

## NOTE

*This is a reformatted version of the amended Compact documents signed in Palikir on May 14, 2003. The content of the text should be identical to that signed, but the separate documents have been merged and the formatting has been made consistent to facilitate easy use of the electronic texts. These documents will be updated to reflect any technical changes to the signed documents.*

## **COMPACT OF FREE ASSOCIATION, AS AMENDED, BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA**

### PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE  
GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA

Affirming that their Governments and their relationship as Governments are founded upon respect for human rights and fundamental freedoms for all, and that the people of the Federated States of Micronesia have the right to enjoy self-government; and

Affirming the common interests of the United States of America and the Federated States of Micronesia in creating and maintaining their close and mutually beneficial relationship through the free and voluntary association of their respective Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and budgetary self-reliance of the Federated States of Micronesia; and

Recognizing that their relationship until the entry into force on November 3, 1986 of the Compact was based upon the International Trusteeship System of the United Nations Charter, and in particular Article 76 of the Charter; and that pursuant to Article 76 of the Charter, the people of the Federated States of Micronesia have progressively developed their institutions of self-government, and that in the exercise of their sovereign right to self-determination they, through their freely-expressed wishes, have adopted a Constitution appropriate to their particular circumstances; and

Recognizing that the Compact reflected their common desire to terminate the Trusteeship and establish a government-to-government relationship which was in accordance with the new political status based on the freely expressed wishes of the people of the Federated States of Micronesia and appropriate to their particular circumstances; and

Recognizing that the people of the Federated States of Micronesia have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of the Government of the Federated States of Micronesia into the Compact by the

people of the Federated States of Micronesia constituted an exercise of their sovereign right to self-determination; and

Recognizing the common desire of the people of the United States and the people of the Federated States of Micronesia to maintain their close government-to-government relationship, the United States and the Federated States of Micronesia:

NOW, THEREFORE, MUTUALLY AGREE to continue and strengthen their relationship of free association by amending the Compact, which continues to provide a full measure of self-government for the people of the Federated States of Micronesia; and

FURTHER AGREE that the relationship of free association derives from and is as set forth in this Compact, as amended, by the Governments of the United States and the Federated States of Micronesia; and that, during such relationship of free association, the respective rights and responsibilities of the Government of the United States and the Government of the Federated States of Micronesia in regard to this relationship of free association derive from and are as set forth in this Compact, as amended.

## TITLE ONE GOVERNMENTAL RELATIONS

### Article I *Self-Government*

#### Section 111

The people of the Federated States of Micronesia, acting through the Government established under their Constitution, are self-governing.

### Article II *Foreign Affairs*

#### Section 121

(a) The Government of the Federated States of Micronesia has the capacity to conduct foreign affairs and shall do so in its own name and right, except as otherwise provided in this Compact, as amended.

(b) The foreign affairs capacity of the Government of the Federated States of Micronesia includes:

(1) the conduct of foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and non-living resources from the sea, seabed or subsoil to the full extent recognized under international law;

(2) the conduct of its commercial, diplomatic, consular, economic, trade, banking, postal, civil aviation, communications, and cultural relations, including negotiations for the receipt of developmental loans and grants and the conclusion of arrangements with other governments and international and intergovernmental organizations, including any matters specially benefiting its individual citizens.

(c) The Government of the United States recognizes that the Government of the Federated States of Micronesia has the capacity to enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations.

(d) In the conduct of its foreign affairs, the Government of the Federated States of Micronesia confirms that it shall act in accordance with principles of international law and shall settle its international disputes by peaceful means.

#### Section 122

The Government of the United States shall support applications by the Government of the Federated States of Micronesia for membership or other participation in regional or international organizations as may be mutually agreed.

#### Section 123

(a) In recognition of the authority and responsibility of the Government of the United States under Title Three, the Government of the Federated States of Micronesia shall consult, in the conduct of its foreign affairs, with the Government of the United States.

(b) In recognition of the foreign affairs capacity of the Government of the Federated States of Micronesia, the Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of the Federated States of Micronesia on matters that the Government of the United States regards as relating to or affecting the Government of the Federated States of Micronesia.

#### Section 124

The Government of the United States may assist or act on behalf of the Government of the Federated States of Micronesia in the area of foreign affairs as may be requested and mutually agreed from time to time. The Government of the United States shall not be responsible to third parties for the actions of the Government of the Federated States of Micronesia undertaken with the assistance or through the agency of the Government of the United States pursuant to this section unless expressly agreed.

#### Section 125

The Government of the United States shall not be responsible for nor obligated by any actions taken by the Government of the Federated States of Micronesia in the area of foreign affairs, except as may from time to time be expressly agreed.

#### Section 126

At the request of the Government of the Federated States of Micronesia and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of the Federated States of Micronesia for travel outside the Federated States of Micronesia, the United States and its territories and possessions.

#### Section 127

Except as otherwise provided in this Compact, as amended, or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United

States as Administering Authority which resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on November 2, 1986, are, as of that date, no longer assumed and enjoyed by the Government of the United States.

Article III  
*Communications*

Section 131

(a) The Government of the Federated States of Micronesia has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communications assistance as mutually agreed.

(b) On May 24, 1993, the Government of the Federated States of Micronesia elected to undertake all functions previously performed by the Government of the United States with respect to domestic and foreign communications, except for those functions set forth in a separate agreement entered into pursuant to this section of the Compact, as amended.

Section 132

The Government of the Federated States of Micronesia shall permit the Government of the United States to operate telecommunications services in the Federated States of Micronesia to the extent necessary to fulfill the obligations of the Government of the United States under this Compact, as amended, in accordance with the terms of separate agreements entered into pursuant to this section of the Compact, as amended.

Article IV  
*Immigration*

Section 141

(a) In furtherance of the special and unique relationship that exists between the United States and the Federated States of Micronesia, under the Compact, as amended, any person in the following categories may be admitted to, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions (the “United States”) without regard to paragraphs (5) or (7)(B)(i)(II) of section 212(a) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)(5) or (7)(B)(i)(II):

(1) a person who, on November 2, 1986, was a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become and remains a citizen of the Federated States of Micronesia;

(2) a person who acquires the citizenship of the Federated States of Micronesia at birth, on or after the effective date of the Constitution of the Federated States of Micronesia;

(3) an immediate relative of a person referred to in paragraphs (1) or (2) of this section, provided that such immediate relative is a naturalized citizen of the Federated States of Micronesia who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence, and

further provided, that, in the case of a spouse, such spouse has been married to the person referred to in paragraph (1) or (2) of this section for at least five years, and further provided, that the Government of the United States is satisfied that such naturalized citizen meets the requirement of subsection (b) of section 104 of Public Law 99-239 as it was in effect on the day prior to the effective date of this Compact, as amended;

(4) a naturalized citizen of the Federated States of Micronesia who was an actual resident there for not less than five years after attaining such naturalization and who satisfied these requirements as of April 30, 2003, who continues to be an actual resident and holds a certificate of actual residence, and whose name is included in a list furnished by the Government of the Federated States of Micronesia to the Government of the United States no later than the effective date of the Compact, as amended, in form and content acceptable to the Government of the United States, provided, that the Government of the United States is satisfied that such naturalized citizen meets the requirement of subsection (b) of section 104 of Public Law 99-239 as it was in effect on the day prior to the effective date of this Compact, as amended; or

(5) an immediate relative of a citizen of the Federated States of Micronesia, regardless of the immediate relative's country of citizenship or period of residence in the Federated States of Micronesia, if the citizen of the Federated States of Micronesia is serving on active duty in any branch of the United States Armed Forces, or in the active reserves.

(b) Notwithstanding subsection (a) of this section, a person who is coming to the United States pursuant to an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for admission under the Compact and the Compact, as amended. This subsection shall apply to any person who is or was an applicant for admission to the United States on or after March 1, 2003, including any applicant for admission in removal proceedings (including appellate proceedings) on or after March 1, 2003, regardless of the date such proceedings were commenced. This subsection shall have no effect on the ability of the Government of the United States or any United States State or local government to commence or otherwise take any action against any person or entity who has violated any law relating to the adoption of any person.

(c) Notwithstanding subsection (a) of this section, no person who has been or is granted citizenship in the Federated States of Micronesia, or has been or is issued a Federated States of Micronesia passport pursuant to any investment, passport sale, or similar program has been or shall be eligible for admission to the United States under the Compact or the Compact, as amended.

(d) A person admitted to the United States under the Compact, or the Compact, as amended, shall be considered to have the permission of the Government of the United States to accept employment in the United States. An unexpired Federated States of Micronesia passport with unexpired documentation issued by the Government of the United States evidencing admission under the Compact or the Compact, as amended, shall be considered to be documentation establishing identity and employment authorization under section 274A(b)(1)(B) of the Immigration and Nationality Act, as

amended, 8 U.S.C. 1324a(b)(1)(B). The Government of the United States will take reasonable and appropriate steps to implement and publicize this provision, and the Government of the Federated States of Micronesia will also take reasonable and appropriate steps to publicize this provision.

(e) For purposes of the Compact and the Compact, as amended,

(1) the term “residence” with respect to a person means the person’s principal, actual dwelling place in fact, without regard to intent, as provided in section 101(a)(33) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(33), and variations of the term “residence,” including “resident” and “reside,” shall be similarly construed;

(2) the term “actual residence” means physical presence in the Federated States of Micronesia during eighty-five percent of the five-year period of residency required by section 141(a)(3) and (4);

(3) the term “certificate of actual residence” means a certificate issued to a naturalized citizen by the Government of the Federated States of Micronesia stating that the citizen has complied with the actual residence requirement of section 141(a)(3) or (4);

(4) the term “nonimmigrant” means an alien who is not an “immigrant” as defined in section 101(a)(15) of such Act, 8 U.S.C. 1101(a)(15); and

(5) the term “immediate relative” means a spouse, or unmarried son or unmarried daughter less than 21 years of age.

(f) The Immigration and Nationality Act, as amended, shall apply to any person admitted or seeking admission to the United States (other than a United States possession or territory where such Act does not apply) under the Compact or the Compact, as amended, and nothing in the Compact or the Compact, as amended, shall be construed to limit, preclude, or modify the applicability of, with respect to such person:

(1) any ground of inadmissibility or deportability under such Act (except sections 212(a)(5) and 212(a)(7)(B)(i)(II) of such Act, as provided in subsection (a) of this section), and any defense thereto, provided that, section 237(a)(5) of such Act shall be construed and applied as if it reads as follows: “any alien who has been admitted under the Compact, or the Compact, as amended, who cannot show that he or she has sufficient means of support in the United States, is deportable;”

(2) the authority of the Government of the United States under section 214(a)(1) of such Act to provide that admission as a nonimmigrant shall be for such time and under such conditions as the Government of the United States may by regulations prescribe;

(3) Except for the treatment of certain documentation for purposes of section 274A(b)(1)(B) of such Act as provided by subsection (d) of this section of the Compact, as amended, any requirement under section 274A, including but not limited to section 274A(b)(1)(E);

(4) Section 643 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, and actions taken pursuant to section 643; and

(5) the authority of the Government of the United States otherwise to administer and enforce the Immigration and Nationality Act, as amended, or other United States law.

(g) Any authority possessed by the Government of the United States under this section of the Compact or the Compact, as amended, may also be exercised by the Government of a territory or possession of the United States where the Immigration and Nationality Act, as amended, does not apply, to the extent such exercise of authority is lawful under a statute or regulation of such territory or possession that is authorized by the laws of the United States.

(h) Subsection (a) of this section does not confer on a citizen of the Federated States of Micronesia the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, as amended, or to petition for benefits for alien relatives under that Act. Subsection (a) of this section, however, shall not prevent a citizen of the Federated States of Micronesia from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

#### Section 142

(a) Any citizen or national of the United States may be admitted, to lawfully engage in occupations, and reside in the Federated States of Micronesia, subject to the rights of the Government of the Federated States of Micronesia to deny entry to or deport any such citizen or national as an undesirable alien. Any determination of inadmissibility or deportability shall be based on reasonable statutory grounds and shall be subject to appropriate administrative and judicial review within the Federated States of Micronesia. If a citizen or national of the United States is a spouse of a citizen of the Federated States of Micronesia, the Government of the Federated States of Micronesia shall allow the United States citizen spouse to establish residence. Should the Federated States of Micronesia citizen spouse predecease the United States citizen spouse during the marriage, the Government of the Federated States of Micronesia shall allow the United States citizen spouse to continue to reside in the Federated States of Micronesia.

(b) In enacting any laws or imposing any requirements with respect to citizens and nationals of the United States entering the Federated States of Micronesia under subsection (a) of this section, including any grounds of inadmissibility or deportability, the Government of the Federated States of Micronesia shall accord to such citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries.

(c) Consistent with subsection (a) of this section, with respect to citizens and nationals of the United States seeking to engage in employment or invest in the Federated States of Micronesia, the Government of the Federated States of Micronesia shall adopt immigration-related procedures no less favorable than those adopted by the Government of the United States with respect to citizens of the Federated States of Micronesia seeking employment in the United States.

#### Section 143

Any person who relinquishes, or otherwise loses, his United States nationality or citizenship, or his Federated States of Micronesia citizenship, shall be ineligible to receive the privileges set forth in sections 141 and 142. Any such person may apply for

admission to the United States or the Federated States of Micronesia, as the case may be, in accordance with any other applicable laws of the United States or the Federated States of Micronesia relating to immigration of aliens from other countries. The laws of the Federated States of Micronesia or the United States, as the case may be, shall dictate the terms and conditions of any such person's stay.

Article V  
*Representation*

Section 151

Relations between the Government of the United States and the Government of the Federated States of Micronesia shall be conducted in accordance with the Vienna Convention on Diplomatic Relations. In addition to diplomatic missions and representation, the Governments may establish and maintain other offices and designate other representatives on terms and in locations as may be mutually agreed.

Section 152

(a) Any citizen or national of the United States who, without authority of the United States, acts as the agent of the Government of the Federated States of Micronesia with regard to matters specified in the provisions of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.), that apply with respect to an agent of a foreign principal shall be subject to the requirements of such Act. Failure to comply with such requirements shall subject such citizen or national to the same penalties and provisions of law as apply in the case of the failure of such an agent of a foreign principal to comply with such requirements. For purposes of the Foreign Agents Registration Act of 1938, the Federated States of Micronesia shall be considered to be a foreign country.

(b) Subsection (a) of this section shall not apply to a citizen or national of the United States employed by the Government of the Federated States of Micronesia with respect to whom the Government of the Federated States of Micronesia from time to time certifies to the Government of the United States that such citizen or national is an employee of the Federated States of Micronesia whose principal duties are other than those matters specified in the Foreign Agents Registration Act of 1938, as amended, that apply with respect to an agent of a foreign principal. The agency or officer of the United States receiving such certifications shall cause them to be filed with the Attorney General, who shall maintain a publicly available list of the persons so certified.

Article VI  
*Environmental Protection*

Section 161

The Governments of the United States and the Federated States of Micronesia declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the Federated States of Micronesia. In order to carry out this policy, the Government of the United States and the Government of the Federated States of Micronesia agree to the following mutual and reciprocal undertakings.

(a) The Government of the United States:

(1) shall continue to apply the environmental controls in effect on November 2, 1986 to those of its continuing activities subject to section 161(a)(2), unless and until those controls are modified under sections 161(a)(3) and 161(a)(4);

(2) shall apply the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 et seq., to its activities under the Compact, as amended, and its related agreements as if the Federated States of Micronesia were the United States;

(3) shall comply also, in the conduct of any activity requiring the preparation of an Environmental Impact Statement under section 161(a)(2), with standards substantively similar to those required by the following laws of the United States, taking into account the particular environment of the Federated States of Micronesia: the Endangered Species Act of 1973, as amended, 87 Stat. 884, 16 U.S.C. 1531 et seq.; the Clean Air Act, as amended, 77 Stat. 392, 42 U.S.C. Supp. 7401 et seq.; the Clean Water Act (Federal Water Pollution Control Act), as amended, 86 Stat. 896, 33 U.S.C. 1251 et seq.; Title I of the Marine Protection, Research and Sanctuaries Act of 1972 (the Ocean Dumping Act), 33 U.S.C. 1411 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq.; the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 et seq.; and such other environmental protection laws of the United States and of the Federated States of Micronesia, as may be mutually agreed from time to time with the Government of the Federated States of Micronesia; and

(4) shall develop, prior to conducting any activity requiring the preparation of an Environmental Impact Statement under section 161(a)(2), written standards and procedures, as agreed with the Government of the Federated States of Micronesia, to implement the substantive provisions of the laws made applicable to U.S. Government activities in the Federated States of Micronesia, pursuant to section 161(a)(3).

(b) The Government of the Federated States of Micronesia shall continue to develop and implement standards and procedures to protect its environment. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Federated States of Micronesia, taking into account its particular environment, shall continue to develop and implement standards for environmental protection substantively similar to those required of the Government of the United States by section 161(a)(3) prior to its conducting activities in the Federated States of Micronesia, substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 161(a), including any standard or procedure applicable thereunder, and section 161(b) may be modified or superseded in whole or in part by agreement of the Government of the United States and the Government of the Federated States of Micronesia.

(d) In the event that an Environmental Impact Statement is no longer required under the laws of the United States for major federal actions significantly affecting the

quality of the human environment, the regulatory regime established under sections 161(a)(3) and 161(a)(4) shall continue to apply to such activities of the Government of the United States until amended by mutual agreement.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact, as amended, and its related agreements from any environmental standard or procedure which may be applicable under sections 161(a)(3) and 161(a)(4) if the President determines it to be in the paramount interest of the Government of the United States to do so, consistent with Title Three of this Compact, as amended, and the obligations of the Government of the United States under international law. Prior to any decision pursuant to this subsection, the views of the Government of the Federated States of Micronesia shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable, a report with his reasons for granting such exemption shall be given promptly to the Government of the Federated States of Micronesia.

(f) The laws of the United States referred to in section 161(a)(3) shall apply to the activities of the Government of the United States under this Compact, as amended, and its related agreements only to the extent provided for in this section.

#### Section 162

The Government of the Federated States of Micronesia may bring an action for judicial review of any administrative agency action or any activity of the Government of the United States pursuant to section 161(a) for enforcement of the obligations of the Government of the United States arising thereunder. The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction over such action or activity, and over actions brought under section 172(b) which relate to the activities of the Government of the United States and its officers and employees, governed by section 161, provided that:

(a) Such actions may only be civil actions for any appropriate civil relief other than punitive damages against the Government of the United States or, where required by law, its officers in their official capacity; no criminal actions may arise under this section.

(b) Actions brought pursuant to this section may be initiated only by the Government of the Federated States of Micronesia.

(c) Administrative agency actions arising under section 161 shall be reviewed pursuant to the standard of judicial review set forth in 5 U.S.C. 706.

(d) The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction to issue all necessary processes, and the Government of the United States agrees to submit itself to the jurisdiction of the court; decisions of the United States District Court shall be reviewable in the United States Court of Appeals for the Ninth Circuit or the United States Court of Appeals for the District of Columbia, respectively, or in the United States Supreme Court as provided by the laws of the United States.

The judicial remedy provided for in this section shall be the exclusive remedy for the judicial review or enforcement of the obligations of the Government of the United States

under this Article and actions brought under section 172(b) which relate to the activities of the Government of the United States and its officers and employees governed by section 161.

In actions pursuant to this section, the Government of the Federated States of Micronesia shall be treated as if it were a United States citizen.

### Section 163

(a) For the purpose of gathering data necessary to study the environmental effects of activities of the Government of the United States subject to the requirements of this Article, the Government of the Federated States of Micronesia shall be granted access to facilities operated by the Government of the United States in the Federated States of Micronesia, to the extent necessary for this purpose, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the United States under Title Three.

(b) The Government of the United States, in turn, shall be granted access to the Federated States of Micronesia for the purpose of gathering data necessary to discharge its obligations under this Article, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the Federated States of Micronesia under Title One, and to the extent necessary for this purpose shall be granted access to documents and other information to the same extent similar access is provided the Government of the Federated States of Micronesia under the Freedom of Information Act, 5 U.S.C. 552.

(c) The Government of the Federated States of Micronesia shall not impede efforts by the Government of the United States to comply with applicable standards and procedures.

## Article VII *General Legal Provisions*

### Section 171

Except as provided in this Compact, as amended, or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceased with respect to the Federated States of Micronesia on November 3, 1986, the date the Compact went into effect.

### Section 172

(a) Every citizen of the Federated States of Micronesia who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any non-resident alien.

(b) The Government of the Federated States of Micronesia and every citizen of the Federated States of Micronesia shall be considered to be a “person” within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701-706, except that only the Government of the Federated States of Micronesia may seek judicial review under the Administrative Procedure Act or judicial enforcement under the Freedom of Information Act when such

judicial review or enforcement relates to the activities of the Government of the United States governed by sections 161 and 162.

#### Section 173

The Governments of the United States and the Federated States of Micronesia agree to adopt and enforce such measures, consistent with this Compact, as amended, and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in the Federated States of Micronesia pursuant to this Compact, as amended, and its related agreements and by the Government of the Federated States of Micronesia in the United States pursuant to this Compact, as amended, and its related agreements.

#### Section 174

Except as otherwise provided in this Compact, as amended, and its related agreements:

(a) The Government of the Federated States of Micronesia, and its agencies and officials, shall be immune from the jurisdiction of the court of the United States, and the Government of the United States, and its agencies and officials, shall be immune from the jurisdiction of the courts of the Federated States of Micronesia.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to November 3, 1986;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of the November 3, 1986; and

(3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States.

(c) Any claim not referred to in section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of the Compact shall be adjudicated in the same manner as a claim adjudicated according to section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor courts, which shall have jurisdiction therefore, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds,

after a hearing, that such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Government of the Federated States of Micronesia shall not be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall not be immune from the jurisdiction of the courts of the Federated States of Micronesia in any civil case in which an exception to foreign state immunity is set forth in the Foreign Sovereign Immunities Act (28 U.S.C. 1602 et seq.) or its successor statutes.

#### Section 175

(a) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern mutual assistance and cooperation in law enforcement matters, including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners, as well as other law enforcement matters. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186 and 3188-95, shall be applicable to the extradition of fugitives under the separate agreement, and the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100-15, shall be applicable to the transfer of prisoners under the separate agreement;

(b) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern requirements relating to labor recruitment practices, including registration, reporting, suspension or revocation of registrations, and enforcement for violations of such requirements.

#### Section 176

The Government of the Federated States of Micronesia confirms that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of the Federated States of Micronesia to grant relief from judgments in appropriate cases.

#### Section 177

Section 177 of the Compact entered into force with respect to the Federated States of Micronesia on November 3, 1986 as follows:

“(a) The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands, or the Federated States of Micronesia, or (Palau) for loss or damage to property and person of the citizens of the Marshall Islands, or the Federated States of Micronesia, resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958.

(b) The Government of the United States and the Government of the Marshall Islands shall set forth in a separate agreement provisions for the just and adequate settlement of all such claims which have arisen in regard to the Marshall Islands and its citizens and which have not as yet been compensated or which in the future may arise, for the continued administration by the Government of the United States of direct

radiation related medical surveillance and treatment programs and radiological monitoring activities and for such additional programs and activities as may be mutually agreed, and for the assumption by the Government of the Marshall Islands of responsibility for enforcement of limitations on the utilization of affected areas developed in cooperation with the Government of the United States and for the assistance by the Government of the United States in the exercise of such responsibility as may be mutually agreed. This separate agreement shall come into effect simultaneously with this Compact and shall remain in effect in accordance with its own terms.

(c) The Government of the United States shall provide to the Government of the Marshall Islands, on a grant basis, the amount of \$150 million to be paid and distributed in accordance with the separate agreement referred to in this Section, and shall provide the services and programs set forth in this separate agreement, the language of which is incorporated into this Compact.”

The Compact, as amended, makes no changes to, and has no effect upon, Section 177 of the Compact, nor does the Compact, as amended, change or affect the separate agreement referred to in Section 177 of the Compact including Articles IX and X of that separate agreement, and measures taken by the parties thereunder.

#### Section 178

(a) The federal agencies of the Government of the United States that provide the services and related programs in the Federated States of Micronesia pursuant to Title Two are authorized to settle and pay tort claims arising in the Federated States of Micronesia from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in section 178(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under section 178(a) that cannot be settled under section 178(a) shall be disposed of exclusively in accordance with Article II of Title Four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of the Federated States of Micronesia shall, in the separate agreement referred to in section 231, provide for:

(1) the administrative settlement of claims referred to in section 178(a), including designation of local agents in each State of the Federated States of Micronesia; such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such separate agreements; and

(2) arbitration, referred to in section 178(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to section 178(a).

(d) The provisions of section 174(d) shall not apply to claims covered by this section.

(e) Except as otherwise explicitly provided by law of the United States, neither the Government of the United States, its instrumentalities, nor any person acting on behalf of the Government of the United States, shall be named a party in any action based on, or arising out of, the activity or activities of a recipient of any grant or other assistance

provided by the Government of the United States (or the activity or activities of the recipient's agency or any other person or entity acting on behalf of the recipient).

#### Section 179

(a) The courts of the Federated States of Micronesia shall not exercise criminal jurisdiction over the Government of the United States, or its instrumentalities.

(b) The courts of the Federated States of Micronesia shall not exercise criminal jurisdiction over any person if the Government of the United States provides notification to the Government of the Federated States of Micronesia that such person was acting on behalf of the Government of the United States, for actions taken in furtherance of section 221 or 224 of this amended Compact, or any other provision of law authorizing financial, program, or service assistance to the Federated States of Micronesia.

## TITLE TWO ECONOMIC RELATIONS

### Article I *Grant Assistance*

#### Section 211 – Sector Grants

(a) In order to assist the Government of the Federated States of Micronesia in its efforts to promote the economic advancement, budgetary self-reliance, and economic self-sufficiency of its people, and in recognition of the special relationship that exists between the Federated States of Micronesia and the United States, the Government of the United States shall provide assistance on a sector grant basis for a period of twenty years in the amounts set forth in section 216, commencing on the effective date of this Compact, as amended. Such grants shall be used for assistance in the sectors of education, health care, private sector development, the environment, public sector capacity building, and public infrastructure, or for other sectors as mutually agreed, with priorities in the education and health care sectors. For each year such sector grant assistance is made available, the proposed division of this amount among these sectors shall be certified to the Government of the United States by the Government of the Federated States of Micronesia and shall be subject to the concurrence of the Government of the United States. In such case, the Government of the United States shall disburse the agreed upon amounts and monitor the use of such sector grants in accordance with the provisions of this Article and the Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as Amended, of Free Association Between the Government of the United States of America and the Government of the Federated States of Micronesia (“Fiscal Procedures Agreement”) which shall come into effect simultaneously with this Compact, as amended. The provision of any United States assistance under the Compact, as amended, the Fiscal Procedures Agreement, the Trust Fund Agreement, or any other subsidiary agreement to the Compact, as amended, shall constitute “a particular distribution ... required by the terms or special nature of the assistance” for purposes of Article XII, section 1(b) of the Constitution of the Federated States of Micronesia.

(1) Education. United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support and improve the educational system of the Federated States of Micronesia and develop the human, financial, and material resources necessary for the Government of the Federated States of Micronesia to perform these services. Emphasis should be placed on advancing a quality basic education system.

(2) Health. United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support and improve the delivery of preventive, curative and environmental care and develop the human, financial, and material resources necessary for the Government of the Federated States of Micronesia to perform these services.

(3) Private Sector Development. United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support the efforts of the Government of the Federated States of Micronesia to attract foreign investment and increase indigenous business activity by vitalizing the commercial environment, ensuring fair and equitable application of the law, promoting adherence to core labor standards, and maintaining progress toward privatization of state-owned and partially state-owned enterprises, and engaging in other reforms.

(4) Capacity Building in the Public Sector. United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support the efforts of the Government of the Federated States of Micronesia to build effective, accountable and transparent national, state, and local government and other public sector institutions and systems.

(5) Environment. United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to increase environmental protection; conserve and achieve sustainable use of natural resources; and engage in environmental infrastructure planning, design construction and operation.

(6) Public Infrastructure.

(i) U.S. annual grant assistance shall be made available in accordance with a list of specific projects included in the plan described in subsection (c) of this section to assist the Government of the Federated States of Micronesia in its efforts to provide adequate public infrastructure.

(ii) Infrastructure and Maintenance Fund. Five percent of the annual public infrastructure grant made available under paragraph (i) of this subsection shall be set aside, with an equal contribution from the Government of the Federated States of Micronesia, as a contribution to an Infrastructure Maintenance Fund (IMF). Administration of the Infrastructure Maintenance Fund shall be governed by the Fiscal Procedures Agreement.

(b) Humanitarian Assistance – Federated States of Micronesia Program. In recognition of the special development needs of the Federated States of Micronesia, the Government of the United States shall make available to the Government of the Federated States of Micronesia, on its request and to be deducted from the grant amount made available

under subsection (a) of this section, a Humanitarian Assistance – Federated States of Micronesia (“HAFSM”) Program with emphasis on health, education, and infrastructure (including transportation), projects. The terms and conditions of the HAFSM shall be set forth in the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Government of the Federated States of Micronesia Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as Amended which shall come into effect simultaneously with the amendments to this Compact.

(c) Development Plan. The Government of the Federated States of Micronesia shall prepare and maintain an official overall development plan. The plan shall be strategic in nature, shall be continuously reviewed and updated through the annual budget process, and shall make projections on a multi-year rolling basis. Each of the sectors named in subsection (a) of this section, or other sectors as mutually agreed, shall be accorded specific treatment in the plan. Insofar as grants funds are involved, the plan shall be subject to the concurrence of the Government of the United States.

(d) Disaster Assistance Emergency Fund. An amount of two hundred thousand dollars (\$200,000) shall be provided annually, with an equal contribution from the Government of the Federated States of Micronesia, as a contribution to a “Disaster Assistance Emergency Fund (DAEF).” Any funds from the DAEF may be used only for assistance and rehabilitation resulting from disasters and emergencies. The funds will be accessed upon declaration by the Government of the Federated States of Micronesia, with the concurrence of the United States Chief of Mission to the Federated States of Micronesia. The Administration of the DAEF shall be governed by the Fiscal Procedures Agreement.

#### Section 212 – Accountability.

(a) Regulations and policies normally applicable to United States financial assistance to its state and local governments, as reflected in the Fiscal Procedures Agreement, shall apply to each sector grant described in section 211, and to grants administered under section 221 below, except as modified in the separate agreements referred to in section 231 of this Compact, as amended, or by United States law. The Government of the United States, after annual consultations with the Federated States of Micronesia, may attach reasonable terms and conditions, including annual performance indicators that are necessary to ensure effective use of United States assistance and reasonable progress toward achieving program objectives. The Government of the United States may seek appropriate remedies for noncompliance with the terms and conditions attached to the assistance, or for failure to comply with section 234, including withholding assistance.

(b) The Government of the United States shall, for each fiscal year of the twenty years during which assistance is to be provided on a sector grant basis under section 211, grant the Government of the Federated States of Micronesia an amount equal to the lesser of (i) one half of the reasonable, properly documented cost incurred during each fiscal year to conduct the annual audit required under Article VIII (2) of the Fiscal Procedures Agreement or (ii) \$500,000. Such amount will not be adjusted for inflation under section 217 or otherwise.

#### Section 213 – Joint Economic Management Committee

The Governments of the United States and the Federated States of Micronesia shall establish a Joint Economic Management Committee, composed of a U.S. chair, two other members from the Government of the United States and two members from the Government of the Federated States of Micronesia. The Joint Economic Management Committee shall meet at least once each year to review the audits and reports required under this Title, evaluate the progress made by the Federated States of Micronesia in meeting the objectives identified in its plan described in subsection (c) of section 211, with particular focus on those parts of the plan dealing with the sectors identified in section subsection (a) of section 211, identify problems encountered, and recommend ways to increase the effectiveness of U.S. assistance made available under this Title. The establishment and operations of the Joint Economic Management Committee shall be governed by the Fiscal Procedures Agreement.

#### Section 214 - Annual Report

The Government of the Federated States of Micronesia shall report annually to the President of the United States on the use of United States sector grant assistance and other assistance and progress in meeting mutually agreed program and economic goals. The Joint Economic Management Committee shall review and comment on the report and make appropriate recommendations based thereon.

#### Section 215 - Trust Fund

(a) The United States shall contribute annually for twenty years from the effective date of this Compact, as amended, in the amounts set forth in section 216 into a Trust Fund established in accordance with the Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Implementing Section 215 and Section 216 of the Compact, as Amended, Regarding a Trust Fund (“Trust Fund Agreement”). Upon termination of the annual financial assistance under section 211, the proceeds of the fund shall thereafter be used for the purposes described in section 211 or as otherwise mutually agreed.

(b) The United States contribution into the Trust Fund described in subsection (a) of this section is conditioned on the Government of the Federated States of Micronesia contributing to the Trust Fund at least \$30 million, prior to September 30, 2004. Any funds received by the Federated States of Micronesia under section 111 (d) of PL 99-239 (January 14, 1986), or successor provisions, would be contributed to the Trust Fund as a Federated States of Micronesia contribution.

(c) The terms regarding the investment and management of funds and use of the income of the Trust Fund shall be set forth in the separate Trust Fund Agreement described in subsection (a) of this section. Funds derived from United States investment shall not be subject to federal or state taxes in the United States or the Federated States of Micronesia. The Trust Fund Agreement shall also provide for annual reports to the Government of the United States and to the Government of the Federated States of Micronesia. The Trust Fund Agreement shall provide for appropriate distributions of trust fund proceeds to the Federated States of Micronesia and for appropriate remedies for the failure of the Federated States of Micronesia to use income of the Trust Fund for the annual grant purposes set forth in section 211. These remedies may include the return to the United States of the present market value of its contributions to the Trust Fund and

the present market value of any undistributed income on the contributions of the United States. If this Compact, as amended, is terminated, the provisions of sections 451 through 453 of this Compact, as amended, shall govern treatment of any U.S. contributions to the Trust Fund or accrued interest thereon.

**Section 216 - Sector Grant Funding and Trust Fund Contributions**

The funds described in sections 211, 212(b) and 215 shall be made available as follows

(In millions of U.S. dollars)

Fiscal Year	Section 211	Section 212(b)	Section 215	Total
2004	76.2	.5	16	92.7
2005	76.2	.5	16	92.7
2006	76.2	.5	16	92.7
2007	75.4	.5	16.8	92.7
2008	74.6	.5	17.6	92.7
2009	73.8	.5	18.4	92.7
2010	73	.5	19.2	92.7
2011	72.2	.5	20	92.7
2012	71.4	.5	20.8	92.7
2013	70.6	.5	21.6	92.7
2014	69.8	.5	22.4	92.7
2015	69	.5	23.2	92.7
2016	68.2	.5	24	92.7
2017	67.4	.5	24.8	92.7
2018	66.6	.5	25.6	92.7
2019	65.8	.5	26.4	92.7
2020	65	.5	27.2	92.7
2021	64.2	.5	28	92.7
2022	63.4	.5	28.8	92.7
2023	62.6	.5	29.6	92.2

**Section 217 - Inflation Adjustment**

Except for the amounts provided for audits under section 212(b), the amounts stated in this Title shall be adjusted for each United States Fiscal Year by the percent that equals two-thirds of the percent change in the United States Gross Domestic Product Implicit Price Deflator, or 5 percent, whichever is less in any one year, using the beginning of Fiscal Year 2004 as a base.

**Section 218 – Carry-Over of Unused Funds**

If in any year the funds made available by the Government of the United States for that year pursuant to this Article are not completely obligated by the Government of the Federated States of Micronesia, the unobligated balances shall remain available in addition to the funds to be provided in subsequent years.

Article II  
*Services and Program Assistance*

Section 221

(a) Services. The Government of the United States shall make available to the Federated States of Micronesia, in accordance with and to the extent provided in the Federal Programs and Services Agreement referred to in section 231, the services and related programs of:

- (1) the United States Weather Service;
- (2) the United States Postal Service;
- (3) the United States Federal Aviation Administration;
- (4) the United States Department of Transportation;
- (5) the Federal Deposit Insurance Corporation (for the benefit only of the Bank of the Federated States of Micronesia), and
- (6) the Federal Emergency Management Agency, and the United States Agency for International Development, Office of Foreign Disaster Assistance.

Upon the effective date of this Compact, as amended, the United States Departments and Agencies named or having responsibility to provide these services and related programs shall have the authority to implement the relevant provisions of the Federal Programs and Services Agreement referred to in section 231.

(b) Programs.

(1) With the exception of the services and programs covered by subsection (a) of this section, and unless the Congress of the United States provides otherwise, the Government of the United States shall make available to the Federated States of Micronesia the services and programs that were available to the Federated States of Micronesia on the effective date of this Compact, as amended, to the extent that such services and programs continue to be available to State and local governments of the United States. As set forth in the Fiscal Procedures Agreement, funds provided under subsection (a) of section 211 will be considered to be local revenues of the Government of the Federated States of Micronesia when used as the local share required to obtain federal programs and services.

(2) Unless provided otherwise by U.S. law, the services and programs described in paragraph (1) of this subsection shall be extended in accordance with the terms of the Federal Programs and Services Agreement referred to in section 231.

(c) The Government of the United States shall have and exercise such authority as is necessary to carry out its responsibilities under this Title and the separate agreements referred to in amended section 231, including the authority to monitor and administer all

service and program assistance provided by the United States to the Federated States of Micronesia. The Federal Programs and Services Agreement referred to in amended section 231 shall also set forth the extent to which services and programs shall be provided to the Federated States of Micronesia.

(d) Except as provided elsewhere in this Compact, as amended, under any separate agreement entered into under this Compact, as amended, or otherwise under U.S. law, all federal domestic programs extended to or operating in the Federated States of Micronesia shall be subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and regulations applicable to such programs and services when operating in the United States.

(e) The Government of the United States shall make available to the Federated States of Micronesia alternate energy development projects, studies, and conservation measures to the extent provided for the Freely Associated States in the laws of the United States.

#### Section 222

The Government of the United States and the Government of the Federated States of Micronesia may agree from time to time to extend to the Federated States of Micronesia additional United States grant assistance, services and programs, as provided under the laws of the United States. Unless inconsistent with such laws, or otherwise specifically precluded by the Government of the United States at the time such additional grant assistance, services, or programs are extended, the Federal Programs and Services Agreement referred to section 231 shall apply to any such assistance, services or programs.

#### Section 223

The Government of the Federated States of Micronesia shall make available to the Government of the United States at no cost such land as may be necessary for the operations of the services and programs provided pursuant to this Article, and such facilities as are provided by the Government of the Federated States of Micronesia at no cost to the Government of the United States as of the effective date of this Compact, as amended, or as may be mutually agreed thereafter.

#### Section 224

The Government of the Federated States of Micronesia may request, from time to time, technical assistance from the federal agencies and institutions of the Government of the United States, which are authorized to grant such technical assistance in accordance with its laws. If technical assistance is granted pursuant to such a request, the Government of the United States shall provide the technical assistance in a manner which gives priority consideration to the Federated States of Micronesia over other recipients not a part of the United States, its territories or possessions, and equivalent consideration to the Federated States of Micronesia with respect to other states in Free Association with the United States. Such assistance shall be made available on a reimbursable or non-reimbursable basis to the extent provided by United States law.

Article III  
*Administrative Provisions*

Section 231

The specific nature, extent and contractual arrangements of the services and programs provided for in section 221 of this Compact, as amended, as well as the legal status of agencies of the Government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in the Federated States of Micronesia, and other arrangements in connection with the assistance, services, or programs furnished by the Government of the United States, are set forth in a Federal Programs and Services Agreement which shall come into effect simultaneously with this Compact, as amended.

Section 232

The Government of the United States, in consultation with the Government of the Federated States of Micronesia, shall determine and implement procedures for the periodic audit of all grants and other assistance made under Article I of this Title and of all funds expended for the services and programs provided under Article II of this Title. Further, in accordance with the Fiscal Procedures Agreement described in subsection (a) of section 211, the Comptroller General of the United States shall have such powers and authorities as described in sections 102 (c) and 110 (c) of Public Law 99-239, 99 Stat. 1777-78, and 99 Stat. 1799 (January 14, 1986).

Section 233

Approval of this Compact, as amended, by the Government of the United States, in accordance with its constitutional processes, shall constitute a pledge by the United States that the sums and amounts specified as sector grants in section 211 of this Compact, as amended, shall be appropriated and paid to the Federated States of Micronesia for such period as those provisions of this Compact, as amended, remain in force, subject to the terms and conditions of this Title and related subsidiary agreements.

Section 234

The Government of the Federated States of Micronesia pledges to cooperate with, permit, and assist if reasonably requested, designated and authorized representatives of the Government of the United States charged with investigating whether Compact funds, or any other assistance authorized under this Compact, as amended, have, or are being, used for purposes other than those set forth in this Compact, as amended, or its subsidiary agreements. In carrying out this investigative authority, such United States Government representatives may request that the Government of the Federated States of Micronesia subpoena documents and records and compel testimony in accordance with the laws and Constitution of the Federated States of Micronesia. Such assistance by the Government of the Federated States of Micronesia to the Government of the United States shall not be unreasonably withheld. The obligation of the Government of the Federated States of Micronesia to fulfill its pledge herein is a condition to its receiving payment of such funds or other assistance authorized under this Compact, as amended. The Government of the United States shall pay any reasonable costs for extraordinary services executed by

the Government of the Federated States of Micronesia in carrying out the provisions of this section.

Article IV  
*Trade*

Section 241

The Federated States of Micronesia is not included in the customs territory of the United States.

Section 242

The President shall proclaim the following tariff treatment for articles imported from the Federated States of Micronesia which shall apply during the period of effectiveness of this title:

(a) Unless otherwise excluded, articles imported from the Federated States of Micronesia, subject to the limitations imposed under sections 503(b) of title 5 of the Trade Act of 1974 (19 U.S.C. 2463(b)), shall be exempt from duty.

(b) Only tuna in airtight containers provided for in heading 1604.14.22 of the Harmonized Tariff Schedule of the United States that is imported from the Federated States of Micronesia during any calendar year not to exceed 10 percent of apparent United States consumption of tuna in airtight containers during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, shall be exempt from duty; but the quantity of tuna given duty-free treatment under this paragraph for any calendar year shall be counted against the aggregated quantity of tuna in airtight containers that is dutiable under rate column numbered 1 of such heading 1604.14.22 for that calendar year.

(c) The duty-free treatment provided under subsection (a) shall not apply to-

(1) watches, clocks, and timing apparatus provided for in Chapter 91, excluding heading 9113, of the Harmonized Tariff Schedule of the United States;

(2) buttons (whether finished or not finished) provided for in items 9606.21.40 and 9606.29.20 of such Schedule;

(3) textile and apparel articles which are subject to textile agreements; and

(4) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.) on April 1, 1984.

(d) If the cost or value of materials produced in the customs territory of the United States is included with respect to an eligible article which is a product of the Federated States of Micronesia, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied for duty assessment purposes toward determining the percentage referred to in section 503(a)(2) of title V of the Trade Act of 1974.

Section 243

Articles imported from the Federated States of Micronesia which are not exempt from duty under subsections (a), (b), (c), and (d) of section 242 shall be subject to the rates of duty set forth in column numbered 1-general of the Harmonized Tariff Schedule of the United States (HTSUS).

#### Section 244

(a) All products of the United States imported into the Federated States of Micronesia shall receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage or use.

(b) The provisions of subsection (a) shall not apply to advantages accorded by the Federated States of Micronesia by virtue of their full membership in the Pacific Island Countries Trade Agreement (PICTA), done on August 18, 2001, to those governments listed in Article 26 of PICTA, as of the date the Compact, as amended, is signed.

(c) Prior to entering into consultations on, or concluding, a free trade agreement with governments not listed in Article 26 of PICTA, the Federated States of Micronesia shall consult with the United States regarding whether or how subsection (a) of section 244 shall be applied.

### Article V *Finance and Taxation*

#### Section 251

The currency of the United States is the official circulating legal tender of the Federated States of Micronesia. Should the Government of the Federated States of Micronesia act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

#### Section 252

The Government of the Federated States of Micronesia may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as the Government of the Federated States of Micronesia deems appropriate. The determination of the source of any income, or the situs of any property, shall for purposes of this Compact be made according to the United States Internal Revenue Code.

#### Section 253

A citizen of the Federated States of Micronesia, domiciled therein, shall be exempt from estate, gift, and generation-skipping transfer taxes imposed by the Government of the United States, provided that such citizen of the Federated States of Micronesia is neither a citizen nor a resident of the United States.

#### Section 254

(a) In determining any income tax imposed by the Government of the Federated States of Micronesia, the Government of the Federated States of Micronesia shall have authority to impose tax upon income derived by a resident of the Federated States of Micronesia from sources without the Federated States of Micronesia, in the same manner and to the same extent as the Government of the Federated States of Micronesia imposes tax upon income derived from within its own jurisdiction. If the Government of the Federated States of Micronesia exercises such authority as provided in this subsection, any individual resident of the Federated States of Micronesia who is subject to tax by the Government of the United States on income which is also taxed by the Government of the Federated States of Micronesia shall be relieved of liability to the Government of the United States for the tax which, but for this subsection, would otherwise be imposed by the Government of the United States on such income. However, the relief from liability to the United States Government referred to in the preceding sentence means only relief in the form of the foreign tax credit (or deduction in lieu thereof) available with respect to the income taxes of a possession of the United States, and relief in the form of the exclusion under section 911 of the Internal Revenue Code of 1986. For purposes of this section, the term “resident of the Federated States of Micronesia” shall be deemed to include any person who was physically present in the Federated States of Micronesia for a period of 183 or more days during any taxable year.

(b) If the Government of the Federated States of Micronesia subjects income to taxation substantially similar to that imposed by the Trust Territory Code in effect on January 1, 1980, such Government shall be deemed to have exercised the authority described in section 254(a).

#### Section 255

For purposes of section 274(h)(3)(A) of the United States Internal Revenue Code of 1986, the term “North American Area” shall include the Federated States of Micronesia.

### TITLE THREE SECURITY AND DEFENSE RELATIONS

#### Article I *Authority and Responsibility*

#### Section 311

(a) The Government of the United States has full authority and responsibility for security and defense matters in or relating to the Federated States of Micronesia.

(b) This authority and responsibility includes:

(1) the obligation to defend the Federated States of Micronesia and its people from attack or threats thereof as the United States and its citizens are defended;

(2) the option to foreclose access to or use of the Federated States of Micronesia by military personnel or for the military purposes of any third country; and

(3) the option to establish and use military areas and facilities in the Federated States of Micronesia, subject to the terms of the separate agreements referred to in sections 321 and 323.

(c) The Government of the United States confirms that it shall act in accordance with the principles of international law and the Charter of the United Nations in the exercise of this authority and responsibility.

#### Section 312

Subject to the terms of any agreements negotiated in accordance with sections 321 and 323, the Government of the United States may conduct within the lands, waters and airspace of the Federated States of Micronesia the activities and operations necessary for the exercise of its authority and responsibility under this Title.

#### Section 313

(a) The Government of the Federated States of Micronesia shall refrain from actions that the Government of the United States determines, after appropriate consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Federated States of Micronesia.

(b) The consultations referred to in this section shall be conducted expeditiously at senior levels of the two Governments, and the subsequent determination by the Government of the United States referred to in this section shall be made only at senior interagency levels of the Government of the United States.

(c) The Government of the Federated States of Micronesia shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of State personally and the United States Secretary of Defense personally regarding any determination made in accordance with this section.

#### Section 314

(a) Unless otherwise agreed, the Government of the United States shall not, in the Federated States of Micronesia:

(1) test by detonation or dispose of any nuclear weapon, nor test, dispose of, or discharge any toxic chemical or biological weapon; or

(2) test, dispose of, or discharge any other radioactive, toxic chemical or biological materials in an amount or manner which would be hazardous to public health or safety.

(b) Unless otherwise agreed, other than for transit or overflight purposes or during time of a national emergency declared by the President of the United States, a state of war declared by the Congress of the United States or as necessary to defend against an actual or impending armed attack on the United States, the Federated States of Micronesia or the Republic of the Marshall Islands, the Government of the United States shall not store in the Federated States of Micronesia or the Republic of the Marshall Islands any toxic chemical weapon, nor any radioactive materials nor any toxic chemical materials intended for weapons use.

(c) Radioactive, toxic chemical, or biological materials not intended for weapons use shall not be affected by section 314(b).

(d) No material or substance referred to in this section shall be stored in the Federated States of Micronesia except in an amount and manner which would not be hazardous to public health or safety. In determining what shall be an amount or manner which would be hazardous to public health or safety under this section, the Government of the United States shall comply with any applicable mutual agreement, international guidelines accepted by the Government of the United States, and the laws of the United States and their implementing regulations.

(e) Any exercise of the exemption authority set forth in section 161(e) shall have no effect on the obligations of the Government of the United States under this section or on the application of this subsection.

(f) The provisions of this section shall apply in the areas in which the Government of the Federated States of Micronesia exercises jurisdiction over the living resources of the seabed, subsoil or water column adjacent to its coasts.

#### Section 315

The Government of the United States may invite members of the armed forces of other countries to use military areas and facilities in the Federated States of Micronesia, in conjunction with and under the control of United States Armed Forces. Use by units of the armed forces of other countries of such military areas and facilities, other than for transit and overflight purposes, shall be subject to consultation with and, in the case of major units, approval of the Government of the Federated States of Micronesia.

#### Section 316

The authority and responsibility of the Government of the United States under this Title may not be transferred or otherwise assigned.

### Article II

#### *Defense Facilities and Operating Rights*

#### Section 321

(a) Specific arrangements for the establishment and use by the Government of the United States of military areas and facilities in the Federated States of Micronesia are set forth in separate agreements, which shall remain in effect in accordance with the terms of such agreements.

(b) If, in the exercise of its authority and responsibility under this Title, the Government of the United States requires the use of areas within the Federated States of Micronesia in addition to those for which specific arrangements are concluded pursuant to section 321(a), it may request the Government of the Federated States of Micronesia to satisfy those requirements through leases or other arrangements. The Government of the Federated States of Micronesia shall sympathetically consider any such request and shall establish suitable procedures to discuss it with and provide a prompt response to the Government of the United States.

(c) The Government of the United States recognizes and respects the scarcity and special importance of land in the Federated States of Micronesia. In making any requests pursuant to section 321(b), the Government of the United States shall follow the policy of

requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy its requirement through public real property, where available, rather than through private real property.

#### Section 322

The Government of the United States shall provide and maintain fixed and floating aids to navigation in the Federated States of Micronesia at least to the extent necessary for the exercise of its authority and responsibility under this Title.

#### Section 323

The military operating rights of the Government of the United States and the legal status and contractual arrangements of the United States Armed Forces, their members, and associated civilians, while present in the Federated States of Micronesia are set forth in separate agreements, which shall remain in effect in accordance with the terms of such agreements.

### Article III

#### *Defense Treaties and International Security Agreements*

#### Section 331

Subject to the terms of this Compact, as amended, and its related agreements, the Government of the United States, exclusively, has assumed and enjoys, as to the Federated States of Micronesia, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty or other international security agreement applied by the Government of the United States as Administering Authority of the Trust Territory of the Pacific Islands as of November 2, 1986.

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in the Federated States of Micronesia. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of the Federated States of Micronesia.

### Article IV

#### *Service in Armed Forces of the United States*

#### Section 341

Any person entitled to the privileges set forth in Section 141 (with the exception of any person described in section 141(a)(5) who is not a citizen of the Federated States of Micronesia) shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States as long as such person has resided in the United States for a period of less than one year, provided that no time shall count towards this one year while a person admitted to the United States under the Compact, or the Compact, as amended, is engaged in full-time study in the United States. Any person described in section 141(a)(5) who is not a

citizen of the Federated States of Micronesia shall be subject to United States laws relating to selective service.

#### Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from the Federated States of Micronesia, as may be nominated by the Government of the Federated States of Micronesia, in each of:

(a) The United States Coast Guard Academy pursuant to 14 U.S.C. 195.

(b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to section 342(b) of this Compact, as amended.

### Article V *General Provisions*

#### Section 351

(a) The Government of the United States and the Government of the Federated States of Micronesia shall continue to maintain a Joint Committee empowered to consider disputes arising under the implementation of this Title and its related agreements.

(b) The membership of the Joint Committee shall comprise selected senior officials of the two Governments. The senior United States military commander in the Pacific area shall be the senior United States member of the Joint Committee. For the meetings of the Joint Committee, each of the two Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, the Joint Committee shall meet annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. The Joint Committee also shall meet promptly upon request of either of its members. The Joint Committee shall follow such procedures, including the establishment of functional subcommittees, as the members may from time to time agree. Upon notification by the Government of the United States, the Joint Committee of the United States and the Federated States of Micronesia shall meet promptly in a combined session with the Joint Committee established and maintained by the Government of the United States and the Republic of the Marshall Islands to consider matters within the jurisdiction of the two Joint Committees.

(d) Unresolved issues in the Joint Committee shall be referred to the Governments for resolution, and the Government of the Federated States of Micronesia shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

#### Section 352

In the exercise of its authority and responsibility under Title Three, the Government of the United States shall accord due respect to the authority and responsibility of the Government of the Federated States of Micronesia under Titles One, Two and Four and

to the responsibility of the Government of the Federated States of Micronesia to assure the well-being of its people.

### Section 353

(a) The Government of the United States shall not include the Government of the Federated States of Micronesia as a named party to a formal declaration of war, without that Government's consent.

(b) Absent such consent, this Compact, as amended, is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the citizens, nationals or Government of the Federated States of Micronesia, which arise out of armed conflict subsequent to November 3, 1986, and which are:

(1) petitions to the Government of the United States for redress; or

(2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under section 353(b)(1) shall be treated as if they were made by citizens of the United States.

### Section 354

(a) The Government of the United States and the Government of the Federated States of Micronesia are jointly committed to continue their security and defense relations, as set forth in this Title. Accordingly, it is the intention of the two countries that the provisions of this Title shall remain binding as long as this Compact, as amended, remains in effect, and thereafter as mutually agreed, unless earlier terminated by mutual agreement pursuant to section 441, or amended pursuant to Article III of Title Four. If at any time the Government of the United States, or the Government of the Federated States of Micronesia, acting unilaterally, terminates this Title, such unilateral termination shall be considered to be termination of the entire Compact, in which case the provisions of section 442 and 452 (in the case of termination by the Government of the United States) or sections 443 and 453 (in the case of termination by the Government of the Republic of the Federated States of Micronesia), with the exception of paragraph (3) of subsection (a) of section 452 or paragraph (3) of subsection (a) of section 453, as the case may be, shall apply.

(b) The Government of the United States recognizes, in view of the special relationship between the Government of the United States and the Government of the Federated States of Micronesia, and in view of the existence of the separate agreement regarding mutual security concluded with the Government of the Federated States of Micronesia pursuant to sections 321 and 323, that, even if this Title should terminate, any attack on the Federated States of Micronesia during the period in which such separate agreement is in effect, would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, the Government of the United States would take action to meet the danger to the United States and to the Federated States of Micronesia in accordance with its constitutional processes.

(c) As reflected in Article 21(1)(b) of the Trust Fund Agreement, the Government of the United States and the Government of the Federated States of Micronesia further recognize, in view of the special relationship between their countries, that even if this Title should terminate, the Government of the Federated States of Micronesia shall refrain from actions which the Government of the United States determines, after appropriate consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Federated States of Micronesia or the Republic of the Marshall Islands.

## TITLE FOUR GENERAL PROVISIONS

### Article I *Approval and Effective Date*

#### Section 411

Pursuant to section 432 of the Compact and subject to subsection (e) of section 461 of the Compact, as amended, the Compact, as amended, shall come into effect upon mutual agreement between the Government of the United States and the Government of the Federated States of Micronesia subsequent to completion of the following:

- (a) Approval by the Government of the Federated States of Micronesia in accordance with its constitutional processes.
- (b) Approval by the Government of the United States in accordance with its constitutional processes.

### Article II *Conference and Dispute Resolution*

#### Section 421

The Government of the United States shall confer promptly at the request of the Government of the Federated States of Micronesia and that Government shall confer promptly at the request of the Government of the United States on matters relating to the provisions of this Compact, as amended, or of its related agreements.

#### Section 422

In the event the Government of the United States or the Government of the Federated States of Micronesia, after conferring pursuant to section 421, determines that there is a dispute and gives written notice thereof, the two Governments shall make a good faith effort to resolve the dispute between themselves.

#### Section 423

If a dispute between the Government of the United States and the Government of the Federated States of Micronesia cannot be resolved within 90 days of written notification in the manner provided in section 422, either party to the dispute may refer it to arbitration in accordance with section 424.

#### Section 424

Should a dispute be referred to arbitration as provided for in section 423, an Arbitration Board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory. Arbitration shall occur according to the following terms:

(a) An Arbitration Board shall consist of a Chairman and two other members, each of whom shall be a citizen of a party to the dispute. Each of the two Governments which is a party to the dispute shall appoint one member to the Arbitration Board. If either party to the dispute does not fulfill the appointment requirements of this section within 30 days of referral of the dispute to arbitration pursuant to section 423, its member on the Arbitration Board shall be selected from its own standing list by the other party to the dispute. Each Government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a Chairman within 15 days after selection of the other members of the Arbitration Board. Failing agreement on a Chairman, the Chairman shall be chosen by lot from the standing lists of the parties to the dispute within 5 days after such failure.

(b) Unless otherwise provided in this Compact, as amended, or its related agreements, the Arbitration Board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles I, II, III, IV and V of Title One, Title Two, Title Four, and their related agreements.

(c) Each member of the Arbitration Board shall have one vote. Each decision of the Arbitration Board shall be reached by majority vote.

(d) In determining any legal issue, the Arbitration Board may have reference to international law and, in such reference, shall apply as guidelines the provisions set forth in Article 38 of the Statute of the International Court of Justice.

(e) The Arbitration Board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact, as amended. Unless the parties provide otherwise by mutual agreement, the Arbitration Board shall endeavor to render its decision within 30 days after the conclusion of arguments. The Arbitration Board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the Arbitration Board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the Government of the Federated States of Micronesia.

### Article III *Amendment*

#### Section 431

The provisions of this Compact, as amended, may be further amended by mutual agreement of the Government of the United States and the Government of the Federated States of Micronesia, in accordance with their respective constitutional processes.

Article IV  
*Termination*

Section 441

This Compact, as amended, may be terminated by mutual agreement of the Government of the Federated States of Micronesia and the Government of the United States, in accordance with their respective constitutional processes. Such mutual termination of this Compact, as amended, shall be without prejudice to the continued application of section 451 of this Compact, as amended, and the provisions of the Compact, as amended, set forth therein.

Section 442

Subject to section 452, this Compact, as amended, may be terminated by the Government of the United States in accordance with its constitutional processes. Such termination shall be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended. Such termination of this Compact, as amended, shall be without prejudice to the continued application of section 452 of this Compact, as amended, and the provisions of the Compact, as amended, set forth therein.

Section 443

This Compact, as amended, shall be terminated by the Government of the Federated States of Micronesia, pursuant to its constitutional processes, subject to section 453 if the people represented by that Government vote in a plebiscite to terminate the Compact, as amended, or by another process permitted by the FSM constitution and mutually agreed between the Governments of the United States and the Federated States of Micronesia. The Government of the Federated States of Micronesia shall notify the Government of the United States of its intention to call such a plebiscite, or to pursue another mutually agreed and constitutional process, which plebiscite or process shall take place not earlier than three months after delivery of such notice. The plebiscite or other process shall be administered by the Government of the Federated States of Micronesia in accordance with its constitutional and legislative processes. If a majority of the valid ballots cast in the plebiscite or other process favors termination, the Government of the Federated States of Micronesia shall, upon certification of the results of the plebiscite or other process, give notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

Article V  
*Survivability*

Section 451

(a) Should termination occur pursuant to section 441, economic and other assistance by the Government of the United States shall continue only if and as mutually agreed by the

Governments of the United States and the Federated States of Micronesia, and in accordance with the parties' respective constitutional processes.

(b) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections (b) and (c) of section 354 of this Compact, as amended, and the separate agreement entered into consistent with those subsections, if termination occurs pursuant to section 441 prior to the twentieth anniversary of the effective date of this Compact, as amended, the United States shall continue to make contributions to the Trust Fund described in section 215 of this Compact, as amended.

(c) In view of the special relationship of the United States and the Federated States of Micronesia described in subsection (b) of this section, if termination occurs pursuant to section 441 following the twentieth anniversary of the effective date of this Compact, as amended, the Federated States of Micronesia shall be entitled to receive proceeds from the Trust Fund described in section 215 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement governing the distribution of such proceeds.

#### Section 452

(a) Should termination occur pursuant to section 442 prior to the twentieth anniversary of the effective date of this Compact, as amended, the following provisions of this Compact, as amended, shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:

- (1) Article VI and sections 172, 173, 176 and 177 of Title One;
- (2) Sections 232 and 234 of Title Two;
- (3) Title Three; and
- (4) Articles II, III, V and VI of Title Four.

(b) Should termination occur pursuant to section 442 before the twentieth anniversary of the effective date of the Compact, as amended:

(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, economic and other assistance by the United States shall continue only if and as mutually agreed by the Governments of the United States and the Republic of the Marshall Islands.

(2) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections (b) and (c) of section 354 of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, the United States shall continue to make contributions to the Trust Fund described in section 215 of this Compact, as amended, in the manner described in the Trust Fund Agreement.

(c) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 442 following the twentieth anniversary of the effective date of this Compact, as amended, the Federated States of Micronesia shall

continue to be eligible to receive proceeds from the Trust Fund described in section 215 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

#### Section 453

(a) Should termination occur pursuant to section 443 prior to the twentieth anniversary of the effective date of this Compact, as amended, the following provisions of this Compact, as amended, shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:

- (1) Article VI and sections 172, 173, 176 and 177 of Title One;
- (2) Sections 232 and 234 of Title Two;
- (3) Title Three; and
- (4) Articles II, III, V and VI of Title Four.

(b) Upon receipt of notice of termination pursuant to section 443, the Government of the United States and the Government of the Federated States of Micronesia shall promptly consult with regard to their future relationship. Except as provided in subsection (c) and (d) of this section, these consultations shall determine the level of economic and other assistance, if any, which the Government of the United States shall provide to the Government of the Federated States of Micronesia for the period ending on the twentieth anniversary of the effective date of this Compact, as amended, and for any period thereafter, if mutually agreed.

(c) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 443 prior to the twentieth anniversary of the effective date of this Compact, as amended, the United States shall continue to make contributions to the Trust Fund described in section 215 of this Compact, as amended, in the manner described in the Trust Fund Agreement.

(d) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 443 following the twentieth anniversary of the effective date of this Compact, as amended, the Federated States of Micronesia shall continue to be eligible to receive proceeds from the Trust Fund described in section 215 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

#### Section 454

Notwithstanding any other provision of this Compact, as amended:

(a) The Government of the United States reaffirms its continuing interest in promoting the economic advancement and budgetary self-reliance of the people of the Federated States of Micronesia.

(b) The separate agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms.

Article VI  
*Definition of Terms*

Section 461

For the purpose of this Compact, as amended, only, and without prejudice to the views of the Government of the United States or the Government of the Federated States of Micronesia as to the nature and extent of the jurisdiction of either of them under international law, the following terms shall have the following meanings:

(a) “Trust Territory of the Pacific Islands” means the area established in the Trusteeship Agreement consisting of the former administrative districts of Kosrae, Yap, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, section 1, in force on January 1, 1979. This term does not include the area of Palau or the Northern Mariana Islands.

(b) “Trusteeship Agreement” means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July 18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) “The Federated States of Micronesia” and “the Republic of the Marshall Islands” are used in a geographic sense and include the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter recognized by the Government of the United States.

(d) “Compact” means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99-239 (Jan. 14, 1986) and went into effect with respect to the Federated States of Micronesia on November 3, 1986.

(e) “Compact, as amended” means the Compact of Free Association Between the United States and the Federated States of Micronesia, as amended. The effective date of the Compact, as amended, shall be on a date to be determined by the President of the United States, and agreed to by the Government of the Federated States of Micronesia, following formal approval of the Compact, as amended, in accordance with section 411 of this Compact, as amended.

(f) “Government of the Federated States of Micronesia” means the Government established and organized by the Constitution of the Federated States of Micronesia including all the political subdivisions and entities comprising that Government.

(g) “Government of the Republic of the Marshall Islands” means the Government established and organized by the Constitution of the Republic of the Marshall Islands including all the political subdivisions and entities comprising that Government.

(h) The following terms shall be defined consistent with the 1998 Edition of the Radio Regulations of the International Telecommunications Union as follows:

(1) “Radiocommunication” means telecommunication by means of radio waves.

(2) “Station” means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service, or the radio astronomy service.

(3) “Broadcasting Service” means a radiocommunication service in which the transmissions are intended for direct reception by the general public. This service may include sound transmissions, television transmissions or other types of transmission.

(4) “Broadcasting Station” means a station in the broadcasting service.

(5) “Assignment (of a radio frequency or radio frequency channel)” means an authorization given by an administration for a radio station to use a radio frequency or radio frequency channel under specified conditions.

(6) “Telecommunication” means any transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems.

(i) “Military Areas and Facilities” means those areas and facilities in the Federated States of Micronesia reserved or acquired by the Government of the Federated States of Micronesia for use by the Government of the United States, as set forth in the separate agreements referred to in section 321.

(j) “Tariff Schedules of the United States” means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(k) “Vienna Convention on Diplomatic Relations” means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

#### Section 462

(a) The Government of the United States and the Government of the Federated States of Micronesia previously have concluded agreements pursuant to the Compact, which shall remain in effect and shall survive in accordance with their terms, as follows:

(1) Agreement Concluded Pursuant to Section 234 of the Compact;

(2) Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association; and

(3) Agreement between the Government of the United States of America and the Federated States of Micronesia Regarding Aspects of the Marine Sovereignty and Jurisdiction of the Federated States of Micronesia.

(b) The Government of the United States and the Government of the Federated States of Micronesia shall conclude prior to the date of submission of this Compact, as amended, to the legislatures of the two countries, the following related agreements which shall come into effect on the effective date of this Compact, as amended, and shall survive in accordance with their terms, as follows:

(1) Federal Programs and Services Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Concluded Pursuant to Article III of Title One, Article II of Title Two (including Section 222), and Section 231 of the Compact of Free Association, as amended which includes:

- (i) Postal Services and Related Programs;
- (ii) Weather Services and Related Programs;
- (iii) Civil Aviation Safety Service and Related Programs;
- (iv) Civil Aviation Economic Services and Related Programs;
- (v) United States Disaster Preparedness and Response Services and Related Programs;
- (vi) Federal Deposit Insurance Corporation Services and Related Programs; and
- (vii) Telecommunications Services and Related Programs.

(2) Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175(a) of the Compact of Free Association, as amended;

(3) Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia on Labor Recruitment Concluded Pursuant to Section 175(b) of the Compact of Free Association, as amended;

(4) Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact of Free Association, as Amended, of Free Association Between the Government of the United States of America and Government of the Federated States of Micronesia;

(5) Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Implementing Section 215 and Section 216 of the Compact, as Amended, Regarding a Trust Fund;

(6) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Federated States of Micronesia Concluded Pursuant to Sections 211(b), 321 and 323 of the Compact of Free Association, as Amended; and the

(7) Status of Forces Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Concluded Pursuant to Section 323 of the Compact of Free Association, as Amended.

#### Section 463

(a) Except as set forth in subsection (b) of this section, any reference in this Compact, as amended, to a provision of the United States Code or the Statutes at Large of the United States constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended.

(b) Any reference in Articles IV and Article VI of Title One and Sections 174, 175, 178 and 342 to a provision of the United States Code or the Statutes at Large of the United States or to the Privacy Act, the Freedom of Information Act, the Administrative Procedure Act or the Immigration and Nationality Act constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended, or as it may be amended thereafter on a non-discriminatory basis according to the constitutional processes of the United States.

Article VII  
*Concluding Provisions*

Section 471

Both the Government of the United States and the Government of the Federated States of Micronesia shall take all necessary steps, of a general or particular character, to ensure, no later than the entry into force date of this Compact, as amended, the conformity of its laws, regulations and administrative procedures with the provisions of this Compact, as amended, or in the case of subsection (d) of section 141, as soon as reasonably possible thereafter.

Section 472

This Compact, as amended, may be accepted, by signature or otherwise, by the Government of the United States and the Government of the Federated States of Micronesia.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Compact of Free Association, as amended, which shall enter into force upon the exchange of diplomatic notes by which the Government of the United States of America and the Government of the Federated States of Micronesia inform each other about the fulfillment of their respective requirements for entry into force.

DONE at \_\_\_\_\_, in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 2003, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:  
FOR THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA:

AGREEMENT CONCERNING PROCEDURES FOR THE IMPLEMENTATION OF  
UNITED STATES ECONOMIC ASSISTANCE PROVIDED IN THE COMPACT OF  
FREE ASSOCIATION, AS AMENDED, BETWEEN THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATED  
STATES OF MICRONESIA

This Agreement is entered into by the Government of the United States and the Government of the Federated States of Micronesia in recognition of their mutual desire to fulfill their obligations and responsibilities in the implementation of United States Economic Assistance, Programs, and Services as Set Forth in Title Two of the Compact, as amended. The purpose of this Agreement is to record the procedures that are most efficient, economical, and beneficial to the discharge of the obligations and responsibilities of each government and which each party agrees to implement and abide by. This Agreement shall be construed and implemented in a manner consistent with the Compact, as amended.

Article I  
*Definition of Terms*

For purposes of this Agreement, the following terms shall have the following meanings when capitalized:

“Agreement” means this Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as amended, of Free Association Between the Government of the United States of America and the Government of the Federated States of Micronesia.

“Accrued Expenditures” means the charges incurred by the Government of the Federated States of Micronesia during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, Sub-Grantees, subcontractors, and other third party non-contractors; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

“Allowable Costs” mean those necessary and reasonable costs allocable to a Grant that comply with the limitations of any agreement relating to such Grant as well as to applicable laws and regulations, are allocated to the Grant on a basis consistent with policies that apply to all activities of the Grant, are accounted for consistently and in accordance with generally accepted accounting principles, are adequately documented, and are net of all applicable credits.

“Annual Report” has the meaning assigned to such term in Article V, section 1(d).

“Appeal” means the right of a Grantee to request a hearing from the director of the United States Department of the Interior’s Office of Hearings and Appeals regarding an adverse agency decision (43 C.F.R. Part 4). An ad hoc appeals board of two or more administrative law judges may be appointed by the director to hear the dispute at the Grantee’s written request. Decisions will be in writing and signed by a majority of

board members. Grantees (and their representatives) who appear before the board are governed by specific rules of practice (43 C.F.R. Part 1).

“Audits” mean financial, program and management audits, including the determination as to whether the Government of the Federated States of Micronesia has met the requirements set forth in the Compact, as amended, or its related agreements regarding the purposes for which Grants or other assistance are to be used; determinations as to the propriety of the financial transactions of the Government of the Federated States of Micronesia with respect to such Grants or assistance; and the substantiation of appropriate follow-up actions by the Government of the United States and the Government of the Federated States of Micronesia.

“Committee” has the meaning assigned to such term in Article III.

“HAFSM” has the meaning assigned to such term in Article II, section 2.

“Closeout” means the normal process by which the awarding agency determines that all applicable administrative actions and all required work on the annual Grant have been completed.

“Compact” means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99-239 (Jan. 14, 1986) and went into effect with respect to the Federated States of Micronesia on November 3, 1986.

“Compact, as amended” means the Compact of Free Association Between the United States and the Federated States of Micronesia, as amended. The effective date of the Compact, as amended, shall be on a date to be determined by the President of the United States, and agreed to by the Government of the Federated States of Micronesia, following formal approval of the Compact, as amended, in accordance with section 411 of this Compact, as amended.

“Contract” means a procurement Contract under a Grant or Sub-Grant. It also means a procurement sub-contract under a contract.

“Core Labor Standards” mean those fundamental rights that are guaranteed to all workers in the Federated States of Micronesia, including but not limited to freedom of association, non-discrimination in employment, the prohibition of forced labor, and the prohibition of exploitive child labor.

“Cost Accounting” means the method by which incurred costs are allocated to sector Grants by classification or type of expenditure linked to performance goals or, in lieu of performance budgeting, as line items of a traditional budget. Regardless of format, Cost Accounting structures for performance budgets should be capable of reporting on the cost of operations at three levels: (1) on an entity-wide (or agency basis); (2) by responsibility segment, defined as a component of the reporting entity that is responsible for carrying out a mission, conducting a major line of activity, or producing one or a group of related products or services; and (3) by segment outputs, that is, the cost centers associated with the separate types of outputs produced within each responsibility segment.

“Economic Assistance, Programs, and Services as Set Forth in Title Two” means the annual assistance provided to the Government of the Federated States of Micronesia by the Government of the United States under the Compact, as amended.

“Equipment” means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. The Government of the Federated States of Micronesia may use its own definition of Equipment provided it at least includes all Equipment defined above.

“Expenditure Report” means: (1) for non-construction Grants, the financial status or other equivalent report, and (2) for construction Grants, the outlay report and request for reimbursement or other equivalent report.

“Fiscal Year” means each one year period beginning October 1 and ending on the next following September 30. Each Fiscal Year shall be designated by the number of the calendar year in which such Fiscal Year ends. For example, “Fiscal Year 2022” means the Fiscal Year ending in calendar year 2022.

“Government of the United States” means the federal government of the United States of America.

“Government of the Federated States of Micronesia” means the Government established and organized by the Constitution of the Federated States of Micronesia including all the political subdivisions and entities comprising that Government.

“Grant” means an award of sector-based financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Government of the United States to the Government of the Federated States of Micronesia in accordance with section 211 of Title Two of the Compact, as amended. The term does not include technical assistance instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Acceptance of a Grant from the Government of the United States creates a legal duty on the part of the Government of the Federated States of Micronesia to use funds in accordance with the terms and conditions of the Grant.

“Grantee” means the recipient of a Grant under the Compact, as amended, or hereunder.

“Grants Administration” means those matters common to Grants in general, such as financial management, kinds and frequency of reports and records retention. These are distinguished from “programmatic” requirements, which concern matters that can be treated only on a program-by-program or Grant-by-Grant basis, such as activities supported by Grants.

“Gross Domestic Product Implicit Price Deflator” means the “Gross Domestic Product Implicit Price Deflator” as published from time to time in the *Survey of Current Business* by the Bureau of Economic Analysis of the United States Department of Commerce, or any successor thereto. It is a weighted average of the detailed price indices used in the deflation of the United States Gross Domestic Product. In each period, it uses as weights the composition of constant dollar output in that period. Changes in the implicit price deflator reflect both changes in prices and changes in the composition of output.

“IDP” has the meaning assigned to such term in Article V, section 1(e).

“IMF” has the meaning assigned to such term in Article VII, section 7.

“Implementing Agency” means the United States Federal agency that is authorized by the United States Congress to receive, disburse, and monitor financial assistance pursuant to Title Two of the Compact, as amended.

“Indirect Costs” mean costs incurred for common institution-wide or joint objectives that cannot be identified readily and specifically with a particular program or activity, such as general administration not associated with a sector Grant or project funded under the Compact, as amended.

“Matching” means the value of the in-kind contributions or the portion of the costs of a project or program of the Government of the United States that is required to be borne by the Government of the Federated States of Micronesia.

“MTBIF” has the meaning assigned to such term in Article V, section 1.

“Obligations” means the amounts of orders placed, Contracts and subcontracts awarded, goods and services received and similar transactions during a given period that will require payment by the Government of the Federated States of Micronesia during the same or future period.

“Operational Costs” means the customary and usual direct costs associated with the operations of a sector Grant program that continue from a given period to a subsequent period.

“Operational Grants” means the grants associated with a sector Grant program that continue from a given period to a subsequent period.

“Operational Reserve Account” has the meaning assigned to such term in Article IV, section 5(b)(2).

“Original Compact” means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99-239 (Jan. 14, 1986) and went into effect with respect to the Federated States of Micronesia on November 3, 1986.

“Payment Bond” has the meaning assigned to such term in Article VI, section 1(j)(13)(iii).

“Performance Bond” has the meaning assigned to such term in Article VI, section 1(j)(13)(ii).

“Prior Approval” means documentation evidencing consent of the awarding agency of the Government of the United States prior to incurring specific cost.

“Program Income” has the meaning assigned to such term in Article VI, section 1(i).

“Real Property” means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and Equipment.

“Standard Form SF-269” has the meaning assigned to such term in Article VI, section 1(b)(1)(iii).

“Standard Form SF-272” has the meaning assigned to such term in Article VI, section 1(b)(1)(iii).

“Sub-Grant” means an award of financial assistance in the form of money, or property in lieu of money, made by the Government of the Federated States of Micronesia to an eligible Grantee, including but not limited to local governments. The Government of the Federated States of Micronesia, as the legal entity to which United States financial assistance is awarded, is accountable for the use of all such funds by its Sub-Grantees.

“Sub-Grantee” means the recipient of a Sub-Grant under the Compact, as amended, or hereunder.

“Supplies” mean all tangible personal property other than “Equipment” as defined in this Article.

“Suspension” means, depending on the context, either (1) temporary withdrawal of the authority to obligate Grant funds pending corrective action by the Government of the Federated States of Micronesia or its Sub-Grantee; (2) a decision to terminate the Grant; or (3) an action taken to immediately exclude a person from participating in Grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

“Termination” means permanent withdrawal of the authority to obligate previously awarded Grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the Government of the Federated States of Micronesia or its Sub-Grantee. It does not include: (1) withdrawal of funds awarded on the basis of an underestimation of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of a Grant; (3) refusal to extend a Grant or award additional funds; or (4) voiding of a Grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

“United States” means the United States of America.

“Withholding” means the retention of payments including reimbursements, by the Government of the United States, with respect to any Grant if the Government of the Federated States of Micronesia is in breach of the terms and conditions of Title Two of the Compact, as amended, or this Agreement with respect to such Grant, fails to comply with any award condition with respect to such Grant, or is indebted to the Government of the United States. Further description of Withholding is in Article IV, section 5(c)(1).

## Article II

### *Economic Assistance Implementation*

1. Subject to the terms and conditions of this Agreement, the Government of the United States shall provide financial assistance on an annual sector Grant basis for a period of 20 years in the amounts set forth in section 217 of Title Two of the Compact, as amended. Such Grants shall be used for assistance in education, health care, public infrastructure, the environment, public sector capacity building and private sector

development, or for other areas as mutually agreed, with priorities in the education and health care sectors.

(a) The education sector Grant shall support and improve the educational system of the Federated States of Micronesia, including, without limitation, the systems for primary, secondary, and post-secondary education, respectively, and develop the human and material resources necessary for the Federated States of Micronesia to perform these services. Emphasis should be on advancing a quality basic education system according to performance standards appropriate for the Federated States of Micronesia, providing secondary education or vocational training to qualified students, improving management and accountability within the educational system, raising the level of staff quality, including teacher training, and improving the relevance of education to the needs of the economy.

(b) The health sector Grant shall support and improve the delivery of preventive, curative and environmental care, and develop the human and material resources necessary for the Federated States of Micronesia to perform these services. Priority should be given to establishing sustainable funding mechanisms for operating a community-based system with emphasis on prevention, primary care, mental health, substance abuse prevention, and the operation of hospitals to provide secondary care at appropriate levels and reduce reliance on medical referrals abroad.

(c) The sector Grant for private sector development shall support the efforts of the Government of the Federated States of Micronesia to attract new foreign investment and increase indigenous business activity by vitalizing the commercial environment, ensuring fair and equitable application of the law, promoting adherence to Core Labor Standards, maintaining progress toward the privatization of state-owned and partially state-owned enterprises, and engaging in other reforms. Priorities should be given to advancing the private development of fisheries, tourism and agriculture; employing new telecommunications technologies; and analyzing and developing new systems, laws, regulations and policies to foster private sector development, to facilitate investment by potential private investors, and to develop business and entrepreneurial skills.

(d) The sector Grant for capacity building shall support the efforts of the Federated States of Micronesia to build effective, accountable, and transparent national and local government and other public sector institutions and systems. Priority should be given to improving economic planning, financial management, auditing, law enforcement, immigration controls, the judiciary, and the compilation and analysis of appropriate statistical indicators with the goal of ensuring that essential functions can be carried out and that essential positions are filled with qualified personnel.

(e) The environment sector grant shall support the efforts of the Government of the Federated States of Micronesia to protect the Nation's land and marine environment and to conserve and achieve sustainable use of its natural resources. These efforts include the ongoing development, adoption and enforcement of policies, laws and regulation in pursuit of the above stated goals; the reduction and prevention of environmental degradation and all forms of environmental pollution; adaptation to climate change; the protection of biological diversity, including the assurance of

adequate legal and international treaty safeguards relating to the protection of botanical and other agro-ecological property belonging to the Federated States of Micronesia; the establishment and management of conservation (sustainable use) areas; environmental infrastructure planning, design construction, and operation; interaction and cooperation with non-governmental organizations; the promotion of increased environmental awareness in governmental and private sectors; and the promotion of increased involvement of citizens and traditional leaders of the Federated States of Micronesia in the process of conserving their country's natural resources.

(f) In accordance with section 211(a) of the Compact, as amended, unless otherwise agreed, annual Grant assistance shall be made available to assist the Government of the Federated States of Micronesia in its efforts to provide adequate public infrastructure assistance. With respect to the public infrastructure sector Grant, the highest priority shall be given to primary and secondary education capital projects and projects that directly affect health and safety, including water and wastewater projects, solid waste disposal projects, and health care facilities. Second priority shall be given to economic development-related projects, including airport and seaport improvements, roads, sea walls, and energy development including renewable energy that cannot be funded through the rate structure.

2. In recognition of the special development needs of the Federated States of Micronesia, the Government of the United States shall make available a Humanitarian Assistance – Federated States of Micronesia Program (“HAFSM”) upon request. Emphasis shall be on health, education, and infrastructure projects, including transportation, and such other projects as mutually agreed. The specific terms and conditions for requesting HAFSM assistance and for deducting costs from a sector Grant(s) awarded to the Government of the Federated States of Micronesia, are set forth in a separate agreement which shall come into effect simultaneously with the Compact, as amended.

3. The Government of the United States shall make annual contributions on or about the beginning of the Fiscal Year, into a trust fund established in accordance with sections 215 and 216 of Title Two of the Compact, as amended. Specific terms regarding fund investment, management, and use of proceeds are set forth in a separate agreement which shall come into effect simultaneously with the Compact, as amended.

4. The Government of the United States shall make an annual contribution of two hundred thousand dollars (\$200,000) on or about the beginning of the Fiscal Year, into a Disaster Assistance Emergency Fund established by the Government of the Federated States of Micronesia in accordance with section 211(d) of Title Two of the Compact, as amended. The Government of the Federated States of Micronesia shall annually deposit an equal amount to the fund. The terms and conditions for use are set forth in Annex A to this agreement.

5. Except as otherwise provided in the Compact, as amended, economic assistance under Title Two of the Compact, as amended, shall be adjusted for each Fiscal Year by the percent that equals two-thirds of the percent change in the United States Gross Domestic Product Implicit Price Deflator, or five percent, whichever is less in the applicable Fiscal Year, using the beginning of Fiscal Year 2004 as a base. This

adjustment shall be done prior to depositing the amounts set forth in section 217 of Title Two of the Compact, as amended, into the trust fund. After year one, the annual change will use an additive percentage change formula. The percent change shall be calculated to two decimal points (xx.xx%) by subtracting the previous calendar year third quarter GDP index from the GDP index of the current calendar year's third quarter, dividing the result by the base year's index (normalized base year equals 100). Funds arising from such adjustments shall be available for allocation to the sector Grants.

6. Funds provided under section 211(a) of the Compact, as amended, shall be considered to be local revenues of the Government of the Federated States of Micronesia when used as the local share required to obtain federal programs and services that enhance its ability to meet stated performance goals.

7. The Government of the Federated States of Micronesia shall not issue negotiable or transferable obligations evidencing indebtedness or encumbrance of funds received under Section 211 of Title Two. On a case-by-case basis, as part of the grant formulation process, the Committee may consider requests by the Federated States of Micronesia for commitment of Section 211 funds beyond the current Fiscal Year.

### Article III

#### *Joint Economic Management*

1. A Joint Economic Management Committee (the "Committee") shall be established to strengthen management and accountability with regard to assistance provided under the Compact, as amended, and to promote the effective use of funding provided thereunder.

2. The Committee shall be composed of five members, three of which shall be from the Government of the United States and two from the Government of the Federated States of Micronesia.

3. The chairperson of the Committee shall be from the Government of the United States. The Government of the United States shall consult with the Government of the Federated States of Micronesia when making the appointment, and the Government of the Federated States of Micronesia shall have an opportunity to present its views which shall be considered.

4. Appointments by the Government of the United States and the Government of the Federated States of Micronesia shall be made not later than 90 days after the effective date of this Agreement. The chairperson and members of the Committee shall serve a term of two years and may be reappointed.

5. The duties of the Committee shall be to:

(a) Review the Development Plan and other planning and budget documents of the Government of the Federated States of Micronesia, and monitor the progress made by the Government of the Federated States of Micronesia toward sustainable economic development and budgetary self-reliance in relation to its written goals and performance measures;

(b) Consult with providers of United States Federal Grant programs and services and other bilateral and multilateral partners to monitor the use of development assistance

from all sources-as it relates to the allocation of financial assistance under the Compact, as amended;

(c) Review Audits called for in the Compact, as amended, or this Agreement and actions taken or being taken to reconcile problems and qualified findings;

(d) Review performance outcomes and other reported data in relation to the previous year's Grant funding levels, terms, and conditions;

(e) Review and approve Grant allocations and performance objectives for the upcoming year;

(f) Review and approve any change proposed by the Government of the Federated States of Micronesia to the sectors to receive economic assistance set forth in Title Two of the Compact, as amended;

(g) Evaluate progress, management problems and any shifts in priorities in each sector, and identify ways to increase the effectiveness of United States assistance;

(h) Review quarterly trust fund investment reports;

(i) Comment on the comprehensive report prepared by the Government of the Federated States of Micronesia as required by section 214 of Title Two of the Compact, as amended, before it is submitted to the President of the United States; and

(j) Stipulate special conditions to attach to any or all annual Grant awards to improve program performance and fiscal accountability, and ensure progress toward macroeconomic goals.

6. The Committee shall meet at least once annually but no later than 30 days before the beginning of each Fiscal Year.

7. Sector Grant allocation decisions of the Committee shall be binding. In the event that the Government of the Federated States of Micronesia overrides all or part of these decisions, the Government of the United States may withhold Grant payments until the issues in dispute are resolved.

8. Each government shall provide the necessary staff support to its representatives on the Committee, to enable the parties to monitor closely the use of assistance under the Compact, as amended. No United States funding shall be used to support the travel or honoraria of Committee members from the Government of the Federated States of Micronesia, or any special salaries paid for serving as members of the Committee.

#### Article IV *Grants Administration*

1. Grant funds may not be used for any purpose other than that for which they are awarded. Unobligated funds shall carry over to the following Fiscal Year for reallocation to the applicable sector Grant, unless otherwise provided in this Agreement or the Compact, as amended.

2. All terms and conditions imposed on the Government of the Federated States of Micronesia shall apply to Sub-Grantees.

3. The President of the Federated States of Micronesia, acting on behalf of the national, state and local governments of the Federated States of Micronesia, shall be responsible for all certifications to the Government of the United States pursuant to this Agreement.

4. Grant Conditions:

(a) General terms and conditions of the sector Grants shall include conformance to the plans, strategies, budgets, project specifications, architectural and engineering specifications, performance standards, and other criteria developed by the Government of the Federated States of Micronesia and concurred with by the Committee.

(b) After consultation with the Government of the Federated States of Micronesia, the Government of the United States may recommend that the Committee attach certain terms and conditions to an annual allocation to assist the Government of the Federated States of Micronesia to achieve the goals of the sector Grant.

(c) Other special conditions or restrictions may be required by the Government of the United States during the course of the Grant year if it determines that the Government of the Federated States of Micronesia or a Sub-Grantee has a history of unsatisfactory performance, is not financially stable, has not conformed to terms and conditions of previous awards, or is otherwise not responsible. Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase of the Grant until receipt of evidence of acceptable performance within a given period;

(3) Requiring additional, more frequent and/or detailed financial reports;

(4) Providing for additional project monitoring;

(5) Requiring the acquisition of technical or management assistance; and

(6) Requiring additional Prior Approvals.

(d) If the Government of the United States imposes such conditions as stated above in clause (c), it shall immediately notify the Government of the Federated States of Micronesia in writing of its intent. This notification shall include a description of the:

(1) Nature of the special conditions or restrictions;

(2) Reasons for imposing them;

(3) Corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and,

(4) Method of requesting reconsideration of the conditions and restrictions imposed.

(e) If the explanation from the Government of the United States or any subsequent discussion between the Government of the United States and the Government of the Federated States of Micronesia is disputed, the Government of the Federated States of Micronesia may submit an Appeal in writing to the Implementing Agency of the Government of the United States. This Appeal must be initiated within 30 days of the receipt of a sector Grant award or a notification of intent to impose special conditions.

In such case, the Appeal for reconsideration will be handled in accordance with established administrative procedures of the Implementing Agency.

5. Payment Procedures:

(a) Establishment of Account. The Government of the Federated States of Micronesia shall establish an account with a bank or commercial financial institution organized in accordance with the laws of the United States or a State of the United States; or, subject to the approval of the Government of the United States, a bank or commercial financial institution in accordance with the laws of the Federated States of Micronesia, in either case for the purpose of receiving payments of Grant funds pursuant to the Compact, as amended, and this Agreement. The Government of the Federated States of Micronesia shall provide the Government of the United States with wiring instructions with respect to such account.

(b) Advance Payment. In general, payments for Operational Grants under the Compact, as amended, shall be made monthly, as set forth below, in advance. The amounts of the payments will match the percentage of the Fiscal Year to be completed during the advance period, or may be based on an outlay analysis performed by the Government of the Federated States of Micronesia and concurred with by the Government of the United States.

(1) Periodic Payments. The first payment of each Fiscal Year for Operational Grants will be sufficient to fund financial requirements for the first two months of each Fiscal Year. All other payments will be made on or about the first Business Day of each month (except that no payment shall be made on the second month of each Fiscal Year) to fund financial requirements of that month.

(2) Operational Reserve Account. The Government of the Federated States of Micronesia shall establish an interest-bearing account that complies with the terms and conditions of this clause (2) (the "Operational Reserve Account"). The Operational Reserve Account shall be established at a financial institution that complies with the requirements of Article IV, section 5(a). On or about the date on which the first payment in respect of Operational Grants is made during each Fiscal Year, the Government of the United States shall deposit into the Operational Reserve Account an amount equal to one-fifty-second ( $1/52$ ) of the aggregate amount of funds in respect of Operational Grants that will be payable to the Government of the Federated States of Micronesia during such Fiscal Year. The amount deposited into the Operational Reserve Account during any Fiscal Year shall be credited toward the final payment in respect of Operational Grants during such Fiscal Year. Provided that all conditions to the obligation of the Government of the United States to make payments in respect of Grants have been satisfied and the Government of the United States is not entitled to effect a Withholding or Suspension, the principal balance of the Operational Reserve Account (which, for the avoidance of doubt, shall not include any interest or other earnings paid or accrued with respect to the Operational Reserve Account) as of the date of the final payment in respect of Operational Grants during any Fiscal Year shall be released to the Government of the Federated States of Micronesia as part of such final payment. Interest, and other earnings on the Operational Reserve Account shall be paid to the

Government of the United States promptly from time to time when earned. Except as set forth above, funds on deposit from time to time in the Operational Reserve Account shall be used solely to cover unanticipated delays of payments from the Government of the United States of funds in respect of Grants, provided that the Government of the United States shall approve any such use of funds in the Operational Reserve Account (which approval shall not be unreasonably withheld). In the event that any amount of funds from the Operational Reserve Account is used in accordance with the immediately preceding sentence, then such amount shall be deducted from the next payment from the Government of the United States of funds in respect of Grants and the amount so deducted shall be deposited into the Operational Reserve Account. Notwithstanding any other provision of this Agreement, the Government of the United States shall be entitled to withdraw all amounts on deposit in the Operational Reserve Account at any time that the Government of the United States is entitled to effect a Withholding or Suspension. The Government of the Federated States of Micronesia and the Government of the United States shall review the continued need for the Operational Reserve Account from time to time, and may discontinue its use upon mutual consent.

(3) Advances for Accrued Expenditures. All infrastructure projects and projects that are not funded by Operational Grants will be paid on the basis of Accrued Expenditures, provided the Government of the Federated States of Micronesia maintains procedures to minimize the time elapsing between transfer of funds and their disbursement.

(c) Breach of Terms and Conditions:

(1) Withholding of Payments. The Government of the United States may withhold payments, including reimbursement payments, with respect to any Grant if the Government of the Federated States of Micronesia is in breach of any of the terms and conditions of Title Two of the Compact, as amended, or this Agreement with respect to such Grant, fails to comply with any award condition with respect to such Grant, or is indebted to the Government of the United States with respect to such Grant. The amount of the withholding shall be proportional to the breach of the term or condition. If the Government of the Federated States of Micronesia disputes the withholding of payments with respect to a Grant, it may submit an Appeal in writing to the Implementing Agency of the Government of the United States. That Appeal must be initiated within 30 days of the receipt of notice of withholding of payment. In such case, the Appeal for reconsideration must be handled in accordance with established administrative procedures of the Implementing Agency. Cash withheld for failure to comply with Grant terms shall be released upon subsequent compliance, provided that such Grant has not been revoked pursuant to any applicable Appeal or dispute resolution proceeding.

(2) Suspension. Notwithstanding any other provision of this Agreement, the Government of the United States may suspend payment with respect to any or all sectors in the event that the Government of the United States reasonably determines that the Government of the Federated States of Micronesia has engaged in a pattern of gross negligence, willful misconduct or material breach of terms and conditions with respect to the use of financial assistance provided under the Compact, as

amended, provided that such determination is made on a sector by sector basis. If the Government of the Federated States of Micronesia disputes the Suspension of Grant assistance under this sub-paragraph, it may seek to resolve the matter through the conference and dispute resolution procedures set forth in Article II of Title Four of the Compact, as amended. The Suspension of payment shall stand unless otherwise determined through the conference and dispute resolution process described in Article II of Title Four of the Compact, as amended.

Article V  
*Pre-Award Requirements*

1. Planning As a Requirement of Economic Assistance:

(a) No later than 90 days after the effective date of Title Two of the Compact, as amended, and thereafter at appropriate intervals, the Government of the Federated States of Micronesia shall prepare and submit to the Government of the United States a “Multi-Year Rolling Development Plan” pursuant to section 211(f) of Title Two of the Compact, as amended (the “Development Plan”). The Development Plan shall be strategic in nature and continuously reviewed and updated through the annual budget process. It shall identify the goals and broad strategies of the Government of the Federated States of Micronesia to promote economic advancement, budgetary self-reliance, and economic self-reliance, and contain specific multi-year objectives for the sectors described in section 211(a) of the Compact, as amended. Each of the sectors so named, or other sectors as agreed to by the Committee, shall be accorded specific treatment in the Development Plan. Those portions of the Development Plan that contemplate use of United States Grant funds require the concurrence of the Committee.

(b) United States sector Grant assistance shall be made available in accordance with annual implementation plans developed by the Government of the Federated States of Micronesia in conjunction with its budget process. The Government of the Federated States of Micronesia shall submit the plan for the division of annual economic assistance among the sectors described in Article II of this Agreement and, for each sector, the proposed expenditures and related performance goals and measures for the next Fiscal Year to the Government of the United States for review no later than 90 days prior to the beginning of the Fiscal Year. Annual Grant budgets by sector should provide:

- (1) Actual expenditures in the most recently completed Fiscal Year;
- (2) Appropriated Grant amounts and estimated expenditures in the current Fiscal Year;
- (3) Estimated Grant requirements for the upcoming Fiscal Year, including a detailed breakdown of personnel expenditures and compensable staff years, travel and other objects;
- (4) Specific performance indicators for each sector;

(5) Funds provided to each sector in the current and upcoming Fiscal Years by United States Federal programs, international donors and local, state or national governments; and

(6) Any available planning estimates for ensuing Fiscal Years.

(c) Changes to sector Grant priorities or performance goals of the Government of the Federated States of Micronesia during the course of the Grant year shall have the concurrence of the Government of the United States.

(d) In accordance with section 214 of Title Two of the Compact, as amended, the Government of the Federated States of Micronesia shall prepare and submit an Annual Report in February of each year to the President of the United States on the use of Grant assistance and other assistance provided by the Government of the United States during the previous Fiscal Year, and on the progress of the Federated States of Micronesia in meeting mutually agreed program and economic goals.

(e) The Government of the Federated States of Micronesia shall develop and submit a nationwide infrastructure development plan (IDP”) to the Government of the United States for review. Projects may be phased over two or more years. The annual implementation plan for the infrastructure sector referred to in (b) above, shall include a list of integrated state and national priorities for new and reconstructed capital infrastructure to be financed by Compact funds, cost requirements, and implementation schedule. This project list and any revision thereto shall be submitted to the Government of the United States. Insofar as Grant funds are involved, the IDP shall be subject to the concurrence of the Committee.

## 2. Annual Budget Consultation:

(a) The Government of the United States shall evaluate the proposed sector Grant budgets of the Government of the Federated States of Micronesia to ascertain consistency with the funding requirements of the Compact, as amended, and its related agreements, the appropriateness of performance objectives and indicators, and the adequacy of expenditures in achieving stated purposes. Upon the completion of the review, the Government of the United States and the Government of the Federated States of Micronesia shall confer to discuss any need for special terms or conditions and to make adjustments to the annual sector Grant budgets or implementation plans as may be appropriate prior to the awarding of Grants. This consultation shall occur before the meeting of the Committee but not later than 30 days after the receipt of the implementation plans and proposed budgets by the Government of the United States.

(b) The Committee shall receive and review the progress reports and annual proposed budgets and implementation plans of the Government of the Federated States of Micronesia, and approve sector Grant allocations no later than 30 days before the beginning of the Fiscal Year. Consistent with the provisions set forth in Article III of this Agreement, the Committee may establish alternative funding levels, special Grant terms and conditions or other actions it deems appropriate to help the Government of the Federated States of Micronesia meet the stated goals and objectives of the Compact, as amended.

## 3. Notification of Grant Acceptance:

(a) The Government of the United States shall forward official Grant award notices to the Government of the Federated States of Micronesia no later than October 1 of each year.

(b) Return of signed Grant awards by the President of the Federated States of Micronesia shall signify acceptance of the funding amounts and any Grant terms and conditions that may be attached to the sector Grants.

Article VI  
*Post-Award Requirements*

1. Financial Administration:

(a) Standards for Financial Management Systems:

(1) The Government of the Federated States of Micronesia shall expend and account for funds provided pursuant to the Compact, as amended, in accordance with its laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the Government of the Federated States of Micronesia, as well as its Sub-Grantees and cost-type contractors, shall be sufficient to:

(i) Permit preparation of reports required by this Agreement and the Compact, as amended; and,

(ii) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have been used in compliance with the provisions of the Compact, as amended, and applicable agreements.

(2) The financial management systems used by the Government of the Federated States of Micronesia shall meet the following standards:

(i) Financial Reporting. Accurate, current, and complete disclosure of the financial results of United States funded activities shall be in accordance with the reporting requirements of the sector Grant or Sub-Grant.

(ii) Accounting Records. Accounting records shall adequately identify the source and application of funds provided for all sector Grant activities. These records must contain information pertaining to awards and authorizations, Obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(iii) Internal Control. The system shall maintain effective controls and accountability for all Grant and Sub-Grant cash, Real Property and personal property, and other assets to safeguard and ensure uses are solely for authorized purposes.

(iv) Budget Control. Actual expenditures or outlays must be compared with budgeted amounts for each Grant or Sub-Grant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the Grant terms and conditions. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(v) Allowable Cost. Applicable cost principles and Grant terms shall be followed in determining the reasonableness and allowability of costs. An Indirect Cost rate may not be charged against funds provided pursuant to the Compact, as amended.

(vi) Source Documentation. Accounting records shall be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, Contract and Sub-Grant award documents, and other financial data.

(vii) Cash Management. Compact payments shall be made in accordance with Article IV of this Agreement. To the extent that the Government of the Federated States of Micronesia awards Sub-Grants to states, local governments or other entities, it shall establish reasonable procedures to ensure the timely receipt of reports on cash balances and cash disbursements to enable the preparation of complete and accurate cash transactions reports.

(viii) The Government of the United States may review the adequacy of the financial management system of any recipient of financial assistance provided pursuant to the Compact, as amended, at any time.

(b) Financial Reports:

(1) Quarterly Financial Reports. The Government of the Federated States of Micronesia shall provide the following financial reports each fiscal quarter to the Government of the United States. These reports will be used to monitor the general budget and fiscal performance of the Government of Federated States of Micronesia and to monitor disbursement or outlay information for each sector Grant.

(i) The Government of the Federated States of Micronesia shall submit the following reports 30 days after the end of each fiscal quarter: (1) a statement of revenues and expenditures for governmental fund types, and (2) a comparison of budget and actual expenditures by function for governmental fund types.

(ii) The quarterly report for all Operational Grants shall contain a budget execution report for each function and include major offices, cost centers and budget activities.

(iii) For all Grants provided pursuant to the Compact, as amended, the Government of the Federated States of Micronesia shall submit a quarterly financial status report on form SF-269 or any successor thereto, as issued by the Government of the United States from time to time (“Standard Form SF-269”) and a quarterly federal cash transactions report on form SF-272 or any successor thereto, as issued by the Government of the United States from time to time (“Standard Form SF-272”). The Government of the Federated States of Micronesia may use the Federal forms available for this purpose or, as mutually agreed, provide the information in an alternative format.

(2) Annual Financial Report(s). The Government of the Federated States of Micronesia shall submit a final cash transactions report for each sector Grant 90 days after the end of the funding period. For Operational Grants, the purpose of this

report is to establish the amount of unobligated Grant funding that will carry over to subsequent Fiscal Years.

(3) The Government of the United States may extend the due date of any financial report upon receiving a justified request from the Government of the Federated States of Micronesia.

(4) Accounting Basis. The Government of the Federated States of Micronesia shall report on a cash or accrual basis consistent with its own policies. Provided the information is not changed in substance, the format of the report may be adapted when reporting is accomplished with the aid of automated data processing Equipment.

(c) Period of Availability of Grant Funds:

(1) Funding for each Grant, other than Grants for infrastructure and other Grants that are not Operational Grants, shall generally be available for one year. Funding for infrastructure and projects that are not funded by Operational Grants shall be available for obligation for the time period described in the terms and conditions of the sector Grants.

(2) The Government of the Federated States of Micronesia shall liquidate all Obligations incurred under a Grant not later than 90 days after the end of the funding period or as otherwise mutually agreed, to coincide with the submission of the final annual cash transactions report.

(d) Changes, Property, and Sub-Awards:

(1) Budget Changes. Re-allocation of funds from one sector to another sector shall not be permitted during the course of the Grant year. Except as set forth below, the Government of the Federated States of Micronesia may reprogram up to 15 percent of the total budget or \$1,000,000, whichever is less, within an approved sector Grant to meet unanticipated requirements and make limited program changes to approved projects. However, unless waived by the Government of the United States, the following changes in budgets and projects during the course of the Grant year shall require prior written approval of the United States:

(i) Budget Changes in Non-Construction Projects. Except as stated in the Grant document, the Government of the Federated States of Micronesia shall obtain Prior Approval whenever any of the following changes is anticipated: (1) any revision that would result in the need for additional funding over and above the original award, and (2) cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities that exceed or are expected to exceed the threshold described above in sub-clause (1) of clause (d).

(ii) Construction Projects. The Government of Federated States of Micronesia shall obtain prior written approval for any budget revision that would result in the need for additional funds.

(2) Programmatic Changes. The Government of the Federated States of Micronesia shall obtain Prior Approval whenever any of the following actions is anticipated:

(i) Any revision of the scope or performance objectives of the sector Grant or infrastructure project;

(ii) The need to extend the period of funding availability;

(iii) Changes in key persons specifically named in a Grant award; and,

(iv) The contracting out or otherwise obtaining the services of a third party to perform non-construction related activities that are central to the purposes of the Grant. This approval is in addition to the requirements described below in clause (j) but does not apply to the procurement of Equipment, Supplies, and general support services.

(e) Real Property:

(1) Title. Subject to the Obligations and conditions set forth in this section, title to Real Property acquired with funds provided pursuant to the Compact, as amended, shall vest upon acquisition in the Government of the Federated States of Micronesia.

(2) Use. Except as mutually agreed by the Government of the Federated States of Micronesia and the Government of the United States, Real Property acquired with funds provided pursuant to the Compact, as amended, shall be used as long as needed for the purposes originally authorized, and the Government of the Federated States of Micronesia shall not dispose of or encumber Real Property titles or other interests.

(3) Disposition. When Real Property is no longer needed for the originally authorized purpose, the Government of the Federated States of Micronesia and the Government of the United States shall consult on the choice of one of the following disposition alternatives:

(i) Retention of Title. If the Real Property will continue to be used for a public purpose, the Government of the Federated States of Micronesia shall retain title.

(ii) Sale of Property. The Government of the Federated States of Micronesia may sell the property and reimburse the Compact accounts held by the Government of the United States. The amount due shall be calculated by applying the percentage of the original price paid by United States funding to the proceeds of the sale after deducting any actual and reasonable expenses. Any funds reimbursed shall be considered unobligated funding under the Compact, as amended, to be reallocated to sector Grants.

(iii) Transfer of Title. The Government of the Federated States of Micronesia may transfer title to a third party approved by the Government of the United States.

(f) Equipment:

(1) Title. Subject to the Obligations and conditions set forth in this section, title to Equipment acquired with funds provided pursuant to the Compact, as amended, will vest upon acquisition in the Government of the Federated States of Micronesia.

(2) Consistent with paragraphs (3) through (5) of this clause (f), the Government of the Federated States of Micronesia shall use, manage and dispose of Equipment acquired with funds provided pursuant to the Compact, as amended, in accordance with its laws and procedures.

(3) Use:

(i) Equipment shall be used in the program or project for which it was acquired as long as needed. When no longer needed for the original purpose, the Equipment may be used in other activities currently or previously supported by an agency of the Government of the United States.

(ii) Equipment acquired with Grant funds provided pursuant to the Compact, as amended, may be used by other projects or programs currently or previously supported by the Government of the United States, provided such use does not interfere with the work on activities funded pursuant to the Compact, as amended, for which such Equipment was originally acquired.

(iii) Unless specifically permitted by Grant terms and conditions, Equipment acquired with funds provided pursuant to the Compact, as amended, to provide services for a fee may not be used to compete unfairly with private companies that provide equivalent services.

(4) Management Requirements. Procedures for managing Equipment, whether acquired in whole or in part with funds provided pursuant to the Compact, as amended, shall meet the following minimum requirements:

(i) Property records shall be maintained which include: (1) a description of the property, (2) a serial number or other identification number, (3) the source of property, (4) who holds title, (5) the acquisition date and cost of the property, (6) the percentage of United States funding used in the purchase, (7) the location, use and condition of the property, and (8) any ultimate disposition data including the date of disposal and sale price.

(ii) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(iii) A control system shall be developed to ensure adequate safeguards against property loss, damage or theft. Any loss, damage, or theft shall be investigated.

(iv) Adequate maintenance procedures shall be developed to keep the property in good condition.

(v) If the property is sold, proper sales procedures shall be established to ensure the highest possible return.

(5) Disposition. When Equipment acquired with funds provided pursuant to the Compact, as amended, is no longer needed for the original project or program, or for

other activities supported by other agencies of the Government of the United States, it shall be disposed as follows:

(i) Items of Equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the Government of the United States.

(ii) Items of Equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold. The Government of the Federated States of Micronesia may sell the property at fair market value and reimburse the Compact accounts-held by the Government of the United States. Any such funds shall be considered unobligated funding for reallocation to sector Grants.

(g) Supplies. Title to Supplies acquired with funds provided pursuant to the Compact, as amended, will vest, upon acquisition, in the Government of the Federated States of Micronesia.

(h) Sub-Awards to Debarred and Suspended Parties. The Government of the Federated States of Micronesia shall not award funds received pursuant to the Compact, as amended, to any party which is debarred, suspended or otherwise excluded from and ineligible for participation in United States assistance programs under Executive Order 12549, "Debarment and Suspension." issued by the President of the United States on February 18, 1986.

(i) Program Income. For the purposes of this Agreement, "Program Income" shall include: (1) earnings from the use or rental of Real Property or personal property acquired with funds provided pursuant to the Compact, as amended; (2) the sale of commodities or items fabricated under a sector Grant; and (3) fees assessed in the areas of public utilities, health services and any other activities provided by government or government-owned enterprises that are supported by sector Grants.

(1) The Government of the Federated States of Micronesia shall seek opportunities to earn Program Income to defray government program costs and shall establish fees for services in the areas of public utilities, health services, and any other government-owned or operated enterprises to comply with the terms and conditions of certain sector Grants.

(2) Unless otherwise authorized by the Grant, Program Income shall remain with the programs in which they are earned, to offset Operational Costs and capital costs not covered by funds provided pursuant to the Compact, as amended.

(j) Procurement:

(1) The Government of the Federated States of Micronesia may use its own procedures for procurement, whether done by government or its Sub-Grantees, provided that they meet the standards identified in this section.

(2) The Government of the Federated States of Micronesia shall maintain a Contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their Contracts or purchase orders.

(3) A written code of conduct shall be maintained by the Government of the Federated States of Micronesia to govern the performance of its employees engaged

in the award and administration of contracts. No employee, officer, or agent of the Government of the Federated States of Micronesia shall participate in the selection, award, or administration of a Contract supported by funds provided pursuant to the Compact, as amended, if a conflict of interest, real or apparent, is involved.

(i) Officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

(ii) The Government of the Federated States of Micronesia may set minimum rules where the financial interest is not substantial or the gift is unsolicited and of nominal intrinsic value.

(iii) To the extent permitted by law or regulations of the Government of the Federated States of Micronesia, the standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations.

(4) Awards shall be made only to contractors who possess the ability to perform responsibly and successfully under the terms and conditions of a proposed procurement. Selection must consider contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(5) Records shall be maintained with sufficient detail to document the history of a procurement, including but not limited to the rationale for and method of procurement, the selection of Contract type, contractor selection or rejection, and the basis for the Contract price.

(6) The Government of the Federated States of Micronesia shall use time and material type Contracts only after determining that no other Contract is suitable and if the Contract includes a ceiling price that the contractor exceeds at its own risk.

(7) The Government of the Federated States of Micronesia shall be solely responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These issues include but are not limited to source evaluation, protests, disputes, and claims.

(8) The Government of the Federated States of Micronesia shall have protest procedures to handle and resolve procurement disputes.

(9) Competition:

(i) All procurement transactions shall be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) requiring unnecessary experience and excessive bonding; (3) noncompetitive pricing practices between firms or between affiliated companies; (4) making noncompetitive awards to consultants on retainer; (5) organizational conflicts of interest; (6) specifying a “brand name” instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement; and (7) any arbitrary action in the procurement process.

(ii) Geographic preferences shall be allowed only if its application leaves an appropriate number of qualified firms to compete in the contract, and if there is no discrimination against race, religion or national origin.

(iii) Written selection procedures shall govern procurement. These procedures shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurement, contain features that unduly restrict competition.

(iv) The Government of the Federated States of Micronesia shall ensure that all pre-qualified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Potential bidders shall not be precluded from qualifying during the solicitation period.

(10) Methods of Procurement:

(i) Procurement By Small Purchase Procedures. Small purchase procedures are those relatively simple and informal methods for securing services, Supplies, or other property that do not cost more than \$100,000. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(ii) Procurement By Sealed Bids. Sealed bids are those bids that are publicly solicited for which a firm-fixed-price Contract is awarded to the lowest bidder who meets all the terms and conditions of the invitation. The sealed bid method is the preferred method for procuring construction, if the conditions of sub-clause (10)(iii) apply.

(iii) The following conditions shall apply to sealed bidding: (1) a complete, adequate, and realistic specification or purchase description must be available; (2) two or more responsible bidders must be willing and able to compete effectively and for the business; (3) the procurement must lend itself to a firm fixed price contract; and (4) the selection of the successful bidder can be made principally on the basis of price.

(iv) The following requirements shall apply if sealed bids are used: (1) the invitation for bids shall be publicly advertised, solicited from an adequate number of known suppliers, and provide bidders with sufficient time to respond; (2) the invitation shall include any specifications and pertinent attachments, and define the items or services to allow the bidder to properly respond; (3) all bids shall be publicly opened at the time and place prescribed in the invitation for bids; and (4) a firm fixed-price Contract award shall be made in writing to the lowest responsive and responsible bidder. Any or all bids may be rejected if there is a sound documented reason.

(v) Procurement By Competitive Proposals. Competitive proposals are normally conducted when more than one source submits an offer for either a fixed-price or cost-reimbursement type contract, and when conditions are not appropriate for the use of sealed bids. If this method is used, the following

requirements shall apply: (1) requests for proposals shall be publicized and identify all evaluation factors and their relative importance; (2) proposals shall be solicited from an adequate number of qualified sources; (3) the Government of the Federated States of Micronesia shall have a method for conducting technical evaluations of the proposals and for selecting awardees; and (4) awards shall be made to the firm whose proposal is most advantageous to the program. Competitive proposals may also be used when price is not a factor but only to procure architectural and engineering services. It cannot be used to purchase other types of services provided by architectural and engineering firms that are a potential source to perform the proposed effort.

(vi) Procurement By Noncompetitive Proposals. Noncompetitive proposals are procurement through the solicitation of only one source or when competition is determined inadequate after soliciting a number of sources. This method shall be used only when the award of a Contract is infeasible under either procedures for small purchase, sealed bids or competitive proposals, and when one of the following circumstances applies: (1) the item is available only from a single source; (2) public exigency or emergency will not permit a delay resulting from competitive solicitation; or (3) competition is determined to be inadequate after the solicitation of a number of sources. Cost analysis shall be required to verify the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits.

(11) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(12) United States Review:

(i) The Government of Federated States of Micronesia shall make available, upon request of the Government of the United States, technical specifications on proposed procurements.

(ii) The Government of Federated States of Micronesia shall make available, upon request of the Government of the United States, pre-award procurement documents, including but not limited to requests for proposals or invitations for bids and independent cost estimates, when: (1) procurement procedures fail to comply with the standards set forth in this section; (2) the procurement is expected to exceed \$100,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; (3) the proposed award is more than \$100,000 and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or (4) a proposed Contract modification changes the scope of a Contract or increases the Contract amount by more than \$100,000.

(13) Bonding Requirements. For construction or facility improvement Contracts or sub-Contracts exceeding \$100,000, the Government of the United States may accept the bonding policy and requirements of the Grantee or Sub-Grantee provided the United States determines that its interests are adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(i) Bid Guarantee. Each bidder shall guarantee an equivalent of five percent of the bid price pursuant to a bid guarantee that complies with the requirements of this clause (i). The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying the bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(ii) Performance Bond. The contractor shall execute a Performance Bond for one hundred percent of the Contract price. A Performance Bond is one executed in connection with a Contract to secure fulfillment of all the contractor's obligations under such contract.

(iii) Payment Bond. The contractor shall execute a Payment Bond for one hundred percent of the Contract price. A Payment Bond is one executed in connection with a Contract to assure the lawful payment of all persons supplying labor and material in the execution of the contract.

(14) Contract Provisions. All Contracts paid with funds provided pursuant to the Compact, as amended, shall contain the following provisions:

(i) For Contracts in excess of \$100,000: administrative, contractual, or legal remedies in instances where contractors violate or breach Contract terms, and the provision of such sanctions and penalties as appropriate;

(ii) For Contracts in excess of \$100,000: Termination for cause and for convenience by the Grantee or Sub-Grantee including the manner by which it will be effected and the basis for settlement;

(iii) Compliance with the local statutes regarding kickbacks and corrupt practices;

(iv) Access by the Government of the Federated States of Micronesia and its Sub-Grantees, the Government of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific Contract for the purpose of making audit, examination, excerpts, and transcriptions;

(v) Retention of all required records for three years after Grantees or Sub-Grantees make final payments and all other pending matters are closed; and

(vi) Compliance with all applicable standards, orders, or requirements issued under local environmental laws.

(k) Sub-Grants:

(1) The Government of the Federated States of Micronesia will follow its laws and procedures when awarding and administering Sub-Grants. The Governments shall ensure that:

(i) Every Sub-Grant includes any clauses required by the Compact, as amended, the sector Grant awards and this Agreement;

(ii) Sub-Grantees are aware of requirements imposed upon them by the Compact, as amended, the sector Grant awards and this Agreement; and

(iii) The Sub-Grantee can meet the financial management standards of this Agreement.

## 2. Program Monitoring, Performance Reports and Records Retention:

(a) Monitoring and reporting sector Grant program performance by the Government of the Federated States of Micronesia:

(1) The Government of the Federated States of Micronesia shall be responsible for the management and monitoring of the day-to-day operations of all sector Grants and their activities, to assure compliance with all applicable Grant terms and conditions. Monitoring shall cover each program, function, or activity to ensure the achievement of performance goals.

(2) The Government of the Federated States of Micronesia shall submit quarterly performance reports on each sector Grant. The reports shall be due 30 days after the reporting period.

(3) The Government of the Federated States of Micronesia and the Government of the United States shall agree on a uniform format for performance reports. Performance reports for each Grant shall contain a summary of the following:

(i) A comparison of actual accomplishments to the objectives and indicators established for the period;

(ii) Any positive events that accelerate performance outcomes;

(iii) Any problems or issues encountered, reasons, and impact on Grant activities and performance measures;

(iv) Additional pertinent information including, when appropriate, an analysis and explanation of cost overruns.

(4) The Government of the Federated States of Micronesia shall require performance reports from its Sub-Grantees.

(b) Construction Performance Reports. Unless otherwise agreed, the Government of the Federated States of Micronesia shall submit quarterly performance reports on each project funded pursuant to the Compact, as amended, to the Government of the United States.

(c) Significant Developments. Events may occur between the scheduled performance reporting dates that have significant impact upon a sector Grant supported activity. In such cases, the Government of the Federated States of Micronesia shall immediately inform the Government of the United States when the following conditions arise:

(1) Problems, delays, or adverse conditions that will materially impair the ability of the Government of the Federated States of Micronesia to meet the terms and conditions of the sector Grant. This disclosure must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments that enable the meeting of time schedules and objectives sooner or at less cost than anticipated, or that produce more beneficial results than anticipated.

(d) The Government of the United States may make site visits as warranted by program needs.

(e) Waivers and Extensions:

(1) The Government of the United States may waive any required performance report.

(2) The Government of the Federated States of Micronesia may extend the due date for any performance report from a Sub-Grantee provided its reporting obligations to the Government of the United States are met.

(f) Frequency:

(1) The Government of the United States may prescribe an alternative reporting frequency for a project or program. If no frequency is specified, the report shall be submitted annually.

(2) A final report shall be required upon the completion or termination of each infrastructure or capacity building sector project.

(g) Due Date:

(1) When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the end of the Grant year.

(2) Final reports shall be due 90 days after the completion or termination of each infrastructure or capacity building Grant project.

(h) Retention and Access Requirements for Records:

(1) Applicability. This clause (h) applies to all financial and programmatic records, supporting documents, statistical records, and other records of the Government of the Federated States of Micronesia or its Sub-Grantees which are required to be maintained by this Agreement, program regulations or the Grant agreement, or are otherwise considered as pertinent to program regulations or the Grant agreement. Records of contractors or subcontractors are exempt from the requirements of this clause (h).

(2) Length of Retention. Except as otherwise provided, records must be retained for three years from the date the Government of the Federated States of Micronesia submits the final project report to the Government of the United States.

(3) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

(4) Access to Records of the Government of the Federated States of Micronesia and Its Sub-Grantees. The Government of the United States shall have the right of

access to any pertinent books, documents, papers, or other records of the Government of the Federated States of Micronesia and its Sub-Grantees which are pertinent to the Grant, in order to make Audits, examinations, excerpts, and transcripts.

3. Enforcement:

(a) Remedies for Noncompliance. If the Government of the Federated States of Micronesia or its Sub-Grantee materially fails to comply with any term or condition relating to records retention or to the reporting on and monitoring of a sector Grant during the course of the Grant year, the United States may take one or more of the following actions:

(1) Temporarily withhold cash payments pending correction of the deficiency by the Government of the Federated States of Micronesia.

(2) Disallow the use of funds provided pursuant to the Compact, as amended, and Matching credit for all or part of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Take other remedies that may be legally available.

(b) Hearings and Appeals. In taking an enforcement action, the Government of the United States will provide the Government of the Federated States of Micronesia an opportunity to a hearing, Appeal, or other administrative proceeding to which it is entitled under this Agreement.

(c) Effects of Suspension and Termination. The Government of the Federated States of Micronesia shall not obligate funds during a Suspension or after Termination of an award unless expressly authorized by the Government of the United States. Costs which are necessary and reasonably unavoidable are allowable if:

(1) The costs result from Obligations that were properly incurred before the effective date of Suspension or Termination, are not in anticipation of it, and, in the case of a Termination, are non-cancelable.

(2) The costs otherwise would be allowed if the award were not suspended or expired normally at the end of the funding period in which the Termination takes effect.

## Article VII

### *Terms and Conditions of Infrastructure Assistance*

1. Infrastructure Grants shall be subject to all laws and regulations governing the use of Grant funds provided by the Government of the United States to the extent these apply to this Agreement. Grant funds may not be used for any purpose other than for which they are offered.

2. Draw downs for reimbursement of actual or Accrued Expenditures shall be accomplished using a format provided by the Government of the United States or as mutually agreed.

3. Prior to the draw down of funds, the Government of the Federated States of Micronesia shall provide the following documentation to the Government of the United States:

(a) Evidence of title, leasehold agreement, or other legal authority for use of the land upon which the capital improvement project(s) is to be constructed.

(b) A detailed project budget for each capital development project. The budget shall include a breakdown of costs (in-house and contracts) for planning, engineering and design, real estate costs, supervision and administration, construction, and construction management and inspection. The Government of the Federated States of Micronesia and the Government of the United States shall mutually agree to the format of this submission.

(c) A scope of work that describes the work to be performed and the schedule from planning through completion of construction. A certified professional engineer or architect shall sign both the scope of work and budget for each construction project.

4. Prior to the draw down of funds for actual project construction, the Government of the United States may request to review the set of construction plans and specifications, a revised detailed cost estimate, and a detailed construction schedule.

5. All Grant monies shall remain available until expended, unless otherwise provided in this Agreement.

6. Failure to comply with program objectives, terms and conditions, or reporting requirements may result in the Suspension of Grant payments until the deficiency is corrected.

7. Infrastructure Maintenance Fund. Five percent of the annual public infrastructure Grant shall be set aside, with an equal contribution from the Government of the Federated States of Micronesia, as a contribution to an infrastructure maintenance fund to be established, maintained and utilized pursuant to the terms and conditions of this section 7 (the "IMF"). The Government of the Federated States of Micronesia may also allocate additional amounts from the health and education sector Grants to fund the maintenance requirements of those sectors.

(a) The funds shall be deposited in an operations and maintenance assistance account established by the Government of the Federated States of Micronesia, as matching contributions are received from the National Government and its Sub-Grantees. The Government of the Federated States of Micronesia may choose to advance matching contributions in advance of any specific contributions by individual Sub-Grantees.

(b) The Government of the United States shall deposit its contribution upon: certification by the Government of the Federated States of Micronesia that local Matching funds have been deposited or upon receipt of a deposit schedule and, beginning in Fiscal Year 2005, an annual financial report from the previous year showing the deposits of both the Government of the United States and the Government of the Federated States of Micronesia, the amount of income generated during the Fiscal Year, and the fund balance.

(c) The IMF shall be available for use following the annual transmittal of an infrastructure maintenance plan by the Government of the Federated States of Micronesia for concurrence in writing by the Government of the United States.

#### 8. Reporting Requirements:

(a) A Standard Form SF 269 or a reasonable facsimile thereof approved by the Government of the United States, shall be prepared quarterly and submitted within 30 days after the end of the quarter to which it applies. The report shall include accounting information and a status of progress for each project funded by the Grant.

(b) A Federal Cash Transactions Report, or Standard Form SF 272 of the Government of the United States or a reasonable facsimile thereof approved by the Government of the United States, shall be submitted quarterly within 30 days of the end of the quarter to which it applies. Actual dates, project identification, and amounts of draw downs for the quarter should be supplied in the “Remarks” section of the form.

### Article VIII

#### *Audit*

#### 1. Standards and Scope of Audit Authority of the Government of the United States:

Audit officials or agents of the Government of the United States, acting pursuant to and in accordance with section 232 of the Compact, as amended, may perform Audits on the use of all funding provided pursuant to the Compact, as amended, including Grants, programs and services, and other assistance provided to the Government of the Federated States of Micronesia. The Government of the United States is responsible for all costs attendant to the discharge of this authority.

#### 2. Audit Responsibility of the Government of the Federated States of Micronesia:

(a) A financial and compliance audit, within the meaning of the Single Audit Act, as amended (31 U.S.C. 7501 et seq.), of the uses of the funding provided pursuant to the Compact, as amended, by the Government of the Federated States of Micronesia, shall be performed for each Fiscal Year during which Title Two of the Compact, as amended, is in effect. The results of these Audits shall be available not later than the beginning of the third fiscal quarter following the end of the Fiscal Year under review.

(b) For purposes of these Audits, the laws and regulations of the United States shall apply which are relevant to the Original Compact and Compact, as amended, related agreements, and such other instruments as may be made expressly applicable pursuant to mutual agreement by the Government of the United States and the Government of the Federated States of Micronesia. In general, the applicable laws and regulations are those promulgated under the authority, and at the discretion, of the Government of the Federated States of Micronesia and which relate in a material, substantial or direct way to that Government’s financial statements and operations.

(c) The authority of the Government of the United States set forth in section 232 of the Compact, as amended, and this Article shall continue for at least three years after the last Grant or element of assistance by the Government of the United States has been provided and expended.

### 3. Audit Officials:

(a) Audit officials from the Government of the United States are the officials and employees of the Government of the United States who are responsible for the discharge of its audit responsibilities, including those of the Comptroller General of the United States and any Inspector General of an agency of the Government of the United States with programs operating in or otherwise serving the Federated States of Micronesia. While present in the Federated States of Micronesia for the purposes of this Agreement, audit officials from the Government of the United States shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions, except insofar as such immunity may be expressly waived by the Government of the United States. The Comptroller General and his duly authorized representatives shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents. Such persons shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations. The privileges, exemptions and immunities accorded under this paragraph are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government of the Federated States of Micronesia.

(b) Audit officials from the Government of the United States shall provide the Government of the Federated States of Micronesia with advance notice of the specific dates and nature of their visits prior to entering the Federated States of Micronesia and shall show verifiable identification to officials of the Government of the Federated States of Micronesia when seeking access to records. In the performance of their responsibilities under this Agreement, audit officials from the Government of the United States shall have due regard for the laws of the Federated States of Micronesia and the duties and responsibilities of the officials of the Government of the Federated States of Micronesia. Officials of the Government of the Federated States of Micronesia shall cooperate fully to the extent practicable with the United States audit officials to enable the full discharge of their responsibilities. Questions with respect to the identity or authorization of United States audit officials shall be referred for resolution to the United States Representative referred to in Article V of Title One of the Compact, as amended.

(c) The Comptroller General of the United States, and officials of the United States General Accounting Office acting on his or her behalf, shall have coextensive authority with the executive branch of the Government of the United States as provided in this Article of this Agreement and section 232 of the Compact, as amended. The audit officials from the executive branch of the Government of the United States shall avoid duplication between their audit programs and those of the United States General Accounting Office. The Government of the Federated States of Micronesia shall cooperate fully to the extent practicable with the Comptroller General of the United States in the conduct of such Audits as the Comptroller General of the United States

determines necessary in accordance with this Article to enable the full discharge of his responsibilities.

#### 4. Access to Records:

(a) The Government of the Federated States of Micronesia shall provide audit officials from the Government of the United States with access, without cost and during normal working hours, to all records, documents, working papers, automated data, and files which are relevant to the uses of funding received pursuant to the Compact, as amended, by the Government of the Federated States of Micronesia. To the extent that such information is contained in confidential official documents, the Government of the Federated States of Micronesia shall undertake to extract information that is not of a confidential nature and make it available to the audit officials from the Government of the United States in the same manner as other relevant information or to provide such information from other sources.

(b) In order to reduce the level of interference in the daily operation of the activities of the Government of the Federated States of Micronesia, audit officials from the Government of the United States shall, to the extent practicable, inform the Government of the Federated States of Micronesia of their need for information, including the type of information and its relation to their annual audit schedule. To the extent practicable, the Government of the Federated States of Micronesia shall make available the information requested by audit officials from the Government of the United States relevant to Audits and available in a manner consistent with generally accepted accounting procedures that allows for the distinction of the Grants, assistance, and payments provided by the Government of the United States from any other funds of the Government of the Federated States of Micronesia. Such information shall be used and returned as quickly as accurate audit testing and surveying allow.

(c) The Government of the Federated States of Micronesia shall maintain records, documents, working papers, automated data, files, and other information regarding each such Grant or other assistance for at least three years after such Grant or assistance was provided.

#### 5. Review of Audits:

Audit organizations and officials from the Government of the United States, including the Comptroller General of the United States and his duly authorized representatives, shall provide the Government of the Federated States of Micronesia with at least 45 days to review and comment on draft audit reports prior to the release of the reports. The comments of the Government of the Federated States of Micronesia shall be included, in full, in the final audit reports. Should a draft audit report be revised based on the comments of the Government of the Federated States of Micronesia, the Government of the Federated States of Micronesia shall have an additional period to review and comment on the report prior to its release.

## Article IX

### *Annual Reconciliation and End-of-Grant Requirements*

1. The Government of the United States shall reconcile Operational Grants at least annually, and evaluate program performance and financial reports to determine work progress, outcomes, and compliance with Grant terms and conditions.

2. The Government of the United States shall close out each award at the end of each annual Grant year once it determines that all applicable administrative actions and required work has been completed or if all Grant monies for that year have been expended.

(a) Within 90 days of the expiration of the Grant year, the Government of the Federated States of Micronesia must submit all final financial, performance, and other reports required as a condition of the Grant. The Government of the United States may Grant an extension of the due date upon the request of the Government of the Federated States of Micronesia.

(b) Within 90 days after receipt of reports in paragraph (2) of this section, the Government of the United States shall make upward or downward adjustments to the allowable reimbursable costs.

(c) The Government of the Federated States of Micronesia shall immediately refund any balance of cash not authorized to be retained. The refunded balance shall be available for use to supplement subsequent Grants.

3. The Government of the United States shall retain the right to disallow costs and recover funds on the basis of a later audit or other review. The Closeout of a Grant does not affect the obligation of the Government of the Federated States of Micronesia to return any funds paid in excess of the amount to which it is finally determined to be entitled under the terms of the award. Such an amount shall be deemed to constitute a debt to the Government of the United States. If the amount owed is not repaid within a reasonable period, the Government of the United States may reduce the debt by:

(a) Making an administrative offset against other requests for reimbursement;

(b) Withholding advance payments otherwise due to the Government of the Federated States of Micronesia; or

(c) Taking other action described in this Agreement or as otherwise permitted by law.

## Article X

### *Effective Date, Amendment, and Duration*

1. This Agreement shall take effect on the effective date of the Compact, as amended.

2. This Agreement may be amended at any time in writing by mutual consent of the Government of the United States and the Government of the Federated States of Micronesia.

3. Disputes:

(a) Disputes involving sections 4, and 5(c)(1) of Article IV, and Articles III, V, VII and VIII shall be resolved in accordance with the Appeal process defined in Article I of this Agreement.

(b) All other disputes may be resolved in accordance with the Appeal process defined in Article I of this Agreement or through the conference and dispute resolution process set forth in Article II of Title Four of the Compact, as amended. Withholdings or Suspensions of payment shall stand unless otherwise determined through the conference and dispute resolution process of Article II of Title Four of the Compact, as amended.

4. This Agreement shall remain in full force and effect until terminated by mutual consent, or until the expiration or Termination of the Grants provided under section 211 and Grants administered under section 221 of the Compact, as amended, whichever occurs first. The Government of the United States shall provide any unobligated Grant balances from the last Fiscal Year of the effectiveness of section 211(a) as amended, to the Government of the Federated States of Micronesia in accordance with the procedures set forth in this Agreement and without regard to whether the Compact, as amended, its related agreements, or this Agreement are still in effect. In this case, the funds shall be budgeted and expended pursuant to the purposes set forth in Article II of this Agreement.

5. This Agreement may be accepted, by signature or otherwise, by the Government of the United States and the Government of the Federated States of Micronesia. Each Government shall possess an original English language version.

6. Interpretation. In this Agreement, all references herein to Articles, paragraphs, sub-paragraphs, clauses, and sections shall be deemed references to this Agreement unless the context shall otherwise require. References to statutes or regulations are to be construed as including all statutory or regulatory provisions, as applicable, consolidating, amending or replacing the statute or regulation referred to. All references to agreements and other documents shall be to such documents as amended, modified, supplemented or restated from time to time in a manner consistent with the terms and conditions of this Agreement. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with Generally Accepted Accounting Principles, as in effect from time to time in the United States of America.

DONE at \_\_\_\_\_, in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 2003, each text being equally authentic.

FOR THE GOVERNMENT OF THE FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA: FEDERATED STATES OF MICRONESIA:

#### ANNEX A

#### AGREEMENT ON THE ESTABLISHMENT AND USE OF THE DISASTER ASSISTANCE EMERGENCY FUND

1. For twenty years beginning in FY'04, and subject to the requirements of paragraph 2, on or about the beginning of each fiscal year, the Government of the Federated States of Micronesia and the Government of the United States shall each deposit \$200,000 in a Disaster Assistance Emergency Fund (DAEF) account established by the Government of the Federated States of Micronesia in accordance with section 211(d) of Title Two of the Compact, as amended. The account shall be with a bank or commercial financial institution organized in accordance with the laws of the United States or a State of the United States; or, subject to the approval of the Government of the United States, a bank or commercial financial institution in accordance with the laws of the Government of the Federated States of Micronesia.

2. The Government of the United States shall deposit its contribution upon: certification by the Government of the Federated States of Micronesia that local matching funds have been deposited and, beginning in Fiscal Year 2005, an annual financial report from the previous year showing deposits of both the Government of the United States and the Government of the Federated States of Micronesia, the amount of interest income generated during the Fiscal Year, and the fund balance.

3. The Government of the Federated States of Micronesia may invest part or all of the DAEF in low-risk instruments such as certificates of deposit, money market funds and Treasury bills, provided asset liquidity is not compromised. Any earnings from such investments shall be reinvested into the DAEF.

4. Funds from this account may be withdrawn only after the President of the Federated States of Micronesia officially declares a national state of emergency in accordance with the laws of the Government of the Federated States of Micronesia and the United States Ambassador concurs as to use and the amount of the withdrawal.

5. The funds shall be used to protect the immediate health and safety of the residents of the Federated States of Micronesia in the event of a natural disaster, and for the rehabilitation and reconstruction of public property damaged in the natural disaster.

6. The Government of the Federated States of Micronesia shall provide the Joint Economic Management Committee (JEMCO) with a written report on the use of the DAEF within thirty days of any withdrawal.

**AGREEMENT BETWEEN**  
**THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE**  
**GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA**  
**IMPLEMENTING SECTION 215 AND SECTION 216 OF THE COMPACT, AS**  
**AMENDED**  
**REGARDING A TRUST FUND**

The Government of the United States of America and the Government of the Government of the Federated States of Micronesia (hereafter the Original Parties);

Desiring to contribute to the long-term budgetary self-reliance of the Federated States of Micronesia by establishing a trust fund to provide the Government of the Federated States of Micronesia with an ongoing source of revenue after Fiscal Year 2023;

Recognizing that it is the mutual intention of the Governments of the United States and the Federated States of Micronesia that the Government of the United States discontinue Annual Grant Assistance beyond fiscal year 2023;

Have agreed as follows:

Part I  
Definitions

Article 1  
*Definitions of Terms*

For purposes of this Agreement, the following terms shall have the following meanings when capitalized:

“A Account” has the meaning assigned to such term in Article 16, paragraph 2.

“Agreement” means this Agreement Between the Government of the Federated States of Micronesia and the Government of the United States of America Implementing Section 215 and Section 216 of the Compact, as Amended, Regarding a Trust Fund.

“Allowable Expenses” means expenses related to rental of hotel meeting space, and incidentals thereto, but does not include salaries, honoraria, travel or per diem expenses.

“Annual Income” means the Income credited to any given Fiscal Year.

“Annual Grant Assistance” means annual monetary assistance provided by the Government of the United States to the Government of the Federated States of Micronesia for the purposes set forth in section 211 of the Compact, as amended.

“Auditor” has the meaning assigned to such term in Article 19, paragraph 1.

“B Account” has the meaning assigned to such term in Article 16, paragraph 4.

“C Account” has the meaning assigned to such term in Article 16, paragraph 5.

“Compact” means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99-239 (Jan. 14, 1986) and went into effect with respect to the Federated States of Micronesia on November 3, 1986.

“Compact, as amended” means the Compact of Free Association Between the United States and the Federated States of Micronesia, as amended. The effective date of the Compact, as amended, shall be on a date to be determined by the President of the United States, and agreed to by the Government of the Federated States of Micronesia, following formal approval of the Compact, as amended, in accordance with section 411 of this Compact, as amended.

“Contributor” means a government, international organization, financial institution, or other entity or person who grants, not lends, funds into the Fund.

“Corpus” means a collection of bonds, stocks or other holdings which form the Principal. It also includes all accumulated Income that has been reinvested and not available for distribution.

“Cumulative Full Inflation” means the Full Inflation applied each Fiscal Year up to the specified Fiscal Year.

“Depository” means the office or bureau within the United States Department of State which retains copies of all international agreements, and documents of withdrawal from agreements.

“Distribution” means the transfer of funds from the Fund to the Government of the Federated States of Micronesia.

“Fiscal Year” means each one year period beginning October 1 and ending on the next following September 30. Each Fiscal Year shall be designated by the number of the calendar year in which such Fiscal Year ends. For example, “Fiscal Year 2022” means the Fiscal Year ending in calendar year 2022.

“Full Inflation” means the full percent change in the United States Gross Domestic Product implicit price deflator in the applicable Fiscal Year compared to the immediate preceding Fiscal Year.

“Fund” has the meaning assigned to such term in Article 2, paragraph 1.

“Government of the Federated States of Micronesia” means the Government established and organized by the Constitution of the Federated States of Micronesia including all the political subdivisions and entities comprising that Government.

“Government of the United States” means the federal government of the United States of America.

“Gross Domestic Product Implicit Price Deflator” means the “Gross Domestic Product Implicit Price Deflator” as published from time to time in the *Survey of Current Business* by the Bureau of Economic Analysis of the United States Department of Commerce, or any successor thereto. It is a weighted average of the detailed price indices used in the deflation of the United States Gross Domestic Product. In each period, it uses as weights the composition of constant dollar output in

that period. Changes in the implicit price deflator reflect both changes in prices and changes in the composition of output.

“Income” means the profit or increase in market value of the Fund, including dividends and interest and other special items allocated to income.

“Investment Adviser” means the individual or firm responsible for: providing investment advice to the Joint Trust Fund Committee; taking direction from the Joint Trust Fund Committee regarding investments; and, overseeing day-to-day investments by the money managers.

“Joint Trust Fund Committee” means the governing body of the Fund.

“Majority Vote” means controlling vote on the Joint Trust Fund Committee.

“Money Manager” means the individual or firm who contracts with the Joint Trust Fund Committee to invest funds in a particular investment vehicle or category.

“Original Party” means the Government of the United States or the Government of the Federated States of Micronesia, “Original Parties” means, collectively, the Government of the United States and the Government of the Federated States of Micronesia.

“Party” means any one of the Original Parties or a Subsequent Contributor granted membership in the Joint Trust Fund Committee.

“Present Market Value” means, as of any time, the value of the Fund assets if those assets were liquidated or sold at such time.

“Principal” means the contributions to the Fund by the Parties, that are invested in bonds, stocks, or other holdings.

“Qualified Instruments” means all stocks, bonds, and other securities issued or recognized in any United States stock exchange, or other Trust Fund Committee-approved instruments.

“Special Needs” means projects that the Government of the Federated States of Micronesia deems necessary as a supplement to that portion of an annual budget to be financed by the Fund, so long as the project(s) are for the purposes of Section 211 of the Compact, as amended.

“Subsequent Contributor” means any government, international organization, financial institution, or other entity or person who grants, not lends, funds into the Fund, not including the Original Parties.

“Trustee” means the financial institution holding legal custody of the Fund.

“Trust Fund Period” means the period that begins twenty (20) years after the effective date of the Compact, as amended.

“United States” means the United States of America.

Part II  
Establishment

Article 2

*Establishment of a Trust Fund for the People of the Federated States of Micronesia*

1. A trust fund known as the “Trust Fund for the People of the Federated States of Micronesia” (in this Agreement called the “Fund”) shall be established:
  - (a) by the Government of the United States in consultation with the Government of the Federated States of Micronesia pending Joint Trust Fund Committee operations; or,
  - (b) by the Joint Trust Fund Committee, if the Joint Trust Fund Committee is operational when the Compact, as amended, takes effect.
2. The Fund shall be governed by the provisions of this Agreement.
3. The situs of the Fund shall be within the United States. The governing law of the Fund shall be the law from any appropriate jurisdiction within the United States.
4. The Original Parties to this Agreement shall be the Government of the United States and the Government of the Federated States of Micronesia. The Original Parties shall contribute to the Fund in accordance with section 215 and section 216 of the Compact, as amended.
5. Subsequent Contributors to the Fund shall be approved by the Joint Trust Fund Committee.

Article 3

*Purpose of the Fund*

The purpose of the Fund is to contribute to the economic advancement and long-term budgetary self-reliance of the Federated States of Micronesia by providing an annual source of revenue, after Fiscal Year 2023, for assistance in the sectors described in Section 211 of the Compact, as amended, or other sectors as mutually agreed by the Original Parties, with priorities in education and health care.

Article 4

*Powers of the Fund*

The Fund shall have all powers necessary, consistent with this Agreement, to fulfill its purpose.

Article 5

*Limitation of Liability*

1. No Party to the Fund shall be liable, by reason of being a Party or for acts or obligations of the Fund.
2. Obligations of the Fund are not obligations of the Governments of the Federated States of Micronesia, the United States of America, or any other Party.

3. Members of the Joint Trust Fund Committee shall have a fiduciary relationship to the Fund. No member of the Joint Trust Fund Committee shall be responsible for any loss or depreciation in value of any assets held in the Fund, except by reason of such member's gross negligence or willful default. Every decision made by a member of the Joint Trust Fund Committee shall be deemed to have been made with reasonable care and diligence unless the contrary is proved by affirmative evidence and any such action shall be conclusively binding upon all parties interested in the Fund.

## Article 6

### *Legal Status, Privileges and Immunities*

1. To enable the Fund to carry out its purpose, each Party shall accord to the Fund in its territory, the legal status, privileges and immunities set out in this Article.

2. The Fund shall possess juridical personality and in particular capacity to:

- (a) contract;
- (b) acquire and dispose of immovable and movable property;
- (c) institute legal proceedings; and,
- (d) take other action to protect the Fund.

3. The Fund shall be exempt from any exchange control regulations, restriction or moratoria.

4. In accordance with section 215 of the Compact, as amended, within the scope of its official activities, the Fund, its property, and its assets shall be exempt from taxation.

## Part III

### Joint Trust Fund Committee

## Article 7

### *Joint Trust Fund Committee*

1. There shall be a Joint Trust Fund Committee composed of voting and, when applicable, non-voting members to administer the Fund.

2. Unless otherwise amended in accordance with Article 23, the composition of the Joint Trust Fund Committee shall be:

(a) three voting members appointed by the Government of the United States, which shall include the Chairman of the Joint Trust Fund Committee; and, two voting members appointed by the Federated States of Micronesia. The Government of the United States shall consult with the Government of the Federated States of Micronesia in appointing the Chairman, and the Federated States of Micronesia shall have an opportunity to present its views, which shall be considered; and,

(b) in addition, by a Majority Vote of the Joint Trust Fund Committee, other voting or non-voting members may be appointed from Subsequent Contributors that contribute to the Fund from time to time, provided that the United States maintains the Majority Vote in the Joint Trust Fund Committee.

(c) After the initial twenty (20) years (beginning October 1, 2023), the Original Parties will consult regarding the future composition of the Joint Trust Fund Committee. The Joint Trust Fund Committee shall remain the same, unless otherwise agreed by the Original Parties.

3. If a voting member is temporarily unable to attend a meeting of the Joint Trust Fund Committee, an alternate shall be designated by the Party appointing the voting member under paragraph 2 of this Article, and the designated alternate shall participate and vote in such meeting of the Joint Trust Fund Committee.

4. All the powers of the Fund shall be vested in and exercisable by the Joint Trust Fund Committee.

5. The functions of the Joint Trust Fund Committee shall include overseeing:

(a) the operation, supervision, and management of the Fund;

(b) the investment and distribution of resources of the Fund; and

(c) the conclusion of agreements and arrangements with Subsequent Contributors and other organizations.

6. Voting and non-voting members shall serve as such without payment of salaries, honoraria, or expenses, including travel, from the Fund. Allowable expenses, as defined, may be covered from the Income, but not from the Corpus, except as provided in Article 16, paragraph 3.

7. The Joint Trust Fund Committee shall meet at least annually or as necessary, and reasonable notice shall be given of meetings.

8. For the purposes of meetings, all voting members of the Joint Trust Fund Committee, or their designated alternates when a voting member may be unable to attend, shall constitute a quorum. Meetings may be in person, via video conferencing or by other technological means.

9. Except where otherwise provided in this Agreement, questions before the Joint Trust Fund Committee shall be decided by a Majority Vote of all the voting members or their designated alternate(s).

10. The Joint Trust Fund Committee shall establish rules of procedure consistent with this Agreement.

## Article 8 *Technical Assistance*

From time to time, the Joint Trust Fund Committee may obtain technical advisory services as needed and appropriate.

Part IV  
Resources of the Fund

Article 9  
*Resources*

The resources of the Fund shall consist of all contributions to the Fund, from whatever sources, and all Income. The resources of the Fund shall be held in trust and administered by the Joint Trust Fund Committee and used only for the purpose of, and in accordance with, this Agreement.

Article 10  
*Initial Contributions by Parties*

1. Each Original Party agrees to contribute to the Fund at least the amounts specified in section 215 and 216 of the Compact, as amended, subject to the provisions of Article 5 of Title IV of the Compact, as (sections 451(b), 452(b), and 453(c)).

2. Any Subsequent Contributor that accedes to this Agreement in accordance with the provisions of Article 26 shall make contributions to the Fund in accordance with arrangements agreed by the Joint Trust Fund Committee with the agreement of all voting members.

3. The Fund may accept additional contributions from Subsequent Contributors, in accordance with Article 11, in the form of a grant.

4. The Joint Trust Fund Committee may refuse a contribution if it considers that it would not be in the interest of the Fund, the United States, or the Federated States of Micronesia.

5. The Fund shall not issue negotiable or transferable obligations evidencing indebtedness for contributions received under paragraph 3 of this Article. Further, the Corpus may not be encumbered in any way.

Article 11  
*Conditions Governing Contributions*

1. No contributions to the Fund shall be refunded except in accordance with Articles 21 and 22.

2. The provisions of sections 451 through 453, inclusive, of the Compact, as amended, and Article 22 of this Agreement, in the event the Compact, as amended, is terminated, shall govern treatment of any Government of the United States contributions to the Fund and accrued interest thereon.

3. The Original Parties shall seek contributions to the Fund from other sources.

Part V  
Trustee(s), Investment Adviser(s), Money Manager(s)

Article 12  
*Appointment of Trustee(s)*

1. Appointment of Trustee(s)

(a) If, pursuant to Article 2, paragraph 1(a), the Government of the United States establishes the Fund, the Government of the United States shall appoint one or more Trustees. Thereafter, the Joint Trust Fund Committee may appoint and employ, pursuant to the terms of this Agreement, a successor Trustee(s).

(b) If, pursuant to Article 2, paragraph 1(b), the Joint Trust Fund Committee establishes the Fund, the Joint Trust Fund Committee shall appoint and employ the initial Trustee(s), pursuant to the terms of this Agreement.

2. The Joint Trust Fund Committee shall be empowered to remove any Trustee acting hereunder or to appoint or select a successor Trustee(s). Any Trustee hereunder may, for cause, be removed by the Joint Trust Fund Committee by giving thirty (30) days written notice to the Trustee.

3. The Trustee(s) and any successor Trustee(s) shall:

- (a) be selected from among trust institutions organized in the United States;
- (b) have a net worth in excess of \$100 million;
- (c) have at least 10 years experience as a custodian of financial assets; and
- (d) have experience in managing trust funds of at least \$500 million.

4. When applicable, upon the appointment of a successor Trustee(s), the resigning or removed Trustee(s) shall transfer and deliver the Fund and any such records pertaining thereto to the successor Trustee(s) after reserving, as Trustee(s), such reasonable amount from the Income to provide for his expenses in the settlement of the Fund account and the amount of any compensation due to him. However, any such amounts so reserved by, and eventually paid to, the resigning or removed Trustee(s) shall be subject to the written approval of the Joint Trust Fund Committee.

5. The Trustee(s) may resign by filing with the Joint Trust Fund Committee and the Original Parties his written resignation. No such resignation shall take effect until sixty (60) days from the date said resignation is filed with the Joint Trust Fund Committee and the Original Parties unless prior thereto a successor Trustee(s) shall have been appointed by the Joint Trust Fund Committee.

6. The Trustee(s) shall hold the Corpus, in trust, for the use and benefit of the people of the Federated States of Micronesia in accordance with the provisions of this Agreement and the Compact, as amended.

Article 13  
*Trustee's Powers and Duties*

1. The Trustee shall use reasonable and prudent care and reasonable and prudent diligence in the exercise of his/her powers and the performance of his/her duties as Trustee.
2. With respect to the Fund, the Trustee shall have the following duties and powers, in addition to and not in limitation of the powers granted or conferred by law, all of which shall be exercised in a fiduciary capacity:
  - (a) To collect and receive any and all money and other property of whatever kind or nature due or owing or belonging to the Fund and to give full discharge and acquittance therefor, and to extend for a reasonable period of time, the time of payment of any obligation at any time owing to the Fund.
  - (b) To disburse Income or Corpus only pursuant to the conditions set forth in Articles 16, 21, and 22 of this Agreement.
3. The Trustee shall follow the written directions of the Joint Trust Fund Committee with respect to the retention, purchase, sale or encumbrance of trust property and the investment and reinvestment of Principal and Income held hereunder, the sole authority and discretion for which shall belong to the Joint Trust Fund Committee (provided, however, that the Joint Trust Fund Committee shall not be authorized to direct the Trustee to purchase any asset that would violate federal, state or local law, or the provisions of this Agreement). The Joint Trust Fund Committee shall have full authority to direct the Trustee to take any action with respect to the trust assets that the Trustee is authorized to take under this Agreement.
4. The Trustee shall not be accountable for any loss or depreciation in value sustained by reason of action taken pursuant to direction of the Joint Trust Fund Committee.
5. The Trustee shall have the entire care and custody of all of the assets comprising the Fund and shall have sole responsibility for:
  - (a) making all payment of liabilities and administration expenses; and,
  - (b) effecting all distributions pursuant to the instruction of the Joint Trust Fund Committee, whether of Principal or of Income, to the Federated States of Micronesia under this Agreement.
6. The Trustee shall maintain full and accurate books of account and records of all financial transactions relative to the Fund, which shall be available at all reasonable times for inspection by the Joint Trust Fund Committee or its representatives.
7. The Trustee shall be entitled to reasonable fees and expenses as compensation for his services as Trustee hereunder. Such fees shall be subject to the prior written agreement and approval by the Joint Trust Fund Committee. Such fees and expenses shall be paid from Income or, when necessary, from the Corpus, pursuant to the terms of Article 16.

Article 14  
*Investment Adviser(s) and Money Manager(s)*

1. The Joint Trust Fund Committee, at any time and from time to time, shall have the power and authority to:

(a) select one or more Investment Adviser(s), including the corporate Trustee(s) or any of its affiliates;

(b) negotiate the terms of, and execute management agreements with, such Investment Advisers; and

(c) direct the Trustee to pay the compensation and costs of such Investment Adviser(s) from the assets of the Fund, in accordance with Article 16 of this Agreement.

2. The Investment Adviser(s) shall advise and recommend to the Joint Trust Fund Committee, one or more Money Managers who will invest the assets of the Fund to produce a diversified portfolio. The Investment Adviser(s) shall provide the Joint Trust Fund Committee with data relating to any prospective Money Manager, indicating performance and relevant comparisons with similar money managers, to assist the Joint Trust Fund Committee in evaluating the performance of the prospective Money Managers.

3. Money Managers shall enter into separate agreements with the Joint Trust Fund Committee.

4. The Joint Trust Fund Committee, at any time and from time to time, shall have the power and authority to direct brokerage instructions through the Investment Adviser(s) for any security transactions executed with respect to the Fund. In connection therewith, the Joint Trust Fund Committee may:

(a) enter into such contracts, agreements or other arrangements as the Joint Trust Fund Committee deems appropriate with such Investment Adviser(s) and Money Manager(s).

(b) direct the Trustee, in writing, to pay the compensation and costs of brokers, as previously negotiated and agreed, from the Fund assets, in accordance with Article 16.

5. The rights and powers herein conferred on the Joint Trust Fund Committee shall be exercisable only in a fiduciary capacity, and any Investment Adviser(s) accepting the delegation of a discretionary function of the Joint Trust Fund Committee also shall be considered to be acting in a fiduciary capacity.

Part VI  
Operation of the Fund

Article 15  
*Investment and Distribution Policy*

1. The Joint Trust Fund Committee shall establish and revise from time to time, an investment and distribution policy consistent with this Agreement, with the intent that on October 1, 2023, and thereafter the Income shall be used for the purposes described in Article 3 of this Agreement.

2. The Investment Adviser(s) and Money Manager(s) shall cause to have the Fund invested only in Qualified Instruments that are identified from time to time by the Joint Trust Fund Committee. Issues of bonds, notes, or other redeemable instruments of the Government of the United States shall be considered Qualified Instruments and the Money Manager(s), under direction of the Joint Trust Fund Committee and the Investment Adviser(s), may invest the Fund in such issues without transaction fees or intermediary charges imposed by the Government of the United States.

3. The Fund and any Income derived from it shall not be taxable by the governments of the Parties to this Agreement to the extent that Income is derived from investment of the Fund in instruments of the Government of the United States or other Qualified Instruments.

Article 16  
*Investment and Distribution to the Government of the Federated States of Micronesia*

1. The Fund shall consist of three accounts to be referred to hereinafter as the “A Account,” the “B Account” and the “C Account,” respectively (collectively, the “Accounts”). Each Account shall become effective as described in this Article.

2. The A Account, which shall be established upon the effective date of the Compact, as amended, shall form the Corpus and consist of contributions from the Original Parties, and Subsequent Contributors. Except as otherwise provided in this Agreement, it also consists of the Income from the investments made from the Principal, and transfers from the B Account and C Account in accordance with this Article.

3. Through September 30, 2022, payment of Allowable Expenses of the Fund shall be made from the A Account. During this period, the amount, if any, of Fund Income in each Fiscal Year which remains after such payment of expenses shall be reinvested into the A Account. Except as provided in this Article, or under Article 13 paragraph 7, or Article 14 paragraph 1(c), or Article 14 paragraph 4(b), or upon withdrawal of contributions under Article 21, or upon termination of the Fund under Article 22, no funds may be removed from the A Account.

4. The B Account:

(a) On October 1, 2022 the B Account shall be created.

(b) During Fiscal Year 2023, all Income earned in Fiscal Year 2023 shall be deposited into the B Account for disbursement, in accordance with this Article, in Fiscal Year 2024.

(c) For Fiscal Year 2024, and thereafter, the B Account shall consist of the prior year's Income from investment of funds in the A Account.

5. The C Account:

(a) shall be created at the same time as the A Account and, beginning in Fiscal Year 2004, through Fiscal Year 2022, any annual Income on the Fund over six percent (6%) shall be deposited in the C Account, up to the limit specified in (b) below. Beginning in Fiscal Year 2023, the C Account shall be replenished from the B Account in accordance with paragraph 8 below;

(b) shall contain no more than three times the estimated equivalent of the fiscal year 2023 Annual Grant Assistance, including estimated inflation calculated in accordance with section 217 of the Compact, as amended. Any excess above the estimated amount shall return to the A Account; and,

(c) may be drawn on, to the extent it contains sufficient funds, to address any shortfall in the B Account after Fiscal Year 2023, if Income on the A Account falls below the previous year's distribution (not including any amount distributed that year for Special Needs) adjusted for inflation, to the Government of the Federated States of Micronesia, and for Special Needs agreed to by the Joint Trust Fund Committee.

6. After Fiscal Year 2023, if the Income in the B Account is less than the previous year's distribution to the Government of the Federated States of Micronesia, and the C Account cannot cover the shortfall in the B Account, then the Corpus shall not be accessed to compensate for the shortfall.

7. The Joint Trust Fund Committee may disburse to the Government of the Federated States of Micronesia, from the B Account (supplemented from the C Account if the B Account is insufficient):

(a) in Fiscal Year 2024, an amount equal to the Annual Grant Assistance in Fiscal Year 2023, plus Full Inflation; and

(b) beginning in Fiscal Year 2025, and thereafter, an amount of funds no more than the amount equal to the Annual Grant Assistance in Fiscal Year 2023 plus Cumulative Full Inflation thereon, plus any additional amounts for Special Needs approved under paragraph 5(c) above.

8. Beginning in Fiscal Year 2023, the Joint Trust Fund Committee shall transfer to the A Account any funds in the B Account in excess of the amount approved for disbursement in the following Fiscal Year, in accordance with paragraph 7 of this Article, unless such excess funds are needed to bring the C Account to the level specified in paragraph 5(b) of this Article.

9. A special account, hereinafter referred to as the D account, may be established to allow contribution by the Federated States of Micronesia for revenues or income from unanticipated sources. This account shall not be mixed with the Fund, but shall have a separate account number. The Federated States of Micronesia shall have access to funds

in this account for unanticipated shortfalls or other purposes. Funds in this account are not part of the Corpus.

#### 10. Accountability

##### (a) Implementing procedures

(1) The Joint Trust Fund Committee shall determine the fiscal procedures, including remedies, to be used in implementing this Agreement, provided that the Fiscal Procedures Agreement, referred to in sections 211 and 212 of the Compact, as amended, together with any amendments to it over the 20-year Compact, as amended, period, shall be the basis for such fiscal procedures, unless otherwise agreed by the Original Parties.

(2) No disbursements shall be made to the Government of the Federated States of Micronesia under this Article, from the Fund, until fiscal procedures have been agreed to under sub-clause (1) of this sub-paragraph (a).

(b) In the event that the remedies determined under sub-clause (1) of this sub-paragraph (a) of this paragraph do not correct any misuse of Income by the Government of the Federated States of Micronesia, and the Government of the Federated States of Micronesia continues to use, or causes to be used, Income or the Corpus for other than agreed purposes, remedies may be taken as provided in Article 21, paragraph 1 (a) of this Agreement.

11. Notwithstanding the foregoing, no funds shall be distributed from the A Account, the B Account or the C Account to the Government of the Federated States of Micronesia prior to October 1, 2023.

#### Article 17 *Financial Year*

The financial year of the Fund is the Fiscal Year.

#### Part VII Accounts, Audit, and Reports

#### Article 18 *Accounts*

1. The Joint Trust Fund Committee shall cause the Trustee to keep all proper books and records of account of the assets, property, liabilities, income expenditure, and transactions of the Fund and to produce these promptly in order to facilitate audit.

2. The Trustee shall create one sub-fund for each Party, reflecting that Party's share of the Principal and Income. The Trustee shall keep all records for each sub-fund.

3. All records and reports of Fund returns shall clearly segregate and identify gross Income, management fees, and net Income.

4. The Government of the Federated States of Micronesia will provide to the Joint Trust Fund Committee full information and documents concerning its national budget and accounts, and any report of its public auditor.

Article 19  
*Audit*

1. From its establishment and through Fiscal Year 2023, the Fund shall be audited at appropriate intervals by an independent auditor appointed by the Joint Trust Fund Committee (the “Auditor”). Thereafter the Fund shall be audited annually by the Auditor.

2. The Auditor shall satisfy himself that the accounts of the Fund have been properly prepared in accordance with United States accounting standards and he shall either:

(a) state in his report that:

(1) the accounts have been properly prepared in accordance with the books and records of the Fund;

(2) the books and records of the Fund have been properly kept and contain information adequate for the purposes of his audit;

(3) the balance sheet and income and expenditure account of the Fund give a true and fair view of the Fund’s financial position; and

(4) the financial affairs of the Fund have been properly conducted in accordance with this Agreement; or

(b) notify the Joint Trust Fund Committee that he is unable to complete his report as provided in sub-paragraph (a) of this paragraph 2 giving his reasons.

3. The Auditor shall include in his/her report information on the performance of the Trustee and Money Manager(s) in the investment of the Fund in accordance with the guidelines laid down by the Joint Trust Fund Committee with comparative references to the performance of managers of other funds of a similar size and nature.

4. The Auditor shall submit his/her report to the Joint Trust Fund Committee.

Article 20  
*Annual Reports*

Within six months of the end of each Fiscal Year, the Joint Trust Fund Committee shall publish and shall submit to the Government of the United States and to the Government of the Federated States of Micronesia:

(a) an annual report on the activities and management of the Fund, including on the operations of the Accounts described in Article 16 of this Agreement, and on the effectiveness of the fund to accomplish its purpose as described in Article 3 of this Agreement, which annual report may include recommendations regarding improving the effectiveness of the Fund to accomplish that purpose;

(b) the accounts of the Fund for that year audited in accordance with Article 19; and,

(c) reports of the Auditor under Article 19.

Part VIII  
Withdrawal and Termination

Article 21  
*Withdrawal of Contributions*

1. The Government of the United States may withdraw the Present Market Value of its contributions to the Fund, and any undistributed Income therefrom:

(a) in the event the Government of the United States determines, after consultation with the Government of the Federated States of Micronesia that the Government of the Federated States of Micronesia grossly failed to use the Income for the purposes described in Article 2 of this Agreement;

(b) should the Government of the Federated States of Micronesia fail to fulfill its obligations under the separate agreement regarding mutual security concluded pursuant to sections 321 and 323 of the Compact, as amended, or take any action which the Government of the United States determines after appropriate consultation with the Government of the Federated States of Micronesia, to be incompatible with the Government of the United States' responsibility for security and defense matters in or relating to the Federated States of Micronesia, as set forth in such agreement(s).

2. Except as provided in paragraph 1 of this Article, any other Party may withdraw from this Agreement by depositing an instrument of withdrawal with the Depository.

3. In the event of withdrawal by a Party, no distribution of assets shall be made to that Party until that Party discharges its proportionate share of operating expenses, fees, and other administrative costs. Subsequently, the Present Market Value of the remaining Principal and Income attributable to that Party, shall be paid back to that Party.

4. A Party that withdraws from this Agreement shall have no rights under this Agreement except as provided in this Article and Article 24 and no refund of its contributions shall be made to it except as a distribution of assets under this Article and Article 22.

Article 22  
*Termination and Distribution of Assets*

1. The Fund's operations may be terminated by written agreement of the Original Parties.

2. Upon termination of operations the Fund shall immediately cease all activities, except those incidental to the orderly realization and conservation of its assets and the settlement of its obligations.

3. On final settlement of the obligations of the Fund and the distribution of its assets this Agreement shall terminate. Until then, the Fund shall remain in existence and all rights and obligations for the Fund and the Parties and Subsequent Contributors under this Agreement shall continue unimpaired.

4. In the event of termination, no distribution of assets shall be made until all liabilities have been discharged. Subsequently, the assets of the Fund shall be distributed as follows:

(a) the Present Market Value of the Principal and Income attributable to the Government of the United States shall be paid back to that Government; and,

(b) the Present Market Value of the Principal and Income attributable to the Government of the Federated States of Micronesia shall be paid back to that Government.

(c) the Present Market Value of the Principal and Income attributable to Subsequent Contributors shall be paid back to those Subsequent Contributors, unless such Subsequent Contributors agree otherwise.

## Part IX Miscellaneous Provisions

### Article 23 *Amendments*

The Agreement may be amended at any time in writing by mutual consent of the Original Parties.

### Article 24 *Dispute Resolution*

1. Any dispute arising out of this Agreement between the Original Parties, whether during the life of the Fund or on its termination of its operations, that cannot be resolved by the Joint Trust Fund Committee:

(a) shall, if the dispute involves Articles 4, 6, 8, 9, 12, 13, 14, 15, 17, 19, 23, 25, and 26, be referred for resolution to the Original Parties. The Original Parties shall confer and resolve the dispute. If either government feels it is necessary, it may give written notification to the other government that it wants the issue to be referred to the Under Secretary of State (or equivalent) of the other Government.

(b) All other disputes may be resolved in accordance with the procedure described in sub-paragraph 1(a) above, or through the conference and dispute resolution process set forth in Article II of Title Four of the Compact, as amended.

2. Disputes involving Subsequent Contributors should be handled as mutually agreed by the Original Parties and Subsequent Contributors.

### Article 25 *Depository*

The Depository for this Agreement shall be the Government of the United States.

Article 26  
*Final Provisions*

1. This Agreement shall be open for signature by the Governments of the Federated States of Micronesia and the United States.
2. This Agreement shall enter into force on the effective date of the Compact, as amended.
3. After entry into force, this Agreement shall be open for accession by Subsequent Contributors, other than the Original Parties, at the invitation of the Joint Trust Fund Committee and in accordance with such arrangements including an initial contribution to the Fund as may be agreed by the Joint Trust Fund Committee.
4. For a Subsequent Contributor which accedes to this Agreement, the Agreement shall enter into force 30 days after the deposit of its instrument of accession.
5. Interpretation. In this Agreement, all references herein to Articles, paragraphs, subparagraphs, clauses, and sections shall be deemed references to this Agreement unless the context shall otherwise require. References to statutes or regulations are to be construed as including all statutory or regulatory provisions, as applicable, consolidating, amending or replacing the statute or regulation referred to. All references to agreements and other documents shall be to such documents as amended, modified, supplemented or restated from time to time in a manner consistent with the terms and conditions of this Agreement. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with Generally Accepted Accounting Principles, as in effect from time to time in the United States of America.

DONE at \_\_\_\_\_, in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 2003, each text being equally authentic.

FOR THE GOVERNMENT OF THE FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA: FEDERATED STATES OF MICRONESIA:

**AGREEMENT REGARDING THE MILITARY USE AND OPERATING  
RIGHTS OF THE GOVERNMENT OF THE UNITED STATES IN THE  
FEDERATED STATES OF MICRONESIA CONCLUDED PURSUANT TO  
SECTIONS 211(B), 321 AND 323 OF THE COMPACT OF FREE ASSOCIATION,  
AS AMENDED**

This Agreement sets forth:

- (a) The conditions under which the Government of the United States shall make available the Humanitarian Assistance – Federated States of Micronesia (HAFSM) Program to the Government of the Federated States of Micronesia pursuant to Section 211(b), Title Two, of the Compact of Free Association, as amended; and

(b) The military use and operating rights of the Government of the United States in the Federated States of Micronesia pursuant to Sections 321 and 323, Title Three, of the Compact, as amended.

Article I  
*Definitions*

1. The Definition of Terms set forth in Article VI of Title Four of the Compact, as amended and the Definitions set forth in paragraph 2 of Article I of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact, as amended (the Status of Forces Agreement) are incorporated in this Agreement.

2. For the purpose of this Agreement only, the following terms shall have the following meanings:

(a) “Humanitarian Assistance – Federated States of Micronesia Project Team” is a unit consisting of members of the force which is organized to undertake civic and humanitarian projects.

(b) “HAFSM Project Team Base Camp” is a “defense site” as set forth in paragraph 2(g) of Article I of the Status of Forces Agreement. A HAFSM work site, however, is not a “defense site”.

Article II  
*Applicability of Status of Forces Agreement*

The provisions of the Status of Forces Agreement shall apply.

Article III  
*Provision of the Defense Sites*

1. The Government of the Federated States of Micronesia shall provide to the Government of the United States the defense sites identified for HAFSM projects in accordance with Annex A to this Agreement.

(a) The provision of defense sites shall include all the necessary land and use rights for such sites, rights of access thereto, and road, pipeline and powerline easements as may be required.

(b) Any rent or other use charges or other consideration to owners of the lands in the defense sites shall be as provided in this Agreement. Such payments shall be made by the Government of the United States to the Government of the Federated States of Micronesia on behalf of its citizens.

2. Specific arrangements for establishment and use by the Government of the United States of defense sites in addition to those set forth in accordance with Annex A to this Agreement shall be between the Governments of the United States and the Federated States of Micronesia in accordance with Section 321 of the Compact, as amended.

3. The Government of the United States affirms that it has no present need for or present intention to seek the use of defense sites other than those identified for HAFSM projects in accordance with Annex A of this Agreement.

4. The Government of the United States shall notify the Government of the Federated States of Micronesia when it no longer has a requirement to retain any of the defense sites, or portions thereof, designated in this Agreement. Such defense sites, or portions thereof, shall then revert to the full and complete control of the Government of the Federated States of Micronesia for disposition to their lawful owners as determined by the Government of the Federated States of Micronesia in accordance with its constitutional processes.

#### Article IV

##### *General Military Use and Operating Rights*

1. Consistent with Section 352 of the Compact, as amended, the Government of the United States has free access to and unrestricted control of the defense sites, including the right to control entry to and exit from any or all defense sites and the right to take necessary measures for their establishment, use and operation. The Government of the United States may take, within the defense sites and within the seabeds, water areas and air space adjacent to or in the vicinity of the defense sites, such measures as are necessary for their use, security and defense. These measures include the right:

- (a) To maintain the defense sites and to construct structures and improvements thereon;
- (b) To improve and deepen the harbors, channels, entrances, and anchorages, to dredge and fill, and generally to fit the premises to their intended use;
- (c) To control anchorages and moorings, the movements of ships and waterborne craft, aircraft operations and land movements;
- (d) To regulate and control all communications of the Government of the United States to, from, and within the defense sites; and
- (e) To install, maintain, use and operate defense-related oceanographic, aeronautical, space communications, and other military or scientific systems and equipment.

2. In conducting activities pursuant to paragraph 1 of this Article, the Government of the United States shall use its best efforts to:

- (a) Avoid interference with commercial activities in the Federated States of Micronesia;
- (b) Avoid interference with access by fishermen to shoreline areas;
- (c) Avoid interference with navigation, aviation, communication and land or water travel in the Federated States of Micronesia;
- (d) Avoid impeding access to recreational areas, particularly beach areas, by residents of and visitors to the Federated States of Micronesia;
- (e) Minimize damage to the terrain and to reef areas;
- (f) Avoid harm to the environment, including water areas;
- (g) Avoid activities which would adversely affect the well-being of the residents of the Federated States of Micronesia; and

(h) Notify the Government of the Federated States of Micronesia of non-routine activities so that the Government of the Federated States of Micronesia may take steps to assist the Government of the United States in executing its responsibilities to minimize any adverse impact of such activities.

Article V  
*Aids to Navigation*

The Government of the United States shall place or establish and maintain in the defense sites and the water areas adjacent thereto or in the vicinity thereof, lights and other fixed and floating aids to navigation of vessels and aircraft necessary for operations pursuant to this Agreement. The Government of the United States shall consult with the Government of the Federated States of Micronesia on the position or characteristics of and any alterations to such aids to navigation.

Article VI  
*Community Relations Council*

The Government of the United States and the Government of the Federated States of Micronesia may each designate representatives to a Community Relations Council whose purpose will be to identify and consider all matters affecting relations between the Defense Site Commander and local Federated States of Micronesia communities and to recommend actions as appropriate.

Article VII  
*Miscellaneous*

1. No proprietary rights to minerals, including oil, antiquities and treasure trove in a defense site, nor rights relating thereto pass to the Government of the United States by virtue of this agreement but any exploitation thereof shall require the prior concurrence of the Government of the United States.

2. Unless otherwise provided, all issues or disputes that may arise under this Agreement which cannot be resolved locally shall be referred for resolution to the Joint Committee established pursuant to Section 351 of the Compact, as amended.

3. In the event of an emergency the Government of the United States, consistent with military requirements, shall make available to the Government of the Federated States of Micronesia, on a cost-reimbursable basis, military fuels and oils.

4. The Government of the United States may station in the Federated States of Micronesia United States personnel required in its use of the defense sites authorized under this Agreement. Except for United States personnel stationed in the Federated States of Micronesia pursuant to this Agreement, or limited numbers of United States personnel in the Federated States of Micronesia on official duty in connection with naval port visits, aircraft transits or other temporary duty, the Government of the United States shall not establish in the Federated States of Micronesia a formal rest, relaxation or recuperation program, without the consent of the Government of the Federated States of Micronesia.

5. The Government of the United States shall not use nuclear power plants or reactors in the Federated States of Micronesia, except on military ships and vessels under the ownership or control of the Government of the United States.

6. Consistent with Article V, paragraph 7 of the Status of Forces Agreement and Article II of this Agreement, the Designated Representatives of the Signatory Governments shall enter into agreed arrangements regarding notice and taxation of major transfers of personal property by United States personnel to non-tax exempt persons in the Federated States of Micronesia.

#### Article VIII

##### *Effective Date, Amendment and Duration*

1. This Agreement shall come into effect simultaneously with the Compact, as amended.

2. This Agreement may be amended at any time by the mutual consent of the Government of the Federated States of Micronesia and the Government of the United States.

3. With the exception of Annex A, this Agreement shall remain in full force and effect for the period of effectiveness of Title Three of the Compact, as amended. Annex A shall remain in full force and effect for 20 years, unless otherwise agreed.

DONE at \_\_\_\_\_, in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 2003, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA: FOR THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA:

#### ANNEX A

##### ESTABLISHMENT OF A HUMANITARIAN ASSISTANCE – FEDERATED STATES OF MICRONESIA (HAFSM) PROGRAM

This Annex supersedes Annex A and B to the Military Use and Operating Rights Agreement concluded between the Government of the United States of America and the Government of the Federated States of Micronesia (the Parties) pursuant to their Compact of Free Association signed on October 1, 1982, approved by the Congress of the United States on January 14, 1986, and which took effect November 3, 1986, concerning the provision of civic action teams. In place of the Military Civic Action Teams, the FSM will have access to a Humanitarian Assistance – Federated States of Micronesia (HAFSM) Program under the terms and conditions laid out in this Annex.

A. The Government of the United States shall make available to the Government of the Federated States of Micronesia a HAFSM for such activities/projects as may be identified

by the Government of the Federated States of Micronesia and mutually agreed by the Parties.

B. The Government of the United States shall make available to the Government of the Federated States of Micronesia HAFSM Projects under the following provisions:

1. The establishment of an annually agreed work program, in accordance with Paragraph E of this Annex, designed to assist in the fulfillment of the national developmental goals of the Federated States of Micronesia; and
2. A HAFSM Project may be suspended, re-evaluated or terminated under any of the following conditions:
  - (a) At the request of the Government of the Federated States of Micronesia;
  - (b) United States military necessity;
  - (c) Failure of the United States Congress to appropriate the necessary funds; or
  - (d) Failure of the Government of the Federated States of Micronesia to provide access to Project sites or necessary permits for Project execution.

C. The entire costs of the HAFSM Projects, excluding salaries of U.S. military personnel, (hereinafter referred to as “cost of the Project(s)”) shall be funded in accordance with paragraph E.3 of this Annex. The Government of the Federated States of Micronesia shall accept the completed HAFSM Projects in writing not later than 30 days after the United States gives notice of completion. Failure to respond to the notice of completion not later than 30 days after notice is given shall constitute acceptance of the HAFSM Project. Costs of maintenance for the HAFSM Projects upon completion shall be borne by the Government of the Federated States of Micronesia.

1. These HAFSM Projects may be executed as:
  - (a) Projects using military labor, including Reserve and Guard component units if possible;
  - (b) Contracts with private firms, using military planning, design and oversight; or
  - (c) A combination of military labor and private contractors.
  - (d) The Government of the United States shall assume all responsibility associated with the execution of the HAFSM Projects, with the exception that the Government of the Federated States of Micronesia shall provide:
    - (1) Suitable public or private land, as required, for HAFSM Project Team base camps; and
    - (2) All necessary access and entry clearances into public and private land and all permits for HAFSM Projects.

2. Consistent with Article IV of the Status of Forces Agreement concluded pursuant to Section 323 of the Compact of Free Association, HAFSM projects shall be executed utilizing FSM labor and locally procured materials to the maximum extent that is feasible, appropriate and in the interest of timely completion of the project.

D. The Government of the Federated States of Micronesia may use the HAFSM program, as needed, in years in which it desires to execute HAFSM Projects; and, shall fund projects from grant assistance in accordance with paragraph E.3. Projects shall be planned as far in advance as possible to allow sufficient time for planning, coordinating, and transferring of funds.

E. The Government of the United States and the Government of the Federated States of Micronesia shall review, on an annual basis, normally during the scheduled Joint Committee Meetings (JCM), or otherwise as may be mutually agreed, all matters relating to the execution and content of the HAFSM Projects.

1. The Government of the Federated States of Micronesia shall nominate prioritized projects through the U.S. Embassy in Pohnpei to the Commander, U.S. Pacific Command (CDRUSPACOM), according to a schedule established by CDRUSPACOM.

2. The annual review shall include: (a) review of the manner in which HAFSM Projects are selected from those nominated, (b) review the planning for the projects and of associated costs, (c) review of the status and execution of existing projects.

3. After the annual review, the Government of the Federated States of Micronesia shall determine which new HAFSM Project(s) it wants to pursue and make its request known through the U.S. Embassy to CDRUSPACOM. When a HAFSM project(s) has been mutually agreed by the Parties pursuant to this Annex, the cost of the Project(s) shall be deducted from the applicable sector grant(s) awarded to the Government of the Federated States of Micronesia in the year the request is approved. The U.S. Department of Interior shall transfer funds in accordance with statutory and regulatory guidelines, to the Department of Defense, or a component thereof, in the amount requested by CDRUSPACOM for that project.

## **STATUS OF FORCES AGREEMENT**

### **CONCLUDED PURSUANT TO SECTION 323 OF THE COMPACT OF FREE ASSOCIATION, AS AMENDED**

This Agreement is concluded by the Signatory Governments and sets forth the legal status of the Armed Forces of the United States, their members, and associated civilians, while present in the Federated States of Micronesia pursuant to Section 323 of the Compact of Free Association (the Compact), as amended.

#### *Article I Definitions*

1. The Definition of Terms set forth in Article VI of Title Four of the Compact, as amended is incorporated into this Agreement.

2. For the purposes of this Agreement only, the following terms shall have the following meanings:

(a) “Armed Forces of the United States” means the land, sea and air armed forces of the United States of America, including the Coast Guard.

(b) “United States Contractors” means the legal entities, including corporations and natural persons, present in the Federated States of Micronesia for the purpose of executing their contracts with the Government of the United States, or subcontracts of such contracts, in support of the Armed Forces of the United States and designated as such by the Government of the United States. The term “United States Contractors” does not include local contractors.

(c) “Local Contractors means the legal entities, including corporations and natural persons organized under the laws of, and who are in, the Federated States of Micronesia.

(d) “United States Personnel” means anyone who is included in any of the following categories:

(1) “members of the force”—all military personnel, notwithstanding their citizenship or nationality, on duty with the Armed Forces of the United States who are in the Federated States of Micronesia;

(2) “members of the civilian component”—all civilian persons, notwithstanding their citizenship or nationality, except local hire personnel, who are in the Federated States of Micronesia, and who are in the employ of, serving with, or accompanying the Armed Forces of the United States;

(3) “contractor personnel”—natural persons, who are United States citizens or nationals or United States permanent resident aliens, except local hire personnel, who are in the Federated States of Micronesia, and who are United States contractors or officers or employees of United States contractors; or

(4) “dependents”—the spouses and dependents of persons included in paragraphs 2(d)(1) and 2(d)(2) who are listed on official United States Government travel orders (including children of persons included in paragraphs 2(d)(1) and 2(d)(2), whether or not they are listed on official United States Government orders, who are born after such persons’ arrival in the Federated States of Micronesia), and the spouses and dependents of persons included in paragraph 2(d)(3) of this Article and, while members of the household of such persons, other relatives or wards of such persons or their spouses.

(e) “Third Country Contractor Personnel” means natural persons other than United States personnel or local hire personnel who are lawfully in the Federated States of Micronesia and who are United States contractors or officers or employees of United States contractors or dependents of any of them.

(f) “Local Hire Personnel” means citizens of the Federated States of Micronesia who are employed in the Federated States of Micronesia by the Armed Forces of the United States or United States contractors.

(g) “Defense Sites” Means “Military Areas and Facilities” as defined in Section 461 (i) of the Compact, as amended.

(h) “Judge” means any judicial officer of a Signatory Government who has the authority to issue a warrant of arrest or its equivalent and for purposes of this

Agreement, except for paragraph 6(c) of Article XII, shall also include judicial officers certified as such by the Government concerned.

Article II  
*Movement*

1. Consistent with the Compact, as amended, this Agreement and any other agreements concluded between the Government of the United States and the Government of the Federated States of Micronesia in accordance with Sections 321 and 323 of the Compact, as amended:

(a) All aircraft, vessels and vehicles operated by, for, or under the control of the Armed Forces of the United States or United States contractors shall enjoy freedom of movement in the Federated States of Micronesia;

(b) Such aircraft, vessels and vehicles shall be operated in a manner which minimizes danger to persons and property and interference with trade, commerce, exploration and exploitation of living and non-living resources of the sea; and

(c) Movement of such aircraft, vessels and vehicles in the Federated States of Micronesia, including access to and use by them of defense sites, ports, harbors and airfields, shall not be subject to any taxes, fees or other charges, except those fees or other charges set forth in paragraph 2 of this Article.

2. The Armed Forces of the United States and United States contractors shall pay, at generally prevailing rates unless otherwise agreed, for specific services rendered at their request, including materials received at their request in connection with the use of ports, harbors and airfields in the Federated States of Micronesia. Such services and materials may include fuel, towing, mechanical servicing and utilities.

Article III  
*Entry and Departure*

1. The Government of the United States may bring into the Federated States of Micronesia:

(a) United States personnel and United States contractors; and

(b) Third country contractor personnel consistent with those laws of the Federated States of Micronesia relating to the exclusion of individual, undesirable aliens and taking into account paragraph 5 of this Article and Article IV of this Agreement.

2. United States personnel shall be exempt from the passport and visa laws and regulations of the Federated States of Micronesia. Taking into account paragraph 1(b) of this Article and Article IV of this Agreement, applications of third country contractor personnel for visas shall be granted or denied expeditiously. All United States and third country contractor personnel shall comply with medical immunization and other health requirements of the Federated States of Micronesia.

(a) No United States personnel or third country contractor personnel shall acquire any right to permanent residence or domicile solely as a result of their being United States personnel or third country contractor personnel.

(b) United States personnel shall be exempt from laws and regulations of the Federated States of Micronesia on the entry, departure, registration and control of aliens and foreign agents.

3. Upon entry into or departure from the Federated States of Micronesia, United States personnel shall have in their possession official orders or documents certifying the status of the individual or group. Such orders or documents shall be shown on request to the appropriate authorities of the Government of the Federated States of Micronesia.

4. For the purpose of their identification while in the Federated States of Micronesia, United States personnel ten years of age or older shall have in their possession a personal identification card authorized by the Government of the United States which shall show the name, date of birth, status, and photograph of the bearer. Such card shall be shown on request to the appropriate authorities of the Government of the Federated States of Micronesia.

5. Should the Government of the Federated States of Micronesia request the removal from the Federated States of Micronesia, of any United States personnel or any third country contractor personnel, the request shall be referred to the Joint Committee established pursuant to Section 351 of the Compact, as amended for resolution in accordance with that Section, unless the Government of the United States receives the person concerned within its own territory or otherwise effects the departure of such person outside the territory of the requesting Government. Section 351 of the Compact, as amended, is incorporated by reference into, and becomes a part of, this Agreement. If the Joint Committee so determines, the person concerned shall immediately become subject to the jurisdiction of the Government of the Federated States of Micronesia in accordance with its laws.

6. Transportation costs attendant to the departure and removal of third country contractor personnel shall be the responsibility of the Government of the United States.

#### Article IV

##### *Utilization of Contractors and Employment of Labor*

1. In the establishment, maintenance, and use and operation of defense sites and in the execution of obligations undertaken by the Government of the United States in the Compact, as amended, and its related Agreements, the Armed Forces of the United States, United States contractors and local contractors:

(a) May employ persons possessing requisite skills and qualifications. Employment preference shall be given, without discrimination, to citizens of the Federated States of Micronesia and to citizens, nationals and permanent resident aliens of the United States. In the employment of such persons pursuant to the preferences set forth in this paragraph, the Armed Forces of the United States and United States contractors shall exercise their best efforts to employ persons present in the Federated States of Micronesia; and

(b) Shall utilize without discrimination, consistent with the laws and regulations of the United States, qualified local contractors to the maximum extent feasible, and qualified contractors which are legal entities of the United States. The Armed Forces of the United States and United States contractors shall ensure that the specifications and

instructions for contract bids shall permit such free and full competition as is consistent with the procurement of the goods and services needed by the Government of the United States.

(c) Shall, in consultation with the Government of the Federated States of Micronesia, establish procedures for local sourcing of products, works, and services where there are qualified local contractors.

2. Prior to the employment of third country personnel or the utilization of third country contractors, the Government of the United States shall notify the Government of the Federated States of Micronesia of that intent, in writing, and shall consult, if requested within thirty days of such notification, with the Government of the Federated States of Micronesia as to the availability of qualified local hire personnel or qualified local contractors. If a response is not received by the United States within thirty days after notification, the United States or its contractor may proceed with the hiring action.

3. The Government of the United States may hire third country contractor personnel without notification under paragraph 2, for periods of temporary duty of ninety days or less within a twelve-month period if qualified local hire personnel are not available.

4. The laws and regulations of the Federated States of Micronesia shall not apply to the terms and conditions of employment of the United States personnel or third country contractor personnel by the Armed Forces of the United States of United States contractors. The Government of the Federated States of Micronesia shall not require United States personnel, third country contractor personnel or United States contractors to obtain any license, permit or certificate, or to undergo any examination, in connection with the performance of their duties on behalf of the Armed Forces of the United States. For purposes of this paragraph only, United States Personnel shall not include relatives (other than spouses and children) or wards of members of the force, members of the civilian component, or contractor personnel, or spouses of such relatives or wards.

5. In the employment of local hire personnel by the Armed Forces of the United States and United States contractors, the Government of the United States shall adopt measures consistent with the standards of local labor laws to the extent they are compatible with the laws, regulations and operational requirements of the United States.

## Article V

### *Taxes and Customs*

1. The following are exempt from any tax, fee or similar charge imposed by the Government of the Federated States of Micronesia:

(a) The services, activities, facilities, equipment, material, income or any other property or transactions of the Armed Forces of the United States or United States contractors; and

(b) The ownership, possession, use, or transfer inter se by United States personnel, by death or otherwise, of real or personal property, tangible or intangible, wherever located.

2. Third country contractor personnel shall be subject to income tax generally applicable in the Federated States of Micronesia.

3. All materials, equipment and other property imported or exported by or on behalf of the Armed Forces of the United States, or United States contractors for the use or benefit of the Armed Forces of the United States, United States contractors, United States personnel, or third country contractor personnel shall be permitted entry into and exit from the Federated States of Micronesia free from customs duties, license requirements, and other import and export taxes, fees or charges.

4. United States personnel may import into and export from the Federated States of Micronesia furniture, household goods and personal effects for their personal or family use, including all forms of privately owned land, sea and air transportation, free from customs duties, license requirements, and other import and export taxes, fees or charges.

5. The following are exempt from customs examination by the Government of the Federated States of Micronesia:

(a) Members of the force, members of the civilian component and the dependents of both when entering or leaving the Federated States of Micronesia under official orders except when under leave orders;

(b) Documents under official seal, and mail in the United States military postal channels; and

(c) Cargo consigned to or shipped by the Armed Forces of the United States or United States contractors.

6. The Armed Forces of the United States, in cooperation with the Government of the Federated States of Micronesia, shall take appropriate measures, including inspection, to prevent the importation of contraband and to prevent abuse of privileges granted under this Article.

7. Should property imported into the Federated States of Micronesia under the exemptions provided by this Article subsequently be transferred to a person not entitled to such exemptions, such person shall be liable for import duties and other charges according to the laws and regulations of the Government of the Federated States of Micronesia.

8. Animals and plants, including fruits and vegetables, imported by United States personnel, subject to the provisions of this Article, and by third country contractor personnel shall be subject to the laws and regulations of the Federated States of Micronesia governing such inspection of and restriction on such importations.

## Article VI *Service Facilities*

The Armed Forces of the United States may authorize the establishment, use, operation and maintenance within defense sites in the Federated States of Micronesia of service, educational and recreational facilities. Such facilities and their related activities, including the importation, purchase, sale or dispensing of merchandise and services by them shall be exempt from all taxes, customs duties, fees, charges and license requirements of the Government of the Federated States of Micronesia.

Article VII  
*Military Post Offices*

The Armed Forces of the United States may establish, operate and maintain military post offices within defense sites for their use and the use of United States contractors and United States personnel. A mail facility operated by a United States contractor on behalf of the Armed Forces of the United States shall be considered a military post office within the meaning of this Article.

Article VIII  
*Bearing of Arms*

1. Members of the force may possess and use arms when necessary to perform their official duties and, in specially designated areas in defense sites, to maintain skills to perform their official duties, in accordance with the laws and regulations governing the Armed Forces of the United States.

2. Contractor personnel may possess or use arms when acting in support of the military mission of the Government of the United States in an official capacity as law enforcement personnel or security officers designated as such by the Government of the United States in accordance with its laws and regulations.

3. Any other possession or use of arms shall be only as agreed between the Government of the United States and the Government of the Federated States of Micronesia.

Article IX  
*Operation and Licensing of Vehicles*

1. The Government of the Federated States of Micronesia shall accept as valid, without a test or fee, the operator's permit or license or military driving permit issued to United States personnel or third country contractor personnel by the Government of the United States, the Governments of the States of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

2. Official vehicles of the Armed Forces of the United States, vehicles owned or operated by the United States contractors, and privately owned vehicles of United States personnel shall be identified by individual markings or license plates issued by the Government of the United States, the Governments of the States of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

(a) Official vehicles shall not be subject to the registration or safety inspection laws of the Government of the Federated States of Micronesia.

(b) The Armed Forces of the United States may register vehicles of United States contractors and United States personnel that are not official vehicles, and may inspect such vehicles applying safety standards of general applicability in the Federated States of Micronesia. Vehicles so registered and inspected shall be exempt from the

registration and safety inspection laws of the Government of the Federated States of Micronesia.

3. For purposes of this Article the term “vehicles” includes all forms of land, sea and air transportation.

#### Article X *Relinquishment of Defense Sites*

1. If any installations or improvements which were constructed at the expense of the Government of the United States are to be left behind after relinquishment of a defense site or portion thereof, whether at the termination of any agreement provided for in Section 321 or 323 of the Compact, as amended, or at any other date, the Government of the Federated States of Micronesia and the Government of the United States shall consult to determine the residual value, including scrap value, if any, of any such installations or improvements to the Government of the Federated States of Micronesia .

2. The Government of the United States shall take all measures practicable to ensure that every condition substantially or materially hazardous to human life, health and safety resulting from use of defense sites is removed or otherwise made safe. The Governments concerned shall consult as to what constitutes a hazard and how hazards shall be removed or otherwise made safe.

3. The Government of the United States shall have no obligation, upon relinquishment, to restore defense sites to their former condition; however, upon notification of intent to relinquish a defense site or portion thereof, or sooner if mutually agreed, the Government of the United States and the Government of the Federated States of Micronesia shall enter into negotiations with a view to reaching an equitable arrangement for return of lands that takes due account of United States investment, the prospective use to which such lands will be used and the unique importance of land under local custom and law.

4. The Government of the Federated States of Micronesia and the Government of the United States shall commence consultations no later than seven years prior to the termination of the Military Use and Operating Rights Agreement to plan, schedule and implement the provisions of this Article. The Government of the United States shall either transfer installations, facilities, or improvements to the Government of the Federated States of Micronesia as soon as they are no longer required by the United States, or it will maintain such installations, facilities or improvements in operating condition throughout the period of consultations.

#### Article XI *Equipment*

The Government of the United States shall retain title to equipment, materials and other moveable property brought into or acquired in the Federated States of Micronesia and may remove such property at any time. In the event the Government of the United States wishes to dispose of such equipment, materials or other moveable property, the Government of the Federated States of Micronesia shall have a right of first refusal to purchase such items, at an agreed upon price, after the Government of the United States has fulfilled its statutory and regulatory responsibilities including first offering such

equipment to other agencies of the Government of the United States. Upon notification of intent to relinquish a defense site, or portion thereof, the Government of the United States will enter into negotiations with the Government of the Federated States of Micronesia regarding the disposition of all fixed and movable real property located on the defense site or sites.

Article XII  
*Criminal Jurisdiction*

1. Subject to the provisions of this Article:

(a) United States personnel are subject to the criminal jurisdiction of the Government of the Federated States of Micronesia for offenses committed by such personnel in the Federated States of Micronesia.

(b) The Government of the United States has the right to exercise within the Federated States of Micronesia criminal and disciplinary jurisdiction over United States personnel for offenses punishable under the laws of the United States. In lieu of criminal or disciplinary proceedings in the Federated States of Micronesia, the Government of the United States may elect to remove United States personnel for such proceedings elsewhere.

(c) For purposes of asserting jurisdiction under this Article, the determination of a Signatory Government as to whether an offense is punishable under its laws shall be conclusive.

2. The Government of the Federated States of Micronesia has the right to exercise exclusive jurisdiction over United States personnel with respect to offenses committed in the Federated States of Micronesia which are punishable under local law, but not under the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States.

3. The Government of the United States has the right to exercise exclusive jurisdiction over United States personnel with respect to offenses committed in the Federated States of Micronesia which are punishable under the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States, but not under local law.

4. The Government of the Federated States of Micronesia and the Government of the United States have concurrent jurisdiction over United States personnel with respect to offenses committed in the Federated States of Micronesia which are punishable under both local laws and the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States. Whenever it is determined by the Government of the Federated States of Micronesia that an act or omission is a punishable offense under the laws of the Federated States of Micronesia, and it is determined by the Government of the United States that the same act or omission is a punishable offense under the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States, the following rules shall apply:

(a) The Government of the Federated States of Micronesia has the primary right to exercise jurisdiction over United States personnel in all other cases of concurrent jurisdiction, except as provided in paragraph 4(b) of this article.

(b) The Government of the United States has the primary right to exercise jurisdiction over United States personnel in the Federated States of Micronesia for:

(1) Offenses committed within defense sites, including non-exclusive-use areas during periods of use by the Government of the United States under applicable military use and operating rights agreements concluded under Sections 321 and 323 of the Compact, as amended;

(2) Offenses against the property or security of the United States, or offenses against the person or property of United States personnel;

(3) Offenses arising out of the performance of official duty;

(4) Offenses committed by United States personnel who are attached to or embarked in aircraft or vessels transiting the Federated States of Micronesia and which are operated by, for, or under the control of the Armed Forces of the United States or United States contractors; and

(5) Any other offense punishable by deprivation of liberty or by a more severe penalty. However, the Government of the Federated States of Micronesia has the primary right of jurisdiction to try any offense that is not a felony under local law and for which the sole penalty which shall be adjudged or imposed, if any, is a fine. The Government of the Federated States of Micronesia shall have the primary right to exercise jurisdiction over any such offense which is not a felony under local law and is subject to a maximum punishment no greater than deprivation of liberty for less than six months.

(c) The Government of the Federated States of Micronesia having the primary right to exercise jurisdiction waives that right, unless it notifies the Government of the United States of its intention to exercise such right as soon as practicably, but within 30 calendar days after notification of the offense by either government.

(d) The Government having the primary right to exercise jurisdiction shall give sympathetic consideration to a request from the other Government concerned for a waiver of such primary right in cases the requesting Government considers to be of particular importance.

(e) The provisions of this article shall be reviewed by the Signatory Governments concerned at anytime on request by one of them in order to determine whether any modification of its provisions may be appropriate in light of circumstances then prevailing.

5. Except for laws officially transmitted in English to the Government of the United States by the Government of the Federated States of Micronesia, ignorance of the laws of the Federated States of Micronesia shall constitute a defense.

6. The Government of the United States and the Government of the Federated States of Micronesia shall assist each other in the arrest or detention of United States personnel in the Federated States of Micronesia.

(a) The Government of the Federated States of Micronesia shall promptly notify the Government of the United States of the arrest or detention of any United States personnel.

(b) Members of the force accused or suspected of the commission of any offense in the Federated States of Micronesia shall remain in or be transferred to the custody of the Government of the United States unless the Government of the United States declines such custody. The Government of the United States shall make available for purposes of investigation or trial members of the force in its custody over whom the Government of the Federated States of Micronesia has the right to exercise jurisdiction pursuant to this Agreement. Upon completion of all judicial proceedings, including appellate proceedings, such personnel shall be transferred to the Government of the Federated States of Micronesia if a sentence providing for deprivation of liberty has been finally adjudged.

(c) The provisions of Title Four of the Agreement on Mutual Assistance in Law Enforcement Matters shall be applicable to United States personnel who are citizens or nationals of the United States.

(d) The Government of the United States may request custody of a prisoner who is a member of the force, deprived of liberty by order of a Court of the Federated States of Micronesia. The Government of the Federated States of Micronesia shall transfer such prisoner to the custody of the Government of the United States which shall provide for the carrying out of the terms of such deprivation of liberty.

7. The Government of the United States and the Government of the Federated States of Micronesia shall assist each other in the carrying out of all necessary investigations into offenses within the scope of this Article, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. The transfer of such objects may be made subject to their return within the time specified by the Government delivering them.

8. Where a person has been tried in accordance with the provisions of this Article, either by the Government of the United States or the Government of the Federated States of Micronesia, and has been acquitted or convicted, or has been pardoned, he may not be tried again within the same territory for the same offense by either Government. This paragraph is without prejudice to the authority of the Armed Forces of the United States to try a member of the force for any violation of rules of discipline.

9. United States personnel prosecuted under the jurisdiction of the Government of the Federated States of Micronesia shall be entitled to all guarantees and rights provided by the constitution and laws of the prosecuting Government for its own citizens and to the following guarantees and rights to the extent that they are not provided by that constitution and those laws:

- (a) To a prompt and speedy trial;
- (b) To be tried only in a court presided over by a qualified judge trained in the law;
- (c) To be informed, in advance of trial, of the specific charge or charges made against such person;

(d) To be confronted with and permitted to cross-examine the witnesses against such person;

(e) To have compulsory process for obtaining witnesses in favor, of such person, if the witnesses are within the jurisdiction of the court;

(f) To have legal representation of such person's own choice for such person's defense throughout all investigative and judicial phases of the entire proceedings or, at such person's election, to have legal representation appointed by the court at no cost to such person under the same terms and conditions applicable to citizens of the Federated States of Micronesia;

(g) To have the services of a competent interpreter, if such person considers it necessary;

(h) To communicate with a representative of the Government of the United States and to have such a representative present at trial and at all stages of the proceedings, including pretrial hearings and examinations and appeals;

(i) Not to be charged with a criminal offense on account of any act or omission which did not constitute a criminal offense under the statutory law of the prosecuting Government at the time it was committed or be subjected to punishment more severe or a procedure less favorable than the one applicable at the time the offense was committed;

(j) To be present at trial which shall be public;

(k) To have the burden of proof placed upon the prosecution;

(l) To be protected from the use of a confession or other evidence obtained by unlawful or improper means;

(m) Not to be compelled to testify against or otherwise incriminate himself or herself;

(n) Not to be required to stand trial while physically or mentally unfit to stand trial and participate in his or her defense;

(o) Not to be tried or punished more than once for the same offense, nor to be subject to greater punishment after appeal than was adjudged initially by the court of first instance;

(p) To have the right to appeal a conviction or sentence;

(q) Not to be subject to an appeal by the prosecution from an acquittal, or a finding of not guilty;

(r) To have credited to any sentence of confinement any related period of pretrial confinement in a confinement facility of the Government of the United States or the Government of the Federated States of Micronesia; and

(s) Not to be subject to the application of martial law or trial by military courts or special tribunals.

10. United States personnel who have been tried in courts of the Government of the Federated States of Micronesia, and who have been convicted and are serving sentences

in confinement facilities of such Government or United States personnel in pretrial custody of such Government, shall be entitled to receive visits not less than monthly from members of their families and from representatives of the Government of the United States. Health and comfort items including clothing, medicine and food may be delivered to and used by such United States personnel in confinement or pretrial custody.

11. Facilities of the Government of the Federated States of Micronesia used for confinement or detention of United States personnel shall meet standards agreed upon by the Government of the United States and the Government of the Federated States of Micronesia.

12. United States personnel convicted by courts of the Government of the Federated States of Micronesia shall not be subject to the death penalty, nor to any form of cruel or unusual punishment.

13. This Article is without prejudice to the authority of the Government of the United States to exercise administrative authority over United States personnel.

14. The Government of the United States and the Government of the Federated States of Micronesia confirm that United States personnel may not be surrendered to, or otherwise transferred to, the custody of an international tribunal or any other entity or state without the express written consent of the Government of the United States.

### Article XIII

#### *Additional Criminal Jurisdiction*

In addition to the rights set forth in Article XII, the Government of the United States shall have the primary right to exercise jurisdiction over all United States citizens or nationals of the United States who are not United States personnel for offenses punishable under the laws of the United States committed within defense sites while in use by the Government of the United States in the Federated States of Micronesia. The Government of the Federated States of Micronesia shall assist the Government of the United States in the arrest of any such person. The custody of any such person shall remain in or be transferred to the Government of the United States unless such custody is declined. The waiver provisions of Article XII, paragraph 4, shall apply.

### Article XIV

#### *Respect for Local Law*

The Government of the United States shall adopt and enforce measures consistent with the Compact, as amended and this Agreement as may be necessary to ensure that United States personnel, United States contractors and third country contractor personnel respect the laws of the Federated States of Micronesia, refrain from any activity inconsistent with this Agreement, and refrain from any political activity concerning the Federated States of Micronesia.

### Article XV

#### *Claims*

This Article provides the exclusive mechanism for resolution of any claim arising from the conduct of the Armed Forces of the United States in the Federated States of

Micronesia within the scope of this Agreement. This Article includes claims by the Government of the Federated States of Micronesia or by third parties against the Armed Forces of the United States. For purposes of this Article, the term “Armed Forces of the United States” shall include members of the force, members of the civilian component, and, when acting in the performance of official duty, local-hire employees of the Armed Forces. Such claims shall be resolved as follows:

1. Claims sounding in contract against the Armed Forces of the United States shall be resolved in accordance with the disputes clause of the contract, if any, and the laws of the United States relating to the resolution of such disputes.

2. Claims, other than claims sounding in contract to which paragraph 1 applies, shall be referred to the Government of the United States. For these claims, the Government of the United States, in accordance with U.S. law regarding foreign claims and public vessels, will pay just and reasonable compensation in settlement of meritorious claims for damage, loss, personal injury or death, caused by acts or omissions of the Armed Forces of the United States, or otherwise incident to non-combat activities of the Armed Forces of the United States. The Government of the Federated States of Micronesia, as appropriate, will provide the Government of the United States with a report on the alleged damages under its laws.

3. A claim against the Armed Forces of the United States not resolved to the satisfaction of the claimant under paragraph 2 above, and which is espoused on behalf of one of its citizens by the Government of the Federated States of Micronesia, shall be referred to the Joint Committee established pursuant to section 351 of the Compact, as amended.

4. Subject to the provisions of Article XII of this Agreement, and absent consent of the Government of the United States, the Armed Forces of the United States shall not be subject to any proceedings in the courts of the Federated States of Micronesia, nor shall the United States be subject to such proceedings arising from the conduct of the Armed Forces.

5. The Government of the United States shall facilitate appropriate arrangements between the government of any third country which has members or units of its armed forces in the Federated States of Micronesia pursuant to Section 315 of the Compact, as amended, and the Government of the Federated States of Micronesia with respect to appropriate settlement of claims arising from the activities of such members or units.

6. Any judgment presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor court, pursuant to Section 174 of the Compact of Free Association, as amended, shall be deemed manifestly erroneous as to law if the claim upon which such judgment is based would have been barred by the statute of limitations if such claim had been brought in a court of the United States.

7. Pursuant to Section 174 of the Compact, as amended, all claims within the scope of this Article which otherwise would have been within the scope of Section 174 of the Compact, as amended shall be settled exclusively in accordance with the provisions of this Article.

## Article XVI

### *Currency*

The Armed Forces of the United States, United States contractors and United States personnel may import into, possess and use within, and export from the Federated States of Micronesia, United States currency. Such importation, possession, use and exportation of United States currency shall be exempt from any form of regulation, restriction, or control by the Government of the Federated States of Micronesia. Should the Government of the Federated States of Micronesia act pursuant to Section 251 of the Compact, as amended to institute a currency other than United States currency, the Government of the United States and the Government of the Federated States of Micronesia shall consult regarding the applicability of foreign exchange laws and regulations in the jurisdiction of the Government of the Federated States of Micronesia.

## Article XVII

### *Medical Services*

To the extent that appropriate services can be made available consistent with available resources and the laws and regulations of the United States, the Government of the United States shall provide, at the request of the Government of the Federated States of Micronesia, medical care to citizens of the Federated States of Micronesia in United States military medical facilities or by United States military medical personnel on a reimbursable basis under terms and conditions agreed upon between the Government of the United States and the Government of the Federated States of Micronesia.

## Article XVIII

### *Telecommunications*

The Government of the United States may use local telecommunication systems and shall do so to the extent feasible. The Government of the United States in determining its uses of such systems shall take into consideration the cost and security of such systems.

(a) To the extent that the Government of the Federated States of Micronesia establishes complete and fully effective commercial international telecommunications systems compatible with existing United States Government installations, and the Government of the United States determines such use is feasible based on the criteria above, the Government of the United States and the Government of the Federated States of Micronesia shall enter into negotiations for a use arrangement which includes normal billing procedures. Following entering into such a use agreement, the Government of the United States shall withdraw or modify any authorizations for use of Defense communications systems for non-official calls by United States personnel.

(b) The Government of the United States shall utilize, to the extent practicable, local telecommunication systems for non-official purposes.

## Article XIX

### *Effective Date, Amendment and Duration*

1. This Agreement shall come into effect simultaneously with the Compact, as amended.

2. This Agreement may be amended at any time by mutual consent of the Government of the Federated States of Micronesia and the Government of the United States.

3. The duration of this Agreement as between the Government of the United States and the Government of the Federated States of Micronesia is for the period of effectiveness of either Title Three of the Compact, as amended, or of the appropriate separate agreements entered into pursuant to Sections 321 and 323 of the Compact, as amended, whichever is the longer. Thereafter, this Agreement shall remain in force until terminated by a Signatory Government, in the following manner:

(a) Termination of this Agreement by any Signatory Government shall be effected by a written notification to either the Government of the United States or to the Government of the Federated States of Micronesia, as appropriate.

(b) Termination shall take effect one year after the recipient Government has been notified.

4. This Agreement may be accepted, by signature or otherwise, by the Government of the United States and the Government of the Federated States of Micronesia. Each Government accepting this Agreement shall possess an original English language version.

DONE at \_\_\_\_\_, in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 2003, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA: FOR THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA:

#### STATUS OF FORCES AGREEMENT

##### AGREED MINUTES

Article VI, Service Facilities: The terms “service, educational and recreational facilities” include schools, commissary stores, retail exchanges and related concessions, credit unions, banking facilities, radio and television stations, recreational facilities, and social and athletic clubs.

Article VII, Military Post Offices: Such military post offices shall be established, operated and maintained exclusively pursuant to the laws and regulations governing the Armed Forces of the United States.

Article VIII, Bearing of Arms: It is the intention of the Signatory Governments that local military commanders and designated representatives of the Government concerned shall enter into an exchange of letters governing the control of privately owned arms. Such an exchange of letters may address the following:

-- registration by military authorities of all privately owned arms, and the provision of registration lists, including certificates of transfer or removal of such arms, to the Government concerned;

-- designation of target practice areas within defense sites;

-- limitations on the carrying of privately owned arms outside defense sites; and

-- other provisions for the control by military authorities of privately owned arms.

Article XV, Claims: The Signatory Governments do not intend that paragraph 7 of Article XV preclude the operation of Section 174 of the Compact, as amended, provided that paragraph 6 of Article XV governs the operation of Section 174 (d) of the Compact, as amended. The import of paragraph 7 of Article XV, read with paragraph 1 of Article XV, is as follows:

-- All claims within the scope of paragraph 1 of Article XV which arise after the effective date of this Agreement shall be processed and settled exclusively pursuant to the Foreign Claims Act, 10 U.S.C. 2734, and any regulations promulgated in implementation thereof.

-- A claim within the scope of paragraph 1 of Article XV which arises during the two year period immediately prior to the effective date of this Agreement shall also be processed and settled pursuant to the Foreign Claims Act, 10 U.S.C. 2734, unless a court action based on such claim has been initiated prior to the effective date of this Agreement and the party bringing such court action continues the court action and proceeds in accordance with section 174(d) of the Compact, as amended. The party bringing such court action may, prior to entry of a final judgment by the court in the action, terminate the action before the court and bring the claim under paragraph 1 of Article XV, in which instance paragraph 6 of Article XV shall govern.

-- Claims arising more than two years prior to the effective date of this Agreement may be brought only in accordance with Section 174(d) of the Compact, as amended.

-- A claim processed, settled and paid under paragraph 1 of Article XV may not subsequently be brought under Section 174(d) of the Compact, as amended. Similarly, a claim which has proceeded to judgment in a court action and is subject to certification under Section 174(d) of the Compact, as amended, may not be processed and settled under paragraph 1 of Article XV.

Article XV is without prejudice to any claim addressed in Section 353 of the Compact, as amended, whether such claim arises prior to subsequent to the effective date of this Agreement.

Article XVI, Currency: Subject to Article VI, this Article is not intended to authorize the establishment or operation of a private financial institution in the Federated States of Micronesia except in accordance with local law.

**AGREEMENT ON EXTRADITION, MUTUAL ASSISTANCE IN LAW  
ENFORCEMENT MATTERS AND PENAL SANCTIONS CONCLUDED  
PURSUANT TO SECTION 175 OF THE AMENDED COMPACT OF FREE  
ASSOCIATION**

This Agreement is concluded by the Government of the Federated States of Micronesia and the Government of the United States as an international agreement and sets forth the obligations, duties, and procedures between the Governments of the Federated States of Micronesia and the United States regarding mutual assistance and cooperation in law enforcement matters including the pursuit, capture, imprisonment and extradition of fugitives from justice and transfer of prisoners pursuant to section 175 of the amended Compact of Free Association. With respect to the Federated States of Micronesia and the United States, this Agreement supercedes the Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding Mutual Assistance in Law Enforcement Matters signed April 25, 1986 and the Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association signed May 30, 1982 and October 1, 1982.

**TITLE ONE  
DEFINITIONS**

*Article I  
Definitions*

1. The definition of terms set forth in Article II of Title Four of the amended Compact is incorporated in this Agreement.

2. For the purposes of Titles Two, Three and Four of this Agreement only, the following terms shall have the following meanings:

(a) "Signatory Governments" means the Government of the United States and the Government of the Federated States of Micronesia. As used here, the Government of the United States shall include the Governments of the states of the United States of America, the United States' territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

(b) "Jurisdiction" is used in a geographic sense. The term "jurisdiction of the requesting/requested Government" when applied to the Government of the Federated States of Micronesia means "Federated States of Micronesia" as defined in section 461(c) of the amended Compact.

(c) "Judge" as used in this Agreement shall include any judicial officer of a "Signatory Government" who has the authority to issue a warrant of arrest or its equivalent.

(d) "Investigation" means an investigation being conducted by a grand jury or by a law enforcement or administrative agency of a "Signatory Government".

(e) “Proceeding” means a proceeding before an administrative or judicial tribunal of a “Signatory Government”.

## TITLE TWO EXTRADITION

### Article I *Obligation to Extradite*

The Government of the United States shall extradite to the Federated States of Micronesia, and the Government of the Federated States of Micronesia shall extradite to the United States, subject to the provisions and conditions described in this Agreement, any person found in their respective jurisdictions against whom the requesting Government is proceeding for an offense or who is wanted by that Government for the enforcement of a sentence.

### Article II *Extraditable Offenses*

1. (a) An offense shall be an extraditable offense if it is punishable under the laws in both signatory countries by deprivation of liberty for a period of more than one year or by a more severe penalty.

(b) For purposes of extradition, it shall not matter whether the laws of the requesting and requested Signatory Governments place the offense within the same category of offenses or describe an offense by the same terminology.

2. Extradition shall be granted in respect of an extraditable offense for the enforcement of a penalty or prison sentence if the duration of the penalty or prison sentence still to be served amounts to at least six months.

3. Subject to the conditions set out in paragraph 1 of this Article extradition shall also be granted:

(a) For attempt or conspiracy to commit, or participation as a principal, accomplice or accessory in, any extraditable offense; and

(b) For any otherwise extraditable offense, whether or not the offense is one for which the laws of the United States require proof of interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such considerations being solely for the purpose of establishing jurisdiction in a federal court of the United States.

4. When a request for extradition is granted in respect of an extraditable offense, it may also be granted for an offense which could not otherwise fulfill the requirements of paragraphs 1 or 2 of this Article as related to the period of deprivation of liberty for which the offense is punishable or as related to the duration of the sentence to be served in the jurisdiction of the requesting Government.

5. Extradition shall be granted in respect of an extraditable offense committed outside the territory of the requesting Signatory Government if:

(a) The courts of the requested Government would be competent to prosecute in similar circumstances; or

(b) The person sought is a citizen or national of the requesting Government.

### Article III

#### *Exceptions to Extradition*

1. Extradition shall not be granted:

(a) When the person whose surrender is sought is being prosecuted or has been convicted, discharged or acquitted by the requested Government for the offense for which extradition is requested; or

(b) When the prosecution of the offense is barred by lapse of time according to the laws of the requesting Government.

2. Subject to paragraph 3 of this Article, extradition may be refused when the Executive Authority of the requested Government, in its sole discretion, determines:

(a) That the offense in relation to which extradition is requested is of a political character; or

(b) That the request for extradition has been made for the purpose of trying or punishing the person whose extradition is sought for an offense of a political character.

3. Extradition shall not be refused on the basis of paragraph 2 of this Article where extradition is requested involves a murder or other violent crimes against a person, including attempts, against the life or physical integrity of a Head of State or Head of Government or of a member of the Head of State's or Head of Government's family or any other internationally protected person, including resident representatives, or where the offense for which extradition is sought is one which the requesting and the requested Government has the obligation to extradite the person sought or to prosecute by reason of a multilateral treaty or other international agreement or where the offense for which extradition is sought involves placing or using an explosive, incendiary or destructive device capable of endangering life, or causing substantial bodily harm, or of causing substantial property damage, or a conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.

### Article IV

#### *Capital Punishment*

When the offense for which extradition is requested is punishable by death under the laws of the requesting Government and the laws of the requested Government do not permit such punishment for that offense, extradition may be refused unless the requesting Government provides such assurances as the Executive Authority of the requested Government considers sufficient that the death penalty will not be imposed, or, if imposed, will not be executed.

Article V  
*Deferred or Temporary Surrender*

After a decision on a request for extradition has been rendered in the case of a person who is being proceeded against or is serving a sentence in the jurisdiction of the United States or the Federated States of Micronesia for an offense other than that for which extradition has been requested, the requested Government may defer the surrender of the person sought until the conclusion of the proceedings against that person, or the full execution of any punishment that may be, or may have been, imposed; or temporarily surrender the person sought to the requesting Government solely for the purpose of prosecution. The person so surrendered shall remain in custody during the period of surrender and shall be returned at the conclusion of the proceedings against that person in accordance with conditions to be determined by agreement of the Executive Authorities of the Signatory Governments.

Article VI  
*Extradition Procedures and Required Documents*

1. The request for extradition shall be made to the requested national Government by the requesting national Government on behalf of itself or one or more political subdivisions. All requests for extradition shall be submitted through the diplomatic channel. Such requests, supporting documentation and notices shall be in the English language.
2. The request shall be accompanied by a description of the person sought, a statement of the facts of the case, the text of the applicable provisions of the laws of the requesting Government describing the offense and punishment, and a statement of its applicable laws relating to proceedings barred by lapse of time.
3. When the request relates to a person who has not yet been convicted, it shall also be accompanied by a copy of a warrant of arrest issued by a judge or other judicial officer of the requesting Government and by such evidence as would provide probable cause, according to the laws of the requested Government, to believe that the person sought has committed the offense for which extradition is requested.
4. When the request relates to a convicted person, it shall be supported by a copy of the judgment of conviction and evidence establishing that the person sought is the person to whom the conviction refers. If no sentence has been imposed, the request for extradition shall be accompanied by a statement to that effect. If a sentence has been imposed, the request for extradition shall be accompanied by a statement to that effect, by a copy of the sentence or committal order and by a statement showing the portion of the sentence remaining to be served.
5. Documentary evidence from the requesting Government in support of a request for extradition shall be deemed duly authenticated and shall be admissible in evidence in the extradition hearing when it bears a seal of the requesting Government, the authenticity of which is attested to by the principal diplomatic or principal consular officer of the requested Government assigned or accredited to the requesting Government.
6. The requested Government shall promptly communicate to the requesting Government the decision on the request for extradition.

Article VII  
*Provisional Arrest or Detention*

1. In case of urgency, a requesting Government may apply to the requested Government for the provisional arrest or detention of the person sought pending the presentation of the formal request for extradition. The request may be transmitted to the requested Government through the diplomatic channel.

2. The application shall contain: a description of the person sought, including, if available, the person's nationality; a brief statement of the facts of the case; the time and location of the offense (to the extent possible); a description of the laws violated; a statement of the existence of a warrant of arrest or detention or a judgment of conviction against that person; and a statement of intention to request the extradition of the person sought.

3. The requesting Government shall be notified without delay of the disposition of its request for provisional arrest and the reasons for any inability to proceed with the request.

4. A person who is provisionally arrested or detained may be discharged from custody upon the expiration of sixty (60) days from the date of arrest or detention pursuant to such application if the request for extradition referred to in Article VI of Title Two of this Agreement has not been received by the requested Government. Such termination and discharge shall not prevent the institution of further proceedings for the extradition of that person.

Article VIII  
*Rule of Specialty*

1. A person extradited under this Agreement shall not be arrested, detained, tried or punished in the jurisdiction of the requesting Government for an offense other than that for which extradition has been granted nor be extradited by that Government to a third country unless:

(a) That person has left the jurisdiction of the requesting Government after extradition and has voluntarily returned to it;

(b) That person has not left the jurisdiction of the requesting Government within thirty days after being free to do so; or

(c) Upon such conditions as may be prescribed by the requested Government, that Government:

(1) Has consented to the arrest, detention, trial or punishment of that person for an offense other than that for which extradition was granted; or

(2) Has consented to extradition to a third country.

2. Paragraph 1 of this Article shall not apply to offenses committed after extradition.

3. Instead of the offense for which a person was extradited, after notice to the requested Government, the person may be tried or punished for a different offense, including a lesser included offense, provided that it is:

(a) Based on the same facts as were set out in the request for extradition and the supporting evidence;

(b) Punishable by no greater penalty than the offense for which the person was extradited; and

(c) An offense referred to in paragraph 1 of Article II of Title Two.

#### Article IX

##### *Multiple Extradition Requests*

When requests for extradition of the same person are received from the requesting Government and one or more other Governments, the requested Government shall have the discretion to determine to which Government the person is to be extradited.

#### Article X

##### *Surrender*

When a request for extradition has been granted, surrender of the person sought shall take place within such time as may be prescribed by the laws of the requested Government.

#### Article XI

##### *Waiver*

1. A person whose extradition is sought may at any time voluntarily waive extradition proceedings. The waiver shall be in writing, endorsed by a judge, and have the effect of a final decision of the requested Government to surrender that person.

2. A certified copy of the waiver shall constitute sufficient authority to maintain the person sought in custody within the jurisdiction of the requested Government and to deliver that person into the custody of the requesting Government.

#### Article XII

##### *Surrender of Property*

1. To the extent permitted under the laws of the requested Government and subject to the rights of third parties, all property relating to the offense shall at the request of the requesting Government be seized and surrendered upon the granting of the extradition. This property shall be handed over even if the extradition cannot be effected due to the death, escape or disappearance of the person sought.

2. The requested Government may make the surrender of the property conditional upon a satisfactory assurance from the requesting Government that the property shall be returned to the requested Government as soon as possible.

#### Article XIII

##### *Transit*

1. Upon prior notice, the Government of the United States shall have the right to transport through the jurisdiction of the Federated States of Micronesia persons surrendered by the Government of the United States to a third country pursuant to an

agreement between the Government of the United States and that third country or a person surrendered by a third country to the United States.

2. Upon prior notice, and if otherwise consistent with U.S. law, the Government of the Federated States of Micronesia shall have the right to transport through the jurisdiction of the United States persons surrendered by the Government of the Federated States of Micronesia to a third country or a person surrendered by a third country to the Federated States of Micronesia pursuant to an agreement between the Government of the Federated States of Micronesia and that third country.

3. When such transport is by air and no stop is scheduled in the jurisdiction of the United States or the Federated States of Micronesia, but is required by extenuating circumstances, no prior notice shall be required.

#### Article XIV *Expenses*

1. The requesting Government shall bear the cost of transportation of the person sought.

2. The appropriate legal officers of the requested Government shall act as counsel for the requesting Government except as otherwise agreed.

#### Article XV *Extradition of Citizens or Nationals*

Neither the Government of the United States nor the Federated States of Micronesia shall refuse extradition based on the nationality of the person sought.

#### Article XVI *Relationship with Other Agreements*

Offenses committed by United States personnel as defined in the Status of Forces Agreement shall be subject to the provisions of the Status of Forces Agreement only when such personnel are in the Federated States of Micronesia, otherwise the provisions of this Agreement shall govern.

### TITLE THREE JUDICIAL ASSISTANCE

#### Article I *Judicial Assistance*

1. The United States District Court of the district in which a person resides or is found may order that person to give testimony or a statement or to produce a document or other thing for use in a judicial, administrative or criminal investigation or proceeding in the Federated States of Micronesia.

2. A national court in the Federated States of Micronesia may order a person residing or found within its jurisdiction to give testimony or a statement or to produce a document

or other thing for use in a judicial, administrative, or criminal investigation or proceeding in the United States.

3. The order may be made either pursuant to a letter rogatory issued or a request made by a court of the other Signatory Government, or pursuant to a request made by a department or ministry of justice of the other Signatory Government.

4. The order may direct that the testimony or statement be given or the documents or other things be produced before a person appointed by the court. By virtue of this appointment, the person appointed has power to administer any necessary oath and take the testimony or statement.

5. When requested, the prescribed procedure shall be designed to meet the requirements for admission in evidence of the testimony or statement to be given, or the document or other thing to be produced, in the place where it is sought to be used. In such cases and as otherwise necessary or appropriate, the order shall prescribe the procedure for taking the testimony or statement or producing the document or other thing.

6. A person may not be compelled to give testimony or a statement or to produce a document or other thing in violation of any legal or constitutional right or privilege applicable in the jurisdiction in which the testimony or statement is given, or a document or other thing is produced.

7. This Agreement does not preclude a person from voluntarily giving testimony or a statement, or producing a document or other thing, for use in an investigation or proceeding in the United States or the Federated States of Micronesia.

8. Letters rogatory, requests and applications for assistance pursuant to this Title shall be in the English language.

## TITLE FOUR EXECUTION OF PENAL SANCTIONS

### Article I *Scope*

1. Sentences imposed by courts of the Federated States of Micronesia on citizens or nationals of the United States may be served in penal institutions of the United States or under the supervision of its authorities in accordance with the provisions of this Agreement.

2. Sentences imposed by courts of the United States, or a state thereof, on citizens or nationals of the Federated States of Micronesia may be served in penal institutions of the Federated States of Micronesia, or under the supervision of its authorities in accordance with the provisions of this Agreement.

### Article II *Definitions*

For the purposes of this Title only:

1. "Transferring Government" means the Signatory Government from which the offender is to be transferred.
2. "Receiving Government" means the Signatory Government to which the offender is transferred.
3. "Offender" means a citizen or national of the Federated States of Micronesia who has been sentenced by a court of the United States, or a state thereof; or a citizen or national of the United States who has been convicted by a court of the Federated States of Micronesia.
4. "Category I Offender" means an "Offender" who comes within the meaning of the term "United States personnel," as that term is defined in paragraph 2(d) of Article I of the Status of Forces Agreement.
5. "Category II Offender" means all "Offenders" other than "Category I Offenders."
6. "State" when used in the sense of a part of the United States means any State of the United States, any territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

### Article III *Eligibility*

This Agreement shall apply only under the following conditions:

1. That the offense for which the Offender was convicted and sentenced is one which would be punishable in the Receiving Government; provided, however, that this condition shall not be interpreted so as to require that the offense described in the laws of both Governments be identical in those matters which do not affect the nature of the crime.
2. That the Offender be a citizen or national of the Receiving Government.
3. That the Offender has not been sentenced to the death penalty nor convicted of a purely military offense.
4. Except for Category I Offenders, that at least six months of the Offender's sentence remain to be served at the time of petition to transfer.
5. That the sentence be final, that any appeal procedures have been completed, and that there be no collateral or extraordinary remedies pending at the time of invocation of the provisions of this Agreement.
6. That the Offender's express consent, or the consent of a legal representative in the case of a minor or of an Offender who has become mentally incompetent, to transfer has been given voluntarily and with full knowledge of the legal consequences thereof.
7. That, before the transfer, the Transferring Government shall afford an opportunity to the Receiving Government to verify through an officer designated by the laws of the Receiving Government that the Offender's consent to the transfer has been given voluntarily.

Article IV  
*Transfer Procedures*

1. The Signatory Government of which an Offender is a citizen or national shall make each request for transfer of an Offender in writing to the Transferring Government.

2. As to an eligible Category I Offender, no finding of the appropriateness of such consenting Offender's transfer by the Transferring Government shall be required. Once internal arrangements have been completed, the transfer of the Offender shall be effected.

3. As to a Category II Offender, if the Transferring Government considers the request to transfer the Offender appropriate, the Transferring Government will communicate its approval of such request to the Receiving Government so that, once internal arrangements have been completed, the transfer of the Offender may be effected.

4. (a) In deciding whether to request the transfer of a Category II Offender under paragraphs 1 and 3 of this Article and with the objective that the transfer should contribute positively to the Government will consider, among other factors: the seriousness of the crime; the Offender's previous criminal record, if any; the Offender's health status; and the ties which the Offender may have to the society of the Transferring Government and the Receiving Government.

(b) If the Offender gives his express consent to the transfer, the Transferring Government shall consider the request promptly and approve it in the absence of serious countervailing considerations, which it shall specify.

5. In any case in which a citizen or national of the Federated States of Micronesia has been sentenced by a state of the United States, the approval of such an Offender's transfer pursuant to paragraph 3 of this Article shall be required from both the appropriate state authority and the federal authority.

6. The Transferring Government shall furnish to the Receiving Government a certified copy of the sentence or judgment relating to the Offender. When the Receiving Government considers such information relevant, it may request, at its expense, copies of the trial record, or portions thereof, or such additional information as it deems necessary. The Transferring Government shall grant such requests to the extent permissible under its laws.

7. Delivery of an Offender by the authorities of the Transferring Government to those of the Receiving Government shall occur at a place agreed upon by the two Governments. The Receiving Government will be responsible for the custody and transport of the Offender from the Transferring Government.

8. The Receiving Government shall not be entitled to any reimbursement for the expenses incurred by it in the transfer of an Offender or the completion of the Offender's sentence.

Article V  
*Execution of Sentence*

1. An Offender delivered for execution of sentence under this Agreement may not again be detained, tried or sentenced by the Receiving Government for the same offense for which the sentence was imposed by the Transferring Government.

2. Except as otherwise provided in this Agreement, the completion of a transferred Offender's sentence shall be carried out according to the laws and procedures of the Receiving Government, including the application of any provisions for reduction of the term of confinement by parole, conditional release, or otherwise.

3. Each Signatory Party may request reports indicating the status of confinement of all Offenders transferred by it under this Agreement, including in particular the parole or release of an Offender. Transferring Government may, at any time, request from the Receiving Government a special report on the status of the execution of an individual sentence.

Article VI  
*Review or Modification of Sentence*

The Transferring Government shall retain exclusive jurisdiction over the sentences imposed and any procedures that provide for revision or modification of the sentences pronounced by its courts. The Transferring Government also shall retain the power to pardon or grant amnesty or clemency to an Offender. The Receiving Government, upon being informed of any decision in this regard, will put such measures into effect.

Article VII  
*Transit*

1. Upon prior notice, the Government of the United States shall have the right to transport through the Federated States of Micronesia Offenders being transferred between the United States and a third country pursuant to an agreement between the Government of the United States and that third country.

2. Upon prior notice, and if otherwise consistent with U.S. law, the Government of the Federated States of Micronesia shall have the right to transport through the United States Offenders being transferred between the Federated States of Micronesia and a third country pursuant to an agreement between the Government of the Federated States of Micronesia and that third country.

3. When such transport is by air and no stop is scheduled in the jurisdiction of Signatory Government, but is required by extenuating circumstances, no prior notice shall be required.

TITLE FIVE  
MUTUAL ASSISTANCE IN LAW ENFORCEMENT MATTERS

Article I  
*Law Enforcement Assistance*

1. The law enforcement agencies of the United States and the Federated States of Micronesia shall assist one another, as mutually agreed, in the prevention and investigation of crimes and the enforcement of the laws of the United States and the Federated States of Micronesia specified in section 3 of this Article. The United States and the Federated States of Micronesia will authorize mutual assistance with respect to investigations, inquiries, audits and related activities by the law enforcement agencies of both Governments in the United States and the Federated States of Micronesia. In conducting activities authorized in accordance with the constitution and laws of the jurisdiction in which such activities are conducted.

2. The United States and the Federated States of Micronesia will take all reasonable and necessary steps, as mutually agreed, based upon consultations in which the Attorney General or other designated officials of each Government participates, to prevent the use of the lands, waters, and facilities of the United States or the Federated States of Micronesia for the purposes of cultivation of, production of, smuggling of, trafficking in, and abuse of any controlled substance as defined in section 102(6) of the United States Controlled Substances Act and Schedules I through V of Subchapter II of the Controlled Substances Act of the Federated States of Micronesia or for the distribution of any such substance to or from the Federated States of Micronesia or to or from the United States or any of its territories or commonwealths.

3. Assistance provided pursuant to this agreement shall also extend to, but not be limited to, prevention and prosecution of violations of the laws of the United States and the laws of the Federated States of Micronesia related to terrorism, espionage, racketeer influenced and corrupt organizations, and financial transactions which advance the interests of any person engaging in unlawful activities, as well as the offenses referred to in Title Two, Article II of this Agreement.

4. The Government of the United States and the Government of the Federated States of Micronesia agree that the law enforcement personnel of the United States may be present during direct police arrest actions in the Federated States of Micronesia related to narcotic control efforts, and that law enforcement personnel of the Federated States of Micronesia may be present during direct police arrest actions in the United States related to narcotic control efforts, as authorized on a case-by-case basis by the Attorney General or other designated representative of the Government of the jurisdiction in which such direct police arrest action is taken.

5. Pursuant to sections 222 and 224 of the amended Compact, the United States shall provide non-reimbursable technical and training assistance as appropriate, including training and equipment for postal inspection of illicit drugs and other contraband, to enable the Government of the Federated States of Micronesia to cooperate with the United States in the enforcement of criminal laws of the United States.

TITLE SIX  
EFFECTIVE DATE, AMENDMENT AND DURATION

Article I

*Effective Date, Amendment and Duration*

1. Titles One through Four and Title Six of this Agreement went into effect on November 3, 1986, the effective date of the original Compact.
2. Title Five of this Agreement went into effect as the Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding Mutual Assistance in Law Enforcement Matters signed April 25, 1986 and in accordance with the Compact and applicable laws and procedures of the United States and the Federated States of Micronesia on November 3, 1986.
3. This Agreement may be amended at any time by the mutual consent of the Government of the Federated States of Micronesia and the Government of the United States.
4. Titles One, Two and Three of this Agreement are effective until terminated by the Government of the United States or the Government of the Federated States of Micronesia, in the following manner:
  - (a) Termination of this Agreement by either the Government of the United States or the Government of the Federated States of Micronesia shall be effected by a written notification of the terminating Government to the other Government.
  - (b) Termination shall take effect one year after the recipient Government has been notified.
5. Except as provided in paragraph 7 of this Article, Titles Four and Six of this Agreement are effective for the period of effectiveness of the Status of Forces Agreement, except for those provisions relating to Category II Offenders which may be terminated in accordance with paragraph 4 of this Article.
6. Upon acceptance by the United States Secretary of State, paragraph 4 of Title Five of this Agreement shall constitute the exemption under 22 U.S.C. 2291(c)(2).
7. Title Five of this Agreement shall remain in effect for a term coincident with section 175 of the amended Compact and thereafter as mutually agreed by the Government of the United States and the Government of the Federated States of Micronesia.

DONE at \_\_\_\_\_, in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 2003, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA: FOR THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA:

AGREEMENT ON EXTRADITION, MUTUAL ASSISTANCE IN LAW  
ENFORCEMENT MATTERS AND PENAL SANCTIONS CONCLUDED  
PURSUANT TO SECTION 175 OF THE AMENDED COMPACT OF FREE  
ASSOCIATION

AGREED MINUTE

Title Three, Article I, Judicial Assistance, paragraph 6: [The term “any legal privilege” shall include any legal or constitutional right or privilege.]

Article XVI, Relationship with Other Agreements: Article XVI of Title II of this Agreement makes it clear that “United States personnel” (within the meaning of the Status of Forces Agreement [SOFA]) who commit offenses while in the Federated States of Micronesia shall be subject to the applicable provisions of the SOFA. If a person who comes within the SOFA definition of “United States personnel,” other than a member of the force, returns to the United States and is no longer subject to the SOFA, the provisions of the extradition agreement would apply. If, however, the offender is a member of the force at the time of the extradition request, it is contemplated that the Executive Authority would not exercise its authority to extradite the Offender, but would refer the case to the military authorities for disposition in accordance with the provisions of the SOFA.

Article XVI of Title II of the Extradition Agreement is without prejudice to the provisions of the SOFA which otherwise allows transfer of members of the force to the Federated States of Micronesia or the Republic of the Marshall Islands.

**AGREEMENT IN IMPLEMENTATION OF SECTION 175(B) OF THE  
COMPACT OF FREE ASSOCIATION, AS AMENDED**

**AGREEMENT REGARDING PROTECTIONS FOR CITIZENS OF THE  
REPUBLIC OF THE FEDERATED STATES OF MICRONESIA (FSM)  
SEEKING TO ENGAGE IN EMPLOYMENT IN THE UNITED STATES  
PURSUANT TO RECRUITMENT OR OTHER PLACEMENT SERVICES**

In order to safeguard the rights and welfare of citizens of the Federated States of Micronesia seeking employment in the United States arranged by any recruitment or other placement service, or pursuant to any pre-arranged employment contract, the Government of the United States and the Government of the Federated States of Micronesia agree that the following requirements shall apply to any recruiter or placement service arranging or facilitating such employment in the United States of citizens of the Federated States of Micronesia:

**A. Registration Requirement**

**1. Who Must Register**

(a) A Recruiter, for purposes of this Agreement, is any person or entity, or agent of such person or entity, engaged in the business of recruiting labor for a fee or other

compensation or otherwise seeking to employ in the United States (including its territories and possessions) the following:

(i) any citizen of the Federated States of Micronesia who is not present in the United States, or

(ii) any citizen of the Federated States of Micronesia, who has been recruited by such person or entity outside of the United States, and is currently employed in the United States in connection with the recruitment efforts of such person or entity, or agent of such person or entity (whether or not the FSM citizen's current position is the one for which the person was initially recruited).

(b) Every Recruiter must register with the Government of the Federated States of Micronesia.

## 2. Contents of Registration

Such registration of a Recruiter shall contain the following information:

(a) the name, address, telephone number, fax number, and e-mail address, if any, of such Recruiter and, where the Recruiter is an entity, its directors and principal officers and of any company through which, or in cooperation with which, such Recruiter conducts any such recruitment efforts;

(b) the name, address, telephone number, fax number, and e-mail address, if any, of any and all partners, agents, or other persons or entities in the United States or elsewhere with which the Recruiter has cooperated or intends to cooperate in seeking to place any citizen of the Federated States of Micronesia with any employer in the United States;

(c) the dates of any previous suspensions or revocations under section D of this Agreement of such Recruiter or of any other Recruiter for which such Recruiter was employed, was an agent, or was otherwise affiliated; and

(d) if, at the time this Agreement becomes effective, such Recruiter is already engaged in any recruitment or placement activities described in this section with respect to citizens of the Federated States of Micronesia, then such Recruiter must, on the effective date of this Agreement, file a registration containing the information required under paragraphs (a), (b), and (c) of this subsection, together with the information required in section B, and an attestation meeting the requirements of section C of this Agreement.

## 3. Failure to Register

The Government of the Federated States of Micronesia agrees that, pursuant to section (D)(2)(e) of this Agreement, it shall prohibit any person, entity, or agent that meets the definition of Recruiter from engaging in such activity for a one-year period, upon finding that such person, entity, or agent has failed to register in compliance with this section.

## B. Semi-Annual Reporting Requirement

Any Recruiter required to register under section A of this Agreement shall thereafter update said registration semiannually, by providing the following information:

1. any changes or updates in the information initially provided by the Recruiter in the registration required under section A of this Agreement;
2. the names, addresses, telephone numbers, fax numbers, and e-mail addresses, if any, of all citizens of the Federated States of Micronesia who are currently employed in the United States pursuant to employment arranged by such Recruiter;
3. the names, addresses, telephone numbers, fax numbers, and e-mail addresses, if any, of all U.S. employers of the FSM citizens referred to in subsection (2) of this section;
4. a list of all fees received by the Recruiter in connection with such placement services, including fees, if any, paid by the FSM citizen (or any person acting on the citizen's behalf) to the Recruiter in connection with any such placement;
5. a statement as to whether the Recruiter, directly or indirectly, is receiving, or has received, any U.S. Federal or State government grant or other U.S. government funding in connection with recruitment, training, or placement of any FSM citizen with a U.S. employer, and, if so, provide the name, address, amount, and designated purpose of each such source of grants or funds; and
6. an attestation as provided in section C of this Agreement.

### C. Attestation

#### 1. Compliance With Laws of the United States and the Federated States of Micronesia

Any Recruiter required to register under section A of this Agreement shall, as part of the semi-annual registration update referred to in section B of this Agreement, attest that it will comply with all applicable:

- (a) laws and regulations of the Federated States of Micronesia, including those relating to the registration of Recruiters, and
- (b) U.S. Federal, State, or local laws, including those relating to placement and/or employment of persons in the United States.

#### 2. No Debt, Liquidated Damages, or Similar Arrangements

Any Recruiter required to register under section A of this Agreement shall, as part of the semi-annual registration update referred to in section B of this Agreement, attest that the Recruiter, and anyone connected with the Recruiter (including any U.S. employer with which the FSM citizen is placed), has neither, to the Recruiter's knowledge:

- (a) entered into any arrangement whereby the FSM citizen (or any other person acting on behalf of such citizen) has signed a promissory note, confession of judgment, or similar promise to pay liquidated damages should the FSM citizen not fully complete the terms of any recruitment, employment contract, or similar arrangement, nor

(b) entered into any other debt arrangement with the FSM citizen (or any other person acting on behalf of such citizen) as consideration for being placed with a U.S. employer.

### 3. Disclosure to the FSM Citizen

#### (a) Terms and Conditions of Employment

Any Recruiter shall, as part of such semi-annual registration update, attest that it has disclosed, and in the future will disclose in writing, in both English and the local language of the FSM citizen to each FSM citizen recruited for employment in the United States, the terms and conditions of such employment, including, but not limited to:

- (i) the anticipated or actual duration, if any is specified, of the FSM citizen's employment;
- (ii) the type of work to be performed by the FSM citizen;
- (iii) the rate of pay;
- (iv) the number of hours and times of day the work typically will be performed;
- (v) the amount of fees to be paid by the FSM citizen to the Recruiter or any parties with which the Recruiter has cooperated in recruiting or placing the FSM citizen, and any other employment-related fee or expense, such as job skill testing, medical examination, or drug testing;
- (vi) that taxes and related items will be deducted from the gross paycheck in accordance with applicable U.S. Federal, State, and local law;
- (vii) any amounts that will be deducted from the FSM citizen's paycheck other than normal withholding of taxes and related deductions;
- (viii) all estimated costs the FSM citizen will be reasonably expected to incur in connection with such employment;
- (ix) whether the FSM citizen's transportation expenses to and from the United States will be paid by the Recruiter or another person or entity (including, in the case of death, the cost of shipping the remains of such FSM citizen to his or her point of origination in the FSM);
- (x) whether the FSM citizen will be provided room and board upon commencement of such employment, and, if so, for how long, whether such room and board are mandatory or optional, whether any such room and board are provided without cost to the FSM citizen or, if not, the estimated costs for any such room and board, and whether such costs will be deducted directly from the FSM citizen's paycheck; and
- (xi) whether job training will be provided to the FSM citizen, and, if so, a general description of such training and all of the information specified in items (i) through (x) above with respect to the training period.

Disclosure of the information set forth above does not, in itself, ensure that the terms and conditions of such employment contract or arrangement comply with the applicable laws where the FSM citizen will be or is employed.

(b) Legal Rights of the FSM Citizen

Any Recruiter shall, as part of such semi-annual registration update, attest that it has disclosed fully, or will disclose fully the information specified below, in writing, in both English and the local language of the FSM citizen to any FSM citizen it proposes to recruit or place with any employer in the United States prior to the time the FSM citizen enters into any agreement with the Recruiter or arranged by the Recruiter regarding such recruitment or employment:

- (i) that the FSM citizen has a right to change employers in the United States, without any adverse immigration consequence;
- (ii) that completion of any recruitment or employment contract shall not be a condition of any FSM citizen's right to remain in the United States under United States or FSM law;
- (iii) that the FSM citizen may have rights, under certain circumstances, when the employment is terminated through no fault of the FSM citizen at a time earlier than that agreed upon;
- (iv) that entry into any debt, liquidated damages, or similar arrangement described in subsection (2) of section (c) of this Agreement is forbidden;
- (v) that failure to complete such employment contract may constitute a breach of contract with certain legal consequences (including an action for actual, but not liquidated or similar damages), depending on the circumstances;
- (vi) that an FSM citizen does not have a right to free counsel in the United States in any civil judicial or administrative proceeding;
- (vii) that an FSM citizen may contact the U.S. Department of Labor concerning his or her rights and protections under U.S. laws and regulations; and
- (viii) any other information reasonably necessary to inform the prospective contract worker fully of the material terms and conditions of such employment contract.

D. Suspension and Revocation for Failure to Provide Full Disclosure or Otherwise Meet the Terms of this Agreement

1. General Responsibilities of the Government of the Federated States of Micronesia and the Government of the United States

The Government of the Federated States of Micronesia agrees that it is responsible for conducting investigations in the Federated States of Micronesia, as may be appropriate, to determine whether a Recruiter has materially complied with the terms and conditions of this Agreement. The Government of the United States agrees to conduct investigations in the United States, as appropriate, to ensure compliance with U.S. law. The Government of the United States will provide assistance in developing

forms and procedures, as appropriate, to help the Government of the Federated States of Micronesia to carry out its duties and responsibilities under this Agreement.

## 2. One-Year Suspension

The Government of the Federated States of Micronesia agrees to suspend the privilege of any Recruiter to recruit or place FSM citizens for the purposes of employment in the United States (“suspension”) for a one-year period if:

(a) the Government of the Federated States of Micronesia determines, after an investigation, that such Recruiter or any affiliated person, entity, or agent has materially failed to comply with the terms and conditions of this Agreement;

(b) the Government of the Federated States of Micronesia receives a report or other information from the Government of the United States that such Recruiter or any affiliated person, entity, or agent has recruited or placed any FSM citizen with an employer in the United States after notification that the employer was determined by an appropriate U.S. Federal, State, or local government authority, following investigation, to have:

(i) materially violated any applicable U.S. Federal, State, or local law concerning employment standards, or

(ii) engaged in a pattern of materially violating the terms of employment contracts or similar agreements with any FSM citizen, or

(iii) has otherwise violated the rights of any FSM citizen reasonably related to such employment, or

(iv) otherwise engaged in violations of labor laws and/or safety standards such as the minimum wage law;

(c) the Government of the Federated States of Micronesia determines, on the basis of the actions of the Recruiter or any affiliated person, entity, or agent, that such one-year suspension is otherwise appropriate, or

(d) the Government of the United States requests such suspension following consultations in accordance with section I of this Agreement, or

(e) such Recruiter or any affiliated person, entity, or agent fails to register in accordance with section A of this Agreement.

## 3. Revocation

The Government of the Federated States of Micronesia agrees to revoke for a minimum of five years (“revocation”) the privilege of any Recruiter to recruit or place FSM citizens for the purposes of employment in the United States if:

(a) such Recruiter or any affiliated person, entity, or agent knowingly files a materially false Recruiter registration, semi-annual registration update, or attestation;

(b) such Recruiter or any affiliated person, entity, or agent at any time violates a one-year suspension order;

(c) the Government of the Federated States of Micronesia determines on the basis of the actions of the Recruiter or any affiliated person, entity, or agent that such revocation is otherwise appropriate; or

(d) the Government of the United States requests such revocation following consultations under section I of this Agreement.

E. Notification to the Government of the United States of Suspension, Revocation, or Reinstatement

1. Notwithstanding section H of this Agreement, if the Government of the Federated States of Micronesia takes action to suspend or revoke the authorization of any Recruiter under section D of this Agreement, such Government agrees to notify promptly the Government of the United States of any such action, and the basis thereof, and to provide the Government of the United States with a copy of all registrations and registration updates, and attestations, filed by such Recruiter, and the record of any such actions and proceedings taken against the Recruiter.

2. In the event of revocation under subsection (3) of section D of this Agreement, the Government of the Federated States of Micronesia shall obtain the consent of the Government of the United States prior to reinstatement.

F. Law Enforcement Cooperation

The Government of the Federated States of Micronesia agrees to cooperate with the Government of the United States in any law enforcement action that the Government of the United States may undertake arising out of any employment involving an FSM citizen in the United States. Notwithstanding subsection (1) of section H of this Agreement, the Government of the Federated States of Micronesia shall promptly provide the Government of the United States, upon request, with copies of all documents and information required under this Agreement in connection with any such law enforcement action undertaken by the Government of the United States.

G. Public Information

The Government of the Federated States of Micronesia agrees to disseminate information to its citizens necessary to ensure that FSM citizens are fully aware of their rights under this Agreement through appropriate means, including distribution at schools, universities, job training facilities, and through printed and electronic media.

H. Sharing of Recruiter Information

1. The Government of the Federated States of Micronesia agrees to provide the Government of the United States, through the U.S. diplomatic representative to the Federated States of Micronesia, a copy of all required documents and information collected under this Agreement on a quarterly basis.

2. The Government of the Federated States of Micronesia agrees to provide the Government of the United States access, upon request, to all information required under this Agreement, and any other information in its possession regarding the activities of any Recruiter relevant to the recruitment, placement, or employment of any FSM citizens in the United States.

3. The Government of the United States agrees to provide the Government of the Federated States of Micronesia, as appropriate, any information in its possession regarding the activities of any Recruiter relevant to the recruitment, placement, or employment of any FSM citizens in the United States.

4. Any information or documentation required under this Agreement shall be made available for public inspection in the Federated States of Micronesia and in the United States, except where protected by applicable law in the respective countries.

I. Consultations

The Government of the United States and the Government of the Federated States of Micronesia shall consult regularly as to whether the rights and privileges of persons admitted to the United States under the Compact for the purpose of obtaining employment are adequately protected, and if the Governments determine that such rights and privileges are not adequately protected, shall discuss appropriate steps to ensure that such rights are protected.

J. Effective Date, Amendment, and Duration

This Agreement shall enter into effect simultaneously with the Compact, as amended.

This Agreement may be amended or terminated at any time by mutual consent of the Government of the United States and the Government of the Federated States of Micronesia, in a manner consistent with their respective Constitutional processes.

This Agreement may not be amended or terminated unilaterally by either the Government of the United States or the Government of the Federated States of Micronesia.

This Agreement shall remain in effect for the period in which the Compact, as amended, remains in effect, unless it is mutually terminated under subsection (2) of this section.

DONE at \_\_\_\_\_, in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 2003, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA: FOR THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA:

**FEDERAL PROGRAMS AND SERVICES AGREEMENT BETWEEN THE  
GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF  
THE FEDERATED STATES OF MICRONESIA**

CONCLUDED PURSUANT TO ARTICLE III OF TITLE ONE, ARTICLE II OF  
TITLE TWO, (INCLUDING SECTION 222), AND SECTION 231 OF THE COMPACT  
OF FREE ASSOCIATION, AS AMENDED

This Agreement is concluded by the Signatory Governments and sets forth their respective authority and responsibility for the provision of the services and related programs authorized by Article III of Title One, Article II of Title Two (including any additional U.S. services and related programs authorized in accordance with section 222 of such Article II), section 231 of the Compact of Free Association, as amended (the Compact, as amended), or, where not otherwise provided within the Compact, as amended, any other provision of United States law. Unless otherwise provided within the Compact, as amended, or any other provision of United States law, this Agreement also sets forth the rights, privileges, and immunities of United States Government instrumentalities and personnel, as well as those of non-United States Government entities and personnel who provide any such services and related programs under those provisions of the Compact, as amended, or any other provision of United States law.

Article I  
*Definitions*

1. The Definition of Terms set forth in Article VI of Title Four of the Compact, as amended, is incorporated into this Agreement.

2. For the purposes of this Agreement only, the following terms shall have the following meanings:

(a) “Federal agency” refers to each department, agency or other instrumentality of the Government of the United States which provides services and related programs in accordance with Title Two of the Compact, as amended or if not otherwise provided, under any other provision of the Compact, as amended including its subsidiary agreements, or any other provision of United States law, including any successor agency or agencies, but does not include:

(1) The Armed Forces of the United States as defined in Article I of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact, as amended, or

(2) The Diplomatic Mission and constituent posts, if any, of the Government of the United States to the Government of the Federated States of Micronesia (the “U.S. Diplomatic Mission”).

(b) “United States contractors” means the legal entities, including corporations and natural persons (irrespective of the country of incorporation or citizenship of any such corporation or citizenship of any such natural person), present in the Federated States of Micronesia for the purpose of executing their contracts with the Government of the United States (or subcontracts of such contracts), or cooperative agreements, in support of the Federal agencies acting pursuant to Article III of Title One, Article II of Title

Two and section 231 of the Compact, as amended, or any other provision of United States law, and who are designated as such by the Government of the United States. The term “United States Contractors” does not include local contractors.

(c) “Local contractors” means the legal entities, including corporations and natural persons, which are organized under the laws of, or which are present in the Federated States of Micronesia primarily for purposes other than those set forth in paragraph (b) of this section.

(d) “United States personnel” means anyone who is included in any of the following categories:

(1) “civilian employees” – all Federal agency personnel, notwithstanding their citizenship or nationality, except local hire personnel, who are in the Federated States of Micronesia, and who are in the employ of or serving with a Federal agency and who are employed in any of the activities of such Federal agency;

(2) “contractor personnel” – natural persons, who are United States citizens or nationals or United States permanent resident aliens, except local hire personnel, who are in the Federated States of Micronesia, and who are United States contractors or officers or employees of United States contractors; or

(3) “dependents” – the spouses and dependents of persons included in paragraph (2)(d)(1) (including children of such persons who are born after such persons’ arrival in the Federated States of Micronesia) who are listed on official United States Government travel orders and the spouses and dependents of persons included in paragraph (2)(d)(2).

(e) “Third country contractor personnel” means natural persons other than United States contractor personnel or local hire personnel who are in the Federated States of Micronesia and who are United States contractors or officers or employees of United States contractors or dependents of any of them.

(f) “Local hire personnel” means any citizen or national of the Federated States of Micronesia, whether or not ordinarily residing in the Federated States of Micronesia, and any citizen or national of any other country who is ordinarily residing in the Federated States of Micronesia, who is employed in the Federated States of Micronesia, by Federal agencies or United States contractors.

## Article II

### *Legal Status of Programs and Related Services, Federal Agencies, United States Contractors and United States Personnel*

1. The provision by the Government of the United States of any specific programs and related services to the Government of the Federated States of Micronesia, as may be funded by the Government of the United States, pursuant to this Agreement, shall be contingent upon compliance by the Government of the Federated States of Micronesia with all applicable provisions of U.S. law, including the provisions of the Compact, as amended (including sections 173 and 223 of the Compact, as amended), as they relate to such program or related service.

2. (a) Subject to subparagraphs (b) and (c) below, the Government of the United States, Federal agencies, United States contractors, United States personnel, and third country contractor personnel, and their respective assets, income and other property shall be exempt from all taxes, including value added taxes (VAT), and shall be exempt from all customs duties and similar charges on the import and export of articles required for official functions and personal use.

(b) Income received by United States personnel or third country contractor personnel for services with or employment by Federal agencies, and income received by United States contractors under contracts or cooperative agreements in support of United States agencies, and income received by United States personnel, third country contractor personnel or United States contractors from sources outside the territory of the Federated States of Micronesia, shall be exempt from any tax, fee or other charge, including income and social security taxes, imposed by the Government of the Federated States of Micronesia, except that United States contractor personnel and third country contractor personnel, including dependents who are themselves United States contractor personnel or third country contractor personnel, shall not be exempt from a personal income tax generally applicable within the Federated States of Micronesia up to a level of five percent of their annual income derived from their employment in the Federated States of Micronesia.

(c) Income derived from and received by United States personnel or third country contractor personnel for services rendered within the FSM other than those specified under subparagraph (b) of this paragraph shall be subject to the personal income tax and social security taxes that the FSM would impose on its own citizens who provide such services.

3. United States personnel and third country contractor personnel may import into and export from the Federated States of Micronesia furniture, household goods and personal effects for their private use, including all forms of privately owned land, sea and air transportation, free from customs duties, license requirements and other import and export taxes, fees or charges.

4. Animals and plants, including fruits and vegetables, imported by United States personnel and by third country contractor personnel shall be subject to the laws and regulations of the Federated States of Micronesia governing inspection of and restrictions on such importations.

5. The Federal agencies, in cooperation with the Government of the Federated States of Micronesia, shall take appropriate measures, including inspection, to prevent importation of contraband and to prevent abuse of privileges granted to United States personnel and third country contractor personnel under this Article.

6. Should property imported into the Federated States of Micronesia under the exemptions provided by this Article subsequently be transferred to a person not entitled to such exemptions, such person shall be liable for import duties and other charges according to the laws and regulations of the Government of the Federated States of Micronesia. This paragraph is without prejudice to the Government of the Federated States of Micronesia adopting laws and regulations that require the giving of notice of such transfer to relevant authorities of the Federated States of Micronesia. The

Government of the United States and its Federal agencies shall cooperate with the Government of the Federated States of Micronesia, as necessary, to prevent abuse of the customs privileges granted under this agreement.

7. Without prejudice to any additional privileges and immunities provided under the Compact, as amended, civilian employees shall enjoy immunity from civil and criminal process and liability relating to or resulting from any wrongful act or omission done within the scope and in the performance of official duty, except insofar as such immunity is expressly waived by the Government of the United States. Civilian employees who have been arrested in connection with an offense not related to the performance of their official duties in the Federated States of Micronesia shall be released to the custody of a United States diplomatic representative in the Federated States of Micronesia, unless in the case of a grave crime a competent judicial authority decides that such civilian employees shall remain subject to detention by the local authorities.

8. (a) The authorities of the Federal agencies shall pay just and reasonable compensation in settlement of meritorious, noncontractual claims arising out of the wrongful acts or omissions occurring subsequent to the effective date of this Agreement in the Federated States of Micronesia of the Federal agencies themselves, or of their civilian employees and local hire personnel, if such act or omission occurred within the scope and in the performance of official duty of the civilian and local hire personnel. All such claims shall be processed and settled by the respective Federal agencies in accordance with the laws and regulations of the United States. Any such claims which cannot be settled as provided for in this paragraph, and which are espoused by the Government of the Federated States of Micronesia, shall be disposed of pursuant to the provisions of Article II of Title Four of the Compact.

(b) Contractual claims against the Federal agencies shall be settled in accordance with the disputes clause of the contract if any, and the laws of the United States relating to the resolution of such disputes. In the absence of such clause, the claims shall be presented to the appropriate United States authority; subject to section 174 of the Compact, as amended, if no settlement is reached, the appropriate court of the United States shall have jurisdiction over such claims.

(c) The Government of the Federated States of Micronesia shall present claims arising under this Article to the United States Diplomatic Mission, which shall forward such claims to the Competent Authority of the Federal Agency concerned.

9. Except as otherwise expressly provided in this or any other subsidiary agreement to the Compact, as amended, any dispute arising under this Agreement shall be disposed of exclusively pursuant to the provisions of Article II of Title Four of the Compact.

(a) The Federal agencies shall not be subject to the jurisdiction of the courts of the Government of the Federated States of Micronesia under Article VII of Title One of the Compact for any claim under paragraph 8 of this Article arising in the Federated States of Micronesia from the acts or omissions of the Federal Agencies occurring subsequent to November 3, 1986. All such claims shall be processed and settled exclusively in accordance with this Article.

(b) Any judgment presented for certification to the United States Court of Appeals for the Federal Circuit pursuant to section 174 of the Compact, as amended, shall be deemed manifestly erroneous as to law if the claim upon which such judgment is based would have been barred by the statute of limitations if such claim had been brought in a court of the United States.

10. For the purposes of carrying out the provisions of this Agreement, the Government of the United States and the Government of the Federated States of Micronesia shall designate Competent Authorities. The Competent Authorities of the Government of the United States and the Competent Authorities of the Federated States of Micronesia may communicate directly with each other. In the case of the Government of the United States, the Competent Authority shall be the head of or designee of the Federal agency concerned who shall be designated in writing to the Government of the Federated States of Micronesia.

11. The Government of the Federated States of Micronesia shall accept as valid, without a test or fee, the operator's permit or license or military driving permit issued to United States personnel or third country contractor personnel by the Government of the United States, the Governments of the States of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

12. Official vehicles of the Federal Agencies, vehicles owned or operated by United States contractors, and privately owned vehicles of United States personnel shall be identified by individual markings or license plates issued by the Government of the United States, the Governments of the States of the United States of America, its Territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands. However, the Government of the United States may use local individual markings or license plates in the Federated States of Micronesia.

(a) Official vehicles shall not be subject to the registration or safety inspection laws of the Government of the Federated States of Micronesia.

(b) The Armed Forces of the United States may register vehicles of United States contractors and United States personnel that are not official vehicles, and may inspect such vehicles applying safety standards of general applicability in the Federated States of Micronesia. Vehicles so registered and inspected shall be exempt from the registration and safety inspection laws of the Government of the Federated States of Micronesia.

13. For purposes of this Article the term "vehicles" includes all forms of land, sea and air transportation.

14. Any reference in this Agreement to a provision of the law of the United States constitutes the incorporation of the language of such provision into this Agreement as such provision is in force on November 3, 1986, or as it may have been or may be amended thereafter on a non-discriminatory basis according to the constitutional processes of the United States.

15. The Government of the United States may use local telecommunication systems and, in determining its uses of such systems, shall take into consideration the cost and security of such systems and the availability of alternate United States systems. The Government of the United States shall encourage the use of local telecommunication systems by United States personnel for non-official purposes. To the extent that the Government of the Federated States of Micronesia establishes telecommunications systems compatible with existing United States Government installations, the Government of the United States and the Government of the Federated States of Micronesia may enter into negotiations for a use arrangement which includes normal billing procedures.

### Article III *Employment of Labor*

1. In providing services and related programs in the Federated States of Micronesia pursuant to Article II of Title Two of the Compact, as amended, any other provision of the Compact, as amended or pursuant to any other provision of United States law, the Federal agencies, United States contractors and local contractors:

(a) may employ persons possessing requisite skills and qualifications. Employment preference shall be given, without discrimination, to citizens, nationals and persons residing permanently in the Federated States of Micronesia, and to citizens, nationals, and lawful permanent residents of the United States. In the employment of such persons pursuant to the preferences set forth in this paragraph, the Federal Agencies and the United States contractors shall exercise their best efforts to employ persons present in the Federated States of Micronesia.

(b) shall use, without discrimination, consistent with the laws and regulations of the United States, qualified local contractors and contractors which are legal entities of the United States. The Federal Agencies and United States contractors shall ensure that the specifications and instructions for contract bids shall permit such free and full competition as is consistent with the procurement of the goods and services needed by the Government of the United States.

2. Prior to the employment of third country personnel or the use of third country contractors, the Government of the United States shall notify the Government of the Federated States of Micronesia and shall consult, if requested, with that Government as to the availability of qualified local hire personnel or qualified local contractors.

3. The laws and regulations of the Federated States of Micronesia shall not apply to the terms and conditions of employment of United States personnel by Federal agencies, or United States contractors. The Government of the Federated States of Micronesia shall not require United States personnel, third country contractor personnel or United States contractors to obtain any license, permit or certificate, or to undergo any examination, in connection with the performance of their duties on behalf of Federal agencies.

4. In the employment of local hire personnel by the Federal agencies and United States contractors, the Government of the United States shall adopt measures consistent with the standards of local labor laws to the extent they are compatible with laws, regulations and operational requirements of the United States.

Article IV  
*Entry and Departure*

1. The Government of the United States may bring into the Federated States of Micronesia:

(a) United States personnel and United States contractors; and

(b) Third country contractor personnel in a manner consistent with those laws of the Federated States of Micronesia relating to the exclusion of individual, undesirable aliens and taking into account paragraph 5 of this Article and Article III of this Agreement.

2. United States personnel shall be exempt from the visa laws and regulations of the Federated States of Micronesia. Taking into account paragraph 1(b) of this Article and Article III of this Agreement, applications of third country contractor personnel for visas shall be adjudicated expeditiously. All such personnel shall comply with the medical immunization requirements of the Federated States of Micronesia.

(a) No United States personnel or third country contractor personnel shall acquire any right to remain permanently in the Federated States of Micronesia solely as a result of their being United States personnel or third country contractor personnel.

(b) United States personnel shall be exempt from laws and regulations of the Federated States of Micronesia on the entry, departure, registration and control of aliens and foreign agents.

3. Upon entry into or departure from the Federated States of Micronesia, United States personnel shall have in their possession official orders or documents certifying the status of the individual or group. Such orders or documents shall be shown on request to the appropriate authorities of the Government of the Federated States of Micronesia.

4. For the purpose of their identification while in the Federated States of Micronesia, all United States personnel described in Article I, paragraph (d)(1) of this Agreement, shall have in their possession a personal identification card authorized by the Government of the United States which shall show the name, date of birth, status, and photograph of the bearer. Such card shall be shown on request to the appropriate authorities of the Government of the Federated States of Micronesia.

5. If the Government of the Federated States of Micronesia requests the removal from the Federated States of Micronesia of any United States personnel or any third country contractor personnel, the request shall be directed to the United States diplomatic representative. Upon receipt of such request, the United States diplomatic representative shall consult with the Government of the Federated States of Micronesia on the appropriate action to be taken regarding removal. If the Government of the United States and the Government of Federated States of Micronesia so determine, the person whose removal has been requested shall immediately become subject to the jurisdiction of the Government of the Federated States of Micronesia in accordance with its laws.

6. Transportation costs attendant to the departure and removal of third country contractor personnel shall be the responsibility of the Government of the United States.

## Article V

### *Implementation of Section 223 of the Compact, as Amended, and Title to Property*

1. Specific arrangements for the establishment and use by the Government of the United States of facilities or areas for Federal agencies in the Federated States of Micronesia that were in effect before the effective date of this Agreement, as amended, shall continue in effect, unless otherwise mutually agreed. Any specific arrangements for the establishment and use by the United States Government of other facilities or areas for Federal agencies in the Federated States of Micronesia shall be set forth in Exchanges of Notes, which, when signed, shall be annexed to this Agreement as an Annex.

2. If, in the exercise of its authority and responsibility under Article Three of Title One, Title Two of the Compact, as amended, and unless otherwise provided by any other United States law, the Government of the United States requires the use of facilities or areas in the Federated States of Micronesia in addition to or in place of those covered in paragraph (1) of this Article, it may request the Government of the Federated States of Micronesia to satisfy those requirements through leases or other arrangements. The Government of the Federated States of Micronesia shall sympathetically consider any such request and shall establish suitable procedures and provide a prompt response to the Government of the United States.

3. If the Government of the Federated States of Micronesia requires for some other purpose the use of facilities or areas which have been provided the Government of the United States pursuant to this Agreement, the Government of the Federated States of Micronesia shall request the Government of the United States to accept equivalent facilities or areas. The Government of the United States shall sympathetically consider any such request and provide a prompt response. Any pertinent agreement shall be effected in accordance with paragraph 2 of Article XIV of this Agreement.

4. Title to any property which remains vested in the Government of the United States pursuant to section 234 of the Compact on the day prior to the effective date of this Agreement, as amended, shall continue after the effective date of this Agreement, as amended.

5. Title to improvements to real property or to any item of equipment or other personal property hereinafter furnished, acquired, supplied, constructed or purchased by or with funds provided by the Government of the United States in connection with the programs and related services set forth in this Agreement is vested in the Government of the United States, except where expressly sold or otherwise conveyed.

6. Upon relinquishing facilities or areas designated for Federal agency use, or a portion thereof, whether at the termination of a specific service and its related programs or at an earlier date, the Government of the United States shall not be obligated to restore any such site or portion thereof to its former condition, or to make compensation in lieu of such restoration. The Governments of the United States and the Federated States of Micronesia may otherwise agree, based on considerations including the existence of conditions substantially or materially hazardous to human life, health and safety.

7. The Government of the United States has the right to remove any installations or improvements that it has constructed on an area designated for Federal agency use. If any

installations or improvements which were constructed at the expense of the Government of the United States are to be left behind after relinquishing facilities or areas designated for Federal agency use, or a portion thereof, the Government of the Federated States of Micronesia and the Government of the United States shall consult to determine the residual value, including scrap value, if any, of any such installations or improvements to the Government of the Federated States of Micronesia and to agree upon an appropriate method of compensating the Government of the United States for such residual value.

8. Except as may be otherwise expressly agreed, the Government of the United States, Federal agencies and United States contractors shall retain title to equipment, materials and other movable property brought into or acquired by them in the Federated States of Micronesia and may remove such property at any time from the Federated States of Micronesia, or dispose of it therein.

## Article VI

### *Postal Services and Related Programs*

1. The Government of the Federated States of Micronesia shall maintain responsibility pursuant to its laws and regulations for all local postal services.

2. The Government of the Federated States of Micronesia shall be responsible for all its own postal staff, facilities and equipment.

3. The Government of the Federated States of Micronesia shall issue postage stamps and other prescribed postal indicia which shall be used for prepayment of postage rates and other postal charges on all mail originating in its territory, except for mail sent through the military postal system provided for in Article VII of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact of Free Association.

4. The United States Postal Service shall provide the following services for the Federated States of Micronesia for a period of 20 years commencing on the effective date of this Agreement without compensation by The Government of the Federated States of Micronesia; provided that the United States Postal Service is reimbursed for the provision of such services from funds appropriated by the United States Congress in implementation of this agreement:

(a) The United States Postal Service shall maintain a reasonable and cost effective level of service for conveyance of mail to and from the United States and between the exchange offices of the Federated States of Micronesia as designated in paragraph 7, and

(b) dispatch, documentation, statistical, accounting, and settlement operations in connection with the international exchange of mail with other countries.

Express Mail without a guarantee (EMS); registered mail; insured parcel service; recorded delivery and money orders shall be made available only as provided in a further agreement to be negotiated with the United States Postal Service. COD (cash on delivery) orders will no longer be available.

5. The Government of the Federated States of Micronesia shall undertake to protect the postal services provided by the Government of the United States from exploitation for the

monetary gain of private or government organizations or of individuals or of commercial enterprises, including the posting of bulk mail, books, catalogues, goods or materials.

6. The Government of the United States shall provide mail service pursuant to this Agreement with the understanding that the volume of mail may increase in proportion to population increases and ordinary growth of local commercial enterprise. Until January 1, 2009, should an increase in the volume of mail of twenty percent or more within a twelve-month period be anticipated or experienced by The Government of the Federated States of Micronesia, the Government concerned shall enter into a separate agreement with the Government of the United States which shall establish the amount of reimbursement to be paid to the Government of the United States for the volume in excess of twenty percent. After January 1, 2009, and at five-year intervals thereafter, the figure of twenty percent will be reviewed by both parties.

7. At the discretion of the United States Postal Service and under such terms and conditions as the United States Postal Service may require, including financial accountability and volume limits, mail bearing postage of the Federated States of Micronesia may be accepted at one or more post offices designated by the United States Postal Service within the fifty United States as if it were accepted and mailed from the Federated States of Micronesia. Mail accepted at such a designated post office within the continental United States on behalf of the Federated States of Micronesia shall not be included when calculating volume growth. The Federated States of Micronesia may use their own stamps, but can only use this type of postage for the commercial advancement of their philatelic initiatives.

8. The Government of the Federated States of Micronesia shall ensure that all mail turned over to the United States Postal Service for conveyance to the United States or other countries complies with the postal conventions to which the United States adheres and with the postal laws and regulations of the United States. International documentation (parcel bills for registered and insured parcels, letter bills for registered letters, and AV-7/CN-38 manifests for Express Mail) shall be required for those special services provided between the exchange offices of the Federated States of Micronesia and designated exchange offices of the United States. Pursuant to paragraph 14 of this Article, the Government of the United States shall, upon request, assist The Government of the Federated States of Micronesia in developing local practices and procedures to fulfill the requirements of this paragraph.

9. Except as noted in paragraph 5, pursuant to this Agreement, mail shall be exchanged at the exchange offices designated in this paragraph and outgoing mail from the Federated States of Micronesia shall be merged with United States mail for conveyance to the United States or to other countries. Such outgoing mail from the Federated States of Micronesia shall be treated as though it were mail from the United States for dispatch, documentation, statistical, accounting and settlement operations with other countries. The four designated exchange offices shall be located in the Federated States of Micronesia at Kosrae, Pohnpei, Chuuk and Yap.

10. The Government of the Federated States of Micronesia may determine postal rates for internal mail to local addresses within the Federated States of Micronesia.

11. After the effective date of this agreement, The Government of the Federated States of Micronesia shall be responsible for determining the postal rates for mail being sent from addresses in the Federated States of Micronesia to addresses in the United States and to other countries. The floor established for postage rates of mail from the Federated States of Micronesia to the United States shall be the published United States domestic postage rates at the time. The floor established for postage rates of mail from the Federated States of Micronesia to other countries, shall be the published United States standard international postage rates at the time. The Government of the Federated States of Micronesia may agree to establish a floor of United States domestic postage rates for mail exchanged between addresses of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. After the effective date of this Agreement, the United States Postal Service may establish special cost-related international rates or may opt to establish standard international rates and classifications for mail from the United States to the Federated States of Micronesia, provided that international rates will be phased in over a period of not less than five (5) years, beginning no sooner than 2006.

12. Revenues derived from the sale of stamps issued by The Government of the Federated States of Micronesia for postal services or for philatelic purposes shall be retained by The Government of the Federated States of Micronesia. The Government of the Federated States of Micronesia agrees to provide, pursuant to their constitutional processes, adequate funding for the operation of their postal services in a manner which will allow the United States Postal Service to perform its responsibilities under this Agreement in an efficient and economical manner, with any disputes arising under this paragraph to be resolved pursuant to Article II of Title Four of the Compact.

13. Liability for the loss of registered and insured items (as may be further agreed to pursuant to paragraph 4) shall rest with the Government which, having received it without comment, cannot prove either delivery to the addressee or correct transfer to another administration. Pursuant to paragraph 14 of this Article, the Government of the United States shall, upon request, assist The Government of the Federated States of Micronesia in developing local practices and procedures to fulfill the requirements of this paragraph.

14. The Government of the Federated States of Micronesia shall not impose any terminal dues or other charges on the United States Postal Service or the postal administrations of any other governments for mail conveyed to the Federated States of Micronesia by the United States Postal Service pursuant to this Agreement.

15. One year from the effective date of the Agreement, the Federated States of Micronesia shall discontinue the sale of Postal Money Orders on USPS forms in accordance with USPS regulations. One year from the effective date of this Agreement, the Federated States of Micronesia shall return to the United States Postal Service all devices used for the imprinting of Postal Money Orders and shall remit to the United States Postal Service all amounts collected in conjunction with the issuance of Postal Orders issued on USPS forms, including the Postal Money Order fees. Within one year following the effective date of this Agreement, the United States Postal Service shall enter into discussions with the Federated States of Micronesia for the exchange of Postal Money Orders under separate Money Order Agreements.

16. Pursuant to this Agreement, the United States Postal Service may provide such technical assistance (including technical assistance to provide any employee training) as the United States Postal Service and appropriate officials authorized to act on behalf of The Government of the Federated States of Micronesia mutually agree to be necessary and appropriate. This technical assistance would not require compensation from the Federated States of Micronesia, provided that the United States Postal Service is reimbursed the costs of such technical assistance from funds appropriated by the United States Congress. In addition, appropriate officials of the Federated States of Micronesia shall consult with the United States Postal Service with regard to fiscal planning and postal administration for the purpose of promoting economical and efficient postal services and programs.

17. United States Postal Service Inspectors, in concert with the Federated States of Micronesia law enforcement agencies, shall be authorized to investigate any incident, issue or claim regarding mail originating from the United States destined for the Federated States of Micronesia, and to seek reimbursement (as pursuant to paragraph 14) for any cost associated with such investigations.

18. The obligations of the Governments signatory to this Agreement under this Article shall terminate 20 years after the effective date of this Agreement. Prior to the termination of this Agreement, the United States Postal Service and The Government of the Federated States of Micronesia shall enter into bilateral arrangements to establish mutually acceptable terms and conditions for the exchange of the mail between the United States and the Federated States of Micronesia.

19. As mutually agreed, the United States shall assist The Government of the Federated States of Micronesia in acquiring membership in relevant international or regional postal organizations.

## Article VII

### *Weather Services and Related Programs*

1. The United States Department of Commerce's National Oceanic and Atmospheric Administration's (NOAA) National Weather Service (hereafter referred to as the National Weather Service) shall, subject to the availability of funds appropriated for that purpose, provide weather services and related programs in the Federated States of Micronesia as described in this Article at the levels equivalent to those available during the year prior to the effective date of the amended Compact.

2. These services and related programs shall be provided pursuant to:

(a) the provisions of 15 U.S.C. 313 et seq.; the International Aviation Facilities Act 49 U.S.C. 1151 et seq.; and section 803 of the Federal Aviation Act of 1958, 49 U.S.C. 44720;

(b) other provisions of the laws of the United States to the extent they expressly apply to the National Weather Service;

(c) weather treaties and other international weather agreements to which the United States is a party;

(d) applicable Executive Orders of the President of the United States; and

(e) implementing National Weather Service regulations.

3. The Government of the Federated States of Micronesia may issue weather forecasts under such terms as may be mutually agreed with the National Weather Service. The Government of the United States shall, however, continue to provide public, marine and aviation weather forecasts and severe weather warnings.

4. The Government of the Federated States of Micronesia is encouraged to take such transitional actions as may be necessary to prepare for the establishment and support of its own weather service. Such transitional actions may be initiated at any time prior to termination of the amended Compact pursuant to Article IV of Title Four of the amended Compact or prior to termination of this Article pursuant to Article XIII of this Agreement. At the request of the Government of the Federated States of Micronesia, prior to the establishment of the Government's own weather service, the National Weather Service shall provide advice in the development of the Federated States of Micronesia weather service.

5. The National Weather Service shall provide weather services and related programs pursuant to this Article, in part, through the Weather Service Offices (WSO) established in the Federated States of Micronesia.

(a) The National Weather Service and the Government of the Federated States of Micronesia shall, in an Exchange of Letters, set forth the duties and qualifications of employees and provide procedures to reimburse the Government of the Federated States of Micronesia for materials and for salaries and other expenses incurred in the performance of these duties; and

(b) The Government of the United States shall reimburse the Government of the Federated States of Micronesia for costs incurred under this paragraph.

6. As required to implement the services and related programs provided pursuant to this Article or to meet technological change, the National Weather Service shall train employees of the Government of the Federated States of Micronesia assigned to WSOs and Supplemental Aviation Weather Reporting Station (SAWRS) observing sites. The Government of the United States shall reimburse the Government of the Federated States of Micronesia for costs incurred for training approved by the National Weather Service.

7. The National Weather Service shall inspect all WSOs and SAWRS observing sites on a regular basis to assure the quality of meteorological operations.

8. The National Weather Service shall provide and maintain WSOs pursuant to Article V of this Agreement, including meteorological observatories and other buildings, and shall maintain and replace meteorological and other equipment of the National Weather Service.

9. The National Weather Service shall provide the supplies and expendables required for the operation of its programs and related services.

10. Pursuant to Article III, Title One of the amended Compact, the radio operating frequencies in the bands 401-406 MHz and 1660-1700 MHz shall be protected by the Government of the Federated States of Micronesia in order to ensure their interference-free use for rawinsonde observations, in accordance with the provisions of Radio

Regulations annexed to the International Telecommunication Convention. Other radio operating frequencies may be substituted for those set forth in this paragraph by agreement of the Governments.

11. The Government of the Federated States of Micronesia, in order to assure that it receives the most current meteorological information and that such information will be available on a global basis, shall as a public service provide, at a reduction from normal commercial rates, continuing access to its telecommunications services, for meteorological traffic to and from Guam and such other points as may be designated by the Government of the United States.

12. The National Weather Service shall provide weather services and related programs in Kosrae, Federated States of Micronesia, and Pohnpei International Airport, Pohnpei, Federated States of Micronesia to the extent that the National Weather Service determines that such services and related programs are necessary to meet requirements for safe and efficient operation of United States air carriers engaged in international and domestic air service in Kosrae and at the Pohnpei International Airport. The National Weather Service shall train employees of the Government of the Federated States of Micronesia assigned to Kosrae and at the Pohnpei International Airport to enable such employees to provide required weather-reporting services pursuant to this paragraph. The National Weather Service shall not be responsible for providing reimbursement to the Federated States of Micronesia for personnel costs, including salaries and expenses, incident to the provision of weather services in Kosrae and at the Pohnpei International Airport pursuant to this paragraph.

13. As the availability of logistic support and finances permit, the National Weather Service will install and operate a network of satellite reporting automatic weather stations within the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands and the Republic of the Marshall Islands in support of the forecasting operations of the Joint Typhoon Warning Center and the Regional Specialized Meteorological Center Tokyo - Typhoon Center.

14. The Government of the Federated States of Micronesia will provide logistic support for the installation and maintenance of the elements of this network within the Federated States of Micronesia, resources permitting, and the National Weather Service will reimburse the Government for the cost of this support.

15. Annexed to this agreement are further details of weather services and related programs to be provided by the National Weather Service to the Federated States of Micronesia.

#### Article VIII

##### *Civil Aviation Safety Services and Related Programs*

1. The Government of the United States and the Government of the Federated States of Micronesia agree that the Federal Aviation Administration (FAA) shall provide aviation safety services in the Federated States of Micronesia in accordance with this Article, subject to availability of appropriated funds, with the common desire to:

(a) promote the common interests of the Government of the United States and the Government of the Federated States of Micronesia in fostering safe and efficient air service; and

(b) facilitate the orderly establishment of aviation safety statutory and regulatory regimes and aviation safety authorities by the Government of the Federated States of Micronesia.

2. The Administrator of the Federal Aviation Administration may determine, after consultation with the Government of the Federated States of Micronesia, the appropriate level of services and related programs that the Federal Aviation Administration shall provide under the Compact, as amended, and this Agreement, provided the levels of services and related programs are consistent with the principles and objectives of the Compact, as amended, and this Agreement, including paragraphs 1 above and paragraphs 3 and 5 below.

3. On behalf of the Government of the Federated States of Micronesia, the Government of the United States shall provide aviation safety services in the Federated States of Micronesia as follows:

(a) en route air traffic services within that air space including the Federated States of Micronesia for which the Government of the United States has responsibility under the appropriate regional air navigation plan approved by the International Civil Aviation Organization (ICAO);

(b) flight inspection and ground certification of nondirectional beacons and distance-measuring equipment, and periodic review and evaluation of the need for, and the maintenance, modification, improvement or replacement of, nondirectional beacons, distance-measuring equipment and related support systems in the Federated States of Micronesia (The nondirectional beacons and distance-measuring equipment shall be removed from service when the need for them no longer exists.); and

(c) development and updating of instrument approach procedures, standard instrument departure procedures and standard terminal arrival routes for airports in the Federated States of Micronesia, and issuance of appropriate Notices to Airmen.

4. The Government of the Federated States of Micronesia, pursuant to Section 471(b) of the Compact, shall take all necessary steps to ensure the conformity of laws, regulations and administrative procedures with the provisions of this Article. The aviation safety services specified under paragraph 3 of this Article shall be provided exclusively pursuant to treaties and other international agreements relating to aviation safety to which the United States is a party and the laws and regulations of the United States. The Government of the Federated States of Micronesia shall:

(a) consistent with Resolutions A23-11, Appendix N, Part II, Air Navigation, of ICAO Assembly Resolutions in force as of October 7, 1980, U.N. Doc. 9349, assign and delegate to the Government of the United States sole authority and responsibility for providing aviation safety services as specified in paragraph 3(a) of this Article until such time as those responsibilities are transferred at the request of the Government of the Federated States of Micronesia, and with the approval of the ICAO, from the

Government of the United States to the Government of the Federates States of Micronesia; and

(b) grant unobstructed access by FAA personnel and FAA equipment to the property on which the navigational and landing aids set forth in paragraph 3(b) of this Article are located.

5. The FAA shall provide technical assistance to the Government of the Federated States of Micronesia to develop civil aviation safety authorities and to assist the FSM Government in the administration of safety certification and related aviation safety programs. Such technical assistance shall be provided pursuant to implementing agreements to be negotiated from time to time between the Government of the United States and the FSM Government. The FAA shall provide such technical assistance in accordance with the provisions of Part A of subtitle VII of Title 49, United States Code, and Chapter 473 of such subtitle. The technical assistance to be provided by the FAA includes, but is not limited to:

(a) continuing development of aviation safety statutes, regulations and aviation safety authorities;

(b) training, in the United States, of personnel designated by the Government of the Federated States of Micronesia;

(c) stationing of FAA personnel in the Federated States of Micronesia to provide continuing advice and guidance to aviation safety authorities at the request of the FSM Government. Such advice and guidance may include assistance to aviation required for certification by the Government of the Federated States of Micronesia of airmen, aircraft, airports and air agencies, as the term "air agencies" is used in 49 U.S.C. 44702 and 44707; and

(d) provision of equipment, tools, and facilities determined to be necessary to ensure aviation safety, or recommendations that such equipment, tools or facilities be provided by the Government of the Federated States of Micronesia.

6. Pursuant to Article II, Title One, of the compact, the Government of the Federated States of Micronesia shall protect radio frequency bands allocated in accordance with Article 5 of the Radio Regulations of the International Telecommunications Union to the aeronautical mobile, mobile, aeronautical fixed, fixed, aeronautical radionavigation, and radionavigation services in accordance with the provisions of Radio Regulations annexed to the International Telecommunication Convention, in order to ensure their use free of interference for these allocated purposes in support of civil aviation.

7. The Government of the Federated States of Micronesia, in order to ensure that they transmit and receive the most current meteorological information for civil aviation purposes and that such information provided by them shall be available on a global basis, shall provide continuing access to their telecommunications services for meteorological traffic to and from Guam or other points as may be designated by the Government of the United States in consultation with the Government of the Federated States of Micronesia.

8. The Government of the Federated States of Micronesia, in order to ensure that they transmit and receive the most current flight movement and airmen information data for civil aviation purposes, and that such information received or provided by them will be

available on a global basis, shall provide continuing access to their telecommunications services for flight movement and airmen information traffic to and from Guam or other entry points into the Aeronautical Fixed Service of the International Civil Aviation Organization as may be designated in accordance with the Convention on International Civil Aviation, Annex 10, Volume 1 and 2, by the Government of the United States in consultation with the Government of the Federated States of Micronesia.

9. The Government of the United States and the Government of the Federated States of Micronesia shall from time to time enter into such agreements as may be necessary to implement subparagraphs (b) and (c) of paragraph 3 of this Article.

## Article IX

### *Civil Aviation Economic Services and Related Programs*

1. The Government of the United States and the Government of the Federated States of Micronesia agree that the following provisions shall apply to the economic regulation of air services of the Federated States of Micronesia.

2. The Government of the Federated States of Micronesia shall exercise independent economic regulatory jurisdiction over air services to, from, and within the Federated States of Micronesia, which for the purposes of this Agreement are points outside the United States, as the term “United States” is defined in 49 U.S.C. § 40102.

3. In accordance with Section 124 of the Compact, the Government of the United States, if requested by the Government of the Federated States of Micronesia and as mutually agreed, shall negotiate or assist in negotiations for air rights with third countries on behalf of the Government of the Federated States of Micronesia.

4. The U.S. Department of Transportation, upon request of the Government of the Federated States of Micronesia, shall provide the following assistance to the Government of the Federated States of Micronesia:

(a) preparation of statutory and regulatory proposals for the economic regulation of civil aviation;

(b) processing, in Washington, D.C., on behalf of and on the basis of procedures mutually agreed with the Government of the Federated States of Micronesia, of applications from any person seeking authority from the Government of the Federated States of Micronesia to engage in air services to, from or within the Federated States of Micronesia; the power of ultimate disposition of such applications rests with the Government of the Federated States of Micronesia;

(c) training in the processing of air service applications, in Washington, D.C., of not more than two persons annually, and a total of not more than six persons during the life of this Agreement, designated by the Government of the Federated States of Micronesia. The Government of the Federated States of Micronesia shall be responsible for travel, subsistence and similar expenses of its designated persons while in such training; and

(d) such other assistance as may from time to time be specifically agreed to by the U.S. Department of Transportation.

5. Subject to the approval of the Congress of the United States, the Government of the United States shall maintain:

(a) A distinct classification of foreign air carrier, as the term “foreign air carrier” is defined in 49 U.S.C. § 40102, to be known as “Freely Associated State Air Carrier.” This classification shall apply exclusively to a carrier which:

(1) is organized under the laws of the Federated States of Micronesia or the United States; and

(2) has consent to such classification from the Government of the Federated States of Micronesia, and consent to such classification from the Government of the United States pursuant to standards adopted by the Government of the United States for such classification.

(b) Authority for the U.S. Department of Transportation to authorize Freely Associated State Air Carriers to carry local traffic between Guam, the Commonwealth of the Northern Mariana Islands, and Honolulu, and within the Commonwealth of the Northern Mariana Islands.

(c) Notwithstanding the provisions of 49 U.S.C. § 40102(a)(15), Air Micronesia, Inc. and Continental Micronesia, Inc. each shall qualify as a U.S. citizen air carrier, within the meaning of 49 U.S.C. § 40102(a)(2), for so long as they continue to be (1) incorporated in the United States or its Territories or possessions, and (2) controlled by citizens of the United States or by a corporation or corporations controlled by citizens of the United States.

(d) The U.S. Department of Transportation shall maintain rules to implement the provisions of this paragraph as the Department, in its discretion, deems appropriate. The Government of the Federated States of Micronesia shall be given notice of any proposed change in these rules and an opportunity to present its views, which shall be considered in any such revision.

6. (a) Notwithstanding paragraph 2, the Government of the Federated States of Micronesia shall authorize, without restrictions or impairment, United States air carriers to operate air services to, through, beyond, within and between the Federated States of Micronesia and to establish prices applicable to such air services.

(b) The Government of the United States shall promptly and sympathetically consider applications by air carriers of the Federated States of Micronesia to serve the United States, subject to all requirements normally applied.

(c) The Governments of the Federated States of Micronesia and the United States shall, on the basis of reciprocity, exempt air carriers that are authorized by each other to provide air services, from customs duties and taxes imposed by their national authorities, and shall not impose user charges that exceed an equitable proportion of the reasonable costs of providing the facilities, or which are discriminatory.

7.(a) The Government of the United States shall promptly notify the Government of the Federated States of Micronesia of the filing with the U.S. Department of Transportation of any application by a United States air carrier for authority under the laws of the United States to operate air services pursuant to paragraph 6. The

Government of the Federated States of Micronesia shall designate competent authorities pursuant to Article II, paragraph 10 of this Agreement for the purpose of receiving such notice. The Government of the Federated States of Micronesia shall be accorded an opportunity to present its views, which shall be considered in reaching any decision. Should a formal or informal proceeding be instituted by the Government of the United States in connection with any such application, the Government of the Federated States of Micronesia shall be made a party to such proceeding with full rights in accordance with the applicable procedural rules.

(b) The Government of the Federated States of Micronesia shall promptly notify the Government of the United States of the filing with the Department of Transportation, Infrastructure and Communications of any application by an air carrier of the Federated States of Micronesia for authority under the laws of the Federated States of Micronesia to operate air services between the Federated States of Micronesia and the United States. The Government of the United States shall designate competent authorities pursuant to Article II, paragraph 10 of this Agreement for the purpose of receiving such notice. The Government of the United States shall be accorded an opportunity to present its views, which shall be considered in reaching any decision. Should a formal or informal proceeding be instituted by the Government of the Federated States of Micronesia in connection with any such application, the Government of the United States shall be made a party to such proceeding with full rights in accordance with the applicable procedural rules,

8. The Government of the United States and the Government of the Federated States of Micronesia shall sympathetically consider a request by the other Government for the negotiation of a bilateral air transport agreement.

9. The Government of the Federated States of Micronesia may terminate the operation of paragraphs 3, 4, 5 or 7 of this Article. Such partial termination may be effected in the same manner as this Article may be terminated in accordance with Article XIII of this Agreement. If the Government of the Federated States of Micronesia terminates the operation of paragraphs 3, 4, 5 and 7 of this Article, the Government of the Federated States of Micronesia may, in accordance with Article XIII of this Agreement, also terminate the operation of paragraph 6 of this Article.

10. If the Government of the Federated States of Micronesia elects to terminate the operation of paragraphs 3, 4, 5 and 7 of this Article, and the operation of paragraph 6 of this Article, the remaining provisions of this Article shall cease to be in effect two years after such termination, unless otherwise agreed by the Government of the Federated States of Micronesia and the Government of the United States. Notwithstanding the entry into force of an air transport agreement between the Government of the Federated States of Micronesia and the Government of the United States, this Article IX shall remain in full force and effect except as may be provided in paragraphs 9 and 10 of this Article.

## Article X

### *United States Disaster Preparedness and Response Services and Related Programs*

1. Federal Emergency Management Agency Disaster Preparedness Services and Related Programs

(a) The Government of the Federated States of Micronesia (FSM) may request an annual grant from the Federal Emergency Management Agency (FEMA), which has been incorporated into the Emergency Preparedness and Response Directorate, Department of Homeland Security, for disaster preparedness, which shall not exceed fifty (50) percent of the cost of improving, maintaining and updating disaster assistance plans, including evaluation of natural hazards and development of the programs and actions to mitigate such hazards, provided that no such grant shall exceed fifty thousand dollars (\$50,000) per annum and, provided further, that the FSM shall be eligible to receive such grants only if funding for these purposes is available to States of the United States.

(b) The Government of the FSM assumes all rights, obligations and liabilities arising out of assistance, services and programs provided by FEMA under this Agreement, including but not limited to the obligation to fund not less than fifty (50) percent of the cost of improving, maintaining and updating the disaster assistance plans referenced in paragraph 1, above.

## 2. United States Agency for International Development (USAID) Office of U.S. Foreign Disaster Assistance Services and Related Programs

(a) As is the case with any disaster-affected country, the Federated States of Micronesia (FSM) may request U.S. Government (USG) foreign disaster assistance through the Chief of Mission of the U.S. Embassy. Based on assessment information provided by the FSM Government, its own assessment, or assessments of other partners, the U.S. Embassy can request specific assistance from the United States Agency for International Development's Office of U.S. Foreign Disaster Assistance within the Bureau of Democracy, Conflict, and Humanitarian Assistance (USAID/DCHA/OFDA). The following criteria would have to be met: 1) the disaster is deemed to be beyond the ability of the FSM to respond to; 2) the FSM has specifically requested or indicated it will accept USG assistance; and 3) a disaster response is in the interest of the USG.

(b) The initial assistance provided through OFDA may be in the form of funding, commodities, or services (or a combination thereof) and is to be used for the immediate relief of people affected by the disaster to save lives and reduce human suffering. The dollar value of this initial assistance (whether in cash, kind, or a combination of the two) will usually be limited to US Dollars 50,000. Additional assistance may be provided if justified, based on additional assessment information and reporting. Under no circumstances will requests for assistance by the FSM be considered by OFDA that are not received directly from the U.S. Embassy.

(c) OFDA has several other options for response beyond the initial provision of relief assistance. In major disasters and with the approval of the FSM Government, the U.S. Embassy may request that OFDA deploy a regional advisor, an assessment team, or a Disaster Assistance Response Team (DART) to provide direct coordination with OFDA and other organizations in the management of USG assistance. Based on further assessments of need, OFDA may provide additional relief commodities, fund proposals by indigenous private voluntary organizations (PVOs), the United Nations (UN), non-governmental organizations (NGOs) and international organizations (IOs). Any

combination of these options may be utilized, based on the magnitude of the disaster, the response by other donors, and the FSM's own response capabilities. In all disaster events, there should be consultation between the FSM Government and the U.S. Embassy and between OFDA and the U.S. Embassy to assure that the needs of disaster victims are met within the context of the total assistance provided by the international disaster assistance community.

(d) In addition to disaster relief, OFDA may also provide preparedness, mitigation, and technical assistance. These non-relief programs may be provided without the need for a disaster declaration, as coordinated between the FSM Government, the U.S. Embassy, OFDA and other partners.

## Article XI

### *Federal Deposit Insurance Corporation Services and Related Programs*

The Government of the United States of America and the Government of the Federated States of Micronesia (the "parties") have agreed as follows:

1. This agreement provides the criteria under which the Federal Deposit Insurance Corporation ("FDIC") will continue to insure the Bank of the Federated States of Micronesia ("Bank").

2. As an ongoing FDIC-insured and FDIC-supervised bank, the Bank and its management are and shall continue to be subject to existing and future United States banking and banking-related laws, rules and regulations relating to supervision, regulatory, and resolution and receivership matters to the extent that those laws, rules and regulations do not conflict with the Federated States of Micronesia's constitutional prohibition on ownership of land by aliens. The mention below of specific laws, rules and regulations is not intended to limit the scope of this governing principle.

3. Within the FDIC's discretion, the sale of a controlling interest in the Bank to a person or entity other than a citizen of the Federated States of Micronesia ("FSM") shall trigger a loss of the Bank's insured status and result in termination of deposit insurance, provided, however, that the Bank is allowed to have up to 33 1/3 percent foreign ownership. The change-of-control provisions in section 7 of the *Federal Deposit Insurance Act* ("FDIC Act") (12 U.S.C.1817(j)) shall apply to any changes in the Bank's ownership.

4. The FDIC has the authority to suspend or terminate the Bank's deposit insurance if the Commissioner of Banking of the FSM ("Commissioner") does not promptly and fully enforce an FDIC directive or order against or involving the Bank or any "institution-affiliated party" ("IAP"), as that term is defined in 12 U.S.C.1813 (u).

5. Any proceeding involving administrative enforcement actions against the Bank or any IAP of the Bank shall be in accordance with the Federal Deposit Insurance Act ("FDI ACT") and FDIC regulations. Any proceeding against the Bank or an IAP shall be held in the State of Pohnpei, unless the parties agree to hold a hearing in another location, or unless an Administrative Law Judge finds good cause to hold a hearing in a different location.

6. The Bank or an affected IAP may appeal temporary administrative orders and interim appealable administrative orders to the United States District Court for the District of Guam or, if warranted by the circumstances, to another appropriate United States District Court, after exhausting any administrative remedies. The Bank or an affected IAP may appeal a final order or directive to the United States Court of Appeals for the Ninth Circuit or to the United States Court of Appeals for the District of Columbia Circuit.

7. The FDIC may sue in the United States District Court for the District of Guam or, if warranted by the circumstances, in another appropriate United States District Court, to enforce any final or temporary order or directive against or involving the Bank or an IAP.

8. The government and courts of the FSM shall give full faith and credit and full effect to final and temporary orders and directives of the FDIC, any United States banking or regulatory agency, and any United States court. All such final and temporary orders and directives shall be enforced by the FSM in summary proceedings. The FSM, including the Department of Justice, courts and agencies of the FSM, commit to full cooperation in the enforcement of all such final temporary orders and directives.

9. The FSM shall bar the participation in the conduct of the affairs of the Bank by any IAP, person, or party who: (a) is subject to a final or temporary order of suspension, removal, or prohibition issued by the FDIC, other United States banking or regulatory agency, or United States court, and/or (b) has been convicted of, or has agreed to enter a pre-trial diversion of similar program, in connection with the prosecution for an offense of the type covered by section 19 of the FDIC Act (12 U.S.C. 1829), including any conviction and/or diversion that takes place in the FSM or in any other nation or jurisdiction.

10. If the Bank becomes “critically undercapitalized,” as that term is used in the provisions of the FDI Act (12 U.S.C. 1821(c)(5), (9)-(13)), the Government of the Federated States of Micronesia shall act to close the Bank.

(a) The FDIC has the authority to appoint itself receiver of the Bank under the circumstances provided in 12 U.S.C. 1821(c)(10) and to exercise all powers conferred by the FDIC Act.

(b) If the Bank is closed for any reason, the FDIC shall become the receiver of the Bank on the date of the closing unless the FDIC notifies the Commissioner in writing that it will not serve as receiver.

(c) As under the provisions of the FDI Act (12 U.S.C.1821 (d)(11)), the receiver’s administrative expenses shall be paid prior to the payment of any other claims of unsecured creditors. In addition, the subrogated claim of the FDIC as insurer of deposits shall have priority over the payment of any claims of general unsecured creditors of the Bank, other than the receiver’s administrative expenses.

(d) No person shall be permitted to bring an action in a court of law or other body (including any action that existed against the Bank prior to its failure) until such person has permitted the receiver a reasonable period to review such claim.

(e) No claim against a receiver arising prior to the failure of the Bank shall be valid unless it appears in the Bank’s records.

(f) No claim against the receiver for its actions in liquidating the Bank shall prevail unless the plaintiff proves by clear and convincing evidence that the receiver acted in willful disregard of the law.

(g) It is further understood by the parties that: (1) no court or administrative agency shall enjoin the operations of the receivership; (2) officers, directors, and other professionals shall be liable to the receiver for any damages caused to the failed Bank; and (3) the receiver shall not be required to perform any executory contract which had been entered into by the Bank prior to its failure.

(h) The FDIC shall commence litigation between the receiver and creditors or debtors of the Bank only after a complete administrative review of the claim by the receiver. All suits of a civil nature to which the FDIC as receiver is a party must be brought in the United States District Court for the District of Guam or in another United States District Court agreed upon by the receiver and the litigant(s). When litigation is necessary, the FDIC shall attempt in good faith to reduce litigants' travel obligations and costs by soliciting the use of a special master designated by the United States District Court for the District of Guam. The special master would travel to the FSM to conduct hearings and gather evidence to assist the United States District Court for the District of Guam.

11. In addition to continuing to insure the Bank, the FDIC is prepared to provide technical assistance to the FSM, in the form of regulatory, supervisory and receivership/liquidation training and other support.

## Article XII

### *Telecommunications Services and Related Programs*

1. This Article sets forth the respective authority and responsibility of the United States of America and the Federated States of Micronesia for communications assistance including frequency spectrum management as authorized by Section 131 of the Compact of Free Association, as amended, and with regard to the operation of telecommunication services of the Government of the United States in the Federated States of Micronesia as authorized by Section 132 of the Compact, as amended.

2. The Government of the United States and the Government of the Federated States of Micronesia, recognizing the progressive development of telecommunications infrastructure for their mutual benefit and the importance of incorporating advances in technology in this development, shall enter into negotiations for the purpose of concluding such subsidiary arrangements as may be necessary to make available, so far as is possible, to the people of the Federated States of Micronesia and to the Government of the United States, a rapid, efficient, reliable and cost-effective wire and radiocommunication service, including broad band services such as fiber optic cable. Further, with a view to acquiring such enhanced telecommunications infrastructure while limiting costs, such communications infrastructure upgrades shall be free from all license requirements, taxes, duties, fees and charges. All arrangements concluded under this paragraph shall remain in force between the Government of the United States and the Government of the Federated States of Micronesia for the period of effectiveness of the provisions of Article XIII of this Agreement.

### Definitions

3. The definition of terms set forth in the following documents are incorporated into this Agreement:

- (a) Article VI of Title Four of the Compact, as amended;
- (b) Paragraph 2 of Article I of the Status of Forces Agreement concluded pursuant to Section 323 of the Compact; and
- (c) Paragraph 2 of Article I of this Agreement.

### United States Telecommunications Support

4. The United States will continue work on the notification of radio frequency assignments to the Radiocommunication Bureau (BR) of the International Telecommunication Union (ITU) until all assignments that require notification pursuant to the ITU Radio Regulations are successfully notified.

5. The United States will provide frequency management support to the frequency management staff of the Federated States of Micronesia by:

- (a) Assisting in the notification and coordination of new radio frequency assignments to the Radiocommunication Bureau when the frequency management staff is faced with new or complex aspects of complying with ITU procedures;
- (b) Providing advice and assistance in accommodating new communications requirements for complex systems or for ones which the staff have not handled before; and,
- (c) Maintaining a computer database of U.S. Government frequency assignments in the Federated States of Micronesia and providing periodic lists of the assignments to the Federated States of Micronesia for the duration of the Compact, as amended.

6. At Joint Telecommunication Board meetings and between meetings, as necessary, the United States will provide information on, for example, issues and correspondence involving activities of the ITU.

### Responsibilities of the Federated States of Micronesia

7. For the duration of the Compact, as amended, the Federated States of Micronesia:

- (a) Will operate its telecommunications services consistent with the provisions of the ITU Constitution and Convention and the ITU Radio Regulations and will fulfill all of its ITU obligations; and
- (b) Will consult with the United States of America (using Joint Telecommunication Board meetings when time permits) on ITU issues, including all ITU conferences and meetings, which could affect its bilateral relationship with the United States of America.

8. In accordance with the applicable provisions of the ITU Convention or as may be provided for in a subsequent ITU instrument binding on the Government of the United States of America and the Government of the Federated States of Micronesia, the Federated States of Micronesia will give the United States of America its proxy to vote

and sign on its behalf at any ITU conference or meeting that it does not attend, provided the two governments have consulted on the issues to be decided.

#### Operation of Telecommunications Services of the United States in the FSM

##### 9. General Provisions:

(a) The Government of the Federated States of Micronesia shall permit the Government of the United States to operate telecommunications services in the Federated States of Micronesia to the extent necessary to fulfill the obligations of the Government of the United States under the Compact, as amended.

(b) In the Federated States of Micronesia, permits or licenses issued to United States personnel by the Government of the United States shall be solely for the operation of telecommunication facilities of the Government of the United States.

(c) The Government of the United States may use local telecommunications systems in the Federated States of Micronesia and is encouraged to do so to the extent feasible taking into account the cost, security, effectiveness and reliability of such systems.

10. Subject to prior consultations with the Federated States of Micronesia, the Government of the United States may take within the Federated States of Micronesia measures for the installation, operation and maintenance of its telecommunication services, including:

(a) the operation and maintenance of all telecommunication facilities, and use of the associated radio frequencies authorized for use, or authorized in use, by it upon the entry into force of this Agreement;

(b) the installation, operation and maintenance of new or additional telecommunication facilities in the Federated States of Micronesia. Such actions will be coordinated with the Government of the Federated States of Micronesia.

(c) the regulation and control of all telecommunications of the Government of the United States, including the licensing of operations personnel; and

(d) the use of codes, ciphers and other means of cryptographic security.

##### 11. The Government of the Federated States of Micronesia:

(a) Permits the operation of United States telecommunication facilities in the Federated States of Micronesia, subject to coordination with the Government of the United States in accordance with the terms of this Agreement; and will ensure that the provision of frequencies to the Government of the United States shall be free from all license requirements, taxes, duties, fees and charges;

(b) Shall make prompt and reasonable efforts to satisfy requests by the Government of the United States for changes in existing frequencies and for requests for additional frequencies; and

(c) Shall accept as its own, without a test or fee, the permits or licenses issued to United States personnel by the Government of the United States.

12. (a) For the purpose of carrying out the provisions of this Article, Competent Authorities shall be designated by each of the Parties. The Competent Authority of the

Government of the United States and the Competent Authority of the Government of the Federated States of Micronesia may communicate directly with each other. The designation by a government of the Competent Authority will be communicated in writing to the other signatory government and such designation may, from time to time, be amended.

(b) Recognizing the establishment of the Joint Telecommunication Board in the Compact provisions for the purpose of harmonizing the telecommunication operations of the Government of the United States with those of the Government of the Federated States of Micronesia, the Competent Authorities shall meet at least annually or more often as may be required. The Board will review plans for changes to the respective telecommunication systems of the parties to ensure maximum possible compatibility and interoperability and discuss and decide any issues relating to the use of local telecommunication systems by the Government of the United States. The secretariat and host for meetings of the Board will be as mutually agreed by the parties.

13. The Government of the United States, through its Competent Authority, shall coordinate proposed major changes to United States telecommunications and extraordinary activities or exercises that would have the potential of causing either electromagnetic or physical interference with other systems used or licensed by the Government of the Federated States of Micronesia. The Government of the Federated States of Micronesia, through its Competent Authority, shall coordinate similar changes with the United States Competent Authority. The Government of the United States and the Government of the Federated States of Micronesia shall use their best efforts to avoid both electromagnetic and physical interference to each other's telecommunication operations. In the event the Competent Authorities cannot reach a mutually satisfactory agreement through consultations, the matter will be referred to their respective governments for resolution in accordance with the provisions of Article V of Title Three or Article II of Title Four of the Compact, as amended, as appropriate.

14. Transmitter and receiver antennas installed by the Government of the United States shall be located and constructed so as not to constitute hazards including, inter alia, hazards to air navigation.

#### Defense Telecommunication Provisions

15. The Armed Forces of the United States and their United States contractors may take, in the Federated States of Micronesia, measures for the installation, operation and maintenance of telecommunication services pursuant to Title Three of the Compact, as amended, and its subsidiary agreements. These measures include the right, as provided for in this Agreement, to install, operate and maintain:

(a) Radio communication, radar and telemetry systems including:

(1) Major radio communication facilities as links with the worldwide military network of the United States;

(2) Such other lesser radio-telephonic and telegraphic communication facilities including the Military Affiliate Radio System as may be required for the support of military and administrative services of the Armed Forces of the United States;

(3) Television systems;

(4) Radio facilities for communication with aircraft and surface vessels;

(5) Satellite communications;

(6) Such other broadcast stations contributing to the morale, welfare and training of the Armed Forces of the United States and its contractors, which includes the Armed Forces Radio and Television Service and short-range broadcast stations; and

(7) Such other telecommunication facilities as may be required from time to time.

(b) Aids to air navigation and airfield approach control systems including electronic navigation and landing aids, such as airport surveillance radars, ground control approach (GCA), TACAN and instrument landing systems (ILS), and other such aids as may be developed and adapted for such use.

(c) Telecommunication equipment in connection with the operation of weather facilities.

(d) The activities contained in paragraph 15 (a) through (c) of this Article, are a non-exclusive, illustrative listing of the telecommunications activities which the United States may take in the Federated States of Micronesia.

(e) The term “television systems” as used in paragraph 15 (a) (3) refers only to such systems used for surveillance monitoring, security systems, command and control, and other such uses, but does not include television broadcast stations as addressed in paragraph 15 (a) (6) of this agreement without the prior agreement between the Government of the United States and the Government of the Federated States of Micronesia.

(f) The Government of the United State shall not undertake any actions to install or operate broadcast stations pursuant to paragraph 15 (a) (6) of this Article without prior agreement between the Government of the United States and the Government of the Federated States of Micronesia.

#### United States Federal Programs and Services Telecommunication Provisions

16. United States Federal Agencies and their United States contractors may take in the Federated States of Micronesia measures for the installation, operation and maintenance of telecommunication services in support of United States Federal Programs and Services as set forth in this Agreement.

#### Effective Date, Amendment and Duration

17. This Article shall enter into force simultaneously with the Compact, as amended. Upon entry into force of this Agreement, both the Section 131 Agreement effected by exchange of notes at Kolonia and Palikir May 28 and June 7, 1993, and as between the United States and the Federated States of Micronesia, the 1982 “Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 132 of the Compact of Free Association,” shall terminate.

18. This Article may be amended by the Parties at any time by mutual agreement.

19. This Article shall remain in force in accordance with the following terms:

(a) Paragraphs 2, 3, 9-15 and 17-19 of this Article shall remain in force between the Government of the United States and the Government of the Federated States of Micronesia for the period of effectiveness of the Military Use and Operating Rights Agreement concluded pursuant to Sections 321 and 323 of the Compact; and

(b) Paragraphs 2, 3, 9-14 and 16-19 of this Article shall remain in force between the Government of the United States and the Government of the Federated States of Micronesia for the period of effectiveness of the provisions of Article XIII of this Agreement.

### Article XIII

#### *Transition and Termination of Services and Related Programs*

1. Whenever the Government of the Federated States of Micronesia desires to terminate a category of the services and related programs set forth in Articles VI through XII of this Agreement, that Government shall give written notice to the United States diplomatic representative and to the Federal agency concerned. The Government of the United States shall assist in the orderly transfer of authority and responsibility for such category of services and related programs. Unless otherwise agreed, the authority and responsibility of the Government of the United States under this Agreement shall terminate one year after receipt of such notice by the United States diplomatic representative.

2. Upon termination of a category of services and related programs pursuant to paragraph 1 of this Article, the applicability of all laws of the United States, its regulations, practices, policies, treaties, conventions, or arrangements, which are applicable to that category solely by virtue of this Agreement, shall cease to be applicable in the Federated States of Micronesia, and any authority and responsibility of the Government of the United States for the conduct of foreign affairs in respect to such services and related programs shall also cease.

### Article XIV

#### *Effective Date, Amendment and Duration*

1. This Agreement, as amended, shall enter into force simultaneously with the amendments to the Compact; any related Exchanges of Notes shall enter into force in accordance with their own terms.

2. The provisions of this Agreement or any related Exchanges of Notes may be amended as to the Government of the Federated States of Micronesia and as to the Government of the United States at any time by mutual agreement.

3. This Agreement shall remain in force for a period of twenty years, subject to Article IV, Title Four of the Compact.

4. This Agreement may be accepted, by signature or otherwise, by the Government of the United States and the Government of the Federated States of Micronesia. Upon acceptance of this Agreement, each Government shall possess an original English language version.

DONE at \_\_\_\_\_, in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 2003, each text being equally authentic.

FOR THE GOVERNMENT OF THE FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA: FEDERATED STATES OF MICRONESIA:

## ANNEX A

### WEATHER SERVICES AND RELATED PROGRAMS

#### PROVIDED BY DOC NOAA NATIONAL WEATHER SERVICE TO THE FEDERATED STATES OF MICRONESIA

To comply with the provisions of the Compact of Free Association the United States Department of Commerce's (DOC) National Oceanic and Atmospheric Administration's (NOAA) National Weather Service (hereafter referred to as the National Weather Service) shall, subject to the availability of funds appropriated for this purpose:

1. Enter into a Contract with the Government of the Federated States of Micronesia (FSM) to provide, on a reimbursable basis, personnel, facilities, supplies, and related support services, including telecommunication infrastructure, to operate and maintain Weather Service Offices at Pohnpei, Chuuk, and Yap, second order weather stations, and climatological networks within the area of responsibility of these three primary weather stations.

(a) The Weather Service Office at Pohnpei includes the observatory, upper air inflation building and associated weather equipment. It is staffed by a Meteorologist-in-Charge or Official-in-Charge, eight Weather Service Specialists, an Electronic Program Specialist and a Tradesman. This office takes and disseminates surface and upper air observations, gathers tide data and makes and disseminates locally adapted forecasts. It also provides expertise to the government on short and long term climatological trends with technical assistance from the National Weather Service. The Pohnpei office supervises the Pohnpei International Airport and Kosrae SAWRS. Second order stations providing limited surface synoptic observations are located at Pingelap, Nukuro, Kapingamorangi, and Kosrae. The Pohnpei office oversees the second order stations and also the cooperative weather sites within Pohnpei State. The person in charge of the Pohnpei office has, as a collateral duty, the function of the Federated States of Micronesia Weather Service Coordinator until such time as the Federated States of Micronesia Government can assume this function on a full time basis.

(b) The Weather Service Office at Yap includes the observatory, upper air inflation building and associated weather equipment. It is staffed by a Meteorologist-in-Charge, eight Weather Service Specialists, an Electronic Program Specialist and a Tradesman. This office takes and disseminates surface and upper air observations, gathers tide data,

and prepares and disseminates locally adapted forecasts. It also provides expertise to the government on short and long term climatological trends with technical assistance from the National Weather Service. The Pohnpei Office oversees second order stations providing surface synoptic observations are located at Woleai and Ulitihi. The Yap office oversees the cooperative weather sites within Yap State.

(c) The Weather Service Office at Chuuk includes the observatory, upper air inflation building and associated weather equipment. It is staffed by a Meteorologist-in-Charge or Official-in-Charge, eight Weather Service Specialists, an Electronic Program Specialist and a Tradesman. This office takes and disseminates surface and upper air observations, gathers tide data, and makes and disseminates locally adapted forecasts. It also provides expertise to the government on short and long term climatological trends with technical assistance from the National Weather Service. The Pohnpei Office oversees second order stations providing surface synoptic observations are located at Puluwat and Lukunor. The Chuuk office oversees the cooperative weather sites within Chuuk State.

2. As funds are available and as efficiencies and new technologies are implemented, modify the staff at the three FSM Weather Service Offices by a reduction in the number of Weather Service Specialists and the addition of a second Meteorologist and a Systems Manager (computer specialist).

3. Provide the supplies (including balloons, radiosondes, hydrogen and tanks, etc.), manuals and instructions, and instruments and equipment required for the operation of the weather offices' programs and related services but which are not provided for under Paragraph 1 above.

4. Provide and maintain weather office facilities, including renovation and periodic replacement, and the replacement of meteorological instruments/equipment, and other equipment required for the weather offices' programs and related services.

5. Regularly inspect the weather offices and SAWRS observing sites to ensure the quality of meteorological operations and services.

6. Train FSM employees as required to implement the provisions of the Compact and to meet technological change.

7. Continue FSM access to telecommunications for meteorological traffic to ensure the receipt and dissemination of current meteorological information.

8. Provide for the maintenance, repair, or installation of instruments and equipment required for the weather offices' programs and related services.

9. Provide advice and technical assistance, upon request, for the development of a Federated States of Micronesia national weather service.

10. Continue the following level of weather services and related programs for FSM until they may be assumed by the development of an FSM national weather service:

(a) General

The National Weather Service provides for the meteorological data acquisition facilities and services and for the dissemination of forecasts and warnings prepared by

the National Weather Service Forecast Offices (WFOs) in Guam and Honolulu to the civil interests, including those involved in marine and aviation activities.

(b) Public Weather Services

(1) WFO Guam prepares tropical storm, typhoon, marine, and other warnings and twice daily marine-oriented forecasts and transmits these products by satellite communications such as the Emergency Manager's Weather Information Network or equivalent means via HF radio (radiofax) for high seas information and by dedicated telecommunications networks to the Weather Service Offices. The WSOs adapt the marine-oriented forecasts for local use and then distribute locally by phone, phone recording, facsimile, Internet web site, and also disseminate by radio and TV (where available) in both English and native languages.

(2) Each of the three FSM offices (Pohnpei, Chuuk and Yap) maintains short-term historical weather records for the use of local, national and international agricultural, construction, and scientific interests. Long-term climatological records are maintained by the US National Climatic Data Center, Asheville, N.C.

(c) Aviation Weather Services

(1) Aviation aerodrome forecasts are to be issued for Yap, Chuuk, and Pohnpei four times daily, and for Kosrae (based upon the availability of SAWRS observations) by either the WFO Guam or the WFO Honolulu.

(2) Aviation warnings are issued, as required, under international agreement.

(d) Sea-Level Monitoring (Tide) stations in Pohnpei, Chuuk and Yap are part of the International Tsunami Warning System. These three stations are located in a critical quadrant of the western Pacific and provide early warnings of Tsunamis generated in the Philippine Islands - New Guinea - Vanuatu area. The tide information is transmitted to the Pacific Tsunami Warning Center in Honolulu for their computation of Tsunami transit time and for use in preparing warnings for the Pacific basin.