

**Agreement**  
**Between**  
**the Government of the United States of America**  
**and**  
**the Government of the Federated States of Micronesia**  
**Regarding the Compact Trust Fund**

The Government of the United States of America and the Government of the Federated States of Micronesia;

Recalling 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*, done at Palikir on May 14, 2003, and wishing to replace it with this Agreement;

Desiring to contribute to the long-term budgetary self-reliance of the Federated States of Micronesia through further contributions to a trust fund to provide the Government of the Federated States of Micronesia with an ongoing source of revenue after Fiscal Year 2043; and

Recognizing the potential need to disburse funds to meet certain needs of the Federated States of Micronesia before the beginning of Fiscal Year 2044;

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:

“2003 Trust Fund Agreement” means 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*, done at Palikir on May 14, 2003.

“2023 Amended Compact” means 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*, done at Palikir on May 14, 2003, as amended by the *Agreement between the Government of the United States of America and the Government of the Federated States of Micronesia to Amend the Compact of Free Association, as Amended*, done at Palikir on May 23, 2023.

“2023 Fiscal Procedures Agreement” means the *Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the 2023 Amended Compact Between the Government of the United States of America and the Government of the Federated States of Micronesia*, done at Palikir on May 23, 2023.

“Annual Financial Report” means the report required under Article 21(3) of this Agreement.

“Annual Performance Report” means the report required under Article 21(13)(b) of this Agreement.

“Annual Report” means the report required under Article 25 of this Agreement.

“Contribution” means amounts deposited into the Trust Fund by a Contributor.

“Contributor” means a government, international organization, financial institution, or other entity that grants, not lends, funds into the Trust Fund, including the Signatory Governments and Subsequent Contributors.

“Covered Telecommunications Equipment or Services” means video surveillance and telecommunications equipment or telecommunications or video surveillance services produced or provided by an entity that the United States Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by or otherwise connected to, the government of a covered foreign country as defined in the United States Federal Acquisition Regulations 4.2101, or any successors.

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

“Distribution” means the transfer of funds from the Trust Fund to the Government of the Federated States of Micronesia pursuant to Article 17, 18, 19, or 20 of this Agreement.

“Distribution Audit” means the audit required under Article 21 of this Agreement.

**“Fiscal Year”** means each one-year period beginning October 1 and ending on the 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 2024” means the Fiscal Year ending in calendar year 2024.

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

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

**“Indirect Costs”** means costs incurred for common institution-wide or joint objectives that cannot be identified readily and specifically within a particular program or activity, such as general administration.

**“Infrastructure Development Plan”** means the plan required and concurred with under the 2023 Fiscal Procedures Agreement.

**“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.

**“IPD”** means the United States Gross Domestic Product Implicit Price Deflator.

**“Joint Trust Fund Committee”** means the governing body of the Trust Fund which serves as the trustee of the Trust Fund.

**“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.

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

**“Principal”** means the Contributions to the Trust Fund, which are invested in bonds, stocks, or other holdings.

“Qualified Findings” means findings included in the Distribution Audit that there are, with respect to Distributions, significant deficiencies and material weaknesses in the internal controls; material noncompliance with this Agreement or applicable laws, rules, or regulations; or questioned costs.

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

“Resiliency Distribution” means a Distribution made pursuant to Article 18 of this Agreement between Fiscal Years 2024 and 2043 to support the sectors described in Section 261(a) of the 2023 Amended Compact, or other sectors as mutually decided by the Signatory Governments, or to support the environmental and infrastructure sectors described in Sections 261(a)(5) and (6) of the 2023 Amended Compact in particular.

“Resiliency Distribution Cap” means the maximum annual amount to be made available for a Resiliency Distribution.

“Restricted Fiduciary Net Position” means the end of Fiscal Year value of the Trust Fund.

“Sector Distribution” means a Distribution made pursuant to Article 17 of this Agreement after Fiscal Year 2043 to support the sectors described in Section 261(a) of the 2023 Amended Compact, or other sectors as mutually decided by the Signatory Governments.

“Sector Distribution Cap” means the maximum annual amount to be made available for a Sector Distribution.

“Signatory Governments” means the Government of the United States of America and the Government of the Federated States of Micronesia.

“Special Needs Distribution” means a Distribution made pursuant to Article 19 of this Agreement at any time for unforeseen singular expenses relating to projects in the sectors described in Section 261(a) of the 2023 Amended Compact that cannot reasonably be financed from other sources of revenue.

“Special Needs Distribution Cap” means the maximum amount to be made available for a Special Needs Distribution in a given year.

“Strategic Development Plan” means the plan required under Section 261(c) of the 2023 Amended Compact and further described in and concurred with under the 2023 Fiscal Procedures Agreement.

“Subsequent Contributor” means any government, international organization, financial institution, or other entity that grants, not lends, funds into the Trust Fund, not including the Signatory Governments.

“Trust Fund” means the trust fund established pursuant to Article 2 of the 2003 Trust Fund Agreement.

“Trust Fund Audit” means the audit required under Article 24 of this Agreement.

“Trust Fund Auditor” means the entity responsible for performing Trust Fund Audit.

“Unspent Economic Assistance Distribution” means a Distribution made pursuant to Article 20 of this Agreement between Fiscal Years 2024 and 2043 to support the sectors described in Section 261(a) of the 2023 Amended Compact, or other sectors as mutually decided by the Signatory Governments.

“Unspent Economic Assistance Distribution Cap” means the maximum amount to be made available for an Unspent Economic Assistance Distribution.

## **Part II Status of the Trust Fund**

### **Article 2 Trust Fund for the People of the Federated States of Micronesia**

1. The Trust Fund shall continue as established and shall be governed by the provisions of this Agreement.

2. The situs of the Trust Fund shall be within the United States of America. The governing law of the Trust Fund shall be the law from any appropriate jurisdiction within the United States of America.

### **Article 3 Purpose of the Trust Fund**

The purpose of the Trust Fund is to contribute to the economic advancement and long-term budgetary self-reliance of the Federated States of Micronesia by: (i) providing an annual source of revenue, after Fiscal Year 2043, for assistance in the sectors described in

Section 261(a) of the 2023 Amended Compact or other sectors as mutually decided by the Signatory Governments, as described in Article 17 of this Agreement; and (ii) providing a source of support for certain needs of the Government of the Federated States of Micronesia beginning Fiscal Year 2024, as described in Articles 18, 19, and 20 of this Agreement.

**Article 4**  
**Powers of the Trust Fund**

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

**Article 5**  
**Limitation of Liability**

1. No Contributor to the Trust Fund shall be liable, by reason of being a Contributor, for acts or obligations of the Trust Fund.

2. Obligations of the Trust Fund are not obligations of the Government of the Federated States of Micronesia, the Government of the United States of America, or any Subsequent Contributor.

3. Members of the Joint Trust Fund Committee shall have a fiduciary relationship to the Trust 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 Trust 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. Any action taken by the Joint Trust Fund Committee shall be conclusively binding.

**Article 6**  
**Legal Status, Privileges, and Immunities**

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

2. The Trust 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 Trust Fund.

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

4. In accordance with Section 265 of the 2023 Amended Compact, within the scope of its official activities, the Trust 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 members and, when applicable, non-voting members to administer the Trust Fund.

2. The Joint Trust Fund Committee shall serve as the trustee of the Trust Fund and ensure that the Trust Fund is maintained and used in accordance with the provisions of this Agreement and the 2023 Amended Compact.

3. The composition of the Joint Trust Fund Committee shall be three voting members appointed by the Government of the United States of America, which shall include the Chair of the Joint Trust Fund Committee, and three voting members appointed by the Government of the Federated States of Micronesia. The Signatory Government appointing the member shall communicate such appointment in writing to the non-appointing Signatory Government and to the Chair of the Joint Trust Fund Committee. The Government of the United States of America shall consult with the Government of the Federated States of Micronesia in appointing the Chair of the Joint Trust Fund Committee, and the Government of the Federated States of Micronesia shall have an opportunity to present its views, which shall be considered. In addition, by a majority vote of the Joint Trust Fund Committee, non-voting members may be appointed by Subsequent Contributors.

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

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

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

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

(b) the investment and disbursement of resources of the Trust Fund; and

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

7. Voting and non-voting members, and their staff, shall serve as such without payment of salaries, honoraria, or expenses, including travel and per diem expenses, from the Trust Fund. The Trust Fund may be used to cover expenses related to the Joint Trust Fund Committee's rental of meeting space and incidentals thereto.

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

9. 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.

10. 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. In cases where there are an equal number of votes, the vote of the Chair of the Joint Trust Fund Committee shall be the deciding vote.

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

## **Article 8**

### **Technical and Administrative Assistance**

The Joint Trust Fund Committee may obtain administrative or technical advisory services as are necessary to ensure the orderly operation of the Trust Fund. Such administrative and technical advisory service providers shall be entitled to reasonable fees and expenses as compensation for their services. Such fees and expenses shall be subject to the prior written approval by the Joint Trust Fund Committee.

**Part IV**  
**Resources of the Trust Fund**

**Article 9**  
**Resources**

The resources of the Trust Fund shall consist of all Contributions to the Trust Fund, from whatever sources, and all Income. The resources of the Trust 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**  
**Contributions**

1. The Government of the United States of America shall contribute to the Trust Fund in accordance with Section 265 and Section 266 of the 2023 Amended Compact, subject to Sections 451(b), 452(b), and 453(c) of the 2023 Amended Compact.

2. The Signatory Governments shall seek Contributions to the Trust Fund from other sources.

3. The Trust Fund may accept Contributions from Subsequent Contributors. Such Contributions must be governed by an agreement between the Subsequent Contributor and the Joint Trust Fund Committee, which must be approved by all voting members of the Joint Trust Fund Committee.

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

**Article 11**  
**Conditions Governing Contributions**

1. No Contributions to the Trust Fund shall be withdrawn or refunded except in accordance with Articles 26 and 27 of this Agreement.

2. In the event the 2023 Amended Compact is terminated, the provisions of Sections 451 through 453, inclusive, of the 2023 Amended Compact, and Article 27 of this Agreement, shall govern treatment of any Contributions by the Government of the United States of America and undistributed Income derived therefrom.

3. The Trust Fund shall not issue negotiable or transferable obligations evidencing indebtedness for Contributions or Income.

**Part V**  
**Custodians, Investment Advisers, Money Managers**

**Article 12**  
**Appointment of Custodian**

1. The Joint Trust Fund Committee shall appoint and employ a Custodian, consistent with this Agreement, and shall be empowered to remove any Custodian acting hereunder and to appoint a successor Custodian. Any Custodian may be removed by the Joint Trust Fund Committee by giving thirty (30) days' written notice to the Custodian.

2. The Custodian shall:

- (a) be selected from among qualified institutions organized in the United States of America;
- (b) have a net worth in excess of \$100 million;
- (c) have at least 15 years' experience as a custodian of financial assets; and
- (d) have experience in managing trust funds of at least \$500 million.

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

4. The Custodian may resign by filing with the Joint Trust Fund Committee a 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 unless prior thereto a successor Custodian shall have been appointed by the Joint Trust Fund Committee.

**Article 13**  
**Custodian's Powers and Duties**

1. The Custodian shall have the entire care and custody of all of the assets comprising the Trust Fund. The Custodian shall use reasonable and prudent care and reasonable and prudent diligence in the exercise of the Custodian's powers and the performance of the Custodian's duties.

2. With respect to the Trust Fund, the Custodian shall have the following duties and powers, in addition to and not in limitation of the powers granted or conferred by applicable law, all of which shall be exercised in a fiduciary capacity:

- (a) To collect and receive any and all funds and other property of whatever kind or nature due or owing or belonging to the Trust Fund and to give full discharge and acquittance therefor, and to extend for a reasonable period of time the deadline for payment of any obligation at any time owing to the Trust Fund.
- (b) To disburse amounts for Distributions as approved by the Joint Trust Fund Committee pursuant to Articles 17, 18, 19, and 20 of this Agreement.
- (c) To disburse amounts for payment of the fees, expenses, compensation, and costs described in Articles 7, 8, 12, 13, 14, and 24 of this Agreement.
- (d) To disburse amounts pursuant to the conditions set forth in Articles 26 and 27 of this Agreement.

3. The Custodian 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 the Trust Fund 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 Custodian 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 Custodian to take any action with respect to the trust assets that the Custodian is authorized to take under this Agreement.

4. The Custodian 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 Joint Trust Fund Committee shall ensure the following duties are performed by the Custodian, or through a competent entity selected by the Joint Trust Fund Committee consistent with Article 8 of this Agreement:

- (a) making all payment of liabilities and administration expenses;
- (b) effecting all Distributions pursuant to the instruction of the Joint Trust Fund Committee to the Government of the Federated States of Micronesia under this Agreement; and

- (c) maintaining full and accurate books of account and records of all financial transactions relative to the Trust Fund, which shall be available at all reasonable times for inspection by the Joint Trust Fund Committee or its representatives.

6. The Custodian shall be entitled to reasonable fees and expenses as compensation for services as Custodian hereunder. Such fees and expenses shall be subject to the prior written approval by the Joint Trust Fund Committee.

#### **Article 14**

#### **Investment Advisers and Money Managers**

1. The Joint Trust Fund Committee shall have the power and authority to:

- (a) select one or more Investment Advisers;
- (b) negotiate the terms of, and execute management agreements with, such Investment Advisers; and
- (c) direct the Custodian to pay the compensation and costs of such Investment Advisers from the Trust Fund.

2. The Investment Advisers shall advise and recommend to the Joint Trust Fund Committee one or more Money Managers who shall invest the assets of the Trust Fund to produce a diversified portfolio in accordance with the investment policy established by the Joint Trust Fund Committee. The Investment Advisers 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 shall have the power and authority to direct brokerage instructions through the Investment Advisers for any security transactions executed with respect to the Trust 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 Advisers and Money Managers; and

(b) direct the Custodian, in writing, to pay the compensation and costs of brokers, as previously negotiated and agreed, from the Trust Fund.

5. The powers and authorities conferred on the Joint Trust Fund Committee under this Agreement shall be exercisable only in a fiduciary capacity, and any Investment Advisers accepting the delegation of a discretionary function of the Joint Trust Fund Committee shall also be considered to be acting in a fiduciary capacity.

**Part VI**  
**Operation of the Trust Fund**

**Article 15**  
**Investment Policy**

1. The Joint Trust Fund Committee shall establish and revise from time to time an investment policy consistent with this Agreement, upon advice of the Investment Advisers, with the intent the Trust Fund shall be used for the purposes described in Article 3 of this Agreement. The investment policy shall indicate the investment strategy of the Trust Fund and shall be monitored according to industry standard benchmarks. The Investment Advisers shall report to the Joint Trust Fund Committee on the investment policy and the Trust Fund's performance at least quarterly. The Joint Trust Fund Committee may direct the Investment Advisers to calculate and include in such reports an estimated rate of return percentage as described in Article 17(4)(b)(i) of this Agreement using the most recent available data. At the request of either of the Signatory Governments, the Joint Trust Fund Committee shall provide such reports to the Signatory Governments.

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

3. The Trust Fund and any Income derived from it shall not be taxable by the Signatory Governments to the extent that Income is derived from investment of the Trust Fund in instruments of the Government of the United States of America or other Qualified Instruments.

**Article 16**  
**Account Structure of the Trust Fund**

1. The Trust Fund shall be reorganized to consist of three accounts to be referred to herein as “Account 1”, “Account 2”, and “Account 3” (collectively, the “Accounts”). Each of the Accounts shall be created as soon as practicable following the entry into force of this Agreement.

2. Account 1

- (a) Account 1 shall consist of the Trust Fund’s initial three accounts (the “A Account,” “B Account,” and “C Account”, as defined in the 2003 Trust Fund Agreement), consolidated into a single account. Any Income derived from Account 1 shall be reinvested into Account 1.
- (b) Account 1 shall be used only for: (i) the payment of fees, expenses, compensation, and costs described in Articles 7, 8, 12, 13, 14, and 24; (ii) the transfer to Account 2 of the amounts for Sector Distributions, Resiliency Distributions, and Special Needs Distributions; and (iii) withdrawal and payment of Contributions and Income under Articles 26 and 27 of this Agreement.

3. Account 2

- (a) Account 2 shall serve as a holding account and shall consist of all amounts transferred from Account 1 for disbursement of Sector Distributions, Special Needs Distributions, and Resiliency Distributions.
- (b) Account 2 shall be used only for disbursement of Sector Distributions, Resiliency Distributions, and Special Needs Distributions.
- (c) Account 2 shall maintain sufficient liquidity at all times to meet the relevant Distribution needs.
- (d) Any amounts remaining in Account 2 at the end of the Fiscal Year in which the amount was supposed to be disbursed shall be returned to Account 1 within 90 days of the close of that Fiscal Year.

4. Account 3

- (a) Account 3 shall consist of all amounts transferred to the Trust Fund pursuant to Article IX of the 2023 Fiscal Procedures Agreement. Any Income derived from

Account 3 shall be deposited into Account 1 within 90 days of the end of each Fiscal Year unless the Joint Trust Fund Committee decides to waive this requirement for a particular Fiscal Year.

- (b) Account 3 shall be used only for disbursement of the Unspent Economic Assistance Distribution.
- (c) Account 3 shall maintain sufficient liquidity at all times to meet the relevant Distribution needs.
- (d) At the end of Fiscal Year 2043, any amounts remaining in Account 3 shall be deposited into Account 1 and Account 3 shall be closed.

5. A special account, hereinafter referred to as Account 4, may be established to allow contribution by the Federated States of Micronesia of revenues or income from unanticipated sources. Account 4 shall not be mixed with any other account and shall have a separate account number. Account 4 may be used by the Government of the Federated States of Micronesia to meet unanticipated shortfalls or other purposes.

## **Part VII Distributions**

### **Article 17 Sector Distribution**

1. The Sector Distribution shall be available for disbursement beginning October 1, 2043, in annual amounts not to exceed the Sector Distribution Cap.
2. The Sector Distribution shall be used only to support the sectors as described in Section 261(a) of the 2023 Amended Compact, or other sectors as mutually decided by the Signatory Governments.
3. The Sector Distribution Cap for the upcoming Fiscal Year shall be calculated by the Joint Trust Fund Committee by March 31 every year beginning in 2043, based on the information contained in the most recent Annual Reports.
4. The Sector Distribution Cap shall equal the sector distribution percentage multiplied by the Account 1 moving average, as calculated using Formula 1 in Annex A to this Agreement and as described in subparagraphs (a) and (b) below. In the event of any discrepancy, Formula 1 shall prevail.

- (a) The Account 1 moving average shall consist of the average of the Restricted Fiduciary Net Position of Account 1 at the end of each of the most recently available completed three Fiscal Years.
- (b) The sector distribution percentage is equal to the rate of return percentage multiplied by the sustainability gap adjustment.
  - i. Each Fiscal Year's rate of return percentage is equal to a 10-year average of the historical real return. The historical real return is a 20-year average of the weighted nominal rate of return in a given calendar year adjusted for inflation. Inflation is calculated using each calendar year's year-over-year change in the United States Gross Domestic Product Implicit Price Deflator (IPD) as published in the January immediately prior to the March 31 calculation of the Sector Distribution Cap. The weighted nominal return is the sum of the nominal return of each asset class in a given calendar year multiplied by the weight of that asset class. The asset class and weighting shall be based on the asset class structure of Account 1 at the end of the most recent Fiscal Year. Where the asset classes' performance time series is not available for the full 20 years, the average shall be calculated using available data or that of a comparable indicator for that asset class.
  - ii. The sustainability gap adjustment is  $\frac{5}{6}$ ths, unless otherwise determined by the Joint Trust Fund Committee by the September 30 immediately prior to the March 31 calculation of the Sector Distribution Cap. In making such a determination, the Joint Trust Fund Committee must give due consideration to Account 1's current asset class structure and may only decide on another value that is between  $\frac{4}{5}$ ths and  $\frac{9}{10}$ ths.

5. The Government of the Federated States of Micronesia may request disbursements up to the amount of the Sector Distribution Cap by submitting a request to the Joint Trust Fund Committee in accordance with the procedures below.

- (a) Beginning in 2043, by no later than July 15 each year, the Government of the Federated States of Micronesia shall submit to the Joint Trust Fund Committee a proposed Sector Distribution budget containing:
  - i. The amount the Government of the Federated States of Micronesia is requesting to be disbursed as a Sector Distribution in the upcoming Fiscal Year;

- ii. A description of how the amount would be allocated among the sectors described in Section 261(a) of the 2023 Amended Compact, or other sectors as mutually decided by the Signatory Governments;
  - iii. Proposed expenditures for the upcoming Fiscal Year by program, including a detailed breakdown by object classes as defined under the laws of the Federated States of Micronesia;
  - iv. A proposed timeline for the disbursement of the amount requested; and
  - v. A description of the monitoring and evaluation framework, including performance metrics, to be applied to ensure compliance with Article 21 of this Agreement.
- (b) Beginning in 2043, by no later than August 30 each year, the Joint Trust Fund Committee shall review and approve the proposed Sector Distribution budget unless:
- i. The amount requested exceeds the Sector Distribution Cap;
  - ii. The amount would not be allocated to the sectors described in Section 261(a) of the 2023 Amended Compact or other sectors as mutually decided by the Signatory Governments; or
  - iii. The Joint Trust Fund Committee determines the monitoring and evaluation framework is inadequate. The Joint Trust Fund Committee may also withhold its approval pending the resolution of any Qualified Findings.
- (c) The Government of the Federated States of Micronesia may revise the approved Sector Distribution budget only with the prior written approval of the Joint Trust Fund Committee.

6. The Government of the Federated States of Micronesia may use the Sector Distribution only under the allocations stated in the approved Sector Distribution budget.

7. The amount equal to any approved Sector Distribution shall be transferred from Account 1 to Account 2 no later than September 15 every year, beginning in 2043.

8. Any amounts disbursed to the Government of the Federated States of Micronesia for a Sector Distribution that are not obligated at the end of the Fiscal Year for which they were disbursed shall be returned to Account 1 within 180 days of the close of that Fiscal Year.

**Article 18**  
**Resiliency Distribution**

1. The Resiliency Distribution shall be available for disbursement only in Fiscal Years 2024 through 2043, in annual amounts not to exceed the Resiliency Distribution Cap.

2. The Resiliency Distribution shall be used only as follows:

(a) The Resiliency Distribution may be used to support the sectors described in Section 261(a) of the 2023 Amended Compact, or other sectors as mutually decided by the Signatory Governments, in amounts up to the lesser of:

i. The amount of assistance for the upcoming Fiscal Year as described in Sections 261(a) and 266 of the 2023 Amended Compact, multiplied by the percentage change in the United States Gross Domestic Product Implicit Price Deflator (IPD), as calculated using Formula 2 in Annex A to this Agreement and as described in this subsection. In the event of any discrepancy, Formula 2 shall prevail. The percentage change is calculated as the change in the IPD of the most recent quarter ending on September 30 and the quarter ending September 30, 2024 as the base as available in the January immediately prior to the March 31 calculation of the Resiliency Distribution Cap; or

ii. The Resiliency Distribution Cap.

(b) Any remaining amounts below the Resiliency Distribution Cap not used under subparagraph (a) above may be used for the environment and infrastructure sectors as described in Sections 261(a)(5) and (6) of the 2023 Amended Compact.

3. The Resiliency Distribution Cap for the upcoming Fiscal Year shall be calculated by the Joint Trust Fund Committee by March 31 every year through 2042, based on the information contained in the most recent Annual Reports.

4. The Resiliency Distribution Cap shall equal the resiliency distribution percentage multiplied by the Account 1 moving average, as calculated using Formula 3 in Annex A to this Agreement and as described in subparagraphs (a) and (b) below. In the event of any discrepancy, Formula 3 shall prevail.

(a) The Account 1 moving average shall consist of the average of the Restricted Fiduciary Net Position of Account 1 at the end of each of the most recently available completed three Fiscal Years.

(b) The resiliency distribution percentage is 4%.

5. The Government of the Federated States of Micronesia may request disbursements up to the amount of the Resiliency Distribution Cap by submitting a request to the Joint Trust Fund Committee in accordance with the procedures described below.

(a) By no later than July 15 each year, through 2042, the Government of the Federated States of Micronesia shall submit to the Joint Trust Fund Committee a proposed Resiliency Distribution budget containing:

- i. The total amount the Government of the Federated States of Micronesia is requesting to be disbursed as a Resiliency Distribution in the upcoming Fiscal Year, as well as any specific amounts being requested under paragraph 2(a) and paragraph 2(b) of this Article;
- ii. A description of how any amounts to be used under paragraph 2(a) of this Article would be allocated among the sectors described in Section 261(a) of the 2023 Amended Compact, or other sectors as mutually decided by the Signatory Governments;
- iii. A description of how any amounts to be used under paragraph 2(b) of this Article would be allocated among the environmental and infrastructure sectors described in Sections 261(a)(5) and (6) of the 2023 Amended Compact;
- iv. Proposed expenditures for the upcoming Fiscal Year by program, including a detailed breakdown by object classes as defined under the laws of the Federated States of Micronesia;
- v. For any amounts that would be allocated to the infrastructure sector, a description of which projects included in the Infrastructure Development Plan the amounts would fund;
- vi. A proposed timeline for the disbursement of the amount requested; and
- vii. A description of the monitoring and evaluation framework, including performance metrics, to be applied to ensure compliance with Article 21 of this Agreement.

(b) By no later than August 30 each year, through 2042, the Joint Trust Fund Committee shall review and approve the proposed Resiliency Distribution budget unless:

- i. The total amount requested exceeds the Resiliency Distribution Cap;
  - ii. The amount requested for use under paragraph 2(a) of this Article exceeds the amount permitted therein, exceeds the Resiliency Distribution Cap, or would not be allocated to the sectors described in Section 261(a) of the 2023 Amended Compact or other sectors as mutually decided by the Signatory Governments;
  - iii. The amount requested for use under paragraph 2(b) of this Article exceeds the amount permitted therein, exceeds the Resiliency Distribution Cap, or would not be allocated to the environmental or infrastructure sectors described in Sections 261(a)(5) and (6) of the 2023 Amended Compact;
  - iv. An amount that would be allocated to the infrastructure sector would fund projects not included in the approved Infrastructure Development Plan; or
  - v. The Joint Trust Fund Committee determines the monitoring and evaluation framework is inadequate. The Joint Trust Fund Committee may also withhold its approval pending the resolution of any Qualified Findings.
- (c) The Government of the Federated States of Micronesia may revise the approved Resiliency Distribution budget only with the prior written approval of the Joint Trust Fund Committee.

7. The Government of the Federated States of Micronesia may use the Resiliency Distribution only under the allocations stated in its approved Resiliency Distribution budget.

8. The amount equal to any approved Resiliency Distribution shall be transferred from Account 1 to Account 2 no later than September 15 every year through 2043.

9. Any amounts disbursed to the Government of the Federated States of Micronesia for a Resiliency Distribution that are not obligated at the end of the Fiscal Year for which they were disbursed shall be returned to Account 1 within 180 days of the close of that Fiscal Year.

## **Article 19**

### **Special Needs Distribution**

1. The Special Needs Distribution shall be available for disbursement in any year, in amounts not to exceed the Special Needs Distribution Cap in a given year.

2. The Special Needs Distribution shall be used only for unforeseen singular expenses of the Government of the Federated States of Micronesia relating to projects that cannot reasonably be financed from other sources of revenue, so long as the projects are to support the sectors described in Section 261(a) of the 2023 Amended Compact.

3. The Special Needs Distribution Cap for the upcoming Fiscal Year shall be calculated by the Joint Trust Fund Committee by March 31 every year, based on the information contained in the most recent Annual Reports.

4. The Special Needs Distribution Cap shall equal the special needs distribution percentage multiplied by the Account 1 moving average, as calculated using Formula 4 in Annex A to this Agreement and as described in subparagraphs (a) and (b) below. In the event of any discrepancy, Formula 4 shall prevail.

(a) The Account 1 moving average shall consist of the average of the Restricted Fiduciary Net Position of Account 1 at the end of each of the most recently available completed three Fiscal Years.

(b) The special needs distribution percentage is 2%.

5. The Government of the Federated States of Micronesia may request disbursements up to the amount of the Special Needs Distribution Cap by submitting a request to the Joint Trust Fund Committee in accordance with the procedures described below.

(a) At any time within a Fiscal Year, the Government of the Federated States of Micronesia may submit to the Joint Trust Fund Committee a proposed Special Needs Distribution budget for a Special Needs Distribution containing:

i. The amount the Government of the Federated States of Micronesia is requesting to be disbursed as a Special Needs Distribution;

ii. A description of how the amount would be used to address unforeseen singular expenses, to a level of specificity as determined by the Joint Trust Fund Committee, and an explanation as to why other sources of revenues cannot be used for such expenses;

iii. A proposed timeline for the disbursement of the amount requested; and

iv. A description of the monitoring and evaluation framework, including performance metrics, to be applied to ensure compliance with Article 21 of this Agreement.

- (b) The Joint Trust Fund Committee shall review the proposed Special Needs Distribution budget as soon as practicable and decide whether to approve a Special Needs Distribution. The Joint Trust Fund Committee shall review the proposed budget on an expedited basis upon receiving a justified request from the Government of the Federated States of Micronesia that articulates the urgency of the circumstances. In deciding whether to approve the proposed Special Needs Distribution budget, the Joint Trust Fund Committee shall consider, among other factors, the impact that the Special Needs Distribution would have on the long-term financial health of the Trust Fund, as well as the impact it would have on future Sector Distributions and Resiliency Distributions. In order to approve a Special Needs Distribution, the Committee must determine that the unforeseen singular expense cannot be met by other sources of funds available to the Government of the Federated States of Micronesia and that the Special Need Distribution outweighs any negative impact the Special Needs Distribution would have on the long-term health and viability of the Trust Fund. Such determinations must be made in writing along with the approval of the Special Needs Distribution. The Joint Trust Fund Committee may also withhold its approval pending the resolution of any Qualified Findings.
- (c) The Government of the Federated States of Micronesia may revise the approved Special Needs Distribution budget only with the prior written approval of the Joint Trust Fund Committee.

6. The Government of the Federated States of Micronesia may use the Special Needs Distribution only for actions consistent with the approved Special Needs Distribution budget.

7. The amount equal to any approved Special Needs Distribution shall be transferred from Account 1 to Account 2 as soon as practicable after approval.

8. Any amounts disbursed to the Government of the Federated States of Micronesia for a Special Needs Distribution that are not obligated at the end of the Fiscal Year in which they were disbursed shall be returned to Account 1 within 180 days of the close of that Fiscal Year.

## **Article 20**

### **Unspent Economic Assistance Distribution**

1. The Unspent Economic Assistance Distribution shall be available for disbursement only in Fiscal Years 2024 through 2043, in amounts not to exceed the Unspent Economic Assistance Distribution Cap.

2. The Unspent Economic Assistance Distribution shall be used only to support the sectors described in Section 261(a) of the 2023 Amended Compact, or others sectors as mutually decided by the Signatory Governments.

3. The Unspent Economic Assistance Distribution Cap for the upcoming Fiscal Year shall be calculated by the Joint Trust Fund Committee by March 31 every year through 2042, based on the information in the most recent Annual Reports.

4. The Unspent Economic Assistance Distribution Cap shall equal the undisbursed amounts transferred to Account 3.

5. The Government of the Federated States of Micronesia may request disbursements up to the amount of the Unspent Economic Assistance Distribution Cap by submitting a request to the Joint Trust Fund Committee in accordance with the procedures described below.

(a) The Government of the Federated States of Micronesia may at any time submit to the Joint Trust Fund Committee a proposed Unspent Economic Assistance Distribution budget containing:

- i. The amount it is requesting to be disbursed as an Unspent Economic Assistance Distribution in the upcoming Fiscal Year;
- ii. A description of how the amount would be allocated among the sectors described in Section 261(a) of the 2023 Amended Compact, or other sectors as mutually decided by the Signatory Governments;
- iii. Proposed expenditures for the upcoming Fiscal Year by program, including a detailed breakdown of object class, as defined under the laws of the Federated States of Micronesia;
- iv. A description of how the allocation would further one or more of the multi-year objectives of the relevant sector as well as one or more of the goals and broad strategies as described in the approved Strategic Development Plan;
- v. For amounts that would be allocated to the infrastructure sector, a description of which projects included in the Infrastructure Development Plan the amounts would fund;
- vi. A proposed timeline for the disbursement of the amount requested; and

- vii. A description of the monitoring and evaluation framework, including performance metrics, to be applied to ensure compliance with Article 21 of this Agreement.
- (b) The Joint Trust Fund Committee shall review and approve as soon as practicable the proposed Unspent Economic Assistance budget unless:
- i. The requested amount exceeds the Unspent Economic Assistance Distribution Cap;
  - ii. The amount would not be allocated to the sectors described in Section 261(a) of the 2023 Amended Compact;
  - iii. The Joint Trust Fund Committee determines that that proposed allocation would not further a multi-year objective of the sector or the goals and broad strategies as described in the approved Strategic Development Plan;
  - iv. An amount that would be allocated to the infrastructure sector would fund projects not included in the approved Infrastructure Development Plan; or
  - v. The Joint Trust Fund Committee determines that the monitoring and evaluation framework is inadequate. The Joint Trust Fund Committee may also withhold its approval pending the resolution of any Qualified Findings.

6. The Government of the Federated States of Micronesia may revise the approved Unspent Economic Assistance budget only with the prior written approval of the Joint Trust Fund Committee.

7. The Government of the Federated States of Micronesia may use the Unspent Economic Assistance Distribution only under the allocations stated in its approved Unspent Economic Assistance budget.

8. Any amounts disbursed to the Government of the Federated States of Micronesia for an Unspent Economic Assistance Distribution that are not obligated at the end of the Fiscal Year for which they were disbursed shall be returned to Account 3 within 180 days of the close of that Fiscal Year.

## **Article 21**

### **Fiscal Procedures for Distributions**

1. The fiscal procedures described in this Article shall apply to all Distributions. As part of the review described in Article 30(3) of this Agreement, the Signatory Governments

shall consult regarding these fiscal procedures. The fiscal procedures described in this Article shall continue to apply to all Distributions unless otherwise agreed by the Signatory Governments.

2. Standards for Financial Management Systems

- (a) The Government of the Federated States of Micronesia shall expend and account for expenditures of Distributions, 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 shall be sufficient to:
- i. Permit preparation of the Annual Financial Report and Annual Performance Report as required under this Article; 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 2023 Amended Compact and this Agreement.
- (b) 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 relating to relevant Distributions.
  - ii. Accounting Records. Accounting records shall adequately identify the source and application of funds provided. 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 Distribution amounts, 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 Distribution budgets approved by the Joint Trust Fund Committee. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate. If unit cost data are required, estimates based on available documentation shall be accepted whenever possible.

- v. Allowable Cost. Applicable cost principles shall be followed in determining the reasonableness and allowability of costs. Indirect Costs may not be charged against any Distribution amounts.
  - vi. Source Documentation. Accounting records shall be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, award documents, and other financial data.
  - vii. Cash Management. Distributions shall be made in accordance with this Agreement. To the extent that the Government of the Federated States of Micronesia awards these funds 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.
- (c) The Joint Trust Fund Committee may review the adequacy of the financial management system at any time to ensure it meets the requirements of this Agreement.

3. Financial Report. The Government of the Federated States of Micronesia shall provide an Annual Financial Report to the Joint Trust Fund Committee within 180 days after the end of the Fiscal Year in which a Distribution was provided. The Annual Financial Report shall include:

- (a) A statement of revenues and expenditures for government fund types;
- (b) A comparison of budget and actual expenditures by function for government fund types; and
- (c) A budget execution report for each function which includes specifying major offices, cost centers, and budget activities.

4. Records Retention. Financial records, supporting documents, statistical records, and all other records pertinent to amounts provided through a Distribution must be retained by the Government of the Federated States of Micronesia for a period of not less than three years from the date of submission of the Annual Financial Report.

#### 5. Prohibited Uses of Distributions

- (a) Contracts to Debarred and Suspended Parties. The Government of the Federated States of Micronesia shall ensure that Distributions are not provided to any party which is debarred, suspended, or otherwise excluded from and

ineligible for participation in United States of America assistance programs. A list of those parties that are debarred, suspended, or otherwise excluded from or ineligible for participation may be found in the System for Award Management list maintained by the General Services Administration, or its successor.

- (b) Covered Telecommunications. The Government of the Federated States of Micronesia may not use any Distributions to procure or obtain Equipment, services, or systems that use Covered Telecommunications Equipment or Services as a substantial or essential component of any system, or as critical technology as part of any system unless the Government of the United States of America waives this requirement.
- (c) Foreign Enterprises. The Government of the Federated States of Micronesia may not use any Distributions to award a contract to or pay an enterprise that has more than a fifty percent share owned by a State other than the Federated States of Micronesia or the United States of America, unless the Signatory Governments mutually decide to waive this prohibition.
- (d) Other Prohibitions. The Government of the Federated States of Micronesia may not use any Distributions to support the Federated States of Micronesia's Office of the President, Offices of State Governors, legislatures, or operations of the judicial branch, nor shall the Distributions be used for any lobbying activities.

## 6. Procurement

- (a) 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.
- (b) 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 Distributions if a conflict of interest, real or apparent, is involved as defined under the laws of the Federated States of Micronesia.
  - 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, except that 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.

- ii. To the extent permitted by the laws or regulations of the Federated States of Micronesia, the standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations.
- (c) Distributions received pursuant to this Agreement shall be awarded 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.
- (d) The Government of the Federated States of Micronesia shall maintain records 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.
- (e) 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.
- (f) The Government of the Federated States of Micronesia may not use Distributions for and shall be solely responsible for, in accordance with good administrative practice and sound business judgment, the settlement of disputes arising out of procurement or the execution of projects. Notwithstanding this limitation, the Government of the United States of America may approve a request from the Government of the Federated States of Micronesia for the use of Distributions for dispute settlement on a case-by-case basis. The Government of the United States of America shall consider any such requests for approval without unnecessary delay. This prohibition on the use of Distributions is not intended to apply to matters arising out of the ordinary course of contract administration.

## 7. Competition

- (a) 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.

- (b) Preferences for contractors and individuals of the Federated States of Micronesia in procurement decisions 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 and it does not substantially increase the cost of the contract.
- (c) 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.
- (d) 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.

## 8. Methods of Procurement

- (a) 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.
- (b) 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 responsive and responsible 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 subsection (i) below apply.
  - i. 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 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.

- ii. 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.

(c) 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.

(d) 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.

9. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

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

- (a) Bid Guarantee. Each bidder shall guarantee an equivalent of five percent of the bid price pursuant to a bid guarantee that complies with the following requirements: 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 a bid, execute such contractual documents as may be required within the time specified.
- (b) 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.
- (c) 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.

11. Contract Provisions. All contracts paid using Distributions shall contain the following provisions:

- (a) 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;
- (b) For contracts in excess of \$100,000: termination for cause and for convenience by the awarding entity including the manner by which it will be effected and the basis for settlement;
- (c) Compliance with the local statutes regarding kickbacks and corrupt practices;

- (d) Access by the Government of the Federated States of Micronesia, the Government of the United States of America, 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;
- (e) Retention of all required records for three years after final payments are made and all other pending matters are closed; and
- (f) Compliance with all applicable standards, orders, or requirements issued under local environmental laws.

#### 12. Joint Trust Fund Committee Review

- (a) The Government of the Federated States of Micronesia shall make available, upon request of the Joint Trust Fund Committee, technical specifications on proposed procurements.
- (b) The Government of the Federated States of Micronesia shall make available, upon request of the Joint Trust Fund Committee, 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 paragraphs 6-11 of this Article; (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. Program Monitoring, Performance Report, Records Retention

- (a) Program Monitoring. The Government of the Federated States of Micronesia shall be responsible for the management and monitoring of the day-to-day operations of all Distribution amounts and the activities funded in full or in part from the Distribution amounts, to assure compliance with the terms of this Agreement.

(b) Performance Report

- i. The Government of the Federated States of Micronesia shall submit an Annual Performance Report on the use of the Distribution amounts 180 days after the close of the Fiscal Year in which they were disbursed.
- ii. The Joint Trust Fund Committee shall establish a uniform format for performance reports that shall be modeled after the performance report specified in Article VI(2)(a) of the 2023 Fiscal Procedures Agreement. The Annual Performance Report shall contain similar information as the performance reports specified in Article VI(2)(a) of the 2023 Fiscal Procedures Agreement.

(c) Retention and Access Requirements for Performance Records

- i. Applicability. The following provisions apply to all financial and programmatic records, supporting documents, statistical records, and other records of the Government of the Federated States of Micronesia which are required to be maintained by this Agreement.
- ii. 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 Annual Performance Report to the Government of the United States of America.
- iii. 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.
- iv. Access to Records of the Government of the Federated States of Micronesia. The Joint Trust Fund Committee shall have the right of access to any pertinent books, documents, papers, or other records of the Government of the Federated States of Micronesia which are pertinent to the use of the Distributions, in order to make Distribution Audits, examinations, excerpts, and transcripts.

**14. Audit Responsibility of the Government of the Federated States of Micronesia for Distributions**

- (a) The Government of the Federated States of Micronesia shall complete a financial and compliance Distribution Audit of the uses of any Distributions for each Fiscal Year in which the Government of the Federated States of Micronesia receives a Distribution. The Distribution Audit shall be an audit within the meaning of the Single Audit Act, as amended (31 U.S.C. 7501 et seq.) or its successors. Distribution Audits shall be provided to the Joint Trust Fund Committee no later than the end of the third fiscal quarter following the end of the Fiscal Year under review.
  
- (b) For purposes of a Distribution Audit, the laws and regulations of the United States of America shall apply which are relevant to the 2023 Amended Compact, related agreements, and such other instruments as may be made expressly applicable pursuant to mutual decision by the Signatory Governments. The applicable laws and regulations of the Federated States of Micronesia 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.

**Article 22  
Financial Year**

The financial year of the Trust Fund is the Fiscal Year.

**Part VII  
Trust Fund Accounting, Audit, and Reports**

**Article 23  
Trust Fund Accounting**

1. The Joint Trust Fund Committee shall ensure the Custodian or competent entity selected consistent with Article 8 of this Agreement keeps and promptly produces all proper books and records of account of the assets, property, liabilities, income, expenditure, and transactions of the Trust Fund in order to facilitate the Trust Fund Audit.

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

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

4. The Government of the Federated States of Micronesia shall, upon request by the Joint Trust Fund Committee, 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 24 Trust Fund Audit**

1. The Joint Trust Fund Committee shall appoint an independent auditor to serve as the Trust Fund Auditor.

2. The Trust Fund shall be audited at least annually by the Trust Fund Auditor.

3. The Trust Fund Auditor shall either:

(a) satisfy themselves that the accounts of the Trust Fund have been properly prepared in accordance with United States of America accounting standards and submit a Trust Fund Audit to the Joint Trust Fund Committee stating that:

i. the accounts have been properly prepared in accordance with the books and records of the Trust Fund;

ii. the books and records of the Trust Fund have been properly kept and contain information adequate for the purposes of the Trust Fund Audit;

iii. the balance sheet and income and expenditure account of the Trust Fund give a true and fair view of the Trust Fund's financial position; and

iv. the financial affairs of the Trust Fund have been properly conducted in accordance with this Agreement; or

(b) notify the Joint Trust Fund Committee that they are unable to complete the Trust Fund Audit as provided in subparagraph (a) above giving the reasons.

4. The Trust Fund Audit shall also include information on the performance of the Custodian and Money Managers in the investment of the Trust Fund in accordance with the guidelines established by the Joint Trust Fund Committee, with comparative references to the performance of managers of other funds of a similar size and nature.

5. The Trust Fund Auditor shall be entitled to reasonable fees and expenses as compensation for their services. Such fees and expenses shall be subject to the prior written approval by the Joint Trust Fund Committee.

## **Article 25 Trust Fund Annual Reports**

1. By March 31 every year, the Joint Trust Fund Committee shall publish and shall submit to the Signatory Governments and Subsequent Contributors an Annual Report containing:

- (a) A report on the activities and management of the Trust Fund, including on the operations of the Accounts described in Article 16 of this Agreement, and on the effectiveness of the Trust Fund to provide Distributions as articulated in this Agreement;
- (b) The accounts of the Trust Fund for the prior Fiscal Year, audited in accordance with Article 24 of this Agreement;
- (c) The Trust Fund Audit;
- (d) The calculated Account 1 Moving Average;
- (e) Through Fiscal Year 2042, the calculated Resiliency Distribution Cap for the upcoming Fiscal Year;
- (f) The calculated Special Needs Distribution Cap for the upcoming Fiscal Year;
- (g) Through Fiscal Year 2042, the calculated Unspent Economic Assistance Distribution Cap for the upcoming Fiscal Year;
- (h) Starting in Fiscal Year 2043, the calculated rate of return percentage for the upcoming Fiscal Year;
- (i) Starting in Fiscal Year 2043, the calculated Sector Distribution Cap for the upcoming Fiscal Year; and
- (j) Any determination made by the Joint Trust Fund Committee with regard to approval of a Special Needs Distribution, including its consideration of the impact that the Special Needs Distribution would have on the long-term financial health of the Trust Fund, as well as the impact it would have on future Sector Distributions and Resiliency Distributions.

2. To assist in carrying out its responsibilities under this Article, the Joint Trust Fund Committee may select a competent entity consistent with Article 8 of this Agreement or request the assistance of the Investment Adviser.

**Part VIII**  
**Withdrawal and Discontinuation of the Trust Fund**

**Article 26**  
**Withdrawal of Contributions**

1. The Government of the United States of America may withdraw the Present Market Value of its Contributions to the Trust Fund, and any remaining Income derived therefrom:

(a) in the event the Government of the United States of America 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 Distributions for the purposes described in Articles 3, 17, 18, 19, and 20 of this Agreement; or

(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 of Free Association between the Government of the United States of America and the Government of the Federated States of Micronesia, done at Honolulu on October 1, 1982*, or take any action which the Government of the United States of America determines, after appropriate consultation with the Government of the Federated States of Micronesia, to be incompatible with the Government of the United States of America's responsibility for security and defense matters in or relating to the Federated States of Micronesia, as set forth in such agreements.

2. Except as provided in paragraph 1 of this Article, any other Contributor may withdraw the Present Market Value of its Contributions to the Trust Fund, and any remaining Income derived therefrom, from the Trust Fund by notifying the Joint Trust Fund Committee.

3. In the event of withdrawal by a Contributor, no payment of assets shall be made to that Contributor until that Contributor 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 Contributor shall be paid to that Contributor.

4. A Contributor that makes a withdrawal pursuant to this Article shall have no rights under this Agreement except as provided in this Article and Article 29 of this Agreement, and no payment shall be made to such Contributor except as a payment of assets under this Article and Article 29 of this Agreement.

**Article 27**  
**Discontinuation and Dissolution of the Trust Fund**

1. The Trust Fund may be discontinued by written agreement of the Signatory Governments.

2. Upon discontinuation of the Trust Fund, the Trust Fund shall immediately stop 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 Trust Fund and the payment of its assets, this Agreement shall terminate. Until then, the Trust Fund shall remain in existence and all rights and obligations of the Trust Fund and the Signatory Governments under this Agreement shall continue unimpaired.

4. In the event the Trust Fund is discontinued, no payment of assets shall be made until all liabilities have been discharged. Subsequently, the assets of the Trust Fund shall be paid as follows:

- (a) the Present Market Value of the Principal and Income attributable to the Government of the United States of America shall be paid back to that Government;
- (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; and
- (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 decide otherwise.

**Part IX**  
**Miscellaneous Provisions**

**Article 28**  
**Amendments**

This Agreement may be amended at any time in writing by mutual agreement of the Signatory Governments.

**Article 29**  
**Dispute Resolution**

1. Any dispute arising out of this Agreement between the Signatory Governments that cannot be resolved by the Joint Trust Fund Committee shall, if the dispute involves Articles 4, 6, 8, 9, 12, 13, 14, 15, 17, 18, 19, 20, 21, 23, 24, and 25, be referred for resolution to the Signatory Governments. The Signatory Governments shall confer and resolve the dispute. If either Signatory Government feels it is necessary, it may give written notification to the other Signatory Government that it wants the issue to be referred to the Under Secretary of State (or equivalent) of the other Signatory Government.

2. All other disputes may be resolved in accordance with the procedure described in paragraph 1 of this Article, or through the conference and dispute resolution process set forth in Article II of Title Four of the 2023 Amended Compact.

**Article 30**  
**Final Provisions**

1. This Agreement shall enter into force on the date of the later note in an exchange of notes between the Signatory Governments indicating that each Signatory Government has completed its internal procedures for entry into force.

2. Upon entry into force of this Agreement, the 2003 Trust Fund Agreement shall be terminated.

3. The Signatory Governments shall consult with each other regarding implementation of this Agreement sixteen years after its entry into force and consider whether any amendments are desirable.

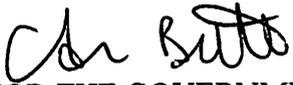
4. This Agreement may be terminated by mutual agreement of the Signatory Governments. Upon entry into force of such agreement, the Trust Fund shall be discontinued in accordance with Article 27 of this Agreement, unless otherwise agreed by the Signatory Governments. Termination shall not take effect until the final settlement of

the obligations of the Trust Fund and the payment of its assets in accordance with Article 27 have been completed.

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.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

**DONE** at Palikir on May 23, 2023.

  
FOR THE GOVERNMENT OF  
THE UNITED STATES OF  
AMERICA:

Alissa M. Bibb

  
FOR THE GOVERNMENT OF THE  
FEDERATED STATES OF  
MICRONESIA:

Leo A. Farson Jr.

## Annex A

to

### the Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Regarding the Compact Trust Fund

#### Formula 1

##### Mathematical Notation for Sector Distribution Cap Formula

$$\text{Sector\_Distribution\_Cap}_t = \text{Account1\_MovingAverage}_t * \text{Sector\_Distribution\_Percentage}_t$$

Where:

$$\text{Account1\_MovingAverage}_t = \frac{\sum_{t=-3}^{-1} \text{Restricted\_Fiduciary\_Net\_Position}_t}{3}$$

$$\text{Sector\_Distribution\_Percentage}_t = \text{Rate\_of\_Return\_Percentage}_t * \text{Sustainability\_Gap\_Adjustment}_t$$

$$\text{Rate\_of\_Return\_Percentage}_t = \frac{\sum_{t=-10}^{-1} \text{Historical\_Real\_Return}_t}{10}$$

$$\text{Historical\_Real\_Return}_t = \frac{\sum_{t=-20}^{-1} (\text{Weighted\_Nominal\_Return}_t - I_t)}{20}$$

$$\text{Weighted\_Nominal\_Return}_t = \sum_{n=1}^N ar_{nt} * w_n$$

$ar_{nt}$  is the nominal return  $r$ , on asset class  $n$ , in calendar year  $t$

$w_n$  is the weight of asset class  $n$ , based on the asset class structure of Account 1 at the end of the most recent Fiscal Year

$I_t$  is the calendar year's year-over-year change in the United States Gross Domestic Product Implicit Price Deflator given by  $I_t = (IPD_t - IPD_{t-1}) / IPD_{t-1}$ , as of the January immediately prior to the March 31 calculation of the Sector Distribution Cap

## **Formula 2**

### **Mathematical Notation for Resiliency Assistance Adjustment Formula**

$$Resiliency\_Assistance\_Adjustment_t = Assistance_t * I_t$$

$I_t$  is the change in the United States Gross Domestic Product Implicit Price Deflator for the most recent quarter ending on September 30 and the quarter ending September 30, 2024 base given by  $I_t = (IPD_t - IPD_{2024})/IPD_{2024}$ , as available in the January immediately prior to the March 31 calculation of the Resiliency Distribution Cap.

## **Formula 3**

### **Mathematical Notation for Resiliency Distribution Cap Formula**

$$Resiliency\_Distribution\_Cap_t \\ = Account1\_MovingAverage_t * Resiliency\_Distribution\_Percentage_t$$

Where:

$$Account1\_MovingAverage_t = \frac{\sum_{t=-3}^{-1} Restricted\_Fiduciary\_Net\_Position_t}{3} \\ Resiliency\_Distribution\_Percentage_t = 0.04$$

## **Formula 4**

### **Mathematical Notation for Special Needs Distribution Cap Formula**

$$Special\_Needs\_Distribution\_Cap_t \\ = Account1\_MovingAverage_t * Special\_Needs\_Distribution\_Percentage_t$$

Where:

$$Account1\_MovingAverage_t = \frac{\sum_{t=-3}^{-1} Restricted\_Fiduciary\_Net\_Position_t}{3} \\ Special\_Needs\_Distribution\_Percentage_t = 0.02$$

No. 23-0162

The Embassy of the United States of America presents its compliments to the Department of Foreign Affairs of the Federated States of Micronesia and has the honor to refer to the Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Regarding the Compact Trust Fund, done at Palikir on May 23, 2023 (the "Agreement").

A review of the signed Agreement has revealed that Article 21(13)(c)(ii) misidentified the recipient of the Annual Performance Report as the Government of the United States of America instead of the Joint Trust Fund Committee. The Embassy, on behalf of the Government of the United States of America, proposes to correct this error by replacing "Government of the United States of America" in Article 21(13)(c)(ii) with "Joint Trust Fund Committee". If the Government of the Federated States of Micronesia concurs with the above proposed correction, this note and the enclosed note in reply thereto, expressing the approval of the Government of the Federated States of Micronesia, shall constitute an official

correction of the Agreement in the manner set forth above. The correction becomes effective on the date of the Department's note.

The Embassy further notes that Article 18 of the Agreement does not include a paragraph 6, and as a result Article 18(5) is followed by Article 18(7), with no missing text. To clarify this fact, the Government of the United States of America has added a clarifying note at the bottom of the relevant page (p. 20) of the signed Agreement. It reads: "Note: The Signatory Governments did not include a Paragraph 6 in Article 18 and as a result Article 18(5) is followed by Article 18(7)."

The Embassy of the United States of America avails itself of this opportunity to renew to the Department of Foreign Affairs assurances of its highest consideration.

Embassy of the United States of America,

Kolonia, June 15, 2023.





# Department of Foreign Affairs Federated States of Micronesia

DFA/BHC-193-23  
June 15, 2023

The Department of Foreign Affairs of the Federated States of Micronesia presents its compliments to the Embassy of the United States of America in the FSM and has the honor to respectfully acknowledge receipt of Note No. 23-0162, dated June 15, 2023, from the Embassy concerning correction to and clarification of the Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia regarding the Compact Trust Fund, done at Palikir on May 23, 2023 (the "Agreement"). The Department concurs with the proposal for correction set forth in the Embassy's note. Therefore, the Embassy's notes together with this note in reply constitute an official correction of the Agreement. The correction becomes effective on the date of this note.

The Department also notes that Article 18 of the Agreement does not include a paragraph 6, and as a result Article 18(5) is followed by Article 18(7), with no missing text. The Department confirms that the Government of the Federated States of Micronesia has also added a clarifying note at the bottom of the relevant page (p. 20) of the signed Agreement. It reads: "Note: The signatory Government did not include a Paragraph 6 in Article 18 and as a result Article 18(5) is followed by 18(7)"

The Department of Foreign Affairs of the Federated States of Micronesia avails itself of this opportunity to renew with the Embassy of United States of America in the FSM the assurances of its highest consideration.

Palikir, Pohnpei

