

## ATTACHMENT 26



### **Memorandum of Agreement with the Police Benevolent Association - RFP entitled: “Dispute Resolution Program”**

MEMORANDUM OF AGREEMENT  
BETWEEN THE  
STATE OF NEW YORK  
AND  
THE POLICE BENEVOLENT ASSOCIATION OF  
THE NEW YORK STATE TROOPERS, INC.

April 2, 2009

WHEREAS, the Police Benevolent Association of the New York State Troopers, Inc. (“PBA”) and State of New York, Division of State Police (“Division”) are parties to an August 16, 2008, Memorandum of Agreement (“MOA”) regarding terms for a Collective Bargaining Agreement dated April 1, 2007, to March 31, 2011, for the bargaining unit consisting of those employees of the Division holding the rank of Trooper (“Troopers’ Unit”) and an August 16, 2008, Memorandum of Agreement (“MOA”) regarding terms for a Collective Bargaining Agreement dated April 1, 2007, to March 31, 2011, for the bargaining unit consisting of those employees of the Division of State Police who are Commissioned and Non-Commissioned Officers (“Supervisors’ Unit”). WHEREAS, paragraph 14 of the Troopers’ Unit MOA and paragraph 15 of the Supervisors’ Unit MOA each set forth that the parties will establish a Labor/Management Committee for the purpose of developing a benefit for certain on-the-job injuries. WHEREAS, the parties have established the Labor/Management Committee and that the Committee has met and discussed the issues associated with developing a benefit for certain on-the-job injuries and the creation of a Modified Duty Policy applicable to both the Troopers’ and Supervisors’ Units. WHEREAS, the PBA, the State and the Division have reached an agreement that is satisfactory to all parties and desire to reduce said agreement to writing; NOW, therefore in consideration of the mutual premises contained herein, it is hereby stipulated and agreed as follows: 122 Heightened Risk Disability Benefit 1. The Heightened Risk Disability Benefit will apply only to on-duty illnesses/injuries resulting from circumstances above and beyond a Member’s routine daily duties. 2. Upon written request by a Member to the Deputy Superintendent – Employee Relations to receive the Heightened Risk Disability Benefit as a result of an on-duty illness/injury, the Superintendent shall determine, on a case-by-case basis, whether the Member’s on-duty illness/injury falls within the Heightened Risk

Category. 3. A Member, who is unable to work due to an on-duty injury/illness that is determined by the Superintendent to be in the Heightened Risk Category, will be entitled to the Heightened Risk Disability Benefit, and thus will continue to receive full pay and fringe benefits during the period of absence until the Member: 1) receives a New York State Police accidental disability retirement (RSSL §363-bb); or 2) becomes eligible for a New York State Police service retirement with full benefits (currently, twenty (20) years of State Police service credit); or 3) reaches his/her applicable mandatory retirement age under New York State law; or 4) is deemed capable of returning to full and strenuous duty; or 5) refuses a modified duty assignment as described in paragraph 6 below, whichever occurs first. 4. The Division or the Member may file for disability retirement on behalf of the Member at any time. The Division reserves the right to file on behalf of the Member without his/her consent. 5. A Member who is eligible to receive the Heightened Risk Disability Benefit shall be required to work in a modified duty assignment if he/she is determined to be fifty percent (50%) or less disabled in accordance with the terms and provisions of the Modified Duty Program as set forth herein. 6. If the Member is determined to be fifty percent (50%) or less disabled in accordance with the terms of the Modified Duty Program, and refuses the assignment to modified duty, he/she shall not be eligible to receive full pay and fringe benefits pursuant to the Heightened Risk Disability Benefit. 7. If the Member is determined to be greater than fifty percent (50%) disabled in accordance with the terms of the Modified Duty Program, he/she shall not be required to work in a modified duty assignment and shall continue to receive full pay and fringe benefits under the Heightened Risk Disability Benefit subject to the terms set forth in paragraph 3 above. 8. The Superintendent's determination that an on-duty injury/illness does not fall within the Heightened Risk Category will be issued in writing to the PBA and the Member and shall be subject to appeal by the Member upon written notification to the Deputy Superintendent – Employee Relations within ten (10) calendar days of his/her receipt of the Superintendent's written determination. Such appeal shall be reviewable by a three (3) person panel that shall be referred to as the Heightened Risk Determination Review Panel ("Panel"). The Panel shall consist of one (1) representative appointed by the Division, one (1) representative appointed by the PBA and one (1) representative appointed by the Director of the Governor's Office of Employee Relations. 9. Upon proper written appeal by the Member as set forth in paragraph 8 above, the Panel shall schedule the date for a hearing in furtherance of its review of the Superintendent's determination on Heightened Risk categorization within twenty (20) calendar days of receipt of the written request to the Deputy Superintendent – Employee Relations. 123 After

reviewing the particular facts and circumstances of the matter, prior Heightened Risk determinations, documentary evidence, testimony, and/or other submissions by the parties, the Panel shall issue a binding written decision based on a majority vote of the Panel members within ten (10) calendar days of the hearing date. 10. Pending the Panel's decision, the Member shall be subject to the Division's normal Workers' Compensation procedures and benefits. Modified Duty Policy 11. Modified Duty Generally. The parties recognize that the traditional policy of requiring a Member to be fit for full and strenuous duty may create a hardship for the Division and a Member who is fit for partial duty, but nonetheless, is not permitted to work. This can result in substantial depletion of a Member's accruals and deprive the Division of the Member's services. Assignment of the Member to Modified Duty will alleviate the impact of the absence on the Member and on the Division. 12. Qualifications for Consideration. It is the policy of the Division to permit and assign a Member recovering from either an on-duty or off-duty illness/injury to a modified duty assignment when such Member meets the criteria for such assignment as set forth herein and the Division's best interests are served. However, modified duty assignments are not designed nor intended to be long-term in duration. 13. Modified Duty Assignments. Modified Duty shall consist of assignments as available and as designated by the Division, including but not limited to, administrative duties, desk duty, records management, inventory control, investigations not requiring field work, communications, and other non-patrol functions. 14. Assignment to Modified Duty. A Member who is approved for assignment to modified duty shall be assigned to report for such duty by the Deputy Superintendent – Employee Relations or his/her designee. 15. Assignment – Schedule. Members assigned to modified duty will be scheduled to work an eight (8) hour work schedule or a twelve (12) hour work schedule at the discretion of the Troop or Detail Commander, subject to the terms set forth in Article 12 of the parties' collective bargaining agreement. 16. Assignment - Limitations. Members working in a modified duty capacity shall not be eligible for assignment to overtime details, normal road patrol, criminal investigations requiring field work, or field supervisory coverage. Absent an emergency, Members working in a modified duty capacity shall not be assigned to work overtime. Any overtime that is assigned to a Member working in a modified duty assignment requires prior approval by the Troop/Detail Commander. The Troop/Detail Commander shall provide notice of all overtime incurred pursuant to this paragraph to the Deputy Superintendent – Employee Relations. 17. Limitations – Location of Assignment. The Division shall have the sole right to determine the location of a modified duty assignment and will make every reasonable effort to assign the Member as close to his/her

official duty station as possible. A Member shall not be assigned more than fifty-five (55) miles from his/her official duty station without his/her consent. However, the Division shall not be required to assign a Member to any location where there is insufficient work. A Member assigned more than thirty-five (35) miles from his/her official duty station will be entitled to mileage or sustenance in accordance with Articles 2 and 124 10 of the New York State Police Administrative Manual, and as otherwise provided for in accordance with law, rule, regulation or collective bargaining agreement.

18. Limitations – Duration of Modified Duty Generally. With the exception of a Member receiving the Heightened Risk Disability Benefit, a Member may not work in a modified duty capacity for more than five hundred forty (540) calendar days in any three (3) year period. This time period limitation shall begin on the first day of the Member's modified duty assignment and shall apply in instances of single or multiple illnesses/injuries, regardless of whether the illnesses/injuries result from the same or different events/circumstances. Upon written request by the Member, the Superintendent may, in his sole discretion, determine to extend the time limitation on modified duty assignments as set forth herein.

19. Assignment – Out-of-Title Work. There shall be no grievances alleging out-of-title work filed or processed in association with any modified duty assignment.

20. Assignment – Attire. The Troop/Detail Commander shall determine whether the Member in a modified duty assignment will wear his/her uniform or appropriate business attire while on duty.

21. Remedies. A determination regarding a Member's degree of disability or eligibility for modified duty, including determinations made regarding a Member's eligibility to receive the Heightened Risk Disability Benefit, shall not be subject to the Article 15 Grievance Process whether contract or non-contract. A dispute regarding the application or interpretation of a term of this Memorandum of Agreement will be subject to the Article 15 Grievance Process as a non-contract grievance.

22. Outside Employment. A Member assigned to modified duty must request approval to engage in outside employment pursuant to Article 8H of the New York State Police Administrative Manual. This requirement applies to both previously approved and new outside employment requests.

23. Promotion While on Modified Duty. A Member on modified duty shall not be precluded from promotional appointment from an eligible list, or from any other promotional opportunity, if there is a medical certification from the Division Physician and the Member's physician that the Member is expected to return to full and strenuous duty within thirty (30) calendar days of the date of promotion. In the event that the Member is promoted under the terms of this paragraph, but does not return to full and strenuous duty within thirty (30) calendar days of promotion, the Division reserves the right to return the Member to his/her

previous rank, however, where the promotion is made from a promotional list, the Member will not lose his/her position on that list.

24. Member's Cooperation. A Member subject to any of the provisions herein shall cooperate fully in all aspects of the process. This includes, but shall not be limited to, attendance at scheduled medical appointments and providing relevant medical records or other relevant documentation as required. Failure to cooperate may result in discontinuation of the Member's assignment to modified duty and/or loss of eligibility under the Heightened Risk Disability Benefit.

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25. Level of Fitness. To be considered for assignment to modified duty, a Member recovering from an on-duty illness/injury, including a Member receiving the Heightened Risk Disability Benefit, must be found to be fifty percent (50%) or less disabled by the State Insurance Fund or his/her attending physician, and the Division Physician must concur with that determination.

26. Requesting Modified Duty. For a Member recovering from an on-duty illness/injury, including a Member receiving the Heightened Risk Disability Benefit, either the Member or the Division can request that the Member be assigned to modified duty. In either event, the request shall be referred to the Division Physician for review. If the Division is making the request, and the Division Physician determines that such assignment is proper, the matter may be referred to the State Insurance Fund for a degree of disability determination. If the State Insurance Fund determines that the Member is fifty percent (50%) or less disabled, and all other criteria are met as set forth herein, and upon final approval of the Division, the Member shall be assigned to modified duty. If the Member is making the request, he/she may submit written certification from his/her health care provider/attending physician that he/she is fifty percent (50%) or less disabled. Such request and determination shall be submitted to the Division Physician for review. If the Division Physician concurs with the Member's health care provider/attending physician, and all other criteria are met as set forth herein, and upon final approval of the Division, the Member shall be assigned to modified duty.

27. Review Procedure. In furtherance of the Division Physician's review of each request as set forth in paragraph 26 above, he/she may direct that additional relevant information be obtained from the Member's health care provider/attending physician prior to making a determination. Upon final medical determination by the Division Physician, the Superintendent shall have the sole authority to determine a Member's modified duty eligibility for on-duty illnesses/injuries. A Member who wishes to contest a modified duty eligibility determination based on the degree of disability determination by the State Insurance Fund, may do so by utilizing the Dispute Resolution Process set forth in paragraph 29 below.

28. Limitations –

Duration of Assignment. All approved modified duty assignments will run for the duration of the disability, or ninety (90) calendar days, whichever is less ("Assignment Period"). All modified duty assignments will be reviewed at the end of each Assignment Period and any approved extension to a subsequent Assignment Period will be subject to the same time limitations. The Superintendent shall determine whether or not to approve an extension to a subsequent assignment period and, when necessary, will refer the matter to the Division Physician for further review and medical recommendation. Should the Division Physician determine that additional medical information is required prior to making a recommendation to the Superintendent, appropriate arrangements shall be made to obtain such medical information and/or to schedule a medical examination by a State Insurance Fund Physician. For a Member recovering from an on-duty illness/injury only, the expense of such examination shall be at State expense.

29. Dispute Resolution Process Generally. A Member who wishes to contest a modified duty eligibility determination based on the degree of disability determination by the State Insurance Fund, may do so by using the Dispute Resolution Process. The Dispute Resolution Process shall consist of a review of the relevant medical documentation by an independent third party medical consultant retained by the Division upon submission of relevant documentation by the parties.

30. Dispute Resolution Process - Appeals. A Member recovering from an on-duty illness/injury, including a Member receiving the Heightened Risk Disability Benefit, who wishes to contest a modified duty determination as described in paragraph 29 above must submit his/her appeal to the Deputy Superintendent – Employee Relations by memorandum through channels within five (5) calendar days of the date that the Member receives notice in writing of the modified duty determination.

31. Dispute Resolution Process – Third Party Review. A Member contesting a modified duty determination as described in paragraph 29 above must also provide an appeal form to his/her attending physician. The Member's attending physician must complete the form and submit it to the third party consultant, along with any medical records deemed relevant in support of the attending physician's opinion with regard to the Member's degree of disability, within ten (10) calendar days of the date that the Member receives notice in writing of the modified duty determination. The Division and the State Insurance Fund shall also provide the third party consultant with the necessary medical documentation to support their degree of disability determination within ten (10) calendar days of receipt of the Member's memorandum contesting assignment to modified duty. A Member appealing a modified duty determination shall not be required to report for a modified duty assignment until completion of the Dispute Resolution Process.

A Member who appeals a modified duty determination, and does not report for a modified duty assignment, will be removed from Workers' Compensation leave during the appeal process. The Member may use any accumulated sick, annual or personal leave accruals for such absence. In the event that the third party consultant finds the Member is fifty percent (50%) or less disabled and is eligible for modified duty or continuing in a modified duty assignment, the Member shall be assigned to modified duty by the Division as soon as practicable. In the event that the third party consultant finds that no disability exists, the Member will be ordered to return to full duty. If the Member then refuses to return to duty after a finding by the third party consultant that the Member is fifty percent (50%) or less disabled or that there is no disability, the Division will direct the State Insurance Fund to pay the Member directly for any Workers' Compensation benefits the Member is entitled to and the Member may continue to charge accumulated accruals. In the event that the third party consultant finds that the Member is greater than fifty percent (50%) disabled, the assignment shall be rescinded and any accruals used by the Member during the appeal process shall be restored. In such case, the Member shall be entitled to leave under Regulation 5.12 of the State Police Administrative Manual or, if applicable based on a prior determination by the Superintendent as set forth above, to benefits under the Heightened Risk Disability Benefit.

32. Leave Entitlement. A Member on modified duty as a result of an on-duty injury, including a Member receiving the Heightened Risk Disability Benefit, shall not be charged with use of Compensation Leave except where otherwise provided for herein. In addition, such Member shall not have his/her leave accruals charged for work time spent performing his/her modified duty assignment, but shall be charged with accruals for any authorized leave.

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33. Level of Fitness. To be considered for assignment to modified duty, a Member recovering from an off-duty illness/injury must present certification from his/her health care provider/attending physician indicating that he/she is fifty percent (50%) or less disabled, and the Division Physician must concur with that determination.

34. Requesting Modified Duty. A Member recovering from an off-duty illness/injury may request assignment to modified duty by memorandum through channels. The Member must include with this memorandum written certification from his/her health care provider/attending physician that he/she is fifty percent (50%) or less disabled and has the ability to perform those modified duty assignments as set forth in paragraph 13 above. Such request shall be reviewed by the Division Physician in furtherance of his/her final medical determination. Any expense incurred in connection with this process shall be the Member's responsibility.

35. Review

Procedure. In furtherance of the Division Physician's review of each request as set forth in paragraph 34 above, he/she may direct that additional relevant information be obtained from the Member's health care provider/attending physician prior to making a determination. Upon final medical determination by the Division Physician, the Superintendent shall have the sole authority to determine a Member's modified duty eligibility for off-duty illnesses/injuries. A Member who wishes to contest a modified duty eligibility determination based on the degree of disability determination by the Division Physician, may do so by utilizing the Dispute Resolution Process set forth in paragraph 37 below.

36. Limitations – Duration of Assignment. All approved modified duty assignments will run for the duration of the disability, or ninety (90) calendar days, whichever is less ("Assignment Period"). All modified duty assignments will be reviewed at the end of each Assignment Period and any approved extension to a subsequent Assignment Period will be subject to the same time limitations. The Superintendent shall determine whether or not to approve an extension to a subsequent assignment period and, when necessary, will refer the matter to the Division Physician for further review and medical recommendation. Should the Division Physician determine that additional medical information is required prior to making a recommendation to the Superintendent, appropriate arrangements shall be made to obtain such medical information and/or to schedule an independent medical examination. The cost of this examination shall be the responsibility of the Member.

37. Dispute Resolution Process Generally. A Member who wishes to contest a modified duty eligibility determination based on the degree of disability determination by the Division Physician, may do so by using the Dispute Resolution Process. The Dispute Resolution Process shall consist of a review of the relevant medical documentation by an independent third-party medical consultant retained by the Division upon submission of relevant documentation by the parties.

38. Dispute Resolution Process - Appeals. A Member recovering from an off-duty illness/injury who wishes to contest a modified duty determination as described in paragraph 37 above must submit his/her appeal to the Deputy Superintendent – Employee Relations by memorandum through channels within five (5) calendar days of the date that the Member receives notice in writing of the modified duty determination.

128 39. Dispute Resolution Process – Third Party Review. A Member who wishes to contest a modified duty determination concerning an off-duty illness/injury shall also have the right to use the Dispute Resolution Process as outlined in paragraph 37 above. If a Member appeals a modified duty determination through the Dispute Resolution Process, the Member shall not be entitled to report for duty until the Dispute Resolution



Process is complete. In the event that the third-party consultant determines that the Member is fifty percent (50%) or less disabled, the Member will be assigned to modified duty as soon as practicable and any leave accruals that the Member used while awaiting a determination from the Dispute Resolution Process will be restored. If the third-party consultant finds that the Member is greater than fifty percent (50%) disabled and incapable of performing modified duty, the Member shall remain on sick leave. After a minimum of thirty (30) calendar days has elapsed from the date of the third-party consultant's determination, the Member may submit additional medical documentation through channels to the Division Physician and again request assignment to modified duty. 40. Leave Entitlement. A Member on modified duty as a result of an off-duty injury shall not have his/her leave accruals charged for work time spent performing his/her modified duty assignment but shall be charged with accruals for any authorized leave. Miscellaneous Terms 41. Contractual Terms. Unless specifically modified herein, the terms of the parties' Collective Bargaining Agreement remain in full force and effect. 42. Right to Reopen. In the event the Division negotiates an enhancement to any benefit contained herein for Members of the Division not represented by the PBA, the parties agree to reopen negotiations and make any necessary modifications to the terms of this MOA. 43. Term of Agreement. Unless renewed by mutual agreement, this Agreement shall terminate on March 31, 2011. 44. Effective Date. This Agreement shall take effect on April 2, 2009.

IN WITNESS WHEREOF, the parties hereto have caused this MOA to be signed in their respective names by their respective representatives thereunto duly authorized.

THE POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE TROOPERS, INC.

\_\_\_\_\_/s/\_\_\_\_\_ By: Daniel M. DeFedericis, President STATE

OF NEW YORK, DIVISION OF STATE POLICE

\_\_\_\_\_/s/\_\_\_\_\_ By: Colonel Francis P. Christensen Deputy

Superintendent