

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

**Executed: 19 November 2018**

**Approved by the Department of Defense on 7 December 2018**

## Table of Contents

<b>Article/Section</b>	<b>Title</b>	<b>Page</b>
	Preamble.....	6
<b>Article 1</b>	<b>Recognition and Unit Designation</b>	
Section 1.1	Recognition and Included Positions.....	7
Section 1.2	Excluded Positions.....	7
<b>Article 2</b>	<b>Miscellaneous Provisions</b>	
Section 2.1	List of Employees.....	8
Section 2.2	Distribution of Contract.....	8
Section 2.3	Other Provisions.....	8
<b>Article 3</b>	<b>Duration and Changes to the Agreement</b>	
Section 3.1	Effective Date.....	9
Section 3.2	Agency Approval.....	9
Section 3.3	Agreement Duration.....	9
Section 3.4	Agreement Amendments/Supplements.....	9
Section 3.5	Renewal of Agreement.....	10
Section 3.6	Negotiating a New Agreement.....	10
Section 3.7	Termination of Agreement.....	10
<b>Article 4</b>	<b>Management Rights</b>	
Section 4.1	Retained Rights.....	11
Section 4.2	Emergency Considerations.....	11
<b>Article 5</b>	<b>Employee Rights</b>	
Section 5.1	Awareness.....	13
Section 5.2	Access to Personnel Files.....	13
Section 5.3	Right to Privacy and Work Area Searches.....	13
Section 5.4	Representation.....	14
Section 5.5	Right to Organize and Discuss Matters of Concerns.....	14
Section 5.6	Employee Treatment.....	15
Section 5.7	Workplace Violence Prevention Program.....	15
<b>Article 6</b>	<b>Union Rights</b>	
Section 6.1	Recognition and Representation.....	16
Section 6.2	Changes Affecting Conditions of Employment.....	16
Section 6.3	Negotiation/Bargaining Procedures.....	17
Section 6.4	Past Practice (Established Practice).....	18
Section 6.5	Unfair Labor Practices (ULP).....	18
Section 6.6	Steward Program.....	18
Section 6.7	Official Time and Travel of Union Representatives.....	19
Section 6.8	Access to Facilities.....	20

<b>Article 7</b>	<b>Voluntary Allotment of Union Dues</b>	
Section 7.1	Arrangements for Dues Deductions.....	21
<b>Article 8</b>	<b>Hours of Work and Compensation</b>	
Section 8.1	Basic Workweek and Workday.....	22
Section 8.2	Reporting for Duty.....	23
Section 8.3	Lunch Periods and Breaks.....	24
Section 8.4	Overtime Work.....	24
Section 8.5	Call Back.....	25
Section 8.6	Stand-By and On-Call Duty Compensation.....	25
Section 8.7	Other Pays.....	26
Section 8.8	Adjustment of Work Schedules for Religious Observances.....	27
<b>Article 9</b>	<b>Leave</b>	
Section 9.1	General Provisions.....	28
Section 9.2	Annual Leave.....	28
Section 9.3	Sick Leave.....	29
Section 9.4	Compensatory Time (CT).....	30
Section 9.5	Leave Without Pay (LWOP).....	31
Section 9.6	Excused Absence.....	31
Section 9.7	Hazardous Weather and Other Emergency Conditions.....	33
Section 9.8	Funeral Leave (5 USC Section 6326).....	33
Section 9.9	Military Funeral Honors Leave.....	33
<b>Article 10</b>	<b>Requirements for Dual Status Technicians</b>	
Section 10.1	Uniform and Appearance.....	34
Section 10.2	Medical Requirements.....	34
Section 10.3	Selective and Qualitative Retention Boards (SRRB and QRB)..	35
Section 10.4	Other Military Considerations.....	35
<b>Article 11</b>	<b>Safety and Occupational Health</b>	
Section 11.1	General Provisions.....	36
Section 11.2	Health Services.....	37
Section 11.3	Safety and Protective Clothing/Equipment (PPE).....	37
Section 11.4	Procedure for Unsafe/Hazardous Assignments.....	38
Section 11.5	Employees Free from Reprisal.....	38
Section 11.6	Clothing Change during Duty Hours.....	38
Section 11.7	Worker's Compensation Entitlements.....	39
Section 11.8	Labor Representative Accompany Inspection Team.....	39
Section 11.9	Occupational Health and Safety Training.....	40
Section 11.10	Make Ready, Tool Turn-In, and Clean-Up Time.....	40
Section 11.11	Office Environment.....	40
Section 11.12	Other Programs.....	40
<b>Article 12</b>	<b>Grievance and Arbitration</b>	
Section 12.1	General.....	42

Section 12.2	Time Limits.....	42
Section 12.3	Procedure and Exclusions.....	42
Section 12.4	Employee Rights.....	43
Section 12.5	Official Time and Excused Absence.....	43
Section 12.6	Union and Employee Grievance Procedures.....	43
Section 12.7	Agency Grievance Procedures.....	45
Section 12.8	Right to Information.....	46
Section 12.9	Arbitration.....	46
Section 12.10	Arbitrator Selection.....	47
Section 12.11	Arbitration Expenses.....	47
Section 12.12	Arbitration Decision.....	48
Section 12.13	Withdrawing of Grievances.....	48
<b>Article 13</b>	<b>Employee Conduct</b>	
Section 13.1	General.....	49
Section 13.2	Investigation, Examination and Representation.....	49
Section 13.3	Non-disciplinary and Disciplinary Actions.....	50
Section 13.4	Adverse Action.....	50
Section 13.5	Miscellaneous Provisions.....	51
<b>Article 14</b>	<b>Furlough and Reduction in Force (RIF)</b>	
Section 14.1	Furlough (in General).....	52
<b>Article 15</b>	<b>Merit Placement</b>	
Section 15.1	General Provisions.....	53
Section 15.2	Vacancy Announcements.....	53
Section 15.3	Consideration of Applicants.....	53
Section 15.4	Complaints.....	54
Section 15.5	Details.....	54
<b>Article 16</b>	<b>Environmental Differential and Hazardous Duty Pay</b>	
Section 16.1	Reduction of Hazardous Working Conditions.....	55
Section 16.2	Hazardous Weather Conditions.....	55
Section 16.3	EDP/HDP.....	58
<b>Article 17</b>	<b>Position Descriptions</b>	
Section 17.1	Employee Awareness of Assigned Duties.....	59
Section 17.2	Other Duties as Assigned.....	59
<b>Article 18</b>	<b>Employee Development and Training</b>	
Section 18.1	Job Related Training and Qualifications.....	61
Section 18.2	Personal Development.....	61
<b>Article 19</b>	<b>Equal Employment Opportunity (EEO)</b>	
Section 19.1	Policy.....	62
Section 19.2	EEO Complaint Procedures.....	62

Section 19.3	Representation and Official Time.....	62
<b>Article 20</b>	<b>Use of Official Facilities &amp; Services</b>	
Section 20.1	Office & Meeting Space.....	63
Section 20.2	Mail Service.....	63
Section 20.3	Publications and Other Services.....	63
Section 20.4	Bulletin Boards.....	63
Section 20.5	Common Areas.....	64
Section 20.6	Use of Government Vehicles.....	64
<b>Article 21</b>	<b>Civilian TDY, Travel and Assignments</b>	
Section 21.1	General.....	65
Section 21.2	Travel Entitlements.....	65
Section 21.3	Conditions of Employment.....	65
<b>Article 22</b>	<b>Performance Standards and Evaluations</b>	
Section 22.1	Employee Performance.....	66
Section 22.2	Actions Based on Unacceptable Performance.....	66
Section 22.3	Within-Grade Increases & Upward Mobility Promotions.....	66
<b>Article 23</b>	<b>Employee Assistance Program (EAP)</b>	
Section 23.1	General Requirements.....	67
<b>Article 24</b>	<b>Outsourcing and Contracting Out</b>	
Section 24.1	General Requirements.....	68
<b>Article 25</b>	<b>Wage Survey</b>	
Section 25.1	General Provisions.....	69
<b>Article 26</b>	<b>Labor/Management Cooperation</b>	
Section 26.1	Joint Employer-Union Sponsored Training Sessions.....	70
Section 26.2	Labor/Management Relations (LMR) Training.....	70
Section 26.3	Orientation of New Employees.....	71
Section 26.4	Labor Management Partnership.....	71
<b>Article 27</b>	<b>Local Policies Affecting Conditions of Employment</b>	
Section 27.1	General.....	72
<b>Article 28</b>	<b>Labor/Management Council</b>	
Article 28.1	General.....	73
Appendix A	Notice of Right to Union Representation.....	74
Appendix B	Official Time Request.....	75
Appendix C	Grievance Form.....	76
	Signature Page.....	77

**THIS PAGE INTENTIONALLY LEFT BLANK**

## **PREAMBLE**

This Agreement is executed between the New Mexico National Guard (NMNG), hereafter referred to as the "employer" or "Agency," by and through the Adjutant General (TAG) of New Mexico, 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 all non-supervisory and non-managerial National Guard employees of the New Mexico National Guard (NMNG), hereafter referred to as "technicians" or "employees."

Wherever language in the Agreement refers to specific duties or responsibilities of Agency 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 the Agency, National Guard Bureau Technician Personnel 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.

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 outside of the bargaining scope of the parties.

This Agreement identifies the mutual covenants of the Parties hereto, which are intended to:

- a. Promote the efficient administration of the New Mexico National Guard and the well-being of its employees.
- b. Provide for the highest degree of efficiency in the accomplishment of the mission of the New Mexico National Guard.
- c. Establish a basic understanding of personnel policy, practice, procedure, and matters affecting conditions of employment within the discretion of the Adjutant General.
- d. Provide a means for discussion and adjustment to matters of mutual interest.
- e. Promote employee communications and knowledge of personnel policy and procedure.
- f. The Parties are jointly responsible for the enforcement of this Agreement.

As a result, the Parties hereto agree within the intent, spirit, and meaning as follows:

## **ARTICLE 1 – GENERAL PROVISIONS**

### **Section 1.1 – Recognition and Included Positions**

1. In accordance with (IAW) the Federal Labor Relations Authority (FLRA) Case Numbers DA-RP-18-0003 and DA-RP-18-0005, LIUNA is the exclusive representative for all civilian employees of the New Mexico Army and Air National Guard.

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

1. In accordance with (IAW) the Federal Labor Relations Authority (FLRA) Case Numbers DA-RP-18-0003 and DA-RP-18-0005, all professional employees, management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7) are excluded from the bargaining unit.

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 IAW 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 technician from a position that is included in the bargaining unit to a position excluded from the bargaining unit is not subject to this provision.



## **ARTICLE 2 – MICELLANEOUS PROVISIONS**

### **Section 2.1 – List of Employees**

1. Upon request, but not more than quarterly, the Agency shall provide to the Union a list of bargaining unit employees showing the name, tenure, pay plan, series, grade, position title, position description number, assigned organization, assigned duty station location, and immediate supervisor name
2. Upon request, the Agency shall provide to the Union a list of non-bargaining unit employees showing the name, pay plan, series, grade, position title, position description number, assigned organization, assigned duty station location, immediate supervisor name, and the reason why the employee is excluded from the bargaining unit.
3. Each even pay period, the Agency will provide the Union with a list of all newly hired bargaining unit employees showing the name, tenure, pay plan, series, grade, position title, position description number, assigned organization, assigned duty station location, and immediate supervisor name.
4. The Union will secure all lists provided under this Section from unauthorized access.

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

1. The contract will be made available via the NMNG SharePoint.
2. The Union will make the contract available on their public website, 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. Timelines are specified in all areas, as needed.

## **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 IAW 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 §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 and justification.

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.

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

1. Barring any changes, proposed changes, or pending negotiations related to the provisions 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 of this Article, the following shall apply:

a. Negotiations for a new Agreement will commence no earlier than one hundred and five days (105) nor later than sixty (60) days prior to the termination of the current Agreement, unless.

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 will meet to initiate a memorandum of understanding (MOU) establishing the ground rules for conduct of negotiations.

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

This Agreement may also be terminated by mutual consent of both parties, or at any time it is determined and established by the FLRA that the Union is no longer entitled to Exclusive Recognition.

## **ARTICLE 4 – MANAGEMENT RIGHTS**

### **Section 4.1 – Retained Rights**

1. The Agency retains the right, IAW 5 USC, §7106(a) to determine the mission, budget, organization, number of employees, internal security practices of the Agency and IAW 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 4.2 – 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 within the NMNG span of control expected to last more than thirty (30) calendar days will be considered a change to this Agreement and may be subject to negotiation. However, this does not preclude the Agency from implementing changes to conditions of employment during an emergency.

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 Parties will ensure that:
  - a. Employees are fully aware that the provisions of this contract prevail in the workplace;
  - b. This contract receives the widest possible dissemination; and,
  - c. Employees receive training 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, and will be allowed a reasonable amount of time during their duty day to access the MyBiz portal, as needed. When an employee is unable to access the MyBiz portal at their normal work site, employee will be afforded opportunities to utilize alternate accommodations.
2. An employee's Work Folder (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 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 – Right to Privacy and Work Area Searches**

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.
2. The Parties recognize the employee's right to voluntarily invest their money, donate to charity, or participate in activities, meetings or undertakings not related to their employment.
3. Any search and/or seizure of Agency-owned, private or personal property, issued, or controlled equipment and/or facilities that is used or occupied by bargaining unit employees during the course of their duties (i.e., personal lockers, tool boxes, desks, etc.), and which is done in conjunction with an investigation, will normally be conducted in the presence of the employee, and in accordance with applicable Federal, state, or local law and regulation, depending on which entity has jurisdictional control over the equipment or facility subject to the administrative searches and/or seizures, and keeping in mind that the employee is a Federal civil servant and has all the protection guaranteed to US citizens under the Constitution in regards to criminal matters.

4. In the case that the employee is unable to be present, a Union representative will be requested to 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.

5. 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.

#### **Section 5.4 – Representation**

1. Employees have a basic right to representation in matters regarding conditions of employment, working conditions, and matters that could have an adverse impact or 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 to ensure 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) via Agency-mailed notice to the individual's home of record; 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, using Appendix A.

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 through their representative. When this choice is made, the Agency proceeds under the premise that all communication with the representative reaches the employee.

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

1. IAW 5 USC §7102, each employee shall have the right to form, join or assist the Union, or to refrain from any such activity, freely and without fear of penalty or reprisal.

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 for the payment of dues through payroll deductions IAW 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 whether or not he or 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 or her own representative for an appellate or grievance action based on law, regulation, or this Agreement.

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

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

2. Employee discipline should be conducted privately in a manner that provides confidentiality and allows for 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 Union is the exclusive representative of all employees and has a right to be represented in negotiations, formal discussions, and meetings between employees and the Agency that concern conditions of employment, grievances, personnel policies and practices, or any other matter affecting general working conditions. This includes Agency sponsored Committees/Meetings dealing with the above subjects.
2. The Union's right to be represented does not extend to informal discussions between an employee and the Agency.
3. The Union should be allowed to participate and provide input, in a Pre-Decisional capacity, when the Agency proposes or considers new policies and or changes to the conditions of employment or working conditions of bargaining unit employees.
4. The Agency shall recognize all Officers and Representatives designated by the Union, to include National Representatives. Upon request, the Union will provide the Agency, in writing, a list of all current Officers and Representatives, to include Stewards.
5. The Union's primary point of contact for all matters is the designated State Representative, or any other representative appointed by the Union.
6. The Agency shall not interfere in internal Union business. Internal Union business shall be conducted during non-duty hours, or while an employee is in a non-duty status.
7. The Agency agrees that there will be no restraint, interference, coercion or discrimination against Union representatives while performing their authorized duties under the Statute.
8. The Union, in consonance with its right to represent, may propose new policy, changes in policy, or resolutions to issues, involving conditions of employment or working conditions.

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

1. The Agency agrees to notify the Union prior to implementing, modifying, or cancelling any personnel policy or procedure that affects employee conditions of employment.
2. The Union will have thirty (30) days from receipt of the Agency's notice to submit a request to negotiate (if the subject is negotiable), or to bargaining 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.
3. When the Agency is unable to provide timely notice, 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 Party will determine the organization of its negotiating team and ensure that all negotiators are empowered to negotiate pursuant to 5 USC § 7114(b)(2).

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.

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 employer, the Union may submit to the employer a request for their position on the non-negotiable item along with the employer's rationale. The Union may then accept the employer'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. 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. The Parties agree that prior to 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. 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.
3. Stewards will be available for call back if needed, and shall report to their supervisor immediately upon return.
4. The Union will assign a qualified steward(s) to oversee each Agency facility where bargaining union employees are present.
5. To the extent possible, Union stewards will be assigned representational duties at their duty location. When qualified stewards are not available at one location, the Union may designate a steward or representative from another location to oversee employment matters at the facility experiencing the steward vacancy.

## **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:

- a. conditions of employment and/or employee working conditions;
- b. an employee grievance or complaint;
- c. representation of employees during a Weingarten investigation or during the course of an adverse action;
- d. to review and/or evaluate a proposed policy change and formulate a recommendation;
- e. to negotiate or bargaining a new proposal or change;
- f. to attend Agency and/or Union-sponsored training which is beneficial to both Parties, normally not to exceed 40 hours per individual per calendar year.

2. This list above 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.

3. Union Representatives shall request Official Time through their appropriate supervisor. The request should state their destination, estimated time of 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.

4. 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 using the attached form in Appendix B. Use of email is acceptable.

5. 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 Department of Defense (DoD) Joint Travel Regulations (JTR).

6. 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. Supervisor may not inquire as to the subject 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).

7. 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 – Access to Facilities**

1. 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.

2. 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 IAW 5 USC §7115.
2. Employees eligible for bargaining unit membership may elect to pay Union dues by having the Agency deduct a pre-specified amount of monies from the employee's regular paycheck. This will be accomplished by filling-out form *SF 1187 Request for Payroll Deduction for Labor Organization Dues* form 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 then 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 employee 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 the Human Resources Office (HRO) Labor Relations Specialist (LRS). 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 July. 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 – Workweek and Work Schedules**

1. The Agency shall establish a basic administrative workweek IAW 5 CFR §610.111, and agrees to establish work schedules IAW 5 USC Chapter 61 – Subchapter II, 5 CFR Part 610 – Subchapter D, and this Agreement. The Adjutant General is the final approval authority for the Agency's work schedule.

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. Unless the mission requires otherwise, it is agreed that work schedules shall remain in effect for at least two pay periods.

3. Any non-emergency 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 prior to implementation. Work schedule changes due to emergencies will be accomplished.

4. The Parties agree to establish Labor-Management Teams tasked with monitoring work schedule practices and making recommendations to the Agency in regards to continuing, adjusting, or modifying the Agency's work schedule. The teams shall convene at the request of either Party. The following will be observed:

a. Each team should be composed of an equal number of representatives. A minimum of four (4) members, two (2) from each Party, is recommended. Each Party is responsible for determining the makeup of their team.

b. Separate teams will be established for the following functional areas:

(1) One team for the Air National Guard

(2) Three teams for the Army National Guard:

i. Aviation

ii. Army Surface Maintenance

iii. All other areas

c. The teams will use the following criteria when making work schedule policy recommendations to the Agency:

- (1) Agency mission requirements
- (2) Establish core duty hours (if applicable)
- (3) Work Schedule Option(s) (i.e., single work schedule or combinations thereof, such as 4/10, 5/4/9, 5/8) that allows the Agency to meet mission requirements
- (4) Employee work schedule preferences
- (5) Accommodation for individuals experiencing personal hardships

### **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 (2) 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 employee is incapacitated and/or physically unable to initiate contact, then the Agency may accept tardiness or absence notice from an employee's next of kin.
3. When an employee cannot establish positive verbal 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 an Agency 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 directly to an Agency official. However, employees may use other modes of acceptable communication, such as voice mail, email, and/or text messaging, as a secondary method of attempting to provide notice, or when all efforts to verbally contact the Agency representative have been reasonably exhausted by the employee.
5. Tardiness and absences from duty of less than one (1) 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 reasonably predicted by an employee.
6. Unexcused tardiness or absence of any duration shall be charged as absence without leave (AWOL). Supervisors will notify employees of their determination that a tardiness or absence has been deemed unexcused.
7. Employees will not be permitted or be required to work during any period for which leave is charged.



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

1. All employees shall receive, at their discretion, a one-half to one hour lunch period, except in emergency situations. The lunch period will be approximately midway through the tour of duty. The employee shall be free to leave the worksite during this period. 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, the employee will be compensated for his/her missed lunch period with an alternate lunch period equal to the time missed.
3. As an exception to the normally scheduled lunch period, and pursuant to the supervisor's right to assign work, if a supervisor assigns an employee work during the normally scheduled lunch period, and it is not possible for the lunch period to be rescheduled during that duty day, the employee shall be entitled to compensation for the missed period of lunch IAW applicable law or regulation.
4. Fifteen (15) minute rest periods or breaks, during the first half and the second half (i.e., before and after lunch) of an employee's shift, will be granted. Rest breaks will not be taken in conjunction with the lunch period, physical training, 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 IAW 32 USC § 709(h) regardless of whether the work is performed on a voluntary basis, or as directed (involuntary) by the Agency 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 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.
4. Overtime requirements will be announced as far in advance as possible to allow employees the opportunity to make suitable arrangements in order to perform the overtime work.

5. The Agency will make every effort to direct or assign employees overtime on an equal basis, and shall take into consideration the nature of the work, the need for special skills, the priority of productive or support effort, and the numbers of employees required. In no case will overtime work be directed or assigned to any employee as a reward or punishment.

6. The Agency should make every effort to seek qualified volunteers prior to mandating that an employee perform overtime work. In the event there are insufficient qualified employee volunteers willing to perform overtime work, the Agency has the authority to direct an employee to work overtime to meet the Agency's mission requirements.

7. The Agency shall provide affected employees not less than seventy-two (72) hours' notice to schedule involuntary overtime except when the head of agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased.

8. Supervisors will also take into consideration any personal hardships that 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 to the worksite.

9. 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, if possible.

10. It is agreed that when overtime follows a regular work shift, the employee may request a fifteen (15) minute paid break at the beginning of the overtime period and, a thirty (30) minute non-paid meal break to begin no later than two (2) hours after the overtime period begins if the overtime period is expected to last greater than four (4) hours.

### **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/her duties on a day when work was not scheduled, or after his/her regular work day is over.

2. Unscheduled call back work entitles an employee to at least two (2) hours of compensatory time.

### **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. Initial notice may be made verbally; however, a formal written order should follow that explains in detail the stand-by or on-call requirement.

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 considered on duty and time spent on standby shall be considered 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/her own purpose. The Parties agree that compensatory time shall be used in standby situations.

a. The Agency shall make every reasonable effort to provide an employee advance notice specifying the beginning and ending period that the employee is on a standby status.

b. The Agency agrees that when an employee is placed in a standby status, 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. The Agency shall notify an 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.

c. Once an employee responds to a call and required to work (call back), he shall be granted compensatory time from the moment the work begins. The employee shall be minimally.

## **Section 8.7 – Other Pays**

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

## **Section 8.8 – Adjustment of Work Schedules for Religious Observances**

1. To the extent that modifications in work schedules do not interfere with the efficient accomplishment of an Agency's mission, an employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek must be permitted to work alternative work hours, so that the employee can meet the religious obligation.
2. An employee will submit a written request for an adjusted work schedule in advance, and specifically state that his or her request for an adjusted work schedule is for religious purposes. The request should be accompanied by acceptable documentation of the need to abstain from work.
3. Request for an adjusted work schedule should be approved or disapproved based strictly on the impact that the employee's absence may have on the Agency's mission, and not on a personal judgment about the employee's religious beliefs or his or her affiliation with a religious organization. When an employee's request is approved, the Agency may determine whether the alternative work hours will be scheduled before or after the religious observance.
4. Request for time off should not be granted without simultaneously scheduling the hours during which the employee will work to make up the time. This provides a clear record of the employee's adjusted work schedule. An employee should be allowed to accumulate only the number of hours of work needed to make up for previous or anticipated absences from work for religious observances, within the same pay period.
5. If an employee is absent when he or she is scheduled to perform work to make up for a planned absence for a religious observance, the employee must take paid leave, request leave without pay, or be charged absent without leave, if appropriate. These are the same options that apply to any other absence from an employee's basic work schedule.

## **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. An employee may cancel previously requested leave at any time.
5. All leave requests (paid and unpaid) shall be submitted using OPM Form 71, or its equivalent.
6. Leave entitlements not specifically addressed in this contract will be done IAW applicable law, rule, and regulation.

### **Section 9.2 – Annual Leave**

1. Supervisors will approve or disapprove properly submitted requests for non-emergency annual leave as soon as possible. If a request is disapproved, the reason will be documented on the OPM Form 71, or its equivalent, and the employee will be notified immediately. The supervisor will work with the affected employee to reschedule the disapproved leave as necessary.
2. Annual 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.
3. When two or more employees from the same work section request the same period of leave and mission requirements prevent approval of all requests, approval will be granted on a first come first served basis. However, supervisors shall consider the prior leave requests and approvals of the employees affected to ensure fair execution of the annual leave program.
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; however, approval is not an entitlement.

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 or 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, IAW applicable law, rule, and regulation.

2. A supervisor may require a medical certificate to support use of sick leave for three (3) days or more. When requested, 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 or 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 or she is not entitled to use sick leave.

3. 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.

4. If there is a reasonable suspicion that sick leave is being abused, the Agency reserves the right to require a medical certificate for sick leave of any duration. However, in such cases, the Agency shall counsel and advise the employee, in writing, of their suspicion that sick leave is being abused and that a medical certificate will be required to support any future approval of sick leave regardless of duration. This notice will contain the reasons the employee is required to furnish a medical certificate, and shall provide the employee an opportunity to provide rebuttal evidence to dispute the charge of sick leave abuse. Supervisors will review the sick leave record of those employees suspected of sick leave abuse 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. CT shall be earned and granted IAW applicable law, rule, and regulation.

2. CT should be used before Annual Leave unless the employee is in a use/lose leave status.

3. Employees may earn CT for religious observances, as follows:

a. An employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in overtime work for time lost for meeting those religious requirements.

b. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Agency's mission, the Agency shall in each instance afford the employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.

c. For the purpose stated in paragraph (b) of this section, the employee may work such compensatory overtime before or after the grant of compensatory time off. A grant of advanced compensatory time off should be repaid by the appropriate amount of compensatory overtime work within a reasonable amount of time. Compensatory overtime shall be credited to an employee on an hour for hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory overtime earned and used.

d. The premium pay provisions for overtime work in 5 CFR 550 – Subpart A and section 7 of the Fair Labor Standards Act of 1938, as amended, do not apply to compensatory overtime work performed by an employee for this purpose.

### **Section 9.5 – Leave Without Pay (LWOP)**

1. An employee’s request for leave without pay may be granted 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 and 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.

2. Employees are entitled to LWOP, with HRO approval, for the following purposes:

a. The Family and Medical Leave Act of 1993 (FMLA), provides covered 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 of 1994 (USERRA) provides 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 disabled veterans are entitled to LWOP for necessary medical treatment.

### **Section 9.6 – Excused Absences**

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) Excused absence related to annual dental exams required by a dual-status technician's military service will be limited to two (2) 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.

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 four (4) hours 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 technician 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 (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.

e. To present a grievance or complaint IAW this Agreement.

f. To attend events hosted or sponsored by an employee's military unit or 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.

g. To attend training and/or obtain personal certifications required by the Agency.

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

1. The Parties will reference the current Agency policy on inclement weather.

### **Section 9.8 – Funeral Leave (Title 5 U.S.C. Section 6326)**

1. An employee is entitled up to three (3) consecutive or non-consecutive workdays to make arrangements for, or to attend, the funeral or memorial service for a qualifying family member, as defined by 5 CFR § 630.803, who died as a result of wounds, disease, or injury incurred while serving in a combat zone (IAW 26 USC § 112) as a member of the Armed Forces of the United States. The employee shall furnish justification for scheduling nonconsecutive days.

### **Section 9.9 – Military Funeral Honors Leave**

1. Military technicians may be used in a technician status to administer, plan, train, and prepare military funeral honor details for the performance of funeral honors IAW DoDI 1300.15, Office of Secretary of Defense (OSD), Military Funeral Honors Policy Memorandum, and Memorandum for Record (MFR) NGB-ARM-O, Technicians Participating in Military Honors.

2. When military technicians perform military funeral honors as part of a detail, they must be placed in an inactive duty training status for retirement credit and must be in an appropriate leave status.

3. Technicians may perform military funeral honors duty and collect the Federal stipend equal to one Unit Training Assembly (UTA) and/or Multiple Unit Training Assembly (MUTA) while in

either an annual leave, compensatory leave, military leave or LWOP status. To receive the stipend, the technician must be in a funeral honors duty status for a period of at least four hours.

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

### **Section 10.1 – Uniform and Appearance**

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 their respective service.
2. Technicians are not required to wear the military uniform under 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.
  - d. While participating in personal fitness activities.
3. The Agency recognizes their requirement to provide sufficient uniforms for eligible technicians to accomplish their duties. Eligible technicians will get their normal issue of military apparel as required of their technician position through their membership in the New Mexico National Guard. If the eligible technician is unable to obtain the required military apparel through the New Mexico National Guard supply system, the eligible technician will work with their technician supervisor to coordinate with the member's unit to satisfy the requirement. If the supervisor cannot get the affected eligible technician the required uniforms, the supervisor will go through the supervisory chain of command to correct the uniform deficiency. Additionally, the Agency shall provide the following:
  - a. Uniforms will be provided 'ready-to-wear' to include emblems/patches, 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 required by the employee's job position description.

### **Section 10.2 – 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. A technician 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 for final determination. If the technician 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 technician. If there is a valid physical and or mental disability which prevents the technician from fulfilling the duties of their assigned position, the Agency (i.e., HRO) will determine the appropriate position, duty limitations, and duty location restrictions established by the Occupational Health Manager.

### **Section 10.3 – Selective and Qualitative Retention Boards (SRRB and QRB)**

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

2. The Agency will make every effort to inform military technicians (dual status) not selected for retention of their right to appeal according to applicable laws and regulations (ANGI 36-2606 and or AR 135-205).

### **Section 10.4 – Other Military Considerations**

1. Technicians may not be required to accomplish duties pertaining to military training, readiness, force protection and other military-related assignments including, but not limited to, training of traditional Guard members, military exercise participation, mobility exercise participation, weapons qualification training, participation in military formations, or medical mobility processing, unless specifically identified in the employee's position description. These tasks have no impact on the classification of a technician's civilian position, and may not be addressed in a technician's performance standards.

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

### **Section 11.1 – General Provisions**

1. It shall be the responsibility of the Agency, the Union, and employees to observe all safety precautions and maintain the standard of safety established IAW applicable laws, 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 IAW 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 shall 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. The Agency 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 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 will impair his/her ability to safely perform their assigned duties. Information provided by an employee shall include the limiting effects of the medication and expected duration of prescription. The Agency 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, an employee will not be allowed to return to work until they are cleared by a medical professional and the Occupational Health Manager.

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

1. The Agency shall establish and maintain an Occupational Health Services and Preventive Medicine Program 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. The equipment shall be replaced on a fair wear-and-tear basis, and shall be custom-fit (when required).

2. IAW OSHA standards as outlined in 29 CFR 1915.156, the Agency shall provide two (2) initial pairs of suitable safety footwear (i.e., steel-toe, waterproof, cleated, etc.) as required by the employee's assigned duty position, and 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. 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.

4. The Agency shall provide employees an adequate supply of work coveralls to wear as protective clothing. The cost for maintenance and care of the coveralls shall be borne by the Agency. Specifically:

a. Army maintenance technicians (direct labor positions) will be provided three (3) 100% cotton coveralls and two (2) insulated coveralls to include cleaning and repair or replacement as necessary of such coveralls, through a contract service to be determined by the Agency.

b. Air maintenance technicians will be provided coveralls (the specific type of coverall will be section dependent) to include insulated coveralls, as required, to include cleaning, repair and or replacement on a fair wear and tear basis.

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

1. The Agency 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 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 immediately report the circumstances to the Agency. This includes work assignments inside or outside the scope of their position description 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 IAW the proper procedures and safety directives or, in the case of imminent danger, cease the work process until the appropriate safety procedures and directives are implemented in order to prevent injury or death of employees, and damage to property.
5. In limited circumstances, an employee has the right to decline to perform his or her assigned task because of a reasonable belief that under the circumstances the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures established in accordance with 29 CFR § 1960.46(a).

#### **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 in accordance with 29 CFR § 1960.46(a), shall be free from reprisals, harassment or unwarranted disciplinary action.

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

1. When clothing being worn by an employee has become contaminated with hazardous materials the Agency shall take the appropriate steps to respond based on the type of the contaminant.

2. Employees should normally maintain an additional set of work uniforms at their work place/space in case their primary set of work clothes become contaminated. In some instances, it may be necessary to direct or allow an employee to return to their residence, change clothing, and return to the worksite.

### **Section 11.7 – Worker’s Compensation Entitlements**

1. It is the Agency's responsibility to advise, orient and assist employees regarding entitlement of medical and loss-of-pay benefits under the Federal Employee's Compensation Act (FECA) for injuries or illnesses that are job related.

2. It is the employee's responsibility to report any injury or illness that he/she feels may be job related to the supervisor immediately after the occurrence. Employees have a right to seek Union representation concerning workplace injuries and any subsequent claims under this Section. It is also the employee’s responsibility to cooperate with required documents for payment, physical restrictions and follow up.

3. When an employee is incapacitated on the job and unable to notify the supervisor 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.

4. Employees absent from work due to a work-related injury or illness shall keep the Agency informed of their condition and prognosis on a regular and recurring basis, and shall make themselves available for contact and possible follow-up evaluations as required by the Agency. The Agency reserves the right to obtain additional medical information or follow-up opinions, as needed, from an employee’s physician or physicians selected by DOL. The Agency shall secure authorization from the employee to obtain medical records.

5. When a treating physician indicates that an employee is physically able to return to work, including light duty work, the employee is required to notify the Agency immediately. If such work is available, the employee will be notified to report for duty as early as the workday following the physician's determination. The Occupational Health Manager will determine evidenced-based work restrictions and/or accommodations that will be employed when a technician is medically able to return to work in either a full or modified capacity. An employee that fails to notify the Agency of their ability to return to work, or who refuses to return to work when ordered, could receive overpayment of worker’s compensation benefits and/or be considered AWOL.

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

1. The Agency shall 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. The Agency will conduct safety-inspections of worksites to ensure compliance with Occupational Safety and Health guidance. These inspections may be in concurrence with, or in addition to, inspection already required by existing law and/or regulation.

3. A Union representative will be permitted to accompany any safety, occupational health, or other workplace inspection teams during an evaluation of their unit/facility, and shall be provided copies of all reports generated as a result of the inspection. Union representatives will be on Official Time.

### **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 safety and a minimum loss of man-hours due to preventable injuries.

2. Employees will be furnished Basic First-Aid Instruction, 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, if applicable.

### **Section 11.10 – Make Ready, Tool Turn-In, and Clean-Up Time**

1. A reasonable amount of time at the beginning of shift, before and after the lunch period, and at the end of the work shift will be allowed for employees to prepare personal and/or work area clean-up, and tool or equipment turn-in as necessary.

2. This will not prevent the Agency 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. Employees will normally accomplish their fitness regime on the premises of their assigned duty location. When an individual work site does not allow for the safe

performance of exercise, employees will coordinate with their supervisor for alternate arrangements.

b. 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 in technician 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. Employees retain the right to request Union representation in the grievance procedure, or to decline such representation.
3. Regardless of an employee’s representation option, the Union, IAW 5 USC §7114, will be given the opportunity to be present during all grievance proceedings to ensure that any relief granted as a result of the grievance process is not inconsistent with the terms of this Agreement.
4. 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 – Time Limits**

1. Failure on the part a responding party to observe the time limits set forth in this Article will automatically permit the grievant to advance to the next step of the resolution process.
2. Failure on the part of a grievant to observe the time limits will automatically terminate the grievance process, except that all time limits provided in this Article may be extended by mutual agreement.

### **Section 12.3 – Procedure and Exclusions**

1. IAW 5 USC §7121, the Parties agree that this negotiated procedure will be the exclusive method of grievance resolution within the bargaining unit concerning employment matters. Except as provided in this section, any matter of concern or dissatisfaction to an employee, which is subject to the control of the Agency and is related to conditions of employment of bargaining unit employees, can be grieved through this procedure.
2. Matters expressly excluded under 5 USC §7121(c) may not be grieved under this procedure, to include:
  - a. Any claimed violation relating to prohibited political activities (Hatch Act Violations).

- b. Retirement, life insurance, or health insurance.
- c. A suspension or removal for national security reasons.
- d. Any examination, certification, or appointment.
- e. The classification of any position which does not result in the reduction in grade or pay of an employee.
- f. Final decisions of the Adjutant General regarding matters covered under 32 USC § 709(f).

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

1. All employees, whether individually or as a group, have the right to present their grievances to the appropriate Agency official 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, the employees and their representative will be free from restraint, coercion, discrimination, or reprisal because they have filed a grievance.

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

1. 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 excused absence.

### **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. All days in this article are calendar days, unless otherwise stated.
3. 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. Failure to observe the time limits for any step in the grievance procedure shall entitle the grievant to advance the grievance to the next step. Failure of the grievant to observe the time limits at any step of the procedure will have the effect of canceling the grievance as untimely. All time limits of this article may be extended by mutual consent. A grievance may be withdrawn by the proponent at any time.
4. 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). The Agency representative will also 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 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). The Agency representative will also 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 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, to include meeting with the aggrieved party, and render 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). The Agency shall also 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, to include meeting with the aggrieved party, and render a final Union 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 12.8 – Right to Information**

1. When arbitration is invoked by either party, relevant documents, reports and evidence relied upon will be exchanged by both parties a minimum of thirty (30) days prior to 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 fifteen (15) days from the conclusion of the Adjutant General's Review or the LIUNA 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.

4. Arbitration hearings shall be conducted during duty hours. Employees required to attend the hearing as complainants, witnesses, etc., will attend without loss of pay or leave, and may be provided travel and per diem IAW the Joint Travel Regulation (JTR).

5. Aggrieved employees, Union representative, and employee witnesses shall be excused from duty for a reasonable period of time to prepare for arbitration.

6. When the Parties agree to the facts at issue, and believe that an arbitration hearing would be unnecessary, they can submit a joint stipulation of facts to the Arbitrator with a request that a decision be rendered based upon the facts jointly presented.

7. The Arbitrator may not add to, change, modify, alter, or delete any provision of this Agreement. The authority of the Arbitrator will extend to the interpretation Federal law, this Agreement, and applicable Agency regulations or policies.

8. The Arbitrator's decision shall be binding on the parties. However, either Party may file exceptions to the arbitration award with the Federal Labor Relations Authority (FLRA). If either party files an exception to the Authority, a copy will be submitted to the other party.

## **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 a 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. The party requesting arbitration (charging party) may withdraw their request at any time prior to the actual hearing. However, they will be responsible for any costs incurred as a result of requesting arbitration.
4. Costs incurred due to postponement of an arbitration, for whatever reason, will be borne by the party requesting the postponement.
5. Should the Arbitrator's decision be overturned on exception to the 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.

## **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 NGB Regulations pertaining to the processing of adverse disciplinary actions.
2. This Article applies to matters of conduct only; actions that relate to job performance will be accomplished IAW the Agency's Performance Management System.
3. Employees are expected to behave appropriately and follow all applicable rules and regulations.
4. The Agency shall determine when disciplinary action is warranted. Such actions will be administered in a fair, impartial, and timely manner.
5. 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.
6. 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 of the case.
7. 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 – 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 13.3 – 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 by the end of the following duty day 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 five (5) 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, and the violation relates to a continuing problem, a summary of past violations and attempts to correct those violations will be included. The employee will be informed they may review the material relied upon to support the reprimand.

4. A suspension of fourteen (14) days or less is an administrative action which denies the employee compensation on a temporary basis and adverse action procedures should be followed, except that an employees' appeal is limited to filing a grievance.

### **Section 13.4 – Adverse Action**

1. An Adverse Action (suspension of fourteen (14) days or more, removal, or change to a lower grade) is an administrative action which denies the employee compensation on a temporary or permanent basis. An employee will be allowed a minimum of ten (10) days following receipt of the proposed adverse action notice to provide a reply. 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.

2. 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.

3. 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 13.5 - Miscellaneous Provisions**

1. The employer will not reasonably delay a Request for Information (RFI) submitted IAW 5 USC §7114(b)(4) concerning prior disciplinary offenses as they relate to a pending adverse action.

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 thirty (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. The Union shall be included in the planning and implementation team and/or committee assigned with of the oversight of the process.
4. When a furlough is not the result of a lack of funds, an employee may be authorized annual leave, sick leave, or compensatory leave during a period of furlough.

## **ARTICLE 15 – MERIT PLACEMENT PLAN**

### **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 Adjutant General of New Mexico Technician Personnel Regulation (AGONM TPR) 335 Merit Placement Plan for Excepted and Competitive Technicians, 5 CFR Part 335 and 32 USC § 709.

### **Section 15.2 – Vacancy Announcements**

1. Vacancy announcements for Area A candidates (i.e., all permanent excepted technicians in the New Mexico Army/Air National Guard) will be opened (posted) for a minimum of fifteen (15) calendar days. All other vacancy announcements will be opened (posted) a minimum of twenty-one (21) calendar days, and must extend over a minimum of one (1) UTA/MUTA period.

2. The Agency will announce all vacancies using the currently approved method (e.g., USA Jobs), and on the appropriate Agency Sharepoint.

3. Vacancy announcements will contain a re-promotion statement (if applicable).

### **Section 15.3 – Consideration of Applicants**

1. Positions which can be filled by either Army or Air technicians may be opened to either Army or Air technicians, or concurrently to both, depending on regulatory or strength ceiling limitations.

2. When a vacancy specifies a military grade requirement, applicants must submit evidence of current or pending military grade eligibility in order to be considered qualified for the vacant position.

3. Qualified eligible candidates will be certified as follows:

a. When a vacancy is advertised to Area A applicants only (i.e., all permanent excepted technicians in the New Mexico Army/Air National Guard), all qualified applicants will be certified and referred to the selecting official.

b. When a vacancy is advertised to applicants beyond Area A, and more than 10 qualified applicants are certified, the procedures in AGONM TPR 335, Chapter 6, Evaluating Candidates, will be used to further screen candidates prior to referral.

4. In making a selection, the selecting official shall either interview all referred applicants, or shall interview none. Interviews shall be either face-to-face or by telephone.

5. When any Area A (i.e., all permanent excepted technicians in the New Mexico Army/Air National Guard) applicants are referred to a selecting official, but none are selected, a Memorandum For Record (MFR) will be generated by the selecting official explaining the reason for the non-selection of Area A applicants, and will be submitted to HRO along with the selection certification.

#### **Section 15.4 – Complaints**

1. When an employee files a grievance concerning their non-selection for a vacancy, and that employee is represented by the Union, the employee representative shall be permitted to review any and all documents used in evaluating all candidates for promotional purposes. If copies of documents are requested by the Union or its authorized representative, the Agency will furnish data not prohibited by law.

#### **Section 15.5 – Details**

1. A detail is the temporary assignment of an employee to a different position for a specified period, with the employee returning to his or her regular duties at the end of the detail. Details are normally used when a special project or a temporary increase in work load requires the use of additional personnel for a period of time.

2. The assignment of additional duties to a position, or the assignment of additional duties to fill in for an employee on temporary absence, does not constitute a detail as the technician is not temporarily assigned to a different position.

3. Whenever practical, details to higher-graded positions for period of less than thirty (30) days will be rotated for each period of detail among available and eligible technicians.

4. All employee details will be reported on Standard Form 52 by the supervisor and submitted to the Human Resources Office. Details of over thirty (30) days will be filed as a permanent record in the employee's Official Personnel Folder. Details of less than thirty (30) days will be placed in the employees' electronic Official Personnel Folder.

5. The Agency should inform a Union representative when details are made. This notification should be made in advanced, when possible.

## **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 well-being 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 IAW 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 policy and 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 10-mile radius of the duty station the Agency will warn employees of the close proximity of lightning.
- f. When lightning strikes the earth within a 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

Chill Chart (IAW ATP 5-19.12)	
Chill Factor Temperature (°F)	Time Limit for Exposure (Hrs & Min)
-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 5-19.12 risk assessment 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. 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)**

1. 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.

2. The Agency shall establish a committee for the purpose of reviewing and making recommendations on situations and conditions which may form a basis for entitlement to EDP/HDP. The committee will include a representative of the Union.

## **ARTICLE 17 – POSITION DESCRIPTIONS (PD)**

### **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, or its equivalent.
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. Employees concerned that their position is not classified correctly may request a classification appeal.
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 – Details and Other Duties as Assigned**

1. A detail is the temporary assignment of a technician to a different position for a specified period, with the employee returning to his regular duties at the end of the detail.
2. Prior to placing an employee on a temporary detail, a request will be submitted to HRO using Standard Form (SF) 52, to include position title, and the start and end date of the detail. HRO will evaluate the assignment to ensure compliance with Agency regulations and this Agreement notify the supervisor whether the detail is approved or disapproved. If approved, HRO will record the action in the employee's official personnel folder (OPF).
3. The Agency may require an employee to perform 'other duties as assigned' on a temporary and infrequent basis. 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. Except in very limited circumstances, 'other duties as assigned' should be closely related to the employee's position and will not be grade-determining.

4. 'Other duties as assigned' does not apply to tasks which would otherwise be considered a detail, temporary promotion, or a reassignment.

5. 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 fourteen (14) 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. Subject to funding availability, the Agency agrees to provide job related training and development for employees, as necessary, to accomplish the mission of the New Mexico National Guard in an efficient manner, and to consider the Union's views and recommendations in developing programs relating to training of employees. 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 IAW applicable laws and regulations. All employees shall have an equal opportunity to participate in training.
2. 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, to the greatest extent possible, for taking the initiative necessary to keep abreast of changes.
3. The Agency agrees to extend every reasonable consideration to employees for attendance at job related courses. Supervisors will provide information on courses that relate to improving the employee's job performance, as applicable.

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

1. The Agency encourages employees to take advantage of the educational benefits that are available to them by virtue of their membership in the New Mexico National Guard.
2. To the greatest extent possible, and barring any disruption to the mission of the New Mexico National Guard, the Agency 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. The Agency will work with the employee to adjust his/her shift rotation or work schedule in order to facilitate their education goals when possible.
4. An employee must provide timely 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.
  1. 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 – Office & Meeting Space**

1. The Agency shall provide the Union with adequate space to conduct Union meetings during non-work hours (before and after normal duty hours, and during lunch). As such, the Agency agrees make space available, upon request, for the Union to conduct internal business.
2. Upon request, the Agency agrees to make adequate space available for the Union to consult with bargaining unit employees on representational matters, and for confidential discussions between bargaining unit employees and designated Union representatives, when held in accordance with the terms of this Agreement.

### **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.
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. Official bulletin boards located at or near the worksite of bargaining unit employees shall be available for use by the Union in accordance with applicable regulations. Any information posted by the Union will not violate any law or applicable regulation, or contain libelous material. Any informational matters displayed will clearly indicate whether the information relates to current law or regulation, as contrasted with proposed or introduced law or regulation. The Union will be solely responsible for all posted material in terms of accuracy and adherence to ethical standards; will ensure that material is kept current; and will maintain its designated bulletin board space in a neat and orderly manner. The space authorized for the Union's use will be clearly marked with the words "LIUNA, Local 1776," by the Union.



## **Section 20.5 – Common Areas**

1. 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.
2. Subject to funding and available space, the Agency shall make available, to each employee and at each worksite, sufficient storage of an adequate size, and located in a conveniently accessible location, for storage of clothing and other personal items.

## **Section 20.6 – Use of Government Vehicles**

1. Use of government owned or leased vehicles may be authorized for Local representational functions for which Official Time has been authorized. When government transportation is unavailable, and the employee's physical presence is required, the use of privately owned vehicles may be authorized and mileage may be paid in accordance with applicable law, rule or regulation.

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

### **Section 21.1 – General**

1. Unless required by 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 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's request to be excused from TDY will be addressed on a case by case, non-precedent setting, basis.
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 as 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 an alternate method of transportation. The Agency will determine what the most cost effective alternate mode of transportation is IAW the JTR and Agency policies.
5. In no case will TDY 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 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 may be appropriate in instances of unacceptable performance related to alcohol or substance abuse. Both supervisors and employees are encouraged to identify situations where it may be advisable for an individual to voluntarily seek assistance.

### **Section 22.3 – Within-Grade Increases (WGIs) & Upward Mobility Promotions**

1. When an employee's unacceptable performance will prevent the award of a Within-Grade Increase (WGI) or an Upward Mobility Promotion, they will be notified in writing at least sixty (60) days prior to the eligibility date. The employee will be placed on a Performance Improvement Plan (PIP).

2. If the employee's performance becomes acceptable within the PIP period, the WGI shall be granted. If the employee's performance has not improved, the PIP may be modified to allow the employee additional time to meet the minimum performance standards.

3. Disputes regarding this section shall be resolved IAW Grievance and Arbitration procedures.

## **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 any time. The Agency should also advise dual-status employees of programs offered through Military One Source.
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 the Agency's right to take administrative action, especially in cases of illegal drug use or violations of the law.
5. Participation in rehabilitative programs may 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 the Agency to preserve employee manpower positions within the New Mexico National Guard (NMNG). However, the Agency 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 – General Provisions**

1. The Agency recognizes the value of the contributions that can be made by its' employees in conducting wage surveys, and will continue to seek the benefits which accrue from keeping the employees informed on wage matters.
2. The Agency agrees to notify the Union promptly after receipt of a notification of a pending wage survey from DoD.
3. The HRO will give due consideration to recommendations made by the Union when selecting Union members who have job experience and who meet the necessary qualifications as data collectors. In response to the Local Wage Survey Committee's (LWSC's) notice of a wage survey, the local union will appoint representatives, as needed, to participate in the wage survey. Employees will be on official duty status.

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

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

1. 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 (ADR) or Interest Based Bargaining (IBB) 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 New Mexico National Guard.

2. Requests to be excused to attend Union sponsored training will be submitted, with justification to the supervisor and HRO LRS, as soon as possible but no later than fourteen (14) days prior to the training session.

3. Approval/Disapproval notice will be returned by e-mail no later than seven (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 is directed by the Agency, 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 fifteen (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. 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.

## **ARTICLE 28 – LABOR/MANAGEMENT COUNCIL**

### **Section 28.1 – General**

1. The Parties agree to maintain a state level Labor/Management Council to address issues of concern to either party.
2. This Council will consist of an equal number of representatives from each Party, but no less than three members from each the Union and the Agency, as follows:

<u>Union</u>	<u>Agency Team</u>
State Representative	Chief of Staff / Director of Staff
ANG Representative	Human Resources Officer
ARNG Representative	ANG Representative
At-Large Representative	ARNG Representative

3. The Council shall meet at the call of either the Agency or Union, and shall be empowered to recommend consensus-based proposals, policies, and solutions on civilian-employment matters to the Adjutant General.
4. Any action proposed by the Council, that would affect employee conditions of employment, shall be subject to review prior to implementation.
5. The Labor Relations Specialist (LRS) or his or her designee will act as Secretary to the Council and will compile Agenda items in preparation for Council meetings. The meeting format shall be informal in order to allow a free and open discussion. The Council's primary goal is to find common-sense and mutually beneficial solutions that ensure the NMNG will accomplish the mission in the most effective and economic way.

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

## Appendix C

<b>NM 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
<b>Phase 1</b>		
Date Submitted	Response Date	Management Representative Name/Position
Resolved (attach justification) <input type="checkbox"/> YES <input type="checkbox"/> NO		Management Representative Signature
<b>Phase 2</b>		
Date Submitted	Response Date	Management Representative Name/Position
Resolved (attach justification) <input type="checkbox"/> YES <input type="checkbox"/> NO		Management Representative Signature
<b>Phase 3</b>		
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.

**Signature Page**

This Agreement was executed by the Parties on \_19 Nov 2018\_\_\_\_\_:

**For the Agency**

**For the Union**

---

COL Jamison A. Herrera  
Chief Negotiator

---

Mr. Ben Banchs  
Chief Negotiator