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

Effective Date: 11 November 2018

PREAMBLE

This agreement is executed between the Utah Army National Guard (UT ARNG), hereafter referred to as the "employer" or "Agency," by and through the Adjutant General (TAG) of Utah, 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 employees of the UT ARNG, hereafter referred to as “technicians” or “employees.”

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

a. Promote the efficient administration of the UT ARNG and the well-being of its employees.

b. Provide for the highest degree of efficiency in the accomplishment of the mission of the UT ARNG.

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.

Wherever language in the Agreement refers to specific duties or responsibilities of supervisors or management officials, it is intended only to provide a guide as to how a situation may be handled. It is agreed that the Employer 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 (NGB) Technician Personnel Regulations (TPR), or Blacks' Law Dictionary. Whenever a dispute arises as to the meaning of a particular term, the Parties will attempt to reach agreement by referencing the sources cited above, in that specific order.

As a result, the Parties hereto agree 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) Certification of Representative Case Number DE-RP-18-0009, LIUNA is the exclusive representative for all federal nonsupervisory, nonprofessional, nonmanagerial General Schedule and Wage Grade employees of the Utah Army National Guard.

Section 1.2 – Excluded Positions

1. Excluded from the Bargaining Unit are all supervisory, professional, and managerial employees employed by the Utah Army National Guard, and employees described in 5 USC § 7112(b)(2), (3), (4), (6), and (7).

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

ARTICLE 2 – MICELLANEOUS PROVISIONS

Section 2.1 – General Provisions

1. When possible, the Parties will attempt to settle each matter of business at the point nearest to its origin and at the lowest level of Management where there is authority for resolutions.

2. Administration of the Agreement must preserve the self-respect and dignity of each employee when said employee is utilizing any part or procedure contained within this Agreement.

Section 2.2. – List of Employees

1. Upon request, 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, tenure, 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. Upon request, the Agency will provide the Union with a list of funded positions authorized for a specific installation or facility within the Army National Guard.

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 UT ARNG public access internet site.

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

Section 2.3 – Other Provisions

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

ARTICLE 3 – DURATION AND CHANGES TO THE AGREEMENT

Section 3.1 – Effective Date

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

Section 3.2 – Agency Approval

1. DCPAS shall approve the agreement within thirty (30) days from the date the agreement is executed by the parties, provided the agreement is 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 ninety (90) 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 sixty (60) days of the written proposal, to commence negotiations on the proposal, unless a later date is mutually agreed upon.

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

Section 3.5 – Renewal of Agreement

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

Section 3.6 – Negotiating a New Agreement

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

a. Negotiations for a new agreement will commence no earlier than one 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

1. 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 expected to last more than thirty (30) calendar days will be considered a change to this Agreement IAW Section 3.4, and shall be subject to

negotiation IAW Section 6.2. 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, and followed by a written (formal letter or email message) notice to the Union 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. Provisions of this contract will be made available to all employees in the workplace.

b. Employees are made aware of the Union contract during initial in processing and through annual briefings.

Section 5.2 – Access to Personnel Files

1. Employees normally have access to their personnel information, and will be allowed a reasonable amount of time during their duty day to access their information, as needed. When an employee is unable to access their information at their normal work site, excused absence may be granted IAW Section 9.6(3)(e).

2. An employee's Work Folder (or electronic equivalent) as maintained by their supervisor will be made available to them for review upon request. A reasonable amount of time may be granted so that the employee may 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. The Agency affirms the right of an employee to conduct his or her private life as they see fit, within the constraint of Federal law and Agency regulations. Employees have the right to engage in outside legal activities of their own choosing without any requirement to report said activity to the employer, except as required by law or Agency regulations. However, employees shall not accept a fee, compensation, gift, payment or expense, or any other thing of monetary value in circumstances in which the acceptance may result in or create the appearance of conflicts of interest. Employees may not engage in outside employment that would interfere with the performance of their assigned duties, and they are also prohibited from receiving compensation or anything of monetary value from a private source in exchange for government services.

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

3. Any employer-directed inspection of personal property or equipment shall be conducted in accordance with applicable Government-wide regulations, as well as any Agency directives in place at the time this Agreement goes into effect. Emergencies notwithstanding, the employer shall not open, search, or inspect an employee's personal property (e.g. clothes, privately owned vehicle, book bag, etc.) without the employee or union representative present. If a search of said property or equipment is conducted as a result of a legally authorized search (i.e., a search warrant) outside of the presence of the affected employee, the Agency will, in writing, document the date, time, and

reasons for said search and provide the employee with a copy of this documentation within 24-hours of conducting the search. This does not apply to vehicle inspections conducted at entry control points.

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

5. The search of work areas must be reasonable in scope, balancing an employee's expectation of privacy against management's need to supervise and operate the workplace. Searches must be based on a reasonable suspicion, and prior to conducting a search of a work area, or of an individual's personal property or effects (i.e., their locker), the employer will notify the employees affected of the search prior to commencing, give the employee the opportunity to be present at the search, and will inform employees that they can request to have a LIUNA representative present during the search. The request for a Union representative shall not unduly delay the search or impede the purpose for which the search is conducted.

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

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

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 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 of Union membership, 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 UT ARNG 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).

Section 5.8 – Requests for Hardship Reassignment

1. Assignment/reassignment is a management right; however, an employee may request, through their supervisor to the HRO, that the Agency reassign them to a different position and or work location as a result of a personal hardship. The request shall be submitted in writing, and must include an explanation of the hardship, how the reassignment would alleviate the hardship, and

whether the reassignment would be temporary or permanent. The Agency shall provide a written response within a reasonable amount of time, normally within thirty (30) days, stating the reason(s) for their decision.

ARTICLE 6 – UNION RIGHTS

Section 6.1 – Recognition and Representation

1. The Union is the exclusive representative of all bargaining unit 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. The right to meet and confer will apply to all levels of management within the UT ARNG and within the Union, starting with the Union Steward and the first level supervisor. It is the intent of the Parties to meet and confer at the lowest level for problem resolution. If the Parties at the initial point of contact feel resolution of a matter is outside their jurisdiction, the matter will be referred to a higher level. This includes Agency sponsored Committees/Meetings dealing with the subject at hand.

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, in meetings between the Agency and other entities/organizations, public or private, when the subject of said meetings concern the conditions of employment or working conditions of bargaining unit employees.

4. The Agency 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. The State Representative or designee will be given reasonable notice of, and will be provided reasonable time to be present at formal discussions concerning any grievance, personnel policy or practice, or other general condition of employment.

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 as a result of performing their authorized duties under the Statute, and that no employee will be reassigned as a result of participating in protected activity.

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. Except in situations arising out of Section 4.2, the Agency agrees to meet with the Union prior to implementing, modifying, or cancelling any personnel policy or procedure that affects employee conditions of employment.

2. The Union will be provided a written notice of proposed changes sixty (60) days prior to the desired date of implementation, except in cases where a change to conditions of employment is necessitated in order to ensure the safety and welfare of personnel or property, or when the Agency, in good faith, cannot provide timely notification under this Section. The notice shall be the Agency's finalized plan-of-action, and shall include the following:

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

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

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

3. 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 IAW Section 6.3.

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

Section 6.3 – Negotiation/Bargaining Procedures

1. The following procedures shall be utilized when either Party requests 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. During negotiations, the Parties will signify agreement on each section by initialing the agreed upon section.

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

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

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

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

g. Negotiability Question: At the time an item is declared non-negotiable by the 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 IAW Section 6.2. It is the burden of the Party claiming the Past Practice to prove its elements.

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

Section 6.5 – Unfair Labor Practices (ULP)

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

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

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

Section 6.7 – Official Time and Travel of Union Representatives

1. Union Representatives shall be permitted a reasonable amount of Official Time in order to effectively represent employees IAW this Agreement. Reasonable time for representational activities (e.g., discussions, meetings, investigations, negotiations, and bargaining sessions) shall be that amount of time determined by both Parties to effectively deal with workplace matters such as:

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 forty (40) hours per individual per calendar year, excluding travel time. A request to exceed the forty (40) hour timeframe shall not be unreasonably denied.

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 their 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 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. The Union shall be allowed to conduct membership drives before and after duty hours, and during break and lunch periods. 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 their allotment for the payment of dues by submitting an *SF 1188 Cancellation of Payroll Deduction for Labor Organization Dues* form directly to the Union. Once the request is validated the Union will submit the request to the Agency. Upon completion, copies will be provided to the employee, the Union, and to HRO (Labor Relations). By statute, dues allotments must be made for no less than one year.

6. Employees shall have the option of dues revocation on their first-year Union membership anniversary. After the first anniversary, dues may only be revoked in intervals of one-year, beginning on or after the first anniversary date of the allotment. The *SF 1188 Cancellation of Payroll Deduction for Labor Organization Dues* form must be submitted no earlier than thirty (30) days prior to the anniversary date. The Agency will be responsible for recuperating dues not collected as a result of a premature or improper 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 will establish specific work schedules, as necessary, to accomplish the Agency's mission IAW 5 CFR §550.103. The Agency shall consider employee effectiveness, efficiency, professional development and morale in establishing specific workweek schedules. Changes to the work schedule policy that occur over the life of the contract must be bargained IAW Article 6, Section 6.2, prior to implementation, and shall be incorporated as an Amendment to this Agreement IAW with Article 3, Section 3.4.

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

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

a. Primary Work Schedule: 4/10's consists of four (4) ten-hour days, Monday through Thursday, with a thirty (30) minute non-paid lunch period each day.

b. Alternate Work Schedule: 4/10's consists of four (4) ten-hour days, Tuesday through Friday, with a thirty (30) minute non-paid lunch period each day.

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

5. Any changes to the work schedule policy, regardless of whether all or a portion of the bargaining unit is affected, must be negotiated with the Union IAW Section 6.2 prior to implementation. Work schedule changes due to emergencies will be accomplished IAW Section 4.2.

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. Employees must be in their assigned duty uniform at all times during their work shift. Clean-up time authorized IAW Section 11.10 may not be used to change into or out of civilian clothes.

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 their supervisor. 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 supervisor 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, and will ask the employee whether they agree or disagree with the determination. Any disagreement shall be processed using the negotiated grievance procedure in Article 12.

7. Employees will not be permitted or be required to work during any period for which leave is charged. However, the Agency may cancel approved leave to meet mission requirements.

Section 8.3- Lunch Periods and Breaks

1. Employees are authorized a thirty (30) minute consecutive and uninterrupted lunch period every workday. A lunch period is a time during which an employee is entirely free from work responsibilities. During this time, the employee is considered to be off-duty.

2. When Agency mission requirements do not allow an employee a full thirty (30) minute consecutive and uninterrupted lunch period, the employee will be compensated for their missed lunch period.

3. 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, or at the beginning or end of the work day.

4. Upon request, or at the direction of a supervisor, an employee may be authorized additional rest periods of a short duration when such periods are deemed beneficial and/or necessary. Additional rest periods are appropriate in the following situations:

a. To provide relief from extreme temperature, hazardous work, confined or restricted spaces, or from work that requires continual and/or considerable physical exertion.

b. To reduce the potential for accidents due to fatigue.

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 applicable law 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 performs 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. Except during periods of emergency IAW Section 4.2, the Agency shall provide affected employees not less than seventy-two (72) hours' notice to schedule involuntary overtime time, except when the Head of the 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, when possible. 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, upon request, be granted a fifteen (15) minute paid break at the beginning of the overtime period and, at the employee's request, a thirty (30) minute non-paid meal break to begin no later than two (2) hours after the overtime period begins.

Section 8.5 – Call Back

1. Call Back is the act or an instance of requesting that an off-duty employee report to work and perform assigned duties on a day when work was not scheduled, or after the regular work day is over.

2. Unscheduled call back work entitles an employee to at least two (2) hours of compensatory time, plus an amount compensatory time equal to the time it takes the employee to travel to and from the worksite.

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 their 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 standby status, and of its cancellation as soon as possible.

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 their living quarters or designated post of duty;

(2) Has activities substantially limited; and

(3) Is required to remain in a state of readiness to perform work.

c. Employees will be compensated in equal amounts spent by them in irregular or overtime work IAW applicable law.

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 is required to work, the employee shall be compensated from the moment the work begins.

Section 8.7 – Other Pays

Night Shift Differential, Sunday and Holiday Premium pay will be computed IAW applicable laws.

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 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 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 and regulation.

2. A supervisor may require a medical certificate to support use of sick leave for three (3) consecutive days or more, or for a lesser period when the Agency determines it's necessary. 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.

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. Additional guidance for CT (Overtime Work) is addressed in Article 8.4.

4. An employee must use accrued compensatory time off by the end of the 26th pay period (one year) after the pay period during which it was earned. Dual status technicians that fail to use the accrued compensatory time will forfeit their CT, unless it is due to a requirement of the service beyond the employee's control.

Section 9.5 - Leave Without Pay (LWOP)

1. An employee’s request for LWOP 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 official Union duties may require an extended absence from their regular position, shall be granted annual leave and/or leave without pay upon request, not to exceed four (4) cumulative years, pursuant to a sixty (60) day written notice. LWOP will not be granted for the purpose of political campaigning.

    b. To deal with personal matters or emergencies.

2. Employees are entitled to LWOP 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 twelve (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 laws and regulations. The intent of an excused absence is to provide for authorized brief absences from duty without loss of pay and without charge to other paid leave.

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

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

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

(1) Dental Exams: Excused absence related to annual dental exams required by a dual-status technician's military service will be limited to one (1) doctor's visit per year. The amount of excused absence granted shall be the amount of time needed to cover the medical appointment, plus the amount of time needed to cover travel to and from the employee's assigned duty station and the medical facility. There is no limitation on the amount of excused absence that may be granted under this section as long as the employee's medical appointment meets the criteria herein.

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

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

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

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

iv. The amount of excused absence granted shall be the amount of time needed to cover the medical appointment, plus the amount of time needed to cover travel to and from the technician's assigned duty station and the medical facility. The employee will request that the medical facility provide documentation verifying the appointment start and end time, and shall submit that documentation to their supervisor.

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

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

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

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

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

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

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

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

(1) Employees may be authorized a maximum of 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 attend events hosted or sponsored by professional organizations affiliated with the employee's status as either a civilian employee or military member (i.e., EANGUS, NGAUS, Federal Executive Board, etc.) when it is determined by the Agency that such attendance will serve the public interest. Excused absence is not applicable when attendance is in a military status (paid or non-paid); in such cases, military and/or annual leave would be appropriate.

Section 9.7 – Hazardous Weather and Other Emergency Conditions

1. When hazardous weather or other emergency conditions (i.e., loss of power, water, or heat) are affecting, or are forecasted to affect, an employee's home of record or worksite, the Agency may approve an employee's request for leave so that they may take care of their personal affairs.

2. The Agency shall, at TAGs discretion, assign administrative leave status when an employee is prevented from reporting to duty, or is dismissed by the Agency prior to the end of the duty day, because hazardous weather or other emergency conditions make it unsafe or impractical for the employee to either travel from their home to the worksite, remain at the worksite, or travel from the worksite to their home. Road closures enforced by local government agencies and other general warnings by local public officials for citizens to 'remain in place' are reliable indicators that conditions exist which may qualify an employee for administrative leave under this section.

a. If an employee requests leave under Paragraph 9.7(1) prior to an administrative dismissal being authorized under Paragraph 9.7(2) then they will be charged leave until the time set for dismissal.

b. If an employee is already scheduled to be absent for the entire work shift on a day when administrative leave is approved under this section then the entire absence is charged to the appropriate leave status requested and they will not be eligible for administrative leave.

3. Unless notified otherwise, employees are to presume that their worksite will be operational each regular work day regardless of weather or other emergency conditions.

Section 9.8 – 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 – Leave in Conjunction with Military Duty

1. An employee who is also a member of the Reserve Component is authorized fifteen (15) days, or one-hundred and twenty (120) hours, of military leave each fiscal year to cover periods of absence from work in order to perform military duty. However, employees are entitled to use any combination of military leave, annual leave, compensatory time, time-off awards, or leave without pay (LWOP) in conjunction with military duty performed during their regular duty hours. The following guidance applies:

a. Military duty includes training or duty such as active duty for operational support (ADOS), annual training (AT), and other Federal duty statuses approved by law. Normally, these duty periods are equal to one twenty-four (24) hour period of duty, or one day.

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

c. Military leave may not be used to cover periods of state active duty (SAD). However, employees may use any other leave status mentioned in paragraph 1 (above) to cover the period of absence as a result of SAD, as well as law enforcement leave (LEL) as described in paragraph 3 (below).

2. When using leave in conjunction with Inactive Duty Training (IDT) periods:

a. IDT is training or duty other than active duty. This includes Unit Training Assemblies (UTA), and MUTA (Army) periods.

b. IDT is scheduled in a minimum of 4-hour increments. Up to two (2) IDT periods may be scheduled in one day. For example, a normal UTA is scheduled over the course of two non-work days (usually Saturday and Sunday), and is equal to four IDT periods. On occasion, employees may be required to perform IDT, such as a MUTA five (5) or six (6) during their regular workweek.

c. Employees performing IDT during the regular workweek, and at their civilian duty station, will only be charged the amount of leave necessary to cover the period of training. The length of the duty period is calculated based on the time the employee was required to report for military duty until the time they were dismissed from said duty. If an employee is dismissed from military duty prior to the end of the regular civilian work shift, the employee will be required to return to fulfill their civilian duty until normal dismissal time. Employees who choose to leave the work site immediately after their military duty period, but prior to the end of the civilian duty day, will have to cover the period of absence with an appropriate amount and type of leave.

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

3. An employee who is also member of the National Guard, and who has been called to duty in support of law enforcement, or to provide assistance to civil authorities in the protection of life, the prevention of injury, or the protection of property is entitled to one-hundred seventy-six (176) hours, or twenty-two (22) days, of additional military leave each calendar year, otherwise known as law enforcement leave (LEL).

a. Employees are not authorized to retain both their military and civilian pay when using LEL.

b. The offset rule requires that an employee's civilian pay be reduced by an amount equal to the military pay (not including travel, transportation, or per diem allowance) received for military service while in an LEL status. In other words, full military pay is received, but the offset rules require a crediting of the military pay against civilian pay, thus, reducing the employee's civilian pay.

c. Civilian pay is not reduced for military pay received for service on non-workdays.

d. A copy of the employee's active duty orders and a certificate of attendance must be furnished to their civilian payroll office in conjunction with their time and attendance record for each period during which LEL is used.

e. Carryover of all or a portion of the one-hundred seventy-six (176) hours is not permitted.

4. An employee who is also member of a Reserve Component is entitled to use forty-four (44) days of military leave, or three-hundred fifty-two (352) hours, without loss of, or reduction in pay, leave to which otherwise entitled, credit for time or service, or performance efficiency rating for days in which serving on active duty without pay. The active duty must be performed under Title 10 U.S.C. 12301(b) or 12301(d) for participation in operations outside the United States, its territories and possessions.

a. The leave is charged in units of whole hours on the same basis as annual and sick leave. Holidays and non-workdays are not charged.

b. Employees may also use annual leave, compensatory time, or leave without pay in conjunction with the 44-day leave.

c. The entitlement is on a calendar year basis. There is no entitlement to carry over any unused military leave from one year to the next.

d. While on 44-day military leave, employees receive their civilian pay for time they would otherwise be in a paid civilian duty status.

e. Members are entitled to military retirement points and medical coverage while on military duty in a non-pay status.

f. Employees must elect prior to deployment the period during which they will use the

44-day military leave and other appropriate leave.

g. Employees must initiate/request the use of the 44 workdays of ML and/or other appropriate leave by submitting an OPM Form 71 (or its equivalent) and a copy of their military duty order prior to deployment. Requesting leave is the responsibility of the employee and must be requested in advance of use – not retroactively.

5. The following guidance applies to dual-status technicians, only:

a. Readiness Management Periods (RMPs) IAW DoDI 1215.06:

(1) A military technician may not be placed in a leave status to perform duty in an RMP status. Additionally, a military technician may not perform duty in an RMP status to accomplish activities that are within the normal requirements and workload of the military technician's job description.

Section 9.10 – Court Leave

1. Employees are authorized court leave with pay when summoned in connection to serve as a juror; or as a witness in a nonofficial capacity on behalf of any party in connection with any judicial proceeding to which the Federal, State or local government is a party.

2. If an employee is on annual leave when called for jury duty or witness service, court leave shall be substituted. No charge shall be made to annual leave for the court service.

3. An employee who is under proper summons from a court to serve on a jury should be granted court leave for the entire period, regardless of the number of hours per day or days per week the employee actually serves on the jury during the period.

4. Jury service for which an employee is entitled to court leave does not include periods when the employee is excused or discharged by the court, either for an indefinite period, subject to call by the court or for a definite period in excess of one (1) day. Therefore, an employee may be required to return to duty or be charged annual leave if excused from jury service for one (1) day or even a substantial part of a day. The employee may not, however, be required to return to duty if it would cause a hardship.

5. When an employee is called for court service (as a witness or juror), the court order, subpoena, or summons, if one was issued, must be presented to the supervisor as far in advance as possible.

6. The employee cannot retain fees received for jury duty and witness service performed. The employee must submit fees received for jury or witness service by money order or personal check to the Agency. A certificate of attendance from the clerk of the court must also be submitted. The certificate shows inclusive dates of jury duty or witness service and amount of fees the court paid to the employee. The certificate of attendance, separately, should identify fees and allowances.

7. Fees received by the employee are collected while allowances are not collected. If the certificate of attendance does not identify allowances separately, all moneys are considered fees

and shall be collected.

8. The employee may keep reimbursements for expenses received from the court, authority, or party that caused the employee to be summoned, and may keep fees that exceed the employee's compensation for the days of service. An employee serving on a jury in a state or local court who waives or refuses to accept jury fees is still liable to the U.S. Government for the fees that would have been received.

ARTICLE 10 - DUAL STATUS TECHNICIAN REQUIREMENTS

Section 10.1 – Uniform 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. Employees 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.

3. The Agency shall provide employees with a total of four (4) sets of their primary duty uniform and all accessories required for proper uniform wear IAW military regulations as follows:

a. Uniforms will be provided 'ready-to-wear' to include emblems/patches/ribbons, nametags/tapes, insignia, etc. as required by regulations.

b. All other clothing accessories such as undershirts and socks, ties, gloves, shoes/boots, hats, etc. as required by regulations.

c. Cold and foul weather gear as provided in Section 11.3(5).

d. Items shall be replaced on a fair wear and tear basis. Employees are highly encouraged to order fair wear and tear replacement items as soon as the item becomes unserviceable. Employees who delay ordering new replacement items until their entire stock of uniforms are unserviceable may experience delays in having items issued, and may become responsible for purchasing their own items in order to comply with the requirement to report to work in the appropriate duty uniform.

4. Employees receive their normal issue of military apparel through membership in the UT ARNG. The following process will be observed when requesting uniform items:

a. STEP 1: Employees will submit orders for required uniform items through their military unit of assignment supply system.

b. STEP 2: The military unit will review the order to ensure the employee is authorized to be issued the items requested, and will place an order for the items which the employee is authorized to receive. The order will be placed as soon as possible, but no later than thirty (30) days after the items were requested.

c. STEP 3: As soon as possible, but no later than sixty (60) days after placing an order, the employee shall confirm the status of their uniform order with the military unit, to include the expected date of issue.

i. If the uniform items are expected to issue within one-hundred and twenty (120) days, the employee will follow-up with the unit to ensure they retrieve the ordered items. If items are not received as expected, go to STEP 4.

ii. If the uniform items are not expected to be issued within one-hundred and eighty (180) days after initial order, go to STEP 4.

d. STEP 4: The employee shall notify their immediate supervisor of the delay so that the Agency can secure the uniform items through alternate means, to include local purchase. The supervisor may also determine the employee's temporary proper attire until such time as a serviceable uniform can be obtained.

e. If an employee's uniform order is not fulfilled within one hundred eighty (180) days of their initial request, the employee may file a grievance IAW Section 12.6, Phase 3, the Adjutant General Review.

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. An employee who is pending disability retirement may be retained until the disability retirement process has been completed. The supervisor will make a recommendation based upon each individual situation. The recommendation will be forwarded up the supervisory chain for final determination. The employee, if retained, may be reassigned to a different position and/or a different work site within the same commuting area. However, any change in duties or work location shall not adversely affect the employee's pay.

Section 10.3 –Qualitative Retention Boards (QRB)

1. A military technician (dual status) not selected for retention may submit a request for retention as follows:

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

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

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. 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, segregated by gender, that are adequately cleaned/maintained, powered, and stocked with supplies, and which have ready access to potable drinking water. When such facilities are not available, the Agency shall provide temporary portable latrine, shower, and mobile drinking water, and shall provide for the regular cleaning/maintenance, and replenishment of supplies until permanent facilities are provided or restored. When neither permanent nor temporary portable hygiene facilities nor drinking water is available at a worksite, that site shall be deemed unsuitable to be occupied and employees shall either be relocated to a suitable facility, or shall be excused from work until personal hygiene facilities and potable drinking water are made available.

9. An employee under the care of a physician shall promptly inform the supervisor of any condition or prescribed medication that will impair the employee's ability to safely perform assigned duties. Information provided by an employee shall include the limiting effects of the condition or medication and expected duration. 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.

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.

2. An employee's medical record may be disclosed without their consent in accordance with DoD 5400.11-R C4.2, as long as the individual requesting access has an official need for the record, articulates in detail why the records are required, the intended use of the record relates to the subject matter for which it is maintained, and only the minimal amount of information required is disclosed. The entire record is not released if only a part of the record will suffice. A requestor's rank, position, or title alone does not authorize access to personal information about others, including their medical record.

3. The Agency shall host "Health Benefits Seminars" in support of the annual benefits open season period. During these seminars, representatives from major insurance providers will be made available to provide employees information regarding their benefit plans. Dates and locations will be determined by the Agency. Employees will be made aware of these seminars as far in advance as possible, and will be allowed excused absence to attend.

Section 11.3 - Safety and Protective Clothing/Equipment

1. The Agency agrees to provide required safety equipment and protective clothing to employees to facilitate the performance of their assigned duties.

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

3. Employees will be issued protective footwear, and replacement for fair wear and tear of such, that conforms to OSHA standards as outlined by applicable laws.

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. Maintenance technicians (direct labor positions) will be provided two (2) issued coveralls and, if available and authorized, two (2) insulated coveralls to include cleaning and repair or replacement as necessary of such coveralls, through a contract service to be determined by management.

5. The Agency agrees to provide employees clothing items as required to work in inclement weather conditions IAW CTA requirements and authorizations. 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 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. When an employee is assigned a safety-related additional duty for which they are not currently trained or qualified to perform, the Agency must ensure that the employee receives the appropriate training prior to carrying out these duties. Any protective equipment normally required during the course of accomplishing said duties must be provided at the time the employee is required to accomplish the task.

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

Section 11.5- Employees Free from Reprisals

1. Employees who file a safety complaint or who request OSHA to inspect a facility, and employees who decline to perform a task under the provisions of Section 11.4 (above), 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 in their personal locker 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 within a reasonable amount of time.

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 Manger will determine evidenced-based work restrictions and/or accommodations that will be implemented when an employee 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 due to an accident or as a result of a reported unsafe condition as it applies to bargaining unit employees.

2. A Union representative will be permitted to accompany any safety, occupational health, or other workplace inspection teams during an evaluation of their unit/facility, and, upon request, provide a copy of any report generated as a result of such an inspection.

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.

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

1. A reasonable amount of time, not to exceed twenty (20) minutes, 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 agrees to 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. This program is not an entitlement and may be modified to accommodate mission requirements. Participation in the program is strictly voluntary and will be utilized in accordance with current TAG policy.

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

Section 11.13 – Safety Committees

1. The Union may appoint two (2) representatives, one primary and one (1) alternate, to serve on the Agency Safety Committee. The purpose of this Committee is to assist and advise the Agency, in accordance with applicable safety directives, on matters affecting Occupational Health and Safety. The Committee shall meet at least quarterly.

2. Local Safety Committees may be established at lower organizational levels, such as individual worksites. When Local Safety Committees are formed, the Union may appoint at least one representative from within the covered area to serve as a committee member. The names of individuals serving on Local Safety Committees will be published and posted on bulletin boards located within the committee's area of responsibility.

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 of 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)(1).

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.

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. 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 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 NGC Local 1776 Business Manager Review Period to request arbitration.

The party seeking arbitration shall provide written notification to the other party informing them that the grievance has been submitted for arbitration.

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

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 FLRA, 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. If a court reporter is requested by the Arbitrator, the cost shall be borne by the losing party. However, if a court reporter is secured for the exclusive use of one party, the cost shall be borne by the requesting party.

5. Costs incurred due to postponement of an arbitration, for whatever reason, will be borne by the party requesting the postponement.

6. 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 their intent to file 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 (31st) 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 addressed by this Agreement, the Parties shall reference current NGB regulations and applicable Federal laws 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 Article 22 (Performance Standards and Evaluations).

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

l. 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 (or equivalent), 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 the supervisor that an entry was made by the end of the following duty day.

b. The employee shall be given the opportunity to discuss the matter with the supervisor, and will initial and date the entry, either on paper or electronically. 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) days.

3. An LOR is a more formal means of making an employee aware that their conduct is unacceptable. When conduct warrants an LOR, 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. An LOR may remain in an employee's record for a period of one (1) to three (3) years, depending on the severity of the infraction.

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 employee's appeal is limited to filing a grievance.

Section 13.4 – Adverse Action

1. An Adverse Action (suspension of fifteen (15) 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 fifteen (15) 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. When a request for extension is denied, the Agency shall provide a written explanation.

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, implementation 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

l. The employer will not unreasonably 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 – General Guidelines

1. Furloughs of thirty (30) days or less will be conducted IAW DoD, NGB, and Agency regulations.

2. Furloughs in excess of 30 calendar days (22 workdays) are considered reductions-in-force and will be conducted IAW 5 CFR Part 351 and 32 USC 709.

3. The Agency shall notify the Union as early as possible of a potential furlough or RIF and shall be included in the planning and implementation team and/or committee assigned oversight of the process.

4. Furlough notices will include:

a. The reason for the furlough and the intent to return employees to work as soon as possible;

b. The estimated length of the furlough (a furlough period can be for 30 consecutive calendar days or 22 nonconsecutive workdays; e.g., 1 day per week for 22 weeks); and

c. Inform the employee of benefits that may be affected (e.g., how to continue insurance coverage) or available during the furlough (e.g., State unemployment).

5. Agency initiated furloughs shall be negotiated in accordance with Article 6.

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

1. Furloughs of thirty (30) days or less, particularly furloughs based on an emergency furlough requiring immediate curtailment of the Agency's activities where a twenty-four (24) hour notice is not possible, to include an absence of appropriations by Congress, the following procedures will be followed:

a. Employees will be notified as far as possible in advance of such furlough. If employees are on leave or TDY, they will be notified, when possible, prior to the beginning of their shift of the day of the required action.

b. Whenever possible, employees will be notified prior to the beginning of their shift on the day they are required to return to work unless a specific amount of days is included in the furlough notice.

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

a. The expected duration of the furlough.

b. The criteria used to determine whether an employee is mission essential or non-mission essential.

c. The designated point-of-contact for the furlough review committee.

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

ARTICLE 15 – MERIT PLACEMENT

Section 15.1 - General Provisions

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

2. Selection shall be based solely on merit and job-related factors, and will be made without discrimination for non-merit reasons such as race, color, political affiliation, religion, gender, sexual orientation, national origin, marital status, membership or non-membership in an employee organization, age, or non-disqualifying physical handicap (except when considering the needs of the military assignment for dual-status technician positions).

3. Military requirements such as assignment, rank (officer, warrant officer, or enlisted), physical standards, and maximum age restrictions are considered job-related qualifying factors for dual-status positions.

4. 5 USC § 2302(b)(7) prohibits the appointment, promotion, employment, or advancement of relatives of an employee who has authority to take, direct others to take, recommend, or approve any personnel action. The Human Resources Office (HRO) will screen all Referral and Selection Certificates to determine if any of the qualified applicants are related to the nominating or selecting official. Where an applicant is determined to be a family member of the nominating or selecting official, said official shall recuse themselves from the placement process.

Section 15.2 – Exceptions to Competition

1. The Agency will provide on-board employees the opportunity to compete for all permanent, and indefinite vacancies that are available within the UT ARNG.

2. Prior to announcing a position vacancy, consideration will be given to filling a vacancy through those actions which are exempt from competition:

a. Promotions due to issuance of new classification standards or correction of a classification error.

b. Promotions when competition was held earlier (i.e., position advertised with known promotion potential).

c. Promotions resulting from a technician's position being reclassified at a higher grade because of additional duties and responsibilities.

d. Position change required by result of reduction-in-force (RIF) regulations.

e. Placement of over-graded technicians entitled to grade retention as a RIF or reclassification.

f. Re-promotion to a grade or an intervening grade or position from which a technician was demoted without personal cause and not at his/her request.

g. Management Directed Reassignment to a position having no higher promotion potential.

h. Temporary promotion of 120 days or less.

i. Detail to same or higher-graded position, or to a position with known promotion potential for 120 days or less.

j. Selection of a former technician from the Re-Employment Priority List for a position at the same or lower grade than the one last held.

k. Direct Hire Authority (i.e., Temporary Not to Exceed [NTE]).

3. The HRO will notify the State Representative in advance when a vacancy is going to be filled as an exception to competition under this section.

Section 15.3 –Vacancy Announcements

1. Vacancy announcements will be IAW the Utah National Guard Merit Promotion and Placement Plan. The Agency will announce all vacancies using the currently approved method (e.g., USA Jobs), and on the appropriate Agency network information system (e.g., SharePoint).

2. When a vacancy is not going to be filled as an Exception to Competition (Section 15.2) the vacant position will be announced IAW the current MPP.

3. The Agency may only advertise a position at an entry (less-than fully qualified) level under the following conditions:

a. To avoid re-advertising if there are insufficient qualified candidates at the fully qualified level.

b. To recruit for candidates at less than the fully qualified level (i.e., to provide 'bridge positions' in support of upward mobility).

c. A Statement of Difference (SOD) will be prepared by the HRO prior to announcing the position at entry levels in order to properly document the duties at each level. Qualifications for dual-status/non-dual status positions will be developed at each grade level and shown on the vacancy announcement.

d. The Agency may not use entry level position as a means to increase their overall manning or as a stop-gap measure during times of limited funding.

Section 15.4 – Evaluation of Candidates for WG-11 or GS-9 Positions and Above

1. The Agency may hire from among properly ranked and certified candidates for promotion; or any other appropriate source.

2. Up to ten (10) qualified applicants per vacancy will be forwarded to the nominating official. When more than ten (10) qualified applicants are certified for a single position, the HRO will appoint a Qualification Review Analysis (QRA) Board to evaluate candidates IAW Section 15.5.

3. When three (3) or more onboard qualified applicants are identified, only those onboard applicants will be considered IAW Section 15.6.

4. When less than three (3) onboard qualified applicants are identified, the Agency may consider all qualified applicants.

5. The HRO will advise, in writing, those individuals who did not meet the qualifications required for the position.

Section 15.5 – Qualification Review Analysis (QRA) Board

1. The QRA will consist of a minimum of two (2) members:

    a. An HRO Staffing representative.

    b. A management representative, preferably not assigned to the work section from where the vacancy is being announced (i.e., a supervisor other than the nominating official), with technical expertise in the field relative to the position being filled.

2. Neither nominating nor selecting officials may participate in a QRA.

3. Persons appointed as members in a QRA will be informed that the processes and results are strictly confidential and that participants may be subject disciplinary action for revealing restricted information.

4. The QRA will narrow the pool of candidates by rating each applicant's level of qualification, experience, past performance ratings, awards and training (both job and non-job related), and education.

5. The top ten (10) candidates identified through the QRA evaluation process will be listed on certified list in alphabetical order.

6. Applicants excluded from consideration using the procedures in this section will be notified that even though they met the basic eligibility requirements for the position that they did not rate high enough to be considered.

Section 15.6 – Selection of Candidates

1. Qualified onboard applicants will be given priority consideration for job vacancies.

2. The Selecting Official must submit written justification to HRO-Staffing to extend consideration beyond onboard applicants.

3. HRO-Staffing shall notify the Union whenever a request to extend the area of consideration is made under this Section.

Section 15.7 – Interviews

1. The Agency agrees that when two (2) or more qualified applicants are referred for consideration, an interview board must be conducted. When interviews are conducted, selecting officials shall conduct fair and impartial interviews of each eligible candidate listed on the HRO job packet. If personal interviews are not possible, telephone interviews may be conducted. If requested by the applicant, and if the circumstances allow, the nominating official will make every effort to grant a personal interview in lieu of a telephone interview.

2. Interviews will be thoroughly documented, and the records closely guarded. The Selecting Official conducting the interviews will collect all records associated with the interview process including any/all documents and data that interview panel members relied on to arrive at their rating of candidates. This includes hand-written notes. These records will become a part of the official record. Once a candidate has been identified for recommended selection, the nominating official will return all forms used during the interview process as well as the nomination package to the HRO.

3. Persons appointed as interview panel members will be informed that the processes and results are strictly confidential and that participants may be subject to disciplinary action for revealing restricted information.

Section 15.8 – Complaints

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

2. The following information shall be made available to an applicant and/or Union representative upon request:

a. Whether the employee was considered for placement and was eligible on the basis of the minimum qualification requirements for the position.

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

made.

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

d. Guidance from the selecting official on areas of improvement to focus on in order to increase promotion potential.

3. Candidates for vacancies may file a grievance IAW Article 12. Only on-board employees may use the grievance procedure. If the employee files a grievance, the Union shall be permitted to review the entire selection packet to determine whether a violation may exist, and will notify the employee as to whether a complaint may be pursued. Processes and results are strictly confidential and the Union may be held liable for revealing restricted information.

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 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.

8. The Agency will establish an EDP/HDP Committee which will meet on an annual basis, or at the discretion of the Adjutant General and as required by the Committee chairperson. The purpose of the Committee will be to conduct a review of the EDP/HDP Plan in order to determine the adequacy of the Plan, and to review the annual expenditures for EDP/HDP. The Committee will be appointed by the Adjutant General, and will have representation from the Union.

9. When a new EDP/HDP situation is approved, an employee who has been required to work under the newly approved conditions may be eligible for retroactive pay. Retroactive payment will be accomplished IAW applicable government regulations.

Section 16.2 – Hazardous Weather Conditions

l. 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 applicable safety regulations.

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

4. IAW Section 11.3, 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.

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.

ARTICLE 17 – POSITION DESCRIPTIONS

Section 17.1 – Employee Awareness of Assigned Duties

1. A position description (PD) is a statement of major duties, responsibilities and supervisory relationships for a given position as required by the mission. Each employee's PD will be maintained in the Supervisor's Work folder, 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.

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 HRO-Classification to determine whether the PD will require pen and ink changes, position review, or a new PD. If a pen and ink change is needed, it must be approved by NGB/TN Branch before implementation. 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.

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 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-Staffing using Standard Form (SF) 52, to include position title, and the start and end date of the detail. HRO-Staffing will evaluate the assignment to ensure compliance with Agency regulations and this Agreement, and notify the supervisor whether the detail is approved or disapproved. If approved, the action will be recorded in the employee's electronic official personnel folder (eOPF).

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

l. The Agency agrees to provide job related training and development for employees, as necessary, to accomplish the mission of the UT ARNG in an efficient manner, and to consider the Union's views and recommendations in developing programs relating to training of employees. The Agency may require a Continued Service Agreement as a condition of training attendance when the cost of said training requires a significant financial expenditure on the part of the Agency.

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.

4. All employees shall have an equal opportunity to receive training.

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 UT ARNG.

2. To the greatest extent possible, and barring any disruption to the mission of the UT ARNG, 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. Upon request, an employee must provide evidence of active/continued enrollment in an accredited institution, satisfactory attendance, and progress in order to justify adjustments to work shifts or schedules.

ARTICLE 19 - EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Section 19.1 – Policy

1. The Parties strongly endorse Title VII of the Civil Rights Act of 1964 (42 USC Chapter 21, Subchapter VI), the right of employees to be free from workplace discrimination. Complaints of discrimination brought by employees are governed by 5 CFR Part 1614.

2. The Parties agree to work together to ensure that all employees are periodically informed of the Agency's EEO policy.

Section 19.2 – EEO Complaint Procedures

1. Any employee who believes they have been discriminated against may file a complaint IAW Federal laws and Equal Employment Opportunity Commission (EEOC) regulations, or may pursue a grievance IAW Article 12, but not both. Employment discrimination includes, but may not be limited to:

a. Unfair treatment because of your gender, race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, sexual orientation, 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, sexual orientation, or genetic information.

c. Denial of a reasonable workplace accommodation that you need because of your religious beliefs or medically documented disability.

d. Retaliation due to filing a complaint of discrimination, or involvement with a discrimination investigation or lawsuit.

e. Discrimination on other basis including sexual orientation, status as a parent, marital status, political affiliation, and conduct that does not adversely affect the performance of the employee.

2. In cases where an employee alleges that they are a victim of sexual assault or sexual harassment committed by other Agency employees, to include allegations against an immediate supervisor, a co-worker assigned to the same work section, or any other individual within close proximity to the accuser (i.e., where accuser and accused are more likely than not to interact on a daily basis), the Agency may consider temporarily reassigning some or all of the individual(s) in order to reduce the potential for further conflict during the investigative phase. However, any reassignment shall be temporary, and it shall not have an adverse impact on any of the individuals involved.

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 to make space available, upon request, for the Union to conduct internal business.

2. The Union shall comply with all security rules applicable to the UT ARNG. Requests for a meeting facility will be coordinated by the Union with the Agency prior to use.

3. The Agency shall provide the Union with office space at no cost within the UT ARNG Headquarters as follows:

a. A climate controlled office that can be secured, and which has adequate lighting and power. The Union will be allowed to post signage identifying the offices IAW the Agency's signage regulations or plan.

b. The Union will be responsible for furnishing each office space, and will provide for their own computer, printer, and telephone equipment at no cost to the Agency. The Agency will provide the Union with telephone access to conduct official business.

Section 20.2 – Mail Service

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

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

Section 20.3 – Publications and Other Services

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

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

Section 20.4 – Bulletin Boards

1. The Agency will provide space for a bulletin board for the exclusive use of the Union in each work site where bargaining unit employees are assigned. The bulletin board shall be purchased by the Union, and shall be located in an area where employees normally congregate or pass for the posting of Union bulletins or notices. Typical locations include areas where the Agency maintains other informational bulletin boards, lunch/break rooms, or any other conspicuous place where

the information is openly visible and access is not restricted.

2. The Union will be responsible for the content of literature posted on the bulletin board. Any such bulletin notices or literature posted or distributed must not violate any law, security, directive, or contain inappropriate material.

3. The Union agrees to maintain the bulletin board space provided in a neat and current manner.

Section 20.5 – Common Areas

1. The Agency will provide parking spaces on a first come, first served basis, and shall submit its Reserved Parking Plan (if applicable) to the Union, IAW Section 6.2.

2. The Agency shall make available personal lockers of adequate size and located in a conveniently accessible location for storage of employee clothing and other personal items.

3. The Agency agrees to maintain adequate common areas (i.e. break areas, locker rooms, etc.) within each facility. Upon request, the Parties will meet at a mutually agreed upon time to discuss improvements to these facilities. If there is a demonstrated need, the Agency agrees to meet and discuss the establishment of such facilities, consistent with appropriate regulations and budgetary constraints.

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

Section 21.1 – General

l. 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 the 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. However, in those cases, military rank may not be used to determine accommodation arrangements. In these circumstances, the Agency will ensure equitable treatment when management and employees are on the same or similar missions, meaning that both management and employee personnel quarters will observe the same living arrangements (i.e., number of employees assigned per room will be the same as the number of management representatives assigned per room), and that accommodations will be of equal standard (i.e., employee quarters will be of the same quality as those of their management counterparts).

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 and regulation.

2. The Agency will notify employees as far in advance as possible of TDY travel. An employee may request to be excused from TDY under justifiable circumstances. If an employee's request is denied, the Agency shall provide the employee a written explanation.

3. Travel will be conducted by the most advantageous, prudent, and economic means available. The Agency will not require an employee to use their privately-owned vehicle (POV) for travel nor will an employee be entitled to reimbursement for POV travel not previously approved and the most cost effective mode of transportation IAW the JTR and Agency policies.

4. An employee’s objection to traveling by commercial airline, which is supported by a valid medical certificate stating he or she should not travel by aircraft, may be accepted as sufficient authority to utilize other methods of transportation. 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's be assigned to any employee as a reward or punishment.

Section 21.3 – Temporary Duty (TDY) Assignments

1. The Agency, in consonance with applicable laws and regulations, may require employees to temporarily travel away from their assigned duty station in order to meet mission requirements. This is commonly known as TDY. When an employee is assigned TDY work, the provisions of this agreement shall be observed regardless of whether the assignment is performed on a voluntary basis, or as directed (involuntary) by the Agency in order to support the Agency's mission.

2. TDY requirements will be announced as far in advance as possible to allow employees the opportunity to make suitable arrangements in order to perform the work.

3. The Agency will make every effort to direct or assign employees TDY 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 TDY's be directed or assigned to any employee as a reward or punishment.

4. 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 TDY work, the Agency has the authority to direct an employee to participate in a TDY in order to meet the Agency's mission requirements.

5. Except during periods of emergency IAW Section 4.2, the Agency shall provide affected employees not less than two (2) weeks' notice to schedule an involuntary TDY, except when the Head of the Agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased.

6. Supervisors will also take into consideration any personal hardships that TDY work may cause the affected employee(s) and will make every effort to accommodate said hardships. These include issues such as child care, school, and other bona fide hardships that may affect the employee and/or their family due to the TDY work.

Section 21.4 – Conditions of Employment

1. The provisions of this Agreement shall apply to the Parties during TDY, to include the scheduling of work, overtime requirements, compensation, discipline, complaint resolution, and other conditions of employment.

2. The Agency may request that the Union designate one or more representatives, depending on the number of employees taking part in the TDY, to serve as Union Stewards.

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.

2. The development of performance standards and identification of critical elements will be a joint effort between the employee and supervisor. These elements must be fair and equitable and consistent with the position description of the job.

3. The standards and identified critical elements shall be put in writing and acknowledged by the employee and supervisor. Amendments and/or modifications can be made during the rating year as long as both the employee and supervisor acknowledge the changes/modifications.

Section 22.2 – Official Appraisal

1. To have an objective appraisal, an employee will work for their appraiser not less than ninety (90) days. When this is not the case, the last approved performance appraisal on file will be used as the employee's most recent rating of record.

2. A supervisor's evaluation of an employee's performance shall be objective and supported by fact. When an employee believes the above criteria has not been met, an appeal may be made using either the Agency's appeal process or the grievance process in Article 12.

3. An employee and their supervisor shall meet, face-to-face, a minimum of three (3) times during the rating cycle in order to accomplish their appraisal:

a. At the beginning of the appraisal period to discuss the performance standards and critical elements to be applicable for the coming rating period, and to discuss performance expectations. Performance will be appraised on a continuing basis and employees shall be kept up-to-date as to how their performance compares to the established performance standards.

b. At least once during the course of the appraisal period to conduct an interim performance review and provide the employee feedback on whether they are meeting expectations, and if not, how they can improve performance. If the supervisor has identified short comings in the employee's performance, the employee shall be notified of perceived problem areas and will be provided guidance on how to improve the quality of work in order to more satisfactorily perform duties at expected levels.

c. At the end of the appraisal period to review the employee's performance during the course of the rating period, and discuss the results. Performance appraisal will be presented to an employee with the goal of communicating the supervisor's overall assessment of the employee's performance over the rating period, review accomplishments, address shortfalls, and discuss the next rating period to include proposing any changes or adjustments he/she feels may be appropriate.

Section 22.3 – Actions Based on Unacceptable Performance

1. An indefinite or permanent employee not serving in a probationary or trial period, and whose performance is below fully successful (or its equivalent), is entitled to a written notice of sub-standard performance. If a performance improvement plan (PIP) is required, the PIP shall be for a minimum period of ninety (90) days and shall inform 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. No action based on unacceptable performance may be taken until critical elements and performance standards have been identified in writing.

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

Section 22.4 – 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, the supervisor will be notified at least sixty (60) days prior to the eligibility date. In turn, the supervisor will notify the employee.

2. If the employee's performance becomes acceptable, the WGI shall be granted.

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

Section 22.5 – Incentive Awards Program

1. The Agency recognizes the importance to reward those employees that consistently excel in the performance of their duties. Therefore, the Agency will implement and maintain an Incentive Awards Program to recognize employee efforts. The Agency agrees to include a Union representative on the Incentive Awards Committee.

ARTICLE 23 - EMPLOYEE ASSISTANCE PROGRAM (EAP)

Section 23.1 – General

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 employer 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 will advise employees of other programs offered (i.e., Military One Source, Military Family Life Consultants, VA, etc.).

2. The Agency may refer employees to EAP; however, participation in the program is strictly voluntary.

3. A fundamental purpose of EAP is to assist employees with problems that may result in conduct or performance deficiencies. However, the program is not intended to shield employees from corrective action(s). While participation in EAP is strictly voluntary, the Agency may recommend that the employee seek EAP assistance as an alternative to disciplinary action. In these cases, the Agency agrees to hold in abeyance a proposed disciplinary action so long as the employee participates in EAP, does not engage in new instances of misconduct or performance deficiency, and successfully completes the treatment to which he/she is referred. If the employee meets these requirements, the proposed disciplinary action will be rescinded. This provision only applies to first-time offenses or instances where an EAP referral may serve as an alternative to disciplinary action. EAP should not be considered, and may not be invoked, in cases of severe, egregious, or criminal misconduct.

4. EAP does not limit the Agency's right to take administrative and/or adverse action.

5. No disciplinary or adverse action will be taken, specifically, as a result of an employee either using or refusing EAP. This extends to an employee who self-discloses a personal medical/behavioral condition to the supervisor. Participation in rehabilitative programs may be taken in consideration when disciplinary action is pending against an employee.

ARTICLE 24 - OUTSOURCING AND CONTRACTING OUT

Section 24.1 – General

1. The Parties agree that it is in their interest to preserve manpower positions within the UT ARNG.

2. The employer 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 employer agrees to negotiate with the Union to the extent those negotiations do not interfere with Management's rights under the Statute. The employer also agrees to negotiate appropriate arrangements for employees adversely affected by the decision to contract out work.

ARTICLE 25 – WAGE SURVEY

Section 25.1 – Employee Participation

1. The Parties recognize that valuable contributions can be made in regards to developing wage policies and in conducting wage surveys. When requested to do so by the Local Wage Survey Committee (LWSC), the Agency and the Union will select employees as data collectors on the basis of their qualifications, to assist in the collection of wage data.

2. Wage Grade employees selected to be data collectors shall be members of the Union.

3. If selected by the LWSC to host the collection of wage data, the Agency will furnish temporary office space and communication equipment (computer terminals, telephone, and fax machine) as necessary in order to support the DoD Wage and Salary Survey Team.

4. The Agency may provide employees serving as data collectors with access to GSA vehicles in order to facilitate their collection of local wage data.

ARTICLE 26 – LABOR/MANAGEMENT COOPERATION

Section 26.1 – Joint Employer-Union Sponsored Training Sessions

1. The Parties may conduct joint Employer-Union training sessions. The training sessions may include training on the administration of this agreement, Alternate Dispute Resolution (ADR) or Interest Based Bargaining (IBB) methods, and other topics specifically related to Labor/Management Relations (LMR).

2. Training conducted will be on Official Time.

Section 26.2 – Labor/Management Relations (LMR) Training

1. Employees serving as Union Representatives may be granted official time in conjunction with attendance at training sessions sponsored by the Union, to include time for travel to and from the training event, provided that the subject matter of such training is in the public interest and will benefit the U.S. Government, the Labor Organization, and the UT ARNG.

2. Requests to be excused to attend Union sponsored training will be submitted, with justification to the supervisor and HRO, 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 after the request is received IAW Section 26.2(2).

4. Information needed for approval of LMR Training is as follows:

a. The name and title of the Union Representative(s).

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 or a letter certifying attendance is required to verify excused absence.

6. Verification of attendance will be given to immediate supervisors for time keeping purposes.

7. When LMR training constitutes official business (i.e. training is in the public interest) and is considered beneficial IAW 5 USC §7131 (d)(2), travel and per diem may be paid IAW appropriate law or regulation.

Section 26.3 – Orientation of New Employees

1. All new employees shall be informed by the Agency that the Union is their exclusive representative. The Agency will provide each new employee a link to the Union website.

2. The Agency will also allow the Union an appropriate amount of Official Time to brief new employees on their rights, the Union's role in the workplace, and the membership benefits of the Union.

Section 26.4 – Labor Management Relations Council

1. The Parties acknowledge a common interest for improving operations of the UT ARNG, and the wellbeing of its employees. The Parties agree to establish a Labor Management Relations Council (LMRC) to consider any suggested improvements in the areas of personnel policies, practices, and working conditions.

2. The Council will consist of an equal number of representatives from the Union and Agency, usually six (6) members, three (3) from each organization, for example:

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

3. The Council shall meet bi-monthly (every other month), or at the request of either the Agency or Union. The meeting location will be mutually agreed upon by both Parties. Generally, the matters discussed may include, but are not limited to:

a. The interpretation and application of this Agreement.

b. The identification and/or correction of conditions causing grievances and misunderstandings.

c. Prevention of accidents.

d. Improving communications between employees and supervisors.

e. The encouragement of good human relations between employees and supervisors.

f. Maintaining employee productivity and morale.

g. The promotion of the Equal Employment Opportunity (EEO) Program.

h. The promotion of education, training, and health.

i. The reduction of absenteeism.

j. The improvement of working conditions.

k. The interpretation and application of rules, regulations, and policies.

4. The Council will not consider individual grievances, complaints, or disputes. Upon completion of each meeting the Council will submit recommendations, if any, to both Management and the Union.

5. 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) will act as Secretary to the Council, and will compile agenda items in preparation for committee 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 UT ARNG will accomplish the mission in the most effective and economic way.

Section 26.5 – Joint Responsibilities

1. Unless otherwise specified, the Parties agree that communications will be conducted in a timely manner, and that replies will be furnished to the other within ten (10) days, or less, of receipt of any communication requiring a response.

ARTICLE 27 – ALCOHOL AND OTHER SUBSTANCES

Section 27.1 – General

1. This Article implements the Drug Free Workplace Program (DFWP) for Agency employees in compliance with Executive Order 12564 and 5 U.S.C. Section 7301. This program provides a mechanism for employee assistance and employee education regarding the dangers of drug abuse.

2. It is every employee's responsibility to comply with the DFWP. Any illegal drug use, or abuse of legal drugs by employees has an adverse impact on the accomplishment of the Agency's mission and will not be tolerated.

3. Employees are cautioned to take note that, regardless of individual state legislation or initiatives, the use of any Federal Controlled Substances Act, Schedule I drug, whether for non-medical or ostensible medical purpose, violates Federal law and the Federal Drug Free Workplace Program. It is also inconsistent with performance of safety-sensitive, health-sensitive, and security-sensitive positions, and with other testing circumstances.

4. In general, and given the Agency's mission, the UT ARNG has reason to operate a comprehensive toxicology testing program including pre-employment testing, random employee testing, reasonable suspicion testing, post-accident testing, post-substance abuse treatment testing, and voluntary testing.

5. Any program that subjects UT ARNG employees to toxicology testing shall be administered IAW DoDI 1010.09, the DoD Civilian Employee Drug-Free Workplace Program.

Section 27.2 – Reasonable Suspicion, Post-Accident, and Voluntary Toxicology Testing

1. Employees have a Weingarten Right to Union representation when being questioned during an investigation, especially when there's a reasonable belief that discipline may be imposed. A toxicology test conducted as part of an investigation, to include instances of reasonable suspicion or when an employee is being asked to submit voluntarily to testing in conjunction with an investigation, falls under the Weingarten umbrella, and an employee has the right to request Union representation before agreeing or being compelled to submit to toxicology testing.

2. Employees who are asked to submit to toxicology testing shall be informed of their right to request Union representation IAW Section 5.4(2)(a) before answering any questions or providing a blood, hair, urine, or other type of body fluid/specimen sample. The employee will not have to answer any questions or submit to the toxicology test until a Union representative is present and they've had an opportunity to speak with them in private.

Section 27.3 – Alcohol Consumption

1. While employees have a right to conduct their private lives as they see fit, they are also expected to maintain appropriate standards of behavior, performance, and discipline consistent with service regulations, instructions and policies, and other public laws. As such, the consumption of alcohol by employees may be regulated IAW Federal, state, and local laws and Agency regulations.

2. For the purpose of this Agreement, an “alcoholic beverage” is any liquid beverage containing any amount of ethyl alcohol, including wines, malt beverages and distilled spirits. Consumption of alcoholic beverages, or the possession of an open container thereof, is prohibited under the circumstances listed in this paragraph:

a. At any time during duty hours. Except as described in paragraphs 4 and 7 (below), the Agency cannot place limits or restrictions on the consumption of alcohol during off-duty hours. Off-duty consumption of alcohol is governed by local laws of the jurisdiction concerned. Lunch time is not considered duty hours for employees; however, employees are required to adhere by the requirements of paragraph 3 (below). For dual-status technicians, impairment by alcoholic beverages is strictly prohibited while in military uniform whether on or off duty.

b. On Agency premises, to include any parking lot or parking areas of installations, except where alcohol consumption is permitted, or at an MWR-type of event where consumption of alcohol is permitted IAW paragraph 10 (below).

3. Employees will exercise good sense and restraint concerning consumption of alcoholic beverages prior to reporting for duty, and while TDY. All personnel will report for duty ready, willing, and able to perform their job, free of impairment from alcohol or any other intoxicating substance. On-duty impairment due to alcohol consumption will not be tolerated. Impairment to a degree that an individual is considered unfit for duty is defined as follows:

a. For personnel not subject to Department of Transportation (DOT) regulations on alcohol testing, an individual is considered to be impaired on duty if they have a blood alcohol content equal to or greater than .05 grams of alcohol per 100 milliliters of blood.

b. For personnel who are subject to DOT regulations, an individual is considered to be impaired on duty if they have a blood alcohol content equal to or greater than .02 grams of alcohol per 100 milliliters of blood.

c. For personnel who are subject to Federal Aviation Administration (FAA) regulations (or their military equivalent), an individual is considered to be impaired on duty and unable to perform as a crewmember if they have consumed alcohol within the previous eight (8) hours, or if they have a blood alcohol content equal to or greater than 0.04 grams of alcohol per 100 milliliters of blood, or both.

4. Employees supporting emergency domestic operations who are expected to be on stand-by for the entire period of response will not consume alcoholic beverages at any time while tasked for this type of response. Employees who are restricted from consuming alcohol after the end of their duty shall be considered on stand-by duty and will receive Compensatory Time for such period IAW 5 CFR 551.431.

5. If an accident involving an aircraft or motor vehicle occurs on or off Agency premises, persons connected with the accident, including the operator(s), occupants, and any maintenance personnel who performed work on the aircraft or vehicle within a reasonable period prior to the accident, may be subject to a blood alcohol test and/or urinalysis. The testing requirement for accidents applies to instances when personnel are TDY including conferences, training, and meetings.

6. Employees involved in ground or aircraft accidents IAW paragraph 5 (above), or who are suspected of being under the influence of alcohol or other impairing substances while on-duty, may be subject to a blood alcohol test or urinalysis.

7. The Agency may establish more restrictive alcohol consumption policies in certain circumstances and for temporary periods of time. However, any modifications or changes which this Agreement must be submitted to the Union prior to implementation, IAW Section 6.3.

Section 27.4 – Self-Referral for Drug and Alcohol (Substance) Abuse

1. The Agency, through the EAP, offers employees assistance with identification and treatment of substance abuse. A fundamental purpose of the EAP is to assist employees who seek treatment for drug and alcohol abuse. As such, the Agency shall not initiate disciplinary action against any employee who meets all three of the following conditions:

a. Voluntarily identifies themselves as having a substance abuse problem prior to being identified through other means. Identification must be to the Agency directly, through an immediate or higher supervisor, or through a Union representative;

b. Obtains counseling or rehabilitation through the EAP or other reputable source; and,

c. Thereafter refrains from substance abuse.

2. The key to this provision's rehabilitative effectiveness is an employee's willingness to freely admit to the problem, so this provision is not available to an employee who requests protection under this provision after:

a. Being asked to submit to toxicology testing for controlled substances and/or alcohol;

b. Being identified as the subject of an Agency investigation concerning substance abuse;

c. Being identified as the subject of a law enforcement investigation concerning substance abuse; or

d. Having been found to have used illegal drugs or to have been intoxicated beyond established limits by direct observation, or by evidence obtained from an arrest or criminal conviction.

3. An employee who is engaged in substance abuse and wishes to seek treatment and rehabilitation should contact the Agency (e.g., their immediate supervisor) for an EAP referral, or contact the EAP Coordinator directly. The employee may also choose to seek treatment through other reputable treatment sources at no cost to the Agency. An employee's own admission is sufficient evidence for a determination that they are engaged in substance abuse, and a toxicology test shall not be required.

Section 27.5 – Other Actions Related to Self-Referral

1. Although an employee who meets the voluntary admission criteria in Section 27.4 may not be disciplined for substance abuse, other administrative action may be required. The Agency shall immediately review the employee's job functions to determine if that employee should be relieved from duty. While the employee is undergoing treatment, the Agency may reassign the employee to a position where they will not pose a threat of danger to the safety of others or to the organization's operation. Absent such a position, the employee may elect to be placed on sick, annual, or other appropriate leave status while undergoing short-term treatment and rehabilitation (i.e., thirty (30) days or less). The Family Medical Leave Act (FMLA) may be used for treatment lasting more than thirty (30) days.

2. Results of any toxicology testing conducted by a treatment facility may be released to the Agency only if the employee provides proper consent. Positive test results released by a treatment provider to the Agency may not be counted against the employee in mandatory dismissal actions under Section 27.6; however, any positive test results the Agency obtains through other permissible testing procedures, described in Section 27.10, are fully actionable, even if the testing occurs while a self-referring employee is participating in a rehabilitation program.

4. An employee who is referred for treatment of thirty (30) days or less shall not be included in any Agency random drug testing pool for the duration of such treatment. In the case of a self-referring dual-status technician that enters short-term treatment, the HRO shall notify the employee's military unit of assignment to ensure the employee's name does not appear on a random testing list inappropriately. An employee in longer treatment may be exempted from random drug testing for a period not to exceed sixty (60) days, or for a period specified in an agreement between the employee and management, or a rehabilitation plan approved by the Agency. Upon completing the program, the employee shall be returned to the random selection pool.

5. When the EAP Coordinator or other reputable treatment provider certifies that the employee has successfully completed a rehabilitation program, the Agency shall determine whether the employee will return to their original assignment.

6. To maintain the integrity and confidentiality of employees' rehabilitation activities, patient records will be maintained in a manner consistent with the requirements of 42 CFR 2.1.

Section 27.6 – Disciplinary Consequences

1. An employee may be determined to be in violation of the Agency's substance abuse policy on the basis of any appropriate evidence including, but not limited to:

a. Direct observation of illegal drug use;

b. Evidence obtained from an arrest or criminal conviction;

c. A verified positive test result; or,

d. An employee's voluntary admission.

2. An employee determined to be in violation of the Agency's substance abuse policy shall be referred to the EAP. If the employee occupies a Test Designated Position (TDP) or other sensitive position, the Agency may determine the employee may not be permitted to remain in that position, and place him or her in a non-sensitive position until appropriate action is taken by the Agency.

3. At the Agency's discretion, an employee may return to duty in a test-designated or sensitive position if the employee's return will not endanger national security, public safety, or Agency security.

4. The severity of the disciplinary action taken against an employee determined to be in violation of the Agency's substance abuse policy shall depend on the circumstances of each case and shall be consistent with current NGB regulations. The full range of disciplinary actions, up to and including dismissal, are available.

5. The Agency may or may not initiate disciplinary action against any employee determined to be in violation of the Agency's substance abuse policy and may or may not discipline an employee who voluntarily admits to illegal drug use in accordance with Section 27.4. Such disciplinary action shall be consistent with the requirements of Article 13 and existing disciplinary and adverse action regulations and procedures.

6. The Agency may initiate action to remove an employee for:

a. Refusing to obtain counseling or rehabilitation after having been determined to be in violation of the Agency's substance abuse policy; or

b. Having been determined not to have refrained from illegal drug use after a first finding or admission of substance abuse. Disciplinary action may or may not have been taken on the first determination of illegal drug use in order to propose and sustain a removal.

7. An employee who refuses to be tested when required shall be subject to the full range of disciplinary action, up to and including dismissal. Attempts to alter or substitute a specimen shall be deemed a refusal to take a drug test when required. However, an employee who requests Union representation may refuse to submit to testing IAW Section 27.2.

Section 27.7 – Test Designated Positions (TDP's)

1. TDP's are those positions for which it has been determined that an incumbent's use of illegal drugs would pose a significant threat to national security, public safety, and fellow employees.

2. Employees identified as filling a TDP shall be notified of their testing status prior to implementation of random testing. If an employee believes his or her position has been wrongly classified, he or she may file an administrative appeal to the Agency, who has authority to remove the position from the TDP list.

3. The employee must submit the administrative appeal, in writing, within fifteen (15) days of

notification, setting forth all relevant information. The Agency's decision is a final administrative decision.

4. Each employee in the TDP shall be asked to sign an acknowledgment of notice regarding testing status prior to implementation of a random testing program. The acknowledgment shall be maintained in the employee's eOPF (or equivalent). All newly affected employees shall also acknowledge their awareness of the Drug Free Workplace Program and receipt of a copy of the current version of the Program Statement on the DFWP.

5. If the employee refuses to sign the acknowledgement, the employee's supervisor, or other staff member tasked with distribution of the notice, shall note on the acknowledgement form that the employee received the notice. This acknowledgement is advisory only, and failure to provide a signed acknowledgement shall not preclude drug testing that employee.

6. Once an employee has signed the acknowledgement, the employee shall not thereafter be required to sign a new acknowledgement, unless the employee changes from a TDP to a non-TDP and then changes back to a test designated position.

7. At a minimum, pre-employment and random selection testing shall be conducted for the following drug classes:

a. Marijuana;

b. Cocaine;

c. Morphine, codeine, and other opiates;

d. Amphetamines; and,

e. Phencyclidine

8. Reasonable suspicion, post-accident, and post-substance abuse treatment testing shall be conducted for a minimum of the above listed drug classes. However, as indicated on a case-by-case basis, the testing may be expanded to include any drug found on Schedules I and II of the Controlled Substances Act.

9. If an initial screening through the immunoassay method yields a positive result, the laboratory shall automatically perform a confirmation test on the specimen using Gas Chromatography/Mass Spectrometry (GC/MS). This is the most reliable combination of testing available.

Section 27.8 – Opportunity to Justify a Positive Test Result

1. When the laboratory has confirmed a result as positive, and has reported this result to the Agency, the employee donor shall be provided an opportunity to justify the result based on the medical history. Only a licensed physician may make a determination of illegal drug use. Such determination shall be made only after the physician has afforded the donor an opportunity to justify the positive laboratory finding. When the Agency physician determines there is a

legitimate reason for the presence of the identified drug, the test result shall be identified as negative and be recorded by the Agency as if the laboratory reported it as negative.

2. Regardless of state or local law, the Agency may not accept a prescription, or the verbal or written recommendation of a physician for a Schedule I substance as a legitimate medical explanation for the presence of a Schedule I drug or metabolite in a Federal employee or applicant specimen.

Section 27.9 – Testing by Laboratory of Employee's Choice

1. An employee may request that the Agency retest the original sample within seventy-two (72) hours following notice that a result has been determined positive. This employee safeguard consists of a retest of the original specimen at a second Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory selected by the employee. The Agency shall bear the cost of re-analysis.

2. A decision by the employee to pursue a retest shall not delay Agency-action resulting from a positive drug test. If the retest fails to confirm the presence of the previously identified substance, then the original test shall be considered negative. Any administrative action initiated as a result of the original positive result shall be discontinued, to include any disciplinary action, and all records of such action shall be removed from the employee's eOPF (or equivalent).

Section 27.10 – TDP Categories of Testing

1. Drug use testing shall be done in these categories:

a. Pre-employment. All applicants are to be notified of the Agency's drug testing program, and notification of drug testing is to be posted on vacancy announcements. Applicants tentatively selected for employment with the Agency shall be required to submit to urinalysis drug screening prior to appointment to any Agency position. The applicant is not to be notified of the actual date and time of the drug test. Positive results which cannot be justified by the presence of a prescription drug shall preclude the applicant from any further consideration. If an applicant has entered on duty before positive results are confirmed, and has denied drug usage during the Pre-Employment Interview, action shall be taken to separate the employee.

b. Random. The random testing selection pool shall include all employees occupying TDP's.

c. Reasonable suspicion. The Agency may require that a toxicology test be conducted on the basis of a reasonable suspicion of substance abuse, as follows:

(1) Application: All employees may be tested for suspicion of on-duty use or impairment, and employees in a TDP may be tested for suspicion off-duty use or impairment, in accordance with the following criteria:

i. Facts and circumstances known warrant a rational inference that a person is abusing drugs or alcohol; or,

ii. Suspicion is supported by evidence of specific, personal observations concerning job performance, appearance, behavior, speech, or bodily odors of the employee; or,

iii. If based on hearsay evidence, there is corroborative evidence from a manager or supervisor with training and experience in the evaluation of drug-induced impairment.

(2) Procedure: If an employee is suspected of substance abuse, the appropriate Agency representative shall gather all information, facts, and circumstances leading to and supporting that suspicion, and report that information to the LRS. The LRS or designated representative shall determine if there is sufficient evidence to substantiate reasonable suspicion and, document the specific facts and circumstances that led him or her to believe that the employee is, or has been, using drugs illegally. That documentation shall include, at a minimum:

i. The appropriate dates and times of reported drug- related incidents;

ii. Reliable/credible sources of information or corroborating information; and,

iii. The rationale leading to the test.

Note: A subsequent report shall be prepared to document the test result and the action taken regarding the employee.

(3) Specimen Collection:

i. Notification. When grounds for reasonable suspicion have been established, the Agency shall ensure that:

A. The employee is notified that he or she is required to submit to a drug test based on reasonable suspicion of illegal drug use. The suspected employee shall be explicitly ordered to submit to a reasonable suspicion drug test in the presence of a witness;

B. The trained specimen collector is notified; and

C. An employee is assigned to accompany the suspect employee to the appropriate collection site.

d. Post-accident or Unsafe Practice: An employee filling a TDP may be subject to drug testing if he or she appears to have caused or contributed to a work-site accident resulting in death or personal injury requiring immediate medical treatment, or property damage in excess of $20,000 (Class D Mishap).

(1) If the accident involved the operation of a qualifying commercial motor

vehicle, then post-accident testing may be required under the authority of the Department of Transportation, Federal Highway Administration (DOT/FHWA).

(2) Testing. Based on satisfaction of the above criteria, the immediate or higher-level supervisor may arrange for this type of employee drug test. Local CEO's may further restrict the level of authority required for post-accident testing.

(3) Rationale. When testing is conducted as a result of a work-site accident, the individual requesting the test shall detail in a written report the basis of the decision to require a drug test. The written report shall include, at a minimum, the:

A. Date and time of the reported accident;

B. Circumstances surrounding the accident;

C. Rationale for perceived appearance that the employee may have caused or contributed to the accident; and,

D. Documentation of the order to require a drug screen.

(4) Having determined that a drug test is warranted, the Agency shall conduct a post-accident employee toxicology screen. The Agency shall be responsible for ensuring that the employee is notified of the required drug test, and that the individual clearly understands the requirement to submit to a post-accident toxicology screen.

(5) Specimen Collection. Tests ordered under this provision are to be collected as soon as possible after the accident; however, the drug test shall not interfere with Section 27.2, or the provision of required medical treatment. The employee shall be given the same privacy and safeguards provided under the reasonable suspicion category of testing.

e. Post-treatment – EAP. An employee may be subject to follow-up testing after completing a drug-related treatment program required by the Agency. Follow-up testing shall be conducted without notice or regularity, and may continue for twelve (12) months at the discretion of the Agency.

f. Voluntary. Employees not occupying a TDP are offered the opportunity to submit themselves for inclusion in the random testing program. Volunteers shall be subject to random testing as if they occupied positions deemed to be test designated.

Section 27.11 – TDP Reporting

1. Pre-employment testing. Applicant test results shall be reported to the HRO initiating the request for drug testing.

2. Other testing. The Agency shall immediately notify the appropriate department of any positive

employee test results, and any non-random selection (reasonable suspicion, post-accident, etc.) employee result. The results of negative random selection results shall not be reported except on request.

Section 27.12 – Confidentiality and Processing of Records

1. The Agency shall keep all positive employee test reports for a minimum of five years. All records and information of personnel actions taken on employees who tested positive shall be forwarded to the LRS. All drug testing information specifically relative to individuals is protected under the 1974 Privacy Act, 5 U.S.C. 552a, and shall be available to authorized individuals only on a "need-to-know" basis.

2. Patient records concerning employees are confidential, and shall not be forwarded to the LRS. The EAP or other treatment source may disclose records only as authorized by 42 CFR Part 2, or upon the employee's written consent. With written consent, the patient may authorize the limited disclosure of those records to the Agency for verification of treatment or for a general evaluation of treatment progress (42 CFR 2.1 et seq.).

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 UT ARNG.

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

UT ARMY NATIONAL GUARD OFFICIAL TIME REQUEST 24 HOURS OR LESS – PLEASE PRINT CLEARLY		
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 ☐ YES ☐ 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 ☐ YES ☐ 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

UT ARMY NATIONAL GUARD GRIEVANCE FORM PLEASE PRINT CLEARLY		
Employee Name		Employee Telephone
Duty Location		Work Section
Grievance Narrative (please include Article and Section of CBA that applies)		
Proposed Resolution		
Union Representation ☐ Employee Request Union Representation ☐ Employee Waives Union Representation		
Employee Signature		Date
Phase 1		
Date Submitted	Response Date	Management Representative Name/Position
Resolved (attach justification) ☐ YES ☐ NO		Management Representative Signature
Phase 2		
Date Submitted	Response Date	Management Representative Name/Position
Resolved (attach justification) ☐ YES ☐ NO		Management Representative Signature
Phase 3		
Date Submitted	Response Date	Management Representative Name/Position
Resolved (attach justification) ☐ YES ☐ 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 11 October 2018:

For the Agency	**For the Union**
_____	_____
Chief Negotiator	Chief Negotiator