The purpose of this policy is to establish the authority and process for initiating, implementing, monitoring and releasing Legal Holds.

A Legal Hold will be issued and enforced when circumstances, usually pending or threatened litigation, required the Department and its employees to (a) suspend the normal and routine destruction of Records Related to the litigation and (b) cooperate in cataloguing and maintaining all Related Records.

This policy applies to all Department of Military Affairs (DMA) personnel and covers all records, regardless of location or form, made or received in the transaction of Department business.

Definitions
The terms below shall have the following meanings;

**Directors Office:** DMA Director, Deputy Director or HR Officer.

**Legal Counsel:** Department of Administration, Agency Legal Services or other counsel who acts in a legal manner or with legal authority on behalf of DMA.

**Legal Hold:** (also known as a "litigation hold") A process the DMA will use to preserve all forms of relevant information when litigation is reasonably anticipated.

**Department Personnel:** Includes all current and former Department employees, whether permanent, temporary, full-time or part-time employees. The term also includes contractors, consultants, vendors or other related third parties. This will not dictate what contractors will be required by statute.

**Affected Department Personnel:** Means all Department Personnel who are in possession or control of Department records that are related to the subject of a Legal Hold.

**Related Records or Records Related:** Includes all information and communications, whether in electronic or hard copy form, created, received, or maintained in the transaction of Department business which pertain to or are related in any way to the subject of the Legal Hold.

**Electronic records:** Include all forms of electronic information, documents, photographs, plans, notes and communications, including but not limited to, information and communications stored on hard drives, state owned and personal electronic devices such as desktop computers, laptop computers, tablets or other personal computer devices, flash drives, CD or DVD ROM,
memory sticks, tapes, zip discs, diskettes, PDAs, smart phones or other mobile devices, e-mail, work processing documents, calendars, spreadsheets, voice messages, videos, photographs and/or text messages.

**Records:** Means all information, documents, photographs, plans, notes, and communications, whether in electronic or hard copy form, created, received, or maintained in the transaction of Department business.

**Point of Contact:** DMA Human Resources or Deputy Director are the only positions to communicate placement or release a Legal Hold for DMA.

**Procedures**

A. A Legal Hold will be initiated when either (a) an official discovery order is served on the Department requesting the production in the judgement of State Legal Services upon the Department or (b) pending or threatened litigation is concerning enough for legal counsel to recommend maintaining all related records. A Legal Hold means that Records Related to the Legal Hold must be preserved and may not be destroyed, even if otherwise permitted under the Department’s document retention and disposition schedule, until officially released from the Legal Hold through communication from the DMA Director’s Office.

B. Any Department Personnel who become aware of any Department-related litigation, threat of litigation, claim, administrative action, other legal action, or an investigation by any administrative, civil or criminal authority (such as through the receipt of notification or other information identifying the possibility of legal action) must immediately notify DMA Director’s Office. The DMA Director’s Office will seek legal counsel whether to initiate a Legal Hold.

C. The Director’s Office will notify DMA IT Administrator and Affected Department Personnel that a Legal hold has been initiated. The notice will inform IT Administrator and Affected Department Personnel of the obligation to identify and preserve all Related Records that may be relevant to the Legal Hold.

D. Upon notice of a Legal Hold, the IT Administrator and Affected Department Personnel are required to do the following:

1. Immediately suspend deletion, alteration, overriding or any other destruction of Electronic Records under their control that are related to the Legal Hold. This includes Electronic Records wherever stored, including, but not limited to, on hard drives of work station desktops, laptops, tablets, or flash drives, CD-ROMS, memory sticks, tapes, zip disks, diskettes, or PDAs or other mobile devices, regardless of location or whether the storage devices are owned by the Department or by Department Personnel, or by any other person or entity. Related Electronic Records must be preserved in a way that they can be retrieved at a later time, and the Related Electronic Records must be preserved in their original electronic form. It is not sufficient to make a hard copy. Affected
Department Personnel must contact DMA Information Technology Administrator with any questions concerning suggested methods for preserving Electronic Records.

2. Preserve any Electronic Records that are generated or received after receipt of the Legal Hold notice if such information is related to the Legal Hold. This must be done by creating separate mailboxes and/or files and segregating all future Electronic Records in these separate mailboxes or files, or by some other methods approved in advance by the DMA IT Administrator.

3. Preserve hard copies of documents under their control. Affected Department Personnel must identify all hard copy documents or files related to the Legal Hold and ensure the retention of Related Records in hard copy format. Affected Department Personnel may make hard copies of Electronic Records; however, as set forth in item D (1) above, the information must also be preserved in its original electronic form.

E. Affected Department Personnel must acknowledge receipt, understanding, and compliance with a Legal Hold without undue delay by e-mail to the Director’s Office.

F. DMA Director’s Office will maintain the following information:
   - Official notification of the Legal Hold and its scope.
   - Identification of all Affected Department Personnel whose electronic accounts must be preserved, including user names, if known.
   - Identification of the employment status of each Affected Department Personnel as active, resigned, terminated, or retired, if known.
   - Identification of the division or unit affiliation for each Affected Department Personnel, if known, and
   - Any other information deemed relevant for the Legal Hold.

G. If Affected Department Personnel separate from employment during the course of a Legal Hold, division heads, bureau chiefs, or another appropriate administrator must take possession of any and all Related Records under the control of the separate personnel and notify the Director’s Office.

H. Once notice of a Legal Hold has been issued, the Director’s Office will continue to monitor compliance with this policy and any notices required.

I. Release of a Legal Hold: DMA HR Officer will communicate when a Legal Hold is to be released and will notify the IT Administrator and Affected Department Personnel of the release.

Violations: It is a violation of law and this policy to destroy, alter, withhold, or obscure evidence once a Legal Hold has been initiated. Violations of this policy are subject to disciplinary action, up to and including termination.
Questions regarding this policy should be directed to the DMA HR Officer, at 324-3334.
ACKNOWLEDGEMENT FORM

I hereby acknowledge receipt of the Montana Department of Military Affairs Legal Hold Policy.

I understand that it is my duty to read and understand the policy. I am aware that failure to comply with the policy is cause for disciplinary action, up to and including termination.

_________________________   ___________________________   _____________
Print Name                  Employee ID#             Date

_________________________   ___________________________
Signature                   Location