grievance is based or from the date when the grievant had or should have had knowledge of the event upon which the grievance is based. The filing date required hereunder shall be deemed to have been complied with by a postmark dated within the specified time limit. Within seven (7) days after the receipt of such notice, the Vice President shall meet with the grievant and attempt to resolve the grievance. If within seven (7) days after such meeting, the grievant and the Vice President shall have failed to agree upon a resolution of the grievance, the grievant may elect to proceed to Step 2.

STEP 2: THE PRESIDENT (FORMAL)

If the grievant elects to proceed to this Step, then within eleven (11) days after the expiration of the period provided under Step 1 for informal resolution of the grievance, he/she shall file with the President:

### a copy of the grievance; and

### all documents and evidence in his/her possession and upon which he/she relies or intends to rely as supporting his/her claim for relief.

All such documents and evidence so filed shall form a part of the grievance record.

The President shall transmit a copy of the grievance to the Chapter President.

The President shall meet with the grievant to discuss the grievance within fifteen (15) days after the filing of the grievance at Step 2. The President shall consider any grievance the resolution of which shall have been sought, pursuant to the terms set forth herein, through the prior Step of the grievance procedure; provided, however, that the President shall have no jurisdiction to consider:

### any grievance that, explicitly or by implication, questions an exercise of academic judgment or business judgement as herein before defined, but provided further that, notwithstanding the foregoing, the President shall have jurisdiction to consider:

#### any grievance that alleges a failure to comply with the procedures prescribed at Section E of Article IX of this Agreement but only as to such allegation;

#### any grievance that alleges that the exercise of the academic judgment or business judgement complained of was arbitrary and capricious; and

### any grievance pertaining to:

#### the denial of a promotion where such promotion was supported neither by the Department Chair or the Library Director or Library Program Area Chair, as the case may be, by the Peer Evaluation Committee, by the Committee on Promotions, by the Dean, nor by the Vice President;

#### the denial of a reappointment where such reappointment was supported neither by the Department Chair or the Library Director or Library Program Area Chair as the case may be, by the Peer Evaluation Committee, by the Dean, nor by the Vice President;

#### the denial of tenure where the granting of tenure was supported neither by the Department Chair or the Library Director or Library Program Area Chair, as the case may be, by the Peer Evaluation Committee (if one was requested by the candidate or required pursuant to Article VIII, Section P or Section Q), by the Committee on Tenure, by the Dean, nor by the Vice President;

but provided further that, notwithstanding the foregoing, the President shall have jurisdiction to consider any grievance that alleges a failure to comply with the procedures prescribed at Article VIII of this Agreement but only as to such allegation.

Within fifteen (15) days after the President and the grievant meet, the President shall make such determination as is prescribed in Section C(6) of this Article. The President shall render a written decision and shall set forth therein his/her determinations and the reasons therefor and his/her findings of fact, and he/she shall provide a copy of his/her decision to the grievant and to the Chapter President. Such decision shall thereafter form a part of the grievance record.

If the President shall have determined that an express provision of this Agreement has been breached in its application to the grievant as claimed, he/she may, consistent with the terms of this Agreement, provide any appropriate remedy for such breach. Whenever the President shall have provided any remedy he/she deemed appropriate, such remedy shall be set forth by him/her in writing in his/her decision. Such determination when so set forth in writing shall thereafter form a part of the grievance record. If the grievance shall not have been resolved to the satisfaction of the Association, then, subject to the provisions of this Article, the Association may elect to proceed to Step 3 or Step 4.

If the Association elects to proceed beyond Step 2, then within twenty-one (21) days after the expiration of the period provided under this Step 2 for resolution of the grievance, it shall file notice of such election with the President, the Chair of the Association Grievance Committee, and the designated representative of the Council of Presidents. This notice shall satisfy the requirements of Step 3 and the requirements of clauses (i) and (ii) in the first paragraph of Step 4; such notice may be filed electronically. As soon as practicable thereafter, the Association President shall follow up with a signed paper copy.

STEP 3: MEDIATION

If the Association elects to proceed to this Step, then following the receipt of such notice by the representative of the Council of Presidents, but no sooner than fifteen (15) days thereafter, the grievance, unless it concerns a question of tenure, will be addressed in mediation as soon as practicable. If the grievance concerns a question of tenure, the Association may request mediation. If the Employer agrees to mediation or fails to respond to the Association’s request within fifteen (15) days, the matter shall proceed to mediation as soon as practicable. If the Employer declines mediation, the matter shall proceed to arbitration.

The Council and the Association shall reserve, at a minimum, the first Wednesday of each month, exclusive of January and February, for the mediation of grievances at Step 3; to the extent possible, the parties will, by mutual agreement, add mediation dates as needed. Dates shall be determined at the beginning of each fiscal year falling within the term of this Agreement. Mediation shall be conducted on a rotating basis by Loretta Attardo and Roberta Golick and other mediators the parties may agree to add.

Two (2) grievances per day shall be the standard for mediation unless the grievances are related, in which case additional related grievances may be addressed by agreement of the parties. Both parties shall ensure that their representatives in mediation have the authority to enter into a settlement.

Documents introduced before and during mediation shall be included in the grievance record. Statements made during mediation shall be off the record in order to encourage free discussion without injuring either party’s case if mediation is unsuccessful. The mediator shall not testify about the mediation in any arbitration conducted under this Article XI or in any other adversarial proceeding or judicial forum. Each party shall maintain the confidentiality of mediation and shall not rely on or introduce as evidence in any other proceeding:

### views expressed or suggestions made by the other party with respect to the possible settlement of the grievance;

### admissions made by the other party in the course of the mediation;

### proposals made or views expressed by the mediator; and

### the fact that the other party had or had not indicated willingness to accept a proposal for settlement or to continue these or any other mediation proceedings.

The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution.

Mediation shall conclude in one of the following ways:

### by the execution of a settlement agreement by the parties; or

### by a written declaration of the mediator, a party, or the parties to the effect that the mediation is concluded.

After May 31, 2020, upon forty-five (45) days’ notice, either party may terminate this mediation procedure, after which Step 4 shall become Step 3.

STEP 4: ARBITRATION

Subject to and in accordance with the following provisions, the Association may initiate arbitration within one hundred thirty-five (135) days of:

* notice by the Association that mediation is waived;
* in the case of a grievance relating to tenure denial, the Employer’s statement declining mediation; or
* the conclusion of mediation (other than by the parties’ execution of a settlement agreement).

a. The Association shall have the exclusive right to initiate arbitration of a grievance. Whenever the Association shall initiate arbitration of a grievance the resolution of which has theretofore been sought by a member or members of the bargaining unit, then such member or members shall be bound in all respects by the decision of the arbitrator to the same extent as the Board of Higher Education and the Association.

b. The Association may initiate arbitration of a grievance only if the resolution of the grievance has been sought through the initial two (2) prior Steps of the grievance procedure (or through Step 2 thereof if the grievance is properly initiated at that Step) and only if submission of the grievance to arbitration has been duly authorized by the Association and so certified by its President.

c. In order to proceed to arbitration, within the time specified in the first paragraph in Step 4, the Association shall file a demand for arbitration with the American Arbitration Association, a copy of which shall be sent to the President, the Chair of the Council of Presidents, the Employee Relations Committee and the labor representative of the Council of Presidents in labor arbitration.

d. The deadline for filing a demand for arbitration for related grievances shall be one hundred thirty-five (135) days after the last of the related grievances has been addressed in accordance with the first paragraph in Step 4. The term “related grievances” shall refer to grievances such as those concerning the stages in a personnel action for the same unit member, grievances by different unit members pertaining to the same transaction or occurrence, or other grievances determined by the parties to be related. Such related grievances shall be included in a single demand for arbitration.

The parties shall have the right, upon mutually agreeing so to do, to waive their rights to a hearing and to submit to the arbitrator, in lieu of such hearing, written briefs setting forth the issues raised by the grievance that is the subject matter of such arbitration and their arguments in respect thereof; provided, however, that nothing herein contained shall be deemed to deprive the parties of any right they may have, pursuant to the rules of the American Arbitration Association, to submit briefs or any other written arguments pursuant to any hearing that may be required to be held pursuant to those rules.

The Association and the Board of Higher Education, acting through the Chair of the Council of Presidents, shall have the right to be represented by counsel at any hearing convened by the arbitrator pursuant to the provisions of this Article. All proceedings before the arbitrator shall be governed by the rules of the American Arbitration Association; provided, however, that the jurisdiction of the arbitrator to inquire into any issue presented by the grievance and his/her authority to render an award shall be governed solely by the provisions of this Article.

# Jurisdiction of the Arbitrator

## Powers of Remand

### Whenever any grievance set forth in the grievance has not been entertained by the President in whole or in part on the ground that such grievance or part thereof was not within his/her jurisdiction as prescribed in Step 2, then the arbitrator shall have no authority or jurisdiction to arbitrate such grievance or part thereof but shall be conclusively bound by the determination of the President of the question of his/her jurisdiction; provided, however, that nothing contained herein shall be deemed to abridge the power of the arbitrator to determine whether such determination shall have been arbitrary or capricious. Whenever the arbitrator shall have determined that such determination was arbitrary or capricious, the arbitrator shall remand such grievance or part thereof to the President, and he/she shall, within twenty-one (21) days of the date of such remand, make such new determination of his/her jurisdiction to consider such grievance or part thereof as, subject to the terms of this Agreement, he/she shall deem proper. Whenever the President shall have newly determined that he/she has jurisdiction to entertain such grievance or part thereof, he/she shall do so pursuant to the provisions of Step 2 and subject to the time limits therein prescribed.

### Subject as is hereinafter provided, whenever any grievant shall have alleged, expressly or by implication of the factual allegations, that any determination or decision involving the exercise of academic judgment or business judgement was, in its application to him/her, arbitrary or capricious, the arbitrator shall have the power to determine the truth or falsity of such allegation. Whenever the arbitrator shall have determined that such allegation is true, he/she shall order that such arbitrary or capricious determination or decision shall be reconsidered, and such determination or decision shall thereafter be newly made pursuant to the procedures prescribed in this Article and subject to the time limits therein prescribed. Thereafter, such decision so newly made shall be subject to the provisions of this Article, including this provision; provided, however, that any grievance arising from such decision so newly made shall be initiated by filing notice thereof with the President pursuant to the provisions of Step 2 of these procedures, and the provisions of Step 1 of these procedures shall not apply to such grievance; and provided further that, anything in the provisions of Step 2 to the contrary notwithstanding, such notice shall be filed with the President within twenty-one (21) days of the date on which notice shall have been given of the decision that shall have been newly made pursuant to the provisions of this paragraph.

## Limit of the Arbitrator’s Jurisdiction

Subject to the provisions of this Agreement, the arbitrator shall have no authority or jurisdiction to arbitrate:

### such portion of any grievance as is removed from the jurisdiction of the President by the express terms of this Article; or

### such portion of any grievance as relates to any determination or decision made pursuant to an exercise of academic judgment or business judgment.

# Decision of the Arbitrator

Within forty-five (45) days after the conclusion of a hearing, or within forty-five (45) days after the date on which briefs shall have been submitted to the arbitrator, the arbitrator shall determine:

## whether the Association and, where a member or members of the bargaining unit sought resolution of the grievance through the first two (2) Steps of the grievance procedure (or through Step 2 thereof if the grievance was properly initiated at that Step), such member or members, have complied with the procedure for initiating and pursuing a grievance as set forth in this Article;

## whether the grievance alleges a breach of an express term of the Agreement;

## whether the arbitrator has jurisdiction to arbitrate; and

## whether an express provision of this Agreement has been violated in its application to the grievant.

The arbitrator shall render his/her decision in writing, shall state the reasons therefor and shall promptly provide copies of his/her decision to the parties to the arbitration proceeding.

The decision of the arbitrator shall be final and binding on all parties to the arbitration proceeding and shall be enforceable in any court of competent jurisdiction.

# Award of the Arbitrator

If the arbitrator determines that no express provision of this Agreement has been breached in its application to the grievant as claimed, he/she shall dismiss the grievance.

If the arbitrator determines that this Agreement has been so breached, he/she may, subject to the provisions of this Article, provide an appropriate remedy for the breach; provided, however, that in making any monetary award, the arbitrator shall provide compensation only for actual damages directly attributable to such breach and shall in no event make any award of penal damages; and provided further that, save as is hereinafter provided, the arbitrator shall make no award that grants any appointment, reappointment, promotion, retention, termination, renewal of contract or tenure to any member of the bargaining unit.

Whenever in his/her grievance any grievant shall have alleged, expressly or by implication of the factual allegations, that any determination or decision made pursuant to an exercise of academic judgment or business judgment was, in its application to him/her, both arbitrary or capricious and made in bad faith, the arbitrator shall have the power to determine the truth or falsity of both such allegations. Whenever the arbitrator shall have found as a matter of fact, on the basis of clear and credible evidence, that both such allegations are true, he/she shall have the power to make any such final and binding award as he/she may deem necessary to make the grievant whole; provided, however, that whenever the arbitrator shall, in respect of such allegations, have found that such determination or decision was arbitrary or capricious but was not made in bad faith, he/she shall remand such determination or decision as is herein before provided.

Whenever the arbitrator shall have found that such decision was arbitrary or capricious but was not made in bad faith, he/she shall assess costs, which shall include reasonable representational costs or attorney’s fees; at the discretion of the arbitrator, upon such a determination or decision the arbitrator may additionally impose liquidated damages not to exceed Five Thousand Dollars ($5000.00).

# Costs of Mediation and Arbitration

In all mediation and arbitration proceedings, the mediator’s or arbitrator’s fees and expenses shall normally be paid fifty percent (50%) by the Association and fifty percent (50%) by the University or Universities; provided, however, that whenever an arbitrator shall have found as a matter of fact on the basis of clear and credible evidence that either party has acted in bad faith during any of the proceedings contained in this Article XI, the arbitrator may determine that the fees and expenses of the arbitrator in such case shall be paid entirely by one or the other party. All payments to the mediator or arbitrator shall be made within forty-five (45) days of the rendering of his/her statement of fees and expenses. In all other respects the parties shall bear their own costs of mediation and arbitration, except that the parties agree to provide a stenographic record of all arbitration proceedings and to each pay fifty percent (50%) of the costs thereof, unless they shall have mutually agreed not to provide for such a stenographic record.

# Association Representation

Any member or members of the bargaining unit may initiate and pursue a grievance through the first two (2) Steps of the grievance procedure without intervention of the exclusive representative of the employee organization representing him/her, provided that the exclusive representative shall be afforded the opportunity to be present at any conferences held and that any adjustment made shall not be inconsistent with the terms of this Agreement.

Any member or members of the bargaining unit may request that the Association represent him/her at any Step of the grievance procedure. The Association shall notify in writing the Vice President, the President of the University and the Chair of the Council of Presidents, as the case may be, of the name and address of such Association representative at the time he/she is so authorized to represent the grievant.

# Waiver, Admission, Termination and Grounds of Appeal

## Waiver - Failure of a grievant to comply with any of the provisions of this Article shall be deemed to be a waiver of the right to seek resolution of the grievance under the terms of this Agreement. In determining whether there has been any such failure to comply with any of the provisions of this Article, time shall be deemed to be of the essence, and any failure of the grievant to comply with any of the time limits prescribed herein shall be deemed to be such failure to comply with the provisions of this Article.

## Admission - The resolution of a grievance by the Vice President, the President of the University or the Council of Presidents, as the case may be, shall not be deemed to be an admission by any Board of Trustees or the Board of Higher Education that the grievance has, for any other purpose or proceeding, standing as a grievance, be an admission by any Board of Trustees or by the Board of Higher Education of any violation or breach of the terms of this Agreement, or be an admission by any Board of Trustees or by the Board of Higher Education that such grievance is cognizable or justiciable according to any applicable provisions of the laws of the Commonwealth.

## Termination - Unless prohibited by applicable provisions of law, if any member or members of the bargaining unit shall initiate in any administrative forum other than the Department of Labor Relations or in any judicial or like proceeding that relates to any matter that is the subject of a grievance in respect of which such member or members is or are the grievant while any proceeding in respect of such grievance is pending under any provision of Section C of this Article, such Section C proceeding shall terminate as of the date of the initiation of such other administrative or judicial proceeding, and the grievance procedure aforesaid shall be inapplicable to such grievance.

## Grounds of Appeal - The Board of Higher Education, acting through the Chair of the Council of Presidents, and the Association shall have the right to appeal any final decision of the arbitrator pursuant to the provisions of Chapter 150E, §8, and Chapter 150C, §§10, 11 and 12, of the General Laws.

# Collateral Consequences of a Grievance

The fact that a grievance is alleged by a member of the bargaining unit, regardless of the ultimate disposition thereof, shall not be recorded in the Official Personnel File of such member or in any file or record utilized in the taking of any personnel action in respect of such member; nor shall such fact be used in the making of any recommendation for the job placement of such member; nor shall such member or any other member or members who participate in any way in the grievance procedure be subjected to any action, whether disciplinary or other, for having processed such grievance; provided, however, that nothing herein contained shall derogate or be deemed to derogate from the right to take any action that might be authorized or required to be taken to give effect to the resolution of any grievance.

The parties agree that, except as may be required by the provisions of this Article or in connection with any appeal of a grievance or in connection with the implementation of any provision of this Agreement, the name of a grievant shall not be used to identify a grievance by any representative of the parties to this Agreement.

# Release Time for Members of the Bargaining Unit

It is understood that grievances will ordinarily be processed during working days; the parties therefore agree that, whenever the work schedules of the grievant, of any Association representative and of any material witnesses who are members of the bargaining unit so require, such participants shall be given so much release time from their scheduled work assignments as the President shall determine is necessary for attendance at any hearing, meeting or other procedure that shall be required for the processing of any grievance. The parties understand that meetings held pursuant to the provisions of this Article will ordinarily be scheduled to avoid conflict with the regularly scheduled work of members of the bargaining unit.

# Consolidated Grievances

Anything in the foregoing provisions to the contrary notwithstanding, the Association, acting through its President, may, within the fifteen (15) day period during which a grievance may otherwise be filed, file such grievance with the Chair of the Council of Presidents in the form of a grievance, specifying therein the reasons why the grievance should be treated as a consolidated grievance. The Chair shall, within fifteen (15) days, determine in his/her sole discretion whether to treat the grievance as a consolidated grievance. If the Chair accepts the grievance as a consolidated grievance, the procedures and time limits of Step 2 shall thereupon apply, provided only that the twenty-one (21) day period for a hearing to be conducted at Step 2 shall commence upon the expiration of the period provided for the Chair to determine if the grievance is to be treated as a consolidated grievance rather than the date the grievance was filed, and provided further that the response rendered at such Step shall be rendered by the Chair in his/her capacity as such rather than by the President of a State University. If the Chair declines to accept the grievance as a consolidated grievance, the Association or any unit member or members may, within fifteen (15) days following the date of the Chair’s decision, file the grievance at Step 1 at the University at which such grievance is alleged to have occurred.

# Grievances Filed prior to the Date of Execution of this Agreement

Notwithstanding any other term of this Agreement, any grievance filed prior to the date of execution of this Agreement shall be subject to the provisions of the predecessor Agreement; provided, however, that at the request of either party, the Employee Relations Committee may review any such grievance as it may determine, subject to the terms of Article II of this Agreement; and provided further that the selection of an arbitrator in connection with the arbitration of any grievance shall, unless already made pursuant to its predecessor, be made pursuant to this Agreement.

# Standing of Certain Grievants

A former member of the bargaining unit shall have standing as a grievant hereunder for the purpose of pursuing any grievance that pertains to a claim of right with respect to retrenchment, termination, salary or stipend, and/or sick-leave buy-back subject to the time limits for filing and pursuing a grievance under Section C of this Article but without any other limitation on the time for initiating a grievance. A former member of the bargaining unit shall have standing as a grievant hereunder for the purpose of pursuing other grievances concerning his/her former employment under and subject to the limits of time contained in Section C of this Article; in no event shall any such grievance be filed more than one hundred thirty-five (135) days after termination of employment in the bargaining unit.

Whenever any former member of the bargaining unit pursues any grievance that pertains to a claim of right with respect to sick-leave buy-back or with respect to any other benefit that is claimed to have arisen under an agreement that is predecessor to this Agreement, the merits of the grievant’s claim shall be governed by the agreement that was in force between the parties at the time the grievant was last employed in the bargaining unit. If any such grievance is submitted to arbitration, the arbitrator shall be selected in accordance with the provisions of this Agreement.

Nothing in this Section N shall operate to extend any limit of time that governs the filing or pursuing of any grievance under this Article XI or under the corresponding provision of any agreement that is predecessor to this Agreement.