

Subsidiary Agreements - Compilation for the RMI

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**FEDERAL PROGRAMS AND SERVICES AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF
THE REPUBLIC OF THE MARSHALL ISLANDS**

**Concluded Pursuant to
Article III of Title One, Article II of Title Two, (including Section 222), and Section
231 of
the Compact of Free Association, as Amended**

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**FEDERAL PROGRAMS AND SERVICES AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF
THE REPUBLIC OF THE MARSHALL ISLANDS**
Concluded Pursuant to
Article III of Title One, Article II of Title Two (including Section 222) and Section
231 of
the Compact of Free Association, as amended

This Agreement is concluded by the Signatory Governments and sets forth their respective authority and responsibility for the provision of the services and related programs authorized by Article III of Title One, Article II of Title Two (including any additional U.S. services and related programs authorized in accordance with section 222 of such Article II), section 231 of the Compact of Free Association, as amended (the Compact, as amended), or, where not otherwise provided within the Compact, as amended, any other provision of United States law. Unless otherwise provided within the Compact, as amended, or any other provision of United States law, this Agreement also sets forth the rights, privileges, and immunities of United States Government instrumentalities and personnel, as well as those of non-United States Government entities and personnel who provide any such services and related programs under those provisions of the Compact, as amended, or any other provision of United States law.

Article I

Definitions

Article I

Definitions

1. The Definition of Terms set forth in Article VI of Title Four of the Compact, as amended, is incorporated into this Agreement.
2. For the purposes of this Agreement only, the following terms shall have the following meanings:
 - (a) “Federal agency” refers to each department, agency or other instrumentality of the Government of the United States which provides services and related programs in accordance with Title Two of the Compact, as amended or if not otherwise provided, under any other provision of the Compact, as amended including its subsidiary agreements, or any other provision of United States law, including any successor agency or agencies, but does not include:
 - (1) The Armed Forces of the United States as defined in Article I of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact, as amended, or
 - (2) The Diplomatic Mission and constituent posts, if any, of the Government of the United States to the Government of the Republic of the Marshall Islands (the “U.S. Diplomatic Mission”).
 - (b) “United States contractors” means the legal entities, including corporations and natural persons (irrespective of the country of incorporation or citizenship of any such corporation or citizenship of any such natural person), present in the Republic of the Marshall Islands for the purpose of executing their contracts with the Government of the United States (or subcontracts of such contracts), or cooperative agreements, in support of the Federal agencies acting pursuant to Article III of Title One, Article II of Title Two and section 231 of the Compact, as amended, or any other provision of United States law, and who are designated as such by the Government of the United States. The term “United States Contractors” does not include local contractors.
 - (c) “Local contractors” means the legal entities, including corporations and natural persons, which are organized under the laws of, or which are present in the Republic of the Marshall Islands primarily for purposes other than those set forth in paragraph (b) of this section.

- (d) “United States personnel” means anyone who is included in any of the following categories:
- (1) “civilian employees” – all Federal agency personnel, notwithstanding their citizenship or nationality, except local hire personnel, who are in the Republic of the Marshall Islands, and who are in the employ of or serving with a Federal agency and who are employed in any of the activities of such Federal agency;
 - (2) “contractor personnel” – natural persons, who are United States citizens or nationals or United States permanent resident aliens, except local hire personnel, who are in the Republic of the Marshall Islands, and who are United States contractors or officers or employees of United States contractors; or
 - (3) “dependents” – the spouses and dependents of persons included in paragraph (2)(d)(1) (including children of such persons who are born after such persons’ arrival in the Republic of the Marshall Islands) who are listed on official United States Government travel orders and the spouses and dependents of persons included in paragraph (2)(d)(2).
- (e) “Third country contractor personnel” means natural persons other than United States contractor personnel or local hire personnel who are in the Republic of the Marshall Islands and who are United States contractors or officers or employees of United States contractors or dependents of any of them.
- (f) “Local hire personnel” means any citizen or national of the Republic of the Marshall Islands, whether or not ordinarily residing in the Republic of the Marshall Islands, and any citizen or national of any other country who is ordinarily residing in the Republic of the Marshall Islands, who is employed in the Republic of the Marshall Islands, by Federal agencies or United States contractors.

Article II

Legal Status of Programs and Related Services, Federal Agencies, United States
Contractors and United States Personnel

Article II

Legal Status of Programs and Related Services,
Federal Agencies, United States Contractors and
United States Personnel

1. The provision by the Government of the United States of any specific programs and related services to the Government of the Republic of the Marshall Islands, as may be funded by the Government of the United States, pursuant to this Agreement, shall be contingent upon compliance by the Government of the Republic of the Marshall Islands with all applicable provisions of U.S. law, including the provisions of the Compact, as amended (including sections 173 and 223 of the Compact, as amended), as they relate to such program or related service.

2.
 - (a) Subject to subparagraphs (b) and (c) below, the Government of the United States, Federal agencies, United States contractors, United States personnel, and third country contractor personnel, and their respective assets, income and other property shall be exempt from all taxes, including value added taxes (VAT), and shall be exempt from all customs duties and similar charges on the import and export of articles required for official functions and personal use.

 - (b) Income received by United States personnel or third country contractor personnel for services with or employment by Federal agencies, and income received by United States contractors under contracts or cooperative agreements in support of United States agencies, and income received by United States personnel, third country contractor personnel or United States contractors from sources outside the territory of the Republic of the Marshall Islands, shall be exempt from any tax, fee or other charge, including income and social security taxes, imposed by the Government of the Republic of the Marshall Islands, except that United States contractor personnel and third country contractor personnel, including dependents who are themselves United States contractor personnel or third country contractor personnel, shall not be exempt from a personal income tax generally applicable within the Republic of the Marshall Islands up to a level of five percent of their annual income derived from their employment in the Republic of the Marshall Islands.

 - (c) Income derived from and received by United States personnel or third country contractor personnel for services rendered within the Republic of the Marshall Islands other than those specified under subparagraph (b) of this paragraph shall be subject to the personal income tax and social

security taxes that the Republic of the Marshall Islands would impose on its own citizens who provide such services.

3. United States personnel and third country contractor personnel may import into and export from the Republic of the Marshall Islands furniture, household goods and personal effects for their private use, including all forms of privately owned land, sea and air transportation, free from customs duties, license requirements and other import and export taxes, fees or charges.
4. Animals and plants, including fruits and vegetables, imported by United States personnel and by third country contractor personnel shall be subject to the laws and regulations of the Republic of the Marshall Islands governing inspection of and restrictions on such importations.
5. The Federal agencies, in cooperation with the Government of the Republic of the Marshall Islands, shall take appropriate measures, including inspection, to prevent importation of contraband and to prevent abuse of privileges granted to United States personnel and third country contractor personnel under this Article.
6. Should property imported into the Republic of the Marshall Islands under the exemptions provided by this Article subsequently be transferred to a person not entitled to such exemptions, such person shall be liable for import duties and other charges according to the laws and regulations of the Government of the Republic of the Marshall Islands. This paragraph is without prejudice to the Government of the Republic of the Marshall Islands adopting laws and regulations that require the giving of notice of such transfer to relevant authorities of the Republic of the Marshall Islands. The Government of the United States and its Federal agencies shall cooperate with the Government of the Republic of the Marshall Islands, as necessary, to prevent abuse of the customs privileges granted under this agreement.
7. Without prejudice to any additional privileges and immunities provided under the Compact, as amended, civilian employees shall enjoy immunity from civil and criminal process and liability relating to or resulting from any wrongful act or omission done within the scope and in the performance of official duty, except insofar as such immunity is expressly waived by the Government of the United States. Civilian employees who have been arrested in connection with an offense not related to the performance of their official duties in the Republic of the Marshall Islands shall be released to the custody of a United States diplomatic representative in the Republic of the Marshall Islands, unless in the case of a grave crime a competent judicial authority decides that such civilian employees shall remain subject to detention by the local authorities.

8.
 - (a) The authorities of the Federal agencies shall pay just and reasonable compensation in settlement of meritorious, noncontractual claims arising out of the wrongful acts or omissions occurring subsequent to the effective date of this Agreement in the Republic of the Marshall Islands of the Federal agencies themselves, or of their civilian employees and local hire personnel, if such act or omission occurred within the scope and in the performance of official duty of the civilian and local hire personnel. All such claims shall be processed and settled by the respective Federal agencies in accordance with the laws and regulations of the United States. Any such claims which cannot be settled as provided for in this paragraph, and which are espoused by the Government of the Republic of the Marshall Islands, shall be disposed of pursuant to the provisions of Article II of Title Four of the Compact.
 - (b) Contractual claims against the Federal agencies shall be settled in accordance with the disputes clause of the contract if any, and the laws of the United States relating to the resolution of such disputes. In the absence of such clause, the claims shall be presented to the appropriate United States authority; subject to section 174 of the Compact, as amended, if no settlement is reached, the appropriate court of the United States shall have jurisdiction over such claims.
 - (c) The Government of the Republic of the Marshall Islands shall present claims arising under this Article to the United States Diplomatic Mission, which shall forward such claims to the Competent Authority of the Federal Agency concerned.
9. Except as otherwise expressly provided in this or any other subsidiary agreement to the Compact, as amended, any dispute arising under this Agreement shall be disposed of exclusively pursuant to the provisions of Article II of Title Four of the Compact.
 - (a) The Federal agencies shall not be subject to the jurisdiction of the courts of the Government of the Republic of the Marshall Islands under Article VII of Title One of the Compact for any claim under paragraph 8 of this Article arising in the Republic of the Marshall Islands from the acts or omissions of the Federal Agencies occurring subsequent to November 3, 1986. All such claims shall be processed and settled exclusively in accordance with this Article.
 - (b) Any judgment presented for certification to the United States Court of Appeals for the Federal Circuit pursuant to section 174 of the Compact, as amended, shall be deemed manifestly erroneous as to law if the claim

upon which such judgment is based would have been barred by the statute of limitations if such claim had been brought in a court of the United States.

10. For the purposes of carrying out the provisions of this Agreement, the Government of the United States and the Government of the Republic of the Marshall Islands shall designate Competent Authorities. The Competent Authorities of the Government of the United States and the Competent Authorities of the Republic of the Marshall Islands may communicate directly with each other. In the case of the Government of the United States, the Competent Authority shall be the head of or designee of the Federal agency concerned who shall be designated in writing to the Government of the Republic of the Marshall Islands.
11. The Government of the Republic of the Marshall Islands shall accept as valid, without a test or fee, the operator's permit or license or military driving permit issued to United States personnel or third country contractor personnel by the Government of the United States, the Governments of the States of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.
12. Official vehicles of the Federal Agencies, vehicles owned or operated by United States contractors, and privately owned vehicles of United States personnel shall be identified by individual markings or license plates issued by the Government of the United States, the Governments of the States of the United States of America, its Territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands. However, the Government of the United States may use local individual markings or license plates in the Republic of the Marshall Islands.
 - (a) Official vehicles shall not be subject to the registration or safety inspection laws of the Government of the Republic of the Marshall Islands.
 - (b) The Armed Forces of the United States may register vehicles of United States contractors and United States personnel that are not official vehicles, and may inspect such vehicles applying safety standards of general applicability in the Republic of the Marshall Islands. Vehicles so registered and inspected shall be exempt from the registration and safety inspection laws of the Government of the Republic of the Marshall Islands.
13. For purposes of this Article the term "vehicles" includes all forms of land, sea and air transportation.

14. Any reference in this Agreement to a provision of the law of the United States constitutes the incorporation of the language of such provision into this Agreement as such provision is in force on November 3, 1986, or as it may have been or may be amended thereafter on a non-discriminatory basis according to the constitutional processes of the United States.

15. The Government of the United States may use local telecommunication systems and, in determining its uses of such systems, shall take into consideration the cost and security of such systems and the availability of alternate United States systems. The Government of the United States shall encourage the use of local telecommunication systems by United States personnel for non-official purposes. To the extent that the Government of the Republic of the Marshall Islands establishes telecommunications systems compatible with existing United States Government installations, the Government of the United States and the Government of the Republic of the Marshall Islands may enter into negotiations for a use arrangement which includes normal billing procedures.

Article III

Employment of Labor

Article III

Employment of Labor

1. In providing services and related programs in the Republic of the Marshall Islands pursuant to Article II of Title Two of the Compact, as amended, any other provision of the Compact, as amended or pursuant to any other provision of United States law, the Federal agencies, United States contractors and local contractors:
 - (a) may employ persons possessing requisite skills and qualifications. Employment preference shall be given, without discrimination, to citizens, nationals and persons residing permanently in the Republic of the Marshall Islands, and to citizens, nationals, and lawful permanent residents of the United States. In the employment of such persons pursuant to the preferences set forth in this paragraph, the Federal Agencies and the United States contractors shall exercise their best efforts to employ persons present in the Republic of the Marshall Islands.
 - (b) shall use, without discrimination, consistent with the laws and regulations of the United States, qualified local contractors and contractors which are legal entities of the United States. The Federal Agencies and United States contractors shall ensure that the specifications and instructions for contract bids shall permit such free and full competition as is consistent with the procurement of the goods and services needed by the Government of the United States.
2. Prior to the employment of third country personnel or the use of third country contractors, the Government of the United States shall notify the Government of the Republic of the Marshall Islands and shall consult, if requested, with that Government as to the availability of qualified local hire personnel or qualified local contractors.
3. The laws and regulations of the Republic of the Marshall Islands shall not apply to the terms and conditions of employment of United States personnel by Federal agencies, or United States contractors. The Government of the Republic of the Marshall Islands shall not require United States personnel, third country contractor personnel or United States contractors to obtain any license, permit or certificate, or to undergo any examination, in connection with the performance of their duties on behalf of Federal agencies.
4. In the employment of local hire personnel by the Federal agencies and United States contractors, the Government of the United States shall adopt measures

consistent with the standards of local labor laws to the extent they are compatible with laws, regulations and operational requirements of the United States.

Article IV

Entry and Departure

Article IV

Entry and Departure

1. The Government of the United States may bring into the Republic of the Marshall Islands:
 - (a) United States personnel and United States contractors; and
 - (b) Third country contractor personnel in a manner consistent with those laws of the Republic of the Marshall Islands relating to the exclusion of individual, undesirable aliens and taking into account paragraph 5 of this Article and Article III of this Agreement.
2. United States personnel shall be exempt from the visa laws and regulations of the Republic of the Marshall Islands. Taking into account paragraph 1(b) of this Article and Article III of this Agreement, applications of third country contractor personnel for visas shall be adjudicated expeditiously. All such personnel shall comply with the medical immunization requirements of the Republic of the Marshall Islands.
 - (a) No United States personnel or third country contractor personnel shall acquire any right to remain permanently in the Republic of the Marshall Islands solely as a result of their being United States personnel or third country contractor personnel.
 - (b) United States personnel shall be exempt from laws and regulations of the Republic of the Marshall Islands on the entry, departure, registration and control of aliens and foreign agents.
3. Upon entry into or departure from the Republic of the Marshall Islands, United States personnel shall have in their possession official orders or documents certifying the status of the individual or group. Such orders or documents shall be shown on request to the appropriate authorities of the Government of the Republic of the Marshall Islands.
4. For the purpose of their identification while in the Republic of the Marshall Islands, all United States personnel described in Article I, paragraph (d)(1) of this Agreement, shall have in their possession a personal identification card authorized by the Government of the United States which shall show the name, date of birth, status, and photograph of the bearer. Such card shall be shown on request to the appropriate authorities of the Government of the Republic of the Marshall Islands.

- 5, If the Government of the Republic of the Marshall Islands requests the removal from the Republic of the Marshall Islands of any United States personnel or any third country contractor personnel, the request shall be directed to the United States diplomatic representative. Upon receipt of such request, the United States diplomatic representative shall consult with the Government of the Republic of the Marshall Islands on the appropriate action to be taken regarding removal. If the Government of the United States and the Government of Republic of the Marshall Islands so determine, the person whose removal has been requested shall immediately become subject to the jurisdiction of the Government of the Republic of the Marshall Islands in accordance with its laws.

6. Transportation costs attendant to the departure and removal of third country contractor personnel shall be the responsibility of the Government of the United States.

Article V

Implementation of Section 223 of the Compact, as Amended,
and Title to Property

Article V

Implementation of Section 223 of the Compact, as amended
And Title to Property

1. Specific arrangements for the establishment and use by the Government of the United States of facilities or areas for Federal agencies in the Republic of the Marshall Islands that were in effect before the effective date of this Agreement, as amended, shall continue in effect, unless otherwise mutually agreed. Any specific arrangements for the establishment and use by the United States Government of other facilities or areas for Federal agencies in the Republic of the Marshall Islands shall be set forth in Exchanges of Notes, which, when signed, shall be annexed to this Agreement as an Annex.
2. If, in the exercise of its authority and responsibility under Article Three of Title One, Title Two of the Compact, as amended, and unless otherwise provided by any other United States law, the Government of the United States requires the use of facilities or areas in the Republic of the Marshall Islands in addition to or in place of those covered in paragraph (1) of this Article, it may request the Government of the Republic of the Marshall Islands to satisfy those requirements through leases or other arrangements. The Government of the Republic of the Marshall Islands shall sympathetically consider any such request and shall establish suitable procedures and provide a prompt response to the Government of the United States.
3. If the Government of the Republic of the Marshall Islands requires for some other purpose the use of facilities or areas which have been provided the Government of the United States pursuant to this Agreement, the Government of the Republic of the Marshall Islands shall request the Government of the United States to accept equivalent facilities or areas. The Government of the United States shall sympathetically consider any such request and provide a prompt response. Any pertinent agreement shall be effected in accordance with paragraph 2 of Article XIV of this Agreement.
4. Title to any property which remains vested in the Government of the United States pursuant to section 234 of the Compact on the day prior to the effective date of this Agreement, as amended, shall continue after the effective date of this Agreement, as amended.
5. Title to improvements to real property or to any item of equipment or other personal property hereinafter furnished, acquired, supplied, constructed or purchased by or with funds provided by the Government of the United States in connection with the programs and related services set forth in this Agreement is

vested in the Government of the United States, except where expressly sold or otherwise conveyed.

6. Upon relinquishing facilities or areas designated for Federal agency use, or a portion thereof, whether at the termination of a specific service and its related programs or at an earlier date, the Government of the United States shall not be obligated to restore any such site or portion thereof to its former condition, or to make compensation in lieu of such restoration. The Governments of the United States and the Republic of the Marshall Islands may otherwise agree, based on considerations including the existence of conditions substantially or materially hazardous to human life, health and safety.
7. The Government of the United States has the right to remove any installations or improvements that it has constructed on an area designated for Federal agency use. If any installations or improvements which were constructed at the expense of the Government of the United States are to be left behind after relinquishing facilities or areas designated for Federal agency use, or a portion thereof, the Government of the Republic of the Marshall Islands and the Government of the United States shall consult to determine the residual value, including scrap value, if any, of any such installations or improvements to the Government of the Republic of the Marshall Islands and to agree upon an appropriate method of compensating the Government of the United States for such residual value.
8. Except as may be otherwise expressly agreed, the Government of the United States, Federal agencies and United States contractors shall retain title to equipment, materials and other movable property brought into or acquired by them in the Republic of the Marshall Islands and may remove such property at any time from the Republic of the Marshall Islands, or dispose of it therein.

Article VI

Postal Services and Related Programs

Article VI

Postal Services and Related Programs

1. The Government of the Republic of the Marshall Islands shall maintain responsibility pursuant to its laws and regulations for all local postal services.
2. The Government of the Republic of the Marshall Islands shall be responsible for all its own postal staff, facilities and equipment.
3. The Government of the Republic of the Marshall Islands shall issue postage stamps and other prescribed postal indicia which shall be used for prepayment of postage rates and other postal charges on all mail originating in its territory, except for mail sent through the military postal system provided for in Article VII of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact of Free Association.
4. The United States Postal Service shall provide the following services for the Republic of the Marshall Islands for a period of 20 years commencing on the effective date of this Agreement without compensation by The Government of the Republic of the Marshall Islands; provided that the United States Postal Service is reimbursed for the provision of such services from funds appropriated by the United States Congress in implementation of this agreement:
 - (a) The United States Postal Service shall maintain a reasonable and cost effective level of service for conveyance of mail to and from the United States and between the exchange offices of the Republic of the Marshall Islands as designated in paragraph 7, and
 - (b) dispatch, documentation, statistical, accounting, and settlement operations in connection with the international exchange of mail with other countries.

Express Mail without a guarantee (EMS); registered mail; insured parcel service; recorded delivery and money orders shall be made available only as provided in a further agreement to be negotiated with the United States Postal Service. COD (cash on delivery) orders will no longer be available.

5. The Government of the Republic of the Marshall Islands shall undertake to protect the postal services provided by the Government of the United States from exploitation for the monetary gain of private or government organizations or of individuals or of commercial enterprises, including the posting of bulk mail, books, catalogues, goods or materials.

The Government of the United States shall provide mail service pursuant to this Agreement with the understanding that the volume of mail may increase in proportion to population increases and ordinary growth of local commercial enterprise. Should an increase in the volume of mail of ten percent or more within a twelve-month period be anticipated or experienced by The Government of the Republic of the Marshall Islands, the Government concerned shall enter into a separate agreement with the Government of the United States which shall establish the amount of reimbursement to be paid to the Government of the United States for the volume in excess of ten percent.

At the discretion of the United States Postal Service and under such terms and conditions as the United States Postal Service may require, including financial accountability and volume limits, mail bearing postage of the Republic of the Marshall Islands may be accepted at one or more post offices designated by the United States Postal Service within the fifty United States as if it were accepted and mailed from the Republic of the Marshall Islands. Mail accepted at such a designated post office within the continental United States on behalf of the Republic of the Marshall Islands shall not be included when calculating volume growth. The Republic of the Marshall Islands may use their own stamps, but can only use this type of postage for the commercial advancement of their philatelic initiatives.

6. The Government of the Republic of the Marshall Islands shall ensure that all mail turned over to the United States Postal Service for conveyance to the United States or other countries complies with the postal conventions to which the United States adheres and with the postal laws and regulations of the United States. International documentation (parcel bills for registered and insured parcels, letter bills for registered letters, and AV-7/CN-38 manifests for Express Mail) shall be required for those special services provided between the exchange offices of the Republic of the Marshall Islands and designated exchange offices of the United States. Pursuant to paragraph 14 of this Article, the Government of the United States shall, upon request, assist The Government of the Republic of the Marshall Islands in developing local practices and procedures to fulfill the requirements of this paragraph.
7. Except as noted in paragraph 5, pursuant to this Agreement, mail shall be exchanged at the exchange offices designated in this paragraph and outgoing mail from the Republic of the Marshall Islands shall be merged with United States mail for conveyance to the United States or to other countries. Such outgoing mail from the Republic of the Marshall Islands shall be treated as though it were mail from the United States for dispatch, documentation, statistical, accounting and settlement operations with other countries. The designated exchange office shall be located in Majuro, the Republic of the Marshall Islands.

8. The Government of the Republic of the Marshall Islands may determine postal rates for internal mail to local addresses within the Republic of the Marshall Islands.
9. After the effective date of this agreement, The Government of the Republic of the Marshall Islands shall be responsible for determining the postal rates for mail being sent from addresses in the Republic of the Marshall Islands to addresses in the United States and to other countries. The floor established for postage rates of mail from the Republic of the Marshall Islands to the United States shall be the published United States domestic postage rates at the time. The floor established for postage rates of mail from the Republic of the Marshall Islands to other countries, shall be the published United States standard international postage rates at the time. The Government of the Republic of the Marshall Islands may agree to establish a floor of United States domestic postage rates for mail exchanged between addresses of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. After the effective date of this Agreement, the United States Postal Service may establish special cost-related international rates or may opt to establish standard international rates and classifications for mail from the United States to the Republic of the Marshall Islands, provided that international rates will be phased in over a period of not less than five (5) years, beginning no sooner than 2006.
10. Revenues derived from the sale of stamps issued by The Government of the Republic of the Marshall Islands for postal services or for philatelic purposes shall be retained by The Government of the Republic of the Marshall Islands. The Government of the Republic of the Marshall Islands agrees to provide, pursuant to their constitutional processes, adequate funding for the operation of their postal services in a manner which will allow the United States Postal Service to perform its responsibilities under this Agreement in an efficient and economical manner, with any disputes arising under this paragraph to be resolved pursuant to Article II of Title Four of the Compact.
11. Liability for the loss of registered and insured items (as may be further agreed to pursuant to paragraph 4) shall rest with the Government which, having received it without comment, cannot prove either delivery to the addressee or correct transfer to another administration. Pursuant to paragraph 14 of this Article, the Government of the United States shall, upon request, assist The Government of the Republic of the Marshall Islands in developing local practices and procedures to fulfill the requirements of this paragraph.
12. The Government of the Republic of the Marshall Islands shall not impose any terminal dues or other charges on the United States Postal Service or the postal administrations of any other governments for mail conveyed to the Republic of

the Marshall Islands by the United States Postal Service pursuant to this Agreement.

13. One year from the effective date of the Agreement, the Republic of the Marshall Islands shall discontinue the sale of Postal Money Orders on USPS forms in accordance with USPS regulations. One year from the effective date of this Agreement, the Republic of the Marshall Islands shall return to the United States Postal Service all devices used for the imprinting of Postal Money Orders and shall remit to the United States Postal Service all amounts collected in conjunction with the issuance of Postal Orders issued on USPS forms, including the Postal Money Order fees. Within one year following the effective date of this Agreement, the United States Postal Service shall enter into discussions with the Republic of the Marshall Islands for the exchange of Postal Money Orders under separate Money Order Agreements.
14. Pursuant to this Agreement, the United States Postal Service may provide such technical assistance (including technical assistance to provide any employee training) as the United States Postal Service and appropriate officials authorized to act on behalf of The Government of the Republic of the Marshall Islands mutually agree to be necessary and appropriate. This technical assistance would not require compensation from the Republic of the Marshall Islands, provided that the United States Postal Service is reimbursed the costs of such technical assistance from funds appropriated by the United States Congress. In addition, appropriate officials of the Republic of the Marshall Islands shall consult with the United States Postal Service with regard to fiscal planning and postal administration for the purpose of promoting economical and efficient postal services and programs.
15. United States Postal Service Inspectors, in concert with the Republic of the Marshall Islands law enforcement agencies, shall be authorized to investigate any incident, issue or claim regarding mail originating from the United States destined for the Republic of the Marshall Islands, and to seek reimbursement (as pursuant to paragraph 14) for any cost associated with such investigations.
16. The obligations of the Governments signatory to this Agreement under this Article shall terminate 20 years after the effective date of this Agreement. Prior to the termination of this Agreement, the United States Postal Service and The Government of the Republic of the Marshall Islands shall enter into bilateral arrangements to establish mutually acceptable terms and conditions for the exchange of the mail between the United States and the Republic of the Marshall Islands.

17. As mutually agreed, the United States shall assist The Government of the Republic of the Marshall Islands in acquiring membership in relevant international or regional postal organizations.

Article VII

Weather Services and Related Programs

Article VII

Weather Services and Related Program

1. The United States Department of Commerce's National Oceanic and Atmospheric Administration's (NOAA) National Weather Service (hereafter referred to as the National Weather Service) shall, subject to the availability of funds appropriated for that purpose, provide weather services and related programs in the Republic of the Marshall Islands (RMI) as described in this Article at the levels equivalent to those available during the year prior to the effective date of the Compact, as amended.
2. These services and related programs shall be provided pursuant to:
 - (a) the provisions of 15 U.S.C. 313 et seq.; the International Aviation Facilities Act 49 U.S.C. 1151 et seq. and section 803 of the Federal Aviation Act of 1958, 49 U.S.C. 44720;
 - (b) other provisions of the laws of the United States to the extent they expressly apply to the National Weather Service;
 - (c) weather treaties and other international weather agreements to which the United States is a party;
 - (d) applicable Executive Orders of the President of the United States; and
 - (e) implementing National Weather Service regulations.
3. The Government of the Republic of the Marshall Islands may issue weather forecasts under such terms as may be mutually agreed with the National Weather Service. The Government of the United States shall, however, continue to provide public, marine and aviation weather forecasts and severe weather warnings.
4. The Government of the Republic of the Marshall Islands is encouraged to take such transitional actions as may be necessary to prepare for the establishment and support of its own weather service. Such transitional actions may be initiated at any time prior to termination of the Compact pursuant to Article IV of Title Four of the Compact, as amended, or prior to termination of this Article pursuant to Article XIII of this Agreement. At the request of the Government of the Republic of the Marshall Islands, prior to the establishment of the Government's weather service, the National Weather Service shall provide advice in the development of the weather service.

5. The National Weather Service shall provide weather services and related programs pursuant to this Article, in part, through the Weather Service Office (WSO) established on Majuro, Republic of the Marshall Islands.
 - (a) The National Weather Service and the Government of the Republic of the Marshall Islands shall, in an Exchange of Letters, set forth the duties and qualifications of employees and provide procedures to reimburse the Government of the Republic of the Marshall Islands for materials and for salaries and other expenses incurred in the performance of these duties; and
 - (b) The Government of the United States shall reimburse the Government of the Republic of the Marshall Islands for costs incurred under this paragraph.
6. As required to implement the services and related programs provided pursuant to this Article or to meet technological change, the National Weather Service shall train employees of the Government of the Republic of the Marshall Islands assigned to weather stations. The Government of the United States shall reimburse the Government of the Republic of the Marshall Islands for costs incurred for training approved by the National Weather Service.
7. The National Weather Service shall inspect all WSOs and Supplemental Aviation Weather Reporting Station (SAWRS) observing sites to assure the quality of meteorological operations.
8. The National Weather Service shall provide and maintain WSOs pursuant to Article V of this Agreement, including meteorological observatories and other buildings, and shall maintain and replace meteorological and other equipment of the National Weather Service.
9. The National Weather Service shall provide the supplies and expendables required for the operation of its programs and related services.
10. Pursuant to Article III, Title One of the Compact, as amended, the radio operating frequencies in the bands 401-406 MHz and 1660-1700 MHz shall be protected by the Government of the Republic of the Marshall Islands in order to ensure their interference-free use for rawinsonde observations, in accordance with the provisions of Radio Regulations annexed to the International Telecommunication Convention. Other radio operating frequencies may be substituted for those set forth in this paragraph by agreement of the Government of the Republic of the Marshall Islands.

11. The Government of the Republic of the Marshall Islands, in order to assure that it receives the most current meteorological information and that such information will be available on a global basis, shall as a public service provide, at a reduction from normal commercial rates, continuing access to its telecommunications services, for meteorological traffic to and from Guam and such other points as may be designated by the Government of the United States.
12. The National Weather Service shall provide weather services and related programs in Majuro, the Republic of the Marshall Islands to the extent that the National Weather Service determines that such services and related programs are necessary to meet requirements for safe and efficient operation of United States air carriers engaged in international and domestic air service at the Amata Kabua International Airport. To this end, the National Weather Service shall train employees of the Government of the Republic of the Marshall Islands as Supplemental Aviation Weather Reporting Station (SAWRS) personnel to enable such employees to provide required weather reporting services pursuant to this paragraph. The National Weather Service shall not be responsible for providing reimbursement to the Government of the Republic of the Marshall Islands for the SAWRS personnel costs, including salaries and expenses, incident to the provision of weather services in Majuro pursuant to this paragraph.
13. As the availability of logistic support and finances permit, the National Weather Service will install and operate a network of satellite reporting automatic weather stations within the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands and the Republic of the Marshall Islands in support of the forecasting operations of the Joint Typhoon Warning Center and the Regional Specialized Meteorological Center Tokyo-Typhoon Center.
14. The Government of the Republic of the Marshall Islands will provide logistic support for the installation and maintenance of the elements of this network within the Republic of the Marshall Islands, resources permitting, and the National Weather Service will reimburse the Government for the cost of this support.
15. Annexed to this agreement are further details of weather services and related programs to be provided by the National Weather Service to the Republic of the Marshall Islands.

Article VIII

Civil Aviation Safety Service and Related Programs

Article VIII

Civil Aviation Safety Services and Related Programs

1. The Government of the United States and the Government of the Republic of the Marshall Islands agree that the Federal Aviation Administration (FAA) shall provide aviation safety services in the Republic of the Marshall Islands in accordance with this Article, subject to the availability of appropriated funds, with the common desire to:
 - (a) promote the common interests of the Government of the United States and the Government of the Republic of the Marshall Islands in fostering safe and efficient air service; and
 - (b) provide advice and guidance to aviation safety statutory and regulatory regimes and aviation safety authorities of the Government of the Republic of the Marshall Islands.
2. The Administrator of the Federal Aviation Administration may determine, after consultation with the Government of the Republic of the Marshall Islands, the appropriate level of services and related programs that the Federal Aviation Administration shall provide under the Compact, as amended, and this Agreement, provided the levels of services and related programs are consistent with the principles and objectives of the Compact, as amended, and this Agreement, including paragraphs 1 above and paragraphs 3 and 5 below.
3. On behalf of the Government of the Republic of the Marshall Islands, the Government of the United States shall provide aviation safety services in the Republic of the Marshall Islands as follows:
 - (a) en route air traffic services within that air space including the Republic of the Marshall Islands for which the Government of the United States has responsibility under the appropriate regional air navigation plan approved by the International Civil Aviation Organization (ICAO);
 - (b) flight inspection and ground certification of nondirectional beacons and distance-measuring equipment, and periodic review and evaluation of the need for, and the maintenance, modification, improvement or replacement of, nondirectional beacons, distance-measuring equipment and other aviation navigational systems in the Republic of the Marshall Islands (The nondirectional beacons and distance-measuring equipment shall be removed from service when the need for them no longer exists.); and

- (c) development and updating of instrument approach procedures, standard instrument departure procedures and standard terminal arrival routes for airports in the Republic of the Marshall Islands, and issuance of appropriate Notices to Airmen.
4. The Government of the Republic of the Marshall Islands, pursuant to Section 471 of the Compact, as amended shall take all necessary steps to ensure the conformity of laws, regulations and administrative procedures with the provisions of this Article. The aviation safety services specified under paragraph 3 of this Article shall be provided exclusively pursuant to treaties and other international agreements relating to aviation safety to which the United States is a party and the laws and regulations of the United States. The Government of the Republic of the Marshall Islands shall:
- (a) consistent with Resolutions A23-14, Appendix N, Air Navigation, of ICAO Assembly Resolutions in force as of October 5, 2001, assign and delegate to the Government of the United States sole authority and responsibility for providing aviation safety services as specified in paragraph 3(a) of this Article until such time as those responsibilities are transferred at the request of the Government of the Republic of the Marshall Islands, and with the approval of the ICAO, from the Government of the United States to the Government of the Republic of the Marshall Islands; and
 - (b) grant unobstructed access by FAA personnel and FAA equipment to the property on which the navigational and landing aids set forth in paragraph 3(b) of this Article are located.
5. The FAA shall provide technical assistance to the Government of the Republic of the Marshall Islands to develop civil aviation safety authorities and to assist the Marshall Islands Government in the administration of safety certification and related aviation safety programs. Such technical assistance shall be provided pursuant to implementing agreements to be negotiated from time to time between the Government of the United States and the Government of the Republic of the Marshall Islands. The FAA shall provide such technical assistance in accordance with the provisions of Part A of subtitle VII of Title 49, United States Code, and Chapter 473 of such subtitle. The technical assistance to be provided by the FAA includes, but is not limited to:
- (a) continuing development of aviation safety statutes, regulations and aviation safety authorities;
 - (b) training, in the United States or its territories, of personnel designated by the Government of the Republic of the Marshall Islands;

- (c) stationing of FAA personnel in the Republic of the Marshall Islands to provide continuing advice and guidance to aviation safety authorities at the request of the RMI Government. Such advice and guidance may include assistance to aviation required for certification by the Government of the Republic of the Marshall Islands of airmen, aircraft, airports and air agencies, as the term “air agencies” is used in 49 U.S.C. 44702 and 44707; and
 - (d) equipment, tools, and facilities determined to be necessary to ensure aviation safety.
- 6. Pursuant to Article III, Title One, of the compact, the Government of the Republic of the Marshall Islands shall protect radio frequency bands allocated in accordance with Article 5 of the Radio Regulations of the International Telecommunications Union to the aeronautical mobile, mobile, aeronautical fixed, fixed, aeronautical radionavigation, and radionavigation services in accordance with the provisions of Radio Regulations annexed to the International Telecommunication Convention, in order to ensure their use free of interference for these allocated purposes in support of civil aviation.
- 7. The Government of the Republic of the Marshall Islands, in order to ensure that they transmit and receive the most current meteorological information for civil aviation purposes and that such information provided by them shall be available on a global basis, shall provide continuing access to their telecommunications services for meteorological traffic to and from Guam or other points as may be designated by the Government of the United States in consultation with the Government of the Republic of the Marshall Islands.
- 8. The Government of the Republic of the Marshall Islands, in order to ensure that they transmit and receive the most current flight movement and airmen information data for civil aviation purposes, and that such information received or provided by them will be available on a global basis, shall provide continuing access to their telecommunications services for flight movement and airmen information traffic to and from Guam or other entry points into the Aeronautical Fixed Service of the International Civil Aviation Organization as may be designated in accordance with the Convention on International Civil Aviation, Annex 10, Volume 1 and 2, by the Government of the United States in consultation with the Government of the Republic of the Marshall Islands.
- 9. The Government of the United States and the Government of the Republic of the Marshall Islands shall from time to time enter into such agreements as may be necessary to implement subparagraphs (b) and (c) of paragraph 3 of this Article.

Article IX

Civil Aviation Economic Services and Related Programs

Article IX

Civil Aviation

Economic Services and Related Programs

1. The Government of the United States and the Government of the Republic of the Marshall Islands agree that the following provisions shall apply to the economic regulation of air services of the Republic of the Marshall Islands.
2. The Government of the Republic of the Marshall Islands shall exercise independent economic regulatory jurisdiction over air services to, from and within the Republic of the Marshall Islands, which for the purposes of this Agreement are points outside the United States, as the term “United States” is defined in 49 U.S.C. 40102.
3. Subject to approval of the Congress of the United States, the Government of the United States shall maintain:
 - (a) A distinct classification of foreign air carrier, as the term “foreign air carrier” is defined in 49 U.S.C. 40102, to be known as “Freely Associated State Air Carriers.” This classification shall apply exclusively to a carrier which:
 - (1) is organized under the laws of the Republic of the Marshall Islands or the United States; and
 - (2) has consent to such classification from the Government of the Republic of the Marshall Islands, and consent to such classification from the Government of the United States pursuant to standards adopted by the Government of the United States for such classification.
 - (b) Authority for the U.S. Department of Transportation to authorize Freely Associated State Air Carriers to carry local traffic between Guam, the Commonwealth of the Northern Mariana Islands, and Honolulu, and within the Commonwealth of the Northern Mariana Islands.
 - (c) The U.S. Department of Transportation shall maintain rules to implement the provisions of this paragraph as the Department in its discretion, deems appropriate.
4. Notwithstanding paragraph 2, the Government of the Republic of the Marshall Islands shall authorize, without restrictions or impairment, United States air

carriers to operate air services to, through, and beyond the Republic of the Marshall Islands; between Majuro and Kwajalein within the Republic of the Marshall Islands; and to establish prices applicable to such air services. The Government of the United States shall promptly notify the Government of the Republic of the Marshall Islands of the filing with the U.S. Department of Transportation of any application by a United States air carrier for authority under the laws of the United States to operate air services pursuant to this paragraph.

5. The Government of the United States shall sympathetically consider a request by the Government of the Republic of the Marshall Islands for negotiation of a bilateral air transport agreement between the Government of the United States and the Government of the Republic of the Marshall Islands. The Governments of the Republic of the Marshall Islands and the United States shall, on the basis of reciprocity, exempt air carriers that are authorized by each other to provide air services, from customs duties and taxes imposed by their national authorities, and shall not impose user charges that exceed an equitable proportion of the reasonable costs of providing the facilities, or which are discriminatory.
6. The Government of the Republic of the Marshall Islands may terminate the operation of the economic services described in paragraph 3 of this Article. Such partial termination may be effected in the same manner as this Article may be terminated in accordance with Article XII of this Agreement. If the Government of the Republic of the Marshall Islands terminates the operation of paragraph 3 of this Article, the Government of the Republic of the Marshall Islands may, in accordance with Article XII of this Agreement, also terminate the operation of paragraph 4 of this Article.
7. If the Government of the Republic of the Marshall Islands elects to terminate the operation of paragraph 3 of this Article, and the operation of paragraph 4 of this Article, the remaining provisions of this Article shall cease to be in effect two years after such termination, unless otherwise agreed by the Government of the Republic of the Marshall Islands and the Government of the United States.

Article X

United States Disaster Preparedness and Response Services
and
Related Programs

Article X

United States Disaster Preparedness and Response Services and Related Programs

- A. For the period beginning on the effective date of this Agreement and ending on 16 December 2008:
1. The programs and services of the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) shall continue to be available to the Republic of the Marshall Islands to the same extent such programs and services were available in fiscal year 2003.
 2. These programs and services shall be provided pursuant to:
 - (a) The provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 – 5206 (the Stafford Act).
 - (b) Applicable Executive Orders of the President of the United States; and
 - (c) Applicable DHS and FEMA regulations, policies and directives.
 3. Assistance to be provided pursuant to paragraph one of this Article shall be made available to the Government of the Republic of the Marshall Islands in the same manner as assistance is made available to a "State," as defined in Section 102 of the Stafford Act, 42 U.S.C. § 5122. Solely for the purpose of applying the Stafford Act to this Article, the Republic of the Marshall Islands shall be considered to be a "State" as defined in Section 102 of the Stafford Act, 42 U.S.C. § 5122.
 4. The President of the Republic of the Marshall Islands may request a determination by the President of the United States that an emergency or a major disaster exists in the Republic of the Marshall Islands, respectively, in accordance with Sections 401 and 501 of the Stafford Act, 42 U.S.C. §§ 5170 and 5191, respectively. In order to expedite such determination, the request shall simultaneously be forwarded to the Regional Director of FEMA in whose region the Republic of the Marshall Islands is included for the purposes of this Article. The request shall conform to the provisions of 44 C.F.R. Part 206. Upon the declaration of an emergency or a major disaster, FEMA and the Government of the Republic of the Marshall Islands shall execute a FEMA-State Agreement in accordance with 44 C.F.R. § 206.44.

5. The President of the Republic of the Marshall Islands may request a determination by FEMA that fire management assistance be provided to the Republic of the Marshall Islands pursuant to 42 U.S.C. § 5187. The request shall conform to the requirements set forth in 44 C.F.R. Part 204. Upon a fire management assistance declaration, FEMA and the Government of the Republic of the Marshall Islands shall execute a FEMA-State Agreement in accordance with 44 C.F.R. § 204.25.
6. The Government of the Republic of the Marshall Islands may request an annual grant from the United States, for disaster preparedness, which shall not exceed fifty (50) percent of the cost of improving, maintaining and updating disaster assistance plans, including evaluation of natural hazards and development of the programs and actions to mitigate such hazards, provided that no such grant shall exceed fifty thousand dollars (\$50,000) per annum and, provided further, that the Republic of the Marshall Islands shall be eligible to receive such grants only if funding for these purposes is available to the States of the United States.
7. The Government of the Republic of the Marshall Islands assumes all rights, obligations and liabilities arising out of the programs and services provided under this Article, including matching fund obligations that may be required by law or for which a commitment has been made by agreement between FEMA and the Government of the Republic of the Marshall Islands.
8. To the extent necessary to permit FEMA to fulfill its obligations under this Agreement following the declaration of a major disaster or emergency, the Government of the Republic of the Marshall Islands shall:
 - (a) make available to FEMA, at no cost, equipment or facilities in its territory, including facilities necessary for communications;
 - (b) permit FEMA to operate telecommunications services in its territory;
 - (c) endeavor to make available radio frequencies for the exclusive use by FEMA;
 - (d) assist FEMA representatives in inter-island and intra-island movement for the purpose of accomplishing predeclaration damage assessment, post-declaration damage survey and the provision of disaster assistance to include the movement of supplies and equipment; and
 - (e) upon request, provide representatives of FEMA and the Controller General of the United States access to any books, documents, papers, and records that pertain to federal funds, equipment and supplies received under this Article, for the purpose of audit and examination.

9. The Government of the Republic of the Marshall Islands shall set forth in a governmental emergency plan the procedures and assignments of responsibility which are required for the Government of the Republic of the Marshall Islands to prepare for and respond to disasters and to facilitate the delivery of disaster assistance by the Government of the United States.
 10. The Government of the Republic of the Marshall Islands may appeal any determination of the Regional Director related to federal assistance provided under this Article. An appeal shall first be submitted to the Regional Director of FEMA for reconsideration; if such appeal is denied, the Government may submit a second appeal in accordance with FEMA regulations. Action on the second appeal shall be final.
- B. Following the effective date of this Agreement, the Government of the United States and the Government of the Republic of the Marshall Islands shall seek to reach agreement on a modification of this Article to provide for alternate disaster assistance arrangements involving a significant role for the U.S. Agency for International Development (USAID). Should the parties not reach agreement, effective on 16 December 2008, all emergency and disaster preparedness, response and recovery assistance shall be provided to the Republic of the Marshall Islands as follows:

The USAID shall be responsible for the provision of emergency and disaster relief assistance in accordance with its statutory authorities, regulations and policies. The Republic of the Marshall Islands may additionally request that the President of the United States make an emergency or major disaster declaration. If the President declares an emergency or major disaster, FEMA and USAID shall jointly (a) assess the damage caused by the emergency or disaster and (b) prepare a reconstruction plan including an estimate of the total amount of Federal resources that are needed for reconstruction. USAID shall carry out reconstruction activities in the Republic of the Marshall Islands in accordance with the reconstruction plan. For purposes of the United States Government's Disaster Relief Fund appropriations, the funding of the activities to be carried out pursuant to this paragraph shall be deemed to be necessary expenses in carrying out the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 et seq.

The Government of the Republic of the Marshall Islands may request an annual grant in accordance with the terms set forth in 42 U.S.C. § 5131(d). DHS may provide to the Republic of the Marshall Islands such assistance to the same extent that such assistance is available to the States of the United States. Funding for this assistance may be made available from appropriations made to DHS for preparedness activities.

- C. Any reference in this Article to a provision of the United States Code constitutes the incorporation of the language of such provision into this Article as such provision was in force on the effective date of this Article.

- D. Notwithstanding the provisions of subsection (e) of section 211 of the Compact, as amended, or other sections of the Compact, as amended, the funds referenced in subsection (e) of section 211 of the Compact, as amended, shall be handled in accordance with section 105(f)(1)(A)(ii) of the Compact of Free Association Amendments Act of 2003.

Article XI

Telecommunications Services and Related Programs

Article XI

Telecommunications Services and Related Programs

1. This Article sets forth the respective authority and responsibility of the United States of America and the Republic of the Marshall Islands for communications assistance including frequency spectrum management as authorized by Section 131 of the Compact of Free Association, as amended, and with regard to the operation of telecommunication services of the Government of the United States in the Republic of the Marshall Islands as authorized by Section 132 of the Compact, as amended.
2. The Government of the United States and the Government of the Republic of the Marshall Islands, recognizing the progressive development of telecommunications infrastructure for their mutual benefit and the importance of incorporating advances in technology in this development, shall enter into negotiations for the purpose of concluding such subsidiary arrangements as may be necessary to make available, so far as is possible, to the people of the Republic of the Marshall Islands and to the Government of the United States, a rapid, efficient, reliable and cost-effective wire and radiocommunication service, including broad band services such as fiber optic cable. Further, with a view to acquiring such enhanced telecommunications infrastructure while limiting costs, such communications infrastructure upgrades shall be free from all license requirements, taxes, duties, fees and charges. All arrangements concluded under this paragraph shall remain in force between the Government of the United States and the Government of the Republic of the Marshall Islands for the period of effectiveness of the provisions of Article XIII of this Agreement.

Definitions

3. The definition of terms set forth in the following documents are incorporated into this Agreement:
 - (a) Article VI of Title Four of the Compact, as amended;
 - (b) Paragraph 2 of Article I of the Status of Forces Agreement concluded pursuant to Section 323 of the Compact; and
 - (c) Paragraph 2 of Article I of this Agreement.

United States Telecommunications Support

4. The United States will continue work on the notification of radio frequency assignments to the Radiocommunication Bureau (BR) of the International

Telecommunication Union (ITU) until all assignments that require notification pursuant to the ITU Radio Regulations are successfully notified.

5. The United States will provide frequency management support to the frequency management staff of the Republic of the Marshall Islands by:
 - (a) Assisting in the notification and coordination of new radio frequency assignments to the Radiocommunication Bureau when the frequency management staff is faced with new or complex aspects of complying with ITU procedures;
 - (b) Providing advice and assistance in accommodating new communications requirements for complex systems or for ones which the staff have not handled before; and,
 - (c) Maintaining a computer database of U.S. Government frequency assignments in the Republic of the Marshall Islands and providing periodic lists of the assignments to the Republic of the Marshall Islands for the duration of the Compact, as amended.
6. At Joint Telecommunication Board meetings and between meetings, as necessary, the United States will provide information on, for example, issues and correspondence involving activities of the ITU.

Responsibilities of the Republic of the Marshall Islands

7. For the duration of the Compact, as amended, the Republic of the Marshall Islands:
 - (a) Will operate its telecommunications services consistent with the provisions of the ITU Constitution and Convention and the ITU Radio Regulations and will fulfill all of its ITU obligations; and
 - (b) Will consult with the United States of America (using Joint Telecommunication Board meetings when time permits) on ITU issues, including all ITU conferences and meetings, which could affect its bilateral relationship with the United States of America.
8. In accordance with the applicable provisions of the ITU Convention or as may be provided for in a subsequent ITU instrument binding on the Government of the United States of America and the Government of the Republic of the Marshall Islands, the Republic of the Marshall Islands will give the United States of America its proxy to vote and sign on its behalf at any ITU conference or meeting

that it does not attend, provided the two governments have consulted on the issues to be decided.

Operation of Telecommunications Services of the United States in the RMI

9. General Provisions

- (a) The Government of the Republic of the Marshall Islands shall permit the Government of the United States to operate telecommunications services in the Republic of the Marshall Islands to the extent necessary to fulfill the obligations of the Government of the United States under the Compact, as amended.
- (b) In the Republic of the Marshall Islands, permits or licenses issued to United States personnel by the Government of the United States shall be solely for the operation of telecommunication facilities of the Government of the United States.
- (c) The Government of the United States may use local telecommunications systems in the Republic of the Marshall Islands and is encouraged to do so to the extent feasible taking into account the cost, security, effectiveness and reliability of such systems.

10. Subject to prior consultations with the Republic of the Marshall Islands, the Government of the United States may take within the Republic of the Marshall Islands measures for the installation, operation and maintenance of its telecommunication services, including:

- (a) the operation and maintenance of all telecommunication facilities, and use of the associated radio frequencies authorized for use, or authorized in use, by it upon the entry into force of this Agreement;
- (b) the installation, operation and maintenance of new or additional telecommunication facilities in the Republic of the Marshall Islands. Such actions will be coordinated with the Government of the Republic of the Marshall Islands.
- (c) the regulation and control of all telecommunications of the Government of the United States, including the licensing of operations personnel; and
- (d) the use of codes, ciphers and other means of cryptographic security.

11. The Government of the Republic of the Marshall Islands:

- (a) Permits the operation of United States telecommunication facilities in the Republic of the Marshall Islands, subject to coordination with the Government of the United States in accordance with the terms of this Agreement; and will ensure that the provision of frequencies to the Government of the United States shall be free from all license requirements, taxes, duties, fees and charges;
- (b) Shall make prompt and reasonable efforts to satisfy requests by the Government of the United States for changes in existing frequencies and for requests for additional frequencies; and
- (c) Shall accept as its own, without a test or fee, the permits or licenses issued to United States personnel by the Government of the United States.

12.

- (a) For the purpose of carrying out the provisions of this Article, Competent Authorities shall be designated by each of the Parties. The Competent Authority of the Government of the United States and the Competent Authority of the Government of the Republic of the Marshall Islands may communicate directly with each other. The designation by a government of the Competent Authority will be communicated in writing to the other signatory government and such designation may, from time to time, be amended.
- (b) Recognizing the establishment of the Joint Telecommunication Board in the Compact provisions for the purpose of harmonizing the telecommunication operations of the Government of the United States with those of the Government of the Republic of the Marshall Islands, the Competent Authorities shall meet at least annually or more often as may be required. The Board will review plans for changes to the respective telecommunication systems of the parties to ensure maximum possible compatibility and interoperability and discuss and decide any issues relating to the use of local telecommunication systems by the Government of the United States. The secretariat and host for meetings of the Board will be as mutually agreed by the parties.

13. The Government of the United States, through its Competent Authority, shall coordinate proposed major changes to United States telecommunications and extraordinary activities or exercises that would have the potential of causing either electromagnetic or physical interference with other systems used or licensed by the Government of the Republic of the Marshall Islands. The Government of the Republic of the Marshall Islands, through its Competent Authority, shall coordinate similar changes with the United States Competent Authority. The Government of the United States and the Government of the

Republic of the Marshall Islands shall use their best efforts to avoid both electromagnetic and physical interference to each other's telecommunication operations. In the event the Competent Authorities cannot reach a mutually satisfactory agreement through consultations, the matter will be referred to their respective governments for resolution in accordance with the provisions of Article V of Title Three or Article II of Title Four of the Compact, as amended, as appropriate.

14. Transmitter and receiver antennas installed by the Government of the United States shall be located and constructed so as not to constitute hazards including, inter alia, hazards to air navigation.

Defense Telecommunication Provisions

15. The Armed Forces of the United States and their United States contractors may take, in the Republic of the Marshall Islands, measures for the installation, operation and maintenance of telecommunication services pursuant to Title Three of the Compact, as amended, and its subsidiary agreements. These measures include the right, as provided for in this Agreement, to install, operate and maintain:

(a) Radio communication, radar and telemetry systems including:

- (1) Major radio communication facilities as links with the worldwide military network of the United States;
- (2) Such other lesser radio-telephonic and telegraphic communication facilities including the Military Affiliate Radio System as may be required for the support of military and administrative services of the Armed Forces of the United States;
- (3) Television systems;
- (4) Radio facilities for communication with aircraft and surface vessels;
- (5) Satellite communications;
- (6) Such other broadcast stations contributing to the morale, welfare and training of the Armed Forces of the United States and its contractors, which includes the Armed Forces Radio and Television Service and short-range broadcast stations; and

- (7) Such other telecommunication facilities as may be required from time to time.
- (b) Aids to air navigation and airfield approach control systems including electronic navigation and landing aids, such as airport surveillance radars, ground control approach (GCA), TACAN and instrument landing systems (ILS), and other such aids as may be developed and adapted for such use.
- (c) Telecommunication equipment in connection with the operation of weather facilities.
- (d) The activities contained in paragraph 15 (a) through (c) of this Article, are a non-exclusive, illustrative listing of the telecommunications activities which the United States may take in the Republic of the Marshall Islands.
- (e) The term "television systems" as used in paragraph 15 (a) (3) refers only to such systems used for surveillance monitoring, security systems, command and control, and other such uses, but does not include television broadcast stations as addressed in paragraph 15 (a) (6) of this agreement without the prior agreement between the Government of the United States and the Government of the Republic of the Marshall Islands.
- (f) The Government of the United State shall not undertake any actions to install or operate broadcast stations pursuant to paragraph 15 (a) (6) of this Article without prior agreement between the Government of the United States and the Government of the Republic of the Marshall Islands.

United States Federal Programs and Services Telecommunication Provisions

16. United States Federal Agencies and their United States contractors may take in the Republic of the Marshall Islands measures for the installation, operation and maintenance of telecommunication services in support of United States Federal Programs and Services as set forth in this Agreement.

Effective Date, Amendment and Duration

17. This Article shall enter into force simultaneously with the Compact, as amended. Upon entry into force of this Agreement, both the Section 131 Agreement effected by exchange of notes at Kolonia and Palikir May 28 and June 7, 1993, and as between the United States and the Republic of the Marshall Islands, the 1982 "Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 132 of the Compact of Free Association," shall terminate.

18. This Article may be amended by the Parties at any time by mutual agreement.

19. This Article shall remain in force in accordance with the following terms:

- (a) Paragraphs 2, 3, 9-15 and 17-19 of this Article shall remain in force between the Government of the United States and the Government of the Republic of the Marshall Islands for the period of effectiveness of the Military Use and Operating Rights Agreement concluded pursuant to Sections 321 and 323 of the Compact; and
- (b) Paragraphs 2, 3, 9-14 and 16-19 of this Article shall remain in force between the Government of the United States and the Government of the Republic of the Marshall Islands for the period of effectiveness of the provisions of Article XIII of this Agreement.

Article XII

Transition and Termination of Services and Related Programs

Article XII

Transition and Termination of Services and Related Programs

1. Whenever the Government of the Republic of the Marshall Islands desires to terminate a category of the services and related programs set forth in Articles VI through XII of this Agreement, that Government shall give written notice to the United States diplomatic representative and to the Federal agency concerned. The Government of the United States shall assist in the orderly transfer of authority and responsibility for such category of services and related programs. Unless otherwise agreed, the authority and responsibility of the Government of the United States under this Agreement shall terminate one year after receipt of such notice by the United States diplomatic representative.
2. Upon termination of a category of services and related programs pursuant to paragraph 1 of this Article, the applicability of all laws of the United States, its regulations, practices, policies, treaties, conventions, or arrangements, which are applicable to that category solely by virtue of this Agreement, shall cease to be applicable in the Republic of the Marshall Islands, and any authority and responsibility of the Government of the United States for the conduct of foreign affairs in respect to such services and related programs shall also cease.

Article XIII

Effective Date, Amendment and Duration

Article XIII

Effective Date, Amendment and Duration

1. This Agreement, as amended, shall enter into force simultaneously with the amendments to the Compact; any related Exchanges of Notes shall enter into force in accordance with their own terms.
2. The provisions of this Agreement or any related Exchanges of Notes may be amended as to the Government of the Republic of the Marshall Islands and as to the Government of the United States at any time by mutual agreement.
3. This Agreement shall remain in force for a period of twenty years, subject to Article IV, Title Four of the Compact.
4. This Agreement may be accepted, by signature or otherwise, by the Government of the United States and the Government of the Republic of the Marshall Islands. Upon acceptance of this Agreement, each Government shall possess an original English language version.

DONE at _____, in duplicate, this _____ day
of _____, 2004, each text being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF THE MARSHALL
ISLANDS:

ANNEX A

**WEATHER SERVICES AND RELATED PROGRAMS
PROVIDED BY
NOAA NATIONAL WEATHER SERVICE
TO
THE REPUBLIC OF THE MARSHALL ISLANDS**

To comply with the provisions of the Compact of Free Association, as amended, the United States Department of Commerce's (DOC) National Oceanic and Atmospheric Administration's (NOAA) National Weather Service (hereafter referred to as the National Weather Service) shall, subject to the availability of funds appropriated for this purpose:

1. Enter into a contract with the Government of the Republic of the Marshall Islands to provide, on a reimbursable basis, personnel, facilities, supplies, and related support services to operate and maintain the Weather Service Office at Majuro, and second order weather stations, climatological networks, and Supplemental Aviation Weather Reporting Stations (SAWRS) within the area of responsibility of the primary Majuro weather station. The Weather Service Office at Majuro includes the weather observatory, upper air inflation building and associated weather equipment. It is staffed by a Meteorologist-in-Charge or Official-in-Charge, eight Weather Service Specialists, an Electronic Program Specialist and a Tradesman. This office takes and disseminates surface and upper air observations, gathers tide data and prepares and disseminates locally adapted forecasts and warnings. It also provides expertise to the government on short and long term climatological trends with technical assistance provided by the National Weather Service. The Majuro office supervises the SAWRS at the Amata Kabua International Airport. Second order stations providing limited surface synoptic observations are located at Utirik, Mili, Jaluit, Wotje, and Ailinglapalap. The Majuro station oversees the second order stations and also the cooperative weather sites within the Republic of the Marshall Islands.
2. As funds are available and as efficiencies and new technologies are implemented, modify the staff at the Majuro location by a reduction in the number of Weather Service Specialists and the addition of a second Meteorologist and a Systems Manager (computer specialist).
3. Provide the supplies (including balloons, radiosondes, hydrogen and tanks, etc.), manuals and instructions, and instruments and equipment required for the operation of the weather stations' programs and related services but which are not provided for under Paragraph 1 above.

4. Provide and maintain weather office facilities, including renovation and replacement, and the replacement of meteorological instruments/equipment, and other equipment required for the weather stations' programs and related services.
5. Regularly inspect the weather offices and SAWRS observing sites to ensure the quality of meteorological operations and services.
6. Train Republic of the Marshall Islands employees as required to implement the provisions of the Compact, as amended, and to meet technological change.
7. Continue Republic of the Marshall Islands access to telecommunications for meteorological traffic to ensure the receipt and dissemination of current meteorological information.
8. Provide for the maintenance, repair, or installation of instruments and equipment required for the weather stations' programs and related services.
9. Provide advice and technical assistance, upon request, for the development of a Republic of the Marshall Islands national weather service.
10. Continue the following level of weather services and related programs for the Republic of the Marshall Islands until they may be assumed by the development of a Republic of the Marshall Islands national weather service:

(a) General

The National Weather Service provides for the meteorological data acquisition facilities and services and for the dissemination of forecasts and warnings prepared by the National Weather Service Forecast Offices (WFOs) in Guam and Honolulu to the civil interests, including those involved in marine and aviation activities.

(b) Public Weather Services

- (1) Twice daily marine-oriented forecasts are prepared and transmitted from WFO Guam by dedicated telecommunications networks to the Weather Service Offices. The forecasts are adapted for local use and then distributed locally by phone, phone recording, facsimile, Internet web site, and are also disseminated by radio and TV (where available) in both English and native languages.

- (2) Tropical storm, typhoon, and other marine forecasts and warnings are disseminated as in Paragraph 1 above and also by satellite communications such as the Emergency Manager's Weather Information Network or equivalent means via HF radio (radio fax) for high seas information.
- (3) The Majuro weather station shall maintain short-term historical weather records for the use of local, national and international agricultural, construction, and scientific interests. Long-term climatological records are maintained by the US National Climatic Data Center.

(c) Aviation Weather Services

- (1) Aviation aerodrome forecasts are issued for Majuro and Kwajalein four times daily by either WFO Guam or the WFO Honolulu.
- (2) Aviation warnings are issued, as required, under international agreement.

- (d) Two tide stations in Majuro and Kwajalein are part of the International Tsunami Warning System. These two stations are located in a critical quadrant of the western Pacific and provide early warnings of Tsunamis generated in the Philippine Islands - New Guinea - Vanuatu area. The tide information is transmitted to the Pacific Tsunami Warning Center in Honolulu for their computation of tsunami transit time and for use in preparing warnings for the Pacific Basin.

AGREED MINUTE

MILITARY USE OF AIR SERVICES OF THE AIRLINE OF THE MARSHALL ISLANDS

Article IX, Civil Aviation Economic Services and Related Programs, paragraph 3:

The United States Government notes that intra-Marshall Islands air services, particularly intra-Kwajalein air services, can provide a needed complement to otherwise available air services used in connection with United States military operations within the Republic of the Marshall Islands. In this regard, the Parties understand that the Airline of the Marshall Islands (AMI) should be provided the opportunity to provide scheduled air services for use by the United States military within the territory of the Republic of the Marshall Islands in accordance with the following guidelines, and subject to qualification as follows:

1. It is mutually understood that United States Military Authorities will, under appropriate circumstances, consider use of intra-Marshall Islands air services provided by AMI under paragraph 1(a), Article II Movement, of the Status of Forces Agreement Concluded Pursuant to section 323 of the amended Compact of Free Association.
2. It is further mutually understood that such “appropriate circumstances” would include:
 - (a) The United States Government determines that AMI possesses adequate organizational and material resources (including, but not limited to aircraft) to render, upon the request of the United States Government scheduled air services referred to in paragraph 1 of this Minute, on a consistent and reliable basis; and
 - (b) The United States Government determines that AMI meets all Federal Aviation Administration (FAA) and Department of Defense (DOD) safety and security requirements, including safety audits by DOD, and
 - (c) The United States Military Authorities determine there is a need for scheduled air services.

Appendix II

Law Enforcement Agreement

**Agreement on Extradition, Mutual Assistance
in Law Enforcement Matters and Penal Sanctions
Concluded Pursuant to Section 175 of
The Amended Compact of Free Association**

**Agreement in Implementation
of Section 175 of
The Amended Compact of Free Association**

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**Agreement on Extradition, Mutual Assistance
in Law Enforcement Matters and Penal Sanctions
Concluded Pursuant to Section 175 of
The Amended Compact of Free Association**

This Agreement is concluded by the Government of the Republic of the Marshall Islands and the Government of the United States as an international agreement and sets forth the obligations, duties, and procedures between the Governments of the Republic of the Marshall Islands and the United States regarding mutual assistance and cooperation in law enforcement matters including the pursuit, capture, imprisonment and extradition of fugitives from justice and transfer of prisoners pursuant to section 175 of the amended Compact of Free Association. With respect to the Republic of the Marshall Islands and the United States, this Agreement supercedes the Agreement Between the Government of the United States and the Government of the Marshall Islands Regarding Mutual Assistance in Law Enforcement Matters signed July 21, 1986 and the Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association signed May 30, 1982 and October 1, 1982.

TITLE ONE

DEFINITIONS

Article I

Definitions

1. The definition of terms set forth in Article II of Title Four of the amended Compact is incorporated in this Agreement.
2. For the purposes of Titles Two, Three and Four of this Agreement only, the following terms shall have the following meanings:
 - (a) “Signatory Governments” means the Government of the United States and the Government of the Republic of the Marshall Islands. As used here, the Government of the United States shall include the Governments of the states of the United States of America, the United States’ territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.
 - (b) “Jurisdiction” is used in a geographic sense. The term “jurisdiction of the requesting/requested Government” when applied to the Government of the Republic of the Marshall Islands means “the Republic of the Marshall Islands” as defined in section 461(c) of the amended Compact.
 - (c) “Judge” as used in this Agreement shall include any judicial officer of a “Signatory Government” who has the authority to issue a warrant of arrest or its equivalent.
 - (d) “Investigation” means an investigation being conducted by a grand jury or by a law enforcement or administrative agency of a “Signatory Government”.
 - (e) “Proceeding” means a proceeding before an administrative or judicial tribunal of a “Signatory Government”.

TITLE TWO

EXTRADITION

Article I

Obligation to Extradite

The Government of the United States shall extradite to the Republic of the Marshall Islands, and the Government of the Republic of the Marshall Islands shall extradite to the United States, subject to the provisions and conditions described in this Agreement, any person found in their respective jurisdictions against whom the requesting Government is proceeding for an offense or who is wanted by that Government for the enforcement of a sentence.

Article II

Extraditable Offenses

1. (a) An offense shall be an extraditable offense if it is punishable under the laws in both signatory countries by deprivation of liberty for a period of more than one year or by a more severe penalty.
- (b) For purposes of extradition, it shall not matter whether the laws of the requesting and requested Signatory Governments place the offense within the same category of offenses or describe an offense by the same terminology.
2. Extradition shall be granted in respect of an extraditable offense for the enforcement of a penalty or prison sentence if the duration of the penalty or prison sentence still to be served amounts to at least six months.
3. Subject to the conditions set out in paragraph 1 of this Article extradition shall also be granted:
 - (a) For attempt or conspiracy to commit, or participation as a principal, accomplice or accessory in, any extraditable offense; and
 - (b) For any otherwise extraditable offense, whether or not the offense is one for which the laws of the United States require proof of interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such considerations being solely for the purpose of establishing jurisdiction in a federal court of the United States.
4. When a request for extradition is granted in respect of an extraditable offense, it may also be granted for an offense which could not otherwise fulfill the requirements of paragraphs 1 or 2 of this Article as related to the period of deprivation of liberty for which the offense is punishable or as related to the duration of the sentence to be served in the jurisdiction of the requesting Government.
5. Extradition shall be granted in respect of an extraditable offense committed outside the territory of the requesting Signatory Government if:
 - (a) The courts of the requested Government would be competent to prosecute in similar circumstances; or
 - (b) The person sought is a citizen or national of the requesting Government.

Article III

Exceptions to Extradition

1. Extradition shall not be granted:
 - (a) When the person whose surrender is sought is being prosecuted or has been convicted, discharged or acquitted by the requested Government for the offense for which extradition is requested; or
 - (b) When the prosecution of the offense is barred by lapse of time according to the laws of the requesting Government.
2. Subject to paragraph 3 of this Article, extradition may be refused when the Executive Authority of the requested Government, in its sole discretion, determines:
 - (a) That the offense in relation to which extradition is requested is of a political character; or
 - (b) That the request for extradition has been made for the purpose of trying or punishing the person whose extradition is sought for an offense of a political character.
3. Extradition shall not be refused on the basis of paragraph 2 of this Article where extradition is requested involves a murder or other violent crimes against a person, including attempts, against the life or physical integrity of a Head of State or Head of Government or of a member of the Head of State's or Head of Government's family or any other internationally protected person, including resident representatives, or where the offense for which extradition is sought is one which the requesting and the requested Government has the obligation to extradite the person sought or to prosecute by reason of a multilateral treaty or other international agreement or where the offense for which extradition is sought involves placing or using an explosive, incendiary or destructive device capable of endangering life, or causing substantial bodily harm, or of causing substantial property damage, or a conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.

Article IV

Capital Punishment

When the offense for which extradition is requested is punishable by death under the laws of the requesting Government and the laws of the requested Government do not permit such punishment for that offense, extradition may be refused unless the requesting Government provides such assurances as the Executive Authority of the requested Government considers sufficient that the death penalty will not be imposed, or, if imposed, will not be executed.

Article V

Deferred or Temporary Surrender

After a decision on a request for extradition has been rendered in the case of a person who is being proceeded against or is serving a sentence in the jurisdiction of the United States or the Republic of the Marshall Islands for an offense other than that for which extradition has been requested, the requested Government may defer the surrender of the person sought until the conclusion of the proceedings against that person, or the full execution of any punishment that may be, or may have been, imposed; or temporarily surrender the person sought to the requesting Government solely for the purpose of prosecution. The person so surrendered shall remain in custody during the period of surrender and shall be returned at the conclusion of the proceedings against that person in accordance with conditions to be determined by agreement of the Executive Authorities of the Signatory Governments.

Article VI

Extradition Procedures and
Required Documents

1. The request for extradition shall be made to the requested national Government by the requesting national Government on behalf of itself or one or more political subdivisions. All requests for extradition shall be submitted through the diplomatic channel. Such requests, supporting documentation and notices shall be in the English language.
2. The request shall be accompanied by a description of the person sought, a statement of the facts of the case, the text of the applicable provisions of the laws of the requesting Government describing the offense and punishment, and a statement of its applicable laws relating to proceedings barred by lapse of time.
3. When the request relates to a person who has not yet been convicted, it shall also be accompanied by a copy of a warrant of arrest issued by a judge or other judicial officer of the requesting Government and by such evidence as would provide probable cause, according to the laws of the requested Government, to believe that the person sought has committed the offense for which extradition is requested.
4. When the request relates to a convicted person, it shall be supported by a copy of the judgment of conviction and evidence establishing that the person sought is the person to whom the conviction refers. If no sentence has been imposed, the request for extradition shall be accompanied by a statement to that effect. If a sentence has been imposed, the request for extradition shall be accompanied by a statement to that effect, by a copy of the sentence or committal order and by a statement showing the portion of the sentence remaining to be served.
5. Documentary evidence from the requesting Government in support of a request for extradition shall be deemed duly authenticated and shall be admissible in evidence in the extradition hearing when it bears a seal of the requesting Government, the authenticity of which is attested to by the principal diplomatic or principal consular officer of the requested Government assigned or accredited to the requesting Government.

6. The requested Government shall promptly communicate to the requesting Government the decision on the request for extradition.

Article VII

Provisional Arrest or Detention

1. In case of urgency, a requesting Government may apply to the requested Government for the provisional arrest or detention of the person sought pending the presentation of the formal request for extradition. The request may be transmitted to the requested Government through the diplomatic channel or directly between the United States Department of Justice and the Republic of the Marshall Islands Ministry of Justice.
2. The application shall contain: a description of the person sought, including, if available, the person's nationality; a brief statement of the facts of the case; the time and location of the offense (to the extent possible); a description of the laws violated; a statement of the existence of a warrant of arrest or detention or a judgment of conviction against that person; and a statement of intention to request the extradition of the person sought.
3. The requesting Government shall be notified without delay of the disposition of its request for provisional arrest and the reasons for any inability to proceed with the request.
4. A person who is provisionally arrested or detained may be discharged from custody upon the expiration of sixty (60) days from the date of arrest or detention pursuant to such application if the request for extradition referred to in Article VI of Title Two of this Agreement has not been received by the requested Government. Such termination and discharge shall not prevent the institution of further proceedings for the extradition of that person.

Article VIII

Rule of Specialty

1. A person extradited under this Agreement shall not be arrested, detained, tried or punished in the jurisdiction of the requesting Government for an offense other than that for which extradition has been granted nor be extradited by that Government to a third country unless:
 - (a) That person has left the jurisdiction of the requesting Government after extradition and has voluntarily returned to it;
 - (b) That person has not left the jurisdiction of the requesting Government within thirty days after being free to do so; or
 - (c) Upon such conditions as may be prescribed by the requested Government, that Government:
 - (1) Has consented to the arrest, detention, trial or punishment of that person for an offense other than that for which extradition was granted; or
 - (2) Has consented to extradition to a third country.
2. Paragraph 1 of this Article shall not apply to offenses committed after extradition.
3. Instead of the offense for which a person was extradited, after notice to the requested Government, the person may be tried or punished for a different offense, including a lesser included offense, provided that it is:
 - (a) Based on the same facts as were set out in the request for extradition and the supporting evidence;
 - (b) Punishable by no greater penalty than the offense for which the person was extradited; and
 - (c) An offense referred to in paragraph 1 of Article II of Title Two.

2-10

Article IX

Multiple Extradition Requests

When requests for extradition of the same person are received from the requesting Government and one or more other Governments, the requested Government shall have the discretion to determine to which Government the person is to be extradited.

2-11

Article X

Surrender

When a request for extradition has been granted, surrender of the person sought shall take place within such time as may be prescribed by the laws of the requested Government.

2-12

Article XI

Waiver

1. A person whose extradition is sought may at any time voluntarily waive extradition proceedings. The waiver shall be in writing, endorsed by a judge, and have the effect of a final decision of the requested Government to surrender that person.
2. A certified copy of the waiver shall constitute sufficient authority to maintain the person sought in custody within the jurisdiction of the requested Government and to deliver that person into the custody of the requesting Government.

Article XII

Surrender of Property

1. To the extent permitted under the laws of the requested Government and subject to the rights of third parties, all property relating to the offense shall at the request of the requesting Government be seized and surrendered upon the granting of the extradition. This property shall be handed over even if the extradition cannot be effected due to the death, escape or disappearance of the person sought.
2. The requested Government may make the surrender of the property conditional upon a satisfactory assurance from the requesting Government that the property shall be returned to the requested Government as soon as possible.

Article XIII

Transit

1. Upon prior notice, the Government of the United States shall have the right to transport through the jurisdiction of the Republic of the Marshall Islands persons surrendered by the Government of the United States to a third country pursuant to an agreement between the Government of the United States and that third country or a person surrendered by a third country to the United States.
2. Upon prior notice, and if otherwise consistent with U.S. law, the Government of the Republic of the Marshall Islands shall have the right to transport through the jurisdiction of the United States persons surrendered by the Government of the Republic of Marshall Islands to a third country or a person surrendered by a third country to the Republic of Marshall Islands pursuant to an agreement between the Government of the Republic of Marshall Islands and that third country.
3. When such transport is by air and no stop is scheduled in the jurisdiction of the United States or the Republic of the Marshall Islands, but is required by extenuating circumstances, no prior notice shall be required.

2-15

Article XIV

Expenses

1. The requesting Government shall bear the cost of transportation of the person sought.
2. The appropriate legal officers of the requested Government shall act as counsel for the requesting Government except as otherwise agreed.

2-16

Article XV

Extradition of Citizens or Nationals

Neither the Government of the United States nor the Republic of the Marshall Islands shall refuse extradition based on the nationality of the person sought.

Article XVI

Relationship with Other Agreements

Offenses committed by United States personnel as defined in the Status of Forces Agreement shall be subject to the provisions of the Status of Forces Agreement only when such personnel are in the Republic of the Marshall Islands, otherwise the provisions of this Agreement shall govern.

TITLE THREE

JUDICIAL ASSISTANCE

Article I

Judicial Assistance

1. The United States District Court of the district in which a person resides or is found may order that person to give testimony or a statement or to produce a document or other thing for use in a judicial, administrative or criminal investigation or proceeding in the Republic of the Marshall Islands.
2. A national court in the Republic of the Marshall Islands may order a person residing or found within its jurisdiction to give testimony or a statement or to produce a document or other thing for use in a judicial, administrative, or criminal investigation or proceeding in the United States.
3. The order may be made either pursuant to a letter rogatory issued or a request made by a court of the other Signatory Government, or pursuant to a request made by a department or ministry of justice of the other Signatory Government.
4. The order may direct that the testimony or statement be given or the documents or other things be produced before a person appointed by the court. By virtue of this appointment, the person appointed has power to administer any necessary oath and take the testimony or statement.
5. When requested, the prescribed procedure shall be designed to meet the requirements for admission in evidence of the testimony or statement to be given, or the document or other thing to be produced, in the place where it is sought to be used. In such cases and as otherwise necessary or appropriate, the order shall prescribe the procedure for taking the testimony or statement or producing the document or other thing.
6. A person may not be compelled to give testimony or a statement or to produce a document or other thing in violation of any legal or constitutional right or privilege applicable in the jurisdiction in which the testimony or statement is given, or a document or other thing is produced.
7. This Agreement does not preclude a person from voluntarily giving testimony or a statement, or producing a document or other thing, for use in an investigation or proceeding in the United States or the Republic of the Marshall Islands.
8. Letters rogatory, requests and applications for assistance pursuant to this Title shall be in the English language.

TITLE FOUR

EXECUTION OF PENAL SANCTIONS

Article I

Scope

1. Sentences imposed by courts of the Republic of the Marshall Islands on citizens or nationals of the United States may be served in penal institutions of the United States or under the supervision of its authorities in accordance with the provisions of this Agreement.
2. Sentences imposed by courts of the United States, or a state thereof, on citizens or nationals of the Republic of the Marshall Islands may be served in penal institutions of the Republic of the Marshall Islands, or under the supervision of its authorities in accordance with the provisions of this Agreement.

Article II

Definitions

For the purposes of this Title only:

1. “Transferring Government” means the Signatory Government from which the offender is to be transferred.
2. “Receiving Government” means the Signatory Government to which the offender is transferred.
3. “Offender” means a citizen or national of the Republic of the Marshall Islands who has been sentenced by a court of the United States, or a state thereof; or a citizen or national of the United States who has been convicted by a court of the Republic of the Marshall Islands.
4. “Category I Offender” means an “Offender” who comes within the meaning of the term “United States personnel,” as that term is defined in paragraph 2(d) of Article I of the Status of Forces Agreement.
5. “Category II Offender” means all “Offenders” other than “Category I Offenders.”
6. “State” when used in the sense of a part of the United States means any State of the United States, any territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

Article III

Eligibility

This Agreement shall apply only under the following conditions:

1. That the offense for which the Offender was convicted and sentenced is one which would be punishable in the Receiving Government; provided, however, that this condition shall not be interpreted so as to require that the offense described in the laws of both Governments be identical in those matters which do not affect the nature of the crime.
2. That the Offender be a citizen or national of the Receiving Government.
3. That the Offender has not been sentenced to the death penalty nor convicted of a purely military offense.
4. Except for Category I Offenders, that at least six months of the Offender's sentence remain to be served at the time of petition to transfer.
5. That the sentence be final, that any appeal procedures have been completed, and that there be no collateral or extraordinary remedies pending at the time of invocation of the provisions of this Agreement.
6. That the Offender's express consent, or the consent of a legal representative in the case of a minor or of an Offender who has become mentally incompetent, to transfer has been given voluntarily and with full knowledge of the legal consequences thereof.
7. That, before the transfer, the Transferring Government shall afford an opportunity to the Receiving Government to verify through an officer designated by the laws of the Receiving Government that the Offender's consent to the transfer has been given voluntarily.

Article IV

Transfer Procedures

1. The Signatory Government of which an Offender is a citizen or national shall make each request for transfer of an Offender in writing to the Transferring Government.
2. As to an eligible Category I Offender, no finding of the appropriateness of such consenting Offender's transfer by the Transferring Government shall be required. Once internal arrangements have been completed, the transfer of the Offender shall be effected.
3. As to a Category II Offender, if the Transferring Government considers the request to transfer the Offender appropriate, the Transferring Government will communicate its approval of such request to the Receiving Government so that, once internal arrangements have been completed, the transfer of the Offender may be effected.
4. (a) In deciding whether to request the transfer of a Category II Offender under paragraphs 1 and 3 of this Article and with the objective that the transfer should contribute positively to the Government will consider, among other factors: the seriousness of the crime; the Offender's previous criminal record, if any; the Offender's health status; and the ties which the Offender may have to the society of the Transferring Government and the Receiving Government.

(b) If the Offender gives his express consent to the transfer, the Transferring Government shall consider the request promptly and approve it in the absence of serious countervailing considerations, which it shall specify.
5. In any case in which a citizen or national of the Republic of the Marshall Islands has been sentenced by a state of the United States, the approval of such an Offender's transfer pursuant to paragraph 3 of this Article shall be required from both the appropriate state authority and the federal authority.

6. The Transferring Government shall furnish to the Receiving Government a certified copy of the sentence or judgment relating to the Offender. When the Receiving Government considers such information relevant, it may request, at its expense, copies of the trial record, or portions thereof, or such additional information as it deems necessary. The Transferring Government shall grant such requests to the extent permissible under its laws.
7. Delivery of an Offender by the authorities of the Transferring Government to those of the Receiving Government shall occur at a place agreed upon by the two Governments. The Receiving Government will be responsible for the custody and transport of the Offender from the Transferring Government.
8. The Receiving Government shall not be entitled to any reimbursement for the expenses incurred by it in the transfer of an Offender or the completion of the Offender's sentence.

Article V

Execution of Sentence

1. An Offender delivered for execution of sentence under this Agreement may not again be detained, tried or sentenced by the Receiving Government for the same offense for which the sentence was imposed by the Transferring Government.
2. Except as otherwise provided in this Agreement, the completion of a transferred Offender's sentence shall be carried out according to the laws and procedures of the Receiving Government, including the application of any provisions for reduction of the term of confinement by parole, conditional release, or otherwise.
3. Each Signatory Party may request reports indicating the status of confinement of all Offenders transferred by it under this Agreement, including in particular the parole or release of an Offender. Transferring Government may, at any time, request from the Receiving Government a special report on the status of the execution of an individual sentence.

Article VI

Review or Modification of Sentence

The Transferring Government shall retain exclusive jurisdiction over the sentences imposed and any procedures that provide for revision or modification of the sentences pronounced by its courts. The Transferring Government also shall retain the power to pardon or grant amnesty or clemency to an Offender. The Receiving Government, upon being informed of any decision in this regard, will put such measures into effect.

Article VII

Transit

1. Upon prior notice, the Government of the United States shall have the right to transport through the Republic of the Marshall Islands Offenders being transferred between the United States and a third country pursuant to an agreement between the Government of the United States and that third country.
2. Upon prior notice, and if otherwise consistent with U.S. law, the Government of the Republic of the Marshall Islands shall have the right to transport through the United States Offenders being transferred between the Republic of the Marshall Islands and a third country pursuant to an agreement between the Government of the Republic of the Marshall Islands and that third country.
3. When such transport is by air and no stop is scheduled in the jurisdiction of Signatory Government, but is required by extenuating circumstances, no prior notice shall be required.

TITLE FIVE

MUTUAL ASSISTANCE
IN LAW ENFORCEMENT MATTERS

Article I

Law Enforcement Assistance

1. The law enforcement agencies of the United States and the Republic of the Marshall Islands shall assist one another, as mutually agreed, in the prevention and investigation of crimes and the enforcement of the laws of the United States and the Republic of the Marshall Islands specified in section 3 of this Article. The United States and the Republic of the Marshall Islands will authorize mutual assistance with respect to investigations, inquiries, audits and related activities by the law enforcement agencies of both Governments in the United States and the Republic of the Marshall Islands. In conducting activities authorized in accordance with the constitution and laws of the jurisdiction in which such activities are conducted.
2. The United States and the Republic of the Marshall Islands will take all reasonable and necessary steps, as mutually agreed, based upon consultations in which the Attorney General or other designated officials of each Government participates, to prevent the use of the lands, waters, and facilities of the United States or the Republic of Marshall Islands for the purposes of cultivation of, production of, smuggling of, trafficking in, and abuse of any controlled substance as defined in section 102(6) of the United States Controlled Substances Act and Schedules I through V of Subchapter II of the Controlled Substances Act of the Marshall Islands, or for the distribution of any such substance to or from the Republic of the Marshall Islands or to or from the United States or any of its territories or commonwealths.
3. Assistance provided pursuant to this agreement shall also extend to, but not be limited to, prevention and prosecution of violations of the laws of the United States and the laws of the Republic of the Marshall Islands related to terrorism, espionage, racketeer influenced and corrupt organizations, and financial transactions which advance the interests of any person engaging in unlawful activities, as well as the offenses referred to in Title Two, Article II of this Agreement.

4. The Government of the United States and the Government of the Republic of the Marshall Islands agree that the law enforcement personnel of the United States may be present during direct police arrest actions in the Republic of the Marshall Islands related to narcotic control efforts, and that law enforcement personnel of the Republic of the Marshall Islands may be present during direct police arrest actions in the United States related to narcotic control efforts, as authorized on a case-by-case basis by the Attorney General or other designated representative of the Government of the jurisdiction in which such direct police arrest action is taken.

5. Pursuant to sections 222 and 224 of the amended Compact, the United States shall provide non-reimbursable technical and training assistance as appropriate, including training and equipment for postal inspection of illicit drugs and other contraband, to enable the Government of the Republic of the Marshall Islands to cooperate with the United States in the enforcement of criminal laws of the United States.

TITLE SIX

EFFECTIVE DATE, AMENDMENT AND DURATION

Article I

Effective Date, Amendment and Duration

1. Titles One through Four and Title Six of this Agreement went into effect on October 21, 1986, the effective date of the original Compact.
2. Title Five of this Agreement went into effect as the Agreement Between the Government of the United States and the Government of the Marshall Islands Regarding Mutual Assistance in Law Enforcement Matters signed July 21, 1986 and in accordance with the Compact and applicable laws and procedures of the United States and the Republic of the Marshall Islands on October 21, 1986.
3. This Agreement may be amended at any time by the mutual consent of the Government of the Republic of the Marshall Islands and the Government of the United States.
4. Titles One, Two and Three of this Agreement are effective until terminated by the Government of the United States or the Government of the Republic of the Marshall Islands, in the following manner:
 - (a) Termination of this Agreement by either the Government of the United States or the Government of the Republic of the Marshall Islands shall be effected by a written notification of the terminating Government to the other Government.
 - (b) Termination shall take effect one year after the recipient Government has been notified.
5. Except as provided in paragraph 7 of this Article, Titles Four and Six of this Agreement are effective for the period of effectiveness of the Status of Forces Agreement, except for those provisions relating to Category II Offenders which may be terminated in accordance with paragraph 4 of this Article.
6. Upon acceptance by the United States Secretary of State, paragraph 4 of Title Five of this Agreement shall constitute the exemption under 22 U.S.C. 2291(c)(2).
7. Title Five of this Agreement shall remain in effect for a term coincident with section 175 of the amended Compact and thereafter as mutually agreed by

the Government of the United States and the Government of the Republic of the Marshall Islands.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions which shall come into effect in accordance with its terms between the Government of the United States and the Republic of the Marshall Islands.

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

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF THE MARSHALL
ISLANDS:

**Agreement on Extradition, Mutual Assistance in Law Enforcement Matters
and Penal Sanctions Concluded Pursuant to Section 175 of The Amended
Compact of Free Association**

Agreed Minute

Article XVI, Relationship with Other Agreements: Article XVI of Title II of this Agreement makes it clear that “United States personnel” (within the meaning of the Status of Forces Agreement [SOFA]) who commit offenses while in the Republic of the Marshall Islands shall be subject to the applicable provisions of the SOFA. If a person who comes within the SOFA definition of “United States personnel,” other than a member of the force, returns to the United States and is no longer subject to the SOFA, the provisions of the extradition agreement would apply. If, however, the offender is a member of the force at the time of the extradition request, it is contemplated that the Executive Authority would not exercise its authority to extradite the Offender, but would refer the case to the military authorities for disposition in accordance with the provisions of the SOFA.

Article XVI of Title II of the Extradition Agreement is without prejudice to the provisions of the SOFA which otherwise allows transfer of members of the force to the Republic of the Marshall Islands or the Federated States of Micronesia.

- (a) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern mutual assistance and cooperation in law enforcement matters, including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners, as well as other law enforcement matters. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186, and 3188-95, shall be applicable to the extradition of fugitives under the separate agreement, and the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100-15, shall be applicable to the transfer of prisoners under the separate agreement; and
- (b) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern requirements relating to labor recruitment practices, including registration, reporting, suspension or revocation of authorization to recruit persons for employment in the United States, and enforcement for violations of such requirements.

Appendix III

Labor Agreement in Implementation of Section 175(b)

**Agreement in Implementation of Section 175(b) of the
Compact of Free Association, as Amended**

AGREEMENT REGARDING PROTECTIONS FOR CITIZENS OF THE REPUBLIC
OF THE REPUBLIC OF THE MARSHALL ISLANDS (RMI) SEEKING TO ENGAGE
IN EMPLOYMENT IN THE UNITED STATES PURSUANT TO RECRUITMENT OR
OTHER PLACEMENT SERVICES

In order to safeguard the rights and welfare of citizens of the Republic of the Marshall Islands seeking employment in the United States arranged by any recruitment or other placement service, or pursuant to any pre-arranged employment contract, the Government of the United States and the Government of the Republic of the Marshall Islands agree that the following requirements shall apply to any recruiter or placement service arranging or facilitating such employment in the United States of citizens of the Republic of the Marshall Islands:

A. Registration Requirement

1. Who Must Register

(a) A Recruiter, for purposes of this Agreement, is any person or entity, or agent of such person or entity, engaged in the business of recruiting labor for a fee or other compensation or otherwise seeking to employ in the United States (including its territories and possessions) the following:

(i) any citizen of the Republic of the Marshall Islands who is not present in the United States, or

(ii) any citizen of the Republic of the Marshall Islands, who has been recruited by such person or entity outside of the United States, and is currently employed in the United States in connection with the recruitment efforts of such person or entity, or agent of such person or entity (whether or not the RMI citizen's current position is the one for which the person was initially recruited).

(b) Every Recruiter must register with the Government of the Republic of the Marshall Islands.

2. Contents of Registration

Such registration of a Recruiter shall contain the following information:

- (a) the name, address, telephone number, fax number, and e-mail address, if any, of such Recruiter and, where the Recruiter is an entity, its directors and principal officers and of any company through which, or in cooperation with which, such Recruiter conducts any such recruitment efforts;
- (b) the name, address, telephone number, fax number, and e-mail address, if any, of any and all partners, agents, or other persons or entities in the United States or elsewhere with which the Recruiter has cooperated or intends to cooperate in seeking to place any citizen of the Republic of the Marshall Islands with any employer in the United States;
- (c) the dates of any previous suspensions or revocations under section D of this Agreement of such Recruiter or of any other Recruiter for which such Recruiter was employed, was an agent, or was otherwise affiliated; and
- (d) if, at the time this Agreement becomes effective, such Recruiter is already engaged in any recruitment or placement activities described in this section with respect to citizens of the Republic of the Marshall Islands, then such Recruiter must, on the effective date of this Agreement, file a registration containing the information required under paragraphs (a), (b), and (c) of this subsection, together with the information required in section B, and an attestation meeting the requirements of section C of this Agreement.

3. Failure to Register

The Government of the Republic of the Marshall Islands agrees that, pursuant to section (D)(2)(e) of this Agreement, it shall prohibit any person, entity, or agent that meets the definition of Recruiter from engaging in such activity for a one-year period, upon finding that such person, entity, or agent has failed to register in compliance with this section.

B. Semi-Annual Reporting Requirement

Any Recruiter required to register under section A of this Agreement shall thereafter update said registration semiannually, by providing the following information:

1. any changes or updates in the information initially provided by the Recruiter in the registration required under section A of this Agreement;
2. the names, addresses, telephone numbers, fax numbers, and e-mail addresses, if any, of all citizens of the Republic of the Marshall Islands who are currently employed in the United States pursuant to employment arranged by such Recruiter;
3. the names, addresses, telephone numbers, fax numbers, and e-mail addresses, if any, of all U.S. employers of the RMI citizens referred to in subsection (2) of this section;
4. a list of all fees received by the Recruiter in connection with such placement services, including fees, if any, paid by the RMI citizen (or any person acting on the citizen's behalf) to the Recruiter in connection with any such placement;
5. a statement as to whether the Recruiter, directly or indirectly, is receiving, or has received, any U.S. Federal or State government grant or other U.S. government funding in connection with recruitment, training, or placement of any RMI citizen with a U.S. employer, and, if so, provide the name, address, amount, and designated purpose of each such source of grants or funds; and
6. an attestation as provided in section C of this Agreement.

C. Attestation

1. Compliance With Laws of the United States and the Republic of the Marshall Islands

Any Recruiter required to register under section A of this Agreement shall, as part of the semi-annual registration update referred to in section B of this Agreement, attest that it will comply with all applicable:

- (a) laws and regulations of the Republic of the Marshall Islands, including those relating to the registration of Recruiters, and
- (b) U.S. Federal, State, or local laws, including those relating to placement and/or employment of persons in the United States.

2. No Debt, Liquidated Damages, or Similar Arrangements

Any Recruiter required to register under section A of this Agreement shall, as part of the semi-annual registration update referred to in section B of this Agreement, attest that the Recruiter, and anyone connected with the Recruiter (including any

U.S. employer with which the RMI citizen is placed), has neither, to the Recruiter's knowledge:

- (a) entered into any arrangement whereby the RMI citizen (or any other person acting on behalf of such citizen) has signed a promissory note, confession of judgment, or similar promise to pay liquidated damages should the RMI citizen not fully complete the terms of any recruitment, employment contract, or similar arrangement, nor
- (b) entered into any other debt arrangement with the RMI citizen (or any other person acting on behalf of such citizen) as consideration for being placed with a U.S. employer.

3. Disclosure to the RMI Citizen

(a) Terms and Conditions of Employment

Any Recruiter shall, as part of such semi-annual registration update, attest that it has disclosed, and in the future will disclose in writing (in both English and Marshallese) to each RMI citizen recruited for employment in the United States, the terms and conditions of such employment, including, but not limited to:

- (i) the anticipated or actual duration, if any is specified, of the RMI citizen's employment;
- (ii) the type of work to be performed by the RMI citizen;
- (iii) the rate of pay;
- (iv) the number of hours and times of day the work typically will be performed;
- (v) the amount of fees to be paid by the RMI citizen to the Recruiter or any parties with which the Recruiter has cooperated in recruiting or placing the RMI citizen, and any other employment-related fee or expense, such as job skill testing, medical examination, or drug testing;
- (vi) that taxes and related items will be deducted from the gross paycheck in accordance with applicable U.S. Federal, State, and local law;
- (vii) any amounts that will be deducted from the RMI citizen's paycheck other than normal withholding of taxes

and related deductions;

(viii) all estimated costs the RMI citizen will be reasonably expected to incur in connection with such employment;

(ix) whether the RMI citizen's transportation expenses to and from the United States will be paid by the Recruiter or another person or entity (including, in the case of death, the cost of shipping the remains of such RMI citizen to his or her point of origination in the RMI);

(x) whether the RMI citizen will be provided room and board upon commencement of such employment, and, if so, for how long, whether such room and board are mandatory or optional, whether any such room and board are provided without cost to the RMI citizen or, if not, the estimated costs for any such room and board, and whether such costs will be deducted directly from the RMI citizen's paycheck; and

(xi) whether job training will be provided to the RMI citizen, and, if so, a general description of such training and all of the information specified in items (i) through (x) above with respect to the training period.

Disclosure of the information set forth above does not, in itself, ensure that the terms and conditions of such employment contract or arrangement comply with the applicable laws where the RMI citizen will be or is employed.

(b) Legal Rights of the RMI Citizen

Any Recruiter shall, as part of such semi-annual registration update, attest that it has disclosed fully, or will disclose fully the information specified below, in writing (in both English and in Marshallese) to any RMI citizen it proposes to recruit or place with any employer in the United States prior to the time the RMI citizen enters into any agreement with the Recruiter or arranged by the Recruiter regarding such recruitment or employment:

(i) that the RMI citizen has a right to change employers in the United States, without any adverse immigration consequence;

- (ii) that completion of any recruitment or employment contract shall not be a condition of any RMI citizen's right to remain in the United States under United States or RMI law;
- (iii) that the RMI citizen may have rights, under certain circumstances, when the employment is terminated through no fault of the RMI citizen at a time earlier than that agreed upon;
- (iv) that entry into any debt, liquidated damages, or similar arrangement described in subsection (2) of section C of this Agreement is forbidden;
- (v) that failure to complete such employment contract may constitute a breach of contract with certain legal consequences (including an action for actual, but not liquidated or similar damages), depending on the circumstances;
- (vi) that an RMI citizen does not have a right to free counsel in the United States in any civil judicial or administrative proceeding;
- (vii) that an RMI citizen may contact the U.S. Department of Labor concerning his or her rights and protections under U.S. laws and regulations; and
- (viii) any other information reasonably necessary to inform the prospective contract worker fully of the material terms and conditions of such employment contract.

D. Suspension and Revocation for Failure to Provide Full Disclosure or Otherwise Meet the Terms of this Agreement

1. General Responsibilities of the Government of the Republic of the Marshall Islands and the Government of the United States

The Government of the Republic of the Marshall Islands agrees that it is responsible for conducting investigations in the Republic of the Marshall Islands, as may be appropriate, to determine whether a Recruiter has materially complied with the terms and conditions of this Agreement. The Government of the United States agrees to conduct investigations in the United States, as appropriate, to ensure compliance with U.S. law. The Government of the United States will

provide assistance in developing forms and procedures, as appropriate, to help the Government of the Republic of the Marshall Islands to carry out its duties and responsibilities under this Agreement.

2. One-Year Suspension

The Government of the Republic of the Marshall Islands agrees to suspend the privilege of any Recruiter to recruit or place RMI citizens for the purposes of employment in the United States ("suspension") for a one-year period if:

(a) the Government of the Republic of the Marshall Islands determines, after an investigation, that such Recruiter or any affiliated person, entity, or agent has materially failed to comply with the terms and conditions of this Agreement;

(b) the Government of the Republic of the Marshall Islands receives a report or other information from the Government of the United States that such Recruiter or any affiliated person, entity, or agent has recruited or placed any RMI citizen with an employer in the United States after notification that the employer was determined by an appropriate U.S. Federal, State, or local government authority, following investigation, to have:

(i) materially violated any applicable U.S. Federal, State, or local law concerning employment standards, or

(ii) engaged in a pattern of materially violating the terms of employment contracts or similar agreements with any RMI citizen, or

(iii) has otherwise violated the rights of any RMI citizen reasonably related to such employment, or

(iv) otherwise engaged in violations of labor laws and/or safety standards such as the minimum wage law;

(c) the Government of the Republic of the Marshall Islands determines, on the basis of the actions of the Recruiter or any affiliated person, entity, or agent, that such one-year suspension is otherwise appropriate, or

(d) the Government of the United States requests such suspension following consultations in accordance with section I of this Agreement, or

(e) such Recruiter or any affiliated person, entity, or agent fails to register in accordance with section A of this Agreement.

3. Revocation

The Government of the Republic of the Marshall Islands agrees to revoke for a minimum of five years (“revocation”) the privilege of any Recruiter to recruit or place RMI citizens for the purposes of employment in the United States if:

(a) such Recruiter or any affiliated person, entity, or agent knowingly files a materially false Recruiter registration, semi-annual registration update, or attestation;

(b) such Recruiter or any affiliated person, entity, or agent at any time violates a one-year suspension order;

(c) the Government of the Republic of the Marshall Islands determines on the basis of the actions of the Recruiter or any affiliated person, entity, or agent that such revocation is otherwise appropriate; or

(d) the Government of the United States requests such revocation following consultations under section I of this Agreement.

E. Notification to the Government of the United States of Suspension, Revocation, or Reinstatement

1. Notwithstanding section H of this Agreement, if the Government of the Republic of the Marshall Islands takes action to suspend or revoke the authorization of any Recruiter under section D of this Agreement, such Government agrees to notify promptly the Government of the United States of any such action, and the basis thereof, and to provide the Government of the United States with a copy of all registrations and registration updates, and attestations, filed by such Recruiter, and the record of any such actions and proceedings taken against the Recruiter.

2. In the event of revocation under subsection (3) of section D of this Agreement, the Government of the Republic of the Marshall Islands shall obtain the consent of the Government of the United States prior to reinstatement.

F. Law Enforcement Cooperation

The Government of the Republic of the Marshall Islands agrees to cooperate with the Government of the United States in any law enforcement action that the Government of the United States may undertake arising out of any employment involving an RMI citizen in the United States. Notwithstanding subsection (1) of section H of this Agreement, the Government of the Republic of the Marshall Islands shall promptly provide the Government of the United States, upon request, with copies of all documents and information required under this Agreement in connection with any such law enforcement action undertaken by the Government of the United States.

G. Public Information

The Government of the Republic of the Marshall Islands agrees to disseminate information to its citizens necessary to ensure that RMI citizens are fully aware of their rights under this Agreement through appropriate means, including distribution at schools, universities, job training facilities, and through printed and electronic media.

H. Sharing of Recruiter Information

1. The Government of the Republic of the Marshall Islands agrees to provide the Government of the United States, through the U.S. diplomatic representative to the Republic of the Marshall Islands, a copy of all required documents and information collected under this Agreement on a quarterly basis.
2. The Government of the Republic of the Marshall Islands agrees to provide the Government of the United States access, upon request, to all information required under this Agreement, and any other information in its possession regarding the activities of any Recruiter relevant to the recruitment, placement, or employment of any RMI citizens in the United States.
3. The Government of the United States agrees to provide the Government of the Republic of the Marshall Islands, as appropriate, any information in its possession regarding the activities of any Recruiter relevant to the recruitment, placement, or employment of any RMI citizens in the United States.
4. Any information or documentation required under this Agreement shall be made available for public inspection in the Republic of the Marshall Islands and in the United States, except where protected by applicable law in the respective countries.

I. Consultations

The Government of the United States and the Government of the Republic of the

Marshall Islands shall consult regularly as to whether the rights and privileges of persons admitted to the United States under the Compact for the purpose of obtaining employment are adequately protected, and if the Governments determine that such rights and privileges are not adequately protected, shall discuss appropriate steps to ensure that such rights are protected.

J. Effective Date, Amendment, and Duration

1. This Agreement shall enter into effect simultaneously with the Compact, as amended.
2. This Agreement may be amended or terminated at any time by mutual consent of the Government of the United States and the Government of the Republic of the Marshall Islands, in a manner consistent with their respective Constitutional processes.
3. This Agreement may not be amended or terminated unilaterally by either the Government of the United States or the Government of the Republic of the Marshall Islands.
4. This Agreement shall remain in effect for the period in which the Compact, as amended, remains in effect, unless it is mutually terminated under subsection (2) of this section.

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

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF THE MARSHALL
ISLANDS:

Appendix IV

Fiscal Procedures Agreement

**Agreement Concerning Procedures for the Implementation of United States
Economic Assistance Provided in the Compact, as amended, of Free Association
Between the Government of the United States of America and
the Government of the Republic of the Marshall Islands**

This Agreement is entered into by the Government of the United States and the Government of the Republic of the Marshall Islands in recognition of their mutual desire to fulfill their obligations and responsibilities in the implementation of United States Economic Assistance, Programs, and Services as Set Forth in Title Two of the Compact, as amended, and section 105(f)(1)(B) of the Compact of Free Association Amendments Act of 2003. The purpose of this Agreement is to record the procedures that are most efficient, economical, and beneficial to the discharge of the obligations and responsibilities of each government and which each party agrees to implement and abide by. Except as otherwise provided, this Agreement shall be construed and implemented in a manner consistent with the Compact, as amended.

**Article I
Definition of Terms**

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

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

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

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

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

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

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

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

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

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

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

“Compact” means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99-239 (Jan. 14, 1986) and went into effect with respect to the Republic of the Marshall Islands on October 21, 1986.

“Compact, as amended,” means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99-239 (Jan. 14, 1986) and went into effect with respect to the Republic of the Marshall Islands on October 21, 1986, as amended with respect to the Republic of the Marshall Islands, following exchange of instruments of approval confirming the completion of the necessary domestic processes for entry into force by both parties.

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

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

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

“Economic Assistance, Programs, and Services as Set Forth in Title Two” means the annual assistance provided to the Government of the Republic of the Marshall Islands by the Government of the United States under the Compact, as amended. It does not include annual payments under section 212 of the Compact, as amended. It would include any financial assistance provided pursuant to section 222 of the Compact, as amended.

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

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

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

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

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

“Grant” means an award of sector-based or other financial assistance, or an award under the Supplemental Education Grant, including cooperative agreements, in the form of money, or property in lieu of money, by the Government of the United States to the Government of the Republic of the Marshall Islands in accordance with section 211 of Title Two of the Compact, as amended, or section 105(f)(1)(B) of the Compact of Free Association Amendments Act of 2003. The term does not include technical assistance instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Acceptance of a Grant from the Government of the United States creates a legal duty on the part of the Government of the Republic of the Marshall Islands to use funds in accordance with the terms and conditions of the Grant.

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

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

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

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

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

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

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

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

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

“MUORA” means the “Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association,” as amended.

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

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

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

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

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

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

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

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

“Sector Grant” means a Grant described in Article II, section 1 for education, health care, public infrastructure, the environment, public sector capacity building, or private sector development, but does not include the Supplemental Education Grant.

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

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

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

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

“Supplemental Education Grant” means the Grant described in section 105(f)(1)(B)(iii) of the Compact of Free Association Amendments Act of 2003 supplementing the Sector Grant for education.

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

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

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

that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

“United States” means the United States of America.

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

Article II

Economic Assistance Implementation

1. Subject to the terms and conditions of this Agreement, and except as otherwise provided, the Government of the United States shall provide financial assistance on an annual grant basis for a period of 20 years (or longer in the case of assistance provided under section 211(b) of the Compact, as amended) in the amounts set forth in section 217 of Title Two of the Compact, as amended. Such Grants shall be used for assistance in education, health care, public infrastructure, the environment, public sector capacity building and private sector development, or for other areas as mutually agreed, with priorities in the education and health care sectors. To the extent appropriated for that purpose, the Government of the United States shall also provide the Supplemental Education Grant in the amount of \$6,100,000 for fiscal year 2005, and an equivalent amount, as adjusted for inflation under section 218 of the Compact, as amended, for each of fiscal years 2006 through 2023.

(a) 1. The education Sector Grant shall support and improve the educational system of the Republic of the Marshall Islands, and develop the human and material resources necessary for the Republic of the Marshall Islands to perform these services. Emphasis should be on advancing a quality basic education system by increasing the achievement levels of students in the primary and secondary education system based on performance standards and assessments appropriate for the Republic of the Marshall Islands; providing secondary education or vocational training to qualified students; improving management and accountability within the educational system; raising the level of staff quality, including teacher training, with the ultimate aspiration of increasing the number of highly qualified teachers in the classroom; and improving the relevance of education to the needs of the economy.

2. Funds awarded under the Supplemental Education Grant shall be used to support the goals and objectives of the education portion of the Medium-Term Budget and Investment Framework and shall be used to support additional direct educational services at the local school level focused on school readiness, early childhood education, primary and secondary education, vocational training, adult and family literacy, and the smooth transition of students from high school

to postsecondary educational pursuits or rewarding career endeavors. Direct educational services include but are not limited to: activities designed to prepare and enable students to participate in early childhood educational activities, including nutritional health, transportation, and social services; activities designed to improve student achievement or the quality of education; instructional services for students that enhance the services supported by the education Sector Grant, e.g., technology labs or specialized reading programs; teacher training and professional development; curriculum development; and instructional materials; workforce and manpower development training programs and assistance; alternate secondary programs for out of school and pushed out youth; and activities to improve parental and community involvement at all levels of education. Funds may also be used to provide aid to students at post-secondary institutions based on financial need, and to design and develop innovative and strategic programs or activities that enable the education system to provide improved direct educational services and meet performance accountability requirements. Funds awarded under the Supplemental Education Grant shall not be used for school construction or remodeling; general operational costs (other than general operational costs of programs and activities funded by the Supplemental Educational Grant); or teacher salaries, except for the salaries of teachers, teaching assistants, paraprofessionals, or instructors who are needed to carry out programs or activities supported by the Supplemental Education Grant. Funds awarded under the Supplemental Education Grant are not to be taken into account when satisfying the priority to be given to education and health when awarding Sector Grants under paragraphs (a)(1) above and (b) below.

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

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

(d) The Sector Grant for capacity building shall support the efforts of the Republic of the Marshall Islands to build effective, accountable, and transparent

national and local government and other public sector institutions and systems. Priority should be given to improving economic planning, financial management, auditing, law enforcement, immigration controls, the judiciary, and the compilation and analysis of appropriate statistical indicators with the goal of ensuring that essential functions can be carried out and that essential positions are filled with qualified personnel.

(e) The environment Sector Grant shall increase environmental protection; establish and manage conservation (sustainable use) areas; engage in environmental infrastructure planning, design construction, and operation; and involve the citizens of the Republic of the Marshall Islands in the process of conserving their country's natural resources.

(f) In accordance with section 211(d) of the Compact, as amended, unless otherwise agreed, not less than 30 percent or more than 50 percent of United States annual Grant assistance shall be made available for public infrastructure assistance. With respect to the public infrastructure Sector Grant, the highest priority shall be given to primary and secondary education capital projects and projects that directly affect health and safety, including water and wastewater projects, solid waste disposal projects, and health care facilities. Second priority shall be given to economic development-related projects, including airport and seaport improvements, roads, sea walls, and electrical power expansion that cannot be funded through the rate structure.

(g) For each sector mentioned in this Article, annual financial assistance to support the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll as specified in section 211(b)(1) of Title Two of the Compact, as amended, shall be included in the medium-term strategic budget and investment framework referenced in section 211(e) of the Compact, as amended, submitted by the Government of the Republic of the Marshall Islands, and distributed among the Grants annually awarded to and managed by that Government. Such assistance shall cover the period as set forth in the MUORA.

(h) In conjunction with section 321(a) of the Compact, as amended, the Government of the United States shall provide to the Government of the Republic of the Marshall Islands annual Grants of \$1.9 million adjusted for inflation under section 218 of the Compact, as amended, in accordance with section 211(b)(2) thereof which shall be included in the medium-term budget and investment framework referenced in section 211(e) of the Compact, as amended, to address the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within the Kwajalein Atoll with the emphasis on the Kwajalein landowners most impacted by the United States presence on Kwajalein Atoll. This assistance shall be used for purposes of affordable housing, educational and general health improvements, and other general living condition improvements for that community.

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

3. The Government of the United States shall make annual contributions on or about the beginning of the Fiscal Year, into a trust fund established in accordance with sections 216 and 217 of Title Two of the Compact, as amended. Specific terms regarding fund investment, management, and use of proceeds are set forth in a separate agreement which shall enter into force simultaneously with the Compact, as amended.

4. In addition to amounts provided under Section 211(a)(4) of Title Two of the Compact, as amended, the Government of the United States shall provide funding adjusted for inflation in accordance with section 218 of the Compact, as amended, and section 104(j) of the Compact of Free Association Amendments Act of 2003, for each fiscal year from 2004 through 2023 for the training of judges and officials of the judiciary of the Republic of the Marshall Islands, in cooperation with the Pacific Islands Committee of the Ninth Circuit Judicial Council. The Implementing Agency shall provide an annual grant for this purpose based on a scope of work, including specific performance indicators, as the Implementing Agency may agree with the Government of the Republic of the Marshall Islands and the Pacific Islands Committee of the Ninth Circuit Judicial Council. The annual grant shall be subject to Article VI of this Agreement or to other grant regulations appropriate to the grantee.

5. Except as otherwise provided in the Compact, as amended, and in this Agreement, the amounts stated in Title Two of the Compact, as amended, shall be adjusted for each Fiscal Year by the percent that equals two-thirds of the percent change in the United States Gross Domestic Product Implicit Price Deflator, or five percent, whichever is less in the applicable Fiscal Year, using the beginning of Fiscal Year 2004 as a base. Notwithstanding section 218 of the Compact, as amended, as of Fiscal Year 2015, if the United States Gross Domestic Product Implicit Price Deflator average for Fiscal Years 2009 through 2013 is greater than the United States Gross Domestic Product Implicit Price Deflator average for Fiscal Years 2004 through 2008, then the amounts stated in Title Two of the Compact, as amended, and amounts awarded under the Supplemental Education Grant shall be adjusted for each Fiscal Year by the percent that equals the full percent change in the United States Gross Domestic Product Implicit Price Deflator, using the beginning of Fiscal Year 2014 as a base. The inflation adjustment shall be done prior to depositing the amounts set forth in section 217 of Title Two of the Compact, as amended, into the trust fund. After year one, the annual change will use an additive percentage change formula. The percent change shall be calculated to two decimal points (xx.xx%) by subtracting the previous calendar year third quarter GDP index from the GDP index of the current calendar year’s third quarter, dividing the result by the base

year's index (normalized base year equals 100). Funds arising from inflation adjustments shall be available in accordance with the Compact, as amended.

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

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

Article III Joint Economic Management

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

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

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

4. Appointments by the Government of the United States and the Government of the Republic of the Marshall Islands shall be made not later than 90 days after the entry into force of this Agreement. The chairperson and members of the Committee shall serve a term of two years and may be reappointed.

5. The duties of the Committee shall be to:

(a) Review the medium-term budget and investment framework of the Government of the Republic of the Marshall Islands, and evaluate the progress made by the Government of the Republic of the Marshall Islands to foster economic advancement and budgetary self-reliance in relation to its written goals and performance measures;

(b) Consult with providers of United States Federal Grant programs and services and other bilateral and multilateral partners to coordinate the use of development assistance from all sources-as it relates to the allocation of financial assistance under the Compact, as amended.

- (c) Review Audits called for in the Compact, as amended, or this Agreement and actions taken or being taken to reconcile problems and qualified findings;
- (d) Review performance outcomes and other reported data in relation to the previous year's Grant funding levels, terms, and conditions;
- (e) Review and approve Grant allocations, performance objectives, and, where appropriate, assessment tools for the upcoming year;
- (f) Review and approve any change proposed by the Government of the Republic of the Marshall Islands to the sectors or other areas to receive economic assistance set forth in Title Two of the Compact, as amended.
- (g) Evaluate progress, management problems and any shifts in priorities in each sector or other area, and identify ways to increase the effectiveness of United States assistance;
- (h) Review quarterly trust fund investment reports;
- (i) Comment on the comprehensive report prepared by the Government of the Republic of the Marshall Islands as required by section 215 of Title Two of the Compact, as amended, before it is submitted to the President of the United States; and
- (j) Attach special conditions to any or all annual Grant awards to improve program performance and fiscal accountability, and ensure progress toward macroeconomic goals.

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

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

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

9. In making decisions concerning the use of funds in the Supplemental Education Grant, the Committee shall take appropriate account of plans for such use initiated by (i) the Government of the Republic of the Marshall Islands; (ii) the agreement between the United States Secretaries of Education, Health and Human Services, Labor, and the Interior; and, (iii) Article II, Paragraph 1(a)(2) of the Agreement.

Article IV Grants Administration

1. Grant funds, may not be used for any purpose other than that for which they are awarded. Unobligated funds shall carry over to the following Fiscal Year for reallocation to the applicable Grant, unless otherwise provided in this Agreement or the Compact, as amended.
2. All terms and conditions imposed on the Government of the Republic of the Marshall Islands shall apply to Sub-Grantees.
3. The President of the Republic of the Marshall Islands, acting on behalf of the national and local governments of the Republic of the Marshall Islands, shall be responsible for all certifications to the Government of the United States pursuant to this Agreement.
4. Grant Conditions:
 - (a) General terms and conditions of Grants shall include conformance to the plans, strategies, budgets, project specifications, architectural and engineering specifications, performance standards, and other criteria developed by the Government of the Republic of the Marshall Islands and concurred with by the Committee.
 - (b) After consultation with the Government of the Republic of the Marshall Islands, the Government of the United States may recommend that the Committee attach certain terms and conditions to an annual allocation to assist the Government of the Republic of the Marshall Islands to achieve the goals of the Grant.
 - (c) Other special conditions or restrictions may be required by the Government of the United States during the course of the Grant year if it determines that the Government of the Republic of the Marshall Islands or a Sub-Grantee has a history of unsatisfactory performance, is not financially stable, has not conformed to terms and conditions of previous awards, or is otherwise not responsible. Special conditions or restrictions may include:
 - (1) Payment on a reimbursement basis;
 - (2) Withholding authority to proceed to the next phase of the Grant until receipt of evidence of acceptable performance within a given period;
 - (3) Requiring additional, more frequent and/or detailed financial reports;
 - (4) Providing for additional project monitoring;
 - (5) Requiring the acquisition of technical or management assistance;
and

(6) Requiring additional Prior Approvals.

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

- (1) Nature of the special conditions or restrictions;
- (2) Reasons for imposing them;
- (3) Corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and,
- (4) Method of requesting reconsideration of the conditions and restrictions imposed.

(e) If the explanation from the Government of the United States or any subsequent discussion between the Government of the United States and the Government of the Republic of the Marshall Islands is disputed, the Government of the Republic of the Marshall Islands may submit an Appeal in writing to the Implementing Agency of the Government of the United States. This Appeal must be initiated within 30 days of the receipt of a Grant award or a notification of intent to impose special conditions. In such case, the Appeal for reconsideration will be handled in accordance with established administrative procedures of the Implementing Agency.

5. Payment Procedures:

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

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

- (1) The first payment of each Fiscal Year for Operational Grants will be sufficient to fund financial requirements for the first two months

of each Fiscal Year. All other payments will be made on or about the first Business Day of each month (except that no payment shall be made on the second month of each Fiscal Year) to fund financial requirements of that month.

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

(c) Breach of Terms and Conditions :

- (1) Withholding of Payments. The Government of the United States may Withhold payments, including reimbursements, with respect to any Grant if the Government of the Republic of the Marshall Islands is in breach of the terms and conditions of Title Two of the Compact, as amended, or this Agreement with respect to such Grant, fails to comply with any award condition with respect to such Grant, or is indebted to the Government of the United States. The amount of the Withholding shall be proportional to the breach of the term or condition. If the Government of the Republic of the Marshall Islands disputes the Withholding of payments with respect to a Grant, it may submit an Appeal in writing to the Implementing Agency of the Government of the United States. That Appeal must be initiated within 30 days of the receipt of notice of Withholding of payment. In such case, the Appeal for reconsideration must be handled in accordance with established administrative procedures of the Implementing Agency. Cash withheld for failure to comply with Grant terms shall be released upon subsequent compliance, provided that such Grant has not been revoked pursuant to any applicable Appeal or dispute resolution proceeding.
- (2) Suspension. Notwithstanding any other provision of this Agreement, the Government of the United States may suspend payment with respect to any or all sectors and areas in the event that the Government of the United States reasonably determines that the Government of the Republic of the Marshall Islands has engaged in a pattern of gross negligence, willful misconduct or material breach of terms and conditions with respect to the use of financial assistance provided under the Compact, as amended, provided that such determination is made on a sector by sector or area basis. If the Government of the Republic of the Marshall Islands disputes the Suspension of Grant assistance under this subparagraph, it may seek to resolve the matter through the conference and dispute resolution procedures set forth in Article II of Title

Four of the Compact, as amended. The Suspension shall stand unless otherwise determined through the conference and dispute resolution process of Article II of Title Four of the Compact, as amended.

Article V

Pre-Award Requirements

1. Planning As a Requirement of Economic Assistance:

(a) No later than 90 days after the entry into force of Title Two of the Compact, as amended, and thereafter at intervals no greater than three years from that date, the Government of the Republic of the Marshall Islands shall submit to the Government of the United States a “Medium-Term Budget and Investment Framework” pursuant to section 211(f) of Title Two of the Compact, as amended, (the “MTBIF”). The MTBIF shall be strategic in nature, identify the multi-year priorities, budget and implementation plan of the Government of the Republic of the Marshall Islands to promote economic advancement and budgetary self-reliance, and contain the goals for the sectors described in section 211(a) of the Compact, as amended, for the assistance described in section 211(b) thereof, and for the Supplemental Education Grant. Each of the sectors or areas so named, or other sectors as agreed by the Committee, shall be accorded specific treatment in the framework. Such sector or other strategies and goals shall be continuously reviewed and updated through the annual budget process. Those portions of the MTBIF that contemplate use of United States Grant funds require the concurrence of the Committee.

(b) United States Grant assistance shall be made available in accordance with annually updated MTBIF implementation steps developed by the Government of the Republic of the Marshall Islands in conjunction with its budget process. The Government of the Republic of the Marshall Islands shall submit its proposal for the division of annual economic assistance among the sectors or other areas described in Article II of this Agreement and, for each sector or area, expenditures and related performance goals and measures for the next Fiscal Year to the Government of the United States for review no later than 90 days prior to the beginning of the Fiscal Year. The implementation plan shall also address which activities are to be funded by the Supplemental Education Grant. Annual Grant budgets by sector or other area should provide:

- (1) Actual expenditures in the most recently completed Fiscal Year;
- (2) Appropriated Grant amounts and estimated expenditures in the current Fiscal Year;
- (3) Estimated Grant requirements for the upcoming Fiscal Year, including a detailed breakdown of personnel expenditures and compensable staff years, travel and other objects;
- (4) Grant objectives, specific performance indicators and assessment methods for each sector or area, including, in the case of education, programs and activities supported by the Supplemental Education Grant.

- (5) Funds provided to each sector or other area in the current and upcoming Fiscal Years by United States Federal programs, international donors and local or national governments; and
 - (6) Any available planning estimates for ensuing Fiscal Years.
- (c) Changes to Grant priorities or performance goals of the Government of the Republic of the Marshall Islands during the course of the Grant year shall have the concurrence of the Government of the United States.
- (d) In accordance with section 215 of Title Two of the Compact, as amended, the Government of the Republic of the Marshall Islands shall prepare and submit an Annual Report in February of each year to the President of the United States on the use of Grant assistance and other assistance provided by the Government of the United States during the previous Fiscal Year, and on the progress of the Republic of the Marshall Islands in meeting mutually agreed program and economic goals.
- (e) The Government of the Republic of the Marshall Islands shall develop and submit an infrastructure development and maintenance plan (“IDMP”) to the Government of the United States for review. The IDMP may be included as part of the MTBIF. Projects may be phased over two or more years. The Government of the Republic of the Marshall Islands shall maintain and update a list of integrated priorities for new and reconstructed capital infrastructure and cost requirements in conjunction with its annual budget process. This project list and any revision thereto shall be submitted to the Government of the United States. Insofar as Grant funds are involved, the IDMP shall be subject to the concurrence of the Committee.

2. Annual Budget Consultation:

- (a) The Government of the United States shall evaluate the proposed Grant budgets of the Government of the Republic of the Marshall Islands to ascertain consistency with the funding requirements of the Compact, as amended, and its related agreements, the appropriateness of performance objectives and indicators, and the adequacy of expenditures in achieving stated purposes. Upon the completion of the review, the Government of the United States and the Government of the Republic of the Marshall Islands shall confer to discuss any need for special terms or conditions and to make adjustments to the annual Grant budgets or implementation plans as may be appropriate prior to the awarding of Grants. This consultation shall occur before the meeting of the Committee but not later than 30 days after the receipt of the implementation plans and proposed budgets by the Government of the United States.
- (b) The Committee shall receive and review the progress reports and annual proposed budgets and implementation steps and strategies of the Government of the Republic of the Marshall Islands, and approve Grant allocations no later than 30 days before the beginning of the Fiscal Year. Consistent with the provisions set forth in Article III of this Agreement, the Committee may establish special Grant

terms and conditions or other actions it deems appropriate to help the Government of the Republic of the Marshall Islands meet the stated goals and objectives of the Compact, as amended.

3. Notification of Grant Acceptance:

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

(b) Return of signed Grant awards by the President of the Republic of the Marshall Islands shall signify acceptance of the funding amounts and any Grant terms and conditions that may be attached to the sector or other Grants.

Article VI
Post-Award Requirements

1. Financial Administration:

(a) Standards for Financial Management Systems:

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

- (i) Permit preparation of reports required by this Agreement and the Compact, as amended, and,
- (ii) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have been used in compliance with the provisions of the Compact, as amended, and applicable agreements.

(2) The financial management systems used by the Government of the Republic of the Marshall Islands shall meet the following standards:

- (i) Financial Reporting. Accurate, current, and complete disclosure of the financial results of United States funded activities shall be in accordance with the reporting requirements of the Grant or Sub-Grant.
- (ii) Accounting Records. Accounting records shall adequately identify the source and application of funds provided for all Grant activities. These records must contain information pertaining to awards and authorizations, Obligations,

unobligated balances, assets, liabilities, outlays or expenditures, and income.

- (iii) Internal Control. The system shall maintain effective controls and accountability for all Grant and Sub-Grant cash, Real Property and personal property, and other assets to safeguard and ensure uses are solely for authorized purposes.
- (iv) Budget Control. Actual expenditures or outlays must be compared with budgeted amounts for each Grant or Sub-Grant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the Grant terms and conditions. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- (v) Allowable Cost. Applicable cost principles and Grant terms shall be followed in determining the reasonableness and allowability of costs. An Indirect Cost rate may not be charged against funds provided pursuant to the Compact, as amended.
- (vi) Source Documentation. Accounting records shall be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, Contract and Sub-Grant award documents, and other financial data.
- (vii) Cash Management. Compact payments shall be made in accordance with Article IV of this Agreement. To the extent that the Government of the Republic of the Marshall Islands awards Sub-Grants to local governments or other entities, it shall establish reasonable procedures to ensure the timely receipt of reports on cash balances and cash disbursements to enable the preparation of complete and accurate cash transactions reports.
- (viii) The Government of the United States may review the adequacy of the financial management system of any recipient of financial assistance provided pursuant to the Compact, as amended, at any time.

(b) Financial Reports:

- (1) Quarterly Financial Reports. The Government of the Republic of the Marshall Islands shall provide the following financial reports each fiscal quarter to the Government of the United States. These

reports will be used to monitor the general budget and fiscal performance of the Government of Republic of the Marshall Islands and to monitor disbursement or outlay information for each sector or other Grant.

- (i) The Government of the Republic of the Marshall Islands shall submit the following reports 30 days after the end of each fiscal quarter: (1) a statement of revenues and expenditures for governmental fund types, and (2) a comparison of budget and actual expenditures by function for governmental fund types.
 - (ii) The quarterly report for all Operational Grants shall contain a budget execution report for each function and include major offices, cost centers and budget activities.
 - (iii) For all Grants provided pursuant to the Compact, as amended, the Government of the Republic of the Marshall Islands shall submit a quarterly financial status report on form SF-269 or any successor thereto, as issued by the Government of the United States from time to time (“Standard Form SF-269”) and a quarterly federal cash transactions report on form SF-272 or any successor thereto, as issued by the Government of the United States from time to time (“Standard Form SF-272”). The Government of the Republic of the Marshall Islands may use the Federal forms available for this purpose or, as mutually agreed, provide the information in an alternative format.
- (2) Annual Financial Report(s). The Government of the Republic of the Marshall Islands shall submit a final cash transactions report for each sector or other Grant 90 days after the end of the funding period. For Operational Grants, the purpose of this report is to establish the amount of unobligated Grant funding that will carry over to subsequent Fiscal Years.
 - (3) The Government of the United States may extend the due date of any financial report upon receiving a justified request from the Government of the Republic of the Marshall Islands.
 - (4) Accounting Basis. The Government of the Republic of the Marshall Islands shall report on a cash or accrual basis consistent with its own policies. Provided the information is not changed in substance, the format of the report may be adapted when reporting is accomplished with the aid of automated data processing Equipment.

(c) Period of Availability of Grant Funds:

- (1) Funding for each Grant, other than Grants for infrastructure and other Grants that are not Operational Grants, shall generally be available for one year. Funding for infrastructure and projects that are not funded by Operational Grants shall be available for obligation for the time period described in the terms and conditions of the Grants.
- (2) The Government of the Republic of the Marshall Islands shall liquidate all Obligations incurred under a Grant not later than 90 days after the end of the funding period or as otherwise mutually agreed, to coincide with the submission of the final annual cash transactions report.

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

- (1) Budget Changes. Re-allocation of funds from one sector to another sector shall not be permitted during the course of the Grant year. Re-allocation of Supplemental Education Grant funds for activities outside of those approved to be supported by that Grant is prohibited. Except as set forth below, the Government of the Republic of the Marshall Islands may reprogram up to 15 percent of the total budget or \$500,000, whichever is less, within either an approved Sector Grant or the Supplemental Education Grant to meet unanticipated requirements and make limited program changes to approved projects. However, unless waived by the Government of the United States, the following changes in budgets and projects during the course of the Grant year shall require prior written approval of the United States:
 - (i) Budget Changes in Non-Construction Projects. Except as stated in the Grant document, the Government of the Republic of the Marshall Islands shall obtain Prior Approval whenever any of the following changes is anticipated: (1) any revision that would result in the need for additional funding over and above the original award, and (2) cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities that exceed or are expected to exceed the threshold described above in sub-clause (1) of clause (d).
 - (ii) Construction Projects. The Government of Republic of the Marshall Islands shall obtain prior written approval for any budget revision that would result in the need for additional funds.

(2) Programmatic Changes. The Government of the Republic of the Marshall Islands shall obtain Prior Approval whenever any of the following actions is anticipated:

- (i) Any revision of the scope or performance objectives of the Grant or infrastructure project;
- (ii) The need to extend the period of funding availability;
- (iii) Changes in key persons specifically named in a Grant award; and,
- (iv) The contracting out or otherwise obtaining the services of a third party to perform non-construction related activities that are central to the purposes of the Grant. This approval is in addition to the requirements described below in clause (j) but does not apply to the procurement of Equipment, Supplies, and general support services.

(e) Real Property:

(1) Title or Long-Term Use Rights. Subject to the Obligations and conditions set forth in this section, title or long-term use rights to Real Property acquired with funds provided pursuant to the Compact, as amended, shall vest upon acquisition in the Government of the Republic of the Marshall Islands.

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

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

- (i) Retention of Title or Long-Term Use Rights. If the Real Property will continue to be used for a public purpose, the Government of the Republic of the Marshall Islands shall retain title or long-term use rights.
- (ii) Sale of Property. The Government of the Republic of the Marshall Islands may sell the property, if owned, and reimburse the Compact accounts held by the Government of the United States. The amount due shall be calculated by

applying the percentage of the original price paid by United States funding to the proceeds of the sale after deducting any actual and reasonable expenses. Any funds reimbursed shall be considered unobligated funding under the Compact, as amended, to be reallocated to sector or other Grants.

- (iii) Transfer of Title. The Government of the Republic of the Marshall Islands may transfer title to a third party approved by the Government of the United States.

(f) Equipment:

- (1) Title. Subject to the Obligations and conditions set forth in this section, title to Equipment acquired with funds provided pursuant to the Compact, as amended, will vest upon acquisition in the Government of the Republic of the Marshall Islands.
- (2) Consistent with paragraphs (3) through (5) of this clause (f), the Government of the Republic of the Marshall Islands shall use, manage and dispose of Equipment acquired with funds provided pursuant to the Compact, as amended, in accordance with its laws and procedures.
- (3) Use:
 - (i) Equipment shall be used in the program or project for which it was acquired as long as needed. When no longer needed for the original purpose, the Equipment may be used in other activities currently or previously supported by an agency of the Government of the United States.
 - (ii) Equipment acquired with Grant funds provided pursuant to the Compact, as amended, may be used by other projects or programs currently or previously supported by the Government of the United States, provided such use does not interfere with the work on activities funded pursuant to the Compact, as amended, for which such Equipment was originally acquired.
 - (iii) Unless specifically permitted by Grant terms and conditions, Equipment acquired with funds provided pursuant to the Compact, as amended, to provide services for a fee may not be used to compete unfairly with private companies that provide equivalent services.
- (4) Management Requirements. Procedures for managing Equipment, whether acquired in whole or in part with funds provided pursuant to the Compact, as amended, shall meet the following minimum requirements:

- (i) Property records shall be maintained which include: (1) a description of the property, (2) a serial number or other identification number, (3) the source of property, (4) who holds title, (5) the acquisition date and cost of the property, (6) the percentage of United States funding used in the purchase, (7) the location, use and condition of the property, and (8) any ultimate disposition data including the date of disposal and sale price.
 - (ii) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
 - (iii) A control system shall be developed to ensure adequate safeguards against property loss, damage or theft. Any loss, damage, or theft shall be investigated.
 - (iv) Adequate maintenance procedures shall be developed to keep the property in good condition.
 - (v) If the property is sold, proper sales procedures shall be established to ensure the highest possible return.
- (5) Disposition. When Equipment acquired with funds provided pursuant to the Compact, as amended, is no longer needed for the original project or program, or for other activities supported by other agencies of the Government of the United States, it shall be disposed as follows:
- (i) Items of Equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the Government of the United States.
 - (ii) Items of Equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold. The Government of the Republic of the Marshall Islands may sell the property at fair market value and reimburse the Compact accounts held by the Government of the United States. Any such funds shall be considered unobligated funding for reallocation to sector or other Grants.
- (g) Supplies. Title to Supplies acquired with funds provided pursuant to the Compact, as amended, will vest, upon acquisition, in the Government of the Republic of the Marshall Islands.
- (h) Sub-Awards to Debarred and Suspended Parties. The Government of the Republic of the Marshall Islands shall not award funds received pursuant to the Compact, as amended, to any party which is debarred, suspended or otherwise excluded from and ineligible for participation in United States assistance

programs under Executive Order 12549, "Debarment and Suspension," issued by the President of the United States on February 18, 1986.

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

- (1) The Government of the Republic of the Marshall Islands shall seek opportunities to earn Program Income to defray government program costs and shall establish fees for services in the areas of public utilities, health services, and any other government-owned or operated enterprises to comply with the terms and conditions of certain sector or other Grants.
- (2) Unless otherwise authorized by the Grant, Program Income shall remain with the programs in which they are earned, to offset Operational Costs and capital costs not covered by funds provided pursuant to the Compact, as amended.

(j) Procurement:

- (1) The Government of the Republic of the Marshall Islands may use its own procedures for procurement, whether done by government or its Sub-Grantees, provided that they meet the standards identified in this section.
- (2) The Government of the Republic of the Marshall Islands shall maintain a Contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their Contracts or purchase orders.
- (3) A written code of conduct shall be maintained by the Government of the Republic of the Marshall Islands 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 Republic of the Marshall Islands shall participate in the selection, award, or administration of a Contract supported by funds provided pursuant to the Compact, as amended, if a conflict of interest, real or apparent, is involved.
 - (i) Officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

- (ii) The Government of the Republic of the Marshall Islands may set minimum rules where the financial interest is not substantial or the gift is unsolicited and of nominal intrinsic value.
 - (iii) To the extent permitted by law or regulations of the Government of the Republic of the Marshall Islands, the standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations.
- (4) Awards shall be made only to contractors who possess the ability to perform responsibly and successfully under the terms and conditions of a proposed procurement. Selection must consider contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- (5) Records shall be maintained with sufficient detail to document the history of a procurement, including but not limited to the rationale for and method of procurement, the selection of Contract type, contractor selection or rejection, and the basis for the Contract price.
- (6) The Government of the Republic of the Marshall Islands shall use time and material type Contracts only after determining that no other Contract is suitable and if the Contract includes a ceiling price that the contractor exceeds at its own risk.
- (7) The Government of the Republic of the Marshall Islands shall be solely responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These issues include but are not limited to source evaluation, protests, disputes, and claims.
- (8) The Government of the Republic of the Marshall Islands shall have protest procedures to handle and resolve procurement disputes.
- (9) Competition:
 - (i) All procurement transactions shall be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) requiring unnecessary experience and excessive bonding; (3) noncompetitive pricing practices between firms or between affiliated companies; (4) making noncompetitive awards to consultants on retainer; (5) organizational conflicts of interest; (6) specifying a “brand

name" instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and (7) any arbitrary action in the procurement process.

- (ii) Geographic preferences shall be allowed only if its application leaves an appropriate number of qualified firms to compete in the contract, and if there is no discrimination against race, religion or national origin.
- (iii) Written selection procedures shall govern procurement. These procedures shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurement, contain features that unduly restrict competition.
- (iv) The Government of the Republic of the Marshall Islands shall ensure that all pre-qualified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Potential bidders shall not be precluded from qualifying during the solicitation period.

(10) Methods of Procurement:

- (i) Procurement By Small Purchase Procedures. Small purchase procedures are those relatively simple and informal methods for securing services, Supplies, or other property that do not cost more than \$100,000. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.
- (ii) Procurement By Sealed Bids. Sealed bids are those bids that are publicly solicited for which a firm-fixed-price Contract is awarded to the lowest bidder who meets all the terms and conditions of the invitation. The sealed bid method is the preferred method for procuring construction, if the conditions of sub-clause (10)(iii) apply.
- (iii) The following conditions shall apply to sealed bidding: (1) a complete, adequate, and realistic specification or purchase description must be available; (2) two or more responsible bidders must be willing and able to compete effectively and for the business; (3) the procurement must lend itself to a firm fixed price contract; and (4) the selection of the successful bidder can be made principally on the basis of price.

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

- (v) Procurement By Competitive Proposals. Competitive proposals are normally conducted when more than one source submits an offer for either a fixed-price or cost-reimbursement type contract, and when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements shall apply: (1) requests for proposals shall be publicized and identify all evaluation factors and their relative importance; (2) proposals shall be solicited from an adequate number of qualified sources; (3) the Government of the Republic of the Marshall Islands shall have a method for conducting technical evaluations of the proposals and for selecting awardees; and (4) awards shall be made to the firm whose proposal is most advantageous to the program. Competitive proposals may also be used when price is not a factor but only to procure architectural and engineering services. It cannot be used to purchase other types of services provided by architectural and engineering firms that are a potential source to perform the proposed effort.

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

data, the projections of the data, and the evaluation of the specific elements of costs and profits.

- (11) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
- (12) United States Review:
 - (i) The Government of Republic of the Marshall Islands shall make available, upon request of the Government of the United States, technical specifications on proposed procurements.
 - (ii) The Government of Republic of the Marshall Islands shall make available, upon request of the Government of the United States, pre-award procurement documents, including but not limited to requests for proposals or invitations for bids and independent cost estimates, when:
 - (1) procurement procedures fail to comply with the standards set forth in this section;
 - (2) the procurement is expected to exceed \$100,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) the proposed award is more than \$100,000 and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (4) a proposed Contract modification changes the scope of a Contract or increases the Contract amount by more than \$100,000.
- (13) Bonding Requirements. For construction or facility improvement Contracts or sub-Contracts exceeding \$100,000, the Government of the United States may accept the bonding policy and requirements of the Grantee or Sub-Grantee provided the United States determines that its interests are adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
 - (i) Bid Guarantee. Each bidder shall guarantee an equivalent of five percent of the bid price pursuant to a bid guarantee that complies with the requirements of this clause (i). The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying the bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
 - (ii) Performance Bond. The contractor shall execute a Performance Bond for one hundred percent of the Contract price. A Performance Bond is one executed in connection

with a Contract to secure fulfillment of all the contractor's obligations under such contract.

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

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

- (i) For Contracts in excess of \$100,000: administrative, contractual, or legal remedies in instances where contractors violate or breach Contract terms, and the provision of such sanctions and penalties as appropriate;
- (ii) For Contracts in excess of \$100,000: Termination for cause and for convenience by the Grantee or Sub-Grantee including the manner by which it will be effected and the basis for settlement;
- (iii) Compliance with the local statutes regarding kickbacks and corrupt practices;
- (iv) Access by the Government of the Republic of the Marshall Islands and its Sub-Grantees, the Government of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific Contract for the purpose of making audit, examination, excerpts, and transcriptions;
- (v) Retention of all required records for three years after Grantees or Sub-Grantees make final payments and all other pending matters are closed; and
- (vi) Compliance with all applicable standards, orders, or requirements issued under local environmental laws.

(k) Sub-Grants:

- (1) The Government of the Republic of the Marshall Islands will follow its laws and procedures when awarding and administering Sub-Grants. The Governments shall ensure that:
 - (i) Every Sub-Grant includes any clauses required by the Compact, as amended, Grant awards and this Agreement;

- (ii) Sub-Grantees are aware of requirements imposed upon them by the Compact, as amended, Grant awards and this Agreement; and
- (iii) The Sub-Grantee can meet the financial management standards of this Agreement.

2. Program Monitoring, Performance Reports and Records Retention:

(a) Monitoring and reporting Grant program performance by the Government of the Republic of the Marshall Islands:

- (1) The Government of the Republic of the Marshall Islands shall be responsible for the management and monitoring of the day-to-day operations of all Grants and their activities, to assure compliance with all applicable Grant terms and conditions. Monitoring shall cover each program, function, or activity to ensure the achievement of performance goals.
- (2) The Government of the Republic of the Marshall Islands shall submit quarterly performance reports on each Grant. The reports shall be due 30 days after the reporting period.
- (3) The Government of the Republic of the Marshall Islands and the Government of the United States shall agree on a uniform format for performance reports. Performance reports for each Grant shall contain a summary of the following:
 - (i) A comparison of actual accomplishments to the objectives and indicators established for the period;
 - (ii) Any positive events that accelerate performance outcomes;
 - (iii) Any problems or issues encountered, reasons, and impact on Grant activities and performance measures;
 - (iv) Additional pertinent information including, when appropriate, an analysis and explanation of cost overruns.
- (4) The Government of the Republic of the Marshall Islands shall require performance reports from its Sub-Grantees.

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

(c) Significant Developments. Events may occur between the scheduled performance reporting dates that have significant impact upon a Grant supported activity. In such cases, the Government of the Republic of the Marshall Islands

shall immediately inform the Government of the United States when the following conditions arise:

- (1) Problems, delays, or adverse conditions that will materially impair the ability of the Government of the Republic of the Marshall Islands to meet the terms and conditions of Grant. This disclosure must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.
 - (2) Favorable developments that enable the meeting of time schedules and objectives sooner or at less cost than anticipated, or that produce more beneficial results than anticipated.
- (d) The Government of the United States may make site visits as warranted by program needs.
- (e) Waivers and Extensions:
- (1) The Government of the United States may waive any required performance report.
 - (2) The Government of the Republic of the Marshall Islands may extend the due date for any performance report from a Sub-Grantee provided its reporting obligations to the Government of the United States are met.
- (f) Frequency:
- (1) The Government of the United States may prescribe an alternative reporting frequency for a project or program. If no frequency is specified, the report shall be submitted annually.
 - (2) A final report shall be required upon the completion or termination of each infrastructure or capacity building project.
- (g) Due Date:
- (1) When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the end of the Grant year.
 - (2) Final reports shall be due 90 days after the completion or termination of each infrastructure or capacity building Grant project.
- (h) Retention and Access Requirements for Records:
- (1) Applicability. This clause (h) applies to all financial and programmatic records, supporting documents, statistical records, and other records of the Government of the Republic of the

Marshall Islands or its Sub-Grantees which are required to be maintained by this Agreement, program regulations or the Grant agreement, or are otherwise considered as pertinent to program regulations or the Grant agreement. Records of contractors or subcontractors are exempt from the requirements of this clause (h).

- (2) Length of Retention. Except as otherwise provided, records must be retained for three years from the date the Government of the Republic of the Marshall Islands submits the final project report to the Government of the United States.
- (3) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- (4) Access to Records of the Government of the Republic of the Marshall Islands and Its Sub-Grantees. The Government of the United States shall have the right of access to any pertinent books, documents, papers, or other records of the Government of the Republic of the Marshall Islands and its Sub-Grantees which are pertinent to the Grant, in order to make Audits, examinations, excerpts, and transcripts.

3. Enforcement:

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

- (1) Temporarily withhold cash payments pending correction of the deficiency by the Government of the Republic of the Marshall Islands.
- (2) Disallow the use of funds provided pursuant to the Compact, as amended, or the Supplemental Education Grant, and disallow Matching credit for all or part of the activity or action not in compliance.
- (3) Wholly or partly suspend or terminate the current award.
- (4) Take other remedies that may be legally available.

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

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

- (1) The costs result from Obligations that were properly incurred before the effective date of Suspension or Termination, are not in anticipation of it, and, in the case of a Termination, are non-cancelable.
- (2) The costs otherwise would be allowed if the award were not suspended or expired normally at the end of the funding period in which the Termination takes effect.

Article VII

Terms and Conditions of Infrastructure Assistance

1. Infrastructure Grants shall be subject to all laws and regulations governing the use of Grant funds provided by the Government of the United States to the extent these apply to this Agreement. Grant funds may not be used for any purpose other than for which they are offered.
2. Draw downs for reimbursement of actual or Accrued Expenditures shall be accomplished using a format provided by the Government of the United States or as mutually agreed.
3. Prior to the draw down of funds, the Government of the Republic of the Marshall Islands shall provide the following documentation to the Government of the United States:
 - (a) Evidence of title, leasehold agreement, or other legal authority for use of the land upon which the capital improvement project(s) is to be constructed.
 - (b) A detailed project budget for each capital development project. The budget shall include a breakdown of costs (in-house and contracts) for planning, engineering and design, real estate costs, supervision and administration, construction, and construction management and inspection. The format of this submission shall be as mutually agreed by the Government of the Republic of the Marshall Islands and the Government of the United States.
 - (c) A scope of work that describes the work to be performed and the schedule from planning through completion of construction. A certified professional engineer or architect shall sign both the scope of work and budget for each construction project.
4. Prior to the draw down of funds for actual project construction, the Government of the United States may request to review the set of construction plans and specifications, a revised detailed cost estimate, and a detailed construction schedule.

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

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

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

(a) The funds shall be deposited in an operations and maintenance assistance account established by the Government of the Republic of the Marshall Islands.

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

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

8. Reporting Requirements:

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

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

Article VIII

Audit

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

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

2. Audit Responsibility of the Government of the Republic of the Marshall Islands:

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

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

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

3. Audit Officials:

(a) Audit officials from the Government of the United States are the officials and employees of the Government of the United States who are responsible for the discharge of its audit responsibilities, including those of the Comptroller General of the United States and any Inspector General of an agency of the Government of the United States, with programs operating in or otherwise serving the Republic of the Marshall Islands. While present in the Republic of the Marshall Islands for the purposes of this Agreement, audit officials from the Government of the United States shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions, except insofar as such immunity may

be expressly waived by the Government of the United States. The Comptroller General and his duly authorized representatives and other audit officials from the Government of the United States shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents. Such persons shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations. The privileges, exemptions and immunities accorded under this paragraph are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government of the Republic of the Marshall Islands.

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

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

4. Access to Records:

(a) The Government of the Republic of the Marshall Islands shall provide audit officials from the Government of the United States with access, without cost

and during normal working hours, to all records, documents, working papers, automated data, and files which are relevant to the uses of funding received pursuant to the Compact, as amended, by the Government of the Republic of the Marshall Islands. To the extent that such information is contained in confidential official documents, the Government of the Republic of the Marshall Islands shall undertake to extract information that is not of a confidential nature and make it available to the audit officials from the Government of the United States in the same manner as other relevant information or to provide such information from other sources.

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

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

5. Review of Audits:

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

Article IX
Annual Reconciliation and End-of-Grant Requirements

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

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

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

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

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

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

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

(b) Withholding advance payments otherwise due to the Government of the Republic of the Marshall Islands; or

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

Article X

Effective Date, Amendment, and Duration

1. This Agreement shall enter into force the same date as the Compact, as amended.

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

3. Disputes:

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

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

4. This Agreement shall remain in full force and effect until either (i) the expiration or Termination of all assistance provided under section 211 of the Compact, as amended, all grants provided for the purposes authorized under section 105(f)(1)(B) of the Compact of Free Association Amendments Act of 2003, all Grants administered under section 221 of the Compact, as amended, and any financial assistance under section 222 of the Compact, as amended; or, (ii) termination by mutual written consent, whichever occurs first. The Government of the United States shall provide any unobligated Grant balances from the last Fiscal Year of the effectiveness of section 211(a) of the Compact, as amended, except those unobligated Grant balances associated with sections 211(b)(1), and 211(b)(3) of the Compact, as amended, to the Government of the Republic of the Marshall Islands in accordance with the procedures set forth in this Agreement and without regard to whether the Compact, as amended, its related agreements, or this Agreement are still in force. In this case, the funds shall be budgeted and expended pursuant to the purposes set forth in Article II of this Agreement.

5. Interpretation. In this Agreement, all references herein to Articles and sections shall be deemed references to this Agreement unless the context shall otherwise require. References to statutes or regulations 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 as amended, modified, supplemented or restated from time to time in a manner consistent with the terms and conditions of this Agreement. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with Generally Accepted Accounting Principles, as in effect from time to time in the United States of America.

DONE at _____, in duplicate, this _____ day of
_____, 2004, each text being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF THE MARSHALL
ISLANDS:

Appendix V
Trust Fund Agreement

**Agreement Between
the Government of the United States of America
and the Government of the Republic of the Marshall Islands
Implementing Section 216 and Section 217 of the Compact, as Amended,
Regarding a Trust Fund**

The Government of the United States of America and the Government of the Republic of the Marshall Islands (hereafter the Original Parties);

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

Recognizing that it is the mutual intention of the Governments of the United States and the Republic of the Marshall Islands that the Government of the United States discontinue Annual Grant Assistance beyond Fiscal Year 2023;

Have agreed as follows:

**Part I
Definitions**

**Article 1
Definitions of Terms**

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

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

“Agreement” means this Agreement Between the Government of the Republic of the Marshall Islands and the Government of the United States of America Implementing Section 216 and Section 217 of the Compact, as Amended, Regarding a Trust Fund.

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

“Compact” means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99-239 (Jan. 14, 1986) and went into effect with respect to the Republic of the Marshall Islands on October 21, 1986.

“Compact, as amended,” means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was

approved by the United States Congress in section 201 of Public Law 99-239 (Jan. 14, 1986) and went into effect with respect to the Republic of the Marshall Islands on October 21, 1986, as amended with respect to the Republic of the Marshall Islands following formal approval of the amendments by the United States Government in accordance with its constitutional processes and the Government of the Republic of the Marshall Islands with respect to its constitutional processes.

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

“Annual Grant Assistance” means annual monetary assistance provided by the Government of the United States to the Government of the Republic of the Marshall Islands for the purposes set forth in subsections (a), (d), and (e) of section 211 of the Compact, as amended.

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

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

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

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

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

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

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

“Distribution” means the transfer of funds from the Fund to the Government of the Republic of the Marshall Islands.

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

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

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

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

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

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

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

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

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

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

“Original Party” means the Government of the United States or the Government of the Republic of the Marshall Islands, “Original Parties” means, collectively, the Government of the United States and the Government of the Republic of the Marshall Islands.

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

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

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

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

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

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

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

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

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

“United States” means the United States of America.

Part II
Establishment

Article 2
Establishment of a
Trust Fund for the People of the Republic of the Marshall Islands

1. A trust fund known as the “Trust Fund for the People of the Republic of the Marshall Islands” (in this Agreement called the "Fund") shall be established:
 - (a) by the Government of the United States in consultation with the Government of the Republic of the Marshall Islands pending Trust Fund Committee operations; or,
 - (b) by the Trust Fund Committee, if the Trust Fund Committee is operational when the Compact, as amended, takes effect.
2. The Fund shall be governed by the provisions of this Agreement.
3. The situs of the Fund shall be within the United States. The governing law of the Fund shall be the law from any appropriate jurisdiction within the United States.
4. The Original Parties to this Agreement shall be the Government of the United States and the Government of the Republic of the Marshall Islands. The Original Parties shall contribute to the Fund in accordance with section 216 and section 217 of the Compact, as amended.
5. Subsequent Contributors to the Fund shall be approved by the Trust Fund Committee.

Article 3
Purpose of the Fund

The purpose of the Fund is to contribute to the economic advancement and long-term budgetary self-reliance of the Republic of the Marshall Islands by providing an annual source of revenue, after Fiscal Year 2023, for assistance in education, health care, the environment, public sector capacity building, private sector development, and public infrastructure described in Section 211 of the Compact, as amended, or other sectors as mutually agreed by the Original Parties, with priorities in education and health care.

Article 4
Powers of the Fund

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

Article 5

Limitation of Liability

1. No Party to the Fund shall be liable, by reason of being a Party or for acts or obligations of the Fund.
2. Obligations of the Fund are not obligations of the Governments of the Republic of the Marshall Islands, the United States of America, or any other Party.
3. Members of the Trust Fund Committee shall have a fiduciary relationship to the Fund. No member of the Trust Fund Committee shall be responsible for any loss or depreciation in value of any assets held in the Fund, except by reason of such member's gross negligence or willful default. Every decision made by a member of the Trust Fund Committee shall be deemed to have been made with reasonable care and diligence unless the contrary is proved by affirmative evidence and any such action shall be conclusively binding upon all parties interested in the Fund.

Article 6

Legal Status, Privileges and Immunities

1. To enable the Fund to carry out its purpose, each Party shall accord to the Fund in its territory, the legal status, privileges and immunities set out in this Article.
2. The Fund shall possess juridical personality and in particular capacity to:
 - (a) contract;
 - (b) acquire and dispose of immovable and movable property;
 - (c) institute legal proceedings; and,
 - (d) take other action to protect the Fund.
3. The Fund shall be exempt from any exchange control regulations, restriction or moratoria.
4. In accordance with section 216 of the Compact, as amended, within the scope of its official activities, the Fund, its property, and its assets shall be exempt from taxation.

Part III
Trust Fund Committee

Article 7
Trust Fund Committee

1. There shall be a Trust Fund Committee composed of voting and, when applicable, non-voting members to administer the Fund.
2. Unless otherwise amended in accordance with Article 23, the composition of the Trust Fund Committee shall be:
 - (a) three voting members appointed by the Government of the United States, which shall include the Chairman of the Trust Fund Committee; and, two voting members appointed by the Republic of the Marshall Islands. The Government of the United States shall consult with the Government of the Republic of the Marshall Islands in appointing the Chairman, and the Republic of the Marshall Islands shall have an opportunity to present its views, which shall be considered; and,
 - (b) in addition, by a Majority Vote of the Trust Fund Committee, other voting or non-voting members may be appointed from Subsequent Contributors that contribute to the Fund from time to time, provided that the United States maintains the Majority Vote in the Trust Fund Committee.
 - (c) after the initial twenty (20) years (beginning October 1, 2023), the Original Parties will consult regarding the future composition of the Trust Fund Committee. The Trust Fund Committee shall remain the same, unless otherwise agreed by the Original Parties.
3. If a voting member is temporarily unable to attend a meeting of the Trust Fund Committee, an alternate shall be designated by the Party appointing the voting member under paragraph 2 of this Article, and the designated alternate may participate and vote in such meeting of the Trust Fund Committee.
4. All the powers of the Fund shall be vested in and exercisable by the Trust Fund Committee.
5. The functions of the Trust Fund Committee shall include overseeing:
 - (a) the operation, supervision, and management of the Fund;
 - (b) the investment and distribution of resources of the Fund; and
 - (c) the conclusion of agreements and arrangements with Subsequent Contributors and other organizations.

6. Voting and non-voting members shall serve as such without payment of salaries, honoraria, or expenses, including travel, from the Fund. Allowable expenses, as defined, may be covered from the Income, but not from the Corpus, except as provided in Article 16, paragraph 3.
7. The Trust Fund Committee shall meet at least annually or as necessary, and reasonable notice shall be given of meetings.
8. For the purposes of meetings, all voting members of the Trust Fund Committee, or their designated alternates when a voting member may be unable to attend, shall constitute a quorum. Meetings may be in person, via video conferencing or by other technological means.
9. Except where otherwise provided in this Agreement, questions before the Trust Fund Committee shall be decided by a Majority Vote of all the voting members or their designated alternate(s).
10. The Trust Fund Committee shall establish rules of procedure consistent with this Agreement.

Article 8 **Technical Assistance**

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

Part IV
Resources of the Fund

Article 9
Resources

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

Article 10
Initial Contributions by Parties

1. Each Original Party agrees to contribute to the Fund at least the amounts specified in section 216 and 217 of the Compact, as amended, subject to the provisions of Article 5 of Title IV of the Compact, as amended, (sections 451(b), 452(b), and 453(c)).
2. Any Subsequent Contributor that accedes to this Agreement in accordance with the provisions of Article 26 shall make contributions to the Fund in accordance with arrangements agreed by the Trust Fund Committee with the agreement of all voting members.
3. The Fund may accept additional contributions from Subsequent Contributors, in accordance with Article 11, in the form of a grant.
4. The Trust Fund Committee may refuse a contribution if it considers that it would not be in the interest of the Fund, the United States, or the Republic of the Marshall Islands.
5. The Fund shall not issue negotiable or transferable obligations evidencing indebtedness for contributions received under paragraph 3 of this Article. Further, the Corpus may not be encumbered in any way.

Article 11
Conditions Governing Contributions

1. No contributions to the Fund shall be refunded except in accordance with Articles 21 and 22.
2. The provisions of sections 451 through 453, inclusive, of the Compact, as amended, and Article 22 of this Agreement, in the event the Compact, as amended, is terminated, shall govern treatment of any Government of the United States contributions to the Fund and accrued interest thereon.
3. The Original Parties shall seek contributions to the Fund from other sources.

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

Article 12
Appointment of Trustee(s)

1. Appointment of Trustee(s)
 - (a) If, pursuant to Article 2, paragraph 1(a), the Government of the United States establishes the Fund, the Government of the United States shall appoint a Trustee. Thereafter, the Trust Fund Committee may appoint and employ, pursuant to the terms of this Agreement, a successor Trustee.
 - (b) If, pursuant to Article 2, paragraph 1(b), the Trust Fund Committee establishes the Fund, the Trust Fund Committee shall appoint and employ the initial Trustee, pursuant to the terms of this Agreement.
2. The Trust Fund Committee shall be empowered to remove any Trustee acting hereunder or to appoint or select a successor Trustee. Any Trustee hereunder may, for cause, be removed by the Trust Fund Committee by giving thirty (30) days written notice to the Trustee.
3. The Trustee and any successor Trustee shall:
 - (a) be selected from among trust institutions organized in the United States;
 - (b) have a net worth in excess of \$100 million;
 - (c) have at least 10 years experience as a custodian of financial assets; and
 - (d) have experience in managing trust funds of at least \$500 million.
4. When applicable, upon the appointment of a successor Trustee, the resigning or removed Trustee shall transfer and deliver the Fund and any such records pertaining thereto to the successor Trustee after reserving, as Trustee, such reasonable amount from the Income to provide for his expenses in the settlement of the Fund account and the amount of any compensation due to him. However, any such amounts so reserved by, and eventually paid to, the resigning or removed Trustee shall be subject to the written approval of the Trust Fund Committee.
5. The Trustee may resign by filing with the Trust Fund Committee and the Government of the United States his written resignation. No such resignation shall take effect until sixty (60) days from the date said resignation is filed with the Trust Fund Committee unless prior thereto a successor Trustee shall have been appointed by the Trust Fund Committee.

6. The Trustee shall hold the Corpus, in trust, for the use and benefit of the people of the Republic of the Marshall Islands in accordance with the provisions of this Agreement and the Compact, as amended.

Article 13
Trustee's Powers and Duties

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

8. The Trustee shall be entitled to reasonable fees and expenses as compensation for his services as Trustee hereunder. Such fees shall be subject to the prior written agreement and approval by the Trust Fund Committee. Such fees and expenses shall be paid from Income or, when necessary, from the Corpus, pursuant to the terms of Article 16.

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

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

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

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

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

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

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

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

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

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

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

Part VI
Operation of the Fund

Article 15
Investment and Distribution Policy

1. The Trust Fund Committee shall establish and revise from time to time, an investment and distribution policy consistent with this Agreement, with the intent that on October 1, 2023 and thereafter the Income shall be used for the purposes described in Article 3 of this Agreement.
2. The Investment Adviser(s) and Money Manager(s) shall cause to have the Fund invested only in Qualified Instruments that are identified from time to time by the Trust Fund Committee. Issues of bonds, notes, or other redeemable instruments of the Government of the United States shall be considered Qualified Instruments and the Money Manager(s), under direction of the Trust Fund Committee and the Investment Adviser(s), may invest the Fund in such issues without transaction fees or intermediary charges imposed by the Government of the United States.
3. The Fund and any Income derived from it shall not be taxable by the governments of the Parties to this Agreement to the extent that Income is derived from investment of the Fund in instruments of the Government of the United States or other Qualified Instruments.

Article 16
Investment and Distribution to the Government of the
Republic of the Marshall Islands

1. The Fund shall consist of three accounts to be referred to hereinafter as the “A Account,” the “B Account” and the “C Account,” respectively (collectively, the “Accounts”). Each Account shall become effective as described in this Article.
2. The A Account, which shall be established upon the effective date of the Compact, as amended, shall form the Corpus and consist of contributions from the Original Parties, and Subsequent Contributors. Except as otherwise provided in this Agreement, it also consists of the Income from the investments made from the Principal, and transfers from the B Account and C Account in accordance with this Article.
3. Through September 30, 2022, payment of Allowable Expenses of the Fund shall be made from the A Account. During this period, the amount, if any, of Fund Income in each Fiscal Year which remains after such payment of expenses shall be reinvested into the A Account. Except as provided in this Article, or under Article 13 paragraph 8, or Article 14 paragraph 1(c), or Article 14 paragraph 4(b), or upon withdrawal of contributions under Article 21, or upon termination of the Fund under Article 22, no funds may be removed from the A Account.

4. The B Account:

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

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

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

5. The C Account:

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

(b) shall contain no more than three times the estimated equivalent of the Fiscal Year 2023 Annual Grant Assistance, including estimated inflation calculated in accordance with section 218 of the Compact, as amended. Any excess above the estimated amount shall return to the A Account; and,

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

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

7. The Trust Fund Committee may disburse to the Government of the Republic of the Marshall Islands, from the B Account (supplemented from the C Account if the B Account is insufficient):

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

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

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

9. A special account, hereinafter referred to as the D account, may be established to allow contribution by the Government of the Republic of the Marshall Islands for revenues or income from unanticipated sources. The D account shall not be mixed with the Fund, but shall have a separate account number. The Government of the Republic of the Marshall Islands shall have access to funds in this account for unanticipated shortfalls or other purposes. Funds in this account are not part of the Corpus.

10. Accountability

(a) Implementing procedures

(1) The Trust Fund Committee shall determine the fiscal procedures, including remedies, to be used in implementing this Agreement, provided that the Fiscal Procedures Agreement referred to in sections 211 and 213 of the Compact, as amended, together with any amendments to it over the 20-year period of the Compact, as amended, shall be the basis for such fiscal procedures, unless otherwise agreed by the Original Parties.

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

(b) In the event that the remedies described in this paragraph do not correct any misuse of Income by the Government of the Republic of the Marshall Islands, and the Government of the Republic of the Marshall Islands continues to use, or causes to be used, Income or the Corpus for other than agreed purposes, remedies may be taken as provided in Article 21, paragraph 1 (a) of this Agreement.

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

Article 17
Financial Year

The financial year of the Fund is the Fiscal Year.

Part VII
Accounts, Audit, and Reports

Article 18
Accounts

1. The Trust Fund Committee shall cause the Trustee to keep all proper books and records of account of the assets, property, liabilities, income expenditure, and transactions of the Fund and to produce these promptly in order to facilitate audit.
2. The Trustee shall create one sub-fund for each Party, reflecting that Party's share of the Principal and Income. The Trustee shall keep all records for each sub-fund.
3. All records and reports of Fund returns shall clearly segregate and identify gross Income, management fees, and net Income.
4. The Government of the Republic of the Marshall Islands will provide to the Trust Fund Committee full information and documents concerning its national budget and accounts, and any report of its public auditor.

Article 19
Audit

1. From its establishment and through Fiscal Year 2023, the Fund shall be audited at appropriate intervals by an independent auditor appointed by the Trust Fund Committee (the "Auditor"). Thereafter the Fund shall be audited annually by the Auditor.
2. The Auditor shall satisfy himself that the accounts of the Fund have been properly prepared in accordance with United States accounting standards and he shall either:
 - (a) state in his report that:
 - (1) the accounts have been properly prepared in accordance with the books and records of the Fund;
 - (2) the books and records of the Fund have been properly kept and contain information adequate for the purposes of his audit;
 - (3) the balance sheet and income and expenditure account of the Fund give a true and fair view of the Fund's financial position; and
 - (4) the financial affairs of the Fund have been properly conducted in accordance with this Agreement; or
 - (b) notify the Trust Fund Committee that he is unable to complete his report as provided in sub-paragraph (a) of this paragraph 2 giving his reasons.

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

Article 20

Annual Reports

Within six months of the end of each Fiscal Year the Trust Fund Committee shall publish and shall submit to the Government of the United States and to the Government of the Republic of the Marshall Islands:

- (a) an annual report on the activities and management of the Fund, including the Accounts described in Article 16 (Investment and Distribution) of this Agreement, and on the effectiveness of the Fund to accomplish its purpose as described in Article 3 of this Agreement; which annual report may include recommendations regarding improving the effectiveness of the Fund to accomplish that purpose;
- (b) the accounts of the Fund for that year audited in accordance with Article 19; and,
- (c) reports of the Auditor under Article 19.

Part VIII
Withdrawal and Termination

Article 21
Withdrawal of Contributions

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

(a) in the event the Government of the United States determines, after consultation with the Government of the Republic of the Marshall Islands that the Government of the Republic of the Marshall Islands grossly failed to use the Income for the purposes described in Article 3 of this Agreement.

(b) should the Government of the Marshall Islands:

(1) fail to fulfill its obligations under the separate agreement regarding mutual security concluded pursuant to sections 321 and 323 of the Compact, as amended; or,

(2) take any action which the Government of the United States determines, after appropriate consultation with the Government of the Republic of the Marshall Islands, to be incompatible with the Government of the United States' responsibility for security and defense matters in or relating to the Republic of the Marshall Islands, as set forth in such agreement(s).

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

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

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

Article 22
Termination and Distribution of Assets

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

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

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

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

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

(b) the Present Market Value of the Principal and Income attributable to the Republic of the Marshall Islands shall be paid back to that Government.

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

Part IX
Miscellaneous Provisions

Article 23
Amendments

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

Article 24
Dispute Resolution

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

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

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

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

Article 25
Depository

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

Article 26
Final Provisions

1. This Agreement shall be open for signature by the Governments of the Republic of the Marshall Islands and the United States.

2. This Agreement shall enter into force on the effective date of the Compact, as amended,

3. After entry into force, this Agreement shall be open for accession by Subsequent Contributors, other than the Original Parties, at the invitation of the Trust Fund

Committee and in accordance with such arrangements including an initial contribution to the Fund as may be agreed by the Trust Fund Committee.

4. For a Subsequent Contributor which accedes to this Agreement, the Agreement shall enter into force 30 days after the deposit of its instrument of accession.

5. Interpretation. In this Agreement, all references herein to Articles 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 as amended, modified, supplemented or restated from time to time in a manner consistent with the terms and conditions of this Agreement. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with Generally Accepted Accounting Principles, as in effect from time to time in the United States of America.

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

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF THE MARSHALL
ISLANDS:

Appendix VI

Military Use and Operating Rights Agreement

**Agreement Regarding the
Military Use and Operating Rights
of the Government of the United States in
the Republic of the Marshall Islands
Concluded Pursuant to Sections 321 and 323 of the
Compact of Free Association, as Amended**

**Agreement Regarding the
Military Use and Operating Rights
of the Government of the United States in
the Republic of the Marshall Islands
Concluded Pursuant to Sections 321 and 323 of the
Compact of Free Association, as Amended**

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**Agreement Regarding the
Military Use and Operating Rights
of the Government of the United States in
the Republic of the Marshall Islands
Concluded Pursuant to Sections 321 and 323 of the
Compact of Free Association, as Amended**

This agreement sets forth the military use and operating rights of the Government of the United States in the Republic of the Marshall Islands, and is concluded pursuant to Sections 321 and 323, Title Three of the Compact of Free Association (the Compact), as amended.

Article I

Definitions

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

2-1

Article II

Applicability of Status of Forces Agreement

The provisions of the Status of Forces Agreement, as amended, shall apply.

Article III

Provision of Defense Sites

1. The Government of the Republic of the Marshall Islands shall provide to the Government of the United States the defense sites identified in Annex A to this Agreement. Specific arrangements for the establishment and use by the Government of the United States of defense sites in addition to those set forth in Annex A shall be in accordance with Section 321 of the Compact, as amended.

2. Pursuant to section 321(b) of the Compact of Free Association, as amended, the Government of the Republic of the Marshall Islands shall give favorable consideration to the request of the Government of the United States for additional defense sites. These defense sites shall be mutually agreed between the two Governments and incorporated by Annexes which shall become integral parts of this Agreement. In connection with the provision of the additional defense sites, any compensation, other use charges or other consideration due to persons with interests in land in the Republic of the Marshall Islands, and all legal arrangements related thereto, shall be provided by, and are the responsibility of, the Government of the Republic of the Marshall Islands.

Article IV

General Military Use and Operating Rights

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

(a) To maintain the defense sites and to construct structures and improvements thereon;

(b) To improve and deepen the harbors, channels, entrances, and anchorages, to dredge and fill and generally to fit the premises to their intended use;

(c) To control anchorages and moorings adjacent to or within the vicinity of the defense sites, and movements of ships and waterborne craft, to, from and within the defense sites;

(d) Subject to the provisions of paragraph 2 of Article V of this Agreement, to control aircraft operations to, from and within the defense sites and to control aircraft movement in the air space adjacent to or in the vicinity of the defense sites;

(e) To regulate and control all official communications of the Government of the United States and its contractors to, from and within the defense sites subject to the separate agreement between the Government of the United States and the Government of the Republic of the Marshall Islands on communications referred to in Article III of Title One of the Compact, as amended;

(f) To prevent interference from any source whatsoever with all official communications of the Government of the United States and its contractors;

(g) To install, maintain, use and operate defense-related oceanographic, aeronautical, space communications, and other military or scientific systems and equipment; and

(h) To advise and assist, by means of visual and radio vectoring, safe passage of ships and aircraft through areas made hazardous by periodic missile and other test operations after, or concurrent with, notification to the Government of the Republic of the Marshall Islands.

2. In conducting its activities in the defense sites, the Government of the United States shall use its best efforts to:

(a) Avoid interference with commercial activities including the exploitation of living and non-living resources of the sea;

(b) Avoid interference with navigation, aviation, communication and land or water travel in the Republic of the Marshall Islands;

(c) Minimize damage to the terrain and to reef areas;

(d) Minimize unnecessary adverse effects to the environment, including water areas;

(e) Avoid activities which would adversely affect the well-being of the residents of the Republic of the Marshall Islands; and

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

3. Except for Meck, Illeginni, Gagan and Legan, the islands and the area of the Mid-Atoll Corridor defined in Annex A shall be open to visitation unless closed temporarily on orders of the United States Army Kwajalein Atoll Commander in order to avoid interference with operations of the defense sites or to avoid posing safety hazards to individuals in the area. Notice of these periods of closure shall be given to the Government of the Republic of the Marshall Islands in a timely manner. In no event will there be less access to the Mid-Atoll Corridor than 126 days each calendar year. Unless mutually agreed, no new construction will be permitted on the Mid-Atoll Corridor Islands. The Commander, United States Army Kwajalein Atoll, shall designate the periods of temporary closure, and shall establish the basis for visitation to Omelek, Gellinam and Eniwetak Islands. This basis shall include temporary habitation by up to 19 persons on Omelek, who can fish from Gellinam and Eniwetak. Consistent with United States activities, on Eniwetak, the Commander, United States Army Kwajalein Atoll, shall allow temporary habitation on that island as well. The Governments of the United States and the Republic of the Marshall Islands may, from time to time, consult regarding such modifications to visitation arrangements as may be mutually agreed.

4. The Government of the United States may invite members of the armed forces of other countries to use defense sites pursuant to this Agreement, in conjunction with and under the control of the United States Armed Forces. Use by units of the armed forces of other countries of such defense sites, other than for transit and over flight purposes, shall

be subject to consultation with and, in the case of major units, approval by the Government of the Republic of the Marshall Islands.

5. The provisions of Section 173 of the Compact, as amended are incorporated by reference into, and become a part of, this Agreement. The Signatory Governments may, from time to time, consult regarding the implementation of this paragraph.

Article V

Shipping and Aviation

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

2. Aircraft owned or operated by the Government of the Republic of the Marshall Islands and aircraft of Air Marshall Islands or its successor shall have access to and use of the airfield and related facilities located on the Kwajalein Island defense site, subject to United States military requirements and security interests. The Government of the United States shall give sympathetic consideration to requests by the Government of the Republic of the Marshall Islands for access to and use of this airfield and related facilities by other aircraft. This access and use shall be subject to agreement between the Government of the United States and the Government of the Republic of the Marshall Islands. Aircraft may also land at other defense sites with the prior consent of the Government of the United States.

Article VI

Law Enforcement and Security

1. Regularly constituted military units of the Armed Forces of the United States and civilian security guards of the Armed Forces of the United States or security personnel under contract to or employed by the Government of the United States shall have the right to police the defense sites, and may take all appropriate measures to ensure the maintenance of law and order on the defense sites. United States military police or civilian security guards shall not be used outside the defense sites for law enforcement purposes, except as may be agreed with the Government of the Republic of the Marshall Islands.
2. The Government of the Republic of the Marshall Islands shall take all reasonable measures within its power to ensure the safety and security of United States military and civilian personnel and property in the Republic of the Marshall Islands, as well as the protection of such property from seizure by or conversion to the use of any entity or Party other than the Government of the United States, without the prior consent of the Government of the United States. The Armed Forces of the United States are authorized to provide internal security of those facilities and areas assigned to their exclusive use. External security for the defense sites will be conducted by the Government of the Republic of the Marshall Islands in close coordination with U.S. forces. If the Government of the Marshall Islands cannot provide adequate external defense of the defense sites, United States forces will be permitted to exercise their inherent right of self-defense.
3. The Government of the United States and the Government of the Republic of the Marshall Islands shall cooperate on the suspension of innocent passage during missile testing operations and on the enforcement of such suspensions in accordance with Annex C. References in Annex C to the Lomor would include successor vessels.

Article VII

Community Relations Council

The Government of the Republic of the Marshall Islands and the Government of the United States shall each designate representatives to a Community Relations Council, the purpose of which will be to identify and consider all matters, with the exception of those pertaining primarily to issues of labor relations addressed by the Joint Labor Relations Board under Article VIII of this Agreement, affecting relations between the defense sites and local Marshallese communities and to recommend actions as appropriate.

Article VIII

Joint Labor Relations Board and Employment of Labor

1. The Government of the Republic of the Marshall Islands and the Government of the United States shall each designate representatives to a Joint Labor Relations Board, the purpose of which will be to identify and consider issues of labor relations arising out of the operations of the defense sites, and to recommend actions as appropriate. The Board shall:

(a) meet no less than annually to review, evaluate, and make recommendations concerning wages and other terms and conditions of employment for local hire personnel who are in the employment of United States contractors;

(b) provide an annual report to the Government of the United States (the U.S. Kwajalein Military Commander responsible for the defense sites and the United States Ambassador to the Republic of the Marshall Islands) and the Government of the Republic of the Marshall Islands on the status of the local hire personnel work force and local contractors;

(c) consider other matters as may be mutually agreed.

2. In the employment of local hire personnel, the Armed Forces of the United States and United States contractors shall comply with laws of general applicability in the Republic of the Marshall Islands regarding minimum wages, provided that such minimum wages do not exceed the minimum wage prevailing in the United States.

3. In the employment of local hire personnel, the Armed Forces of the United States and United States contractors shall provide equal pay for equal work. In carrying out this provision, due consideration shall be given to relevant recommendations of the Joint Labor Relations Board.

4. The wages of local hire personnel who were in the employment of the Armed Forces of the United States or United States contractors on October 21, 1986, shall not be reduced by reason of the cessation of the applicability of the United States law in the Republic of the Marshall Islands as of October 21, 1986.

5. The Government of the United States and the Government of the Republic of the Marshall Islands shall consult with regard to the creation of training projects designed to provide for greater utilization of local hire personnel and to improve their job skills.

Article IX

Miscellaneous

1. Section 351 of the Compact, as amended, between the Government of the United States and the Government of the Republic of the Marshall Islands is incorporated by reference into, and becomes a part of this Agreement. Unless otherwise provided, all issues or disputes that may arise under this Agreement which cannot be resolved locally shall be referred to the Joint Committee established by section 351 and resolved in accordance with that section.
2. Except as otherwise provided, all minerals, including oil, antiquities and treasure trove in a defense site and all rights relating thereto are reserved to the Government of the Republic of the Marshall Islands, but any exploitation thereof shall require the prior concurrence of the Government of the United States. Sunken warships and military aircraft in a defense site, (except for warships captured before they sank, title to which belongs to the capturing state), remain the property of the flag State until affirmatively abandoned or transferred in accordance with the law of the flag State.
3. The Government of the United States, pursuant to section 234 of the Compact, transferred title to the Prinz Eugen, the former German warship now located in the Kwajalein Atoll area, to the Government of the Republic of the Marshall Islands. It is understood that unexpended ordnance and oil remains within the hull of the Prinz Eugen, and that salvage or any other use of the ship could be hazardous. The Government of the Republic of the Marshall Islands shall hold the Government of the United States harmless for any loss, damage or liability associated with the Prinz Eugen, including any loss, damage or liability that may result from any salvage operation or any other activity that the Government of the Republic of the Marshall Islands takes or causes to be taken concerning the Prinz Eugen. Any such operation or activity undertaken by or on behalf of the Government of the Republic of the Marshall Islands shall be conducted at a time and in a manner to be agreed to between the Government of the United States and the Government of the Republic of the Marshall Islands so as not to interfere with the operation of the defense sites.
4. Consistent with the laws and regulations of the United States, and to the extent that emergency medical services can be made available, the Government of the United States at its Kwajalein Island defense site contractor-operated medical facility shall undertake to provide such emergency services to citizens and nationals of the Republic of the Marshall Islands on a reimbursable basis under terms and conditions agreed upon between the Signatory Governments.

Article X

Economic Assistance, Effective Date, Amendment and Duration

1. The amendments to this Agreement shall come into effect simultaneously with the Compact, as amended.
2. This Agreement may be amended or terminated at any time by mutual consent.
3. This Agreement shall remain in effect until the end of Fiscal Year 2066. The Government of the United States shall have the right to extend this Agreement for twenty additional years beyond the initial term. If Title Three of the Compact, as amended, is still in effect when the Government of the United States terminates its use of Kwajalein in accordance with this Article, this Agreement (except for Article IV(3), Article V(2), Article VI(3), Article X(4), (5) , and (6), and Annexes A,B, and C) shall continue in force as long as Title Three continues in force.
 - a. Not later than the end of Fiscal Year 2060, the Government of the United States shall elect whether to exercise the twenty year extension. Such election shall be made in writing to the Government of the Republic of the Marshall Islands.
 - b. If the Government of the United States elects to exercise the twenty year extension , the Government of the United States shall provide to the Government of the Republic of the Marshall Islands in the first year of the extension, an additional payment equal to the section 212 Kwajalein use payment (as inflated under section 218 of the Compact, as amended) for that year (Fiscal Year 2067).
- 4.. In reaffirmation of its continuing interest in promoting the long-term economic advancement and self-sufficiency of all the people of the Republic of the Marshall Islands:
 - a. Of the total grant assistance made available under section 211 of the Compact, as amended, the amounts specified therein shall be allocated annually from FY-2004 through FY-2023, and thereafter for as long as this agreement remains in effect, to advance the objectives and specific priorities set forth in subsections 211 (a) and (b) and the Fiscal Procedures Agreement, to address the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll. This United States grant assistance shall be made available, in accordance with the medium-term budget and investment framework described in subsection 211(f), to support and improve the infrastructure and delivery of services and develop the human and material resources necessary for the Republic of the Marshall Islands to carry out its responsibility to maintain such infrastructure and deliver such services. The amount of this assistance shall be \$3.1 million, with an inflation adjustment as provided in section 218, from FY 2004 through FY 2013, and the FY 2013 level of funding, with an inflation adjustment as

provided in section 218, will be increased by \$2 million for FY 2014. The FY 2014 level of funding, with an inflation adjustment as provided in section 218, will be made available from FY 2015 through FY 2023, and thereafter for as long as the agreement remains in effect.

b. The Government of the United States shall also provide to the Government of the Republic of the Marshall Islands, in conjunction with section 321(a) of this Compact, as amended, an annual payment from FY 2004 through FY 2023, and thereafter for as long as this agreement remains in effect, in the amount of \$1.9 million. This grant assistance will be subject to the Fiscal Procedures Agreement and adjusted for inflation under section 218 provided the Government of the Republic of the Marshall Islands controls the payment of the \$1.9 million (as adjusted) and ensures that these funds are properly accounted for and used to address the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll and will be for the benefit of the Kwajalein landowners as described in the Fiscal Procedures Agreement.

c. Of the total grant assistance made available under subsection (a) of this section, and in conjunction with section 321(a) of the Compact, as amended, \$200,000, with an inflation adjustment as provided in section 218, shall be allocated annually from FY 2004 through FY 2023 (and thereafter for as long as this Agreement remains in effect) to support increased participation of the Government of the Republic of the Marshall Islands Environmental Protection Authority in the annual U.S. Army Kwajalein Atoll Environmental Standards Survey and to promote a greater Government of the Republic of the Marshall Islands capacity for independent analysis of the Survey's findings and conclusions.

d. The Government of the United States shall provide to the Government of the Republic of the Marshall Islands in conjunction with section 321(a) of the Compact, as amended, a payment in FY 2004 of \$15 million, with no adjustment for inflation. In FY 2005 and through FY 2013, the annual payment will be the FY 2004 amount (\$15 million) with an inflation adjustment as provided under section 218. In FY 2014, the annual payment will be \$18 million (with no adjustment for inflation) or the FY 2013 amount with an inflation adjustment under section 218, whichever is greater. For FY 2015 through FY 2023 (and thereafter for as long as this agreement remains in effect), the annual payment will be the FY 2014 amount, with an inflation adjustment as provided under section 218. The United States will make the annual payments described in this paragraph quarterly, in advance.

e. Grant assistance provided pursuant to section 222 of the Compact, as amended, may be used for the purposes described in this paragraph, or otherwise for the benefit of the Kwajalein landowners and community. The Fiscal Procedures Agreement shall apply to such assistance only as provided in the Fiscal Procedures Agreement.

5. The Government of the United States may terminate this Agreement at any time after 2023 by giving written notice, not later than seven years prior to the date it intends to terminate, of its intention to terminate. Upon notice of termination pursuant to this paragraph, the Government of the United States shall make a termination payment to an escrow account, provided that there are adequate protections in the terms of the escrow account to guarantee quiet enjoyment and use by the United States during the remaining seven years. This termination payment would be based on the anticipated amount of the annual payment in the year that termination would be effective and would be computed by multiplying by a designated factor the estimated annual grant pursuant to section 212 of the Compact, as amended, adjusted in accordance with section 218 of the Compact, as amended. This termination payment would be calculated as follows:

(i) If termination were to occur between 2024 and 2033, the termination payment would be three times the estimated annual grant amount for the year that termination would be effective (based on section 212 of the Compact, as amended, and adjusted in accordance with section 218 of the Compact, as amended).

(ii) If termination were to occur between 2034 and 2043, the termination payment would be twice the estimated annual grant amount for the year that termination would be effective (based on section 212 of the Compact, as amended, and adjusted in accordance with section 218 of the Compact, as amended).

(iii) If termination were to occur between 2044 and 2053, the termination payment would be the estimated annual grant amount for the year that termination would be effective (based on section 212 of the Compact, as amended, and adjusted in accordance with section 218 of the Compact, as amended).

(iv) If this Agreement is terminated after 2053, no termination payment shall be made.

6. The assistance the Government of the United States provides the Government of the Republic of the Marshall Islands pursuant to this Agreement is to ameliorate any adverse impact on economic and social conditions from the activities of the Government of the United States in the area of the defense sites. The Government of the Republic of the Marshall Islands shall initiate projects utilizing the funds provided under paragraph 4(a and b) of this Article to this end. After consultation, the Government of the United States shall provide such technical and planning assistance to the Government of the Republic of the Marshall Islands in its implementation of such projects as is mutually agreed.

7. Pursuant to Section 224 of the Compact, as amended, the Government of the United States shall work closely with the Government of the Republic of the Marshall Islands in developing plans and programs to reduce any adverse social and economic impact of United States defense activities in the Republic of the Marshall Islands, and will seek to provide, within existing resources, technical assistance required for the implementation of these plans and programs. In addition, the United States is prepared to seek, on a matching basis to be determined by mutual agreement, priority funding to ameliorate any adverse impact caused by changes in defense programs.

8. The Government of the United States and the Government of the Republic of the Marshall Islands may from time to time enter into contractual arrangement pursuant to Section 323 of the Compact, as amended. Such arrangements may include reimbursable services provided by the Government of the United States to the Government of the Republic of the Marshall Islands. The Armed Forces of the United States may furnish such services provided that payment for reimbursable services is made in accordance with the terms of such contractual arrangements.

9. This Agreement, as amended, supersedes the Second Supplementary Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Marshall Islands and Adjustment of the Mid-Atoll Corridor Concluded Pursuant to Section 321(b) of the Compact of Free Association.

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

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF THE MARSHALL
ISLANDS:

Agreement Regarding the
Military Use and Operating Rights
of the Government of the United States in
the Republic of the Marshall Islands
Concluded Pursuant to Sections 321 and 323 of the
Compact of Free Association, as Amended

AGREED MINUTES

Article IX, Miscellaneous paragraph 1: It is the understanding of the Government of the United States and the Government of the Republic of the Marshall Islands that paragraph 1 of Article IX of this agreement shall be implemented in a manner consistent with the Constitution of the Republic of the Marshall Islands and shall not be interpreted as impairing, limiting or altering any rights or interests in mineral rights, or the benefits derived from exploitation thereof, as established by or arising under the Republic of the Marshall Islands Constitution.

Article X, Economic Assistance, Effective Date and Duration, paragraph 8: It is the understanding of the Signatory Governments that contractual arrangement for provision of reimbursable services pursuant to paragraph 8 or Article X of this Agreement may include, in addition to services, provision of such supplies and equipment, on a reimbursable basis, as may be mutually agreed.

ANNEX A

**Defense Sites Provided by the Government
of the Republic of the Marshall Islands Pursuant to Article III**

1. The Government of the Republic of the Marshall Islands shall provide to the United States the following land areas. The Government of the United States may, upon request of the Government of the Republic of the Marshall Islands, grant limited access to these areas.

(a) Outside Mid-Atoll Corridor

<u>Island</u>	<u>Approximate Acreage</u>
Kwajalein	748 (Includes 205 acres land-fill constructed by U.S. Government)
Roi-Namur	398 (Includes 40 acres land-fill constructed by U.S. Government)
Ennugarret	6 (of 24 total acres)
Ennylabegan	71 (of 124 total acres)

(b) Within the Mid-Atoll Corridor

Meck	55 (includes 18 acres land-fill constructed by U.S. Government)
Eniwetak	15
Omelek	8
Gellinam	5
Gagan	6
Illeginni	31
Legan	18

2. The Government of the United States shall have control of entry and movement of personnel within the Mid-Atoll Corridor Area of the Kwajalein Atoll.

(a) The Mid-Atoll Corridor is defined as the area within the Kwajalein Atoll bounded on the north by a line drawn north of Boked Island on the east reef and Yabbernohr Island on the west reef and bounded on the south by the line drawn north of Bigej Island on the east reef to a point at latitude 08 54.2N, longitude 167 45.8E, then to a point at latitude 08 52.8N, longitude 167 45.8E, and then to a point north of the high tide mark on Ninni Island on the west reef. Bigej Island, including the inner reef, is specifically excluded and is not part of the Mid-Atoll Corridor. A map of the area is attached as Annex B. (Revised map TBP.)

(b) The boundary lines, as stated above and as set out in the map attached as Annex B, shall be redrawn when the Government of the United States determines that the area needed for the safe operation of the defense sites can be reduced from that currently utilized. If the boundary lines are redrawn, the islands then outside the Mid-Atoll Corridor area, except those islands listed in paragraph 1 of this Annex, shall be relinquished.

3. The Government of the RMI agrees to coordinate with the Government of the United States through its Competent Authority on any new or expanded telecommunications operations on Bigej prior to their implementation.

4. Exclusive use by the Government of the United States of Bigen Island, Aur Atoll: 4.253 acres of land, per site surveys already conducted. During operational activities, the Government of the United States will have exclusionary rights to restrict temporarily access to all of Bigen Island, and immediately adjacent areas, to ensure safety and security. The Government of the United States will also have access to the airstrip on Tabal Island during operational activities, and to a small portion of land near the airstrip to store materials. The Government of the United States agrees to pay the Government of the Republic of the Marshall Islands the sum of \$17,012.00 annually in consideration for the use of the additional defense site above. Should any of the sites designated in this paragraph prove inappropriate for the intended purposes, other mutually agreed sites may be substituted upon request of the Government of the United States. The Government of the United States shall permit those who were landowners on June 16, 1995 to continue access and exploitation of the sites designated in this paragraph until the Government of the United States gives notice to the Government of the Republic of the Marshall Islands that operational activities preclude such use. The Government of the United States shall promptly notify the Government of the Marshall Islands when operational activities no longer preclude such use. On an annual basis, or as necessary, the Government of the United States will consult with the Government of the Republic of the Marshall Islands, in order to provide the respective landowners projected plans for United States activities

in the defense sites described in this paragraph. This paragraph may be amended by mutual agreement, to include additional defense sites, including their related operational and technical requirements and comparable terms of compensation.

ANNEX C

UNDERSTANDING

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
ACTING THROUGH THE U.S. ARMY SPACE AND MISSILE DEFENSE
COMMAND

AND

THE REPUBLIC OF THE MARSHALL ISLANDS

ANNEX C

**UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA,
ACTING THROUGH THE U.S. ARMY SPACE AND MISSILE DEFENSE
COMMAND
AND
THE REPUBLIC OF THE MARSHALL ISLANDS**

SUBJECT: Suspension of Innocent Passage During Missile Testing Operations

Consistent with Title III of the Compact of Free Association, as amended between the United States (U.S.) and the Republic of the Marshall Islands (RMI); the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Republic of the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as amended; the international law reflected in Article 25(3) of the United Nations Convention on the Law of the Sea; and the exchange of Diplomatic Notes of 28 March 2001 and 03 July 2001 dates between the U.S. and the RMI, the Government of the United States of America, acting through the U.S. Army Space and Missile Defense Command/U.S. Army Kwajalein Atoll/Kwajalein Missile Range, and the RMI have reached the following understanding:

1. When the United States deems such action necessary during missile testing operations, the RMI, acting through its Secretary of Transportation and Communications, in consultation with the U.S. Army Kwajalein Atoll/Kwajalein Missile Range (USAKA/KMR) intends to announce the suspension of the innocent passage of foreign ships in the RMI waters, which shall, for the purposes of this Understanding, mean 12 nautical miles out from the low water mark of the outer reef of Kwajalein Atoll, as per the attached map ("RMI waters").
2. In such cases, the RMI and USAKA/KMR would publish notice of the suspension of innocent passage of foreign ships in the RMI waters. The notice of the suspension would be published in advance of missile testing operations in the Notice to Airmen and the Notice to Mariners and would be approximately ten days in duration.
3. In such cases, the U.S. and the RMI intend to coordinate on a case-by-case basis to ensure minimal interference with international shipping and transit.
4. The RMI and U.S. intend to take those actions necessary to enforce suspension of the innocent passage of foreign ships in the RMI waters.

5. Prior to missile testing operations, the U.S. may request assistance from the RMI in the enforcement of the suspension of the innocent passage of foreign ships in the RMI waters, including the participation of the RMI patrol boat, the Lomor.
6. The RMI intends to consider sympathetically any such request for assistance. USAKA/KMR intends to reimburse the RMI at the rate of \$3,500.00 per day for the participation of the Lomor in the enforcement of the suspension of innocent passage of foreign ships in the RMI waters. It is the understanding of the parties that extraordinary expenses may be incurred by the RMI and will also be considered for reimbursement by the U.S.
7. It is the intent of the U.S. and the RMI that the Lomor would depart in order to arrive in the Kwajalein Atoll two days prior to the going into effect of the suspension of innocent passage of foreign ships in the RMI waters. Transit time for the Lomor would be considered reimbursable time under paragraph 6 of this Understanding.
8. The U.S. and the RMI understand that, under these circumstances, the Commander, USAKA/KMR, would command the U.S. security and enforcement efforts and the Lomor Captain would retain command and control of the Lomor. A USAKA/KMR liaison officer would be present on the Lomor to facilitate coordination and communications with USAKA/KMR. The RMI may provide a Lomor liaison officer to the USAKA/KMR operations center for the duration of the participation of the Lomor in U.S. security and enforcement activities to facilitate coordination and communications with the Lomor.
9. It is the intent of the RMI that, under these conditions, the Lomor and her crew would be prepared to enforce the laws of the RMI including actions necessary to enforce the suspension of the innocent passage of foreign ships in the RMI waters.
10. The RMI, in consultation with the USAKA/KMR would, as soon as the area was deemed secure and safe for transit, endeavor to end the suspension of the innocent passage of foreign ships in the RMI waters, but in any event, the said suspension of the innocent passage of foreign ships shall not exceed the published period referred to in paragraph 2 above, unless such period is extended by the mutual consent of the RMI and the USAKA/KMR.
11. This Understanding is effective upon the date the parties hereto have signed this Understanding.
12. This Understanding may be modified at any time by the mutual consent of the U.S. and the RMI. Either participant may terminate cooperation under this Understanding upon written notice to the other participant.

13. Each participant will review this Understanding periodically.

SIGNED at this day of, two thousand and one.

For the Government of the
United States of America

For the Republic of the Marshall Islands

(Signed)
CURTIS I. WRENN, JR.
Colonel, U.S. Army
Commander, USAKA/KMR

(Signed)
PHILIP KABUA
Chief Secretary
Republic of the Marshall Islands

ANNEX D

**Establishment of a Humanitarian
Assistance – Republic of the Marshall Islands (HARMI) Program**

On signature, this Annex becomes Annex D to the Military Use and Operating Rights Agreement concluded between the Government of the United States of America and the Government of the Republic of the Marshall Islands (the Parties) pursuant to their Compact of Free Association signed on October 1, 1982, approved by the Congress of the United States on January 14, 1986, and which took effect October 21st, 1986, concerning the provision of civic action teams. Civic action teams made available to the RMI pursuant to section 227 of the Compact will no longer be available after October 21, 2003. Instead, this capability will be replaced by the offer of a Humanitarian Assistance – Republic of the Marshall Islands (HARMI) Program under the terms and conditions laid out in this Annex.

A. The Government of the United States shall make available to the Government of the Republic of the Marshall Islands a HARMI for such activities as may be identified by the Government of the Republic of the Marshall Islands and mutually agreed by the Parties with emphasis on health, education and infrastructure, including transportation, projects, and such other projects as may be mutually agreed.

B. The Government of the United States shall make available to the Government of the Republic of the Marshall Islands HARMI Projects under the following provisions:

1. The establishment of an annually agreed work program, in accordance with Paragraph E of this Annex, designed to assist in the fulfillment of the national developmental goals of the Republic of the Marshall Islands; and
2. A HARMI Project may be terminated under any of the following conditions:
 - (a) At the request of the Government of the Republic of the Marshall Islands;
 - (b) United States military necessity;
 - (c) Failure of the United States Congress to appropriate the necessary funds; or
 - (d) Failure of the Government of the Republic of the Marshall Islands to provide access to Project sites or necessary permits for Project execution.

C. The entire costs of the HARMI Projects (excluding salaries of U.S. military personnel, hereinafter referred to as “cost of the Project(s)”) shall be funded in accordance with paragraph E.3 of this Annex. The Government of the Republic of the Marshall Islands shall accept the completed HARMI Projects in writing not later than 30 days after the United States gives notice of completion. Failure to respond to the notice of completion not later than 30 days after notice is given shall constitute acceptance of the HARMI Project. Costs of maintenance for the HARMI Projects upon completion shall be borne by the Government of the Republic of the Marshall Islands.

1. These HARMI Projects may be executed as:

(a) Projects using military labor, including Reserve and Guard component units if possible;

(b) Contracts with private firms, using military planning, design and oversight; or

(c) A combination of military labor and private contractors.

(d) The Government of the United States shall assume all responsibility associated with the execution of the HARMI Projects, with the exception that the Government of the Republic of the Marshall Islands shall provide:

(1) Suitable public or private land, as required, for HARMI Project Team base camps; and

(2) All necessary access and entry clearances into public and private land and all permits for HARMI Projects.

D. The Government of the Republic of the Marshall Islands may use the HARMI program, as needed, in years in which it desires to execute HARMI projects; and, shall fund projects from grant assistance in accordance with paragraph E.3 of this Annex. Projects shall be planned as far in advance as possible to allow sufficient time for planning, coordinating, and transferring of funds.

E. The Government of the United States and the Government of the Republic of the Marshall Islands shall review, on an annual basis, normally during the scheduled Joint Committee Meetings (JCM), or otherwise as may be mutually agreed, all matters relating to the execution and content of the HARMI Projects.

1. The Government of the Republic of the Marshall Islands shall nominate prioritized projects through the U.S. Embassy in Majuro to the Commander, U.S. Pacific Command (CDRUSPACOM), according to a schedule established by CDRUSPACOM.
2. The annual review shall include review of the manner in which HARMI Projects are selected from those nominated, as well as review of the planning of the projects and of associated costs.
3. After the annual review, the Government of the Marshall Islands shall determine which new HARMI Projects it wants to pursue and make its request known through the U.S. Embassy to CDRUSPACOM. When a HARMI project(s) has been mutually agreed by the Parties pursuant to this Annex, the cost of the Project(s) shall be deducted from the applicable sector grant(s) awarded to the Government of the Republic of the Marshall Islands in the year the request is approved. The U.S. Department of Interior shall transfer funds in accordance with statutory and regulatory guidelines, to the Department of Defense, or a component thereof, in the amount requested by CDRUSPACOM for that project.

Appendix VII

Status of Forces Agreement

STATUS OF FORCES AGREEMENT
Concluded Pursuant to Section 323 of
The Compact of Free Association, as amended

Agreement in Implementation
of Section 323 of
The Compact of Free Association, as amended

Status of Forces Agreement

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**STATUS OF FORCES AGREEMENT
Concluded Pursuant to Section 323 of
The Compact of Free Association, as amended**

This Agreement is concluded by the Signatory Governments and sets forth the legal status of the Armed Forces of the United States, their members, and associated civilians, while present in the Republic of the Marshall Islands pursuant to Section 323 of the Compact of Free Association (the Compact), as amended.

Article I

Definitions

Article I

Definitions

1. The Definition of Terms set forth in Article VI of Title Four of the Compact, as amended is incorporated into this Agreement.
2. For the purposes of this Agreement only, the following terms shall have the following meanings:
 - (a) "Armed Forces of the United States" means the land, sea and air armed forces of the United States of America, including the Coast Guard.
 - (b) "United States Contractors" means the legal entities, including corporations and natural persons, present in the Republic of the Marshall Islands for the purpose of executing their contracts with the Government of the United States, or subcontracts of such contracts, in support of the Armed Forces of the United States and designated as such by the Government of the United States. The term "United States Contractors" does not include local contractors.
 - (c) "Local Contractors" means the legal entities, including corporations and natural persons organized under the laws of, and who are in, the Republic of the Marshall Islands.
 - (d) "United States Personnel" means anyone who is included in any of the following categories:
 - (1) "members of the force" -- all military personnel, notwithstanding their citizenship or nationality, on duty with the Armed Forces of the United States who are in the Republic of the Marshall Islands;
 - (2) "members of the civilian component" -- all civilian persons, notwithstanding their citizenship or nationality, except local hire personnel, who are in the Republic of the Marshall Islands, and who are in the employ of, serving with, or accompanying the Armed Forces of the United States;
 - (3) "contractor personnel" -- natural persons, who are United States citizens or nationals or United States permanent resident aliens, except local hire personnel, who are in the Republic of the Marshall Islands, and who are United States contractors or officers or employees of United States contractors; or

(4) "dependents" -- the spouses and dependents of persons included in paragraphs 2(d)(1) and 2(d)(2) who are listed on official United States Government travel orders (including children of persons included in paragraphs 2(d)(1) and 2(d)(2), whether or not they are listed on official United States Government orders, who are born after such persons' arrival in the Republic of the Marshall Islands), and the spouses and dependents of persons included in paragraph 2(d)(3) of this Article and, while members of the household of such persons, other relatives or wards of such persons or their spouses.

(e) "Third Country Contractor Personnel" means natural persons other than United States personnel or local hire personnel who are lawfully in the Republic of the Marshall Islands and who are United States contractors or officers of employees of United States contractors or dependents of any of them.

(f) "Local Hire Personnel" means citizens of the Republic of the Marshall Islands who are employed in the Republic of the Marshall Islands by the Armed Forces of the United States or United States contractors.

(g) "Defense Sites" Means "Military Areas and Facilities" as defined in Section 461 (i) of the Compact, as amended.

(h) "Judge" means any judicial officer of a Signatory Government who has the authority to issue a warrant of arrest or its equivalent and for purposes of this Agreement, except for paragraph 6(c) of Article XII, shall also include judicial officers certified as such by the Government concerned.

Article II

Movement

Article II

Movement

1. Consistent with the Compact, as amended, this Agreement and any other agreements concluded between the Government of the United States and the Government of the Republic of the Marshall Islands in accordance with Sections 321 and 323 of the Compact, as amended:

(a) All aircraft, vessels and vehicles operated by, for, or under the control of the Armed Forces of the United States or United States contractors shall enjoy freedom of movement in the Republic of the Marshall Islands;

(b) Such aircraft, vessels and vehicles shall be operated in a manner which minimizes danger to persons and property and interference with trade, commerce, exploration and exploitation of living and non-living resources of the sea; and

(c) Movement of such aircraft, vessels and vehicles in the Republic of the Marshall Islands, including access to and use by them of defense sites, ports, harbors and airfields, shall not be subject to any taxes, fees or other charges, except those fees or other charges set forth in paragraph 2 of this Article.

2. The Armed Forces of the United States and United States contractors shall pay, at generally prevailing rates unless otherwise agreed, for specific services rendered at their request, including materials received at their request in connection with the use of ports, harbors and airfields in the Republic of the Marshall Islands. Such services and materials may include fuel, towing, mechanical servicing and utilities.

Article III

Entry and Departure

Article III

Entry and Departure

1. The Government of the United States may bring into the Republic of the Marshall Islands:

(a) United States personnel and United States contractors; and

(b) Third country contractor personnel consistent with those laws of the Republic of the Marshall Islands relating to the exclusion of individual, undesirable aliens and taking into account paragraph 5 of this Article and Article IV of this Agreement.

2. United States personnel shall be exempt from the passport and visa laws and regulations of the Republic of the Marshall Islands. Taking into account paragraph 1(b) of this Article and Article IV of this Agreement, applications of third country contractor personnel for visas shall be granted or denied expeditiously. All United States and third country contractor personnel shall comply with medical immunization and other health requirements of the Republic of the Marshall Islands.

(a) No United States personnel or third country contractor personnel shall acquire any right to permanent residence or domicile solely as a result of their being United States personnel or third country contractor personnel.

(b) United States personnel shall be exempt from laws and regulations of the Republic of the Marshall Islands on the entry, departure, registration and control of aliens and foreign agents.

3. Upon entry into or departure from the Republic of the Marshall Islands, United States personnel shall have in their possession official orders or documents certifying the status of the individual or group. Such orders or documents shall be shown on request to the appropriate authorities of the Republic of the Marshall Islands Government.

4. For the purpose of their identification while in the Marshall Islands, United States personnel ten years of age or older shall have in their possession a personal identification card authorized by the Government of the United States which shall show the name, date of birth, status, and photograph of the bearer. Such card shall be shown on request to the appropriate authorities of the Government of the Republic of the Marshall Islands.

5. Should the Government of the Marshall Islands request the removal from the Marshall Islands, of any United States personnel or any third country contractor personnel, the request shall be referred to the Joint Committee established pursuant to Section 351 of the Compact, as amended for resolution in accordance with that Section, unless the Government of the United States receives the person concerned within its own territory

or otherwise effects the departure of such person outside the territory of the requesting Government. Section 351 of the Compact, as amended, is incorporated by reference into, and becomes a part of, this Agreement. If the Joint Committee so determines, the person concerned shall immediately become subject to the jurisdiction of the Government of the Republic of the Marshall Islands in accordance with its laws.

6. Transportation costs attendant to the departure and removal of third country contractor personnel shall be the responsibility of the Government of the United States.

Article IV

Utilization of Contractors and Employment of Labor

Article IV

Utilization of Contractors and Employment of Labor

1. In the establishment, maintenance, and use and operation of defense sites and in the execution of obligations undertaken by the Government of the United States in the Compact, as amended, and its related Agreements, the Armed Forces of the United States, United States contractors and local contractors:

(a) May employ persons possessing requisite skills and qualifications.

Employment preference shall be given, without discrimination, to citizens of the Republic of the Marshall Islands and to citizens, nationals and permanent resident aliens of the United States. In the employment of such persons pursuant to the preferences set forth in this paragraph, the Armed Forces of the United States and United States contractors shall exercise their best efforts to employ persons present in the Republic of the Marshall Islands; and

(b) Shall utilize without discrimination, consistent with the laws and regulations of the United States, qualified local contractors to the maximum extent feasible, and qualified contractors which are legal entities of the United States. The Armed Forces of the United States and United States contractors shall ensure that the specifications and instructions for contract bids shall permit such free and full competition as is consistent with the procurement of the goods and services needed by the Government of the United States.

(c) Shall, in consultation with the Government of the Republic of the Marshall Islands, establish procedures for local sourcing of products, works, and services where there are qualified local contractors.

2. Prior to the employment of third country personnel or the utilization of third country contractors, the Government of the United States shall notify the Government of the Republic of the Marshall Islands of that intent, in writing, and shall consult, if requested within thirty days of such notification, with the Government of the Republic of the Marshall Islands as to the availability of qualified local hire personnel or qualified local contractors. If a response is not received by the United States within thirty days after notification, the United States or its contractor may proceed with the hiring action.

3. The Government of the United States may hire third country contractor personnel without notification under paragraph 2, for periods of temporary duty of ninety days or less within a twelve-month period if qualified local hire personnel are not available.

4. The laws and regulations of the Republic of the Marshall Islands shall not apply to the terms and conditions of employment of the United States personnel or third country contractor personnel by the Armed Forces of the United States of United States

contractors. The Government of the Republic of the Marshall Islands shall not require United States personnel, third country contractor personnel or United States contractors to obtain any license, permit or certificate, or to undergo any examination, in connection with the performance of their duties on behalf of the Armed Forces of the United States. For purposes of this paragraph only, United States Personnel shall not include relatives (other than spouses and children) or wards of members of the force, members of the civilian component, or contractor personnel, or spouses of such relatives or wards.

5. In the employment of local hire personnel by the Armed Forces of the United States and United States contractors, the Government of the United States shall adopt measures consistent with the standards of local labor laws to the extent they are compatible with the laws, regulations and operational requirements of the United States.

Article V

Taxes and Customs

Article V

Taxes and Customs

1. The following are exempt from any tax, fee or similar charge imposed by the Government of the Republic of the Marshall Islands:

(a) The services, activities, facilities, equipment, material, income or any other property or transactions of the Armed Forces of the United States or United States contractors;

(b) The ownership, possession, use, or transfer inter se by United States personnel, by death or otherwise, of real or personal property, tangible or intangible, wherever located; and

(c) Income received by United States personnel for services with or employment by the Armed Forces of the United States or United States contractors, or from sources outside the territory of the Republic of the Marshall Islands, except that United States contractor personnel and dependents who are also United States contractor personnel are not exempt from a personal income tax generally applicable within the Republic of the Marshall Islands up to a level of five percent of their annual income derived from their employment in the Republic of the Marshall Islands by United States contractors. After Fiscal Year 2016, the United States and the Republic of the Marshall Islands shall, from time to time, review jointly the foregoing personal income tax rate taking into consideration the tax revenues derived from local hire personnel and local contractors at United States defense sites in the Republic of the Marshall Islands.

2. Third country contractor personnel shall be subject to income tax generally applicable in the Republic of the Marshall Islands.

3. All materials, equipment and other property imported or exported by or on behalf of the Armed Forces of the United States, or United States contractors for the use or benefit of the Armed Forces of the United States, United States contractors, United States personnel, or third country contractor personnel shall be permitted entry into and exit from the Republic of the Marshall Islands free from customs duties, license requirements, and other import and export taxes, fees or charges.

4. United States personnel may import into and export from the Marshall Islands furniture, household goods and personal effects for their personal or family use, including all forms of privately owned land, sea and air transportation, free from customs duties, license requirements, and other import and export taxes, fees or charges.

5. The following are exempt from customs examination by the Government of the Republic of the Marshall Islands:

(a) Members of the force, members of the civilian component and the dependents of both when entering or leaving the Republic of the Marshall Islands under official orders except when under leave orders;

(b) Documents under official seal, and mail in the United States military postal channels; and

(c) Cargo consigned to or shipped by the Armed Forces of the United States or United States contractors.

6. The Armed Forces of the United States, in cooperation with the Government of the Republic of the Marshall Islands, shall take appropriate measures, including inspection, to prevent the importation of contraband and to prevent abuse of privileges granted under this Article.

7. Should property imported into the Republic of the Marshall Islands under the exemptions provided by this Article subsequently be transferred to a person not entitled to such exemptions, such person shall be liable for import duties and other charges according to the laws and regulations of the Government of the Republic of the Marshall Islands.

8. Animals and plants, including fruits and vegetables, imported by United States personnel, subject to the provisions of this Article, and by third country contractor personnel shall be subject to the laws and regulations of the Republic of the Marshall islands governing such inspection of and restriction on such importations.

Article VI

Service Facilities

Article VI

Service Facilities

The Armed Forces of the United States may authorize the establishment, use, operation and maintenance within defense sites in the Republic of the Marshall Islands of service, educational and recreational facilities. Such facilities and their related activities, including the importation, purchase, sale or dispensing of merchandise and services by them shall be exempt from all taxes, customs duties, fees, charges and license requirements of the Government of the Republic of the Marshall Islands.

Article VII

Military Post Offices

Article VII

Military Post Offices

The Armed Forces of the United States may establish, operate and maintain military post offices within defense sites for their use and the use of United States contractors and United States personnel. A mail facility operated by a United States contractor on behalf of the Armed Forces of the United States shall be considered a military post office within the meaning of this Article.

Article VIII

Bearing of Arms

Article VIII

Bearing of Arms

1. Members of the force may possess and use arms when necessary to perform their official duties and, in specially designated areas in defense sites, to maintain skills to perform their official duties, in accordance with the laws and regulations governing the Armed Forces of the United States.
2. Contractor personnel may possess or use arms when acting in support of the military mission of the Government of the United States in an official capacity as law enforcement personnel or security officers designated as such by the Government of the United States in accordance with its laws and regulations.
3. Any other possession or use of arms shall be only as agreed between the Government of the United States and the Government of the Republic of the Marshall Islands.

Article IX

Operation and Licensing of Vehicles

Article IX

Operation and Licensing of Vehicles

1. The Government of the Republic of the Marshall Islands shall accept as valid, without a test or fee, the operator's permit or license or military driving permit issued to United States personnel or third country contractor personnel by the Government of the United States, the Governments of the States of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

2. Official vehicles of the Armed Forces of the United States, vehicles owned or operated by the United States contractors, and privately owned vehicles of United States personnel shall be identified by individual markings or license plates issued by the Government of the United States, the Governments of the States of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

(a) Official vehicles shall not be subject to the registration or safety inspection laws of the Government of the Republic of the Marshall Islands.

(b) The Armed Forces of the United States may register vehicles of United States contractors and United States personnel that are not official vehicles, and may inspect such vehicles applying safety standards of general applicability in the Republic of the Marshall Islands. Vehicles so registered and inspected shall be exempt from the registration and safety inspection laws of the Government of the Republic of the Marshall Islands.

3. For purposes of this Article the term "vehicles" includes all forms of land, sea and air transportation.

Article X

Relinquishment of Defense Sites

Article X

Relinquishment of Defense Sites

1. If any installations or improvements which were constructed at the expense of the Government of the United States are to be left behind after relinquishment of a defense site or portion thereof, whether at the termination of any agreement provided for in Section 321 or 323 of the Compact, as amended, or at any other date, the Government of the Republic of the Marshall Islands and the Government of the United States shall consult to determine the residual value, including scrap value, if any, of any such installations or improvements to the Government of the Republic of the Marshall Islands .
2. The Government of the United States shall take all measures practicable to ensure that every condition substantially or materially hazardous to human life, health and safety resulting from use of defense sites is removed or otherwise made safe. The Governments concerned shall consult as to what constitutes a hazard and how hazards shall be removed or otherwise made safe.
3. The Government of the United States shall have no obligation, upon relinquishment, to restore defense sites to their former condition; however, upon notification of intent to relinquish a defense site or portion thereof, or sooner if mutually agreed, the Government of the United States and the Government of the Republic of the Marshall Islands shall enter into negotiations with a view to reaching an equitable arrangement for return of lands that takes due account of United States investment, the prospective use to which such lands will be used and the unique importance of land under local custom and law.
4. The Government of the Republic of the Marshall Islands and the Government of the United States shall commence consultations no later than seven years prior to the termination of the Military Use and Operating Rights Agreement to plan, schedule and implement the provisions of this Article. The Government of the United States shall either transfer installations, facilities, or improvements to the Government of the Republic of the Marshall Islands as soon as they are no longer required by the United States, or it will maintain such installations, facilities or improvements in operating condition throughout the period of consultations.

Article XI

Equipment

Article XI

Equipment

The Government of the United States shall retain title to equipment, materials and other moveable property brought into or acquired in the Republic of the Marshall Islands and may remove such property at any time. In the event the Government of the United States wishes to dispose of such equipment, materials or other moveable property, the Government of the Republic of the Marshall Islands shall have a right of first refusal to purchase such items, at an agreed upon price, after the Government of the United States has fulfilled its statutory and regulatory responsibilities including first offering such equipment to other agencies of the Government of the United States. Upon notification of intent to relinquish a defense site, or portion thereof, the Government of the United States will enter into negotiations with the Government of the Republic of the Marshall Islands regarding the disposition of all fixed and movable real property located on the defense site or sites.

Article XII

Criminal Jurisdiction

Article XII

Criminal Jurisdiction

1. Subject to the provisions of this Article:

(a) United States personnel are subject to the criminal jurisdiction of the Government of the Republic of the Marshall Islands for offenses committed by such personnel in the Republic of the Marshall Islands.

(b) The Government of the United States has the right to exercise within the Republic of the Marshall Islands criminal and disciplinary jurisdiction over United States personnel for offenses punishable under the laws of the United States. In lieu of criminal or disciplinary proceedings in the Republic of the Marshall Islands, the Government of the United States may elect to remove United States personnel for such proceedings elsewhere.

(c) For purposes of asserting jurisdiction under this Article, the determination of a Signatory Government as to whether an offense is punishable under its laws shall be conclusive.

2. The Government of the Republic of the Marshall Islands has the right to exercise exclusive jurisdiction over United States personnel with respect to offenses committed in the Republic of the Marshall Islands which are punishable under local law, but not under the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States.

3. The Government of the United States has the right to exercise exclusive jurisdiction over United States personnel with respect to offenses committed in the Marshall Islands which are punishable under the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States, but not under local law.

4. The Government of the Republic of the Marshall Islands and the Government of the United States have concurrent jurisdiction over United States personnel with respect to offenses committed in the Republic of the Marshall Islands which are punishable under both local laws and the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States. Whenever it is determined by the Government of the Republic of the Marshall Islands that an act or omission is a punishable offense under the laws of the Republic of the Marshall Islands, and it is determined by the Government of the United States that the same act or omission is a punishable offense under the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States, the following rules shall apply:

(a) The Government of the Republic of the Marshall Islands has the primary right to exercise jurisdiction over United States personnel in all other cases of concurrent jurisdiction, except as provided in paragraph 4(b) of this article.

(b) The Government of the United States has the primary right to exercise jurisdiction over United States personnel in the Republic of the Marshall Islands for:

(1) Offenses committed within defense sites, including non-exclusive-use areas during periods of use by the Government of the United States under applicable military use and operating rights agreements concluded under Sections 321 and 323 of the Compact, as amended;

(2) Offenses against the property or security of the United States, or offenses against the person or property of United States personnel;

(3) Offenses arising out of the performance of official duty;

(4) Offenses committed by United States personnel who are attached to or embarked in aircraft or vessels transiting the Republic of the Marshall Islands and which are operated by, for, or under the control of the Armed Forces of the United States or United States contractors; and

(5) Any other offense punishable by deprivation of liberty or by a more severe penalty. However, the Government of the Republic of the Marshall Islands has the primary right of jurisdiction to try any offense that is not a felony under local law and for which the sole penalty which shall be adjudged or imposed, if any, is a fine. The Government of the Republic of the Marshall Islands shall have the primary right to exercise jurisdiction over any such offense which is not a felony under local law and is subject to a maximum punishment no greater than deprivation of liberty for less than six months.

(c) The Government of the Republic of the Marshall Islands having the primary right to exercise jurisdiction waives that right, unless it notifies the Government of the United States of its intention to exercise such right as soon as practicably, but within 30 calendar days after notification of the offense by either government.

(d) The Government having the primary right to exercise jurisdiction shall give sympathetic consideration to a request from the other Government concerned for a waiver of such primary right in cases the requesting Government considers to be of particular importance.

(e) The provisions of this article shall be reviewed by the Signatory Governments concerned at anytime on request by one of them in order to determine whether any modification of its provisions may be appropriate in light of circumstances then prevailing.

5. Except for laws officially transmitted in English to the Government of the United States by the Government of the Republic of the Marshall Islands, ignorance of the laws of the Republic of the Marshall Islands shall constitute a defense.

6. The Government of the United States and the Government of the Republic of the Marshall Islands shall assist each other in the arrest or detention of United States personnel in the Republic of the Marshall Islands.

(a) The Government of the Republic of the Marshall Islands shall promptly notify the Government of the United States of the arrest or detention of any United States personnel.

(b) Members of the force accused or suspected of the commission of any offense in the Republic of the Marshall Islands shall remain in or be transferred to the custody of the Government of the United States unless the Government of the United States declines such custody. The Government of the United States shall make available for purposes of investigation or trial members of the force in its custody over whom the Government of the Republic of the Marshall Islands has the right to exercise jurisdiction pursuant to this Agreement. Upon completion of all judicial proceedings, including appellate proceedings, such personnel shall be transferred to the Government of the Republic of the Marshall Islands if a sentence providing for deprivation of liberty has been finally adjudged.

(c) The provisions of Title Four of the Agreement on Mutual Assistance in Law Enforcement Matters shall be applicable to United States personnel who are citizens or nationals of the United States.

(d) The Government of the United States may request custody of a prisoner who is a member of the force, deprived of liberty by order of a Court of the Republic of the Marshall Islands. The Government of the Republic of the Marshall Islands shall transfer such prisoner to the custody of the Government of the United States which shall provide for the carrying out of the terms of such deprivation of liberty.

7. The Government of the United States and the Government of the Republic of the Marshall Islands shall assist each other in the carrying out of all necessary investigations into offenses within the scope of this Article, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. The transfer of such objects may be made subject to their return within the time specified by the Government delivering them.

8. Where a person has been tried in accordance with the provisions of this Article, either by the Government of the United States or the Government of the Republic of the Marshall Islands, and has been acquitted or convicted, or has been pardoned, he may not be tried again within the same territory for the same offense by either Government. This paragraph is without prejudice to the authority of the Armed Forces of the United States to try a member of the force for any violation of rules of discipline.

9. United States personnel prosecuted under the jurisdiction of the Government of the Republic of the Marshall Islands shall be entitled to all guarantees and rights provided by the constitution and laws of the prosecuting Government for its own citizens and to the following guarantees and rights to the extent that they are not provided by that constitution and those laws:

- (a) To a prompt and speedy trial;
- (b) To be tried only in a court presided over by a qualified judge trained in the law;
- (c) To be informed, in advance of trial, of the specific charge or charges made against such person;
- (d) To be confronted with and permitted to cross-examine the witnesses against such person;
- (e) To have compulsory process for obtaining witnesses in favor, of such person, if the witnesses are within the jurisdiction of the court;
- (f) To have legal representation of such person's own choice for such person's defense throughout all investigative and judicial phases of the entire proceedings or, at such person's election, to have legal representation appointed by the court at no cost to such person under the same terms and conditions applicable to citizens of the Republic of the Marshall Islands;
- (g) To have the services of a competent interpreter, if such person considers it necessary;

(h) To communicate with a representative of the Government of the United States and to have such a representative present at trial and at all stages of the proceedings, including pretrial hearings and examinations and appeals;

(i) Not to be charged with a criminal offense on account of any act or omission which did not constitute a criminal offense under the statutory law of the prosecuting Government at the time it was committed or be subjected to punishment more severe or a procedure less favorable than the one applicable at the time the offense was committed;

(j) To be present at trial which shall be public;

(k) To have the burden of proof placed upon the prosecution;

(l) To be protected from the use of a confession or other evidence obtained by unlawful or improper means;

(m) Not to be compelled to testify against or otherwise incriminate himself or herself;

(n) Not to be required to stand trial while physically or mentally unfit to stand trial and participate in his or her defense;

(o) Not to be tried or punished more than once for the same offense, nor to be subject to greater punishment after appeal than was adjudged initially by the court of first instance;

(p) To have the right to appeal a conviction or sentence;

(q) Not to be subject to an appeal by the prosecution from an acquittal, or a finding of not guilty;

(r) To have credited to any sentence of confinement any related period of pretrial confinement in a confinement facility of the Government of the United States or the Government of the Republic of the Marshall Islands; and

(s) Not to be subject to the application of martial law or trial by military courts or special tribunals.

10. United States personnel who have been tried in courts of the Government of the Republic of the Marshall Islands, and who have been convicted and are serving sentences in confinement facilities of such Government or United States personnel in pretrial custody of such Government, shall be entitled to receive visits not less than monthly from members of their families and from representatives of the Government of the United

States. Health and comfort items including clothing, medicine and food may be delivered to and used by such United States personnel in confinement or pretrial custody.

11. Facilities of the Government of the Republic of the Marshall Islands used for confinement or detention of United States personnel shall meet standards agreed upon by the Government of the United States and the Government of the Republic of the Marshall Islands.

12. United States personnel convicted by courts of the Government of the Republic of the Marshall Islands shall not be subject to the death penalty, nor to any form of cruel or unusual punishment.

13. This Article is without prejudice to the authority of the Government of the United States to exercise administrative authority over United States personnel.

14. The Government of the United States and the Government of the Republic of the Marshall Islands confirm that United States personnel may not be surrendered to, or otherwise transferred to, the custody of an international tribunal or any other entity or state without the express written consent of the Government of the United States.

Article XIII

Additional Criminal Jurisdiction

Article XIII

Additional Criminal Jurisdiction

In addition to the rights set forth in Article XII, the Government of the United States shall have the primary right to exercise jurisdiction over all United States citizens or nationals of the United States who are not United States personnel for offenses punishable under the laws of the United States committed within defense sites while in use by the Government of the United States in the Republic of the Marshall Islands. The Government of the Republic of the Marshall Islands shall assist the Government of the United States in the arrest of any such person. The custody of any such person shall remain in or be transferred to the Government of the United States unless such custody is declined. The waiver provisions of Article XII, paragraph 4, shall apply.

Article XIV

Respect for Local Law

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Article XIV

Respect for Local Law

The Government of the United States shall adopt and enforce measures consistent with the Compact, as amended and this Agreement as may be necessary to ensure that United States personnel, United States contractors and third country contractor personnel respect the laws of the Republic of the Marshall Islands, refrain from any activity inconsistent with this Agreement, and refrain from any political activity concerning the Republic of the Marshall Islands.

Article XV

Claims

Article XV

Claims

This Article provides the exclusive mechanism for resolution of any claim arising from the conduct of the Armed Forces of the United States in the Republic of the Marshall Islands within the scope of this Agreement. This Article includes claims by the Government of the Republic of the Marshall Islands or by third parties against the Armed Forces of the United States. For purposes of this Article, the term "Armed Forces of the United States" shall include members of the force, members of the civilian component, and, when acting in the performance of official duty, local-hire employees of the Armed Forces. Such claims shall be resolved as follows:

1. Claims sounding in contract against the Armed Forces of the United States shall be resolved in accordance with the disputes clause of the contract, if any, and the laws of the United States relating to the resolution of such disputes.
2. Claims, other than claims sounding in contract to which paragraph 1 applies, shall be referred to the Government of the United States. For these claims, the Government of the United States, in accordance with U.S. law regarding foreign claims and public vessels, will pay just and reasonable compensation in settlement of meritorious claims for damage, loss, personal injury or death, caused by acts or omissions of the Armed Forces of the United States, or otherwise incident to non-combat activities of the Armed Forces of the United States. The Government of the Republic of the Marshall Islands, as appropriate, will provide the Government of the United States with a report on the alleged damages under its laws.
3. A claim against the Armed Forces of the United States not resolved to the satisfaction of the claimant under paragraph 2 above, and which is espoused on behalf of one of its citizens by the Government of the Republic of the Marshall Islands, shall be referred to the Joint Committee established pursuant to section 351 of the Compact, as amended.
4. Subject to the provisions of Article XII of this Agreement, and absent consent of the Government of the United States, the Armed Forces of the United States shall not be subject to any proceedings in the courts of the Republic of the Marshall Islands, nor shall the United States be subject to such proceedings arising from the conduct of the Armed Forces.
5. The Government of the United States shall facilitate appropriate arrangements between the government of any third country which has members or units of its armed forces in the Republic of the Marshall Islands pursuant to Section 315 of the Compact, as amended, and the Government of the Republic of the Marshall Islands with respect to appropriate settlement of claims arising from the activities of such members or units.

6. Any judgment presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor court, pursuant to Section 174 of the Compact of Free Association, as amended, shall be deemed manifestly erroneous as to law if the claim upon which such judgment is based would have been barred by the statute of limitations if such claim had been brought in a court of the United States.

7. Pursuant to Section 174 of the Compact, as amended, all claims within the scope of this Article which otherwise would have been within the scope of Section 174 of the Compact, as amended shall be settled exclusively in accordance with the provisions of this Article.

Article XVI

Currency

Article XVI

Currency

The Armed Forces of the United States, United States contractors and United States personnel may import into, possess and use within, and export from the Republic of the Marshall Islands, United States currency. Such importation, possession, use and exportation of United States currency shall be exempt from any form of regulation, restriction, or control by the Government of the Republic of the Marshall Islands. Should the Government of the Republic of the Marshall Islands act pursuant to Section 251 of the Compact, as amended to institute a currency other than United States currency, the Government of the United States and the Government of the Republic of the Marshall Islands shall consult regarding the applicability of foreign exchange laws and regulations in the jurisdiction of the Government of the Republic of the Marshall Islands.

Article XVII

Medical Services

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Article XVII

Medical Services

To the extent that appropriate services can be made available consistent with available resources and the laws and regulations of the United States, the Government of the United States shall provide, at the request of the Government of the Republic of the Marshall Islands, medical care to citizens of the Republic of the Marshall Islands in United States military medical facilities or by United States military medical personnel on a reimbursable basis under terms and conditions agreed upon between the Government of the United States and the Government of the Republic of the Marshall Islands.

Article XVIII

Telecommunications

Article XVIII

Telecommunications

The Government of the United States may use local telecommunication systems and shall do so to the extent feasible. The Government of the United States in determining its uses of such systems shall take into consideration the cost and security of such systems.

(a) To the extent that the Government of the Republic of the Marshall Islands establishes complete and fully effective commercial international telecommunications systems compatible with existing United States Government installations, and the Government of the United States determines such use is feasible based on the criteria above, the Government of the United States and the Government of the Republic of the Marshall Islands shall enter into negotiations for a use arrangement which includes normal billing procedures. Following entering into such a use agreement, the Government of the United States shall withdraw or modify any authorizations for use of Defense communications systems for non-official calls by United States personnel.

(b) The Government of the United States shall utilize, to the extent practicable, local telecommunication systems for non-official purposes.

Article XIX

Effective Date, Amendment and Duration

Article XIX

Effective Date, Amendment and Duration

1. This Agreement shall come into effect simultaneously with the Compact, as amended.
2. This Agreement may be amended at any time by mutual consent of the Government of the Republic of the Marshall Islands and the Government of the United States.
3. The duration of this Agreement as between the Government of the United States and the Government of the Republic of the Marshall Islands is for the period of effectiveness of either Title Three of the Compact, as amended, or of the appropriate separate agreements entered into pursuant to Sections 321 and 323 of the Compact, as amended, whichever is the longer. Thereafter, this Agreement shall remain in force until terminated by a Signatory Government, in the following manner:
 - (a) Termination of this Agreement by any Signatory Government shall be effected by a written notification to either the Government of the United States or to the Government of the Republic of the Marshall Islands, as appropriate.
 - (b) Termination shall take effect one year after the recipient Government has been notified.
4. This Agreement may be accepted, by signature or otherwise, by the Government of the United States and the Government of the Republic of the Marshall Islands. Each Government accepting this Agreement shall possess an original English language version.

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

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF THE MARSHALL
ISLANDS:

STATUS OF FORCES AGREEMENT

Agreed Minutes

Article VI, Service Facilities: The terms "service, educational and recreational facilities" include schools, commissary stores, retail exchanges and related concessions, credit unions, banking facilities, radio and television stations, recreational facilities, and social and athletic clubs.

Article VII, Military Post Offices: Such military post offices shall be established, operated and maintained exclusively pursuant to the laws and regulations governing the Armed Forces of the United States.

Article VIII, Bearing of Arms: It is the intention of the Signatory Governments that local military commanders and designated representatives of the Government concerned shall enter into an exchange of letters governing the control of privately owned arms. Such an exchange of letters may address the following:

- registration by military authorities of all privately owned arms, and the provision of registration lists, including certificates of transfer or removal of such arms, to the Government concerned;
- designation of target practice areas within defense sites;
- limitations on the carrying of privately owned arms outside defense sites; and
- other provisions for the control by military authorities of privately owned arms.

Article XV, Claims: The Signatory Governments do not intend that paragraph 7 of Article XV preclude the operation of Section 174 of the Compact, as amended, provided that paragraph 6 of Article XV governs the operation of Section 174 (d) of the Compact, as amended. The import of paragraph 7 of Article XV, read with paragraph 1 of Article XV, is as follows:

-- All claims within the scope of paragraph 1 of Article XV which arise after the effective date of this Agreement shall be processed and settled exclusively pursuant to the Foreign Claims Act, 10 U.S.C. 2734, and any regulations promulgated in implementation thereof.

-- A claim within the scope of paragraph 1 of Article XV which arises during the two year period immediately prior to the effective date of this Agreement shall also be processed and settled pursuant to the Foreign Claims Act, 10 U.S.C. 2734, unless a court action based on such claim has been initiated prior to the effective date of this Agreement and the party bringing such court action continues the court action and proceeds in

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accordance with section 174(d) of the Compact, as amended. The party bringing such court action may, prior to entry of a final judgment by the court in the action, terminate the action before the court and bring the claim under paragraph 1 of Article XV, in which instance paragraph 7 of Article XV shall govern.

-- Claims arising more than two years prior to the effective date of this Agreement may be brought only in accordance with Section 174(d) of the Compact, as amended.

-- A claim processed, settled and paid under paragraph 1 of Article XV may not subsequently be brought under Section 174(d) of the Compact, as amended. Similarly, a claim which has proceeded to judgment in a court action and is subject to certification under Section 174(d) of the Compact, as amended, may not be processed and settled under paragraph 1 of Article XV.

Article XV is without prejudice to any claim addressed in Section 353 of the Compact, as amended, whether such claim arises prior to subsequent to the effective date of this Agreement.

Article XVI, Currency: Subject to Article VI, this Article is not intended to authorize the establishment or operation of a private financial institution in the Republic of the Marshall Islands except in accordance with local law.