

**GOVERNMENT OF GUAM**  
**DEFINED CONTRIBUTION RETIREMENT SYSTEM**  
**PLAN AND TRUST AGREEMENT**  
**(EFFECTIVE OCTOBER 1, 2010)**

**GOVERNMENT OF GUAM  
DEFINED CONTRIBUTION RETIREMENT SYSTEM PLAN  
AND TRUST AGREEMENT**

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APPENDIX A: CURRENT EMPLOYEE AND EMPLOYER CONTRIBUTION RATES

**GOVERNMENT OF GUAM**  
**DEFINED CONTRIBUTION RETIREMENT SYSTEM PLAN**  
**AND TRUST AGREEMENT**

P R E A M B L E

On September 29, 1995, the Legislature of the Government of Guam enacted legislation creating a defined contribution retirement system. The legislation is codified in Article 2, Chapter 8, Title 4 of the Guam Code Annotated (“GCA”). Pursuant to Sections 8201, 8205, and 8218 of Title 4 of the GCA, the Board of Trustees (the “Board”) adopted a plan document (the “1995 Plan Document”) effective as of October 1, 1995, to administer the defined contribution retirement system. The 1995 Plan Document was restated in its entirety, effective October 1, 2005 (the “2005 Plan Document”). This document restates and replaces the 2005 Plan Document in its entirety effective as of October 1, 2010, to comply with changes in the law and regulations, including certain provisions of the Pension Protection Act of 2006, the Heroes Earnings Assistance and Relief Tax Act of 2008, the Worker, Retiree, and Employer Recovery Act of 2008, and final Treasury Regulations under Section 415 of the United States Internal Revenue Code. If there is any conflict or ambiguity between the provisions of this Plan document and the provisions of Title 4 of the GCA, the statutes shall control.

This Plan is a “governmental plan” as defined in Section 414(d) of the United States Internal Revenue Code of 1986. It is intended that the Plan and trust qualify under Sections 401(a) and 501(a), respectively, of the United States Internal Revenue Code and the “mirror” provisions under the Guam Territorial Income Tax Code, as such provisions apply to retirement plans sponsored by the Government of Guam.

The purpose of the Plan is to provide tax-qualified retirement benefits for eligible employees of the participating public employers. Mandatory employee and employer contributions, as adjusted for income or loss, are accumulated in individual accounts and made available to participants upon their retirement or as otherwise specified herein.

## ARTICLE I

### PARTICIPATION

#### 1.1 Eligibility

(a) **Employees Hired after September 30, 1995.**

Except as otherwise provided in this section 1.1, every Employee hired after September 30, 1995, is required to participate in the Plan. An Employee's entry date into the Plan is the day the Employee commences employment with a Contributing Employer.

(b) **Employees Electing to Transfer from the Government of Guam Retirement Fund.**

Employees who are members of the Retirement Fund may elect to participate in this Plan if the following requirements are satisfied:

- (1) The Employee's service credit recognized under the Retirement Fund is less than 20 years; and
- (2) During a three-month period each year, beginning March 1 and ending May 31, the Employee elects, in accordance with such rules and procedures as the Board may establish, to transfer from the Retirement Fund to this Plan.

(c) **Rehired Employees Participating in the Government of Guam Retirement Fund.**

An Employee who terminates from Government service for reasons other than retirement under the terms of the Retirement Fund, and who is thereafter reemployed by a Contributing Employer, shall not be eligible to participate in this Plan if the Employee has not completely withdrawn his or her contributions from the Retirement Fund prior to the date of reemployment.

(d) **Rehired Retirees Participating in the Government of Guam Retirement Fund.**

An Employee who retires under the terms of the Retirement Fund, is thereafter reemployed by a Contributing Employer, and is not eligible to continue participating in the Retirement Fund shall be eligible for membership in this Plan in accordance with Section 8206 of the GCA.

(e) **Temporary, Seasonal, Intermittent, or Part-Time Employees.**

Effective October 1, 2005, every Employee, including those classified as temporary, seasonal, intermittent, or part-time, must participate in the Plan.

## 1.2 **Determination by Board**

If a question arises as to eligibility, the Board shall make a determination and render a decision, and such determination and decision shall be final and conclusive.

## ARTICLE II

### CONTRIBUTIONS

#### **2.1 Employee Contributions**

Participants are required to make Employee Contributions at the rate specified in Appendix A. Employee Contributions are made by mandatory payroll deduction from a Participant's Compensation. Although designated as "Employee Contributions," the Contributing Employers are required to "pick up" these contributions, so that the contributions are treated as "employer contributions" for income tax purposes under section 414(h)(2) of the Code. Employees do not have the option of choosing to receive the contributed amounts directly.

#### **2.2 Employer Contributions**

A Participant's Contributing Employer shall match the Participant's Employee Contributions by making Employer Contributions at the rate specified in Appendix A.

#### **2.3 GGRF After-Tax Contributions**

Upon an Employee's election to transfer from the Retirement Fund to this Plan in accordance with Section 1.1(b), the Board shall transfer to the Employee's individual Account in this Plan the balance credited to the individual account of the Employee in the Members' Contribution Reserve in the Retirement Fund in accordance with Section 8164(a) of the GCA.

#### **2.4 Rollover Contributions**

In the event that a Participant has received, or is entitled to receive, an otherwise taxable distribution from another "qualified retirement plan" that is an "eligible rollover distribution," the Board may accept the rollover or direct transfer of the distribution amount as a Rollover Contribution to the Plan. For purposes of this section 2.4, "qualified retirement plan" means a plan meeting the requirements of Sections 401(a) or 403(a) of the Code, an individual retirement account or individual retirement annuity described in Section 408 of the Code (not a Roth IRA), an annuity contract described in Section 403(b) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code that is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code. For purposes of this Section 2.4, an "eligible rollover distribution" means a payment of cash, the full amount of which would otherwise be taxable to the Participant (therefore, not comprising after-tax employee contributions), which is not one of a series of periodic payments for the life (or life expectancy of the Participant) or joint lives (or joint life expectancies) of the Participant and the Participant's beneficiary or for a specified period of ten years or more, and which is not a payment required to be distributed to the Participant under Section 401(a)(9) of the Code or a hardship distribution. Prior to accepting a Rollover Contribution, the Board may require such assurances from the Participant, as the Board deems appropriate, in its discretion, that the Rollover Contribution is an "eligible rollover distribution," as defined in this Section 2.4 and Section 402(c)(4) of the Code, and that the Plan's receipt of the Rollover Contribution will not adversely affect the tax-qualified status of the Plan.



Rollover Contributions are subject to the distribution and withdrawal rules set forth in Articles V and VI.

## **2.5 Payment of Employee and Employer Contributions**

The Contributing Employers shall pay the Employee Contributions and Employer Contributions in cash to the Trust within five working days of the payroll issuance date for the salary relating to such Contributions.

## **2.6 Erroneous Contributions**

A payroll deduction of Employee Contributions made in error from the Compensation of an Employee shall be returned to the Employee's Contributing Employer for payment to the Employee as wages as soon as practicable after the error is discovered. A payment of Employer Contributions made in error shall be returned to the operating account of the Contributing Employer from whom the contribution originated as soon as practicable after the error is discovered.

## **2.7 Omissions**

In the event a payroll deduction is not made from the salary of an Employee when such deduction should have been made or if other omissions or errors occur, the Contributing Employer shall make or require such adjustments or make-up contributions as may be necessary to correct the mistake, as permitted or required by applicable law and as authorized by the Board of Trustees. Any make-up Employee Contributions which are required to be made under this Section 2.7 shall be accomplished by means of payroll deduction, and not by cash or personal check or other form of direct payment from the Employee.

## **2.8 Limitation on Annual Additions under Section 415 of the Code**

Annual additions to each Participant's Account for any limitation year shall not exceed the tax limits in effect under Section 415(c) of the Code. For the limitation year ending September 30, 2010, the limits are the lesser of \$49,000, or 100% of the Participant's Section 415 Compensation. The \$49,000 limit is subject to annual cost-of-living increases under Section 415(d) of the Code.

"Annual additions" means the aggregate amount allocated to a Participant's Account during the limitation year as a result of: (1) Employer Contributions, (2) Employee Contributions, and (3) forfeitures. "Annual additions" does not include Rollover Contributions or amounts transferred from the Retirement Fund.

The "limitation year" is the 12-month period ending September 30.

"Section 415 Compensation" means the Participant's Box 1, W-2 earnings for the year, modified to include any pre-tax elective deferrals pursuant to Sections 403(b), 457(b), 125, or 132(f)(4) of the Code. Employee Contributions picked up by the Contributing Employer under Section 2.1 are not included in a Participant's Section 415 Compensation. Generally, Section 415 Compensation does not include amounts paid after severance from employment. However, Section 415 Compensation does include

amounts paid by the later of 2½ months after the Participant's severance from employment or the end of the limitation year that includes the date of the Participant's severance from employment if:

- (a) the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or similar payments, and, absent the severance from employment, the payments would have been paid to the Participant while the Participant continued in employment with the Contributing Employer; or
- (b) the payment is for unused accrued bona fide sick, vacation, or other leave that the Participant would have been able to use if the Participant's employment had continued, and the payment would have been included in Section 415 Compensation if it were paid prior to the Participant's severance from employment.

Section 415 Compensation also includes any payments to a Participant who does not currently perform services for a Contributing Employer by reason of Qualified Military Service to the extent those payments do not exceed the amounts the Participant would have received if the Participant had continued to perform services for the Contributing Employer rather than entering Qualified Military Service.

Finally, Section 415 Compensation includes payments awarded by an administrative agency or court or pursuant to a bona fide agreement by a Contributing Employer to compensate a Participant for lost wages. Such payments for back pay are treated as Section 415 Compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included as Section 415 Compensation under this Plan.

## **2.9 USERRA**

The Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), as amended, provides certain pension benefit rights to employees who return to employment with their employer following a leave of absence for Qualified Military Service. Section 8209.2 of the GCA also provides certain rights to Employees who are on leave without pay and on active duty with the Guam National Guard or the reserve components of any of the Armed Services of the United States. Any Participant who returns to employment with a Contributing Employer following Qualified Military Service shall be entitled to the greater of the rights the Participant is entitled to under Section 8209.2 of the GCA or the reemployment pension rights in Section 414(u) of the Code.

## **2.10 HEART**

### **(a) Death Benefits**

The Heroes Earnings Assistance and Relief Tax Act of 2008, as amended ("HEART"), provides for rights to any additional benefits with respect to a Participant who dies while performing Qualified Military Service. Specifically, effective January 1, 2007, in the

case of a Participant who dies while performing Qualified Military Service, the Beneficiary of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) that would be provided under the Plan had the Participant resumed and then terminated employment on account of death, in accordance with Section 401(a)(37) of the Code. This would include full vesting in the Participant's Employer Contribution Account under Section 4.2(a)(2).

(b) Differential Wage Payments

For Plan Years beginning after December 31, 2008, (1) an individual receiving a differential wage payment (within the meaning of Code Section 3401(h)(2)) shall be treated as an Employee of the Employer making the payment, (2) the differential wage payment shall be treated as Section 415 Compensation, and (3) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment. However, a differential wage payment shall not be treated as Compensation for purposes of determining contributions and benefits under the Plan. Thus, no Employer Contributions shall be determined or made on behalf of a Participant based on the differential wage payment.

## ARTICLE III

### PARTICIPANT ACCOUNTS

#### 3.1 Individual Participant Accounts

The Board of Trustees shall establish and maintain a separate Account for each Participant in accordance with this Article III. Each Participant's Account shall reflect amounts contributed thereto and distributed or withdrawn therefrom, as adjusted for earnings, losses, and expenses in accordance with this Article III. The fact that any allocation or credit shall be made to the Account of a Participant shall not vest in any Participant any legal or equitable right, title, or interest in or to any specific assets of the Fund.

#### 3.2 Subaccounts

Although the total interest of a Participant in the Plan is reflected in or expressed as his or her Account, the Board has established the following subaccounts to assist in the administration of the Plan:

##### (a) Employee Contribution Account

The Board has established and maintains an Employee Contribution Account on behalf of each Participant representing the balance of Employee Contributions made on behalf of the Participant, as adjusted for earnings and losses.

##### (b) Employer Contribution Account

The Board has established and maintains an Employer Contribution Account for each Participant representing the balance of Employer Contributions made on behalf of the Participant, including amounts forfeited and restored due to reemployment in accordance with Section 4.3(b), as adjusted for earnings and losses.

##### (c) GGRF After-Tax Contribution Account

The Board has established and maintains a GGRF After-Tax Contribution Account for each Participant who has voluntarily transferred from the Retirement Fund to this Plan representing the balance transferred from the Members' Contribution Reserve in the Retirement Fund under Section 8164(a) of the GCA, as adjusted for earnings and losses.

##### (d) Rollover Account

The Board has established and maintains a Rollover Account for each Participant who makes a Rollover Contribution in accordance with Section 2.4, which is adjusted for subsequent earnings and losses.

**(e) Transfer Incentive Reserve**

The Board has established and maintains a Transfer Incentive Reserve for each Participant who is entitled to transfer incentive benefits under Section 8164(b) of the GCA, which is adjusted for subsequent earnings and losses.

**3.3 Participant-Directed Investments**

Participants direct the investments with respect to their individual Accounts. In directing their investments, Participants may choose from among the investment options designated by the Board of Trustees. Participants are responsible for educating themselves regarding the investment options available to them. Prospectuses for the investment options are available to Participants. The individual Accounts of Participants are valued on a daily basis in accordance with the rules of the investment options offered under the Plan.

**3.4 Board-Directed Investments**

The Board of Trustees directs the investment of Suspense Account Funds. At least quarterly, the Board shall determine the fair market value of the Suspense Account Funds and the total Fund and their net incomes or losses (including realized and unrealized income, gains, and losses) in accordance with generally accepted principles of trust accounting consistently applied. The Board's determination of the fair market value of the Suspense Account Funds and of the total Fund and of their net income or loss shall be conclusive and binding on Participants, Beneficiaries, and every other person claiming an interest in the Fund.

**3.5 Expenses**

In accordance with Section 8217 of the GCA, Participant Accounts may be assessed an administrative fee of up to 2% of the Employer and Employee Contributions made to the Plan.

**3.6 Statements of Account**

At least quarterly, the Board of Trustees shall furnish to the Participant a statement of the Participant's Account. Upon the discovery of any error or miscalculation in an Account, the Board shall correct it, to the extent correction is practically feasible. Statements to Participants are for reporting purposes only, and no valuation or statement of Account shall vest in any Participant any right or title to any part of the Fund, nor require any segregation of Fund assets.

## ARTICLE IV

### VESTING

#### 4.1 **Employee Contribution Account, GGRF After-Tax Contribution Account, Rollover Account, and Transfer Incentive Reserve**

A Participant's interest in his or her Employee Contribution Account, GGRF After-Tax Contribution Account, Rollover Account, and Transfer Incentive Reserve, as applicable, is fully vested and nonforfeitable at all times.

#### 4.2 **Employer Contribution Account**

##### (a) **Vesting Conditioned on Events.**

A Participant's interest in his or her Employer Contribution Account shall be fully vested and nonforfeitable upon the first to occur of the following events: (1) the Participant's attainment of Normal Retirement Age while employed by a Contributing Employer; (2) the Participant's death while employed by a Contributing Employer; (3) the Participant's Disability while employed by a Contributing Employer; or (4) the termination of or complete discontinuance of contributions to the Plan.

##### (b) Vesting Conditioned on Service.

In addition to vesting due to the occurrence of one of the above events, a Participant's interest in the balance of his or her Employer Contribution Account shall be fully vested and nonforfeitable upon the Participant's completion of five Years of Vesting Service.

##### (c) Qualified Military Service.

Qualified Military Service shall not be treated as a break in service. Upon reemployment following a Qualified Military Service, the Participant shall be entitled to vesting credit for the period of Qualified Military Service.

#### 4.3 **Forfeitures**

##### (a) **Occurrence of Forfeiture.**

If a Participant terminates service with the Contributing Employers before vesting, the Participant's Employer Contribution Account shall be forfeited immediately. The forfeited amount shall be credited to a forfeiture suspense account.

##### (b) **Reemployment within Five Years of Forfeiture.**

- (1) If a Participant is reemployed by a Contributing Employer before five years have passed since the Participant's termination from service, the amount forfeited shall be treated as follows:

(A) Restoration if No Distribution.

In the event a Participant did not receive a distribution of any portion of the Participant's vested Account balance, the amount of the forfeiture shall be fully restored as provided in Section 4.3(b)(2) below and shall be re-credited to the Participant's Account as of the Participant's reemployment without adjustment for interest or earnings or losses for the period of forfeiture.

(B) Restoration If Distribution Repaid.

In the event a full or partial distribution of a Participant's vested Account was made to the Participant, the amount of the forfeiture shall be fully restored as provided in Section 4.3(b)(2) below if the Participant repays the full amount of the prior distribution in a single sum before the date which is one year after the Participant is reemployed by a Contributing Employer. If the Participant does not make full repayment of the prior distribution by such date, the amount forfeited shall not be restored. Participants who terminated employment prior to October 1, 2005, and who return to covered employment within five years will have up to five years from the date of reemployment to repay the prior distribution.

(2) Source Of Restored Amounts.

The amount of any forfeiture to be restored on behalf of a Participant shall be restored by reinstating the forfeited amount from the suspense account.

**(c) Reemployment More than Five Years After Forfeiture.**

Five years after a Participant terminates service, any amount forfeited shall be forever forfeited, and no restoration will be made to the Participant's Employer Contribution Account if the Participant subsequently returns to service with a Contributing Employer.

**(d) Use of Forfeitures Released from Suspense Account.**

If the Participant does not return to employment with a Contributing Employer within five years of terminating service, the amount forfeited shall be released from the suspense account and first applied to the payment of the Plan's administrative expenses in accordance with Section 7.6 of the Plan and Section 8217 of the GCA. Any balance remaining after the payment of administrative expenses shall be applied to Employer Contributions in future years in accordance with Section 8210(e) of the GCA.

#### **4.4 Forfeiture of Lost Participant's Account**

If all or a portion of a Participant's vested Account becomes payable under Article V and the Board of Trustees cannot locate the Participant or the Participant's Beneficiary after a reasonable search, the Participant's vested Account shall be forfeited. Any vested

amount forfeited because of the Board's inability to locate a Participant or Beneficiary shall be restored from forfeitures released from the suspense account if a proper claim is later made for the Account. Any forfeitures restored under this paragraph shall be restored without adjustment for interest or any earnings or losses for the interim period.



## ARTICLE V

### PAYMENT OF BENEFITS

#### 5.1 Commencement of Benefits

A Participant or Beneficiary may apply for and receive a distribution of the Participant's vested Account balance (determined as of the most recent Valuation Date, and adjusted for subsequent contributions or distributions, if any) as soon as practicable following the Participant's termination of employment with the Contributing Employers and the Participant's or Beneficiary's completion of all forms necessary for the distribution to be made. Specifically, the Plan provides benefits in the event of retirement, Disability, or death. If a Participant terminates employment prior to retirement for a reason other than Disability or death, the provisions with respect to retirement benefits apply, except there is no automatic vesting. Adverse tax consequences may apply to any distribution made on account of termination of employment prior to retirement. Participants and Beneficiaries are urged to seek the advice of qualified financial planners and tax advisors prior to requesting a distribution from the Plan.

#### 5.2 Form of Distribution

A Participant (or, in the event of the Participant's death, the Participant's Beneficiary) may elect to receive the Participant's vested Account balance in one of the following optional forms of distribution: (a) a lump sum payment of the Participant's vested Account balance; (b) annual or more frequent installments of substantially equal amounts over a specified term; or (c) a nontransferable annuity contract purchased from an insurance company in such form as may be approved by the Board. Effective March 28, 2005, involuntary cashouts were eliminated from the Plan.

#### 5.3 Direct Rollovers

A "Distributee" who is entitled to a distribution may elect, at the time and in the manner determined by the Board, to have any portion of an "Eligible Rollover Distribution" that is equal to at least \$500 (or such other minimum amount required under the Code or Treasury Regulations) paid directly in a "Direct Rollover" to an "Eligible Retirement Plan". For purposes of these rules, the following definitions apply:

- (a) **"Eligible Rollover Distribution" means any distribution of all or any portion of a Participant's vested Account balance, except that an Eligible Rollover Distribution shall not include:**
- (1) any distribution that is one of a series of substantially equal periodic payments made no less frequently than annually for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Beneficiary, or for a specified period of ten years or more;
  - (2) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;

- (3) any distribution on account of hardship; and
- (4) the portion of any distribution that is not includible in gross income.

Notwithstanding the foregoing, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract), or to a qualified retirement plan (defined contribution or defined benefit) described in Section 401(a) of the Code or an annuity contract described in Section 403(b) of the Code, provided that the qualified trust or annuity contract agrees to separately account for amounts so transferred (and the earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion which is not so includible.

**(b) “Eligible Retirement Plan” shall mean any of the following accounts or plans to the extent it accepts the Distributee’s Eligible Rollover Distribution:**

- (1) A qualified retirement plan described in Section 401(a) of the Code;
- (2) An individual retirement account described in Section 408(a) of the Code (but not a Roth IRA described in Section 408A of the Code);
- (3) An individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract);
- (4) An annuity plan described in Section 403(a) of the Code;
- (5) An annuity contract described in Section 403(b) of the Code, or
- (6) An eligible deferred compensation plan described in Section 457(b) of the Code that is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code and that agrees to separately account for amounts transferred into such plan from this Plan.
- (7) Effective for distributions on or after January 1, 2008, a Distributee may make a Direct Rollover to a Roth IRA if the Distributee meets the requirements that apply to rollovers from a traditional IRA to a Roth IRA (i.e., for tax years prior to January 1, 2010, the Distributee’s modified adjusted gross income cannot exceed \$100,000, and the Distributee must not be married filing a separate return).

**(c) A “Distributee” includes a Participant, the surviving spouse of a deceased Participant, and the current or former spouse of a Participant who is an alternate payee under a qualified domestic relations order that has been approved by the Board.**

Effective for distributions on or after October 1, 2010 (and after the adoption of this Plan restatement), a non-spouse Beneficiary may make a Direct Rollover to an individual retirement account or individual retirement annuity described in Section 5.3(b)(2) or (3) established for the purpose of receiving the distribution on behalf of the non-spouse Beneficiary.

- (d) **A “Direct Rollover” is a direct payment by this Plan to the Eligible Retirement Plan specified by the Distributee.**

In prescribing the manner of making elections with respect to Eligible Rollover Distributions, as described above, the Board may provide for the uniform application of any restrictions permitted under applicable sections of the Code and related rules and regulations, including a requirement that a Distributee may not elect to make a direct rollover from a single eligible rollover distribution to more than one eligible retirement plan. The Board may require a recipient plan to provide a written statement that it will accept the rollover and separately account for the amount rolled over, where appropriate.

Prior to making an Eligible Rollover Distribution, the Board shall provide the Distributee a notice describing the Distributee’s right to make a Direct Rollover to an Eligible Retirement Plan and describing the tax consequences that will follow if a Direct Rollover is not made (the “402(f) Notice”). The Board shall issue the 402(f) Notice at least 30 days but no more than 180 days prior to the date a distribution is made. However, such Eligible Rollover Distribution may commence less than 30 days after the notice is given provided that the 402(f) Notice clearly informs the Distributee that the Distributee has the right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a Direct Rollover and the Distributee, after receiving the notice, affirmatively elects a distribution.

Any otherwise taxable amount that can be directly rolled over but that the Distributee chooses not to have directly rolled over is subject to 20% income tax withholding. This includes distributions to the Distributee that the Distributee intends to roll over in a traditional 60-day rollover transaction.

#### **5.4 Minimum Distribution Rules**

All benefit distributions shall be administered in accordance with a reasonable good-faith interpretation of Section 401(a)(9) of the Code. The following describes the statutory requirements of Section 401(a)(9) of the Code:

- (a) The Participant’s entire interest shall be distributed to the Participant no later than the Participant’s required beginning date, or the Participant’s entire interest must begin to be distributed to the Participant no later than the Participant’s “required beginning date” and must be paid over the life of the Participant or the lives of the Participant and a designated Beneficiary (or over a period that does not extend beyond the life expectancy of the Participant or the life expectancy of the Participant and a designated Beneficiary). The “required beginning date” is April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70½ or (2) the calendar year in which the Participant retires.

(b) If the distribution of the Participant's interest has begun in accordance with Section 5.4(a) and the Participant dies before the Participant's entire interest has been distributed, the remaining portion must be distributed at least as rapidly as under the method of distribution being used to satisfy Section 5.4(a) at the time of the Participant's death.

(c) If the Participant dies before distribution of the Participant's interest has begun under Section 5.4(a), the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later;

(2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, distributions to the designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, and shall be paid over the life of such designated Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary); or

(3) If there is no designated Beneficiary, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) All death benefits shall be administered to comply with the incidental death benefit requirement in section 401(a)(9)(G) of the Code.

(e) Notwithstanding the above provisions of this Section 5.4, a Participant or Beneficiary who would be required to receive required minimum distributions for calendar year 2009 ("2009 RMDs") but for the enactment of Section 401(a)(9)(H) of the Code, and who would have satisfied such requirement by receiving distributions that are: (1) equal to the 2009 RMDs, or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009. Notwithstanding the provisions of Section 5.3, and solely for purposes of applying the direct rollover provisions of the Plan, 2009 RMDs and Extended RMDs shall be treated as eligible rollover distributions.

## **5.5 Administration of Distributions**

### **(a) Facility of Payment**

If any Participant or Beneficiary eligible to receive payments under this Plan is, in the opinion of the Board, legally, physically, or mentally incapable of personally receiving and receipting for any payment under this Plan and if the Board determines that no guardian or other legal representative has been appointed for such person, the Board, in its discretion, may direct that such payments, or any portion thereof, be made to any person, persons, or institutions who have custody of such person, or are providing necessities of life (including, without limitation, food, shelter, clothing, and medical or custodial care) to such person. Such payments shall constitute a full discharge of the liability of the Plan to the extent thereof. The Board, in its discretion, may withhold part or all of the benefits due to such Participant or Beneficiary until a claim for such benefits is made by a duly appointed guardian or other legal representative of such payee.

### **(b) Benefits Payable from Trust**

All benefits payable under the Plan shall be paid solely from the Fund, and the Contributing Employers assume no liability or responsibility therefor beyond their responsibilities to make contributions to the Fund.

## ARTICLE VI

### LOANS; HARDSHIP WITHDRAWALS

#### 6.1 No Loans

Loans are not permitted from the Plan.

#### 6.2 Hardship Withdrawals

##### (a) Limit on Number of Withdrawals

A Participant may apply for only one hardship withdrawal in any consecutive twenty-four (24) month period while still employed by a Contributing Employer.

##### (b) Documentation

To qualify for a hardship withdrawal, a Participant must demonstrate to the satisfaction of the Board or third-party administrator that the Participant has an “immediate and heavy financial need”. All hardship withdrawal applications must be accompanied by the following documents:

- (1) The Participant’s tax returns for the previous two tax years;
- (2) The Participant’s paycheck stubs for the last two pay periods; and
- (3) A personal financial statement in a form approved by the Board.

The Board or third-party administrator may require such additional proof or documentation as it deems appropriate to determine whether there is an “immediate and heavy financial need” and whether the amount that has been applied for represents an allowable cost that has been incurred by the Participant.

##### (c) Limit on Amount of Withdrawal

In no event may a hardship withdrawal exceed the lesser of: (1) the amount necessary to satisfy the immediate and heavy financial need, or (2) 100% of the Participant’s vested Account balance (excluding the Participant’s Employer Contribution Account and Transfer Incentive Reserve, as applicable) valued as of the preceding Valuation Date. For purposes of determining the amount necessary to satisfy the immediate and heavy financial need, the Board or third-party administrator may include the amount necessary to pay any taxes (including penalty taxes) reasonably anticipated to result from the withdrawal.

##### (d) Hardships for Which Withdrawals May Be Made

Hardship withdrawals shall not be allowed for the purchase of a principal residence or for tuition or other educational expenses.

Hardship withdrawals which may be allowed are limited to the following:

- (1) A hardship withdrawal for expenses incurred for medical care in any given year will be limited to allowable, incurred but unreimbursed medical expenses that in the aggregate exceed seven and one half percent (7.5%) of the Participant's average annual Adjusted Gross Income (AGI) as stated on the Participant's tax return for the previous two (2) years. "Allowable" medical expenses are expenses for medical care described in Section 213(d) of the Code previously incurred by the Participant, the Participant's Spouse, or any of the Participant's tax dependents (as defined in Code Section 152, without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).
- (2) A hardship withdrawal shall be allowed for funeral home and burial expenses for the Participant's Spouse, children, or other tax dependents (as defined in Code Section 152, without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).
- (3) A hardship withdrawal to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage of the Participant's principal residence shall be allowed only once during a Participant's membership in the Plan.

Participants are cautioned that hardship withdrawals will reduce the amount available for retirement and may have adverse tax consequences. Participants are urged to seek the advice of qualified financial planners and tax advisors prior to requesting a withdrawal from the Plan. Hardship withdrawals are not eligible rollover distributions.

## ARTICLE VII

### ADMINISTRATION AND INVESTMENTS

#### 7.1 Trust Assets

All contributions to the Plan, all investments made therewith, the proceeds thereof, and all earnings and profits thereon shall constitute the Fund and shall be held in Trust by the Board under this Plan and Trust Agreement for the exclusive benefit of the Participants and their Beneficiaries.

#### 7.2 Authority of Board to Administer the Plan

In addition to the Board's authority stated in other provisions of the Plan, the Board has the following discretionary authority in the administration of the Plan:

- (a) Subject to its compliance with all statutory requirements and as may be allowable under Section 9.1, to amend the Plan and Trust Agreement;
- (b) To designate agents and representatives, including, but not limited to, the Director of the Retirement Fund, and to delegate authority for management and administration of the Plan;
- (c) To contract with one or more third-party administrators;
- (d) To adopt, amend, and rescind such rules and regulations as it deems advisable for the administration of the Plan, to construe and interpret the Plan and its provisions, to resolve any ambiguities in the Plan's provisions, and to make all determinations under the Plan, including determining the rights of Employees, Participants, and Beneficiaries and eligibility for and the amount of any benefits payable hereunder. All such decisions, determinations, and interpretations of the Board shall be final and conclusive upon all persons;
- (e) To employ auditors, actuaries, legal counsel, and other advisers, and to pay their reasonable compensation and expenses from the Fund;
- (f) To direct the payment of benefits in accordance with the Plan to Participants and their Beneficiaries;
- (g) To maintain or cause to be maintained records of receipts and disbursements to and from the Fund; and
- (h) To exercise any and all other powers as the Board in its discretion determines to be necessary or appropriate to the administration of the Plan.



### 7.3 Investments

The Board of Trustees has the following discretionary authority with respect to investments:

#### (a) Participant-Directed Investments

- (1) To select and designate investment options (or to engage an investment advisor who shall serve as a fiduciary of the Plan to select and designate investment options) from among which Participants and their Beneficiaries may choose to direct the investments in their individual Accounts;
- (2) To monitor the designated investment options (or the investment advisor who designates them), and to remove, replace, and add investment options (or investment advisors) as the Board deems appropriate;
- (3) To provide or cause to be provided information and materials to Participants and their beneficiaries with respect to the investment options available to them;
- (4) To adopt and promulgate rules regulating investment elections, including rules that would restrict individual elections;
- (5) To provide for a default investment option for Participants who fail to make an investment election, which default option may be a money market or similar investment account or a “qualified default investment alternative” under Section 404(c)(5) of ERISA; and
- (6) To contract with insurance and other qualified companies and financial institutions to provide annuity contracts, custodial accounts, and other investment vehicles under the Plan.

#### (b) Board-Directed Investments

- (1) To invest and manage Suspense Account Fund assets and to delegate authority for the investment and management of such assets; and
- (2) To appoint, monitor, and remove investment managers, as the Board deems appropriate.

### 7.4 General Trustee Powers

The Board of Trustees, in addition to all powers and authority under common law, statutory authority, and other provisions of the Plan, shall have the following powers and authority, to be exercised in the Board’s sole discretion:

- (a) To purchase any securities or other property, real or personal, by private contract or at public auction, for cash or on credit, at such prices and in such manner as the Board may direct;

- (b) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Board by private contract or at public auction. No person dealing with the Board shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition;
- (c) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to sell or exercise any conversion privileges, subscription rights, warrants, or other options, and to make any payments incidental thereto; to oppose, consent to, or otherwise participate in corporate reorganizations, mergers, consolidations, or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;
- (d) To hold property of the Fund in the Board's own name or in the name of a nominee, including the nominee of any central depository, clearing corporation, or custodian with which securities of the Fund may be deposited, and to hold any investment in bearer form, but the books and records of the Board shall at all times show that all such investments are part of the Fund;
- (e) To keep such portion of the Fund in cash or cash balances as the Board may from time to time deem to be in the best interests of the Plan, without liability for interest thereon;
- (f) To accept and retain for such time as the Board may deem advisable any securities or other property received or acquired as an investment hereunder, whether or not such securities or other property would normally be purchased as an investment hereunder;
- (g) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted herein;
- (h) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;
- (i) To apply for and procure as an investment of the Fund such annuity or other insurance contracts (on the life of any Participant) as the Board deems appropriate; to exercise, at any time or from time to time, whatever rights and privileges may be granted under such annuity or other insurance contracts; to collect, receive, and settle for the proceeds of all such annuity or other insurance contracts as and when entitled to do so under the provisions thereof;
- (j) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest;

- (k) To invest in United States Treasury Bills and other forms of United States government obligations;
- (l) To invest in shares of investment companies registered under the United States Investment Company Act of 1940;
- (m) To sell, purchase, and acquire put or call options, giving the Board an option to buy or sell stock to the maker or endorser thereof at a certain price and on or before a certain date, if the options are traded on and purchased through a national securities exchange registered under the Security Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange;
- (n) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations;
- (o) To borrow money from any person or persons, to issue a promissory note or notes therefor, and to secure the repayment thereof by pledging, mortgaging, or otherwise encumbering any property in the Suspense Account Funds; and
- (p) To exercise any and all other powers as the Board in its discretion determines to be necessary or appropriate with respect to Plan investments.

#### **7.5 Audit**

The Board may engage an independent certified public accountant to audit the Plan's records for any Plan Year. After an audit of the books and records of the Plan in accordance with generally accepted auditing standards, such accountant shall, within a reasonable period after the close of the Plan Year, furnish to the Board a report of the audit setting forth an opinion as to whether the financial statements, schedules, or lists are presented fairly and in conformity with generally accepted accounting principles applied consistently. All auditing and accounting fees shall be an expense of and may be paid from the Fund.

#### **7.6 Expenses**

The Board may pay administrative expenses, including start-up costs, from the Fund in accordance with Section 8217 of the GCA.

## ARTICLE VIII

### CLAIMS PROCEDURES

#### **8.1 Filing a Claim for Benefits**

A Participant or Beneficiary may make a claim for benefits by filing a written claim with the Board of Trustees or its designated representative.

#### **8.2 Notification to Claimant of Decision**

Within 90 days following receipt of a claim, the Board or its designated representative will notify the claimant of the decision on the benefit claim. If the claim is denied in whole or in part, the claimant will be given written notice of the denial and of the claimant's right to an appeal. If special circumstances require an extension of time for processing the claim, the claimant will be notified of the need for an extension of time within the initial 90-day period, and the determination period may be extended for up to an additional 90 days. Commencement of benefit payments shall constitute notice of approval of a claim to the extent of the amount of the approved benefit. If the claimant does not receive notice of the decision regarding a claim within the claim determination period, the claimant may consider the claim denied, and the claimant may then proceed with the appeal procedure provided in Section 8.3.

#### **8.3 Appeal**

Within 60 days after receiving notice that a claim has been denied (or within 60 days after the claim is deemed denied), the claimant may file a written appeal with the Board. The claimant shall be given the opportunity to review pertinent Plan documents upon request and may provide written testimony and written documentation in support of its appeal. The Board may require the claimant to provide additional information or testimony as the Board, in its sole discretion, deems useful or appropriate to the Board's consideration of the claim.

#### **8.4 Decision on Appeal**

The Board will render its final decision within 60 days of receipt of the appeal unless special circumstances require an extension of time. If such an extension is required, the Board will notify the claimant of the need for an extension of time within the initial 60-day period, and may extend the determination period for up to an additional 60 days. If the Board's decision on appeal is a denial of the claim, the Board will provide written notice of the denial, which notice shall set forth, in a manner calculated to be understood by the claimant, the reason for the denial and may refer to specific provisions of the Plan or GCA on which it is based. The decision of the Board shall be final and conclusive on all persons. If the Board does not furnish the claimant with notice of its decision on appeal within the prescribed time, the claim shall be deemed denied on appeal.

## **8.5 Action by Authorized Representative of Claimant**

All actions set forth in this Article to be taken by the claimant may likewise be taken by a representative of the claimant duly authorized by the claimant to act on the claimant's behalf. The Board of Trustees may require such evidence of a representative's authority to represent the claimant as the Board deems necessary or appropriate.

## **8.6 Other Remedies**

A claimant must comply with these procedures and exhaust all possibilities contained herein before seeking relief in any other forum.

## ARTICLE IX

### AMENDMENT AND TERMINATION

#### 9.1 Amendment

The Board of Trustees reserves the right to amend the Plan at any time and for any reason. No amendment may divert the Fund or any portion of it to purposes other than for the exclusive benefit of the Participants and their Beneficiaries.

#### 9.2 Termination

The Legislature of the Government of Guam may terminate the Defined Contribution Retirement System and direct the Board with respect to the disposition of the Fund.

## ARTICLE X

### ASSIGNMENTS

#### 10.1 No Assignment

Except as provided in Section 10.2, no Participant, Beneficiary, or any other person having or claiming to have any right or interest of any kind in the Plan shall have any right to sell, assign, transfer, convey, hypothecate, anticipate, or otherwise dispose of such interest, and any attempt to do so shall be null and void. Furthermore, neither the Fund nor any interest in the Plan or Fund shall be subject to any liabilities or obligations of, or any bankruptcy or insolvency proceedings, claims of creditors, attachment, garnishment, execution, levy, or other legal or equitable process against a Participant, Beneficiary, or any other person.

#### 10.2 Qualified Domestic Relations Order Permitted

Through a qualified domestic relations order (“QDRO”), a Participant’s spouse, child, or other tax dependent (each, an “alternate payee”) may obtain rights to the Participant’s benefits. A QDRO is a “domestic relations order” which assigns to an alternate payee or recognizes an alternate payee’s right to receive all or a portion of the benefits payable with respect to a Participant under the Plan. A “domestic relations order” is a judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or marital property rights and that is made pursuant to Guam’s or a state’s domestic relations law.

A domestic relations order is not a QDRO and will not be honored by the Board if it requires the Plan to provide any form of benefit or other option of any kind not otherwise available under the Plan to Participants or requires the Plan to pay benefits in excess of the Participant’s vested Account balance. The one exception to this rule is that, in accordance with a domestic relations order that the Board or a court of competent jurisdiction determines to be a QDRO, the Board may direct that a lump-sum distribution be made to the alternate payee from the Participant’s vested Account as soon as administratively feasible notwithstanding age, employment status, or any other factor that might prevent the Participant from receiving a distribution from his or her vested Account at the same time.

To be a QDRO, a domestic relations order must clearly specify (a) the name and last known mailing address of the Participant (unless otherwise known by the Board) and the name and mailing address of the alternate payee(s), (b) the amount or percentage of the Participant’s vested Account to be paid by the Plan to each alternate payee or the manner in which such amount is to be determined, and (c) the form in which the benefit is to be paid. Finally, a domestic relations order cannot require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under a previous QDRO.

The Board may establish procedures for determining whether a domestic relations order is a QDRO and for notifying the Participant and the alternate payee(s) of the receipt of the domestic relations order and of the steps that will be taken to determine whether the

order is a QDRO. The Board may amend the procedures at any time without amendment to the Plan. During any period in which the issue of whether a domestic relations order is a QDRO is being determined by the Board of Trustees or a court of law, the Board may separately account for the amounts (with investment income and loss) which are involved.

If the QDRO does not direct an immediate distribution as permitted by this Section 10.2, the Board will establish a separate Account in the Plan for the alternate payee, and the alternate payee will have all rights afforded under the Plan to inactive Participants.

QDRO's can create very complex administrative issues, particularly since conflict often exists between the parties involved. Any costs incurred by the Plan in administering a domestic relations order shall be borne by the Account of the Participant.



## ARTICLE XI

### CONTRIBUTING EMPLOYERS

#### 11.1 Requirements of Contributing Employers

Contributing Employers shall be subject to the following rules:

- (a) The Board of Trustees may, but shall not be required to, commingle, hold, and invest as one fund all contributions made by the Contributing Employers.
- (b) With respect to its relation with the Board of Trustees, each Contributing Employer shall be deemed to have designated irrevocably the Board of Trustees as its agent.
- (c) Each Contributing Employer shall comply with the provisions of the Plan, as the same may be amended from time to time.

#### 11.2 Allocation of Contributions

Each Contributing Employer shall make the Employer Contributions to the Trust required under Article II with respect to Participants employed by such Contributing Employer.

#### 11.3 Accounting for Employees

If an Employee is transferred between Contributing Employers, such Employee shall carry with him or her all amounts credited to his or her Account and his or her accumulated Years of Vesting Service and eligibility to participate in the Plan. No such transfer shall constitute a termination of employment for purposes of the Plan, and the Contributing Employer to whom the Employee is transferred shall assume the employer's obligations with respect to the transferred Employee.

#### 11.4 Separate Records

The Board of Trustees shall keep separate records concerning each Contributing Employer and the accounts of Participants employed by each Contributing Employer. The transferee Contributing Employer shall immediately notify the Board of Trustees if an Employee transfers from one Contributing Employer to another.

#### 11.5 Authority of Board of Trustees

The Board of Trustees shall have authority to make any and all necessary rules or regulations binding upon all Contributing Employers to effectuate the purposes of this Article and the Plan.

## **ARTICLE XII**

### **MISCELLANEOUS**

#### **12.1 Applicable Law**

This Plan shall be regulated, construed, and administered in accordance with Article 2, Chapter 8 of Title 4 of the GCA, the applicable requirements of the Code, and any other applicable laws of the Government of Guam or the United States.

#### **12.2 No Right to Employment**

Nothing contained in the Plan gives any Employee the right to be retained in the service of a Contributing Employer or interferes with the right of a Contributing Employer to discharge any Employee at any time or to deal with an Employee without regard to the effect under the Plan.

#### **12.3 Construction of Plan**

##### **(a) Headings**

The headings of Articles and Sections are included herein solely for the convenience of reference, and if there is any conflict between such headings and the text of this Plan, the text shall control.

##### **(b) Severability**

The invalidity, illegality, or unenforceability of any provision of this document shall in no way affect the validity, legality, or enforceability of any other provision.

#### **12.4 Statutory References**

All statutory references include any subsequent amendments to such statutes and any successor or replacement statutes.

## **ARTICLE XIII**

### **DEFINITIONS**

The following words and phrases have the meanings set forth below, unless clearly required otherwise by the context.

#### **13.1 Account**

“Account” means the separate bookkeeping account maintained for each Participant that represents such Participant’s total proportionate interest in the Plan and Fund as of any Valuation Date. A Participant’s “Account” may be represented by one or more specified subaccounts, including, but not limited to, an Employee Contribution Account, Employer Contribution Account, GGRF After-Tax Contribution Account, Rollover Account, and Transfer Incentive Reserve. Participant Accounts and subaccounts are described more fully in Article III.

#### **13.2 Beneficiary**

A married Participant’s spouse shall be the Participant’s Beneficiary unless the spouse consents to an alternate Beneficiary. Such spousal consent must be on a form approved by the Board. The spouse’s signature on the consent form must be notarized or witnessed by an authorized Plan representative. If a spouse consents to an alternate Beneficiary, such alternate Beneficiary may not be changed without the spouse’s further consent. However, married Participants may name contingent Beneficiaries in the event the spouse predeceases the Participant. Unmarried Participants may name a primary and a secondary Beneficiary for their death benefits. Spousal consent is not required to designate a Beneficiary if it is established to the satisfaction of the Board of Trustees that there is no spouse or that the spouse cannot be located.

If a Participant has a Beneficiary designation in place as an unmarried Participant and marries, the Participant’s spouse will become the Participant’s Beneficiary. If a married Participant obtains spousal consent to name an alternate Beneficiary, divorces, and remarries, the first spouse’s consent will not be effective as to the new spouse.

Subject to the rights of the Participant’s spouse, a Participant may revoke or change Beneficiaries at any time on forms approved by the Board. Whenever a new Beneficiary form is filed, all former Beneficiary designations by such Participant shall automatically be revoked. If, upon the death of a Participant, there is no valid Beneficiary designation on file with the Board or the designated Beneficiary has predeceased the Participant, the Beneficiary shall be, in order of priority:

- the Participant’s surviving spouse;
- the Participant’s surviving children (including adopted children) in equal shares;
- the Participant’s surviving parents in equal shares;
- the Participant’s surviving brothers and sisters in equal shares;
- the Participant’s estate.

Facts as shown by the records of the Board at the time of the Participant's death shall be conclusive as to the identity of the proper Beneficiary.

### **13.3 Board of Trustees or Board**

The Board of Trustees of the Government of Guam Retirement Fund. References to the Board include references to the Board's designated representatives.

### **13.4 Code**

The United States Internal Revenue Code of 1986, as amended, and mirror provisions of the Guam Territorial Income Tax Code.

### **13.5 Compensation**

The Employee's stated rate of base pay which is authorized by the Employer's personnel action. Compensation specifically includes Employee Contributions picked up by the Employee's Contributing Employer under Section 2.1. Compensation specifically excludes any amounts exceeding the Employee's stated rate of base pay, whether or not such amounts are paid in cash.

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual Compensation of each Employee taken into account for purposes of determining allocations for a Plan Year shall not exceed the limit in effect under section 401(a)(17) of the Code. For the Plan Year commencing October 1, 2010, the limit is \$245,000. The limit shall be adjusted for increases in the cost-of-living in accordance with Sections 401(a)(17)(B) and 415(d) of the Code.

### **13.6 Contributing Employer**

The following Government of Guam entities, organizations, and departments that are organized and operated in the Territory of Guam and that employ a Participant: (a) each and every line department or agency of the Executive Branch, (b) every autonomous and semi-autonomous agency or instrumentality, (c) every public corporation, (d) every educational institution (whether secondary or post secondary), (e) the Legislative Branch, (f) the Judicial Branch, (g) the Public Defender Corporation, and (h) every other public entity created by Guam law. For purposes of accounting for contributions, the term "Contributing Employer" refers to the various payroll centers used within the Government of Guam from which contributions are made to the Plan.

### **13.7 Disability**

A Participant shall be considered "Disabled" or to be suffering from a "Disability" if the Participant has met the definitional requirements for disability under the terms of the group disability insurance contract in effect under Article 4, Chapter 8, Title 4 of the GCA, and has terminated employment for purposes of the Plan.

### **13.8 Effective Date**

The effective date of the Plan is October 1, 1995.

### **13.9 Employee**

An individual who is employed by a Contributing Employer and treated as an “employee” on the payroll of the Contributing Employer. “Employee” specifically does not include the following:

- (a) Persons whose services are compensated on a fee basis;
- (b) Independent contractors;
- (c) Persons whose employment is engaged for a specific project; or
- (d) Persons who are employed in the Senior Citizens Community Employment Program.

### **13.10 Employee Contributions**

The contributions made to the Plan by the Participant and “picked up” by the Participant’s Contributing Employer, as described in Section 2.1.

### **13.11 Employee Contribution Account**

The bookkeeping subaccount maintained for each Participant representing the balance of Employee Contributions made on behalf of the Participant, as adjusted for earnings and losses.

### **13.12 Employer Contributions**

The contributions made to the Plan by each Contributing Employer, as described in Section 2.2.

### **13.13 Employer Contribution Account**

The bookkeeping subaccount maintained for each Participant representing the balance of Employer Contributions made on behalf of the Participant, as adjusted for earnings and losses.

### **13.14 Fund**

All property and income held by the Board of Trustees under this Plan and Trust Agreement.

### **13.15 GCA**

The Guam Code Annotated. Unless otherwise specifically provided, references to the GCA shall mean references to Title 4 of the GCA.

### **13.16 GGRF After-Tax Contributions**

The balance credited to the individual account of the Employee in the Members' Contribution Reserve under the Retirement Fund and voluntarily transferred to this Plan, as described in Sections 1.1(b) and 2.3, as adjusted for earnings and losses.

### **13.17 GGRF After-Tax Contribution Account**

The bookkeeping subaccount maintained for a Participant representing the balance of the Participant's individual account in the Members' Contribution Reserve under the Retirement Fund that was voluntarily transferred to this Plan as described in Sections 1.1(b) and 2.3, as adjusted for earnings and losses.

### **13.18 Government**

The Government of Guam.

### **13.19 Hour of Service**

Each hour for which an Employee is directly or indirectly provided Compensation or entitled to Compensation by a Contributing Employer for the performance of duties for the Contributing Employer during the Plan Year.

### **13.20 Normal Retirement Age**

Age 65.

### **13.21 Participant**

Any Employee or former Employee who has an Account in the Plan. An Employee who is currently contributing to the Plan is considered an "active" Participant. A Participant who is no longer making contributions is an "inactive" Participant.

### **13.22 Plan**

The Government of Guam Defined Contribution Retirement System as set forth herein and in Article 2, Chapter 8, Title 4 of the GCA, as both are amended from time to time.

### **13.23 Plan Year**

Each 12-month period ending September 30.

### **13.24 Qualified Military Service**

Any service in the Armed Forces (Army, Air Force, Navy, Marines, or Coast Guard), the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

### **13.25 Retirement Fund**

The Government of Guam Retirement Fund established and maintained under Article 1, Chapter 8, Title 4 of the GCA.

### **13.26 Rollover Account**

The bookkeeping subaccount maintained for a Participant, representing the balance of Rollover Contributions made by the Participant, as adjusted for earnings and losses.

### **13.27 Rollover Contributions**

Tax-free rollovers or direct transfers of amounts from other qualified retirement plans as described in Section 2.4.

### **13.28 Spouse**

A person who is legally and formally married to a Participant at the time such status is determined.

### **13.29 Suspense Account Funds**

All amounts held in one or more suspense accounts and not allocated to a Participant's Individual Account.

### **13.30 Transfer Incentive Reserve**

The bookkeeping subaccount maintained for a Participant representing the balance of transfer incentive benefits transferred to this Plan from the Employer's Contribution Reserve in the Retirement Fund in accordance with Section 8164(b) of the GCA.

### **13.31 Trust**

The entity created by this Plan and Trust Agreement.

### **13.32 Year of Vesting Service**

An Employee shall be credited with one "Year of Vesting Service" for each Plan Year during which the Employee has completed at least 1,000 Hours of Service. For purposes of determining Hours of Service, each month during which an Employee has completed at least one Hour of Service shall be equivalent to 175 Hours of Service.

### **13.33 Valuation Date**

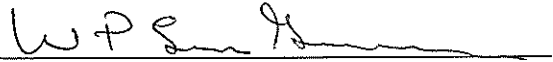
Any date on which the market value of the Fund or an Account is determined. The individual Accounts of Participants are valued daily in accordance with the rules of the investment options in which they are invested. Suspense Account Funds and the total Fund will be valued at least quarterly as of December 31, March 31, June 30, and September 30 of each Plan Year, but the Board may, in its discretion, designate additional dates for valuing the Fund.

IN WITNESS WHEREOF, the Board of Trustees has caused this restated Plan to be executed this 28th day of January, 2011.

**BOARD OF TRUSTEES OF THE  
GOVERNMENT OF GUAM RETIREMENT  
FUND**



\_\_\_\_\_  
JOE T. SAN AGUSTIN  
Chairman



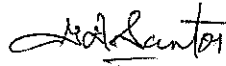
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WILFRED P. LEON GUERRERO, Ed.D.  
Vice Chairman



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ANTOLINA S. LEON GUERRERO  
Secretary

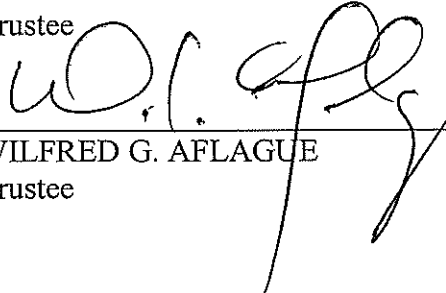


\_\_\_\_\_  
GERARD A. CRUZ  
Treasurer



\_\_\_\_\_  
GEORGE A. SANTOS  
Trustee

\_\_\_\_\_  
KATHERINE T. E. TAITANO  
Trustee



\_\_\_\_\_  
WILFRED G. AFLAGUE  
Trustee



**GOVERNMENT OF GUAM  
DEFINED CONTRIBUTION RETIREMENT SYSTEM PLAN  
AND TRUST AGREEMENT**

**APPENDIX A  
CURRENT EMPLOYEE AND EMPLOYER CONTRIBUTION RATES**

<b>Employee Contribution Rate (As a percentage of base salary)</b>	<b>Employer Contribution Rate (As a percentage of base salary)</b>
5.0%	5.0%