

## **MOU FOR BARGAINING UNIT E PREAMBLE**

This Memorandum of Understanding (Agreement) is entered into by the State of Maryland (Employer) and AFT Healthcare-Maryland, AFT, AFL-CIO Local 5197 (the Union), and has as its purpose the promotion of harmonious relations between the Employer and the Union; the establishment of an equitable and peaceful procedure for the resolution of differences without disruption in the workplace; and includes the agreement of the parties on the standards of wages, hours and other terms and conditions of employment for the Bargaining Unit E employees covered hereunder. The Employer recognizes the commitment of the Union and employees to organizational efficiency and high-quality services and will actively encourage the sharing of concerns regarding management practices, policies, and procedures.

It is understood that agreements on issues requiring approval by the General Assembly of Maryland are tentative pending approval of the General Assembly of Maryland. The provisions of this Agreement shall in no way diminish or infringe any rights, responsibilities, power, or duties conferred by the Constitution of the State of Maryland, the Annotated Code of Maryland and the Collective Bargaining Law (Title 3, State Personnel and Pensions Article) and all laws are hereby incorporated in this agreement as if fully set forth herein, and in the event of a conflict between this Agreement and the law, the law shall prevail.

### **ARTICLE 1. RECOGNITION**

#### **Section 1. Exclusive Representation**

Pursuant to the Collective Bargaining Law (Title 3, State Personnel and Pensions Article), the Employer recognizes the Union as the sole and exclusive representative in all matters establishing and pertaining to wages, hours and other terms and conditions of employment for all employees in Bargaining Unit E. Classifications are listed in Appendix A. The Employer will not negotiate with any other union or employee organization on matters pertaining to wages, hours and other terms and conditions of employment for all employees in Bargaining Unit E and will not allow non-exclusive representatives or other employee organizations to address new employees at orientation meetings.

#### **Section 2. Integrity of the Bargaining Unit**

Unless otherwise provided by law, the Employer recognizes the integrity of the bargaining unit and will act consistently with the current statutory policy to use State employees to perform all State functions in State operated facilities in preference to contracting out with the private sector. In the event the Employer proposes to use non-bargaining unit individuals to displace continuing bargaining unit positions, it will provide the Union with notice at the earliest opportunity, but normally at least sixty (60) days in advance. Supervisors will not be assigned posts for the purpose of limiting overtime opportunities for bargaining unit employees except when fiscal or operational exigencies necessitate.

If a proposed contract with a private vendor to provide services in a State operated facility is not exempt under any of the specific exemptions provided in law, the contract may only be presented to the Board of Public Works for approval if: (1) the contracting agency has provided DBM with an analysis of the cost of the contract that shows that it will save the State at least \$200,000 or 20% of the value of the contract, whichever is less; and (2) DBM finds that the economic advantage of the contract is not outweighed by the preference to use State employees to perform all State functions in State operated facilities.

At least 60 days before issuing a solicitation for a nonexempt service contract to provide services in a State operated facility a State agency must notify the Union of the nature of the work to be performed, the contracting procedures and timetables, and the rights of State employees as provided by law.

### **Section 3. Inclusion/Exclusion of Existing and New Classifications**

If it is believed that the bargaining unit status of a classification has changed, the Employer or the Union, whichever is proposing the change, shall notify the other. Following such notice, the parties shall meet and attempt to resolve the issue. The Employer will promptly notify the Union of all decisions to establish new classifications. If a new classification is a successor title to a classification covered by this Agreement with no substantial change in duties, it shall become part of this bargaining unit. If a new classification contains a significant part of the work done by any classification in this bargaining unit or shares a community of interest with classifications in this bargaining unit, it shall become part of this bargaining unit. The Union may notify the Employer, within thirty (30) days of receiving notice of a new classification that it believes the classification should be in this bargaining unit. The parties will then meet to review the classification specifications and attempt to resolve the issue. If, within thirty (30) days of such notice, such issues are not resolved in determining the inclusion/exclusion of classifications, the parties shall consider the following factors:

- a. the community of interest of the employees involved;
- b. the Employer's organizational structure;
- c. the Collective Bargaining Law (Title 3, State Personnel and Pensions Article);
- d. the principals of efficient administration of government, including limiting the fragmentation of government administrative authority; and
- e. the recommendations of the parties involved.

## **ARTICLE 2. NON-DISCRIMINATION**

### **Section 1. Prohibition against Discrimination**

It is the policy of the State to prohibit discrimination in employment against any employee or applicant for employment because of race, age, color, religion, creed, sex (including pregnancy), sexual orientation, political affiliation, country of national origin, ancestry, genetic information, gender identity or expression, mental or physical disability, marital status, or labor organization

affiliations, and to promote and implement a positive and continuing program of equal employment opportunity.

It is the policy of the Union that it shall not discriminate against any employee or cause or attempt to cause the State to discriminate against any employee because of race, age, color, religion, creed, sex (including pregnancy), sexual orientation, political affiliation, country of national origin, ancestry, genetic information, gender identity or expression, mental or physical disability, marital status, or labor organization affiliation.

## **Section 2. Union Activity**

Each employee shall have the right to join and while off work or on official release time, assist the Union freely, without fear of penalty or reprisal, and the Employer shall assure that each employee shall be protected in the exercise of such right.

## **Section 3. Equal Employment/Affirmative Action/ADA**

The parties agree to comply with applicable federal and State Equal Employment laws, affirmative action laws and the Americans with Disabilities Act.

## **Section 4. Representation**

The Union recognizes its responsibility as the exclusive bargaining representative for this unit and agrees to fairly represent all employees in the bargaining unit to the extent required by applicable law and regulations.

## **ARTICLE 3. MANAGEMENT RIGHTS**

The State through its appropriate officers and employees has the right to:

- 1) Determine the mission, budget, organization, numbers, types, and grades of employees assigned, the work projects, tours of duty, methods, means and personnel by which its operations are to be conducted, technology needed, internal security practices and relocation of its facilities;
- 2) Maintain and improve the efficiency and effectiveness of governmental operations;
- 3) Determine the services to be rendered, operation to be performed, and technology to be utilized;
- 4) Determine the overall methods, processes, means and classes of work or personnel by which governmental operations are to be conducted;
- 5) Hire, direct, supervise, and assign employees;

- 6) Promote, demote, discipline, discharge, retain, and lay off employees;
- 7) Terminate employment because of lack of funds, lack of work, under conditions where the Employer determines continued work would be inefficient or nonproductive, or for other legitimate reasons;
- 8) Set the qualification of employees for appointment and promotion, and set standards of conduct;
- 9) Promulgate state or department rules, regulations, or procedures;
- 10) Provide a system of merit employment according to the standard of business efficiency; and
- 11) Take actions, not otherwise specified in this Article necessary to carry out the mission of the Employer.

#### **ARTICLE 4. UNION RIGHTS**

##### **Section 1. Access**

The Employer agrees that it shall not discourage bargaining unit employees from Union membership or participation in lawfully permitted activities in the exclusive representative's Union.

The Union agrees to notify the Employer at least two (2) days in advance of a non-emergency, mass meeting. In emergency situations, the Union may call a meeting during work hours to prevent, resolve or clarify a problem with prior reasonable notice to and approval by the Employer. Approval for access described in this section shall not be unreasonably denied.

##### **A) Non-24/7 Buildings/Facilities:**

The Employer agrees that it shall not discourage bargaining unit employees from Union membership or participation in lawfully permitted activities in the exclusive representative's Union.

The Union agrees to notify the Employer at least two (2) days in advance of a non-emergency, mass meeting. In emergency situations, the Union may call a meeting during work hours to prevent, resolve or clarify a problem with prior reasonable notice to and approval by the Employer. Approval for access described in this section shall not be unreasonably denied.

Local representatives, officers and Union staff representatives shall, with prior notice to the Employer, have reasonable access to the premises of the Employer for the purposes of administration of this Agreement. In addition, upon reasonable notice to the Employer and

consistent with security, Union representatives shall have access to the Employer's premises for the purpose of administration of this Agreement and membership recruitment.

The State recognizes the need of local representatives, officers, and Union staff representatives to access buildings/facilities with little or no notice. Therefore, the Union shall not be required to give any specific amount of advance notice.

**B) 24/7 Buildings/Facilities:**

Local representatives, officers and Union staff representatives shall, with prior notice to the Employer, have reasonable access to the secure premises of the Employer for the purposes of administration of this Agreement and membership recruitment.

For the purposes of this section, "reasonable access" is defined as access to 24/7 buildings and facilities in a manner which does not compromise the safety and security of employees, the population served or confidential information that the State has an obligation to protect.

The State recognizes the need of local representatives, officers, and Union staff representatives to access 24/7 buildings/facilities with little or no notice. Therefore, the Union shall not be required to give any specific amount of advance notice.

Upon receiving notice of the need for the Union to access a 24/7 building/facility, the Employer shall expeditiously arrange for access to the building/facility and the represented employees.

Access may not be granted during periods of lockdown or during other emergency or security-related incidents. The presence of local Union representatives, officers and/or staff may not unduly disrupt operations or interfere with work being performed by employees and these individuals must comply with applicable security procedures.

In the event that the agency representative and the Union disagree on "reasonable access," access shall be determined by the agency head or designee. The Union may file a complaint under the Dispute Resolution Procedure outlined in Article 30 of this MOU if it disagrees with the agency's interpretation or application of this Article.

The LMC's are encouraged to develop guidelines regarding access for each facility or building as needed.

**Section 2. Stewards**

The Employer will recognize stewards designated by the Union who will be responsible for investigating and processing grievances and participating in any hearings or conferences related to the grievance. Typically, a grievance will have no more than one (1) steward in attendance, unless the presence of a second steward is part of the training process for the second

steward, in addition to a staff representative, but there shall be no more than two (2) stewards in attendance at all times. In addition, at all 24/7 facilities, there shall be a primary and an alternate steward designated by the Union on all primary shifts who will be responsible for non-grievance activities related to the administration of this Agreement and coordinating the activities of other stewards, to ensure the efficient use of release time.

Whenever possible, the Union will notify the appropriate agency personnel director in writing of the names of the designated stewards prior to them assuming any duties. The Employer shall not deny a State employee the right to represent another employee simply because his/her name does not appear on a job stewards list. Designated stewards shall be allowed a reasonable amount of duty time without charge to pay or leave to administer the Agreement and otherwise represent employees in accordance with the Collective Bargaining Law (Title 3, State Personnel and Pensions Article), law or regulation. To the extent necessary to participate in hearings and meetings, a designated steward's shift shall be adjusted so that such participation shall be on official duty time. Release from duty and shift adjustments will not be unreasonably denied and will be consistent with the operational needs of the Employer.

### **Section 3. Union Activity during Working Hours**

The Employer and the Union recognize that Union representatives and stewards play an important role in effectuating the terms of this Agreement; however, both parties acknowledge that the duties undertaken as a Union representative or steward are in addition to their job assignments. The Union shall notify the Department of Budget and Management in writing of the names of designated Union representatives and stewards prior to assumption of any duties.

Consistent with the operational needs of the Employer, the Employer shall grant time off with pay for designated stewards and Union representatives, including reasonable travel time when necessary during work hours, to attend:

- 1) grievance meetings;
- 2) investigatory or "mitigation meetings";
- 3) Labor Management Committee meetings;
- 4) negotiating sessions regarding supplementation or amendment of this Agreement during its term;
- 5) committee meetings and activities if such meetings or activities have been jointly established by the parties; or
- 6) meetings called or agreed to by the Employer, if such employees are entitled and required to attend the meetings by virtue of being Union representatives or stewards.

Union representatives and stewards shall be allowed reasonable work time to complete assignments that have been assigned by the Labor Management Committee. The employee's supervisor shall approve when the time can be taken.

Release hours will not exceed the employee's normally scheduled workday. Time off with pay will not be unreasonably withheld but shall not exceed 16 hours in a pay period. The Union will normally provide the Employer with the names of its Union representatives or stewards who need release time within 48 hours of the scheduling of the meeting. The employee is required to code any activity pursuant to this section as follows: select work tag "remote work location" and then select "Union

business" on the employee's timesheet.

The practices described in § 12-405 of the State Personnel and Pensions Article shall apply to grievants, witnesses and Union representatives.

The practices described in the current Transportation Human Resources Policy §7I, Subsection 10, shall be maintained.

#### **Section 4. Release Time Account for Union Activities**

On July 1 of each year, the Employer shall credit the Union's release time account with one (1) day for every twenty (20) bargaining unit members. Union representatives will be allowed time off with pay charged against the Account consistent with the operational needs of the Employer for Union business such as job steward trainings, leadership conferences, educational conferences, state or area-wide committee meetings or state or International conventions, and Union-sponsored labor relations training provided such representative provides reasonable notice to his/her supervisor of such absence.

Reasonable notice for Union-sponsored meetings and conventions listed above is at least twenty (20) days and the Employer shall respond within five (5) days of receiving the representative's notice. Less notice may be accepted by the State under special circumstances. Where possible, the Union's request for release time shall identify the specific employees to be released from duty and their work location. Such time off will not be detrimental in any way to the employee's record and will be specifically taken into account when applying performance standards relating to quantity and timeliness of work. Time may be used in one (1) hour increments. Time off with pay will not be unreasonably withheld.

#### **Section 5. Meeting Space**

Union representatives may request the use of State property to hold Union meetings. Upon prior notification, the Employer will provide meeting space where feasible. Such meetings will not interrupt State work and will not involve employees who are working. The Employer shall make space available for Union representatives to have confidential discussions with employees on an as-needed basis subject to availability.

#### **Section 6. Union Offices**

Where the Union is currently provided with office space, such space shall be maintained. In locations where the Union does not have office space, Union representatives shall be permitted to have a lockable Union provided filing cabinet at the Employer's premises.

#### **Section 7. Routine Office Supplies**

Union representatives are authorized to make reasonable use of copiers, FAX machines, computers, and other office equipment for representational purposes, provided such use does not interfere with official State business. Union representatives shall request permission to use such equipment, and approval for use will not be withheld unless such use interferes with official State business.

## **Section 8. Bulletin Boards**

The Employer shall provide lockable bulletin boards at each work location in areas mutually agreed to on a local basis, for the exclusive use of the Union. The Union shall be responsible for all items posted on the bulletin board. Each item posted shall be dated and initialed by the Union official approving the posting. The Union shall ensure that items are not illegal, defamatory, political, or partisan and that no item is detrimental to the safety and security of the institution. At the time of posting, the Union shall provide a copy of all items to the Employer. The Employer shall not permit the posting of notices by non-exclusive representative employee organizations on Employer bulletin boards.

## **Section 9. Mail Service and Computer Mail**

The Union shall be permitted to use internal State mail systems, including computer/electronic mail, for membership and bargaining unit mailings. Confidentiality shall be maintained subject to the Employer's security needs. Union mass mailings by internal State mail will be limited to four (4) times per calendar year. The Union shall give the Employer reasonable notice in advance of mass mailings. The Union and the Employer shall develop a system for these mailings.

Before sending out mass or bulk emails, the Union shall consult with the agency personnel director to ensure that the agency's email system can accommodate such a transmission. In the event that a single mass or bulk email cannot be accommodated because of system limitations, the agency personnel director shall work with the Union to determine the appropriate size of bulk or mass emails. The Union will then be permitted to send smaller mass or bulk emails as needed.

## **Section 10. Distribution of Union Information**

At non-secure facilities, the Union shall be permitted to place and distribute materials at mutually agreed to locations frequented by employees, before and after work, and during breaks and meal periods.

At secure facilities, the Union shall be permitted to place informational materials for employees at the worksite. The information shall be placed at a table provided by the Employer and may have a sign of identification. This placement must be done by an employee or a Union staff representative designated by the Union during the employee's non-working hours. Distribution of materials will be done in a non-secure area during non-work hours.

## **Section 11. New Employee Orientation**

The Union will provide each agency personnel director with the names and addresses of up to two (2) authorized Union representatives per agency to receive notice of each formal orientation meeting held by the Department. The notice will be sent as soon as such meetings are scheduled (but not less than ten (10) days in advance) and will include date, time, and location.

Due to operational exigencies, agencies may schedule an orientation which will provide the Union with less than the requisite ten (10) days' notice; however, the Union shall be notified as soon as possible after the scheduling of the orientation and the Union representative shall be released from duty. Agencies shall routinely schedule orientations in a manner that will allow for the ten (10) day advance notice to the Union.



During the formal orientation, the Union will be permitted to give a twenty (20) minute presentation, which may include an enrollment in supplemental Union benefits. The parties shall encourage employee attendance, although attendance shall not be mandatory.

During the term of this Agreement, in the event a formal orientation meeting is not held, or the Union is unable to attend the formal orientation, the Employer shall allow the Union representative and the employee(s) to meet during duty hours at a mutually agreed upon time and location for twenty (20) minutes. Employee participation in these meetings shall be encouraged, although an employee shall not be required to attend such a meeting. Upon expiration of the Agreement on December 31, 2023, and without further action by the parties, it is agreed that this language will revert to the language in the prior MOU that was effective on January 1, 2018.

## **Section 12. Agreement Orientation**

The parties recognize that it is important for employees covered by this Agreement to understand all of its terms and conditions as well as the contract administration matters that may occur during its duration.

Accordingly, the Union shall provide an annual orientation on the Agreement to all current employees at all agencies and correctional facilities that conduct in-service training. The orientation shall be held during a lunch period. The Union will be provided space (such as a classroom) and will be allowed to provide meals consistent with facility security procedures. Employee attendance is voluntary.

In agencies where the Employer does not require in-service training, the Union will be provided space to conduct an annual orientation on the Agreement for all current employees to attend on non-duty time (before and after work or during lunch). The Union will be allowed to provide meals consistent with facility security procedures. Employee attendance is voluntary.

## **Section 13. Release from Duty Issues**

The parties recognize their respective obligations to grant and utilize release time authorized by this Agreement in an efficient manner in the context of effective and efficient government operations. To this end, the Employer and the Union shall each designate a person to discuss and resolve issues associated with release from duty or time off. Due to geographical factors, more than one team may be created. An employee's supervisor may require the representative to provide the request for release time in writing. In such cases a copy of the letter issued by DBM approving release time for a specific event shall be sufficient. Requests for release time in accordance with this Agreement or State policy shall be routinely granted.

In instances where the Union notifies the State of the specific employees to be released at least 30 days before the event, the Employer may only deny time off based on extraordinary operational needs. When the Employer denies time off based on operational needs in accordance with this Agreement, it shall, upon written request of the Union, provide the reasons in writing and shall advise the representative when he/she can obtain the time off. Time off under this provision shall not be arbitrarily denied.

## **Section 14. Information Provided to The Union**

In accordance with SPP §3-208, the Employer shall provide, upon the written request of the Union, and within 30 days of a new employee's date of hire, for each employee in the bargaining unit represented by the Union:

- a. Name;
- b. Position classification;
- c. Bargaining unit;
- d. Home and work site addresses where the employee receives interoffice or US Mail;
- e. Home and work site telephone numbers;
- f. Work email address;
- g. Position Identification Number; and
- h. Employee Workday Identification Number ("W" number)

The Union may present a written request for employee information noted above once every 120 days. The Employer may charge the Union a fee not to exceed the actual cost of providing a list of employees' names, addresses, telephone numbers and work information to the Union.

In accordance with SPP § 3-208(f), the information provided to the Union shall be considered confidential and may not be released to any person, except that the Union may authorized third party contractors to use the information as directed by the Union to carry out the Union's statutory duties under the Collective Bargaining Law and to maintain or increase employee membership in the Union.

On written request of an employee, the Union shall withhold further communication with an employee unless otherwise required by law or the written request is revoked by the employee.

Agencies, departments, worksites, and individual facilities shall provide upon the written request of the Union, within ten (10) business days, for each employee in the bargaining unit represented by the Union:

- a. Name;
- b. Position Classification;
- c. Bargaining Unit;
- d. Worksite address to the lowest organizational unit (where economically feasible); and
- e. Worksite telephone information (where economically feasible).

### **Section 15. Exclusivity**

No organization other than the exclusive representative shall have access to worksites or otherwise be provided with access to facilities and services of the Employer unless they are doing business with the State or except as required by State or federal law.

### **Section 16. Employee Participation (Service Fees)**

Prior to the United States Supreme Court's decision in *Janus v. AFSCME* (2018), the State collected compulsory service fees from employees of Bargaining Unit E. The *Janus* decision rendered compulsory service fees unconstitutional and, as a result, the State ceased collecting service fees. However, there remains the possibility for litigation regarding the collection of service fees for the time

period prior to the *Janus* decision. Therefore, the Union shall indemnify and save the State harmless and shall provide a defense of any and all claims, grievances, demands, actions, suits, costs, expenses, or other forms of liability or damages, including attorney's fees and costs, that arise out of or by reason of any action taken or not taken by the State, its officers, agents, employees or representatives for the purpose of the collection of service fees; or that arise out of or by reason of the State's reliance on any notice, letter, or authorization forwarded to the State by the Union concerning service fees. The Union will assume primary responsibility for the defense of any such claims and may engage counsel of its choosing. As counsel for the State, the Office of the Attorney General will be permitted to enter an appearance and will be kept fully apprised of litigation developments by counsel for the Union, but the Union will not be responsible for any legal fees or costs incurred by the Office of the Attorney General in this regard.

## **ARTICLE 5. WORKWEEK, WORK TIME, SCHEDULES, OVERTIME AND COMPENSATORY TIME**

### **Section 1. Scope**

This Article is intended to define the normal hours of work and to provide the basis for the calculation and payment of overtime. It shall not be construed as a guarantee of hours per day or per week, or of days of work per week.

### **Section 2. Administrative Workweek**

The administrative workweek begins at 12:01 a.m. Wednesday and ends at midnight on the following Tuesday.

### **Section 3. Standard Workweek**

Except as noted below the standard workweek for full-time employees consists of five (5) consecutive eight (8) hour days, Monday through Friday each week. Non-overtime hours and starting and quitting times for such employees shall be the same throughout the standard workweek. The standard workweek does not apply to the following:

1. alternative and/or compressed workweek schedules and flextime arrangements;
2. cases where flexible hours are inherent to the job as an established condition of employment; and
3. those employees whose work is continued by other employees who relieve them and continue those same work tasks.

Employees described in 2 and 3 above who do not work the standard workweek schedule are subject to Section 4 below. The Employer may not change the work schedule of an employee who works a standard workweek to avoid the payment of overtime or accrual of compensatory time.

### **Section 4. Work Schedules**

- A. For purposes of this Agreement, "work schedules" are defined as an employee's assigned work hours and days of the week. Where work schedules vary, they will be posted at least

fourteen (14) calendar days prior to the effective date of the posted schedule unless the current practice is for a longer posting period, in which case the longer posting period will be maintained.

- B. Assigning an employee additional hours on an overtime basis is not considered a change to the work schedule.
- C. Hours worked outside of the established work schedule shall be considered overtime, unless:
  - 1. the employee voluntarily agrees to adjust the work schedule (volunteering or not volunteering to adjust his/her work schedule shall not be detrimental to the employee in any way); or
  - 2. the affected employee is given a minimum five calendar days' notice and there are no more than two occasions when the schedule is changed within the two week pay period;
- D. Involuntary schedule changes must be for legitimate operational needs and rotated equitably among employees and must be for the total hours of the scheduled workday which is being changed.
- E. Nothing in this Agreement shall preclude, with prior approval of management, "trading time" or swapping shifts among employees in the same classification provided they have the particular skills necessary to perform the work and such swaps do not increase Employer costs or substantially disrupt work. There will be no split shifts (unpaid break of greater than one-hour within the workday) unless requested by the affected employee(s).

#### **Section 5. Schedule Change/Approved Leave**

The Employer agrees it will not make an involuntary schedule change that affects an employee's previously scheduled and approved vacation. This does not include short term leave (3 days or less) unless it is approved 30 days in advance. Management will make every effort not to disrupt leave approved for special events.

#### **Section 6. Implementation New Days/Hours**

In the event the Employer seeks to permanently implement new days/hours for positions that had not previously worked such hours, the Employer shall provide the Union with notice and an opportunity to bargain in accordance with this Agreement.

Changes to procedures for selecting shifts and time and attendance recording practices (sign-in procedures, time clocks, etc.) will be negotiated in accordance with this Agreement.

#### **Section 7. Flextime and Compressed Workweek Schedules**

The Employer recognizes the value and benefits of compressed workweeks and flextime arrangements and encourages the development and implementation of compressed workweek schedules and flextime in appropriate work environments. The Employer agrees that the implementation and

cancellation of a flextime or a compressed workweek policy must be negotiated. In addition to the above, discussion may include whether employees may have the option, but not be required, to work eight (8) consecutive hours without a meal break to complete their work requirement.

## **Section 8. Overtime Distribution**

The Employer and the Union will discuss Departmental or agency specific overtime distribution policies at the Departmental or agency level. The Employer agrees to follow its existing overtime distribution policies until changed as a result of Employer/Union negotiation.

## **Section 9. Payment for Overtime**

The current practice regarding eligibility for overtime shall be maintained.

Employees covered under FLSA, with the approval of the Employer, may elect to take compensatory time, paid at time and one-half, or for weather-related emergencies, double time, in lieu of cash payments for overtime. Employees will inform the Employer of their choice of cash overtime or compensatory time before working the overtime. Employees will be allowed to declare their election of compensatory time prior to working overtime but in no case more than on a pay period basis. Opportunities for employees to work overtime will not be affected by their election of cash or compensatory time. Employees can accrue up to 240 hours of compensatory time. Employees who work in a public safety activity, emergency response activity, or seasonal activity, can accrue up to 480 hours of compensatory time.

In addition, such employees with the approval of the Employer [appointing authority] may request compensatory time in lieu of cash for such holiday work.

The Employer may not change the work schedule of an employee who works a standard workweek to avoid the payment of overtime or accrual of compensatory time. For employees who are FLSA covered there will be no time limit during which the employee must use his or her compensatory time. Employees shall not be required to use compensatory time. Use of such compensatory time will be granted in a fair and equitable manner. All unused compensatory time, for all FLSA covered employees, will be paid upon an employee leaving State service or upon death, to the employee's estate, at a rate, which is the higher of:

- The final regular rate received by the employee; or
- The final average regular rate received by the employee during the last three years of employment.

### **1. Work time includes time during which an employee:**

- (a) Is on duty, whether at the employee's principal job site or at a remote location as part of the State's Telecommuting Program;
- (b) Is on paid leave;
- (c) Participates in training activities as a job assignment;

- (d) Is on the Employer's premises and is on call and waiting for work;
  - (e) Is not on the Employer's premises, but is on call and waiting for work, and the employee's personal activities are substantially restricted;
  - (f) Is changing into and removing program-specified clothing and equipment necessary for the performance of the job;
  - (g) Participates in activities that are job-related immediately before the beginning or immediately after the end of an assigned shift;
  - (h) Travels to and from work after being recalled to work by the appointing authority or the appointing authority's designated representative after the employee has completed the standard workday;
  - (i) Travels to and from work after being called to work by the appointing authority or by the appointing authority's designated representative on the employee's scheduled day off if the employee works fewer than eight hours as a result of being called on the employee's scheduled day off;
  - (j) Travels between home and a work site other than the assigned office, in accordance with the Standard Travel Regulations;
  - (k) In accordance with this agreement, investigates and processes a disciplinary appeal or grievance, and participates at any conference or hearing relating to a grievance or appeal; or
  - (l) With prior supervisory approval, uses reasonable time to investigate and process a complaint under State Personnel and Pensions Article, Title 5, Annotated Code of Maryland.
2. Work time includes any other time defined as work time under the Fair Labor Standards Act (FLSA), if applicable.
  3. With the exception of those categories of employees cited in the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., or as otherwise provided in this Agreement, an appointing authority may exclude meal periods and a maximum of 8 hours sleep from consideration as work time for employees who are on duty for more than 24 hours. If the employee's sleep is interrupted for the performance of work so that the employee is unable to sleep continuously for at least 5 hours, the appointing authority shall consider the entire period of sleep, up to a maximum of 8 hours, as work time.

## **Section 10. Call-Back Pay**

Employees who are called to report to work on their regular day off or that have been recalled to work after having left the Employer's premises, shall be guaranteed a minimum of two (2) hours of pay plus travel time at the regular rate of pay for actual hours worked or at the applicable overtime rate, whichever is greater. Employees who are currently guaranteed a

minimum of pay greater than two (2) hours shall continue to be paid at the greater minimum.

Should the employee be paid for at least eight hours, travel time shall not be paid.

### **Section 11. Report Pay**

An employee who is pre-scheduled to work an overtime shift in a 24-hour facility and reports to duty will be guaranteed three (3) hours overtime pay at the appropriate rate unless the employee is a holdover from a previous shift. The Employer shall notify employees as soon as practical prior to their scheduled start time in the event the employee is not required to report for prescheduled overtime. Department of Transportation employees will continue to receive the greater benefits under call-back pay when applicable.

### **Section 12. Additional Compensable Work Time**

Employees who are authorized by the Employer to perform work via the telephone in an emergency or non-emergency situation, before or after their regularly assigned tour of duty, in excess of de minimis time, shall be compensated at the straight time or overtime rate as appropriate and in accordance with the Fair Labor Standards Act. The Employer reserves the right to verify calls and require documentation of the call, including but not limited to: date, time, and length of call; time spent addressing the emergency or required work; name of client or contact; reason for the emergency or required work; and signature of employee.

### **Section 13. Stand-By Pay**

Employees are entitled to stand-by pay if required to remain on the Employer's premises or so close thereto that the employee cannot use the time effectively for his/her own purposes. Stand-by payment shall be at the regular, or overtime rate of pay, whichever is applicable. An employee who is not required to remain on the Employer's premises but is merely required to leave work at his/her home or with the Employer where he/she may be reached is not working while on call. If an employee is called back to work, the provisions of Section 2 apply. Any employee who is placed on call shall not be required to perform any duties the employee is not qualified to perform.

### **Section 14. Compensatory Time**

Those employees who are not eligible for overtime shall earn compensatory time in ½ hour increments beyond their normal workday. Total compensatory time earned includes the first ½ hour plus any time worked after the first ½ hour. In addition, the granting of compensatory time off will not be unreasonably denied.

### **Section 15. Compensatory Time (Non-exempt Employees)**

Employees who provide appropriate justification and documentation of time worked at least ½ hour beyond the employee's regular workday shall be credited with compensatory time.

Use of compensatory time shall be governed by the same policies that govern the use of annual leave.

**Section 16. Short Turnaround Pay**

Shift employees at the Department of Health and Mental Hygiene (including dietary employees), who work a non-overtime shift that begins less than twenty-four hours after the start of their previous shift, shall be paid time and one-half for all time worked on the short turnaround shift that occurs within twenty-four hours of the start of the previous days' shift.

**Section 17. Bilingual Pay**

Where the Employer currently pays bilingual pay or bonuses, it shall continue to do so. The Employer retains discretion to initiate bilingual pay or bonuses. The minimum bilingual bonus or hourly equivalent is \$25 per pay period. The Employer may not require an employee to use bilingual skills without paying the appropriate bonus or pay. This does not apply to employees where such skills are in the classification specification.

**ARTICLE 6. WAGES**

**Section 1A. Wages**

If (final) actual General Fund revenue collections for fiscal year 2021 as noted in the Comptroller's close-out memo exceed the Board of Revenue Estimates' official estimate of December 2020 of \$18,773,636,000 as published in the Board's Report of December 2020 by an amount greater than \$75 million, the Governor shall agree to request a deficiency appropriation at the 2022 Session of the Maryland General Assembly in an amount sufficient to provide all permanent State employees of bargaining unit E a one-time bonus of \$500 effective January 1, 2022.

Additionally, if (final) actual General Fund revenue collections for fiscal year 2021 as noted in the Comptroller's close-out memo exceed the Board of Revenue Estimates' official estimate of December 2020 of \$18,773,636,000 as published in the Board's Report of December 2020 by an amount greater than \$200 million, the Governor shall agree to request a deficiency appropriation at the 2022 Session of the Maryland General Assembly in an amount sufficient to provide all permanent State employees of bargaining unit E a 1% cost-of-living adjustment effective April 1, 2022.

**Section 1B. Annual Salary Review**

Unless prohibited by law, the Employer shall provide the Union with the results of salary and benefits comparative surveys for bargaining unit positions upon the completion of such studies.

**Section 1C. Compensation Rates for Certain Employees**

The Governor shall request funding for the implementation of the salary adjustments for certain employees as required by Chapter 572 (SB 639) and Chapter 576 (SB 693) of the 2020 Laws of Maryland, with an effective date for these salary adjustments of July 1, 2021.

**Section 2. Shift Differential**



The Employer shall pay a shift differential to an employee who works a qualifying shift. A qualifying shift means a full-time or permanent part-time shift which starts at or after 2 P.M. and at or before 1 A.M. The Employer shall pay a shift differential on a prorated basis to an employee who works any part of a qualifying shift. The rate of shift differential pay shall be \$0.625/hour for all classifications in salary grades 5 through 18.

The Employer may not pay a shift differential to an employee who is on leave. Shift differential will be paid for Registered Nurses in 24/7 facilities as follows:

|                   |             |
|-------------------|-------------|
| Weekday Evenings: | \$2.60/Hour |
| Weekday Night:    | \$2.00/Hour |
| Weekend Day:      | \$2.00/hour |
| Weekend Evening:  | \$4.60/Hour |
| Weekend Night:    | \$4.00/Hour |

The Employer may not pay a shift differential to an employee who is on leave.

### **Section 3. Hazardous Duty Pay**

The current practice shall be maintained.

### **Section 4. Acting Capacity Pay**

- 1) An appointing authority may designate an employee to perform temporary duties in a classification for which the rate of pay is higher than that of the employee's classification for any of the following reasons:
  - a) The temporary absence of an incumbent;
  - b) A vacancy exists for which recruitment is underway; or
  - c) Unusual circumstances which necessitate assignment of duties at a level higher than that of the employee's classification.
  - d) A qualified employee with the most seniority in the unit where the acting capacity is to occur will normally be given the opportunity to perform the higher-level duties. If a less senior employee is designated, upon written request from the Union, the appointing authority or designee shall provide a copy of the acting capacity form as documentation of the selection.
  - e) Should a supervisor assign an employee more than 50% of the higher-level duties of a position that is vacant or from which the incumbent is temporarily absent, the employee shall be considered designated for acting capacity pay.
- 2) Wherever possible an appointing authority shall ensure that an employee designated to receive acting capacity pay meets the minimum qualifications of the higher level and upon written request from the Union shall provide a copy of the acting capacity form as documentation of the selection.
- 3) An appointing authority may not designate an employee to perform temporary duties in a classification for which the rate of pay is higher than that of the employee's classification if both the employee's classification and the higher classification are within the same noncompetitive

promotion classification series.

- 4) Payment for acting in a higher classification shall be made as follows when the employee's normal rate of compensation is:
  - a) Between grades 5 and 10, additional compensation shall be paid for the period in excess of 10 continuous workdays;
  - b) For grade 11 or above, additional compensation shall be paid for the period in excess of 20 continuous workdays.

The initial period of acting capacity is limited to 6 months or less and may be extended for periods of up to 6 months.

Notwithstanding the above, hour-for-hour acting capacity pay shall be paid to eligible employees who function in the capacity of the Transportation Heavy Equipment Shop Chief effective with the first hour of the assignment and acting capacity pay will continue to be paid in other cases where employees currently receive such pay.

- 5) An employee in acting capacity shall not be relieved of such capacity prior to the completion of the waiting period for the purpose of avoiding acting capacity payment as evidenced by their subsequent return to acting capacity. The Employer shall not rotate employees in an acting capacity position to avoid acting capacity payment nor shall employees be recurrently scheduled in an acting capacity position without compensation unless there are unusual circumstances outside the Employer's control, or they volunteer to do so. An employee who is not paid acting capacity pay may not be negatively evaluated on his/her performance in the acting capacity position and may not be disciplined for actions that relate to the acting position taken in good faith. An employee shall not be required to accept an acting capacity assignment if he/she would suffer a loss in pay.

## **Section 5. Pay on Promotion/Reclassification**

### **A. Promotion**

When an employee is promoted from a classification with a salary grade to a classification which is one grade higher, the employee shall be placed in the lowest step which provides at least a six (6) percent increase in annual salary, but in no event shall the new rate exceed the maximum in the new grade.

When an employee is promoted from a classification with a salary grade to a classification, which is two or more salary grades higher, the employee shall be placed in the lowest step which provides at least a twelve (12) percent increase in annual salary, but in no event shall the new rate exceed the maximum in the new grade.

When an employee is promoted from a classification with a salary grade, slope scale or flat rate to a classification with a slope scale, the employee shall receive a six (6) percent increase in annual salary if the slope scale is the equivalent of one grade higher than the salary grade from which the employee is promoted. An employee shall receive an increase of twelve (12) percent if the slope scale is the equivalent of two or more grades higher

than the salary from which the employee is promoted, but in no event shall the new rate exceed the maximum in the new scale.

When an employee is promoted from a classification with a salary grade, slope scale or flat rate to a classification with a flat rate, the employee shall receive the specified flat rate salary.

#### **B. Reclassification**

With the exception of the implementation of a new classification, when an employee is reclassified from a classification with a salary grade to a classification which is two or more salary grades higher, the employee shall be placed at the lowest step which provides at least a twelve (12) percent increase in annual salary, but in no event shall the new rate exceed the maximum in the new grade.

With the exception of the implementation of a new classification, when an employee is reclassified from a classification with a salary grade to a classification which is one grade higher, the employee shall be placed in the lowest step which provides at least a six (6) percent increase in annual salary but in no event shall the new rate exceed the maximum in the new grade.

When an employee is reclassified from one classification to another for which a flat rate is paid, the employee shall receive that flat rate salary.

When an employee is reclassified from one classification to another with the same salary grade or slope scale, the employee's rate of pay shall not change.

When the Employer determines that a job is classified at a higher rate than appropriate, it may reclassify the job to the appropriate lower grade only upon vacancy.

**Note:** This section does not apply to a reclassification to a lower grade or scale, or demotion.

#### **C. Reclassification into A New Classification Series**

When an employee is reclassified as the result of the implementation of a new classification with a higher grade, the employee's step or rate of pay shall be determined by a minimum six (6) percent upward adjustment. In the event that the new classification is the same grade level as the prior classification, the employee's step or rate of pay shall remain the same.

When a DOT employee is reclassified as a result of the implementation of a new classification with a higher grade that is unique to DOT only, the employee's step or rate of pay shall be determined by a minimum 6 percent upward adjustment for one pay grade, or a 12 percent upward adjustment for two or more pay grades, whichever is applicable, not to exceed the maximum of the pay grade.

#### **D. Processing Sequence for Simultaneous Transactions Which Affect Salary**

Whenever two or more salary transactions, which are effective on the same date for an employee, shall be processed in the following sequence:

- (1) Salary adjustment of the employee's classification;
- (2) General increase of the salary schedule;
- (3) Annual step increase; and
- (4) All other transactions including, but not limited to, promotion, reclassification, and demotion.

## ARTICLE 7. HOLIDAYS

This Article governs holidays except as otherwise provided by law or regulation.

### **Section 1. Observance**

The following holidays will be observed: New

Year's Day  
Dr. Martin Luther King Jr.'s Birthday  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Thanksgiving Day  
Day After Thanksgiving (except DOT) Christmas  
Each Statewide Election Day

Any other day proclaimed as a holiday or non-working day by the Governor of the State of Maryland or the President of the United States of America.

Except for employees required to work on a holiday, when a holiday falls on a Sunday, the holiday is observed on the following Monday. When a holiday falls on a Saturday, the holiday is observed on the preceding Friday. A holiday will commence at 12:01 A.M. and end at 12:00 Midnight. Upon request, an employee may observe a religious holiday provided that the time off is charged to vacation, compensatory time, personal leave, or leave without pay, at the employee's choice.

### **Section 2A. Work on Holidays**

An employee who is required to work, or works with prior approval, any part of a holiday shall receive holiday compensatory time for up to eight (8) hours, on an hour for hour basis, for the actual non-overtime hours worked in addition to their regular rate of pay. An employee who works overtime on a holiday shall be compensated in accordance with all applicable pay and overtime provisions in addition to receiving up to eight (8) hours of holiday compensatory time for that work. An employee must use holiday compensatory time within one (1) year after having accrued that time.

Employees who have their holidays pre-scheduled by the Employer and are eligible for cash overtime shall be entitled to payment for the number of holiday hours scheduled and payment at time and one half for the number of hours actually worked, if the employee is required to work by the Employer on the pre-scheduled holiday. This provision does not apply to an employee who is off on leave without pay during the same pay period as the assigned holiday.

### **Section 2B. Pre-Scheduled Holidays**

Holidays for certain employees, typically 24/7 facilities, are pre-scheduled on days other than the holidays mentioned in Section 1. This schedule is determined in advance. If employees who have their holiday pre-scheduled are required to work on that pre-scheduled holiday day, they are compensated as follows:

- a) Cash overtime employees are paid for the number of holiday hours pre-scheduled plus payment at the rate of time and one-half for the number of hours actually worked.
- b) Compensatory leave eligible employees are paid for the number of hours prescheduled plus credited with holiday compensatory time for the number of hours actually worked, which must be used within one (1) year after having accrued this time.

This provision does not apply to an employee who is on leave without pay during the same pay period as the assigned holiday.

### **Section 3. Other Holiday Provisions**

An employee whose regular day off falls on a holiday will receive another day off. If a holiday occurs during a period in which an employee is on pre-approved paid leave, the employee will not be charged for the use of leave for the holiday.

### **Section 4. Department of Transportation Procedures**

In accordance with current practice, employees in the Department of Transportation shall be paid double time and one-half for work on all holidays identified in law or this Agreement. In addition, such employees with the approval of the Employer may request compensatory time in lieu of cash for such Holiday work.

## **ARTICLE 8. LEAVE ACCRUAL**

### **Section 1. Personal Leave**

Employees shall be entitled to six (6) days of personal leave each calendar year except that the Department of Transportation employees shall be entitled to seven (7) days of personal leave. In a calendar year that is a leap year, each employee in the State Personnel Management System is entitled to seven (7) days, not to exceed 56 hours of personal leave with pay at the beginning of the first full pay period of the calendar year. In a leap year, Department of Transportation employees shall be entitled to eight (8) days, not to exceed 64 hours. Part-time employees shall be entitled to days of personal leave on a prorated basis. For the calendar year in which new employees begin employment, the number of personal leave days will be prorated according to applicable law. The Employer shall not request the reasons for the use of earned

leave other than sick leave as permitted by Article 10. Use of personal leave for sick leave purposes shall be permitted and taken in accordance with Article 10 of the MOU.

## **Section 2. Annual Leave**

Employees shall earn annual leave in accordance with the following schedule: Less

than five (5) years of service – up to ten (10) days per year

Five (5) to ten (10) years of service – up to fifteen (15) days per year

Eleven (11) years to twenty (20) years of service – up to twenty (20) days per year

Twenty (20) years of service or more – up to twenty-five (25) days per year

The amount will be prorated for employees who work less than full-time.

## **Section 3. Accumulated Annual Leave**

Any days of annual leave not used at the end of a year may be carried forward into the next year. Employees may accumulate unused annual leave and may carry over from one year to the next up to seventy-five (75) days, or six hundred (600) hours.

If an employee is denied the opportunity in a calendar year to use annual leave in excess of seventy-five (75) days or six hundred (600) hours, the head of the employee's principal unit may allow the employee compensation, at the employee's regular rate of pay, for those excess leave days.

The head of a principal unit may approve a request for compensation only if:

- 1) the appointing authority documents the unusual administrative reasons for having denied the employee the use of annual leave; and
- 2) funds are available for that purpose.

## **Section 4. Payment Upon Separation**

An employee or an employee's estate will be paid for:

- 1) the number of days of annual leave, not exceeding 50 days or 400 hours that were accrued at the end of the previous calendar year and that remain unused; and
- 2) the number of days of annual leave that accrued during the calendar year in which the employee's State employment terminates and that remain unused upon termination of State service at the time that the employee receives his/her paycheck for the final period of work or the next pay period.

## **Section 5. Sick Leave**

Employees shall earn fifteen (15) days or one hundred twenty (120) hours of sick leave each year. Employees shall earn 1.5 hours of sick leave for every 26 hours worked in non-overtime status. For this purpose, all paid leave will be considered work time. Part-time employees will earn sick leave on a prorated basis. There is no limit on the number of days of sick leave an employee can accrue.

Accrued sick leave shall be used as a service credit toward retirement in accordance with current statute and regulations. Employees may not use accumulated sick leave to qualify for retirement benefits or to become vested in the retirement system.

### **Section 6. Timely Approval of Leave Requests**

At any time, employees may request the use of short-term leave (annual leave, compensatory time use, or personal leave). Such request shall be submitted on the appropriate form and approved or denied on the form within one week of submission to the appropriate authority (practices of shorter time periods will be maintained) except that current practices concerning emergency leave requests shall be maintained. Requests will not be denied unreasonably. The issue of more employees requesting the use of short-term leave than can be granted because of operational needs shall be resolved at the LMC. The Employer shall not request the reasons for the use of earned leave other than sick leave as permitted by Article 12. All leave may be used in tenth of an hour increments provided, however, that use of personal leave to cover tardiness related absences shall not serve as a bar or defense to disciplinary action.

### **Section 7. Pandemic Carryover**

Beginning in calendar year (CY) 2021, leave in the Pandemic Carryover category will be made available to Bargaining Unit E members that will include:

- a. all compensatory time earned in CY 2019 and lost in CY 2020;
- b. all compensatory time earned in CY 2020 and not used;
- c. any additional compensatory time earned beginning in CY 2021 and not used through the end of the pay period 6 months beyond the end of the emergency period; and
- d. all annual leave forfeited at the end of CY 2020 and at the end of each calendar year thereafter until the end of the pay period 6 months beyond the end of the emergency period.

Compensatory time as noted in subparagraphs a – c above does not include compensatory time earned in lieu of cash overtime.

Leave in the Pandemic Carryover category shall not expire but is not subject to cash out.

Leave in the Pandemic Carryover category may be used for any reason and at any time after obtaining approval from the employee's supervisor.

## **ARTICLE 9. LEAVE WITH PAY**

### **Section 1. Jury Duty Leave**

An employee who is on jury duty is entitled to leave with pay when the employee's jury service occurs on the employee's scheduled workday and provides appropriate documentation. Employees who are scheduled on other than a day shift shall be reassigned to a day shift. If, after reporting for jury duty, the employee is dismissed for the day, the employee shall return to work if time permits. An employee who is selected for jury service shall notify the Employer as soon as practical.

### **Section 2. Bereavement Leave**

A maximum of five (5) working days may be charged to sick leave in the event of the death of one of the following members of the immediate family: spouse, children, foster-children, step- children, parents, step-parents, foster-parents of employee or spouse or others who took the place of parents, legal guardians of employee or spouse, brothers and sisters of employee or spouse, grandparents and grandchildren of employee or spouse, other relatives living as a member of the employee's household.

A maximum of one (1) working day may be charged to sick leave in the event of the death of one of the following relatives: aunts and uncles of employee or spouse, nephews and nieces of employee or spouse, brothers-in-law and sisters-in-law of employee's spouse and sons-in-law and daughters-in-law.

The employee may elect to receive up to three (3) days of bereavement leave in lieu of three (3) of the five (5) sick days upon the death of the following family members: spouse, children, foster-children, stepchildren, parents, stepparents, foster-parents, brothers or sisters, or grandparents and grandchildren of the employee. Appropriate documentation includes a death certificate, funeral slip, or obituary notice.

If additional time is required by the employee, the supervisor shall make reasonable efforts to arrange the work that the employee may take other accrued leave for this purpose.

### **Section 3. Legal Action Leave**

An employee who is summoned to appear in a court action, before a grand jury, before an administrative agency, or for a deposition and is neither a party to the action nor a paid witness, may be absent from work without loss of pay or charge against any leave, unless the employee is currently on suspension.

An employee, who is summoned to appear in a court action, before a grand jury, before an administrative agency, or for a deposition and is a party to the action or a paid witness, may use other accumulated leave, with the appropriate documentation, unless the employee is currently on suspension.

An employee, who is a party to an action against the State, or its agents, is considered on duty for grievances, disputes, or disciplinary appeals before the Office of Administrative Hearings or the Labor Relations Board. An employee who is not on paid leave or approved leave without pay shall be considered on duty when attending a Worker's Compensation Hearing.

### **Section 4. Military Leave**

Any employee who is a member of a reserve component of the Armed Services or in the organized militia shall be permitted military leave with pay for up to fifteen (15) working days per year for training or active duty. To be eligible, the employee must provide the employing agency with a copy of the orders from his/her unit.

### **Section 5. Emergency Conditions**

The terms of this Section supplement, but do not supplant, the provisions contained in the Procedure for Release of State Employees Under Emergency Conditions, Revised October 8, 1999. In situations where the terms of this Article conflict with the Procedure, this Article controls. A copy of



the Procedure for Release of State Employees Under Emergency Conditions, Revised October 1999, is attached to this MOU as Appendix A.

#### A. Definitions

1. Emergency condition – means a circumstance declared by the State of Maryland that would expose State employees to harm or unsafe conditions and includes conditions that threaten the lives of State employees, such as extreme weather events, terrorist attacks or threats, chemical spills, disease outbreak, civil disturbance, and any other conditions determined by the State to be of such emergency nature.

2. Emergency essential employee – An employee whose duties are of such a nature as to require the employee to report for work or remain at the work site to continue agency operations during an emergency condition. Emergency essential employees will be notified of their status no later than December 1st of each year. The Employer retains the ability to notify new hires after December 1st, or declare additional employees as emergency essential when necessary, to avoid or mitigate serious damage to public health, safety, or welfare.

As part of the State's response to the Novel Coronavirus 2019 (COVID-19), some bargaining unit employees were designated emergency essential for the first time in Calendar Year (CY) 2020 and/or were designated emergency essential for CY 2021. Within 60 days after the end of the State of Emergency declared in response to COVID-19, an appointing authority shall review the emergency essential status of its' employees to determine whether this status may be rescinded. If the status is rescinded, the appointing authority shall notify the employee of the change in status. Absent such notification, the designation remains in effect for the applicable CY.

#### B. Emergency Release Determinations

1. Full day closing – When an office or facility is closed prior to the start of normal work hours or shifts due to the declaration of an emergency condition, non-temporary, non-emergency essential employees working in that office or facility are on release time (i.e., administrative leave), with no loss of pay or charge to earned leave, except that employees who are on paid or unpaid leave status prior to the emergency release determination will be charged leave for the entire workday.

2. Liberal leave – When an emergency condition is declared and liberal leave is announced for non-temporary, non-emergency essential employees, such employees may be absent for a portion of the workday or the entire workday; such absence will be charged to accrued annual, personal, or compensatory leave, or leave without pay, if appropriate, for the period of absence. The employee is required to notify the Employer of the intention to take leave in such situations.

3. Delayed Starting Time – When a determination is made to delay the opening of an office or facility due to a declared emergency situation, non-temporary, non-emergency essential employees are required to report at the delayed start time and to work until the close of business, unless the employee is granted permission to use leave; such employees will suffer no loss of pay or charge to accrued leave for the time between the employee's normal start time and the delayed start time.

4. Early Release – When an office or facility is closed after the start of regular work hours or shifts, and non-temporary, non-emergency essential employees are dismissed early, such employees

shall suffer no loss of pay or charge to accrued leave, except that employees who are on pre-approved leave status shall be charged leave as appropriate.

### C. Work During Declared Emergency Conditions

Generally, non-emergency essential employees will not be required to work during declared emergency conditions. Although the employee may do so when liberal leave has been announced, work by such non-emergency essential employees shall be compensated at the employee's regular rate of pay under such circumstances.

A non-emergency essential employee who is required to report to work or stay at work during a declared emergency condition that has resulted in the closure of the office or facility to which the non-emergency essential employee is assigned will be credited with two hours of work time for each hour actually worked during the closure.

Emergency essential employees who work at an agency or facility affected by a closure due to the declaration of emergency conditions, and who are required to perform duties after an emergency condition is declared or are required to report to work after such a declaration, shall be compensated by compensatory time or additional pay, as appropriate; such emergency essential employees are to be credited with two hours of work time for each hour actually worked during the closure.

In the specific case of weather-related emergency conditions, when an authorized governmental jurisdiction prohibits all non-emergency vehicle travel on specified roadways, and the declared weather-related emergency condition is in the home jurisdiction, a jurisdiction along the route or the jurisdiction of the work location, as determined by official personnel records, thereby proscribing an emergency essential employee's ability to get to work, the Employer shall provide transportation to work. If transportation is not provided, the employee shall be granted administrative leave; such paid leave shall be provided until the end of the prohibition on travel or the end of the employee's normal work shift, whichever comes first, or until transportation is provided. An employee shall notify the appropriate designated contact person as early as feasible, but normally at least one hour before the start time of the employee's shift of the weather-related emergency that constrains the employee's travel. The employer shall ensure that a functioning voice-mail service is available for this communication should the contact person be unavailable when an employee calls.

Efforts will be made to restrict an employee to no more than two consecutive shifts during a declared emergency condition. In the event that an employee is required to remain at work more than 2 consecutive shifts, the Employer shall, where feasible, provide the employee with a place to sleep for a minimum of 6 hours, toiletries, and meals.

### D. Communication of Declared Emergency Conditions

The Employer shall expeditiously and effectively communicate the declaration of emergency conditions and the emergency release determination (full day closing, liberal leave, delayed starting time, or early release) to all affected employees through the use of media outlets and website postings. Such media outlets shall be made known to the employees in advance.

## Section 6. Examinations and Interviews for State Positions

An employee shall be allowed up to four (4) hours leave with pay to take examinations and attend interviews for State positions. An employee who has to travel in excess of fifty (50) miles will be given additional administrative leave not to exceed eight (8) hours in total.

The appointing authority may:

1. require prior approval of the interview or examination leave request;
2. require verification of the examination taken or interview or examination attended;
3. require verification of the travel time in excess of 50 miles one way; and,
4. limit the number of interviews and time allotted when abuse is apparent.

### **Section 7. Professional Meetings and Workshops**

To the extent consistent with the operational needs of the Employer, employees will be granted time off with pay, not to exceed their normal workday to attend pre-approved professional meetings and workshops that are "job related". The Employer may, but is not required to, reimburse the costs associated with these meetings and workshops. Leave under this provision shall not be arbitrarily denied. Should the Employer require the employee to attend, the cost of such training will be paid by the Employer.

### **Section 8. Disaster Service Leave**

- a) Requirements for leave with pay - On request, an employee subject to this section may be entitled to disaster service leave with pay if:
  - (1) the employee is certified by the American Red Cross as a disaster service volunteer; and
  - (2) the American Red Cross requests the services of the employee during a disaster that is designated at Level II or above in the regulations and procedures of the National Office of the American Red Cross.
- b) Amount allowed - An employee may use up to 15 days of disaster service leave in any 12-month period only after obtaining approval from the employee's appointing authority.
- c) Employment status for purposes of certain claims - For purposes of Workers Compensation and the Maryland Tort Claims Act, while an employee is using disaster service leave, the employee is deemed not to be a State employee.

### **Section 9. Religious Observance**

All employees, except those working in 24-hour facilities, whose religious beliefs require them to be absent from work, shall be permitted to perform compensatory work outside their regular work hours to offset the absence. For those employees entitled to overtime pay, each hour of compensatory work will offset one hour of absence during any workweek in which employees work fewer than forty hours and for those workweeks in which more than forty hours are worked, compensatory work will offset one and one-half hours of absence. For those employees exempt from overtime pay, each hour of compensatory work will offset one hour of absence. This section shall be administered in accordance with applicable law and COMAR.

## ARTICLE 10. SICK LEAVE

### **Section 1. Sick Leave General**

The Employer and the Union agree that unscheduled absences, excessive sick leave usage and fraudulent sick leave usage unnecessarily increase overtime costs, exacerbate the workloads of other employees, and negatively impacts morale.

### **Section 2. Eligibility**

In accordance with State law, employees are entitled to sick leave with pay:

- a. for illness or disability of the employee;
- b. for death, illness, or disability of a member of the employee's immediate family;
- c. following the birth of the employee's child;
- d. when a child is placed with the employee for adoption; or
- e. for a medical appointment of the employee or a member of the employee's immediate family.

"Immediate family" is defined in accordance with COMAR 17.04.11.06.

### **Section 3. Notification**

When an employee is unable to work due to circumstances provided in Section 1, the employee or employee's designee will notify his/her immediate supervisor or designee at the worksite at a time as established by existing agency policy/practice, unless extenuating circumstances preclude this notification. When an employee calls in accordance with established practice or policy, he/she shall leave a message if the supervisor or supervisor's designee is unavailable, or the Employer may instruct an employee to call a secondary number, and the employee will not be required to call back. The employee or designee must call each day of absence until the employee notifies the Employer of a date he/she will return to duty. The Employer shall not ask the employee to provide information as to his/her diagnosis or condition except as permitted by applicable law.

### **Section 4. Certificate of Illness for Absences for Five or More Consecutive Days**

The Employer may require an employee to provide an original certificate of illness or disability only in cases where an absence is for five (5) or more consecutive workdays or in accordance with the procedures described in Section 4 below. The Certificate required by this Section shall be signed by a health care provider in accordance with applicable law (SP&P 9-504).

### **Section 5. Certificate of Illness for Absences of Less than Five Consecutive Days**

The Employer may require an employee to submit documentation of sick leave use on the following conditions:

- A. When an employee has a consistent pattern of maintaining a zero or near zero sick leave balance without documentation of the need for such relatively high utilization; or

- B. When an employee has six (6) or more occurrences of undocumented sick leave usage within a twelve (12) month period. Sick leave use that is certified in accordance with this Article shall not be considered as an occurrence.
- C. After the first instance of an employee being absent for more than four (4) consecutive days without documentation, the employer may place the employee on notice that future absences of more than three (3) days, within a rolling twelve (12) month period, will require documentation.

### **Section 6. Procedures for Certification Requirement**

Prior to imposing a requirement on an employee for documentation of sick leave use, the Employer shall orally counsel the employee that future undocumented absences may trigger a requirement for certification of future instances of sick leave. If the employee has another undocumented absence after such counseling, the Employer may then put the employee on written notice that he/she must certify all sick leave usage for the next six (6) months if the undocumented absences accumulate in accordance with Section 4. At the conclusion of the six (6) months, the certification requirement will be rescinded provided the employee has complied with the certification requirement. If the employee has not complied with the certification requirement, the requirement shall be extended for six (6) months from the date of the lack of compliance with the requirement. Although a requirement for certification is not a disciplinary action, an employee may grieve allegations of misapplication of this procedure.

### **Section 7. Chronic Conditions**

Employees who suffer from chronic or recurring illnesses or disabling conditions which do not require a visit to a health care provider each time the condition is manifested, shall not be required to provide certification for each absence provided a general certification is provided unless the absence is for five (5) or more consecutive days. Such frequent absences shall also not be used as the basis for a certification requirement. Unless the employee has a condition identified as a permanent disabling condition, the Employer may require certification and follow-up reports from a health care provider no more frequently than every six (6) months of the continued existence of the chronic condition.

### **Section 8. Acceptable Documentation**

For the purposes of absences of less than five (5) consecutive days, acceptable documentation shall consist of the following:

- A. A certificate from a health care provider that the employee (or member of the employee's immediate family) visited the office and/or the employee was unavailable for duty for the reasons specified in Section 1 on the day or dates of absence. For absences of four (4) hours or less, at the employee's option, he/she may submit a copy of the universal health insurance claim form or similar document from the health care provider's office showing the name of the provider, the date of treatment, and address/telephone number of the provider.
- B. An employee who works less than his/her full workday due to having to provide care to the

employee's child or his/her immediate family shall not be required to provide certification from an acceptable health care provider unless management has a basis to believe sick leave is being used for other than described in Section 1 above. Sick leave use in such circumstances shall not count as an occurrence under Section 4.

### **Section 9. Disciplinary Action**

The Employer may take appropriate disciplinary action against an employee for using sick leave for purposes other than described in law or this Agreement; for failing to properly notify the Employer of the use of sick leave, or failure to provide appropriate documentation when properly required to do so.

The Employer may not penalize an employee with regard to scheduling, overtime eligibility, performance evaluations or other right or benefit for sick leave usage or for being subject to a documentation requirement. This does not preclude appropriate disciplinary action for use of sick leave for purposes other than described in Section 1. The procedure described in this Article, and disciplinary procedures, shall be the sole procedures available to address issues related to sick leave use and abuse.

## **ARTICLE 11. LEAVE BANK AND LEAVE DONATION PROGRAM**

### **Section 1. Membership in the State Employees' Leave Bank Program**

A new employee may donate one day (eight hours) of Personal Leave to the State Employees' Leave Bank within the first sixty (60) days of their employment. All other employees may donate one day (eight hours) of Annual, Personal, or Sick Leave to the State Employees' Leave Bank during the open enrollment period. Sick Leave may only be donated if the employee has a balance of 240 hours after the donation. The Employer shall hold an open enrollment period during the health insurance open enrollment period.

### **Section 2. Access to Leave Bank**

An employee becomes eligible for the State Employees' Leave Bank 90 days following the initial donation to the bank. Membership in the State Employees' Leave Bank is for two years, unless the leave in the bank is exhausted, at which time all employees will be notified and given the option of rejoining by donating an additional day. In these cases, employees who had served the 90-day waiting period for eligibility will not be required to serve an additional waiting period. Eligibility for use of leave from the bank will be determined in accordance with existing policy (COMAR).

### **Section 3. Employee-to-Employee Leave Donation Program**

An employee may voluntarily donate annual, sick, or personal leave to another employee who has exhausted all available leave because of a serious and prolonged medical condition. The donating employee shall designate the recipient. Eligibility to receive Employee-to-Employee Leave shall be determined in accordance with the same criteria as COMAR. Bargaining Unit employees shall not be subjected to the same criteria for Employee-to-Employee Leave Donations as for use of leave from the Leave Bank. The recipient may only use the leave for an illness or disability that exists at the time of the donation.

#### **Section 4. Department of Transportation Employees**

Department of Transportation employees will continue to have Advanced and Extended Sick Leave available to them but may first choose to use the Sick Leave Bank or Employee-to- Employee Donated Sick Leave.

#### **Section 5. Short Term and Long-Term Disability Policies**

The Union and the Employer agree to negotiate the possible implementation of Short Term and Long Disability Policies with the intent of replacing the State Employees Leave Bank, the Employee-to-Employee Leave Donation Program and MDOT's Advanced and Extended Sick Leave Policies.

### **ARTICLE 12. LEAVES WITHOUT PAY**

#### **Section 1. General Leave**

The Employer may grant general leaves of absence to employees, upon request, for periods not to exceed two (2) years. The employee may request that the Employer hold the employee's position for up to twenty-four months. When the Employer does not hold the employee's position and elects to accept the employee's request for reinstatement, the Employer will use good faith efforts to return the employee to his/her previous work location.

#### **Section 2. Unpaid Union Leave**

Upon request of the Union's President or designee, the Employer will grant leaves of absence without pay to bargaining unit employees who serve as Union representatives or officers for up to a one-hundred twenty (120) calendar day period if it is consistent with operational needs. This leave will be for no more than one-time per year per employee and no more than eight employees per year who must be from different Departments. An employee's entrance on duty date will not be changed, he/she will not be separated from payroll and he/she will be restored to his/her previous position at the conclusion of such leave.

#### **Section 3. Educational Leave**

Employees may be granted educational leave for up to two (2) years to attend an accredited educational institution, including colleges, universities, trade schools, technical schools, or high schools. Such leave will be approved or denied in a fair and equitable manner. Reinstatement will be governed by COMAR.

#### **Section 4. Military Leave**

If an employee enters military service, his/her employment will be separated with the right to reemployment in accordance with applicable law and regulation.

#### **Section 5. Family and Medical Leave**

The Employer shall provide employees with the benefits of the Family and Medical Leave Act on a fair and equitable basis in accordance with applicable law and regulation.

## ARTICLE 13. PERSONNEL FILE

### **Section 1. Official Personnel File**

Only one (1) official personnel file shall be kept for each employee at the appropriate personnel office.

Records of previous discipline not found in the official personnel file cannot be used against an employee in any future disciplinary proceeding.

Grievances shall not be kept in the employee's official personnel file. Employees shall be informed as to where their personnel file is maintained.

### **Section 2. Access**

An employee and, with the employee's written authorization, a representative(s) shall have the right to review his/her personnel files upon request, during normal business hours, with no loss of pay. Employees have the right to copy any documents in his/her file. The employee may be required to assume reasonable costs of copying.

### **Section 3. Notification**

From the effective date of this memorandum, any derogatory material to be placed in an employee's personnel file will be initialed and dated by the employee and a copy provided to him/her. If the employee refuses to sign, material shall be placed in the file with a note of the employee's refusal. The employee's initials indicate simply that he/she has seen the material and is not to be construed as agreement with its content. In addition, any derogatory material which is placed in an employee's personnel file without following this procedure will be removed from the file and returned to the employee.

### **Section 4. Anonymous Materials**

Other than routine personnel forms, no anonymous materials shall be placed in an employee's official personnel file.

### **Section 5. Rebuttal**

Employees shall have the right to respond in writing and/or through grievance procedure to any materials placed in their official personnel file. Any written response by the employee shall be appended to the appropriate document.

### **Section 6. Work Files**

Supervisors may keep working files, but records of previous discipline not found in the official personnel file cannot be used against an employee in any future disciplinary proceeding.



## **ARTICLE 14. JOB CLASSIFICATION**

### **Section 1. Job Study**

When the employee (and Union representative, if chosen) and supervisor believe a position is incorrectly classified, a request may be submitted to study the position. Such study shall be completed in a timely manner unless a study of the job in question has been completed within the previous twelve months and the job duties have not changed. The employee (and Union representative, if chosen) will be provided with a copy of the Employer's findings upon request.

The Employer will apply its established classification standards and guidelines in a fair and equitable manner.

### **Section 2. Grade and Pay Changes**

Prior to implementing a change in grade or pay for a particular classification or job series or before implementing a new classification or job series, the Employer will meet with the Union and exchange relevant information and negotiate to the extent required by law and Article 35 of this MOU.

### **Section 3. New or Revised Classifications**

The Employer shall meet and confer with the Union over any new or revised classification specifications. The Employer shall negotiate with the Union on other classification issues as required by State personnel law.

## **ARTICLE 15. JOB DESCRIPTIONS**

### **Section 1. Job Descriptions**

All employees shall be provided an accurate copy of their job description. When job descriptions are changed, employees shall be furnished a copy and have an opportunity to discuss any changes with their Supervisor. Terms such as "other duties as assigned" shall mean job-related duties relevant to carrying out the mission of the agency for which the employee works.

## **ARTICLE 16. PERFORMANCE EVALUATION**

The Performance Evaluation is intended to facilitate communication between employees and supervisors regarding expectations and job performance. The process offers employees and supervisors an opportunity to acknowledge the successes achieved over the year, and to openly discuss areas for enhancement and improvement. In cases of poor performance, it is meant to compliment the disciplinary process by providing a means to assist employees to improve.

### **Section 1. Intervals Between Appraisals**

Employees shall receive written performance appraisals at six (6) month intervals according to their entry-on-duty date.

1. Employees with an EOD date between January 1 and June 30, the PEP Cycle begins January 1.
2. Employees with an EOD date between July 1 and December 31, the PEP Cycle begins July 1.

## **Section 2. Performance Ratings**

There will be a mid-year appraisal and an end-of-year appraisal, which will include a performance rating as follows:

1. Outstanding = Exceptional Performance. Achievements clearly are superior to the level of performance required for the job.
2. Satisfactory = Good Performance. The employee met the required and expected results for the job.
3. Unsatisfactory = Unacceptable performance that shows no significant progress or improvement. Improvement is critical.

There are only three ratings: Outstanding, Satisfactory, and Unsatisfactory, to which numerical equivalents of 3, 2, and 1 respectively have been assigned for the purpose of calculating an overall score. No incremental ratings (for example, 1.5, 2.7, etc.) shall be assigned by a supervisor to an individual performance standard or behavioral element.

## **Section 3. Performance Standards**

Performance standards and behavioral elements shall be specific, attainable, relevant, measurable, and fully consistent with an employee's duties, responsibilities and grade as described in his/her job description. Standards and elements will be job and outcome related, not trait related. Standards, elements, and criteria for each rating level shall be provided to an employee in writing at the outset of the rating period and changed during the period only after review with the employee. Performance outcomes considered to be "Outstanding" and "Satisfactory" shall be described for each performance standard and behavioral element.

If an employee does not have an opportunity to perform work described by a standard or element, that standard/element will not be considered in the performance appraisal process.

Standards/elements will be applied fairly, objectively, and equitably. The Employer shall take into account equipment and resource problems, lack of training, frequent interruptions, and other matters outside of an employee's control when applying standards/elements to performance. Pre-approved time away from the job including sick leave, personal days, annual leave and authorized duty time for Union representational purposes and other authorized activities will not be considered negatively in the application of performance standards and behavioral elements. Evaluations shall fully take into account such approved absences in a measure of timeliness and quantity of work.

## **Section 4. Appraisal Procedure**

1. Whenever an employee is assigned to a different supervisor during the rating cycle (whether through a change in position or simply a change in supervisor), the supervisor shall meet with the employee as soon as possible to: review the Position Description (form MS-22 or DTS-3) for accuracy and to make any changes, if necessary; understand and clarify the duties being performed by the employee; identify expectations regarding tasks to be performed during the next rating cycle; and plan for any training, if necessary.
2. The employee's supervisor will prepare a preliminary mid-year and end-of-year performance appraisal. If the immediate supervisor is not available, the second level supervisor shall prepare the appraisal. If the evaluating supervisor is not the direct supervisor, he/she must have actual knowledge of the employee's performance.
3. The supervisor shall meet with the employee to discuss the preliminary appraisal. The employee shall be notified five days prior to the date of the review and discussion. Any rating of "Outstanding" or "Unsatisfactory" assigned by a supervisor to an individual performance standard or behavioral element shall be justified with an adequate explanation in the Supervisor's Comments to support the rating.
4. If an employee is transferred or placed under the supervision of a different supervisor during a rating cycle, he/she shall be given an exit appraisal by the prior supervisor and it shall be used in conjunction with his/her current supervisor's year-end appraisal, unless the employee has been working under the current supervisor for at least six months, and the employee and the Employer mutually agree not to use the former supervisor's appraisal. When both appraisals are used, they shall be averaged in accordance with the number of months evaluated by each appraisal.
5. If an employee has not received an exit appraisal from the former supervisor and has not worked for at least six months for the current supervisor or does not agree to use only the current supervisor's appraisal, the employee can return to the former supervisor and request a performance appraisal for the portion of the rating period s/he was supervised by the former supervisor. If the appraisal is received from the former supervisor, it shall be averaged with the current supervisor's appraisal, as described in paragraph 4.
  - a. If the appraisal is not received within a reasonable time to allow the current supervisor to complete the evaluation for the current rating period, the current supervisor shall complete the appraisal for the time during which the current supervisor supervised the employee, and shall note in writing in the Supervisor's Comments that an appraisal for the first portion of the rating period could not be obtained, and that the rating covers only the period of time the employee was supervised by the current supervisor, which should be specified.
  - b. To obtain the overall rating for the rating period if no performance appraisal is received from the former supervisor, the current supervisor shall credit the employee with a rating of "Satisfactory" for the period of time the employee was supervised by the former supervisor and shall average that rating with the current supervisor's rating as described in paragraph 4.

- Supervisors shall be required to review PEP refresher training materials every two (2) years.

### **Section 5. End-Of-Year Appraisal**

The end-of-year appraisal, which the appointing authority will approve before it is final, shall include the following:

- Performance rating;
- Specific tasks the employee needs to achieve during the next appraisal period and performance standards/behavioral elements;
- Modifications to the employee's job description, if any; and
- Recommendations for training to enhance the employee's skills, if any.

The Employer will not prescribe a forced distribution of levels for ratings for employees covered by this Agreement. No quotas or other limitations shall be applied to employee ratings.

An appointing authority may change an employee's end-of-cycle final evaluation only with written justification, which cites the employee's performance standards/behavioral elements and the employee's actual performance.

The supervisor shall give employees a copy of the end of-year appraisal within 30 days of the date of the PEP meeting, and a copy will be placed in the employee's personnel file. A statement of an employee's objection to an appraisal or comment may be attached and put in their personnel file.

### **Section 6. Department of Transportation Procedures**

This Article applies to the Department of Transportation except that DOT:

- is not required to develop and utilize performance standards;
- is not required to conduct mid-year evaluations;
- will appraise performance on a calendar year basis;
- will provide exit appraisals only to employees transferring to another State agency; and
- will not require employee self-assessments.

### **Section 7. Evaluation Form**

The Union agrees that the Management Rights provision of this Agreement and Section 3-302 of the State Personnel and Pension Article confers upon the State the authority to make changes to the forms used to evaluate employees. Such changes may be implemented after notification to the Union.

## **ARTICLE 17. WITHIN GRADE INCREASES**

### **Section 1.**

This Article and appropriate law, regulation or procedure governs within grade step increases. A supervisor's failure to complete an employee's evaluation shall not be used as a basis to deny the employee's increment.

### **Section 2.**

An employee may not be denied a step pay increase for reasons of performance unless substantial performance deficiencies, defined as being rated less than "Satisfactory" on performance standards/behavioral elements, warranting such action are cited on the employee's mid-year or final performance appraisal forms. In no case will the Employer withhold a step increase unless the affected employee has been notified.

### **Section 3.**

When the Employer determines that an employee's performance warrants withholding of a step increase, it shall notify the employee in writing and:

- 1) identify the specific incidents of unacceptable performance including reference to performance standards/behavioral elements;
- 2) provide a description of what the employer will do to assist the employee and a description of what the employee must do to improve the allegedly unacceptable performance during the opportunity period.

## **ARTICLE 18. TRAINING AND EDUCATION**

### **Section 1. In-Service Training**

Whenever employees are required to participate in, in-service training programs, they will be given time off from work with pay to attend such programs. Travel time will be reimbursed, in excess of the employee's normal, round trip commute in accordance with State Fleet Policies promulgated by the Secretary of the Department of Budget and Management. The costs of such training will be paid by the Employer. When employees are scheduled for an in-service training day, they shall not ordinarily be scheduled to work the shift immediately before or after the training. The only allowable exceptions are for employees who volunteer for such scheduling or when employees are assigned to a shift on an overtime basis to meet minimum staffing requirements.

### **Section 2. Professional Development**

When a prior approved course is offered only during an employee's working hours, an employee may receive, with prior management approval, up to six (6) hours per week of release time to attend job-related training. The term "job-related" includes preparation for potential promotion, as well as improvements in currently utilized skills and knowledge. Leave under this provision shall not be arbitrarily denied. The current release time procedures as defined by Department of Transportation will be maintained.

### **Section 3. Accreditation, Licensure or Certification**

Employees who are assigned or volunteer and are approved by the Employer to assume additional duties in their job classification which requires accreditation, licensure, or certification, shall be granted time off with pay, consistent with the operational needs of the Employer, and be reimbursed for any cost associated with the accreditation, licensure, or certification. The Employer shall, consistent with operational needs, grant the necessary time off with pay and/or provide in-service training for employees required to maintain accreditation, licensure, or certification as a minimum qualification for their position. The Employer may, but is not required to, reimburse the costs required to maintain accreditation, licensure, or certification. In addition, the Employer will pay the cost of and grant time off for physical examinations required for obtaining and renewing Commercial Driver's Licenses. The Employer shall reimburse the annual cost associated with an employee obtaining/retaining CNA certification.

#### **Section 4. Tuition/Training Reimbursement**

Those agencies that have tuition reimbursement shall continue their current policy and practice, contingent on available funding.

An employee seeking tuition reimbursement shall submit a written request stating the course and the cost of tuition. The level of reimbursement per credit shall be limited to the per credit charge at the University of Maryland, College Park for graduate and undergraduate courses. All courses that are "job-related" are eligible for reimbursement. The term "job-related" includes preparation for potential promotion, as well as improvement in currently utilized skills and knowledge. Employees may request reimbursement in accordance with the employing department's policies and procedures.

### **ARTICLE 19. DISCIPLINARY ACTIONS**

Disciplinary Actions and Appeals shall be governed by SPP and TSHRS laws, regulations, TSHRS Disciplinary Action Policy 7G.1 and other applicable policies.

#### **Section 1. General**

Except as otherwise provided by law, the Employer has the burden of proof by a preponderance of the evidence in any proceeding under this Article. After taking a disciplinary action against an employee, the Employer may not impose an additional disciplinary action against that employee for the same conduct unless additional information is made known to the Employer after the disciplinary action was taken.

The suspension of an employee who is exempt from the overtime pay requirements of the Fair Labor Standards Act shall be done so that the employee's overtime exemption will not be lost.

#### **Section 2. Disciplinary Actions Permitted**

The Employer may take the following disciplinary actions against any employee:

1. give the employee a written reprimand;
2. direct the forfeiture of up to 15 workdays of the employee's accrued annual leave;
3. suspend the employee without pay;

4. deny the employee an annual pay increase;
5. demote the employee to a lower pay grade; or
6. with prior approval of the head of the principal unit (Secretary of Department);
  - (i) terminate the employee's employment, without prejudice, or;
  - (ii) if the Employer finds that the employee's actions are egregious to the extent that the employee does not merit employment in any capacity with the State, terminate the employee's employment, with prejudice.

### **Section 3. Automatic Termination of Employment**

The following actions are causes for automatic termination of employment:

1. intentional conduct, without justification that:
  - i) seriously injures another person,
  - ii) causes substantial damage to property, or
  - iii) seriously threatens the safety of the workplace;
2. theft of State property of a value greater than \$300;
3. illegal sale, use or possession of drugs on the job;
4. conviction of a controlled dangerous substance offense by an employee in a designated sensitive classification;
5. conviction of a felony;
6. accepting for personal use any fee, gift, or other valuable thing in connection with or during the course of State employment if given to the employee by any person with the hope or expectation of receiving a favor or better treatment than that accorded to other persons;
7.
  - i) violation of the Fair Election Practices Act; or
  - ii) using, threatening, or attempting to use political influence or the influence of any State employee or officer in securing, promotion, transfer, leave of absence, or increased pay;
8. wantonly careless conduct or unwarrantable excessive force in the treatment or care of an individual who is a client, prisoner, or any other individual who is in the care or custody of this State; and
9. violation of § 3-314 of the Criminal Law Article.

### **Section 4. Duty of the Employer Prior to Imposing Sanctions**

- A. The State agrees with the tenets of progressive discipline, where appropriate. Similarly situated employees will be treated similarly regarding the application of disciplinary actions but mitigating circumstances will be considered.
- B. Procedures - Before taking any disciplinary action related to employee misconduct, the Employer shall:
  1. investigate the alleged misconduct;
  2. meet with the employee;
  3. consider any mitigating circumstances;
  4. determine the appropriate disciplinary action, if any, to be imposed; and
  5. give the employee a written notice of the disciplinary action to be taken and the employee's appeal rights.

- C. Time Limits – An appointing authority may impose any disciplinary action no later than 30 days after the appointing authority acquires knowledge of the misconduct for which the disciplinary action is imposed.
- D. Suspension - (1) An appointing authority, may suspend an employee without pay, no later than five (5) workdays following the close of the employee's next shift after the appointing authority acquires knowledge of the misconduct for which the suspension is imposed. (2) Saturdays, Sundays, legal holidays, and employee leave days are excluded in calculating the five (5) workday period.
- E. Except for employees working for a law enforcement agency and other exceptions authorized by law, an employee may not be required to submit to a polygraph test.
- F. Termination of probationary employees is covered by appropriate Law, Regulations, and /or Policy.

**Section 5. Actions Which Do Not Constitute Disciplinary Actions**

- A. Counseling Memoranda:
  - 1. Issuing a counseling memorandum is an instructional communication and is not a disciplinary action.
  - 2. Within 5 days after receiving a counseling memorandum, an employee may submit to the Employer a written response to the memorandum. The response shall be placed in the employee's personnel file and attached to any record of the memorandum.
  - 3. An employee may not take any other action in response to a counseling memorandum except in DOT, counseling letters are grievable.
- B. Leave Without Pay:
  - 1. Placing an employee on leave without pay when the employee is absent without approval is not a disciplinary action.
  - 2. An employee who is placed on leave without pay for an unapproved absence also may be subject to disciplinary action for the unapproved absence.
- C. Restitution:
  - 1. Requiring an employee to make restitution to the State for loss or damage to State property due to an employee's negligence is not a disciplinary action.
  - 2. The Employer may not require an employee to pay restitution exceeding 3% of the employee's annual base pay.
  - 3. An employee who is ordered to make restitution under this subsection also may be subject to civil prosecution or criminal prosecution.

**Section 6. Right to Union Representation**



- A. An employee shall have the right to Union representation if requested by the employee, only as provided below. There will be no exceptions to this rule.
  - 1. In any investigatory interview or discussion with an employee who is the subject of the investigation.
  - 2. At any disciplinary hearing or discussion with the employee who is the subject of the disciplinary hearing.

Management shall allow reasonable time for the Union Representative to attend said meeting but in no case less than four (4) hours.

- B. An employee shall not have the right to a Union Representative in attendance during a discussion solely related to performance or during a performance review. The right to Union representation does not include a criminal investigation.

All employees are required to give prompt, accurate answers to any and all questions concerning matters of official interest put to him/her by the Employer.

The role of the Union Representative is to assist in the clarification of questions and otherwise advise the employee of his/her rights. Under no circumstances may the Union Representative dominate the meeting or interfere with the employer's investigating process.

## **Section 7. Other Procedures**

- A. Negotiation and bargaining permitted - this Article does not preclude the Employer and an employee from agreeing to:
  - 1. holding in abeyance a disciplinary action for a period not to exceed 18 months in order to permit the employee to improve conduct or performance;
  - 2. imposition of a lesser disciplinary action as a final and binding action.
- B. Failure to appeal - if an employee fails to appeal a decision per law, regulation, or policy, the employee is considered to have accepted the decision.
- C. Time limits - the parties may agree to waive or extend any time limits as stated in this Article.
- D. Resolution of appeal encouraged - each party shall make every effort to resolve an appeal at the lowest level possible.
- E. A failure to decide an appeal in accordance with law and regulation is considered a denial from which an appeal may be made.

## **Section 8. Retention of Records**

After 24 months without any further disciplinary action, the record of any prior disciplinary

action, up to and including suspensions of five (5) days shall be expunged at the employee's request.

After 12 months without any further disciplinary action, counseling memoranda and written reprimands shall be expunged at the employee's request and shall not be used in assessing discipline.

### **Section 9. Excessive Absenteeism, Tardiness or Abuse of Sick Leave**

It is understood that excessive absenteeism, excessive tardiness, or the abuse of sick leave constitutes just cause for discipline and it is the intent of the Employer to take corrective action.

## **ARTICLE 20. TRAVEL**

### **Section 1. Personal Vehicles**

Employees who are directed by the Employer to use a personal vehicle for official state business shall do so in accordance with State fleet policies established by the Department of Budget and Management. When circumstances make it impractical for an employee to obtain a State vehicle on the day the vehicle will be used, such employee may request the vehicle at the end of the prior day's shift, and the appointing authority shall make reasonable accommodation, consistent with the efficient operation of the unit, to accommodate such request. If such request cannot be granted, the employee may use his/her own vehicle and be reimbursed at the full rate, in accordance with State fleet policies.

### **Section 2. Per Diem & Lodging**

Employees required to travel overnight will be reimbursed the overnight lodging and meal costs incurred in accordance with applicable regulations promulgated by the Secretary of Budget and Management. Employees required to travel but not overnight will be reimbursed for meal costs in accordance with applicable regulations.

### **Section 3. Travel Advances**

Employees may apply for and receive a travel advance prior to embarking on State travel if adequate funding is available in accordance with applicable regulations promulgated by the Comptroller of the Treasury.

### **Section 4. Taxi, Road, Bridge, Parking Fees and Other Travel Matters**

Taxi, road, bridge and parking fees, or other transportation and travel costs incurred by an employee on official State business, will be reimbursed by the Employer in accordance with applicable regulations.

### **Section 5. Reimbursement**

The Employer will reimburse employees for transportation and travel expenses in an expeditious manner.

**ARTICLE 21. DISCIPLINARY ACTIONS RELATED TO  
EMPLOYEE PERFORMANCE**

**Section 1. Scope**

This Article applies to an employee in the skilled and professional services.

**Section 2. Discipline for Performance**

The appointing authority may discipline an employee for reasons related to the employee's performance. These reasons include but are not limited to:

1. that the employee is incompetent or inefficient in the performance of the employee's duty;
2. that the employee is an individual with a disability who with reasonable accommodation cannot perform the essential functions of the position; or
3. that the employee currently is not qualified for the position.

**Section 3. Procedures**

- A. Before an employee in the skilled or professional service may be disciplined for performance-related reasons, the appointing authority or designee shall:
  1. Investigate the employee's performance, including the employee's most recent performance appraisals.
  2. Notify the employee in writing of the deficiency and provide an explanation of the Employer's position. The notice shall include:
    - a. Specific instances of unacceptable performance by the employee on which the proposed action is based;
    - b. the performance standards/behavioral elements of the employee's position involved in each specification of unacceptable performance;
    - c. a description of the efforts made by the Employer to assist the employee in improving performance.
  3. Meet with the employee to hear the employee's explanation, unless the employee is unavailable or unwilling to meet; and
  4. After determining the appropriate discipline, give the employee written notice of the disciplinary action to be taken, and the employee's appeal rights, and inform the employee of the effective date of the disciplinary action.
- B. Between the time an appointing authority notifies the employee of the disciplinary action and the time of the imposition of the discipline, the appointing authority may rescind the discipline.

- C. Except in the case of an annual performance appraisal, within 30 days after the appointing authority acquires knowledge of performance-related reasons for which disciplinary action may be imposed, the appointing authority shall take each of the actions required in Section 3A of this Article. The time period may be extended for any time that the employee is unavailable.
- D. In the case of an annual performance appraisal, the appointing authority shall impose discipline within 30 days after the time period specified in Section 4 of this Article.

#### **Section 4. Performance Appraisals**

- A. When an employee has been given an overall rating of "Unsatisfactory" on an annual performance appraisal, the employee's supervisor shall inform the employee that the employee has 180 days from the date that the employee receives the performance improvement plan to improve to the level of "Satisfactory" overall. The employee's development plan will be completed to identify the following:
  - 1. an identification of the performance standards/behavioral elements for which performance is unacceptable;
  - 2. a description of what the Employer will do to assist the employee and a description of what the employee must do to improve the unacceptable performance during the opportunity period;
  - 3. a statement as to when the Employer and the employee decide to meet to evaluate the employee's performance within the 180-day period.

Approximately mid-way through the 180-day period, the supervisor shall meet with the employee to discuss the employee's progress in terms of meeting the requirements of the Performance Improvement Plan.

Failure to achieve an overall "Satisfactory" rating at the end of the 180-day period shall result in the employee's termination.

- B. Under the provisions of State Personnel and Pensions Article §8-107, Annotated Code of Maryland, an employee may not be denied a pay increase unless substantial reasons of performance were cited on the employee's mid-year or final performance appraisal forms.

#### **Section 5. MDOT**

MDOT employees shall be evaluated based on TSHRS Policy 7A. In application of this policy, no employee will have less notice time for improvement and/or notice of termination than what is prescribed in this Article.

### **ARTICLE 22. INSURANCE AND BENEFITS**

#### **Section 1. Medical Plans**

The Employer will maintain the current health (including vision) and dental insurance programs and practices. The Employer shall contribute 80% of the premium charge for PPO plans, 85% of premium for the EPO plan, 85% of premium for the IHM plan, 80% for the prescription drug plan and 50% for the dental plan.

**Section 2. Prescription Drug Plan**

Retail and mail order prescription drug copays for bargaining unit employees shall be as follows:

| Type of Drug                  | Prescriptions for 1-45 Days<br>(1 copay) | Prescriptions for 46-90 Days<br>(2 copays) |
|-------------------------------|--|--|
| Generic drug                  | \$10                                     | \$20                                       |
| Preferred brand name drug     | \$25                                     | \$50                                       |
| Non-preferred brand name drug | \$40                                     | \$80                                       |

For each plan year the Prescription Drug annual out-of-pocket copay maximum shall be \$1,000 for individual coverage and \$1,500 for employee and spouse, employee and child, or employee and family coverage.

**Section 3. Term Life Insurance**

The Employer will maintain and make available to full-time and part-time employees, the current term life insurance plan as set forth in the document "Summary of Health Benefits, Maryland State Employees."

**Section 4. Personal Accidental Death and Dismemberment Plan**

The Employer will maintain and make available to full-time and part-time employees, the current personal accidental death and dismemberment plan as set forth in the document "Summary of Health Benefits, Maryland State Employees."

**Section 5. Health Insurance Portability and Accountability Act of 1996**

The Employer shall not elect to be excluded from subparts 1 and 2 of the Health Insurance Portability and Accountability Act of 1996.

**Section 6. Open Enrollment**

The Employer will conduct an Open Enrollment period each year at which time eligible employees shall be able to enroll in a health plan, continue enrollment in their current plan, or switch to another plan. Unless there is a mandatory Open Enrollment, employees who take no action during Open Enrollment will automatically be re-enrolled in their current plans and coverage, except that employees who wish to enroll in flexible spending account(s) for healthcare and/or dependent care must do so during each Open Enrollment. The Employer shall ensure that health benefit fairs are held during Open Enrollment, that such fairs are well publicized and scheduled to facilitate employee attendance, and that the Union shall be provided with space

at such fairs. Open Enrollment information and forms will be available to all employees and the Union in a timely manner.

Notification of Open Enrollment will be made via email to the email address supplied by the employee and maintained in the Statewide Personnel System (SPS or Workday). The State will make a good faith effort to email notification of Open Enrollment to bargaining unit members by using the employee's work email address. In the absence of a work email address, a personal email address will be used, if available.

An employee who does not have an email address may file a written request with the employee's HR Office for hard copy Open Enrollment materials to be mailed. The employee is responsible for ensuring that the employee's address in the SPS is correct.

### **Section 7. Transit Subsidy Program**

The Employer agrees to provide a free transit program for employees covered under this MOU. This program will include all Baltimore/Metro buses, Light Rail, Subway and Commuter Bus Lines No. 120, 150, 160 and 210 and all other systems and lines included in the current program.

### **Section 8. Death Benefit**

A death benefit in the amount of \$100,000 shall be paid to the surviving spouse, children, or dependent parents (as defined in SPP Section 10-404) of any State employee who is killed in the performance of job duties. A death benefit may not be paid under this section if an employee is killed as a result of the employee's negligence.

### **Section 9. Dependent Coverage for Children**

Effective January 1, 2018, the State shall offer dependent health benefits for dependent children as follows:

1. Up to age 26 for a biological child, adopted child, or stepchild of an employee or retired employee, or a child placed for adoption by the employee or retiree;
2. Up to age 25 for (i) a grandchild of an employee or retired employee, (ii) a child under the testamentary or court appointed guardianship, other than a temporary guardianship of less than 12 months duration, of the employee or retired employee, or (iii) a child who is related to the employee or retired employee by blood or marriage and is solely supported by the employee or retired employee. In each such case, the child must permanently reside with the employee or retired employee and meet the requirements of 26 U.S.C. §§ 105, 106, and 125, and federal regulations implementing those statutory provisions for tax preferred health benefit coverage.
3. The above-referenced limiting ages may not apply if, at the time of reaching the limiting age, the child is incapable of self-support because of a mental or physical incapacity that started before the child reached the limiting age, and the child is chiefly dependent for support on the employee or the retired employee.

## **ARTICLE 23. EMPLOYEE ASSISTANCE PROGRAM**

### **Section 1. Employee Assistance Program (EAP)**

The Employer and the Union recognize the value of counseling and assistance programs to those employees whose personal problems affect performance of their job duties and responsibilities. Therefore, the Employer agrees to continue the existing Employee Assistance Program.

### **Section 2. Labor-Management Advisory Committee**

The Union and the Employer agree to form a joint labor-management committee on employee assistance. The committee will be composed of an equal number of representatives for the Union and the Employer. The committee will review the EAP, EAP provider networks and EAP training programs for employees and supervisors.

### **Section 3. Confidentiality**

Records regarding treatment and participation in the Employee Assistance Program shall be confidential and retained by the Employee Assistance Program.

In cases where the employee and the Employer have entered into a voluntary Employee Assistance Program Participation Agreement in which the Employer agrees to defer discipline as a result of employee participation in the Employee Assistance Program treatment program, the employee shall be required to waive confidentiality by signing appropriate releases of information to the extent required to enable the Employee Assistance Program to provide the Employer with reports regarding compliance or non-compliance.

In cases of supervisor referral to the Employee Assistance Program, records shall be released to the Employer in reference to the ability of the employee to perform the job safely and effectively and/or whether the employee needs to participate in the program.

In addition, the Employer shall be informed of the employee's compliance or non-compliance in the Employee Assistance Program.

## **ARTICLE 24. DRUG AND ALCOHOL TESTING**

### **Section 1. Prior Notification**

Drug and alcohol testing shall be done in a fair and equitable manner in strict observance of all applicable laws and regulations. All employees subject to such testing shall be so informed.

### **Section 2. Employee Notice of Use of Alcohol**

- a. Employees who are called in to work outside of their regularly scheduled hours shall be provided the opportunity to acknowledge they have consumed alcohol within the previous four hours.

- b. The employees who make an acknowledgment under paragraph (a) may not be subject to disciplinary action and may not be assigned to perform a safety-sensitive function.

## **ARTICLE 25. EMPLOYEE FACILITIES**

### **Section 1. Water and Restroom Facilities**

Sanitary drinking water will be provided to all employees and all employees will have access where possible to a fully equipped and clean restroom in reasonable proximity to their place of employment. Where possible, in institutional settings, restrooms will be set aside for the exclusive use of employees.

### **Section 2. Personal Property**

For employees who are required to wear uniforms or other special attire or equipment, the Employer will provide a secure place for employees to store their personal wearing apparel and other personal items where possible.

### **Section 3. Eating Areas**

For employees who have an unpaid lunch (dinner) break, the Employer will provide employees with an area suitable for eating in reasonable proximity to their work area wherever possible. In institutional settings wherever possible, the eating area will be away from residents, patients, inmates, and students.

## **ARTICLE 26. EQUIPMENT**

### **Section 1. Health and Safety**

The Employer shall provide employees with reasonable safety equipment devices and supplies needed to ensure employee health and safety.

The Employer shall provide Community Health Nurses with interpreters and/or escorts when it is deemed necessary by management for home visits.

### **Section 2. Equipment and Supplies**

The Employer shall provide all necessary equipment and supplies that Management or State licensing, or regulatory agencies deem necessary to enable employees to carry out their duties.

Principle work sites for community health nurses shall be provided with reference books that may be required.

Sufficient cell phones and spare batteries will be provided at principal work sites for use of all Community Health Nurses and Facilities Surveyors working outside of the Community Health Office on any given day. One, or more, large Blood Pressure Cuffs shall be available for use by Community



Health Nurses at each principal work site.

The lack of supplies or equipment shall not constitute a right by the employee to refuse to work except in such cases where the lack of such supplies or equipment would constitute a direct specific hazard to the employee's health and safety.

### **Section 3. Computer Access**

The State will strive to provide all facilities' surveyors with laptop computers and software to allow them to connect to the Department's LAN from remote locations.

## **ARTICLE 27. DISPUTE RESOLUTION PROCEDURE**

### **Section 1.**

Subject to any limitations of existing law, a complaint is defined as a dispute concerning the application or interpretation of the terms found only in this MOU.

### **Section 2.**

Pursuant to SPP § 12-101, a dispute between an employee and the employee's employer about the interpretation of and application to the employee of any term or condition of this MOU shall be filed in accordance with SPP Title 12.

## **ARTICLE 28. MISCELLANEOUS**

### **Section 1. Agreement**

To the extent that this Agreement addresses matters covered by existing or future administrative rules, regulations, guidelines, policies, or practices, that are mandatory subjects of Bargaining, management agrees to make any necessary changes in the rules, etc. to be consistent with this agreement. References in this Agreement to "COMAR," "rules," "regulations," or "Transportation Services Human Resources System (TSHRS)," is understood by the parties to be negotiable consistent with the law and as described in Article 35, Mid-Contract Negotiations.

### **Section 2. Preservation of Benefits**

The Employer agrees not to make changes to State statutes, administrative rules, regulations, guidelines, TSHRS or policies that are mandatory subjects of bargaining per the law until negotiated in accordance with this agreement (Article 35).

## **ARTICLE 29. SAVINGS**

Should any part of this Agreement be declared invalid by operation of law or by a tribunal of competent jurisdiction, the remainder of the Agreement shall not be affected but shall remain in full

force and effect. In the event any provision is thus rendered invalid, upon written request of either party, the Employer and the Union shall meet promptly and negotiate a substitute for the invalid Article, Section, or portion thereof.

### **ARTICLE 30. WORK STOPPAGES**

It shall be a violation of this Agreement for the Union to engage in a strike or work stoppage against the State of Maryland. the Union shall forfeit its status as the exclusive representative of employees in this bargaining unit if the Union engages in a strike or work stoppage against the State of Maryland.

### **ARTICLE 31. HEALTH AND SAFETY**

#### **Section 1. General Duty**

The Employer will provide, to the extent possible, safe, secure, healthful working conditions for all employees. The Employer agrees to comply with the federal Occupational Safety and Health Act (OSHA) and all other applicable federal, State, and local laws and regulations, and departmental safety rules and regulations. All employees shall comply with all safety rules and regulations established by the Employer.

#### **Section 2. Unsafe Conditions**

In accordance with 29 CFR § 1977, occasions might arise when an employee is confronted with a choice between not performing assigned tasks and subjecting himself/herself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself/herself to the dangerous condition, he/she would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger by resorting to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

#### **Section 3. Health and Safety Committees**

In order to provide a safe and healthful workplace, local unit level LMCs shall establish Health and Safety Committees. Each committee will be composed of an equal number of representatives appointed by the Union and the Employer and will be co-chaired by a Union and Employer representative. A Union representative must be a member of the unit but either party may be accompanied by staff and/or other subject matter experts who may participate, but not vote, at meetings. Each party shall prepare and submit an agenda to the other party one week prior to any scheduled meeting. If neither party submits an agenda, the meeting shall be canceled.

Each committee's general responsibility will be to provide a safe and healthful workplace by

recognizing hazards and recommending the abatement of hazards and educational programs. Each committee will:

1. meet on an established schedule;
2. arrange periodic inspections to detect, evaluate and offer recommendations for control of potential health and safety hazards;
3. appoint members of the committee to participate in inspections, investigations, or other established health and safety functions to the extent necessary;
4. receive and review a quarterly summary of job-related health and safety reports including accident reports and make appropriate recommendations;
5. investigate all types of employee job-related accidents and all types of occupational illnesses and make recommendations;
6. promote health and safety education;
7. study the use of VDTs and make appropriate recommendations to ensure the health and safety of employees regarding such use;
8. maintain and review minutes of all committee meetings; and
9. review the availability and adequacy of first aid supplies and equipment and address any inadequacies.

In cases where summary reports are provided, a committee member may request and receive an individual case file or report. In no case will an employee's records be provided when the law forbids disclosure. In addition, employees' names will normally be deleted but may be provided to all committee members in instances where committee members need to know the name(s) of employee(s) to effectively represent the bargaining unit(s) and disclosure of name(s) is not prohibited by law. The Employer may require committee members and Union representatives to sign confidentiality statements.

Members of each Health and Safety Committee will be paid by the Employer while performing committee duties, including travel time, and will also be paid for any time spent in committee approved training related to health and safety. The Committee will develop an annual training program for its members.

Each Health and Safety Committee will establish rules consistent with the above principles. A mechanism to coordinate the efforts of individual Health and Safety Committees will be established at each agency.

#### **Section 4. Personal Protective Clothing and Equipment**

The Employer will provide all personal protective clothing and/or equipment that are required by applicable laws, regulations, and policies. The Employer shall purchase or provide reasonable reimbursement to employees who are required to wear non-prescription safety glasses. For employees who wear prescription glasses, where non-prescription glasses do not provide adequate protection, the Employer shall provide reasonable reimbursement for prescription safety glasses.

#### **Section 5. Communicable Diseases**

Employees will be provided with information on all communicable diseases to which they may have routine workplace exposure. Training provided to employees will include the symptoms of the diseases, modes of transmission, methods of self-protection, proper workplace procedures, special

precautions, recommendations for immunization and any relevant regulations, guidelines and CDC recommended precautions.

Employees who have any contact with blood and other body fluids will be offered Hepatitis B vaccinations at the Employer's expense.

Any screening of incoming clients, residents, or inmates in health care facilities or residential or correctional institutions for communicable diseases will be performed according to relevant Centers for Disease Control (CDC) guidelines. If a resident or inmate is found to carry a communicable disease, all appropriate precautions will be taken.

The Employer will comply with the latest CDC guidelines on post exposure treatment whenever an employee receives an exposure, while on duty, to potentially infectious blood or body fluids, except for cases of employee misconduct or gross negligence as related to on duty exposures, CDC guidelines on post-exposure treatment will apply. However, the Employer may seek discipline and/or damages as allowed by law.

### **Section 6. Cardiopulmonary Resuscitation (CPR) Training**

Ongoing CPR training will continue to be provided in accordance with current practice at Employer cost. The Employer will develop emergency facility evacuation plans and provide appropriate training, including fire drills.

### **Section 7. Ergonomics/Back Injury Prevention**

The Employer and the Union shall establish an Ergonomics Committee which shall consider and make recommendations on methods to prevent injuries.

### **Section 8. Staffing Levels**

To the extent legislative appropriations and PIN authorizations allow, safe staffing levels will be maintained in all institutions where employees have patient, client, inmate, or student care responsibilities. In July of each year, the Secretary or Deputy Secretary of each agency will, upon request, meet with the Union, to hear the employees' views regarding staffing levels. In August of each year, the Secretary or Deputy Secretary of Budget and Management will, upon request, meet with the Union to hear the employees' views regarding the Governor's budget request.

### **Section 9. Asbestos**

All employees who work with or around asbestos shall have the proper required training and personal protective equipment where necessary. When an asbestos hazard is discovered, employees shall be promptly notified of the existence and location of the hazard.

### **Section 10. Workplace Violence**

The State of Maryland is committed to providing a workplace for all employees that is safe, secure, and free of harassment, threats, intimidation, and violence. It is the intention of the State and the Union to set forth uniform requirements for all Departmental procedures for addressing situations in

the workplace involving acts of harassment or threatening or intimidating behavior, and violence in the workplace.

- 1) Every Principal Unit will be responsible for developing or updating a Prevention of Violence in the Workplace plan. This plan will be developed by each Department and the Union through the LMCs with the goal of developing a unified plan.
- 2) The Department-specific plan shall be finalized by the LMCs within nine months from the ratification of the MOU.
- 3) Each Department-specific plan shall at a minimum consider the following:
  - a. Guidelines for employees when dealing with an actual or potential incident involving workplace violence.
  - b. A workplace violence training curriculum.
  - c. A method to inform employees of the risk of violence posed to employees in their classification by clients, patients, inmates, or others within their immediate work area, when such risk is foreseeable.
  - d. A program to provide post-incident treatment and necessary follow up for any employee who has been the victim of violence or who witnessed an act of violence in the workplace.

#### **Section 10A. Bullying in the Workplace**

The Employer and the Union recognize the need to educate all employees about bullying in the workplace and have worked collaboratively to enhance the State's Bullying in the Workplace Policy. The parties to this Agreement remain committed to working together to address any issues that arise relating to the Employer's administration of this policy.

#### **Section 11. Indoor Air Quality**

The Employer shall ensure a healthful air quality and attempt to ensure comfortable air temperature in buildings it owns and in space that it leases.

A Statewide Indoor Air Quality LMC shall be established within 60 days of the effective date of this Agreement.

#### **Section 12. Reproductive Hazards**

Any pregnant employee assigned to work in an environment that may be harmful to the pregnancy or to the fetus may request reassignment to alternative work, at equal pay, within her department. Such environments include, but are not limited to, exposure to toxic substance such as ethylene oxide or lead, communicable disease such as cytomegalovirus or rubella, physical hazards, or where there is a reasonable expectation of violence against the employee. Management shall assess any suspected hazard on a case-by-case basis. The Employer shall attempt to accommodate such a request.

#### **Section 13. Physical Exams**

The Employer agrees to provide without cost to employees, physical examinations and/or other appropriate tests when such tests are deemed necessary by management to determine whether the health

of employees is being or has been adversely affected by exposure to potentially harmful physical agents, toxic materials, or infectious agents, or by attacks and assaults.

The Employer agrees to provide to each affected employee who requests it a complete and accurate written report of any such medical examination or other appropriate tests related to occupational exposure. Additionally, written results of an industrial hygiene measurements or investigations related to an employee's occupational exposure will also be provided, upon request, to the employee or the employee's authorized representative. The Union and/or members of the applicable Health and Safety Committee will be provided copies of summary reports, but such reports will not contain personally identifying information.

#### **Section 14. Duty to Report**

All employees who are injured or who are involved in an accident during the course of their employment must fill out an accident report within three business days on forms furnished by the Employer.

#### **Section 15. Vehicle Inspection**

All State agencies must have a formal vehicle inspection program for State vehicles to assure that vehicles are clean, properly equipped, maintained, and in good repair. Each program must provide:

1. the designation of a responsible official for the program and notification to the Union and employees of the name and contact information of that individual;
2. inspections conducted at least every six months;
3. maintenance of inspection records at agency headquarters and allowance for inspection by any employee or the Union;
4. correction of unsatisfactory conditions within seven (7) days and such action shall be recorded on the inspection sheet.

#### **Section 16. Imminent Weather-Related Conditions**

When imminent weather-related conditions will create potentially hazardous travel conditions, the Employer will make every reasonable effort to call-back employees to work prior to the development of hazardous travel conditions.

### **ARTICLE 32. LAYOFFS AND SEPARATIONS FOR LACK OF APPROPRIATION**

#### **Section 1. Layoff/Separations**

The Employer agrees that prior to deciding a layoff, or a separation for lack of appropriations, the Employer will consider all of its reasonable alternatives. The Employer also agrees that, when possible, employees will be provided with 60 days' notice of a layoff or a separation for lack of appropriations. Prior to notifying specific employees that they will be subject to a layoff or a separation for lack of appropriations, the Employer will meet with the Union to discuss the relative merits of using a layoff versus separation for lack of appropriation, and in an effort to develop appropriate arrangements for affected employees. All layoffs shall be in strict conformance with applicable law and regulation including State Personnel and

Pension Article §11-206 regarding seniority points. All separations for lack of appropriations shall be in strict conformance with applicable law and regulation, including State Personnel and Pensions Article Title 11, subtitle 3.

### **ARTICLE 33. LABOR MANAGEMENT COMMITTEES**

Both the Employer and the Union have an interest in maximizing the effectiveness of operations, the delivery of quality services and the promotion of satisfied work forces. To further this interest, the parties endorse the labor-management committee process as an appropriate means to identify and understand workplace issues and develop viable solutions. The Union and the Employer intend to foster an ongoing, communicative relationship in which the parties are encouraged to speak freely and resolve issues within the labor-management forum. The Employer and the Union shall cooperate in using training and other mutually agreed upon methods, within available resources, to assist statewide, department and local level LMCs to be effective.

The number of attendees at each level shall be mutually agreed to and meetings will take place on work time.

#### **Statewide LMCs**

- The Executive Director of the Department of Budget and Management's Office of Personnel Services and Benefits shall meet with Union representatives periodically or as needed to help resolve Department Level LMC issues.

#### **Department Level LMCs**

- Department Secretaries and/or Deputy Secretaries shall meet with Union representatives periodically to discuss and attempt to resolve matters of mutual concern. Such meetings shall be held at least quarterly at mutually agreeable times and locations.
- Subjects which may be discussed at such meetings may include but are not limited to: questions concerning implementation and administration of this Agreement which are departmental in nature, questions concerning the scheduling of employee workdays within the established work week, distribution and posting of job postings, continuity of employment, institution of alternative work week schedules, staff development and training issues and other matters as mutually agreed.
- Written agendas shall be exchanged by the parties no less than seven days before the scheduled date of each meeting. At the time of the meeting, additional subjects for discussion may be placed on the agenda by mutual agreement.
- Department-level labor management committees that have reviewed an issue but have been unable to agree on the disposition of that issue, may refer that issue to the state LMC.

#### **Facility/Institution/Local LMCs**

- Facility, institution, or agency CEOs (or the equivalent) shall meet with Union representatives periodically to discuss and attempt to resolve matters of mutual concern. Such meetings shall be held at least every other month at mutually agreeable times and locations.

- Subjects which may be discussed at such meetings may include but are not limited to: questions concerning implementation and administration of this Agreement which are local in nature, questions concerning the scheduling of employee workdays within the established work week, distribution and posting of job postings, continuity of employment, institution of alternative work week schedules, staff development and training issues and other matters as mutually agreed.
- Written agenda shall be exchanged by the parties no less than seven days before the scheduled date of each meeting. At the time of the meeting, additional subjects for discussion may be placed on the agenda, by mutual agreement.
- If a facility or local-level LMC is unable to agree on the disposition of that issue, it may refer that issue to the departmental LMC.

#### **ARTICLE 34. LIGHT OR MODIFIED DUTY ASSIGNMENT**

LMCs will be formed to evaluate light duty assignment procedures and make recommendations regarding the expansion of the current Managed Return to Work Program.

#### **ARTICLE 35. MID-CONTRACT NEGOTIATIONS**

##### **Section 1.**

The Employer and the Union acknowledge their mutual obligation to negotiate as defined and required by law over Employer proposed changes in wages, hours and other terms and conditions of employment affecting bargaining unit employees not specifically covered by this Agreement. The Union's ability to negotiate does not provide the Union with a "veto" power over Employer initiated changes and shall not unduly delay the implementation of Employer initiated changes. The Employer and the Union expressly agree to subject any changes to working conditions that are mandatory subjects of bargaining to the bargaining process described in this Article prior to proposing legislation sponsored by a member of the General Assembly.

##### **Section 2.**

The obligation to bargain is limited to those changes that will substantially affect the working conditions of bargaining unit employees.

The minimum notice to the Union of an intended change in working conditions is thirty (30) days. If required to meet a legislative mandate or an emergency situation, management will notify the Union as soon as possible.

The Union may request bargaining within this thirty (30) day period and shall submit proposals in response to the Employer's intent to change working conditions within twenty (20) days of its request to bargain.

##### **Section 3. Mediation**

If after good faith negotiations at the local level, the parties are unable to reach an agreement on



a mandatory subject of bargaining, the issue will be forwarded to the Executive Director of the Office of Personnel Services and Benefits and the AFT Healthcare Maryland President to negotiate the issue.

At this point, if an agreement still has not been reached, either party may request the assistance of a mediator from the Federal Mediation Conciliatory Services (FMCS). Should there be a cost involved, this cost will be the responsibility of the party requesting the mediator.

If the mediator is unable to bring the parties to an agreement, both sides will ask for a recommendation. If the recommendation does not support the State's position, the State may implement its proposal upon providing written notification to the Union, identifying the reason(s) the State is going forward with the proposed change. However, this procedure does not prevent the State from implementing proposed changes in an emergency situation declared by the Governor, or when the proposed changes are required to meet a legislative mandate.

### **ARTICLE 36. CLOSURE, COMPLETION AND SEVERABILITY**

With the exception of Article 5, "Workweek, Work Time, Schedules, Overtime and Compensatory Time," Article 6, "Wages," Article 8, "Leave Accrual," Article 9, "Leave with Pay," Article 17, "Within Grade Increases," Article 22, "Insurance and Benefits," and any other provision that has a budgetary impact to the State or otherwise requires legislative approval or the appropriation of funds, this Memorandum of Understanding ("Agreement") incorporates the matters of agreement reached by the State of Maryland, as employer, and the American Federation of Teachers (AFT) Healthcare Maryland, as exclusive representative for Bargaining Unit E, in negotiations consistent with Md. Code Ann., State Pers. & Pens., § 3-501, which gubernatorial matters of agreement are within the executive authority of Larry Hogan, as Governor.

Upon ratification of this Agreement consistent with State Pers. & Pens. § 3-601, if ratification is completed prior to January 1, 2021, all gubernatorial matters of agreement (all terms excepting Article 5, "Workweek, Work Time, Schedules, Overtime and Compensatory Time," Article 6, "Wages," Article 8, "Leave Accrual," Article 9, "Leave with Pay," Article 17, "Within Grade Increases," Article 22, "Insurance and Benefits," and any other provision that has a budgetary impact to the State or otherwise requires legislative approval or the appropriation of funds) shall take effect January 1, 2021 and such gubernatorial matters of agreement shall remain in effect for a period of three years, through December 31, 2023 as authorized under State Pers. & Pens. § 3-601(b).

The terms of Article 5, "Workweek, Work Time, Schedules, Overtime and Compensatory Time," Article 6, "Wages," Article 8, "Leave Accrual," Article 9, "Leave with Pay," Article 17, "Within Grade Increases," Article 22, "Insurance and Benefits," and any other provision of the Agreement that has a budgetary impact to the State or otherwise requires legislative approval or the appropriation of funds under Pers. & Pens. §§ 3-501(c)(2)(ii) and (d)(2) shall stand as executory pending approval by the Governor-elect and the General Assembly, in calendar year 2023 under the Maryland Gubernatorial Transition Act, Md. Code Ann., State Government Art., §§ 3-201 *et seq.*, and in budget years thereafter as consistent with the Maryland Constitution.

Any article, section, clause, or phrase of this Agreement that by a final order of the Maryland judiciary is declared invalid as inconsistent with Pers. & Pens. §§ 3-301, 3-501, or the Gubernatorial Transition Act, shall be severable, and it shall be treated as inoperative and removed from the balance of

Md. Code Ann., State Government Art., §§ 3-201 *et seq.*, and in budget years thereafter as consistent with the Maryland Constitution.

Any article, section, clause, or phrase of this Agreement that by a final order of the Maryland judiciary is declared invalid as inconsistent with Pers. & Pens. §§ 3-301, 3-501, or the Gubernatorial Transition Act, shall be severable, and it shall be treated as inoperative and removed from the balance of the Agreement. If an article, section, clause, or phrase of the Agreement is declared unconstitutional, illegal, or invalid, all other articles, sections and provisions of the Agreement shall survive, remain operative and they shall continue in effect through December 31, 2023. Upon receipt of a final order that declares invalid any provision of the Agreement, the employer and the exclusive representative shall promptly meet to bargain over a substitute for the invalidated provision.

**ARTICLE 37. DURATION**

**Section 1. Duration**

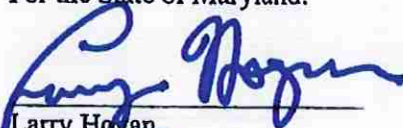
This MOU shall become effective on January 1, 2021, upon signing (subsequent to a proper ratification by both parties) and remain in effect until December 31, 2023.

**Section 2. Limited Reopeners**

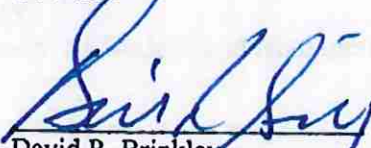
Notwithstanding the provisions of Section 1, Duration, either party may reopen this MOU in September of each succeeding year for the purpose of negotiating over economic issues for the following fiscal year and any other matter mutually agreed upon. All other terms and conditions of this MOU shall remain in full force and effect during any such reopener throughout the duration of this MOU. In the event that there is a change in law affecting the legally permissible scope of bargaining, either party may reopen this MOU to negotiate the newly negotiable matters.

This M.O.U. is hereby accepted by the parties on: December 31, 2020.

For the State of Maryland:



Larry Hogan  
Governor

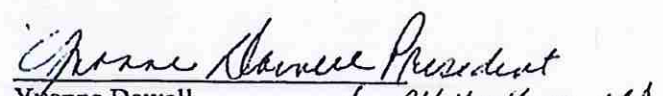


David R. Brinkley  
Secretary  
Department of Budget and Management



Cynthia A. Kollner  
Chief Negotiator

For the Union:

  
Yvonne Dowell  
President  
*AFT Healthcare - MD*

Rose Wertz  
Field Coordinator  
AFT Healthcare - Maryland