

COLLEGE OF MICRONESIA – FSM
RETIREMENT PLAN DOCUMENT
Restatement Effective January 1, 2008

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By execution of this agreement, the Employer establishes this Deferred Compensation Plan (“Plan”) for the benefit of certain Employees specified within this Agreement. The purpose of the Plan is to provide additional compensation to Participants upon termination of employment. The Employer will pay benefits under the Plan only in accordance with the terms and conditions set forth in the Plan.

I. DEFINITIONS

- 1.01 **“Account”** means the account established by the Employer under the Plan for each Participant.
- 1.02 **“Beneficiary”** means the person or persons entitled to receive Plan benefits in the event of a Participant’s death.
- 1.03 **“Compensation”** means Regular Base Pay only. Compensation excludes bonuses, commissions, special contracts, overtime, night differential and all other compensation except regular salary.
- 1.04 **“Disability”** The employer defines disability under the plan as the employee’s inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration; the disability status will be determined by a doctor selected by the plan sponsor.
- 1.05 **“Effective Date”** The initial effective date of this plan is January 1, 2002. The restatement of the Plan Document is effective January 1, 2008 and shall supersede all prior Plan Documents and Amendments.
- 1.06 **“Elective Deferral”** means Compensation elected by a Participant to be deferred into the Participant’s Account under the Plan. An employee can enter the plan or make changes to their contributions on either January 1 or July 1. There is one exception to this rule, an employee can elect to stop contributing at any time during the year. If the employee decides to reenroll, they will need to do so on January 1 or July 1.
- 1.07 **“Employee”** A person employed in a permanent position. This includes regular and pro rata employees only.
- 1.08 **“Employer”** means College of Micronesia - FSM
- 1.09 **“Employer Contribution”** means amounts contributed by the Employer or credited by the Employer to an Account under the Plan.
- 1.10 **“Participant”** means an Employee selected by the Employer to participate in the Plan and designated under Section 2.01 of this agreement.
- 1.11 **“Plan”** The name of the Plan as adopted by the employer is: College of Micronesia – FSM Retirement Plan.
- 1.12 **“Plan Year”** means the 12 consecutive month period ending each December 31.
- 1.13 **“Valuation Date”** means the last day of each Plan Year and such other dates as the Employer may determine.

II. PARTICIPATION

- 2.01 **Eligibility**. The Employer designates the following employees as eligible to participate in the plan: Permanent employees who are at least 18 years old and have completed one

year of employment with the College of Micronesia - FSM. Upon completing a year of service, the eligible employee will be allowed to enter the plan on either January 1 or July 1.

- 2.02 **Possible Non-uniformity.** The Employer will specify within this Agreement such Plan terms and conditions as apply to all Participants on a uniform basis or as may apply to a given Participant. The Employer need not provide the same Plan benefits or apply the same Plan terms and conditions to all Employees who become Participants in the Plan, even as to Employees who are of similar pay, title, and other status with the Employer.
- 2.03 **Elective Deferrals.** Are permitted by all participants. A Participant can contribute up to 100% of their pay, but must contribute at least 3% in order to participate in the plan.
- 2.04 **Employer Contributions.** The Employer will contribute \$.50 for every \$1.00 the employee contributes every pay period. The maximum employer contribution is 3% of gross pay. This contribution will be made on a discretionary basis when funds are available. No additional non-matching employer contribution will be allowed under the plan.

III. VESTING AND FORFEITURE

- 3.01 **Vesting.** The following vesting schedule applies to a participant's employer match account:

<u>Years of Service</u>	<u>Vesting %</u>
4 years	25%
5 years	50%
6 years	75%
7 years	100%

“Immediate Vesting”. A participant's entire account balance is 100% vested without regard to Years of Service if the Participant's termination of employment with the Employer occurs on account of Death or Disability.

- 3.02 **Accounting.** The Employer will maintain a separate accounting of each Participant's Accrued Benefit attributable to Employer Contributions and Elective Deferrals, including interest, earnings, gains and losses as applicable under Section 5.02, as required for proper application of the Plan's vesting and forfeiture provisions.
- 3.03 **Year of Service.** “One year of service” is based on actual time with the employer. Service does not include annual leave. If an employee terminates and is rehired within five years of their termination date, then the original years of service will be included for vesting. If a terminated employee is rehired after five years, then the original service is not included for vesting.
- 3.04 **Application of Forfeitures.** The Plan will retain any Participant forfeiture money. This money will first be used to pay fees to maintain the plan. Once fees are covered, the plan will use any remaining funds to distribute among the participants of the plan.

IV. BENEFIT PAYMENTS

- 4.01 **Termination.** Except as otherwise permitted under Section 4.03, the Plan will pay to the Participant the vested Accrued Benefit held in the Participant's Account following the Participant's termination of employment with the Employer. Payment will commence at the time and in the form and method specified under Section 4.02. In the event of a Participant's death, the Plan will pay to the Participant's Beneficiary the Participant's vested Accrued Benefit or any remaining amount thereof if benefits to the Participant had already commenced.
- 4.02 **Participant's Election of Benefits.** Upon termination from service, a Participant must make an election as to timing and method of payment of his/her vested account unless the

employee has in excess of \$5,000 in their account. If the employee has in excess of \$5,000 in their account, they may maintain their account balance with the company. If they elect this option, they shall be treated as a full time member of the plan with all benefits as an active employee except that they can not contribute to the plan. Payout options under the plan are: lump sum, monthly payments and partial lump sum.

- 4.03 **Beneficiary Designation.** A Participant may designate a Beneficiary (including one or more primary and contingent Beneficiaries) to receive payment of any vested Accrued Benefit remaining in the Participant's Account at death. The Employer will provide each Participant with a form for this purpose and no designation will be effective unless made on that form and delivered to the Employer. A Participant may modify or revoke an existing designation of Beneficiary by executing and delivering a new designation to the Employer. In the absence of a properly designated Beneficiary, the Employer will pay to the deceased Participant's vested Accrued Benefit to the Participant's surviving spouse and if none, to the Participant's estate. If a Beneficiary is a minor or otherwise reasonably determined by the Employer to be legally incompetent, the Employer may pay the Participant's vested Accrued Benefit to a guardian, trustee or other proper legal representative of the Beneficiary. Payment by the Employer of the deceased Participant's vested Accrued Benefit to the Beneficiary or proper legal representative of the Beneficiary completely discharges the Employer and Plan of all further obligations under the Plan.

V. PLAN ELECTION AND INVESTMENTS

- 5.01 **Plan Election.** The employee has the right to direct the investments of the entire participant's account, including both employee money and employer money, among the funds offered under the plan. The participant can request to make changes to their allocations any time during the year. If the request is made via the Internet, the trade will be requested the following business day. If the request is made on a paper form, the transaction will be requested as soon as administratively feasible. The funds offered under the plan will be determined by the Investment Committee. The Investment Committee will determine the funds to be offered using the plan's investment policy. The Investment policy will be drafted and maintained by the plan's investment consultant.
- 5.02 **Interest or Investments.** Each account will be credited and charged with net investment earnings, gain and loss.

VI. LOANS

- 6.01 **Loan Policy.** Only Participants of this Plan who are actively employed by the Employer may apply for a loan. The rules that govern loans form this Plan are explained in a separate Loan Policy document. Eligible Participants that wish to borrow from their retirement account must follow the terms and conditions of the Loan Policy.

VII. MISCELLANEOUS

- 7.01 **No Assignment.** No Participant or Beneficiary has the right to anticipate, alienate, assign, pledge, encumber, sell, transfer, mortgage or otherwise in any manner convey in advance of actual receipt, the Participant's Account. Prior to actual payment, a Participant's Account is not subject to the debts, judgments or other obligations of the Participant or Beneficiary and is not subject to attachment, seizure, garnishment or other process applicable to the Participant or Beneficiary.
- 7.02 **Not Employment Contract.** This Plan is not a contract for employment between the Employer and any Employee who is a Participant. This Plan does not entitle any Participant to continued employment with the Employer and benefits under the Plan are limited to cash payment of a Participant's vested Accrued Benefit in accordance with the terms of the Plan.
- 7.03 **Amendment and Termination.** The Employer reserves the right to amend or to terminate the Plan at any time, including the right to terminate future contributions to the

Plan by or for any Participant; provided, any amendment or termination will not reduce the vested Accrued Benefit held in any Participant Account at the date of the amendment or termination. Unless the Employer otherwise determines, termination of the Plan does not accelerate vesting or in any way affect the timing or method of payment of any Participant's Accrued Benefit under the Plan.

- 7.04 **Severability.** If any provision of the Plan is determined by a proper authority to be invalid, the remaining portions of the Plan will continue in effect and be interpreted consistent with the elimination of the invalid provision.
- 7.05 **Notice and Elections.** Any notice given or election made under the Plan must be in writing and delivered or mailed by certified mail, to the Employer or to the Participant or Beneficiary as appropriate. The Employer will prescribe the form of any Plan notice or election to be given or made by Participants. Any notice or election will be deemed given as of the date of delivery, or if given by certified mail, as of 3 business days after mailing.
- 7.06 **Administration.** The Employer will administer and interpret the Plan, including making determination of the vested Accrued Benefit due any Participant or Beneficiary under the Plan. As a condition of receiving any Plan benefit to which a Participant or Beneficiary otherwise may be entitled, a Participant or Beneficiary will provide such information and perform such other acts as the Employer reasonably may request. The Employer may retain agents to assist in the administration of the Plan and may delegate to agents such duties as it sees fit. The decision of the Employer or its designee concerning the administration of the Plan is final and binding upon all persons having any interest in the Plan. The Employer will indemnify, defend and hold harmless any Employee designated by the Employer to assist in the administration of the Plan from any and all loss, damage, claims, expense or liability with respect to this Plan ("claims") except claims arising from the intentional acts or gross negligence of the Employee.
- 7.07 **Investment Committee.** A committee will be established comprised of plan participants, the President, the staff senate president and one member of each state campus. The committee will meet quarterly to review the investments and make investment decisions using the advice of the investment consultant. The committee will act as a conduit between the employees and the investment consultant and plan administrator.
- 7.08 **Account Statements.** The Employer will provide each Participant with a statement of the Participant's Benefit on a quarterly basis. The Employer also will provide Account statements to any Beneficiary of a deceased Participant with a vested Accrued Benefit remaining in the Plan.
- 7.09 **Costs and Expenses.** The plan may be held responsible to cover all expenses and fees associated with the operation of the Plan if COM-FSM does not elect to make payment.

Execution Page

The Employer hereby agrees to the provisions of this Plan, and in witness of its agreement, the Employer, by its duly authorized officers, has executed this Adoption Agreement on

_____.

Name of Employer: **COLLEGE OF MICRONESIA - FSM**

Signed: _____

SPENSIN JAMES, PRESIDENT