



**AGREEMENT BETWEEN  
THE ADJUTANT GENERAL OF CALIFORNIA AND  
THE LABORERS INTERNATIONAL UNION OF NORTH AMERICA (LIUNA)**

**March 30, 2017**

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## **PREAMBLE**

This Agreement is executed between the California Army National Guard (CA ARNG), hereafter referred to as the "Agency," by and through the Adjutant General (TAG) of California, and the Laborers' International Union of North America (LIUNA), hereafter referred to as the "Union," and collectively referred to as the "Parties." The Agreement is made for non-supervisory and non-managerial Federal employees of the California Army National Guard (CA ARNG), hereafter referred to as "technicians" or "employees."

Wherever language in the Agreement refers to specific duties or responsibilities of supervisors or management officials, it is intended only to provide a guide as to how a situation may be handled. It is agreed that the Agency retains the sole discretion to assign work to supervisors and management officials and to determine which supervisors or management officials will perform the supervisory or managerial functions discussed. All other terms used within this Agreement shall have the meaning ascribed to them as per Federal Court Decisions, United States Code, Federal Labor Relations Authority Decisions, Code of Federal Regulations, Office of Personnel Management, National Guard Bureau Regulations, or Blacks' Law Dictionary. Whenever a dispute arises as to the meaning of a particular term, the Parties will attempt to reach agreement by referencing the sources cited above, in that specific order.

As a result, the Parties hereto agree as follows:

## **ARTICLE 1 – RECOGNITION AND UNIT DESIGNATION**

### **Section 1.1 – Recognition**

1. In accordance with (IAW) the Federal Labor Relations Authority (FLRA) Certification for Inclusion in Existing Consolidated Unit Case No. SF-RP-13-0015 dated June 5, 2013, LIUNA Local 1776 is the exclusive representative for all Federal employees of the CA ARNG.

### **Section 1.2 – Excluded Positions**

1. Excluded from the Bargaining Unit are all professional employees, supervisors, management officials, and employees described in 5 USC § 7112(b)(2), (3), (4), (6), and (7), and military personnel as defined in 10 USC §976.

2. The Parties agree that as a result of reductions, reorganizations, reclassifications, and changes to the Agency's mission, it may become necessary to modify the bargaining unit status of an employee's position that is not normally covered by one of categories listed in Paragraph 1 (above). The Agency will notify the Union when it determines to change a given position's bargaining unit status. The notice will be given prior to effecting that change. If the Parties are unable to resolve a dispute over whether a given position is included or excluded from the bargaining unit, the matter will be referred to the FLRA in accordance with law, regulation and this Agreement. The position in dispute will not be moved until a final resolution is achieved between the Agency and Union, or a decision is rendered by the FLRA.

3. The Parties understand that the movement of an individual employee from a position that is included in the bargaining unit to a position excluded from the bargaining unit is not subject to this provision.

### **Section 1.3 – Bargaining Unit Employees**

1. Upon request, the Agency shall provide to the Union a list of all bargaining unit positions, to include vacant and those that have an incumbent employee. For positions that have an incumbent, the list shall include the employee's name, tenure, pay plan, series, grade, step, position title, position description number, assigned organization, assigned duty station location, and immediate supervisor's name.

2. Upon request, the Agency shall provide to the Union a list of all non-bargaining unit positions, to include vacant and those that have an incumbent employee. For positions that have an incumbent, the list shall include the name, tenure, pay plan, series, grade, step, position title, position description number, assigned organization, assigned duty station location, and immediate supervisor's name, and the reason why the employee is excluded from the bargaining unit.

3. Upon request, the Agency will provide the Union with a list of all newly hired bargaining unit employees showing the name, tenure, pay plan, series, grade, step, position title, position

description number, assigned organization, assigned duty station location, and immediate supervisor's name.

## **ARTICLE 2 – MISCELLANEOUS PROVISIONS**

### **Section 2.1 – Purpose of Agreement**

1. The purpose of this contract is to identify the Parties to this Agreement, define their responsibilities under the Agreement, and to state the non-military personnel policies and practices and matters affecting non-military conditions of employment as provided by this Agreement and applicable laws and regulations.
2. It is intended that this Agreement will meet the following purposes:
  - a. To promote fair, equitable and reasonable working conditions.
  - b. To promote programs designated to assist the Agency and employees in achieving their acknowledged and recognized objectives.
  - c. To promote the highest degree of efficiency, morale, and responsibility to the CA ARNG.
  - d. To provide for the prompt adjustment of any differences arising between the Parties on matters covered by this Agreement.
  - e. To promote harmonious Labor/Management relations between the Agency and its employees.
  - f. To promote and provide a safe and healthful work environment consistent with mission requirements.

### **Section 2.2 – Distribution of Contract**

1. The contract will be made available via the CA ARNG public access internet site.
2. The Union will make the contract available on their public web site, and will also provide a printed, or other type of media, copy of the contract if an employee should require it.

### **Section 2.3 – Other Provisions**

1. All timelines are calculated in calendar days, and may be adjusted by request and mutual agreement between the Parties.

## **ARTICLE 3 – DURATION AND CHANGES TO THE AGREEMENT**

### **Section 3.1 – Effective Date**

1. Providing that the Defense Civilian Personnel Advisory Service (DCPAS) approves the body of this Agreement, the effective date of the contract shall be thirty-one (31) days after execution by the Parties hereto. Both dates (execution and approval) will be made a part of the Agreement prior to distribution.

### **Section 3.2 – Agency Approval**

1. DCPAS shall approve the Agreement within thirty (30) days from the date the Agreement is executed by the Parties, provided the Agreement is in accordance with the provisions of applicable law, rule, or regulation.

2. If DCPAS neither approves nor disapproves the Agreement within the thirty (30) day period, the Agreement shall take effect and be binding on the Agency and the Union on the thirty-first (31st) day, subject to provisions of applicable law, rule, or regulation.

3. In the event that a particular article, or section of an article, is not approved by DCPAS, the remainder of the Agreement shall take effect as provided by law. The article or section of articles, not approved by DCPAS may be later incorporated into the contract after negotiations or appropriate remedies are reached by the Parties and only after subsequent approval by DCPAS.

### **Section 3.3 – Agreement Duration**

1. This Agreement will remain in full force and be effective for three (3) years from the date of approval by DCPAS, or, under the provisions of 5 USC Section 7114, (c) (3) whichever comes first.

### **Section 3.4 – Agreement Amendments/Supplements**

1. This Agreement may be subject to amendments or supplements during the Agreement duration under one of the following procedures:

a. Either party may initiate negotiations at the midpoint of this Agreement, after service of notice, no later than sixty (60) days prior to the midpoint of this Agreement.

b. At any time, by mutual consent, for the purpose of amending or providing supplements to this Agreement.

2. A request for an amendment or supplement to this Agreement by one party shall be submitted in writing to the other party, setting forth the proposed change to the Labor/Management Agreement.

3. Representatives of the Agency and the Union will meet within thirty (30) days of the written proposal, to commence negotiations on the proposal, unless a later date is mutually agreed upon.

4. Approval of an amendment or supplement to the Agreement will be accomplished in the same manner provided for approval of the basic Agreement as specified in Section 3.2 of this Article.

### **Section 3.5 – Renewal of Agreement**

1. Barring any changes, proposed changes, or pending negotiations related to the provisions of Section 3.6 of this Article, the contract will be automatically renewed for a period of one (1) year to take effect immediately following the expiration of the current three (3) year period and will be renewed for one (1) year each year thereafter.

### **Section 3.6 – Negotiating a New Agreement**

1. Should either party wish to change the Agreement prior to automatic renewal provisions in Section 3.5 of this Article, the following shall apply:

a. Negotiations for a new Agreement will commence no earlier than one calendar year (365 days) nor later than ninety (90) days prior to the termination of the current Agreement.

b. Sixty (60) days prior to the start of negotiations of a new Agreement, representatives of the Agency and representatives of the Laborers' International Union of North America Local 1776 will meet to initiate a memorandum of understanding (MOU) establishing the ground rules for conduct of negotiations.

### **Section 3.7 – Termination of Agreement**

1. This Agreement may also be terminated by mutual consent of both Parties, or at any time it is determined and established that the Union is no longer entitled to Exclusive Recognition under Title VII of the Civil Service Reform Act of 1978.

## **ARTICLE 4 - MANAGEMENT RIGHTS**

### **Section 4.1 – Regulations**

1. In the administration of all matters covered by this Agreement, all Parties are governed by existing or future law, by existing Government-wide regulations, by current Agency policies and regulations that do not conflict with this Agreement, and by subsequently published Agency policies and regulations required by law that are non-negotiable.

### **Section 4.2 – Retained Rights**

1. The Agency retains the right, in accordance with 5 USC, § 7106(a), and 32 USC § 709, to determine the mission, budget, organization, number of employees, internal security practices of the Agency, and in accordance with applicable laws:

- a. To hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
- b. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
- c. With respect to filling positions, to make selections for appointments from:
  - (1) Among properly ranked and certified candidates for promotion; or
  - (2) Any other appropriate source; and
- d. To take whatever actions may be necessary to carry out the agency mission during emergencies.

2. Nothing in this Section shall preclude the Parties from negotiating:

- a. At the election of the Agency, the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
- b. The procedures that Agency officials will observe when exercising any authority granted to the Agency under this Section; or
- c. The appropriate arrangements for employees adversely affected by the exercise of any authority granted to the Agency under this Section.

### **Section 4.3 – Emergency Considerations**

1. When an emergency requires changes to conditions of employment for a period of more than seventy-two (72) hours, the Agency shall provide the Union with the following information:

- a. An explanation as to the nature of the emergency requirement;
- b. A list of the conditions of employment that will be temporarily modified;
- c. A list of individual employees which will be affected; and,
- d. An estimate of how long the changes are expected to remain in place before reverting to pre-emergency operations. Changes expected to last more than thirty (30) calendar days will be considered a change to this Agreement IAW Section 3.4, and shall be subject to negotiation IAW Section 6.2.

2. The information required in Paragraph 1 may initially be conveyed verbally, however a written (formal letter or email message) notice shall be furnished to the Union, and will be conveyed as soon as the emergency situation permits, but not later than twenty-four (24) hours after changes have been implemented.

## **ARTICLE 5 – EMPLOYEE RIGHTS**

### **Section 5.1 – Awareness**

1. The Agency and the Union will ensure:

- a. Employees are fully aware that the provisions of this contract prevail in the workplace.
- b. This contract receives the widest possible dissemination.
- c. Employees will receive educational sessions regarding the contents and applicability of the contract.

### **Section 5.2 – Access to Personnel Files**

1. Employees normally have access to their personnel information via MyBiz, eOPF, or any other computer based application that may contain their personnel records. Employees will be allowed a reasonable amount of time during their duty day to access these records, as needed. When an employee is unable to access their information at their normal work site, excused absence may be granted IAW Section 9.6(3)(e) in order to allow the employee to travel to an alternate location where they will be able to access their personnel records. The alternate location, and amount of time granted, will be coordinated with their immediate supervisor. An employee's request to review their personnel records cannot interfere with the accomplishment of assigned duties.

2. An employee's Work Folder, or equivalent product (as maintained by their supervisor), will be made available to them for review upon request. A reasonable amount of time may be granted to the employee so that they can review the contents of their Work Folder, to include their Position Description and other documents present; however, an employee's request to review their Work Folder cannot interfere with the accomplishment of assigned duties.

### **Section 5.3 – Conduct and Right to Privacy**

1. An employee is accountable not only for the performance of their official duties, but also for compliance with the Standards of Conduct for Federal Employees. The Agency affirms the right of an employee to conduct his or her private life within the constraint of Federal law and Agency regulations. Employees have the right to engage in outside legal activities of their own choosing without any requirement to report said activity to the Agency, except as required by law or Agency regulations.

2. Neither the Agency nor the Union will coerce or in any manner require employees to invest their money, donate to charity, or participate in activities, meetings or undertakings not related to their performance of official duties.

3. Any search in conjunction with an investigation shall be conducted in accordance with applicable Government-wide regulations, as well as any Agency directives in place at the time

this Agreement goes into effect. Emergencies notwithstanding, the Agency shall not open, search, or inspect an employee's personal property (e.g. clothes, privately owned vehicle, book bag, etc.) without the employee present. If a search of said property or equipment is conducted as a result of a legally authorized search (i.e., a search warrant) outside of the presence of the affected employee, the Agency will, in writing, document the date, time, and reasons for said search and provide the employee with a copy of this documentation within 24-hours of conducting the search. This does not apply to vehicle inspections conducted at entry control points.

4. Any Agency-directed inspection of government-issued property shall be conducted in accordance with applicable Government-wide regulations, as well as any Agency directives in place at the time this Agreement goes into effect. Emergencies notwithstanding, the Agency should not open, search, or inspect government property or equipment issued to employees (e.g., locker, desk, or toolbox) in their absence. If a search of said property or equipment is conducted outside of the presence of the affected employee, the Agency will, in writing, document the date, time, and reasons for said search and provide the employee with a copy of this documentation within 24-hours of conducting the search.

5. The search of work areas must be reasonable in scope, balancing an employee's expectation of privacy against management's need to supervise and operate the workplace. Searches must be based on a reasonable suspicion, and prior to conducting a search of a work area, or of an individual's personal property or effects (i.e., their locker), the Agency will notify the employees affected of the search prior to commencing, give the employee the opportunity to be present at the search, and will inform employees that they can request to have a Union representative present during the search.

6. Searches conducted as a result of a criminal investigation, or suspected criminal activity, should be conducted by individuals properly trained in the collection of evidence, such as military or civilian law enforcement personnel. When law enforcement is not readily available, the suspected item(s) or area(s) may be sealed by the Agency pending the arrival of law enforcement personnel in order to prevent tampering.

7. When a search of the work area is conducted as a result of surreptitious activity, such as a bomb threat or a terrorist attack, the Agency is not required to give the employees notification of an impending search.

8. When an employee is unable to be present during a search, a Union representative will be present provided that the supplying of such representative by the Union shall not unduly delay the search or impede the purpose for which the search is conducted.

#### **Section 5.4 – Representation**

1. Employees have a basic right to representation in matters regarding their working conditions, or in matters that could have an adverse effect on their employment, such as disciplinary actions. The Union is the sole exclusive representative of bargaining unit employees concerning workplace matters.

2. The Parties agree it is important to ensure that employees are aware and understand their Weingarten Rights and their rights to have and retain representation. Further, the Parties agree to the following:

a. The Agency will inform all employees of their right to Union representation (Weingarten Right) IAW 5 USC §7114(a)(2)(B):

(1) At their respective new hire orientation;

(2) On an annual basis IAW 5 USC 7114(a)(3) by posting on informational bulletin boards at the worksite or, electronically to the employee's official email address; and,

(3) Prior to any examination of an employee in the bargaining unit by a representative of the Agency in connection with an investigation. The employee will acknowledge having been informed of their right to representation, and indicate their desire whether or not to have a Union representative present, by completing Appendix A.

c. Management shall grant fifteen (15) minutes of Official Time to Union representatives for the purposes of briefing new employees on Weingarten Rights and rights to representation.

e. Management shall grant fifteen (15) minutes of Official Time annually to Union representatives and/or shop stewards at each work location for the purposes of briefing all employees of their Weingarten Rights and rights to representation.

f. Travel to and from a work location does not count against Official Time.

3. An employee who requests to have representation must do so in writing and must include the representative's name and contact information. Furthermore, an employee may request that all communication be made with or furnished to their representative. When this choice is made, management proceeds under the premise that all communication with the representative reaches the employee.

4. Consistent with law and regulation, the Agency may provide legal representation, within the purview of applicable State and Federal Law, for those employees who, within the scope of their official duties, are accused of violating a law.

### **Section 5.5 – Right to Organize and Discuss Matters of Concern**

1. Each employee shall have the right to form, join or assist the officially recognized Union, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right in accordance with 5 USC §7102.

2. Nothing in this Agreement shall require an employee to become or remain a member of the Union, or to pay money to the Union except pursuant to a voluntary written authorization by a member for the payment of dues through payroll deductions in accordance with 5 USC §7115.

3. An employee shall not be disciplined nor otherwise discriminated against based on having filed a formal grievance, complaint, or for giving testimony under Title VII CSRA 1978.

4. No employee shall be precluded, regardless of whether or not he/she is a member of the Union, from bringing matters of personal concern to the attention of appropriate officials under applicable law, rule, regulation, or published policy; or from choosing his own representative for an appellate or grievance action based on law, regulation, or this Agreement.

### **Section 5.6 – Employee Treatment**

1. All employees deserve to be treated with common courtesy and consideration.

2. Counseling and warning sessions involving employees should be conducted privately in a manner that provides professional feedback to the employee. No employee shall be asked or directed to make a public statement or disclosure regarding any matter which concerns personal discipline.

### **Section 5.7 – Workplace Violence Prevention Program**

1. Supervisors will review the Agency's Workplace Violence Prevention Program policy with employees on an annual basis (e.g., during their annual performance feedback sessions or other training or information setting).

## **ARTICLE 6 – UNION RIGHTS**

### **Section 6.1 – Recognition and Representation**

1. The Agency will recognize the Union as the exclusive representative of all employees. This includes the Union's right to be represented in negotiations, formal discussions and meetings between employees and the Agency, with regard to matters affecting conditions of employment concerning grievances, personnel policies and practices or other matters affecting general working conditions. This would include Agency sponsored Committees/Meetings dealing with the above subjects. Management shall not implement changes until their obligations under Section 6.2 are fulfilled.

2. The right of the Union to be represented does not extend to informal discussions between an employee and Management, however an employee's reasonable request to have a Union representative present during these types of informal meetings shall not be denied. The Agency agrees to fully respect the rights of the Union to represent all Bargaining Unit Employees as required by law.

3. The Union should be allowed to participate and provide input, in a Pre-Decisional capacity, in meetings between the Agency and other entities/organizations, public or private, when the subject of said meetings concern the conditions of employment or working conditions of bargaining unit employees.

4. The Agency will recognize all Local Union Officers and Representatives designated by the Union:

a. The Union will supply the Agency, in writing, and will maintain on a current basis, a list of its Union Officers and Representatives. Copies of the list will be furnished to the HRO-LR.

b. The Union's primary point of contact for all matters is the designated State Representative, or any other representative appointed by the Union.

c. The Agency agrees that it shall not interfere in internal business matters between the Union, and employees.

d. The Agency agrees that there will be no restraint, interference, coercion or discrimination against Union representatives while performing their authorized duties under the Statute.

4. The Union, in consonance with its right to represent, may propose new policy, changes in policy, or resolutions to issues, involving local conditions of employment or working conditions. This right shall apply at all levels of management within the Agency and the Union, starting with the Steward and the first level Supervisor.

5. At the request of the Union, the Agency shall furnish the Union a monthly list of new employees, including their work address and positions.

## **Section 6.2 – Changes Affecting Conditions of Employment**

1. The Agency agrees to meet with the Union prior to implementing, modifying, or cancelling any personnel policy or procedure that affects employee conditions of employment as far in advanced as possible of the desired date of implementation.

2. Notwithstanding paragraph 1 (above), and except in cases where a change to conditions of employment is necessitated in order to ensure the safety and welfare of personnel or property, or when the Agency, in good faith, cannot provide timely notification under this Section, the Union will be provided a written notice of proposed changes no less than forty-five (45) days prior to the desired date of implementation. The notice shall be the Agency's finalized plan-of-action, shall be submitted to the designated Union representative as identified in Section 6.1(4)(a), and shall include the following:

a. Whether the proposal will be a new policy or practice, or if it is a change to an established policy or practice.

b. Justification for the proposal (why is it necessary).

c. What the immediate and long-term impact will be on employees, and the Parties.

3. As soon as practicable, but no later than fifteen (15) days from receipt of the Agency's notice, the Union will notify the Agency of their desire to negotiate (if the subject is negotiable), or to bargain on the impact and implementation thereof. Once the Union submits a timely request under this Section, the proposed change cannot be implemented until negotiations and/or bargaining have been completed IAW Section 6.3. Failure on the Union's behalf to request negotiations and/or bargaining with fifteen (15) days will be interpreted as concurrence with the Agency's proposal, and shall allow the Agency to implement their proposal immediately.

4. When the Agency is unable to provide timely notice IAW Paragraph 2 (above), the Parties will meet, prior to implementation of the changes, to determine how to modify the requirements of this Section, and to explore an alternate arrangement which will satisfy the Agency's need to expedite implementation of their change while at the same time honoring the Union's right to negotiate and/or bargain the proposed changes to conditions of employment.

## **Section 6.3 – Negotiation/Bargaining Procedures**

1. The following procedures shall be utilized when either Party request to negotiate or bargain a matter affecting conditions of employment:

a. Each party is responsible for determining the make-up of their negotiating team. The number of employees for whom official time is authorized shall be equal to the number of individuals designated as representing the Agency in any capacity during negotiations.

This includes observers, runners, facilitators, and any other persons present in or during the negotiation sessions (in any capacity) on behalf of the Agency.

b. Each team shall identify a Chief Negotiator with the authority to finalize agreements. Other members may be recognized to speak with the approval of their chairperson.

c. The names of each team member will be exchanged by the Parties in writing no later than forty-eight (48) hours prior to the beginning of negotiations. Any changes regarding team membership will be submitted to the other party prior to the next negotiation session.

d. Union representatives will be on official time during all negotiations/bargaining sessions.

e. Once negotiation/bargaining sessions are completed, the Parties will sign and date the Agreement to indicate execution, and (if applicable) will submit the Agreement to DCPAS for Agency Head approval IAW Section 3.2.

f. Negotiations Impasse: When the Parties cannot agree on a negotiable matter and an impasse has been reached, the item shall be set aside. After all negotiable items on which agreement can be reached have been disposed of, the Parties will again attempt to resolve any impasse. **Either or both Parties may seek the services of the Federal Mediation and Conciliation Service (FMCS).** When the services of mediation do not resolve the impasse, either party may seek the services of the **Federal Service Impasses Panel (FSIP).** Any proposals referred to the FSIP shall be deemed a provision of the executed Agreement upon receipt of an FSIP decision ordering adoption of the proposal.

g. Negotiability Question: At the time an item is declared non-negotiable by the Agency, the Union may submit to the Agency a request for their position on the non-negotiable item along with the Agency's rationale. The Union may then accept the Agency's declaration of non-negotiability, or file an appeal with the FLRA. The rules and regulations of the FLRA will govern procedures for the filing of the appeal.

#### **Section 6.4 – Past Practice (Established Practice)**

1. A Past Practice is a longstanding frequent practice that is accepted and known by the Parties, that is not specifically included in this Agreement, and that does not contradict Federal law. This Agreement, Agency regulations, and Federal law take precedence over Past Practice and tradition when there is a contradiction.

2. Neither Party may unilaterally terminate an established Past Practice without providing notice and an opportunity to bargain IAW Section 6.2. It is the burden of the Party claiming the Past Practice to prove its elements.

3. When a Past Practice is determined to be contrary to Federal law, the practice must be stopped immediately. The Parties shall meet to bargain over the impact and implementation of the change.

### **Section 6.5 – Unfair Labor Practices (ULP)**

1. Management and the Union agree that prior to either party submitting an Unfair Labor Practice (ULP) charge to the **Federal Labor Relations Authority (FLRA)**, the charging Party will notify the other and request a meeting in an attempt to resolve a suspected ULP. The meeting will be an informal attempt to resolve the matter(s) in dispute.

2. If, after fifteen (15) days from the initial notice, a solution agreeable to both Parties has not been reached, the charging party will then be allowed to file a formal ULP charge.

### **Section 6.6 – Steward Program**

1. The appointment and management of Union Stewards is an internal Union matter.

2. Stewards shall be allowed a reasonable amount of Official Time IAW Section 6.7.

3. It is agreed that Stewards will carry out their duties in a way that does not interfere with the Agency's ability to accomplish the mission.

4. Stewards will be available for call back if needed, and shall report to their supervisor immediately upon return.

### **Section 6.7 – Official Time and Travel of Union Representatives**

1. Union Representatives shall be permitted a reasonable amount of Official Time in order to effectively represent employees IAW this Agreement. Reasonable time for representational activities (e.g., discussions, meetings, investigations, negotiations, and bargaining sessions) shall be that amount of time determined by both Parties to effectively deal with workplace matters such as: 1. conditions of employment and/or employee working conditions; 2. an employee grievance or complaint; 3. representation of employees during a Weingarten investigation or during the course of an adverse action; 4. to review and/or evaluate a proposed policy change and formulate a recommendation; 5. to negotiate or bargaining a new proposal or change; and, 6. to attend Agency and/or Union-sponsored training which is beneficial to both Parties. This list is not all-inclusive and Official Time may be requested and granted for other situations not listed as long as the purpose and/or justification falls within the parameters of 5 USC §7131.

2. Union Representatives shall request Official Time through their appropriate supervisor using the Request for Official Time form (Appendix B). The request should state their destination, estimated time of departure and return, and the nature of Union business. If the request cannot be accommodated due to mission requirements, the representative will be informed of the earliest possible time when they will be able to leave his/her work site. Union Representatives will be available for call back due to mission requirements.

3. In addition to the requirements of paragraph 2 (above), requests for prolonged absences (longer than 24 hours) will be made by using an official memorandum on Union letterhead. Absences of short duration (less than 24 hours) may be requested/approved either verbally or in writing. Use of email is acceptable.

4. Travel costs for Union Representatives will be the responsibility of the Union; however, if travel is pursuant to an Agency request, and the meeting location is outside of the Union Representative's commuting area, the Agency shall be responsible for travel costs IAW DoD Joint Travel Regulations (JTR).

5. Whenever an employee meets with the Union concerning a representational matter, and that meeting takes place during duty hours, reasonable notification shall first be provided to the employee's immediate supervisor prior to the employee ceasing performance of assigned duties. If the employee cannot be released at that time due to mission requirements, the Union will be informed of the earliest possible time when the employee will be available. Supervisors may not inquire as to the subject-matter of the meeting, and cannot deem the employee's release contingent on subject-matter knowledge. No notice is required when representational activities take place during non-work periods (i.e., before and after regular duty hours, during breaks, or during the lunch period).

6. Paragraphs 1 – 5 notwithstanding, the Union's designated State Representative shall be granted additional Official Time for the purposes of discharging his/her representational duties IAW 5 USC Chapter 71 and this Agreement.

### **Section 6.8 – Internal Union Business, Limitation of Activities, and Access to Facilities**

1. It is agreed that internal Union business such as soliciting membership, collecting dues, campaigning for office, electing officers, attending Union meetings, and posting or distributing Union literature will be conducted during the non-duty hours of the employee involved.

2. There will be no restraint, coercion, or discrimination against any Union official because of the performance of duties in consonance with this Agreement, Title VII, CSRA 1978, directives, etc., pertaining to employees' rights and labor management relations; or against any employee for filing a complaint or acting as a witness under this Agreement or applicable regulations.

3. Subject to normal security limitations, Union Representatives will be granted access to Agency facilities. The Union's request to access Agency facilities shall not be unreasonably delayed or denied.

4. Access in conjunction with a membership drive shall be coordinated with the Labor Relations office, and shall be limited to non-work areas such as a lunch/break room or other non-work areas where employees usually gather during periods of rest. In facilities that do not have a lunch/break room, the Union will be allowed temporary use of a conference room or other work area in order to support an authorized membership drive.

## **ARTICLE 7 – VOLUNTARY ALLOTMENT OF UNION DUES**

### **Section 7.1 – Arrangements for Dues Deductions**

1. Dues deduction will be accomplished in accordance with 5 USC §7115.
2. Technicians eligible for bargaining unit membership may elect to pay Union dues. This will be accomplished by completing SF 1187 ([http://www.opm.gov/forms/pdf\\_fill/sf1187.pdf](http://www.opm.gov/forms/pdf_fill/sf1187.pdf)), Request for Payroll Deduction for Labor Organization Dues, and forwarding the completed form to the Union. The Union will certify the amount of dues while completing the appropriate portions of the form and forward the form to the Agency.
3. Allotments will become effective on the first full pay period commencing after receipt of the applicable form by the Payroll Office. The Agency will be responsible for recuperating dues not collected as a result of an administrative delay or error, unless that delay or error is caused by reasons beyond the Agency's control.
4. An allotment shall terminate when the employee leaves the unit as a result of any type of separation, transfer, reassignment, promotion or other action which would exclude the employee from the bargaining unit; upon loss of exclusive recognition by the Union; when the agreement providing for dues withholding is suspended or terminated by an appropriate authority outside DoD, or when the employee has been suspended or expelled from the Union. Employees can make arrangements with the Union for other methods of payment (i.e., personal check, debit, or allotment through MyPay).
5. An employee may voluntarily revoke his/her allotment for the payment of dues by submitting an SF 1188 Cancellation of Payroll Deduction for Labor Organization Dues form directly to the Agency. Once the action is completed, copies will be provided to the employee, the Union, and to HRO (Labor Relations). By statute, dues allotments must be made for no less than one year.
6. Employees may only cancel allotments after their one year anniversary date. Thereafter, dues may be cancelled during the first full pay period in April. The Agency will be responsible for recuperating dues not collected as a result of a premature cancellation of a dues allotment.
7. Dues withholding arrangements as set forth in this Article will continue if this Agreement is not renegotiated by its termination date because of impasse, third party proceedings involving a negotiability dispute, or unit representation.

## **ARTICLE 8 – HOURS OF WORK AND COMPENSATION**

### **Section 8.1 – Basic Workweek and Workday**

1. The Agency will establish specific work schedules at each CA ARNG Activity, as necessary, to accomplish the Agency's mission IAW 5 CFR §550.103. The Agency shall consider employee effectiveness, efficiency, professional development and morale in establishing specific workweek schedules. Changes to the work schedule policy that occur over the life of the contract must be bargained IAW Article 6, Section 6.2, prior to implementation, and shall be incorporated as an Amendment to this Agreement IAW with Article 3, Section 3.4.

2. The Agency has the right to establish each employee's workweek to ensure cost effective and timely compliance with operational requirements. Subject to these requirements, the Agency, in establishing an employee's work schedule, shall take into consideration any personal hardship made known to the Agency by an employee, and shall make every reasonable effort to provide each employee a work schedule fourteen (14) calendar days in advance of its effective date. It is agreed that work schedules shall remain in effect for at least two pay periods when possible and consistent with 5 CFR 610.121.

3. Subject to mission requirements, Agency-established core hours, and/or general safety considerations, **employees may request one of the following work schedule options:**

- a. Regular Work Schedule: 5/8's
- b. Alternate Work Schedule 1: 5/4/9's
- c. Alternate Work Schedule 2: 4/10's
- d. Alternate Work Schedule 3: Flexible Tour

4. An employee's request to utilize one of the work schedule options in paragraph 3 (above) will be submitted to the Agency through their immediate supervisor, and shall not be unreasonably denied. Approval will be primarily based on mission and core hour requirements, although the Agency may take into consideration other factors (e.g., personal hardships, education, commuting, etc.).

5. Any changes to the work schedule policy, regardless of whether all or a portion of the bargaining unit is affected, must be negotiated with the Union IAW Section 6.2 prior to implementation.

### **Section 8.2 – Reporting for Duty**

1. Employees have a responsibility to report to work ready, willing, able, and in proper attire, promptly at the beginning of their scheduled work period.

2. Except in the case of an emergency, employees will notify their immediate supervisor as soon as possible, but not later than two hours after beginning of the work shift, of the reason that prevented them, or will prevent them, from reporting to work on time. If the reason provided is illness of the employee or qualified family member, supervisors cannot request that an employee elaborate on the specifics of the medical condition. If the employee is incapacitated and/or physically unable to initiate contact him/herself, then management may accept tardiness or absence notice from an employee's next of kin.
3. When an employee cannot establish positive contact with their first level supervisor, then employees should attempt to make contact with their next level of supervision, and continue to do so, until a management representative is reached, in order to provide notice. Co-workers cannot be used to relay information concerning tardiness or absence.
4. Tardiness and absence notices, regardless of the circumstances, should be provided verbally by the employee him/herself directly to a management official. However, employees may use other modes of acceptable modern communication, such as voice mail, email, and/or text, as a secondary method of attempting to provide notice, or when all efforts to verbally contact a management representative have been reasonably exhausted by the employee.
5. Tardiness and absences from duty of less than an hour may be excused when the reasons are justified to the supervisor. Justifiable reasons are events which are beyond the employee's control such as abnormal traffic congestion, severe weather, or any other type of event that cannot be predicted. However, the employee's leave status will be determined by the supervisor when tardiness or unexcused absences from work is less than an hour.
6. The employee will not be permitted or required to work during any period for which leave is charged.

### **Section 8.3 – Lunch Periods and Breaks**

1. Employees are authorized thirty (30) consecutive and uninterrupted minutes for lunch every workday. A lunch period is a time during which an employee is entirely free from his/her work responsibilities. During this time the employee is considered to be off-duty.
2. When Agency mission requirements do not allow an employee time off for lunch IAW paragraph 1 (above), the employee will be compensated for his/her missed lunch period with an amount of Compensatory Time equal to the missed lunch period.
3. Fifteen (15) minute rest periods or breaks during the first half and the second half of an employee's shift will be granted. Rest breaks will not be taken in conjunction with the lunch period, or at the beginning or end of the work day.

### **Section 8.4 – Overtime Work**

1. The Parties, in consonance with applicable laws and regulations, agree that occasionally the Agency will need employees to work in excess of their regular work hours (overtime) in order to

meet mission requirements. Employees will be compensated for overtime work done on a voluntary basis, or as directed (involuntary) by management in order to support the Agency's mission.

2. Overtime work is any activity that an employee is required to accomplish or participate in, including mandatory meetings or events scheduled and/or hosted by the Agency or its representatives, which require an employee to be present at the worksite prior to the beginning of their regular duty day, or require an employee to remain at the worksite after their regular duty day ends.

3. Requiring employees to arrive at the worksite prior to the start of their shift in order to make ready for work, or causing employees to remain at the worksite beyond the end of their shift in order for them to accomplish personal or shop clean-up and tool turn-in, is considered compensable overtime work. These types of activities are considered part of the work process and should be accomplished during regular duty hours (reference Section 11.10).

4. Overtime requirements will be announced as far in advanced as possible to allow employees the opportunity to make suitable arrangements in order to perform the overtime work.

5. Management will make every effort to direct or assign employees overtime on an equal basis. In no case will overtime work be directed or assigned to any employee as a reward or punishment.

6. Management should make every effort to seek volunteers prior to mandating that an employee perform overtime work. In the event there are insufficient employee volunteers willing to perform overtime work, management has the authority to direct an employee to work overtime to meet the Agency's mission requirements. Management shall provide affected employees five calendar days' notice to schedule involuntary compensatory time.

7. Supervisors will also take into consideration any personal hardships that the overtime work may cause the affected employee(s) and will make every effort to accommodate said hardships. These include issues such as child care, school, transportation to and from the workplace (especially if an employee participates in car-pooling), and distance from the employee's home of record.

8. Employees scheduled to work overtime will be notified of any cancellation of the overtime requirement by the end of the preceding workday. Employees scheduled to work overtime on any non-duty day will be notified of any cancellation as soon as it is known but not later than 1200 hours on the preceding duty day.

9. It is agreed that when overtime follows a regular work shift, the employee will be given a fifteen (15) minute paid break at the beginning of the overtime period and, at the employees request, a thirty (30) minute non-paid meal break to begin no later than two (2) hours after overtime begins.

## **Section 8.5 – Call Back**

1. Call Back is the act or an instance of requesting that an off-duty employee report to work and perform his duties on a day when work was not scheduled, or after his regular work day is over.
2. Unscheduled call back work entitles an employee to at least two (2) hours of compensatory time. When the employee is instructed to report to a location other than their regular duty station, they shall be entitled to an amount of compensatory travel time equal to the time it takes the employee to travel to and from the alternate worksite minus the home to work travel in accordance with regulations.
3. If an employee is on scheduled leave and called back to work, a corrected OPM 71 Leave Request Form will be submitted to the Timekeeper upon the employee reporting to work.

## **Section 8.6 – Stand-By and On-Call Duty Compensation**

1. In order to deal with situations occurring after regular duty hours, employees may be placed on either a stand-by or on-call duty status.
2. The Agency may establish routine prohibitions regarding alcohol consumption, and may restrict the use of specific prescription or over the counter drugs, in order to ensure employees maintain the ability to perform work.
3. Stand-By Duty. An employee is on duty, and time spent on standby duty is hours of work if, for work related reasons, the employee is restricted to a designated post of duty and is assigned to be in a state of readiness to perform work with limitations on the employee's activities so substantial that the employee cannot use the time effectively for his own purpose. The Parties agree that compensatory time shall be used in standby time situations.
  - a. Management shall make every reasonable effort to provide an employee advance notice specifying the beginning and ending period that he/she is on standby status.
  - b. Management agrees that when an employee is placed on standby time, compensatory time shall be granted for the standby period provided the following are apparent:
    - (1) The employee is restricted to his/her living quarters or designated post of duty;
    - (2) Has his/her activities substantially limited; and
    - (3) Is required to remain in a state of readiness to perform work.
  - c. Management shall notify any employee who is on standby status of its cancellation as soon as possible.
  - d. Employees will be given compensatory time in equal amounts spent by them in irregular or overtime work.

4. On-Call Duty. An employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:

a. The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or

b. The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

5. Once an employee responds to a call and is required to work (call back), he/she shall be granted compensatory time from the moment the work begins until the work is completed.

### **Section 8.7 – Other Pays**

Night Shift Differential, Night Pay Differential, Sunday and Holiday Premium pay will be computed IAW 5 CFR §532 and §550.

## **ARTICLE 9 – LEAVE**

### **Section 9.1 – General Provisions**

1. An employee's request to take earned leave will normally be granted as requested, unless the supervisor determines that the employee's presence is required to meet mission requirements.
2. Employees are encouraged to apply for leave as far in advance as possible; however, there is no set requirement on how far in advance a request must be submitted in order for it to be approved.
3. Approval or denial of employee leave requests are based solely on the Agency's mission requirements at the time the request is submitted. If an employee has sufficient leave to cover the period of absence, and their absence will not negatively impact the Agency's mission, then the supervisor shall approve the request.
4. Leave requests for emergency reasons will be considered on a case-by-case basis, and may be granted even if the employee's absence will have a negative impact on the Agency's mission. Employees will notify their supervisor as soon as possible of the emergency situation stating the reason for the request and the time they desire to be absent from work.
5. An employee may cancel previously requested leave at any time
6. All leave requests (paid and unpaid) will be submitted using OPM 71.
7. Leave entitlements not addressed in the contract will be done IAW the applicable law, rule, and regulation.

### **Section 9.2 – Annual Leave**

1. Employees shall earn annual leave in accordance with applicable law, rule, and regulation.
2. A supervisor will approve or disapprove properly submitted request for annual leave as soon as possible. If the request is disapproved, the reason will be entered on Block 8b of the OPM 71 and the employee will be notified. The supervisor will work with the affected employee to reschedule the disapproved leave as necessary.
3. When two or more employees from the same work section desire the same period of programmed leave and mission requirements precludes approval of all requests, approval will be granted on a first come first serve basis.
4. Employees may exhaust all of their annual leave balance during one continuous period of absence and for any reason, insofar as mission requirements permit. Supervisors cannot require that employees maintain a minimum annual leave balance. Supervisors also cannot require that employees provide a reason or justification for non-emergency annual leave in order to approve their request.

5. Supervisors or employees may request the carry-over of use/lose leave if the mission dictates that leave cannot be used before the first pay period of the new calendar year.

6. Once approved, annual leave should not be cancelled unless the employee's presence is necessary to meet mission requirements. Prior to cancellation, the supervisor shall consider any personal or financial hardship to the employee to include the potential loss of deposits or payments made to vacation providers and retailers including hotels, airlines, cruise ships, etc. The supervisor shall provide justification for any cancellation decision, and will work with the employee to mitigate any personal or financial hardship caused, to include delaying the employee's return if such a delay will not have a significant impact on the Agency's ability to accomplish the mission.

7. Employee requests for advanced annual leave shall be made in writing through their supervisor, to the HRO. The request will include the number of hours applied for and proper justification. The maximum amount of annual leave that can be advanced is limited to the amount of annual leave an employee would accrue for the remainder of the leave year. Advance annual leave is not an entitlement. Employees will be required to repay the amount of advance leave for which he/she is indebted in the event they separate from Federal service prior to accruing the amount of leave advanced.

### **Section 9.3 – Sick Leave**

1. Employees shall earn and be granted sick leave, or advanced sick leave, in accordance with applicable law, rule, and regulation. Employees must receive approval for sick leave to be granted.

2. A supervisor may require a medical certificate or other administratively acceptable evidence to support the use of sick leave for absences in excess of three (3) days, or for a lesser period when the Agency determines it is necessary IAW paragraph 3 (below). An employee's signed statement certifying that the period of absence is chargeable to sick leave may be accepted when it is unreasonable to require a medical certificate. Circumstances under which an employee's signed statement is acceptable in lieu of a medical certificate are:

a. Inability to secure an appointment with a medical professional during the period of incapacitation.

b. Remoteness of the medical facility.

c. Temporary illnesses if the nature of illness would not necessarily require the services of a medical professional (e.g., common cold or other instances of temporary non-emergency conditions).

d. If acquiring a medical certification would cause a financial hardship.

3. If there is a reasonable suspicion that sick leave is being abused, the Agency reserves the right to require a medical certificate or other administratively acceptable evidence for sick leave without advanced notification. However, in such cases, the Agency will advise the employee, in writing, that documentation will be required to support any future approval of sick leave regardless of duration. At a minimum, the written notice will contain the reasons the employee is being required to furnish documentation, and the expected duration of the probationary period. An employee must provide administratively acceptable evidence or medical certification within fifteen (15) days of the Agency's request. If the employee is unable to provide evidence, despite the employee's diligent, good faith efforts, he/she must provide it within a reasonable period of time, but no later than thirty (30) calendar days after the Agency makes the request. If the employee fails to provide the required evidence within the specified time period, he/she is not entitled to sick leave.

4. Supervisors will review the sick leave record of those employees required to present a medical certificate every six (6) months to determine if this requirement should continue. The employee will be advised, in writing, of the supervisor's determination.

5. Sick leave, not to exceed 240 hours, may be advanced to an employee when supported by a medical certificate describing the illness or injury and the anticipated time of disability. Employee requests for advanced sick leave shall be made in writing through their supervisor to the HRO. The request will include the number of hours applied for and proper justification. Advance sick leave is not an entitlement. Employees will be required to repay the amount of advance sick for which he or she is indebted in the event they separate from Federal service prior to accruing the amount of leave advanced. Advancement of sick leave will only be approved after all annual leave and compensatory time has been exhausted by the employee, and based on a medical prognosis that the employee will return to full duty within a reasonable period of time.

#### **Section 9.4 – Compensatory Time (CT)**

1. Compensatory time shall be earned and granted in accordance with applicable law, rule, and regulation.
2. Compensatory time shall be used before Annual Leave unless the employee is in a use/lose leave status.
3. Additional guidance for compensatory time (Overtime Work) is addressed in Section 8.4.

#### **Section 9.5 - Leave without Pay (LWOP)**

1. When it is determined that it is in the best interest of the Agency, LWOP may be granted upon request, subject to approval by the Agency, as follows:

a. When serving as an officer, employee, or representative of the Union:

- (1) An employee who has been duly elected or appointed as a Union Officer or Delegate, and whose duties may require an extended absence from their regular

position, shall be granted annual leave and/or leave without pay upon request, not to exceed one (1) year, pursuant to a sixty (60) day written notice.

- b. To deal with personal matters or emergencies.
- c. Requests for extensions may be submitted up to 60 days prior to the expiration of the period of leave without pay.
- d. A determination on such requests will be made no later than 30 days prior to the expiration date.

2. When eligible, employees are entitled to LWOP, as follows:

a. The Family and Medical Leave Act of 1993 (FMLA), provides eligible employees with an entitlement to a total of up to 12 weeks of unpaid leave (LWOP) during any 12-month period for certain family and medical needs. Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or 'next of kin' of a covered veteran with a serious injury or illness to take up to a total of 26 workweeks of LWOP during a 'single 12-month period' to provide care for the veteran.

b. The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides eligible employees with an entitlement to LWOP when employment is interrupted by a period of service in the uniformed service.

c. Executive Order 5396, July 17, 1930, provides that eligible disabled veterans are entitled to LWOP for necessary medical treatment.

### **Section 9.6 - Excused Absences (Administrative Leave)**

1. Excused absences may be granted IAW applicable law, rule, and regulation. The intent of an excused absence is to provide for authorized brief absences from duty without loss of pay and without charge to other paid leave.

2. The Agency has the authority to grant or disapprove requests for excused absences.

3. Excused absence may be granted for the following reasons:

a. To comply with an examination (medical or academic) directed by the Agency to determine civilian and/or military medical qualification or disability of an employee, to include required dental exams of dual-status technicians required by their respective military service.

(1) Dental Exams: Excused absence related to annual dental exams required by a dual-status technician's military service will be limited to one (1) doctor's visit per year. The amount of excused absence granted shall be the amount of time needed to cover the medical appointment, plus the amount of time needed to

cover travel to and from the employee's assigned duty station and the medical facility. There is no limitation on the amount of excused absence that may be granted under this section as long as the employee's medical appointment meets the criteria herein.

(2) Medical Appointments for Combat-Related Injuries: Technicians may be granted excused absence to attend medical appointments that meet the following criteria:

i. The medical appointment must be at a facility approved or designated by the Veterans Administration (VA) to evaluate or treat the technician.

ii. The medical appointment must be related to an injury or illness incurred in a combat zone as a result of active service in the Armed Forces of the United States, and treatment of the condition is directly related to the technician's continued employment.

iii. The request for excused absence must be submitted using OPM Form 71, Request for Leave or Approved Absence, and must be accompanied with written documentation from the VA to verify that the appointment meets the criteria set forth in this policy. Each request for excused absence must be submitted separately.

iv. The amount of excused absence granted shall be the amount of time needed to cover the medical appointment, plus the amount of time needed to cover travel to and from the technician's assigned duty station and the medical facility.

v. The technician is responsible for providing the required documentation to justify an excused absence request IAW this policy. Excused absence cannot be granted unless the criteria in sub-paragraph (2) i - iv are satisfied. When the criteria cannot be satisfied prior to attending a VA medical appointment, the employee shall be placed in an appropriate leave status to cover the period of absence. However, a technician may subsequently provide the required documentation at which point their time and attendance record shall be promptly corrected to reflect the appropriate duty status.

vi. The Agency will consider the following factors when determining the appropriateness of the excused absence:

A. The treatment of the illness or injury directly impacts the employee's military non-deployability status.

B. The employee's current sick leave balance is below 104 hours (i.e., a low leave balance that could cause financial hardship).

C. The amount of excused absences already given and whether it would be more appropriate for the employee to be on Warrior Transition Active Duty status or some other active status as determined by a line of duty (LOD) investigation.

b. To vote or register in civic elections or in civic referendums which directly affect the town, ward/precinct, district, county, or state in which the employee's home-of-record is located.

(1) An employee may be excused from duty up to three (3) hours after the polls open, or to leave work three (3) hours before the polls close, whichever results in the lesser amount of time off.

c. To volunteer as blood or apheresis (i.e., plasma) donor, without compensation, to the American Red Cross, to military hospitals, or other blood banks, or in response to emergency calls for needy individuals or national catastrophes.

(1) Employees may be authorized a maximum of one-half day excused absence for blood donations.

(2) This excused absence is authorized once every sixty (60) days and is for the express purpose of donating blood or blood products and recuperation.

(3) Any leave granted must be utilized at the time of the donation and may not be taken at a later date.

(4) A longer period may be authorized only when required for donor recuperation purposes.

d. To review their employee personnel records or fulfill administrative responsibilities in connection with transfers or separations within the National Guard.

(1) This excused absence will be approved by the Agency or designated representative (e.g., immediate supervisor).

(2) The time and date of the personnel action will be coordinated with HRO.

(3) Travel time will be authorized and excluded from the time allotted for the excused absence.

f. To attend events hosted or sponsored by professional organizations affiliated with the employee's status as either a civilian employee or military member (i.e., EANGUS, NGAUS, Federal Executive Board, etc.) when it is determined by the Agency that such attendance will serve the public interest. Excused absence is not applicable when

attendance is in a military status (paid or non-paid); in such cases, military and/or annual leave would be appropriate.

### **Section 9.7 – Hazardous Weather and Other Emergency Conditions**

1. When hazardous weather or other emergency conditions are affecting, or are forecasted to affect, an employee's home of record or worksite, the Agency may approve an employee's request for leave so that they may take care of their personal affairs.
2. The Agency may place an employee in an administrative leave status when he/she is prevented from reporting to duty, or is dismissed by the Agency prior to the end of the duty day, because hazardous weather or other emergency conditions make it unsafe or impractical for the employee to either travel from their home to the worksite, remain at the worksite, or travel from the worksite to their home. Road closures enforced by local government agencies and other general warnings by local public officials for citizens to 'remain in place' are reliable indicators that conditions exist which may qualify an employee for administrative leave under this section.
  - a. If an employee requests leave under Paragraph 9.7(1) prior to an administrative dismissal being authorized under Paragraph 9.7(2) then they will be charged leave until the time set for dismissal.
  - b. If an employee is already scheduled to be absent for the entire work shift on a day when administrative leave is approved under this section then the entire absence is charge to the appropriate leave status requested and they will not be eligible for administrative leave.
3. Unless notified otherwise, employees are to presume that their worksite will be operational each regular work day regardless of weather or other emergency conditions.

### **Section 9.8 – Leave in Conjunction with Military Duty**

1. Generally, technicians are entitled to use any combination of Military Leave, Annual Leave, Compensatory Time, Time-off Awards, or Leave Without Pay (LWOP) in conjunction with Inactive Duty Training (IDT) or Active Duty (AD) performed during their regular duty hours. Technicians are also entitled to use Law Enforcement Leave (LEL), but only when the activation is in response to an emergency. Military Leave may not be used to cover periods of state active duty.
2. The following guidance applies when charging technicians leave in conjunction with Inactive Duty Training (IDT):
  - a. IDT is training or duty other than active duty. This includes Unit Training Assemblies (UTA), and MUTA (Army) periods.
  - b. IDT is usually scheduled in 4-hour increments. Multiple IDT periods may be scheduled in one day. For example, a normal UTA is scheduled over the course of two

non-work days (usually Saturday and Sunday), and is equal to four IDT periods. On occasion, Technicians may be required to perform IDT, such as a MUTA 5 or 6 during their regular workweek.

c. Technicians performing IDT during their regular workweek, and at their technician duty station, will only be charged the amount of leave necessary to cover the period of training. For example, a technician on a four-ten (4/10) Compressed Work Schedule, who's normal duty hours are 0700 – 1730 Tuesday thru Friday, and who performs two 4-hour IDT periods during the course of a regular ten-hour shift, will only be charged eight (8) hours of leave during that period.

d. Technicians whose IDT unit location is separate from their normal worksite will be allowed to use an amount of leave necessary to cover both the period of training and any necessary travel to the training site. The amount of time allowed for travel is whatever amount of time is reasonably needed to arrive at the training site.

3. The following guidance applies when charging technicians leave in conjunction with periods of active duty:

a. Active duty includes training or duty such as ADOS, AT, AGR, or state active duty (SAD). One active duty period is equal to one 24-hour period of duty, or one day.

b. Technicians performing active duty during their regular workweek will be charged an amount of leave necessary to cover the portion of their technician work shift affected by the active duty period.

### **Section 9.9 – Voluntary Leave Transfer Program**

1. IAW 5 CFR Part 630, Subpart I, accrued annual leave of one or more employees (donors) may be transferred for use by another employee (recipient) needing such leave because of a medical condition and/or emergency (as defined in 5 CFR 630.902) that may require an employee's absence from duty for a prolonged period of time and result in a substantial loss of income to the employee because of the unavailability of paid leave.

2. Employee requests to become donated leave recipients shall be made in writing through their supervisor to the HRO. When an employee is incapacitated, the request may be submitted by an immediate family member, or a personal representative. At a minimum, the request will include:

a. The name, position title, and grade or pay level of the potential leave recipient;

b. The reasons transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency affecting the potential leave recipient; and,

c. Certification from one or more physicians, or other appropriate experts, with respect to the medical emergency, if requested by the Agency.

3. In considering whether to approve or disapprove a request under this section, the Agency shall use the following criteria. No other factors will be considered when determining whether to approve or disapprove an employee's request to become a donated leave recipient:

a. Whether an employee's absence from duty without available paid leave because of a bona fide medical emergency is (or is expected to be) at least twenty-four (24) hours; and,

b. Whether such absence is likely to result in a substantial loss of income.

4. The Agency shall notify employees whether their request is approved or disapproved within ten (10) calendar days. If disapproved, written explanation shall be provided.

## **ARTICLE 10 – REQUIREMENTS FOR DUAL STATUS TECHNICIANS**

### **Section 10.1 – Uniform Appearance, Customs and Courtesies**

1. The Parties agree that performing duties as a dual status (DS) technician requires wear of the uniform appropriate for the member's grade. Technicians will adhere to appropriate appearance standards, customs, and courtesies of the US Army.
2. Employees are not required to wear the military uniform in the following situations:
  - a. During non-duty hours.
  - b. When on Official Time acting as a Union Representative.
  - c. While appearing as an aggrieved employee or Union witness before a third party proceeding.

### **Section 10.2 – Uniform Allowance**

1. The Agency shall furnish employees with four (4) sets of their primary dual-status technician duty uniform and all accessories required for proper uniform wear IAW military regulations as follows:

- a. Uniforms will be provided 'ready-to-wear' to include emblems/patches/ribbons, nametags/tapes, insignia, etc. as required by regulations.
- b. All other clothing accessories such as undershirts and socks, ties, gloves, shoes/boots, hats, etc. as required by regulations.
- c. Cold and foul weather gear as provided in Section 11.3.

2. In the case where the employee does not have a serviceable uniform, and the Agency has been unsuccessful in providing the employee uniforms through the normal supply process, the Agency agrees to provide a uniform in the most expeditious manner possible, at no expense to the employee. In the rare instances that the Agency is unable to obtain a serviceable uniform, the Agency will determine the appropriate attire until such time as a serviceable uniform can be obtained for the employee.

### **Section 10.3 – Medical Requirements**

1. Medical requirements associated with technician employment, to include immunizations or testing under a substance abuse program, will be accomplished IAW NGB policy.
2. An employee who is pending disability retirement may be retained until the disability retirement process has been completed. The supervisor will make a recommendation based upon each individual situation. The recommendation will be forwarded up the supervisory chain of

command and the Agency will make the final determination. If the employee is retained, he/she may be reassigned to a different position and/or a different work site within the same commuting area. However, any change in duties or work location shall not adversely affect the employee's pay.

#### **Section 10.4 – Qualitative Retention Boards (QRB)**

1. A military technician (dual status) not selected for retention may submit a request for retention IAW AR 135-205 paragraph 2-17, which provides: A military technician may request retention in a current assignment provided they are not eligible for an immediate unreduced retirement annuity, have at least fifteen (15) years of service creditable toward such an annuity on the date they would otherwise be removed from the unit, and will become eligible for such unreduced annuity on or before the last day of the month in which they become sixty-four (64) years of age. Requests must be submitted through the military chain of command to The Adjutant General within fifteen (15) days of announcement of the board results.

2. This section does not create a new entitlement and is not grievable.

## **ARTICLE 11 – SAFETY AND OCCUPATIONAL HEALTH**

### **Section 11.1 – Responsibilities**

1. It shall be the responsibility of the Agency and employee to observe all safety precautions and maintain the standard of safety established in accordance with applicable regulations and safety and occupational health policies.
2. The Parties agree to exert every reasonable effort to provide and maintain a work environment conducive to the safety and well-being of all employees, and to provide safety and health training for all employees in accordance with applicable laws, rules, and regulations.
3. All rules, laws, and regulations pertaining to safety and health shall be on-hand within the employees work center and will be adhered to by all employees.
4. Hazardous tasks will normally be assigned and performed by employees who have received appropriate briefings, instructions, and training pertinent to the hazardous tasks to be performed. The performance of hazardous tasks shall incorporate all immediately available safety precautions and devices.
5. The Union agrees to cooperate in these efforts and encourage employees to work in a safe manner, obey established safety policies, and directives, and wear the required safety equipment.
6. The Union shall be allowed to be present at local and state level Safety Council meetings. Management agrees to consider all recommendations of the Union relative to basic policy on safety and health.
7. The cost and responsibility for cleaning and repair of protective clothing and equipment contaminated with or by controlled waste material shall be borne and provided by the Agency.
8. The Agency shall provide employees access to permanent personal hygiene facilities at each worksite. This includes access to latrine and shower facilities, segregated by gender, that are adequately cleaned/maintained, powered, and stocked with supplies, and which have ready access to potable drinking water. When such facilities are not available, the Agency shall provide temporary portable latrine, shower, and mobile drinking water, and shall provide for the regular cleaning/maintenance, and replenishment of supplies until permanent facilities are provided or restored. When neither permanent nor temporary portable hygiene facilities nor drinking water is available at a worksite, that site shall be deemed unsuitable to be occupied and employees shall either be relocated to a suitable facility, or shall be excused from work until personal hygiene facilities and potable drinking water are made available.
9. An employee under the care of a physician shall promptly inform his/her supervisor of any prescribed medication that a physician or pharmacist has advised will impair the employee's ability to safely perform assigned work. Information provided by an employee shall include the limiting effects of the medication and expected duration of prescription. Management shall make every reasonable effort to find a safe, temporary assignment for the employee. However, such

accommodation is not an entitlement. In cases where impairment caused by medications cannot be accommodated, employees will not be allowed to return to work until a medical professional has cleared the employee to return to full duty.

### **Section 11.2 – Health Services**

1. It is of infinite benefit to the Agency to have employees in top physical and mental condition. Therefore, an Occupational Health Services and Preventive Medicine Program shall be established and maintained by the Agency, as provided for in 5 USC Chapter 79 and other applicable laws, rules and regulations.

### **Section 11.3 – Safety and Personal Protective Clothing/Equipment (PPE)**

1. In accordance with 29 CFR Part 1910, the Agency agrees to provide all appropriate safety equipment, protective clothing and footwear to employees during the performance of their assigned duties, to include training on the proper use, care, and inspection of Agency-issued PPE.

2. An employee who, after evaluation from an optometrist, is required to wear prescription eyeglasses and is required to wear these eyeglasses in order to safely accomplish their assigned duties, may provide their prescription to the Agency who will then provide the employee with one pair of prescription safety glasses or goggles at no personal expense to the employee, but not to exceed the amount allotted by the Agency. Employees will be responsible for paying any amount which exceeds the allowance provided by the Agency.

3. The Agency shall provide employees an adequate supply of reusable work coveralls to wear as protective clothing. The use of disposable coveralls is not authorized. The cost for maintenance and care of the coveralls shall be borne by the Agency. Employees engaged in vehicle and aircraft maintenance will be provided five (5) protective coveralls, two (2) insulated jackets, one (1) winter cap, and one (1) summer cap to include cleaning and repair or replacement, as necessary, of such equipment, through a contract service to be determined by management.

4. The Parties agree that situations may arise when the Agency may not be able to honor the requirements of paragraph 3 (above) due to a lapse of appropriations or other unforeseen circumstances, such as a service provider's failure to honor a contract. In those circumstances, the Agency shall make every effort to secure another service provider as soon as possible, but no later than sixty (60) days upon discovering that an interruption of services is due to take place. The use of disposable coveralls is authorized during this interruption period.

### **Section 11.4 – Procedure for Unsafe/Hazardous Assignments**

1. Management will give full consideration to the need to adhere to established safety directives in the assignment of work, and shall consider the safety factors that address time, duration, frequency of exposure, and the wearing of additional personal protective equipment before directing any employee to perform function-specific tasks. Function-specific tasks may include, but are not limited to, welders, painters, radiation protection personnel, calibration personnel,

auto rebuild employees, etc. These tasks shall comply with applicable state or federal OSHA standards.

2. Should an employee observe or reasonably believe a work assignment is unsafe, or involves a potential hazard to their health, the employee should report the circumstances to the Agency and the Union, immediately. This includes, especially, work assignments that are outside scope of the employee's position description (PD), or for which they have yet to receive training.

3. Any person may report an unsafe or hazardous condition, or one that places an employee in imminent danger.

4. Upon receiving such a report, the Agency will insure the work is being performed in accordance with the proper procedures and safety directives or, in the case of imminent danger, immediately cease the work process until the appropriate safety procedures and directives are effected to assure the safety of the employee.

5. Employees may decline to perform an assigned task due to the risk of imminent death or serious bodily harm until those risks are mitigated through appropriate safety precautions. This includes situations where two persons are required in order to safely accomplish the task, when required personal protective equipment is not available, and/or when the employee is not qualified to accomplish the task.

6. No employee, who is by nature of their job, required to work in an area identified as a hazardous area, will be required to work alone or without a co-worker at the access to a hazardous confined area.

### **Section 11.5- Employees Free from Reprisals**

1. Employees who file a safety complaint or who request OSHA to inspect a facility, and employees who decline to perform a task under the provisions of Section 11.4, Paragraph 5 (above), shall be free from reprisals, disciplinary action, or harassment.

### **Section 11.6 - Clothing Change during Duty Hours**

1. When clothing being worn by an employee has become contaminated with hazardous materials, which may create a hazard to the wearer, then the employee will be permitted to change clothing.

2. In cases where the employee does not have a spare uniform readily available and/or adequate hygienic facilities are unavailable at the worksite/work-section, excused absence, based on the time necessary to change clothing or the need for an employee to return to his residence to change his/her clothing, shall be granted to the employee by the Agency or designated representative.

## **Section 11.7 - Workers' Compensation Entitlements**

1. Worker's compensation procedures fall directly under Department of Labor (DOL). Employees should refer to the current DOL website, or contact the Injury Compensation Program Administrator (ICPA) located in the HRO, for processes and procedures.
2. It is the Agency's responsibility to advise, orient and assist employees regarding entitlement to medical and loss-of-pay benefits for injuries or illnesses that occur which are job related. The guidance can be found in California Military Department Instruction (CMDI) 1416.09, Employees' Compensation Operations and Management Portal (ECOMP) Procedures for National Guard Technicians. The injured employee's supervisor will ensure the ICPA explains to the employee his/her rights and options under the Federal Employee's Compensation Act (FECA).
3. Employees may file a claim using the DOL ECOMP website at <https://www.ecomp.dol.gov>. The employee will be required to register with ECOMP in order to file a claim, and will identify their supervisor during the registration process.
4. Supervisors will review forms and assist the employee in completing the claim.
5. It is the employee's responsibility to report any injury or illness that he/she feels may be job related to the Agency immediately after the occurrence. Any representation will be IAW 20 CFR Part 10.701.
6. When the employee is incapacitated and unable to notify the Agency of injury or illness, it shall be the Agency's responsibility to initiate the required procedures as soon as they are aware an incident has occurred.
7. When an employee requires a temporary light duty assignment, the procedure outlined in CMDI 1100.01 will be followed. The employee will have their attending physician provide to the Agency a written prognosis and date for the employee's return to full, limited, or light duty. If the treating physician indicates an employee is physically able to return to work of any kind, and such work is available, the employee will be notified to report for duty the workday following the physician's determination. An employee is to be advised that refusing to return to work when ordered could result in overpayment and/or AWOL.
8. The Agency reserves the right to obtain additional information or follow-on opinions from physicians selected by DOL.

## **Section 11.8 – Labor Representative Accompany Inspection Team**

1. The Agency shall immediately notify the Union of any worksite safety inspection being conducted as a result of any recurring requirement, due to an accident, or as a result of a reported unsafe condition.

2. A Union representative will be permitted to accompany any safety, occupational health, or other workplace inspection teams during an evaluation of their unit/facility.

### **Section 11.9 – Occupational Health and Safety Training**

1. Although employees are basically qualified to perform their duties, the Agency recognizes the need for specific training and update training regarding Occupational Health and Safety to assure employee to assure employee safety and a minimum loss of man-hours due to preventable injuries.

2. Additionally, within resource limitations, all employees will be furnished Basic First-Aid Instruction every three years, annual Cardio-Pulmonary Resuscitation (CPR) instruction, and Automated External Defibrillator (AED) training as required by their position. Each person who successfully completes a recognized course will receive a certification card.

### **Section 11.10 – Personal Clean-Up**

1. A reasonable amount of time, not to exceed 10 minutes, at the beginning of shift, before lunch, and at the end of the work shift will be allowed for personal and work area clean-up for employees whose work requires the wear of coveralls and handling of hazardous materials.

2. This will not prevent management from assigning work as necessary.

### **Section 11.11 – Office Environment**

1. The Agency will provide, upon employee request and within budget constraints, office accommodations and equipment which reduce or eliminate the risk of prolong sitting and staring at computer video monitors. These items include, but are not limited to, eye and posture protective devices such as screen covers, ergonomic keyboards, mice, chairs, and desks to those employees who do a substantial amount of computer terminal work.

### **Section 11.12 – Other Programs**

1. The Agency will implement and administer an ongoing voluntary Physical Fitness Incentive Program which allows employees the opportunity to achieve and maintain certain fitness requirements during duty hours. An employee's participation in the program may not interfere with the Agency's ability to accomplish the mission.

a. The program shall allow each eligible employee a maximum of sixty (60) minutes of exercise time on three (3) separate days each work week. Exercise time is considered 'use or lose' and may not be accumulated or carried over to subsequent work days.

b. Employees will normally accomplish their fitness regime on the premises of their assigned duty location.

c. Participation in the program is strictly voluntary. Employees cannot be required to participate in group exercises, nor can they be required to undergo annual military physical fitness testing while in a civilian employment status, either voluntarily or involuntarily.

2. Accommodations for nursing mothers will be provided IAW Federal law, rule, and regulation.

## **ARTICLE 12 – GRIEVANCE AND ARBITRATION**

### **Section 12.1 – General**

1. The Parties agree that a genuine effort will be made to settle grievances expeditiously and at the lowest level possible. The Parties further agree, when appropriate, to utilize alternative dispute resolution processes (e.g., mediation) in attempting to resolve grievances.
2. This grievance procedure will be the exclusive method of grievance resolution for bargaining unit employees, and the Parties.
3. An employee retains the right to request Union representation in a grievance procedure, or to decline such representation IAW Section 5.4 of this Agreement. Employees will indicate their representation preference on the Grievance Form (Appendix C).
4. Regardless of the employee’s representation option, the Union will be given the opportunity to have a representative present during all grievance proceedings to ensure that the adjustments of the grievance are not inconsistent with the terms of this Agreement.
5. Parties, as used in this Article, refer to the Agency, the Union, and/or an employee or group of employees regardless of whether they are represented by the Union.

### **Section 12.2 – Exclusions**

1. Exclusions will be in accordance with 5 USC §7121 and actions covered by statutory appeals procedures in 32 USC §709(f).

### **Section 12.3 - Procedures**

1. The Agency and Union agree that this negotiated procedure is the exclusive procedure available to the Parties and employees in the bargaining unit for the processing of any grievance.

### **Section 12.4 – Employee Rights**

1. All employees, whether individually or as a group, have the right to present their grievances to the appropriate management officials for prompt consideration. This procedure provides a means for the prompt and orderly consideration and resolution of employee or Union grievances. In exercising this right, employees and their representatives will be free from restraint, coercion, discrimination, or reprisal because they have filed a grievance.
2. If an employee believes they have been affected by a prohibited personnel practice, they may use either the negotiated or statutory procedures (5 USC §7121(d)).

## **Section 12.5 – Official Time and Excused Absence**

1. IAW Section 6.7, Official Time shall be granted to a Union representative who is presenting a grievance on behalf of the Union, representing an employee(s) in a grievance procedure, or who is observing a grievance being presented by an employee(s) under this Article.
2. An employee who is presenting a grievance or is being represented by the Union in a grievance proceeding under this Article shall be granted official time IAW Section 6.7.

## **Section 12.6 – Union and Employee Grievance Procedures**

1. A grievance must be submitted to the lowest level of the Agency with the ability to resolve the matter.
2. To be considered timely, a grievance must be submitted no later than thirty (30) days after the occurrence of a grievable matter or incident, or no later than thirty (30) days after the aggrieved party became aware of a grievable matter or incident.
3. The following procedures shall be used for resolving grievances filed against the Agency:

### **a. Phase 1 – Informal**

- (1) The aggrieved party shall advise the appropriate level of the Agency and the Human Resources Office (HRO) of their intent to initiate the informal grievance process. Notice should be provided in writing either via a memorandum or email. The timeline for resolution begins upon notice being served.
- (2) The Agency representative will acknowledge receipt of the grievance with signature and date (or via email timestamp), and will forward a copy of the grievance notice to the HRO.
- (3) The Agency representative will have fifteen (15) days to attempt resolution of the grievance. When a grievance has been filed by an employee absent Union representation, the Agency representative must coordinate with the HRO to ensure the Union has the opportunity to be present IAW Section 12.1(3) before any discussions with the grievant(s) take place.
- (4) Failure to reach resolution within fifteen (15) days after notice is served will allow the grievant to proceed to Phase 2.

### **b. Phase 2 – Formal**

- (1) When resolution is not achieved during Phase 1, the aggrieved party may submit their complaint to the next level of the Agency, and the HRO, not later than fifteen (15) days after conclusion of Phase 1. The timeline for resolution begins upon notice being served.

(2) The Agency representative will acknowledge receipt of the grievance with signature and date (or email timestamp), and will forward a copy of the grievance form to the HRO.

(3) The Agency representative will have fifteen (15) days to attempt resolution of the grievance. When a grievance has been filed by an employee absent Union representation, the Agency representative must coordinate with the HRO to ensure the Union has the opportunity to be present IAW Section 12.1(3) before any discussions with the grievant(s) take place.

(4) Failure to reach resolution within fifteen (15) days after notice is served will allow the grievant to proceed to Phase 3.

c. Phase 3 - Adjutant General Review

(1) If the aggrieved party is dissatisfied with the decision reached in Phase 2, the grievance may be submitted to the Adjutant General, and the HRO, not later than fifteen (15) days after conclusion of Phase 2. The timeline for resolution begins upon notice being served.

(2) The Adjutant General, or his/her designated representative, shall take appropriate action to review the complaint file, which may include meeting with the aggrieved party, prior to rendering a final Agency-decision no later than thirty (30) days after receipt of the grievance.

(3) Failure to reach resolution within thirty (30) days after notice is served will allow the grievant to proceed to arbitration.

**Section 12.7 – Agency Grievance Procedures**

1. A grievance by the Agency against the Union must be submitted to the LIUNA State Representative.

2. To be considered timely, a grievance must be submitted no later than thirty (30) days after the occurrence of a grievable matter or incident, or no later than thirty (30) days after the aggrieved party became aware of a grievable matter or incident.

3. The following procedures shall be used for resolving grievances filed under this section:

a. Phase 1 – Informal

(1) The Agency shall advise the State Representative of their intent to initiate the informal grievance process in writing either via a memorandum or email. The timeline for resolution begins upon notice being served.

(2) The State Representative will acknowledge receipt of the grievance with signature and date (or email timestamp), and shall forward a copy to LIUNA NGC Local 1776 Business Manager.

(3) The State Representative will have fifteen (15) days to attempt resolution of the grievance.

(4) Failure to reach resolution within fifteen (15) days after notice is served will allow the Agency to proceed to Phase 2.

b. Phase 2 – LIUNA NGC Local 1776 Business Manager Review

(1) If the Agency is dissatisfied with the decision reached in Phase 1, the grievance may be submitted to the LIUNA NGC Local 1776 Business Manager not later than fifteen (15) days after conclusion of Phase 1. The timeline for resolution begins upon notice being served.

(2) The Business Manager, or his/her designated representative, shall take appropriate action to review the complaint file, which may include meeting with the aggrieved party, and render a final Union decision no later than thirty (30) days after receipt of the grievance.

(4) Failure to reach resolution within thirty (30) days after notice is served will allow the Agency to proceed to arbitration.

**Section 12.8 – Right to Information**

1. If, due to a grievance denial, arbitration is invoked by either party, relevant documents, reports and evidence relied upon will be exchanged by both Parties during the scheduled arbitration. All information will be considered privileged and confidential and will not be used for any other purpose except for invoking arbitration.

**Section 12.9 – Arbitration**

1. The Parties shall be subject to binding arbitration under this Article for any unresolved grievance. Only the Agency or the Union may invoke the provisions of this section.

2. The aggrieved party will have thirty (30) days from the conclusion of the Adjutant General's Review or the LIUNA NGC Local 1776 Business Manager Review Period to request arbitration. The party seeking arbitration shall provide written notification to the other party informing them that the grievance has been submitted for arbitration.

3. The Arbitrator will resolve questions of whether the matter is subject to arbitration.

## **Section 12.10 – Arbitrator Selection**

1. The party invoking arbitration will request from the Federal Mediation and Conciliation Service (FMCS) a list of ten (10) impartial persons qualified to serve as Arbitrators. A copy of the request may serve as notification to the other party that arbitration has been invoked.
2. Within ten (10) days of receiving the list, both Parties will alternately strike the name from the list until only one (1) name remains. The party requesting arbitration will strike the first name. The individual's name remaining will be duly selected to hear the grievance.
3. If either party fails to participate in the selection process, the arbitration action will proceed with the requesting party accomplishing the selection. The Parties agree that if the selected Arbitrator is unavailable to hear the grievance within forty-five (45) days the Parties may select a new arbitrator using the above procedures.
4. Arbitration will normally be conducted during duty hours at a convenient location to accommodate the maximum number of participants.
5. The Arbitrator will have the authority to interpret and define the explicit terms of this Agreement, Agency policy, etc., as necessary to render a decision. The Arbitrator shall have no authority to add to or modify any terms to this Agreement or Agency policy.

## **Section 12.11 – Arbitration Expenses**

1. The cost of an Arbitrator shall be borne by the losing party. Any dispute as to who the 'losing party' is shall be decided by the Arbitrator. In the event there is no clear winner or loser, the arbitrator shall decide the percentage paid by each party.
2. The Agency shall initially bear the cost charged by the Arbitrator to hear a case, to include the Arbitrator's travel expenses. Should the Agency prevail, a detailed invoice shall be submitted to the Union within (30) days of the Arbitrator's decision detailing costs paid directly to the Arbitrator and for his/her travel expenses. The Union shall promptly reimburse the Agency for charges billed under this section.
3. Should the Arbitrator's decision be overturned on exception to the Federal Labor Relations Authority (FLRA) or appeal to the Federal Circuit, the party that initially paid the Arbitrator's fees will be reimbursed by the then determined losing party.

## **Section 12.12 – Arbitration Decision**

1. The Arbitrator is requested by both Parties to render a decision as quickly as possible.
2. Within fifteen (15) days after receipt of the Arbitrator's decision, the Parties to the arbitration will notify one another in writing of whether or not they are filing for an exception with the FLRA. An exception to the Arbitrator's decision must be filed within thirty (30) days from the date the award is served on the Parties.

3. It is understood that if no exception to an award is filed during this thirty (30) day period, the award shall be final and binding, effective on the thirty-first (31<sup>st</sup>) day.

### **Section 12.13 – Withdrawing of Grievances**

1. Grievances will be terminated for the following reasons:

a. At the request of the charging party.

b. If the grievant is an employee, upon termination or death of the employee unless the personal relief sought may be granted regardless of employment status.

### **Section 12.14 – Time Limits**

1. Failure of the respondent to observe the time limits in this Article will automatically permit the grievant to advance to the next step of the grievance procedure.

2. Failure of the grievant to observe the time limits will terminate the grievance, except that all time limits provided in this Article may be extended by mutual agreement.

## **ARTICLE 13 – EMPLOYEE CONDUCT**

### **Section 13.1 – General**

1. Disciplinary and adverse actions shall be processed IAW this Agreement. Should a matter arise that is not address by this Agreement, the Parties shall reference current law/regulation, NGB guidance, and/or supplemental CNG regulations pertaining to the processing of discipline or adverse actions.

2. This Article generally applies to matters of conduct; actions that relate to job performance will normally be accomplished in accordance with the Agency's performance appraisal system.

3. The purpose of the discipline and adverse action program is to maintain control and order within the workforce by requiring compliance with established rules and regulations. Disciplinary actions will normally be taken using the concept of progressive discipline. While the concept of progressive discipline is the general rule, there may be times or circumstances when the employee's behavior is such that a more severe punishment is required for the first offense. Supervisors will proactively address unacceptable behavior at the earliest and lowest level of discipline possible. However, this does not inhibit the Agency's right to choose a higher level of discipline as appropriate.

4. Employees are expected to behave appropriately and follow all applicable rules and regulations.

5. The Agency shall determine when the need for disciplinary action occurs, and such actions will be administered in a fair, impartial, and timely manner in accordance with applicable laws and regulations.

6. The initiation of a disciplinary action against an employee should not be unreasonably delayed. Some examples of a reasonable delay may include pending investigations or unexpected work schedule conflicts of short duration. The Parties agree that in order for the discipline to be effective it must be timely. When the Agency becomes aware of a situation involving the misconduct of an employee, the Agency will initiate the disciplinary action within a reasonable time frame. This shall not apply to offenses which could be raised in a criminal setting.

7. When the processing of a disciplinary action will be delayed beyond six (6) months, the employee and/or their representative will be notified stating the reason for the delay and the anticipated disposition. Letters of Reprimand (LOR's) and all adverse actions must be cleared by the HRO prior to being issued to the employee. Actions not cleared by HRO shall not be considered official.

### **Section 13.2 – Douglas Factors**

1. In determining the appropriate remedy, penalty, or punishment, the Agency will observe the principles of 'like penalties for like offenses in like circumstance' as outlined in the 'Douglas

Factors.’ Management must establish the penalty selected does not clearly exceed the limits of reasonableness.

2. Management must ensure that when an employee's past disciplinary record is referenced, said reference should be a past action (in effect) at the time the most recent conduct occurred. Otherwise, consideration is improper and cannot be relied upon.

3. Letters of reprimand that have expired may be used as a consideration when determining the penalty to be imposed in an adverse action when a range of penalties may be imposed. However, the expired LOR may not be used to constitute a prior offense.

### **Section 13.3 – Investigation, Examination and Representation**

1. An employee has a right to request Union representation during any examination or questioning by a representative of the Agency in connection with an investigation if the employee:

- a. Reasonably believes that the examination may result in disciplinary action; and,
- b. Makes a clear request to exercise this right.

2. When an employee requests representation, further questioning of that employee shall be delayed for a reasonable period of time while the employee secures representation, however, that period may not delay the Agency’s investigation. The representative shall be appointed by the Union, and may participate either in person or via teleconference. Prior to questioning, the employee should be advised of the subject and purpose of the interview, and they should be provided an opportunity to consult in private with the Union designated representative.

3. Employees are compelled to provide truthful responses to questions raised during an administrative investigation and cannot refuse to answer questions, but if an employee desires representation, it shall be granted before the examination can be continued. However, during the course of a criminal investigation, employees may invoke their right to remain silent.

### **Section 13.4 – Non-Disciplinary and Disciplinary Actions**

1. Counseling and warning sessions are informal meetings that supervisors can use to make employees aware of possible misconduct. The informal meetings should be documented (date, subject, and employee’s acknowledgement) in the Supervisor’s Employee Brief, and will remain for a minimum of six (6) months, but no longer than twelve (12) months, as long as there are no continuing or reoccurring conduct problems.

2. Entries made without the employee’s knowledge or acknowledgement are not considered valid, and may not be referenced as a prior offense in conjunction with a disciplinary action. When a supervisor documents misconduct in the Supervisor’s Employee Brief:

- a. The employee shall be notified by his/her supervisor that an entry was made within twenty-four (24) hours of the entry being made.
- b. The employee shall be given the opportunity to discuss the matter with the supervisor, and will initial and date the entry. The employee's initials will signify knowledge of the entry, but not necessarily concurrence. The employee will also be given the opportunity to attach a written rebuttal to the entry within twenty (20) calendar days.

**3. An LOR** is a more formal means of making an employee aware that their conduct is unacceptable. If an LOR is decided upon, the following will apply:

- a. Normally issued by the first-level supervisor.
- b. Describes the offense in sufficient detail to enable the employee to understand why the reprimand is necessary.
- c. If the violation relates to a continuing problem, a summary of past violations and attempts to correct those violations will be included.
- d. Informs the employee he/she may review the material relied upon to support the reprimand.
- e. Informs the employee that the letter will be filed in the Official Personnel Folder (OPF) for a period of up to twelve (12) months, and that it may be removed prior to the specified time if conduct improves.
- f. Informs the employee that the letter of reprimand may be grieved IAW Article 12.
- g. Includes a warning that further offenses could result in suspension, change to lower grade, or removal.

### **Section 13.5 – Adverse Action**

1. An Adverse Action (suspension, removal, or change to a lower grade) is an administrative action which denies the employee compensation on a temporary or permanent basis.
2. The following will be the sequence of events for an Adverse Action:
  - a. Notice of Proposed Adverse Action:
    - (1) Employees will be given a Notice of Proposed Adverse Action signed by the individual proposing the action, normally their immediate supervisor.
    - (2) The proposal will include the specific reasons for the proposed adverse action, a narrative of the events that support the proposal, and justification for the penalty being imposed.

(3) At a minimum, the proposal will advise the employee of:

- i. His/her right to review all the information relied upon to arrive at the proposed adverse action.
- ii. His/her right to reply and furnish affidavits and other documentary evidence to the Deciding Official within twenty-one (21) days following receipt of the proposed adverse action notice. This timeline may be extended upon request by the employee and/or their representative if there's justification that more time is needed in order to furnish an adequate response.
- iii. His/her right (and their representative's) to excused absence to prepare a reply.
- iv. The Deciding Official's name, telephone number, business address, email address, and how to request an extension of time.
- v. That the Deciding Official will issue an Original Decision at the earliest practical date after receipt of replies or after the reply period has ended.
- vi. The Human Resources Office (HRO) Labor Relations Specialist (LRS) point-of-contact.

b. Employee's Reply:

- (1) An employee has the right to receive fair and impartial consideration from the Deciding Official. An employee's reply will be given due consideration and weight. A Deciding Official may not treat the reply as an empty formality.
- (2) An employee is allowed to raise mitigating factors in their reply (e.g. marital problems, financial obligations, number of dependents, and alleged bias of immediate supervisor).
- (3) An employee will be allowed a minimum of twenty-one (21) days to reply to the charges, in writing and/or in person, to the Deciding Official. The twenty-one (21) day timeline will be calculated IAW Section 13.5(4).
- (4) The Agency will take no action for the duration of the twenty-one (21) day reply period, or the agreed-upon extended time.

c. Original Decision Letter:

- (1) The employee will be issued a Notice of Original Decision which will state the specific action being taken.

(2) The Original Decision should normally be issued within fifteen (15) days of the employee's response. This timeline may be extended if there's justification that more time is needed in order to furnish an adequate response; the letter must contain the following:

- i. The action that was decided upon. An action more severe than originally proposed cannot be taken.
- ii. Date action will be effective IAW Section 13.5(5).
- iii. Reference to the employee's reply and how it was specifically considered in arriving at the decision.
- iv. Provide detailed justification for the decision. When an employee is charged with multiple offenses, each charge must be addressed separately by the Deciding Official.
- v. Provide Human Resource Office (HRO) Labor Relations Specialist (LRS) point-of-contact assistance information.
- vi. Inform employee of their appeal or grievance options IAW Section 13.5(5).

3. During a proposed adverse action the employee will remain in a duty status pending the Original Decision. The Agency may determine that an employee awaiting discipline should not be present at the worksite because it may adversely impact the mission, cause a safety concern, or unduly disrupt the work area. In that case the Agency may detail the employee to an alternate worksite within their commuting area or place the employee in a non-duty pay status for all or part of the time it takes to process the Original Decision.

4. Employees will be given a minimum of twenty-one (21) days following receipt of a Proposed Adverse Action Letter (PAAL) to furnish a reply to the Deciding Official. The timeline does not begin until the employee or their representative has been provided copies of all documentation referenced as relied upon in the PAAL to justify the discipline.

5. When a Deciding Official imposes a suspension, change to lower grade, or removal, the employee shall be informed of their right to appeal.

6. Where the Original Decision letter imposes a suspension, change to lower grade or removal, imposition of the action may be held in abeyance at the request of the employee and concurrence of the Adjutant General:

- a. The request will be made to the Adjutant General, with written justification, through the HRO within five (5) calendar days after issuance of the original decision letter.

b. The Adjutant General's representatives will consider the request and may provide an opportunity to meet and confer with the employee and their representative on the merits of the request.

c. The Adjutant General or designated representative will render a written decision within five (5) days after the information is received and the meeting has occurred to inform the employee as to whether or not the request will be granted.

### **Section 13.6 – Miscellaneous Provisions**

1. Upon request, and IAW 5 USC §7114(b)(4), the Agency shall provide the Union with a record of all disciplinary action decisions that have been rendered within three years of the date of the request.

2. The Parties understand that all employee personnel records are subject to the provisions of the Privacy Act.

## **ARTICLE 14 - FURLOUGH AND REDUCTION IN FORCE (RIF)**

### **Section 14.1 – Furloughs (in General)**

1. Furloughs of thirty (30) days or less will be conducted IAW DoD, NGB, and Agency regulations.
2. Furloughs in excess of 30 calendar days (22 workdays) are considered reductions-in-force and will be conducted IAW 5 CFR Part 351 and 32 USC 709.
3. The Agency shall notify the Union as early as possible of a potential furlough or RIF and shall be included in the planning and implementation team and/or committee assigned with of the oversight of the process.
4. Furlough notices will include:
  - a. The reason for the furlough and the intent to return employees to work as soon as possible;
  - b. The estimated length of the furlough (a furlough period can be for 30 consecutive calendar days or 22 nonconsecutive workdays; e.g., 1 day per week for 22 weeks); and
  - c. Inform the employee of benefits that may be affected (e.g., how to continue insurance coverage) or available during the furlough (e.g., State unemployment).
5. An employee may be authorized annual leave, sick leave, or compensatory leave during a period of furlough provided the furlough is not a result of a lack of funds.
6. Agency initiated furloughs shall be negotiated in accordance with Article 6.

### **Section 14.2 – Furloughs of 30 Days or Less (22 Workdays)**

1. Furloughs of thirty (30) days or less, particularly furloughs based on an emergency furlough requiring immediate curtailment of the Agency's activities where a twenty-four (24) hour notice is not possible, to include an absence of appropriations by Congress, the following procedures will be followed:
  - a. Employees will be notified as far as possible in advance of such furlough. If employees are on leave or TDY, they will be notified, when possible, prior to the beginning of their shift of the day of the required action.
  - b. Whenever possible, employees will be notified prior to the beginning of their shift on the day they are required to return to work unless a specific amount of days is included in the furlough notice.

2. Furloughs of thirty (30) days or less, the Agency will identify, by position, mission-essential personnel. Mission-essential employees are those whose functions directly support readiness or are necessary to prevent disruption of essential operations related to mission accomplishment. Immediately upon initiating a furlough, Management shall provide the Union, in writing:

- a. The expected duration of the furlough.
- b. The criteria used to determine whether an employee is mission essential or non-mission essential.
- c. The designated point-of-contact for the furlough review committee.

3. Employees identified as 'non-mission-essential' will be issued a notice to that effect for anticipated (or required) furloughs of thirty (30) days or less.

## **ARTICLE 15 – MERIT PLACEMENT**

### **Section 15.1 – General Provisions**

1. The purpose of the Merit Placement Program is to ensure maximum opportunity for on-board employees to further their careers and to provide for fair and impartial consideration for promotion within statutory and regulatory limitations. Merit Placement actions shall conform with 5 CFR Part 335 and 32 USC § 709.

### **Section 15.2 – Selection of Qualified Candidates**

1. The Agency agrees that in order to maximize promotional opportunities for on-board employees, priority consideration will be given to those current employees when attempting to fill vacant positions. Every effort shall be made to select qualified applicants from amongst current, on-board, employees.

2. When onboard employees are identified as qualified applicants, only those on-board applicants will be forwarded to the selecting official for consideration. Consideration will not be extended to non-employee applicants without justification from the nominating official IAW paragraph 3 (below).

3. When the selecting official requests to extend the pool of applicants beyond on-board qualified applicants, full justification will be furnished to the HRO for the request.

4. The HRO shall notify the Union prior to granting a request to extend the area of consideration under this section.

### **Section 15.3 – Complaints**

1. The following information shall be made available to an employee and/or their representative upon request:

a. Whether the employee was considered for placement and, if so, whether he/she was eligible on the basis of the minimum qualification requirements for the position.

b. Whether the employee was one of those in the group from which the selection was made.

c. The name of the person selected for the vacancy.

d. Areas of improvement the employee could focus on to increase their promotion potential.

2. Candidates for vacancies may file a grievance IAW Article 12. Only on-board employees may use the grievance procedure. If the employee files a grievance, the Union shall be permitted to

review the entire selection packet to determine whether a violation may exist, and will notify the employee as to whether a complaint may be pursued.

3. A grievance may only be filed when the complainant alleges that an administrative or procedural error, whether intentional or not, was committed, or that a rule, law, and/or regulation was violated during the course of the merit placement action, including Prohibited Personnel Practices and Equal Employment Opportunity violations, that may have denied the applicant an opportunity to be fully considered for the advertised position. The mere act of not being selected from a properly certified register involving bargaining unit members is not enough grounds for a grievance.

#### **Section 15.4 – Intra-Agency Priority Placement of Over-Graded Employees**

1. The Agency will maintain a listing of all over-graded employees entitled to grade retention as a result of RIF or reclassification action. Prior to announcing a position vacancy, the Agency will give first consideration to the repromotion/placement of all over-graded employees entitled to grade retention as a result of RIF or a reclassification of position, and who meet the full civilian and/or military qualifications of the position.

2. If the position is of equal or intervening grade and within the commuting area, first consideration will be afforded to those employees who are fully qualified and within the commuting area. If there is more than one eligible employee in a save-grade status, all candidates will be referred to the selecting official for consideration before the vacancy is announced for competition.

3. If the position is not within the commuting area and there are no over-graded employees within the commuting area, the position will be offered to over-graded employees outside the commuting area before the position is announced. If the employee refuses the offer of a position outside the commuting area, grade and pay retention will continue if otherwise eligible.

4. The over-graded employee's name will be removed from the priority placement roster at the expiration of the two-year retention period.

## **ARTICLES 16 – ENVIRONMENTAL DIFFERENTIAL AND HAZARDOUS DUTY PAY (EDP & HDP)**

### **Section 16.1 – Reduction of Hazardous Working Conditions**

1. The Agency has as its objective the elimination or reduction to the lowest level possible of all hazards, physical hardships, and working conditions of an unusually severe nature.
2. The Agency shall provide the best possible work environment for the safety and wellbeing of the employee.
3. When an Agency's action does not overcome the unusually severe nature of the hazards, physical hardships, or working conditions, an environmental differential determination may be authorized.
4. Current conditions will always be considered in the assignment of duties.
5. When anyone identifies a condition that may warrant coverage under appropriate categories of Environmental Differential Pay (EDP) or Hazardous Duty Pay (HDP) they may initiate an EDP/HDP Situation Request IAW the applicable Agency Regulation.
6. Administration of this Plan will be in accordance with all applicable laws, rules and regulations.
7. The EDP/HDP work group will consist of the members as outlined in the Agency EDP/HDP Regulation. The Work Group will be conducted and will meet IAW Agency regulation.

### **Section 16.2 – Hazardous Weather Conditions**

1. The Parties agree that certain hazardous weather conditions (lightning, flooding, extreme heat, extreme cold, etc.) can create or contribute to unsafe work conditions. The Parties further agree to monitor conditions, provide applicable specific training, and to work together to prevent unsafe actions and situations.
2. Safety standards for hazardous weather conditions will be done IAW OSHA guidelines.
3. Lightning safety:
  - a. Lightning safety awareness is a priority at every outdoor facility and operation. Awareness and education regarding the dangers posed by a lightning strike is the single most important means to achieving lightning safety. The Agency will conduct annual safety briefings which educate employees on the dangers posed by lightning.
  - b. The Agency will monitor weather conditions at all times using the most up-to-date means of weather forecast equipment available, and will keep employees posted on the latest weather conditions affecting their work area.

c. Local weather forecasts from an approved DoD Weather Organization should be noted in a reasonable amount of time prior to scheduled work activities.

d. Suspension and resumption of work activities, and the weather events that will trigger a work stoppage, should be planned in advance and adhered to without compromise.

e. When lightning strikes the earth within a ten (10) mile radius of the duty station the Agency will make an announcement warning employees of the close proximity of lightning.

f. When lightning strikes the earth within a five (5) mile radius of the duty station, the Agency will cease all outdoor activity at the affected facility and ensure employees take shelter in approved sites. These include fully enclosed metal vehicles with windows up, substantial buildings, and low ground.

g. Unsafe shelter areas include all outdoor metal objects, like power poles, fences and gates, high mast light poles, metal bleachers, electrical equipment, and mowing and road machinery. Personnel will avoid seeking shelter under solitary trees, in water, in open fields, or on high ground and inside caves.

#### 4. Extreme cold:

a. The Agency recognizes the hazards of working outside for extended periods in extremely cold temperatures.

b. The Agency acknowledges the responsibility to insure the adequacy of cold weather gear worn by employees, and the availability of all such protective equipment, prior to venturing out into extreme temperatures for extended periods of time as determined by applicable extreme weather exposure criteria.

c. The Agency will furnish authorized cold weather protective gear at no cost to the employee and will monitor working conditions.

d. The Agency acknowledges that there are certain cold factors beyond which employees are incapable of performing sustained work.

e. It is realized that tolerance between individuals differ and that the type of outside work being accomplished affects the body heat generated by a worker, therefore, common sense and the Chill Chart below must be applied when considering exposure times.

Table 16-2.1

<b>Chill Chart (IAW ATP 4-25.12)</b>	
<b>Chill Factor Temperature (°F)</b>	<b>Time Limit for Exposure (Hrs &amp; Min)</b>
-20°	0:45
-15°	1:00
-10°	1:15
-05°	1:30
-0°	1:45
+10°	2:00

5. Extreme heat:

a. The Agency recognizes the potential hazards of working outside for extended periods in extremely hot temperatures.

b. Individual tolerance to temperature extremes varies and may be affected by the type of sustained outside activity (light, moderate, or heavy) being accomplished and, therefore, common sense must be applied.

c. IAW OSHA standards and ATP 5-19 risk management principals will be utilized to maximize operational capabilities while minimizing risks during periods of extremely hot temperatures when sustained outside work is required.

d. IAW OSHA Standards, the Agency will monitor weather conditions and determine when extremely hot temperatures are a work factor.

e. Mission-essential work will be performed to meet requirements. If the outside temperature becomes extremely hot and the Agency determines it is a work factor, the Agency will institute appropriate work control measures such as rest periods in cool areas, cool drinking water, etc., to reduce the risks involved in sustained mission-essential outside work IAW the chart below.

Table 16.2.2

<b>Heat Chart</b>				
<b>Category</b>	<b>Heat Condition</b>	<b>WGBT Index</b>	<b>Water Intake (qt/HR)</b>	<b>Hourly Work/Rest Cycle (minutes)</b>
I	*	Below 82°	0.5 Pint	50/10
II	Green	82° - 84°	0.5 – 1.5 Pints	50/10
III	Yellow	85° - 87°	1.0 – 1.5 Pints	45/15
IV	Red	88° - 89°	1.5 – 2.0 Pints	30/30
V	Black**	90° - Above	More than 2.0	20/40
* At heat conditions below green, intense physical activity may cause heat injuries - use care!				
** Suspend physical training and strenuous activity. If mission requires strenuous activity, enforce water intake to minimize expected heat injuries.				

f. If the outside temperature becomes extremely hot and the Agency determines it is a work factor, the Agency will make every reasonable effort to minimize sustained non-mission essential outside work.

g. The Agency will determine what appropriate work control measures will be instituted to reduce risks involved in sustained non-mission essential outside work.

h. The Agency will make every effort to train supervisors and employees on the effects of heat and sun exposure.

i. The Agency will make sunscreen and any other PPE required by regulation, available for use by those employees whose duties involve routine and sustained exposure to the sun.

j. The Agency will provide access to the laws, regulations, and instructions applicable to this article.

6. The Agency agrees to provide employees required to work in inclement weather conditions the appropriate clothing for the weather conditions present at their worksite, or for conditions that they might be exposed to as a result of their assigned duties.

7. The items in Paragraph 6 (above) shall be provided at the request of an employee who's assigned duties expose them to outdoor elements on a recurring and on-going basis. The items will be made part of the employee's issued property record, and shall be replaced on a fair wear and tear basis, or when it becomes unserviceable during the course of performing normal duties. employees will be responsible for the maintenance and safekeeping of these items, and will be responsible for replacement or payment of items that become lost or damaged due to employee negligence.

### **Section 16.3 – Environmental Differential Pays (EDP)/ Hazardous Duty Pays (HDP)**

EDP/HDP may be authorized IAW 5 CFR § 532 and 5 CFR § 550 respectively. All requests for EDP/HDP will be completed IAW applicable Agency regulation.

## **ARTICLE 17 – POSITION DESCRIPTIONS**

### **Section 17.1 – Employee Awareness of Assigned Duties**

1. A position description (PD) is a statement of major duties, responsibilities and supervisory relationships for a given position as required by the mission. Each employee's PD will be maintained in the Supervisor's Work folder in accordance with CNG FPR 293.
2. A supervisor in coordination with the employee is responsible for ensuring that the duties and responsibilities of the current PD accurately reflect the work being performed by the employee. Supervisors will review the PD with the employee on an annual basis, usually in conjunction with their performance appraisal, or as requested by the employee. New-hire employees will be provided a current copy of their PD at their incoming briefing.
3. Employees concerned that they could be performing duties outside the scope of their position description (either higher or lower graded duties) may request a desk audit of their position through their supervisor. Employees concerned that their position is not classified correctly may request a classification appeal IAW applicable regulations.
4. When a PD is determined to be inaccurate, is changed or updated the supervisor will coordinate with HR-Classification Specialist to determine whether the PD will require pen and ink changes, position review, or a new PD. Any of the aforementioned changes to a PD will be provided to the affected employee(s). When a PD is changed, the Supervisor will take into consideration any new duties for which the employee is not already qualified when conducting evaluations.
5. A supervisor will immediately notify an employee of any changes to their PD. They will also provide a copy of the changes to the employee, and will review the changes with the employee so that he/she is aware of the modifications to the PD.

### **Section 17.2 – Other Duties as Assigned**

1. The Agency may require an employee to perform 'other duties as assigned' on a temporary and infrequent basis.
2. The Parties agree that the phrase 'other duties as assigned' as used in a PD simply establishes the principle that assignment of duties to employees is not limited to the duties specifically described in the PD. In emergency situations, duties that might not be reasonably related to an employee's position may have to be assigned. Also, there are some situations where what might be considered unrelated duties are normally assigned. Except in those circumstances, 'other duties as assigned' should be closely related to the employee's position and will not be grade-determining.
3. 'Other duties as assigned' does not apply to tasks which would otherwise be considered a detail, temporary promotion, or a reassignment, and may not include duties:

- a. That are directed by someone other than the employee's civilian chain of command.
- b. That may result in injury to the employee or fellow employees due to a lack of knowledge, lack of proper equipment, or improper training for the task.

4. Neither the Agency nor employees shall abuse the use of 'other duties as assigned.' If an employee is assigned duties of a higher pay grade for a period in excess of thirty (30) days, either consecutive or aggregate, during any one-hundred and twenty (120) day period, the employee should be temporarily promoted to the higher paying position. Promotions exceeding one hundred and twenty days (120) days shall be competitively announced.

## **ARTICLE 18 – EMPLOYEE DEVELOPMENT AND TRAINING**

### **Section 18.1 – Job Related Training and Qualifications**

1. The Agency agrees to provide job related training and development as necessary and at no cost to the employee, to include specialized training which the employee is not able to receive through other means (i.e., as a result of their membership in the National Guard), in order to safely and effectively accomplish the mission. The Agency will consider the Union's views and recommendations in developing programs relating to training of employees.
2. The Agency shall encourage and assist to secure training for all employees, as appropriate, (to include re-certification training in specialized areas) that is consistent with the Agency's needs and in accordance with applicable laws and regulations. All employees shall have an equal opportunity to participate in training.
3. The Parties recognize that changes in the work place will continue as technology, new techniques, material, and equipment are developed and employed. Each employee is responsible for taking the initiative necessary to keep abreast of these changes.
4. Management agrees to extend every reasonable consideration to employees for attendance at job related courses. Supervisors will provide information on courses that relates to improving the employee's job performance, as applicable.
5. Any employee who seeks training is required to submit a fully completed request for training. If approved, the signed request will then be forwarded to the HRO.

### **Section 18.2 – Personal Development**

1. Management encourages employees to take advantage of the educational benefits that are available to them by virtue of their membership in the California National Guard.
2. To the greatest extent possible, and barring any disruption to the mission of the California National Guard, Management agrees to accommodate employees pursuing a higher-level education or certification, in a nationally recognized and accredited institution, such as a community college or university.
3. Management will work with the employee to adjust his/her shift rotation or work schedule in order to facilitate their education goals when possible.
4. Upon request, an employee must provide evidence of active/continued enrollment in an accredited institution, satisfactory attendance, and progress in order to justify adjustments to work shifts or schedules.

## **ARTICLE 19 – EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

### **Section 19.1 – Policy**

1. The Parties strongly endorse Title VII of the Civil Rights Act of 1964 (42 USC Chapter 21, Subchapter VI), the right of employees to be free from workplace discrimination. Complaints of discrimination brought by employees are governed by 5 CFR Part 1614.
2. The Parties agree to work together to ensure that all employees are periodically informed of the Agency's EEO policy.

### **Section 19.2 – EEO Complaint Procedures**

1. Any employee who believes they have been discriminated against may file a complaint IAW Federal laws and Equal Employment Opportunity Commission (EEOC) regulations, or may pursue a grievance IAW Article 12, but not both. Employment discrimination includes, but may not be limited to:
  - a. Unfair treatment because of your gender, race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.
  - b. Harassment by managers, co-workers, or others in your workplace, because of your race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.
  - c. Denial of a reasonable workplace accommodation that you need because of your religious beliefs or disability.
  - d. Retaliation because you complained about job discrimination, or assisted with a job discrimination investigation or lawsuit.
  - e. Discrimination on other bases including sexual orientation, status as a parent, marital status, political affiliation, and conduct that does not adversely affect the performance of the employee.

### **Section 19.3 – Representation and Official Time**

1. Employees may elect Union representation in an EEO complaint or grievance.
2. An employee's representative must be elected in writing. The appointed representative shall be allowed to attend all subsequent meetings, hearings, investigations, or discussions that require the employee to be present.
3. An employee and his/her representative shall be given a reasonable amount of time to prepare and present a complaint or any subsequent appeal.

## **ARTICLE 20 – USE OF OFFICIAL FACILITIES & SERVICES**

### **Section 20.1 – Meetings and VIP Visits**

1. The Agency shall provide the Union with adequate space within each worksite to conduct Union meetings during non-work hours (before and after normal duty hours, and during lunch). The Union shall comply with all security regulations and/or requirements. Requests for a meeting facility, if other than the designated Union office space, will be coordinated by a Union Official at that facility and an Agency representative who has the authority to approve use of the facility.

2. When the Union requests VIP guests be allowed to enter CA ARNG facilities, security and protocol require the Agency be notified within a reasonable period of time, but no less than seven (7) days prior to the desired visit date.

### **Section 20.2 - Mail Service**

1. The Union shall be authorized to use the Agency's internal mail distribution system, and the electronic mail system (e-mail), to conduct Union business which is necessary for the effective representation of bargaining unit employees, and for other purposes which are customarily allowed of other non-Government entities such as EANGUS/NGAUS, and other Labor Organizations.

2. Union representatives shall observe all Agency rules and regulations governing the use of mail distribution systems (electronic or otherwise). Failure to do so may result in denial of access of use.

### **Section 20.3 – Publications and Other Services**

1. The Agency will keep employees informed of changes in services and benefits such as retirement seminars, health benefits, the Thrift Savings Plan, etc.

2. The Agency agrees to make electronically available to the Union and employees for their use in review and research current policy directives, regulations, etc. relating to matters which affect pay and benefits, personnel policies, practices, and working conditions.

### **Section 20.4 – Bulletin Boards**

1. The Agency will provide space for a bulletin board for the exclusive use of the Union in each work site where bargaining unit employees are assigned. The bulletin board shall be purchased by the Union, and shall be located in an area where employees normally congregate or pass for the posting of Union bulletins or notices. Typical locations include areas where the Agency maintains other informational bulletin boards, lunch/break rooms, or any other conspicuous place where the information is openly visible and access is not restricted.

2. The Union will be responsible for the content of literature posted on the bulletin board. Any such bulletin notices or literature posted or distributed must not violate any law, security, directive, or contain libelous material.
3. The Union agrees to maintain the bulletin board space provided in a neat and current manner.

### **Section 20.5 – Common Areas (including parking)**

1. Normally, the Agency will provide parking spaces on a first come, first served basis, and shall submit its Reserved Parking Plan (if applicable) to the Union within sixty (60) days after this Agreement is approved, and anytime the plan is changed or modified after that, IAW Section 6.2.
2. Smoking/non-smoking areas for all Agency facilities shall be as established by law or regulations for State or government-wide Federal facilities, as the case may be.
3. The Agency shall make available, to each employee and at each worksite, individual personnel lockers of adequate size and located in a conveniently accessible location for storage of employee clothing and other personal items.

### **Section 20.6 – Agency-Provided Union Resources**

1. Use of government owned or leased vehicles may be authorized for Local representational functions for which official time has been authorized. Where government transportation is unavailable, use of privately owned vehicles may be authorized and mileage may be paid in accordance with applicable law, rule or regulation.
2. The Agency agrees to provide the Union an office at each worksite to conduct business in a manner consistent with this Agreement. Should space restrictions preclude the designation of a separate office, an alternate suitable space shall be identified. The office or suitable space shall allow Union representatives the ability to maintain required files and records, which are sensitive and may contain Privacy Act data, and must be capable of being secured from access by unauthorized individuals.
3. Each office or suitable space will be furnished, at a minimum and when resources permit, with a desk, chair, and locking file-cabinet, a dedicated office extension, local telephone access, a computer terminal with LAN and public network access (internet), and printing capabilities to be used for representational use.

## **ARTICLE 21 – CIVILIAN TEMPORARY DUTY (TDY), TRAVEL, AND ASSIGNMENTS**

### **Section 21.1 – General**

1. IAW DoD JTR, the use of government quarters by civilian employees during temporary duty (TDY) assignments, including assignments to a military post, camp, station, or depot owned and operated by the United States Government, is not mandatory and will be at the discretion of the employee. Furthermore, employees will not be required to share quarters with other employees.
2. In some very limited circumstances, the Agency may determine that use of government quarters by civilian employees is necessary due to the lack of adequate commercial lodging facilities in the temporary-duty location, or when the use of commercial lodging facilities creates a safety concern for the employee.
3. The Parties agree that employees will use the Defense Travel System (DTS) and, if available, the Government Travel Card (GTC) for all official travel arrangements and related expenses.

### **Section 21.2 – Travel Entitlements**

1. Travel and per diem will be paid IAW applicable law, rule, and regulation.
2. The Agency will notify employees as far in advance as possible of TDY travel. An employee may request to be excused from TDY under justifiable circumstances. If an employee's request is denied, Management shall provide an employee a written explanation.
3. Travel will be conducted in the most advantageous and prudent means available. The Agency will not require an employee to use their privately-owned vehicle (POV) for travel nor will an employee be entitled to reimbursement for POV travel not previously approved and the most cost effective mode of transportation IAW the JTR and Agency policies.
4. An employee's objection to traveling by commercial airline, which is supported by a valid medical certificate stating he or she should not travel by aircraft, may be accepted as sufficient authority to utilize other methods of transportation.
5. In no case will TDY's be assigned to any employee as a reward or punishment.

### **Section 21.3 – Conditions of Employment**

1. The provisions of this Agreement shall apply and will be observed by the Parties during TDY, to include the scheduling of work, overtime requirements, and compensation.

## **ARTICLE 22 – PERFORMANCE STANDARDS AND EVALUATIONS**

### **Section 22.1 – Employee Performance**

1. The Agency’s Employee Performance and Incentive Awards Programs will be administered IAW NGB and Agency regulatory guidance.

### **Section 22.2 – Actions Based on Unacceptable Performance**

1. An indefinite or permanent employee whose performance is below fully successful (or its equivalent) is entitled to a performance improvement plan (PIP) for a period of one hundred and twenty (120) days which informs the employee of:

- a. The instances of unacceptable performance.
- b. The critical elements of the job standard which are unacceptable.
- c. How the supervisor will assist the employee in bringing his/her work up to acceptable standards.

2. Use of the Employee Assistance Program (Article 23) may be appropriate in instances of unacceptable performance. Both supervisors and employees are encouraged to identify situations where it may be advisable for an individual to voluntarily seek assistance.

## **ARTICLE 23 – EMPLOYEE ASSISTANCE PROGRAM (EAP)**

### **Section 23.1 – General Requirements**

1. The Agency shall institute a program IAW 5 USC § 7904 to assist employees who may be experiencing personal difficulties or hardships such as substance dependency or abuse, relationship challenges, stress, and other situations which can affect an employee's ability to accomplish their assigned duties. The Agency will not reveal names of persons voluntarily seeking assistance without the employee's written consent. Employees may request the services available through the Agency-sponsored EAP, as follows:

a. Dual-Status Technicians can utilize EAP services provided through the Military One Source Program located at [www.militaryonesource.mil](http://www.militaryonesource.mil), or by phone at 1-800-342-9647.

b. Civilian Employees can utilize EAP services provided through the FOH4YOU program located at [www.foh4you.com](http://www.foh4you.com), or by phone at 1-800-222-0364.

2. Supervisors may refer employees to EAP at any time; however, participation in the program is strictly voluntary.

3. No disciplinary or adverse action will be taken as a result of using EAP. This extends to an employee who self-discloses a personal medical/behavioral condition to his supervisor.

4. This article does not limit management's right to take administrative action, especially in cases of illegal drug use or violations of the law.

5. Participation in rehabilitative programs shall be viewed favorably in consideration of disciplinary action against the employee.

## **ARTICLE 24 – OUTSOURCING AND CONTRACTING OUT**

### **Section 24.1 – General Requirements**

1. All Parties agree that it is in the best interest of both employees and Management to preserve employee manpower positions within the California National Guard (CNG). However, management has a right to contract out personnel and services under 5 USC § 7106(a)(2)(B) in order to promote the efficiency of the Agency.
2. The Agency will notify the Union as soon as it decides that it is necessary to contract out work which could cause an immediate or eventual RIF or downgrade of employees. This notification shall occur before the contract is let.
3. The Agency agrees to negotiate with the Union to the extent those negotiations do not interfere with Management's rights under the Statute. The Agency also agrees to negotiate appropriate arrangements for employees adversely affected by the decision to contract out work.

## **ARTICLE 25 – WAGE SURVEY**

### **Section 25.1 – Employee Participation**

1. The Parties recognize that valuable contributions can be made in regards to developing wage policies and in conducting wage surveys. When requested to do so by the Local Wage Survey Committee (LWCS), the Agency and the Union will select employees as data collectors on the basis of their qualifications, to assist in the collection of wage data.
2. Wage Grade employees selected to be data collectors shall be members of the Union.
3. If selected by the LWCS to host the collection of wage data, the Agency will furnish temporary office space and communication equipment (computer terminals, telephone, and fax machine) as necessary in order to support the DoD Wage and Salary Survey Team.
4. When available, the Agency may also provide employees serving as data collectors with access to GSA vehicles in order to facilitate their collection of local wage data.

## **ARTICLE 26 – LABOR/MANAGEMENT COOPERATION**

### **Section 26.1 – Joint Agency-Union Sponsored Training Sessions**

The Agency and the Union agree to conduct joint Agency-Union training sessions upon request by either party. The training sessions may include training on the administration of this Agreement, Alternate Dispute Resolution or Interest Based Bargaining methods. Training conducted will be on Official Time.

### **Section 26.2 – Labor/Management Relations (LMR) Training**

1. An employee who is an official or representative of a Labor Organization holding exclusive recognition may be granted official time in conjunction with attendance at a training session sponsored by that organization, provided that the subject matter of such training is in the public interest and will benefit the Government, the Labor Organization, and the California National Guard.
2. Requests to be excused to attend Union sponsored training will be submitted, with justification to the Supervisor and HRO-Labor Relations, as soon as possible but no later than 14 days prior to the training session.
3. Approval/Disapproval notice will be returned by e-mail no later than 7 days prior to the training session.
4. Specific justification for approval of LMR Training is as follows:
  - a. The name and title of the official or representative of the appropriate LIUNA Local.
  - b. The name or title of the Union sponsored training session.
  - c. The agenda of the Union sponsored training session, to include total number of hours.
  - d. The specific dates of training.
  - e. The total number of hours requested.
  - f. Location of Training, i.e. facility and address.
5. Upon completion of the training, a certificate of attendance or a letter certifying the attendance of the Union representative is required to verify excused absence used.
6. Verification of attendance will be given to immediate Supervisors for time keeping purposes.
7. When LMR training constitutes official business (i.e. training is in the public interest and benefits the Government, the Union, and the California Army National Guard, 5 USC §7131 (d)(2)) travel and per diem may be paid IAW appropriate law, rule or regulation.

### **Section 26.3 – Orientation of New Employees**

1. At the time of their appointment, all new indefinite and permanent employees will be informed by the Agency that the Union is the exclusive representative of all employees in the Bargaining Unit.

2. Upon a new employee's appointment into the Bargaining Unit, Management will allow a minimum of 15 minutes of Official Time to brief the new employee on his/her rights as an employee of the Federal Government, the Union's role in the workplace, and the membership benefits the Union has to offer.

### **Section 26.4 – Labor Management Partnership**

1. The Agency and the Union agree to maintain a State-Level Labor Management Forum or Council that implements the requirements of Executive Order 13522 issued in 2009. The Parties agree to continue this collaborative framework even in the absence of EO 13522.

## **ARTICLE 27 – LOCAL POLICIES AFFECTING CONDITIONS OF EMPLOYMENT**

### **Section 27.1 – General**

1. IAW Article 4, the Agency has a right to develop and implement policies that address conditions of employment, which may be specific and unique to an individual work site. These policies may take the form of a desk memorandum or Standard Operating Procedure (SOP). Local policies cannot conflict with this Agreement. The Agency will ensure all local policies currently in force affecting conditions of employment comply with Federal law, Agency regulations, and this Agreement. Local policies are subject to the provisions of Section 6.2.

**Appendix A**

**Notice of Right to Union Representation During Investigations**

DATE: \_\_\_\_\_

MEMORANDUM FOR: \_\_\_\_\_

1. In accordance with (IAW) Article 5, Section 5.4(2)(a)(3), and IAW 5 USC §7114(a)(2)(B), you have the legal right to request Union representation during any examination or questioning by a representative of the California National Guard.

2. Should you exercise your right for Union representation, the investigation or questioning cannot continue until:

a. The Union representative is present (either in person or via teleconference);

b. You're advised of the subject and purpose of the interview; and,

c. You have had an opportunity to consult in private with the Union designated representative.

3. Please indicate your selection below:

a. \_\_\_\_\_ I wish to exercise my right to Union representation.

b. \_\_\_\_\_ I do not want Union representation at this time. However, I reserve the right to invoke my right to Union representation anytime during the course of this investigation.

\_\_\_\_\_  
EMPLOYEE SIGNATURE

\_\_\_\_\_  
DATE

4. Point of contact is the undersigned.

\_\_\_\_\_  
AGENCY REPRESENTATIVE NAME

Telephone:

E-mail:

**Appendix B**

<b>CA ARMY NATIONAL GUARD OFFICIAL TIME REQUEST</b> <small>24 HOURS OR LESS – PLEASE PRINT CLEARLY</small>		
<b>Union Representative Name</b>		<b>Employee Telephone</b>
<b>Supervisor Name</b>		<b>Duty Location and Work Section</b>
<b>Reason for Request</b>		
<b>Departure Date</b>	<b>Departure Time</b>	<b>Destination</b>
<b>Return Date</b>	<b>Return Time</b>	<b>Management POC at Destination</b>
<b>Reason for Request</b>		
<b>Union Representative Signature</b>		<b>Date</b>
<b>Supervisor Action</b>		
<b>Approved</b> <input type="checkbox"/> <b>YES</b> <input type="checkbox"/> <b>NO</b>		<b>Total Time Approved</b> (including travel to and from if applicable)
<b>Comments</b> (if request is not approved provide reason and an alternate date/time when request can be fulfilled)		
<b>Supervisor Signature</b>		<b>Date</b>

Appendix C

<b>CA ARMY NATIONAL GUARD GRIEVANCE FORM</b> <small>PLEASE PRINT CLEARLY</small>		
Employee Name	Employee Telephone	
Duty Location	Work Section	
Grievance Narrative (please include Article and Section of CBA that applies)		
Proposed Resolution		
Union Representation <input type="checkbox"/> Employee Request Union Representation <input type="checkbox"/> Employee Waives Union Representation		
Employee Signature	Date	
Phase 1		
Date Submitted	Response Date	Management Representative Name/Position
Resolved (attach justification) <input type="checkbox"/> YES <input type="checkbox"/> NO		Management Representative Signature
Phase 2		
Date Submitted	Response Date	Management Representative Name/Position
Resolved (attach justification) <input type="checkbox"/> YES <input type="checkbox"/> NO		Management Representative Signature
Phase 3		
Date Submitted	Response Date	Management Representative Name/Position
Resolved (attach justification) <input type="checkbox"/> YES <input type="checkbox"/> NO		Management Representative Signature

- If the grievance is not resolved at Phase 3 the Parties may invoke arbitration IAW Section 12.9.
- Only the Union or the Agency may invoke arbitration.

