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CHAPTER 4A

**GOVERNMENT OF GUAM RETIREMENT PLAN
DEFINED BENEFIT 1.75 RETIREMENT SYSTEM**

SOURCE: These rules were submitted to the Legislature on March 30, 2017, and became effective on June 28, 2017, pursuant to the legislative decision to not act upon them pursuant to 5 GCA, Ch. 9, Administrative Adjudication Law.

2020 NOTE: The rules and regulations codified in this Chapter reflect the Plan Document for the Defined Benefit 1.75 Retirement System, and have been renumbered and codified in this Chapter pursuant to the authority of 1 GCA § 1606.

Preamble

Article 1. Participation

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Preamble

On September 14, 2016, the Legislature of the Government of Guam enacted Public Law No. 33-186 which establishes the “Defined Benefit 1.75 Retirement System” or “DB 1.75 Plan” as codified in Article 5, Chapter 8, Title 4 of the Guam Code Annotated (“GCA”). As described in Article 5, Chapter 8 of Title 4 of the GCA, the DB 1.75 Plan does not constitute a separate fund apart from the Existing Retirement System, but rather constitutes additional provisions to the Existing Retirement System which establishes an alternative benefit structure under the Existing Retirement System that may be elected on a voluntary basis by members of the Government of Guam Defined Contribution Retirement System. This alternative benefit structure under the DB 1.75 Plan is coordinated with participation in and a mandatory contribution to the Government of Guam Deferred Compensation Program.’

Pursuant to Article 5, Chapter 8 of Title 4 of the GCA, and for purposes of the administration of the DB 1.75 Plan, the Board of Trustees (“Board”) desires to adopt this plan document effective as of January 1, 2018, which reflects the terms and conditions of the DB 1.75 Plan, and which

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supplements the statutory provisions of Articles 1 and 5, Chapter 8 of Title 4 of the GCA, governing the Existing Retirement System and the DB 1.75 Plan. Unless otherwise provided under the DB 1.75 Plan (which DB 1.75 Plan shall be comprised of the underlying statutory provisions, this plan document, and the underlying rules and regulations), the provisions of the Existing Retirement System under Article 1, Chapter 8 of Title 4 of the GCA, shall be applicable under the DB 1.75 Plan.

This DB 1.75 Plan document as aggregated with the statutory provisions of Articles 1 and 5, Chapter 8 of Title 4 of the GCA, constitutes a “governmental plan” as defined in Section 414(d) of the United States Internal Revenue Code of 1986. It is intended that the Plan and underlying trust constitute a qualified retirement plan that meets the applicable requirements under Sections 401(a) and 501(a), of the United States Internal Revenue Code and the “mirror” provisions under the Guam Territorial Income Tax Code.

ARTICLE 1
PARTICIPATION

- § 4A101. New Members in Defined Contribution System.
- § 4A102. Active Members in Defined Contribution.
- § 4A103. Reemployment of Defined Contribution System Member.
- § 4A104. Reemployment of Existing Retirement System Member.
- § 4A105. Reemployment of Retiree.
- § 4A106. No Other Eligibility to Retirement Fund.
- § 4A107. Membership in Deferred Compensation Program.
- § 4A108. Membership in Welfare Benefit Plans.
- § 4A109. Summary of DB 1.75 Plan Participation Elections.

§ 4A101. Participation.

(a) Election by Certain New Employees in 2017.

(1) An Employee whose employment commences with the Government of Guam between April 1, 2017, and

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December 31, 2017, inclusive, and who satisfies the eligibility requirements for membership in the Existing Retirement Fund under 4 GCA §§ 8105 and 8106, may during the “New Employee Election Window” commencing on the Employee’s employment commencement date and ending on December 31, 2017 (or January 31, 2018, for Employees who employment commencement date is during the month of December 2017) elect (“New Employee Election”) on a voluntary basis to participate in the Defined Benefit 1.75 Retirement System (“DB 1.75 Plan”).

(2) In the case of a Member who so elects, the Member’s entry date into the DB Plan 1.75 Plan shall be effective as of January 1, 2018, and notwithstanding the otherwise applicable eligibility provisions of Article 2, Chapter 8 of Title 4 of the GCA, under the Defined Contribution System, the Member shall terminate participation in the Defined Contribution System as of January 1, 2018.

(b) A Member’s New Employee Election that is made and delivered to the Plan prior to the close of the New Employee Election Window may be revoked and modified prior to the close of the New Employee Election Window.

(1) However, the Member’s New Employee Election shall be irrevocable as of the close of the New Employee Election Window (i.e., December 31, 2017, or January 31, 2018, for an Employee whose employment commencement date is during the month of December 2017) and the Member shall not be allowed to modify the New Employee Election after the close of the New Employee Election Window.

(2) Thus, following the submission of a New Employee Election and the close of the New Employee Election Window, the Member shall not be allowed to withdraw from participation in the DB 1.75 Plan or commence active participation in the Defined Contribution System. The failure to make an New Employee Election shall mean that by default under the otherwise applicable

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requirements the Member shall become an active member under the Defined Contribution System and not commence participation under the DB 1.75 Plan. The New Employee Election shall be made by submitting a prescribed election form in the form and manner as determined by the Board.

(c) As described in Article 3, the New Employee Election shall include the requirement to transfer the Member's Account that would otherwise be established and maintained under the Defined Contribution Retirement System to the Retirement Fund effective as of January 1, 2018 (or January 31, 2018, if such date is the applicable close of the New Employee Election Window).

(d) The New Employee Election is for participation in the DB 1.75 Plan effective as of January 1, 2018, and the New Employee Election Window closes on December 31, 2017, (or January 31, 2018, for an Employee whose New Employee Election Window closes at such time) and the transfer of the Member's Account to the Retirement Fund shall occur as such time.

(1) As such, the New Employee Election shall only apply to an Employee who is employed by the Government of Guam as of January 1, 2018 (or January 31, 2018, for an Employee whose New Employee Election Window closes at such time).

(2) Specifically, the New Employee Election shall apply only to an Employee who is in continuous employment with the Government of Guam through January 1, 2018 (or January 31, 2018, for an Employee whose New Employee Election Window closes at such time).

(3) Thus, the New Employee Election shall not apply to an Employee who has retired or otherwise terminated employment from the Government of Guam during the course of the New Employee Election Window, or as of January 1, 2018 (or January 31, 2018, for an Employee

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whose New Employee Election Window closes at such time).

(4) In this case, the Employee shall continue participation in the Defined Contribution System in accordance with the terms and conditions of the Defined Contribution System.

2020 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 4A102. Active Members in Defined Contribution.

(a) Election by Active Members.

(1) An Employee who is an active member in the Defined Contribution System on March 31, 2017, may during the “Active Member Election Window” commencing April 1, 2017, and ending on September 30, 2017, elect (“Active Member Election”) on a voluntary basis to participate in the DB 1.75 Plan.

(2) In the case of a member who so elects, the member’s entry date into the DB 1.75 Plan shall be January 1, 2018, and the member shall terminate participation in the Defined Contribution System as of January 1, 2018.

(b) A member’s Active Member Election that is made and delivered to the Plan prior to the close of the Active Member Election Window may be revoked and modified prior to the close of the Active Member Election Window.

(1) However, the member’s Active Member Election shall be irrevocable as of the close of the Active Member Election Window (i.e., September 30, 2017) and the member shall not be allowed to modify the Active Member Election after the close of the Active Member Election Window.

(2) Thus, following the submission of an Active Member Election and the close of the Active Member Election Window, the member shall not be allowed to withdraw from participation in the DB 1.75 Plan or

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recommence active participation in the Defined Contribution System.

(3) The failure to make an Active Member Election shall mean that by default under the otherwise applicable requirements the Member shall remain as an active member under the Defined Contribution System and not commence participation under the DB 1.75 Plan. The Active Member Election shall be made by submitting a prescribed election form in the form and manner as determined by the Board.

(c) In accordance with 4 GCA §§ 8503(d)(2) and 8504 and as described in Article 3, the Active Member Election shall include the requirement to transfer the required portion of the Member's Account under the Defined Contribution Retirement System to the Retirement Fund effective as of January 1, 2018.

(d) Inasmuch as the Active Member Election is for participation in the DB 1.75 Plan effective as of January 1, 2018, the Active Member Election shall only apply to Participants who are employed by the Government of Guam as of January 1, 2018.

(1) Specifically, the Active Member Election shall apply only to a Member who is in continuous employment with the Government of Guam as of March 31, 2017 (i.e., immediately prior to the Active Member Election Window), and through January 1, 2018.

(2) Thus, the Active Member Election shall not apply to a Member who has retired or otherwise terminated employment from the Government of Guam as of the March 31, 2017, or during the course of the Active Member Election Window, or as of January 1, 2018.

(3) In this case, the Member of the Defined Contribution System shall continue participation in the Defined Contribution System in accordance with its terms and conditions.

2020 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

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§ 4A103. Reemployment of Defined Contribution System Member.

(a) Reinstated Membership in Defined Contribution System. In accordance with 4 GCA § 8502(4), any Employee who is a member in the Defined Contribution System, who terminates employment from the Government of Guam and who later is reemployed prior to September 30, 2017, by the Government of Guam, shall become an active member in the Defined Contribution System upon reemployment if such Employee otherwise meets the eligibility requirement under the Defined Contribution System.

(b) Reemployed Member Election to DB 1.75 Plan

(1) Reemployment Between April 1, 2017 and September 30, 2017. However, if such a member described above in Section § 4A103(a) is reemployed by the Government of Guam during the period commencing on April 1, 2017, and ending on September 30, 2017, and satisfies the eligibility requirements for membership in the Existing Retirement Fund under 4 GCA §§ 8105 and 8106, the member may during the “Reemployed Member Election Window” commencing April 1, 2017, and ending on September 30, 2017 (or October 31, 2017) for a member reemployed during the month of September 2017), elect (“Reemployed Member Election”) on a voluntary basis to participate in the DB 1.75 Plan. In the case of a member who so elects, the member’s entry date into the DB 1.75 Plan shall be January 1, 2018, and the Member shall terminate participation in the Defined Contribution System as of January 1, 2018.

(2) A member’s Reemployed Member Election that is made and delivered to the Plan prior to the close of the Reemployed Member Election Window may be revoked and modified prior to the close of the Reemployed Member Election Window.

(A) However, the member’s Reemployed Member Election shall be irrevocable as of the close of the Reemployed Member Election Window (i.e.,

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September 30, 2017, or October 31, 2017 for a member reemployed during the month of September 2017) and the member shall not be allowed to modify the Reemployed Member Election after the close of the Reemployed Member Election Window.

(B) Thus, following the submission of a Reemployed Member Election and the close of the Reemployed Member Election Window, the member shall not be allowed to withdraw from participation in the DB 1.75 Plan or recommence active participation in the Defined Contribution System.

(C) The failure to make a Reemployed Member Election shall mean that by default under the otherwise applicable requirements the Member shall recommence as an active member under the Defined Contribution System and not commence participation under the DB 1.75 Plan. The Reemployed Member Election shall be made by submitting a prescribed election form in the form and manner as determined by the Board.

(D) In accordance with 4 GCA §§ 8503(d)(2) and 8504 and as described in Article 3, the Reemployed Member Election shall include the requirement to transfer the required portion of the Participant's Account under the Defined Contribution Retirement System to the Retirement Fund effective as of January 1, 2018.

(E) Inasmuch as the Reemployed Member Election is for participation in the DB 1.75 Plan effective as of January 1, 2018, the Reemployed Member Election shall only apply to Members who are employed by the Government of Guam as of January 1, 2018.

(F) Specifically, the Reemployed Member Election shall apply only to a Member who is in continuous employment with the Government of

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Guam from the date of reemployment through January 1, 2018.

(i) Thus, the Reemployed Member Election shall not apply to a Member who has retired or otherwise terminated employment from the Government of Guam during the course of the Reemployed Member Election Window, or as of January 1, 2018.

(ii) In this case, the Member of the Defined Contribution System shall continue participation in the Defined Contribution System in accordance with its terms and conditions.

(3) Reemployment Between October 1, 2017 and December 31, 2017.

(A) Further, if such a member described above in § 4A103(a) is reemployed by the Government of Guam during the period commencing on October 1, 2017, and ending on December 31, 2017, and satisfies the eligibility requirements for membership in the Existing Retirement Fund under 4 GCA §§ 8105 and 8106, the member may on elect (“Late Reemployed Member Election”) on a voluntary basis during the thirty (30) day period commencing on the date of reemployment (“Late Reemployed Member Election Window”) to participate in the DB 1.75 Plan.

(B) In the case of a member who so elects, the member’s entry date into the DB 1.75 Plan shall be January 1, 2018. The Late Reemployed Member Election shall be made by submitting a prescribed election form in the form and manner as determined by the Board.

(C) In accordance with 4 GCA §§ 8503(d)(2) and 8504 and as described in Article 3, the Late Reemployed Member Election shall not include the requirement to transfer any portion of the

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Participant's Account under the Defined Contribution Retirement System to the Retirement Fund.

(c) Reemployment of Defined Contribution System Member on Disability

(1) No Eligibility for DB 1.75 Plan Generally.

(A) Notwithstanding the provisions of this Article 1 allowing a Defined Contribution System member to elect to participate in the DB 1.75 Plan following reemployment,

(B) a member of the Defined Contribution System who had incurred a disability and at any time been eligible to receive any benefits provided under any long-term disability insurance policy issued pursuant to 4 GCA § 8213 shall not be eligible for membership under the DB 1.75 Plan upon reemployment,

(C) but such member who satisfies the eligibility requirements for membership under 4 GCA §§ 8206 and 8207 at such time shall participate in the Defined Contribution System in accordance with such eligibility requirements.

(2) Election by Member on Disability Prior to October 1, 2017. Notwithstanding the preceding portion of the § 4A103(c),

(A) if a member of the Defined Contribution system receives disability benefits under 4 GCA § 8213 or Article 4, Chapter 8 of Title 4 of the GCA, on or before September 30, 2017,

(B) and if such member is reemployed by or retires from the Government of Guam on or after January 1, 2018, the member may on elect ("Reemployed Disability Member Election") on a voluntary basis during the period commencing April 1, 2017, and ending on September 30, 2017 (or October 31, 2017,

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(C) for a member who commences receiving disability benefits during the month of September 2017) (“Reemployed Disability Member Election Window”) to participate in the DB 1.75 Plan.

(D) In the case of a member who so elects, the member’s entry date into the DB 1.75 Plan shall be the later of:

(i) January 1, 2018, or

(ii) as of the date of the Member’s reemployment or the Member’s retirement or other termination of employment.

(iii) The Reemployed Disability Member Election shall be made by submitting a prescribed election form in the form and manner as determined by the Board.

(E) In accordance with 4 GCA §§ 8503(d)(2) and 8504 and as described in Article 3, the Reemployed Disability Member Election shall include the requirement to transfer the required portion of the Participant’s Account under the Defined Contribution Retirement System to the Retirement Fund as of the date of the Member’s participation in the DB 1.75 Plan (i.e., the later of

(i) January 1, 2018, or

(ii) as of the date of the Member’s reemployment or the Member’s retirement or other termination of employment).

2020 NOTE: Subsection designations altered pursuant to authority granted by 1 GCA § 1606.

§ 4A104. Reemployment of Existing Retirement System Member.

(a) In accordance with 4 GCA § 8502(b)(3), any Employee who is a member in the Existing Retirement System, who terminates employment from the Government of Guam and who is later reemployed after December 31, 2017, by the Government

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of Guam, shall become an active member in the Existing Retirement System upon reemployment if such Employee has not received a refund of contributions resulting in ineligibility for membership under 4 GCA § 8130(b), and if such Employee otherwise meets the requirements under the Existing Retirement System.

(b) If such Employee has received a refund of contributions resulting in ineligibility for membership under 4 GCA § 8130(b), or if such Employee otherwise fails to meet the requirements under the Existing Retirement System, then such Employee shall be eligible for participation under Guam Retirement Security Plan in accordance with the terms and conditions of such plan.

2020 NOTE: Subsection designations altered pursuant to authority granted by 1 GCA § 1606.

§ 4A105. Reemployment of Retiree

Any Employee who retired under the Existing Retirement System, the Defined Contribution System, or the Defined Benefit 1.75 Retirement System shall participate in the Defined Contribution System upon reemployment in accordance with Article 2, Chapter 8 of Title 4 of the GCA.

§ 4A106. No Other Eligibility to Retirement Fund.

The New Employee Election, Active Member Election, Reemployed Member Election, Later Reemployed Member Election, and Reemployed Disability Member Election as described in the above in Article 1 constitute the means for an Employee to gain participation in the Retirement Fund under the terms and conditions of the DB 1.75 Plan.

(a) Apart from these means of participation in the Retirement Fund, no additional new Employees shall be admitted to the Retirement Fund under the terms and conditions of the Existing Retirement System on or after January 1, 2018, except as may be otherwise provided from time to time under the Existing Retirement System.

(b) Current members of the Existing Retirement System whose employment continues beyond December 31, 2017, shall continue to contribute and participate in the

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Existing Retirement System without change in provisions or benefits, except as may be otherwise provided from time to time under the Existing Retirement System.

2020 NOTE: Subsection designations altered pursuant to authority granted by 1 GCA § 1606.

§ 4A107. Membership in Deferred Compensation Program.

Any member in the DB 1.75 Plan shall participate in the Guam Deferred Compensation Program under Article 3, Chapter 8 of Title 4 of the GCA, effective as of the date on which the member commences participation in the DB 1.75 Plan.

§ 4A108. Membership in Welfare Benefit Plans.

(a) Any member in the DB 1.75 Plan shall not be eligible to participate in the welfare benefit plans established and maintained under Article 4, Chapter 8 of Title 4 of the GCA.

(b) Thus, a member of the Defined Contribution System who elects to participate in the DB 1.75 Plan under this Article shall not commence participation, and shall terminate participation, in such welfare benefits plans effective as of the date on which the member commences participation in the DB 1.75 Plan.

2020 NOTE: Subsection designations altered pursuant to authority granted by 1 GCA § 1606.

§ 4A109. Summary of DB 1.75 Plan Participation Elections.

Election	Election Period	Effective Date in DB 1.75 Plan	Effective Date of Termination from DC System	Transfer of DC System Account
New Employee Election [Employee's employment commencement date is 4/1/2017-12/31/2017]	4/1-12/31/2017 [4/1-1/31/2018 if commencement of employment in 12/2017]	1/1/2018	1/1/2018	Yes (effective 1/1/2018 or 1/31/2018 if later close of election)

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				period)
Active Member Election [active member in DC System as of 3/31/2017]	4/1-9/30/2017	1/1/2018	1/1/2018	Yes (effective 1/1/2018)
Reemployed Member Election [inactive member in DC System reemployed 4/1/2017-9/30/2017]	4/1-9/30/2017 [4/1-10/31/2017 if commencement of employment in 9/2017]	1/1/2018	1/1/2018	Yes (effective 1/1/2018)
Late Reemployed Member Election [inactive member in DC System reemployed 10/1/2017-12/31/2017]	30-day period commencing on date of reemployment	1/1/2018	N/A [continue as inactive member in DC System]	No
Reemployed Disability Member Election [inactive member in DC System reemployed or retirement/termination of employment on or after 1/1/2018]	4/1-9/30/2017 [4/1-10/31/2017 if commencement of disability benefits in 9/2017]	Later of 1/1/2018 or date of reemployment or retirement/termination of employment	Later of 1/1/2018 or date of reemployment or retirement/termination of employment	Yes (effective applicable date of reemployment or retirement/termination of employment)

2020 NOTE: Bracketed text is from the original plan document.

**ARTICLE 2
RETIREMENT BENEFITS**

- § 4A201. Basic Retirement Annuity.
- § 4A202. Service Retirement Annuity
- § 4A203. Late Retirement Annuity.
- § 4A204. Disability Retirement Annuity.
- § 4A205. Adjustment of Annuity.

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§ 4A201. Basic Retirement Annuity.

(a) A Member of the DB 1.75 Plan who terminates employment after completing at least five Years of Credited Service shall, upon written application to and approval by the Board, be eligible for a Basic Retirement Annuity upon attaining age 62. The Basic Retirement Annuity shall be an annual retirement annuity commencing at age 62 under the normal form of payment which is a single life annuity for the life of the Member in the amount equal to 1.75% of Average Annual Compensation for each Year of Credited Service. However, in no event shall the Member's Basic Retirement Annuity exceed the maximum of 85% of the Member's Average Annual Compensation. Further, in no event shall the Member's Basic Retirement Annuity be less than the minimum annual amount of \$1,200.

(b) A Member of the DB 1.75 Plan who is eligible for a Basic Retirement Annuity may elect to defer the commencement of such annuity until a date that is after age 62. In the case of such an election, the Member's retirement annuity shall be the same as the Basic Retirement Annuity as described above.

2020 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 4A202. Service Retirement Annuity.

A Member of the DB 1.75 Plan who terminates employment after completing at least 25 Years of Credited Service shall, upon written application to and approval by the Board, be eligible for a Service Retirement Annuity on or after attaining age 55 (and before attaining age 62). The Service Retirement Annuity shall be the amount of the Basic Retirement Annuity determined for the Member as of age 62, reduced by 1/2 of 1% for each month such Member is under the age of 62 years, determined as of the annuity commencement date.

§ 4A203. Late Retirement Annuity.

A Member of the DB 1.75 Plan who terminates employment after attaining age 62 and completing at least five Years of Credited Service shall, upon written application and approval of the Board, be eligible for a Late Retirement

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Annuity. The Late Retirement Annuity shall be the same as the Basic Retirement Annuity described above in Section 4A201 but determined as of the Member's date of termination from employment and based on the Member's Years of Credited Service and Average Annual Compensation as of that date.

§ 4A204. Disability Retirement Annuity.

A Member of the DB 1.75 Plan who incurs a disability shall be eligible for a Disability Retirement Annuity. The Disability Retirement Annuity shall be an annual retirement annuity commencing as date of disability under the normal form of payment which is a single life annuity for the life of the Member in the amount equal to 50% of Average Annual Compensation.

§ 4A205. Adjustment of Annuity.

Any Participant in pay status receiving a Basic, Service, Late, or Disability Retirement Annuity shall receive each year on the anniversary date of the Participant's Retirement (or other entitlement which serves as the annuity commencement date) an automatic "sliding scale" increase in the Member's Retirement Annuity as applicable under the Existing Retirement System pursuant to 4 GCA § 8122 (or in the case of the Member's Disability Retirement Annuity, as applicable under the Existing Retirement System pursuant to 4 GCA § 8129). Any Participant in pay status receiving a Basic, Service, Late, or Disability Retirement Annuity shall receive each year on the anniversary date of the Participant's Retirement (or other entitlement which serves as the annuity commencement date) an automatic "sliding scale" increase in the Member's Retirement Annuity as applicable under the Existing Retirement System pursuant to 4 GCA § 8122 (or in the case of the Member's Disability Retirement Annuity, as applicable under the Existing Retirement System pursuant to 4 GCA § 8129).

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ARTICLE 3
ACCOUNT TRANSFERS AND CREDITED SERVICE

- § 4A301. Transfers to Defined Benefit 1.75 Plan.
- § 4A302. Service Credits for Transfers to Defined Benefit 1.75 Plan.
- § 4A303. Defined Benefit 1.75 Plan Member Death and Survivors Benefits.
- § 4A304. Defined Benefit 1.75 Plan Member Contributions

§ 4A301. Transfers to Defined Benefit 1.75 Plan.

(a) Transfer of Member Account in Defined Contribution System.

(1) As described in Article 1, certain members in the Defined Contribution System (or who would otherwise participate as members in the Defined Contribution System) may elect to participate in the DB 1.75 Plan. If the Member so elects to participate in the DB 1.75 Plan pursuant to a New Member Election, the Member's participation in the DB 1.75 Plan (and cessation of participation in the Defined Contribution) shall be effective as of January 1, 2018. In this case, the Member's participation in the Defined Contribution System shall cease effective as of such date, and the amount of the Member's Account that has been established and maintained under the Defined Contribution System shall be transferred to the Retirement Fund as of January 1, 2018 (or January 31, 2018, for an Member whose New Employee Election Window closes at such time).

(2) However, as described in Article 1, if the Member elects to participate in the DB 1.75 Plan pursuant to an Active Member Election or a Reemployed Member Election, the Member shall participate in the DB 1.75 Plan effective as of January 1, 2018 (and the Member's participation in the Defined Contribution System shall cease

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as of January 1, 2018), and an amount of the Member's Account under the Defined Contribution Systems shall be transferred to the Retirement Fund as of January 1, 2018.

(3) Further, as described in Article 1, if the Member elects to participate in the DB 1.75 Plan pursuant to a Late Reemployed Member Election, the Member's participation in the DB 1.75 Plan (and cessation of participation in the Defined Contribution) shall be effective as of January 1, 2018. In this case, there shall be no required transfer of any portion of the Member's Account from the Defined Contribution System to the Retirement Fund, and the Member shall continue as an inactive member under the Defined Contribution System to the extent the Member's Account is maintained thereunder.

(4) Further, as described in Article 1, if the Member so elects to participate in the DB 1.75 Plan pursuant to a Reemployed Disability Member Election, the Member's participation in the DB 1.75 Plan (and cessation of participation in the Defined Contribution System) shall be the later of:

(i) January 1, 2018, or

(ii) as of the date of the Member's reemployment or the Member's retirement or other termination of employment. In this case, the required portion of the Member's Account shall be transferred from the Defined Contribution System to the Retirement Fund as of the date of the Member's participation in the DB 1.75 Plan (i.e., the later of (i) January 1, 2018, or (ii) as of the date of the Member's reemployment or the Member's retirement or other termination of employment).

(b) Transfer and Sources of Actuarial Cost of Credited Service.

(1) In the case of any required transfer of a Member's Account from the Defined Contribution System to the

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Retirement Fund, the portion of the Member's Account in the Defined Contribution System that shall be transferred to the Retirement Fund is the amount equal to:

(A) the Member's Account balance as described in 4 GCA § 8209 (Employer Contribution Account); plus

(B) the lesser of

(i) the Member's Account balances as described in 4 GCA §§ 8208 (i.e., Member Pick Up Contribution Account) and 8209.1(a) (i.e., Rollover Account of Member Contribution Reserve from Existing Retirement System); or

(ii) the "Actuarial Cost of Credited Service". However, in the case of a transfer of a Member's Account due to a New Employee Election, the entire amount of the Member's Account in the Defined Contribution System shall be transferred to the Retirement Fund.

(2) The transfer of the Member's 4 GCA § 8209 Account (i.e., Employer Contribution Account) shall be applied to the Member's 4 GCA § 8164(b) Account (i.e., Employer Contribution Reserve) under the Retirement Fund. The transfer of the Member's 4 GCA § 8208 Account (i.e., Member Pre-Tax Pick Up Contribution Account) shall be applied to the Member's 4 GCA § 8164(a) Account (i.e., Member Contribution Reserve) under the Retirement Fund. The transfer of the Member's GCA Section 8209.1(a) Account (i.e., Rollover Account of Member Contribution Reserve from Existing Retirement System) shall be applied to the Member's 4 GCA § 8164(a) Account (i.e., Member Contribution Reserve) under the Retirement Fund.

(3) In the case that the Actuarial Cost of Credited Service is less than the Member's Account balances as described in 4 GCA §§ 8208 (i.e., Member Pre-Tax Pick-Up Contribution Account) and 8209.1(a) (i.e., Rollover After-Tax Account of Member Contribution Reserve from

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Existing Retirement System), then the “Actuarial Cost of Credited Service”:

(A) first shall be funded from the Member’s GCA 4 § 8209.1(a) Account (i.e., Rollover After-Tax Account of Member Contribution Reserve from Existing Retirement System); and

(B) second any further amounts needed to fund up to the Actuarial Cost of Credited Service shall be funded from the Member’s 4 GCA § 8208 Account (i.e., Member Pre-Tax Pick-Up Contribution Account).

(c) Treatment of Excess Account Balances Following Transfer.

(1) Subsequent to the determination and funding of the Actuarial Cost of Credited Service from the Member’s Account in the Defined Contribution System:

(A) any Excess Account Balance attributable to the Member’s 4 GCA § 8209.1(a) Account (i.e., Rollover After-Tax Account of Member Contribution Reserve from Existing Retirement System) shall continue to be maintained under the Defined Contribution System, which may include amounts designated by the Member to be applied to repay prior partial withdrawals from the Member’s Account in accordance with 4 GCA § 8503(d)(3); and

(B) any Excess Account Balance attributable to the Member’s 4 GCA § 8208 Member Contribution Account (i.e., Member Pre-Tax Pick-Up Contribution Account) shall continue to be maintained under the Defined Contribution System, which may include amounts designated by the Member to be applied to repay prior partial withdrawals from the Member’s Account in accordance with 4 GCA § 8503(d)(3).

(2) An amount equal to the Member’s 4 GCA § 8209.1(b) Account (i.e., Rollover Pre-Tax Employer Contribution Account, also referred to as the Transfer

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Incentive Reserve, originating from the 4 GCA § 8164(b) Employer Contribution Reserve used to fund transfer incentive benefits under the Existing Retirement System in accordance with 4 GCA § 8164(b)) shall not be subject to transfer from the Defined Contribution System to the Retirement Fund and shall continue to be maintained under the Defined Contribution System. Further, any Ancillary Benefit Account maintained under the Defined Contribution System on behalf of a Member as described in 4 GCA § 820l(n) shall not be subject to transfer from the Defined Contribution System to the Retirement Fund and shall continue to be maintained under the Defined Contribution System. The nontransferable amounts under the Defined Contribution System may be designated by the Member to be applied to repay prior partial withdrawals from the Member's Account in accordance with 4 GCA § 8503(d)(3).

2020 NOTE: Subsection designations added/altered pursuant to authority granted by 1 GCA § 1606.

§ 4A302. Service Credits for Transfers to Defined Benefit 1.75 Plan.

(a) Defined Contribution System Credited Service. Effective as of the effective date of the transfer of a Member's Account from the Defined Contribution System to the DB 1.75 Plan (and the corresponding date of participation under the DB 1.75 Plan), the service for which the member's Account is credited with employer contributions under the Defined Contribution System (as well as the service under the Retirement Fund attributable to the employee contributions previously transferred from the Retirement Fund to the Defined Contribution System pursuant to the Member's election under GCA Section 8207), shall be credited to the Member for purposes of determining the Member's Years of Credited Service and Basic Retirement Annuity under this Article 2 (where full service shall be so credited irrespective of the value of the member's Account that is transferred to the DB 1.75 Plan, except that full service shall be subject to adjustment as described below in Section 4A302(b) in the case of a

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Member's Account that has been reduced by the Member's withdrawal).

(b) Credited Service for Repayment of Defined Contribution System Contributions. In the case of a Member who elects to participate in the DB 1.75 Plan and whose Defined Contribution System Account was previously reduced by the Member's withdrawal of an amount from the Member's Account that is attributable to contributions during the Member's active participation in the Defined Contribution System, the Member shall be allowed to repay to the Retirement Fund the amount of the withdrawal, adjusted for interest during the period commencing on the date of the withdrawal and ending on the date of the repayment, which repayment shall be made in any combination of the following:

- (1) single direct cash payment by the Member;
- (2) transfer of the Member's Excess Account Balance; or
- (3) installments to the Retirement Fund in accordance with Article 1 of Chapter 3, Division I, Title 2 of the Guam Administrative Rules, as amended.

If such withdrawn portion of the Member's Account is not timely repaid in full to the Retirement Fund, the service that otherwise would be credited under the Retirement Fund for service during the Member's active participation in the Defined Contribution System shall be reduced to account for the service to which the withdrawal relates, in accordance with rules, regulations and procedures as promulgated or approved by the Board.

(c) Credited Service for Repayment of Prior Retirement Fund Contributions. In the case of a Member who elects to participate in the DB 1.75 Plan and whose Defined Contribution System Account was previously reduced by the Member's withdrawal of an amount from the Member's Account that is attributable to the prior transfer of employee contributions from the Retirement Fund to the Defined Contribution System (specifically, considering only the portion of the Account derived from the transferred GCA Section 8209.1(a) Member

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Contribution Reserve Account, and not the portion of the Account derived from the transferred 4 GCA § 8164(b) Employer Contribution Reserve Account) pursuant to the Member's election under 4 GCA § 8207, the Member shall be allowed to repay to the Retirement Fund the amount of the withdrawal, adjusted for interest during the period commencing on the date of the withdrawal and ending on the date of the repayment, which repayment shall be made in any combination of the following:

- (1) single direct cash payment by the Member;
- (2) transfer of the Member's Excess Account Balance; or
- (3) installments to the Retirement Fund in accordance with Article 1 of Chapter 3, Division I, Title 2 of the Guam Administrative Rules, as amended.

If such withdrawn portion of the Member's Account is not timely repaid in full to the Retirement Fund, the service that otherwise would be credited under the Retirement Fund for service during the Member's active participation in the Defined Contribution System shall be reduced to account for the service to which the withdrawal relates, in accordance with rules, regulations and procedures as promulgated or approved by the Board.

2020 NOTE: Subsection designations added/altered pursuant to authority granted by 1 GCA § 1606.

§ 4A303. Defined Benefit 1.75 Plan Member Death and Survivors Benefits.

The death benefit and survivor annuity provisions in connection with a Member's death under 4 GCA § 8131 through 8135 or other successor provisions shall be applicable to the Defined Benefit 1.75 Plan Members in a manner no different than the application to Retirement Fund Members who are not Defined Benefit 1.75 Plan Members.

§ 4A304. Defined Benefit 1.75 Plan Member Contributions.

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(a) The Member contribution provisions under 4 GCA § 8186 or other successor provision shall be applicable to Defined Benefit 1.75 Plan Members in a manner no different than the application to Retirement Fund Members who are not Defined Benefit 1.75 Plan Members. However, notwithstanding that the contributions by Defined Benefit 1.75 Members are designated as member contributions and shall be administered as member contributions under 4 GCA § 8136, such contributions shall be on a mandatory basis deducted from the Member’s base salary and paid by the Employer in lieu of contributions by the Member, and shall constitute pre-tax “pick-up” employer contributions for purposes of determining the income tax treatment of such contributions under Code Section 414(h) and mirror provisions of the Guam Territorial Income Tax Code.

ARTICLE 4
DEFINITIONS

- § 4A400. [Note Regarding Definitions.]
- § 4A401. Average Annual Salary.
- § 4A401. Average Annual Salary.
- § 4A403. Board of Trustees or Board.
- § 4A404. Code.
- § 4A405. Contributing Employer.
- § 4A406. Deferred Compensation Program.
- § 4A407. Defined Benefit 1.75 Retirement System or DB 1.75 Plan.
- § 4A408. Defined Contribution System.
- § 4A409. Director.
- § 4A410. Effective Date.
- § 4A411. Employee.
- § 4A412. Excess Account Balance.
- § 4A413. Existing Retirement System.
- § 4A414. GCA.
- § 4A415. Government.
- § 4A416. Member

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- § 4A417. Plan Year.
- § 4A418. Retirement Fund.
- § 4A418. Salary.

§ 4A400. [Note Regarding Defintions.]

The following words and phrases under this DB 1.75 Plan shall have the meanings set forth below, unless clearly required otherwise by the context. Otherwise, the words and phrases under this DB 1.75 Plan shall have the meanings as applicable under the Existing Retirement System.

2020 NOTE: This prefatory language has been codified and numbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 4A401. Average Annual Salary.

Average Annual Salary means the average of the highest three Plan Years of Salary during the Member's Years of Credited Service.

§ 4A402. Actuarial Cost of Credited Service.

Actuarial Cost of Credited Service means a percentage of historical base salary corresponding to the service for which a Member's Account is credited with Employer Contributions under the Defined Contribution Retirement System through the date preceding the Member's effective date of participation in the Defined Benefit 1.75 Retirement System. The applicable percentage shall be specified by the Board based on an actuarial review of the cost of credited service. The same percentage shall apply to all members within categories of similarly situated members, which categories may be determined at the sole and complete discretion of the Board.

§ 4A403. Board of Trustees or Board.

Board of Trustees or Board means the Board of Trustees of the Government of Guam Retirement Fund, which is responsible for the direction and operation of the affairs and business of the Defined Benefit 1.75 Retirement System.

§ 4A404. Code.

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Code means the United States Internal Revenue Code of 1986, as amended, and corresponding references to the Guam Territorial Income Tax Code, as may be appropriate.

§ 4A405. Contributing Employer.

Contributing Employer means the following Government of Guam entities, organizations, and departments that are organized and operated in Guam and that employ a Participant:

- (a) each and every line department or agency of the Executive Branch,
- (b) every autonomous and semi-autonomous agency or instrumentality,
- (c) every public corporation,
- (d) every educational institution (whether secondary or post-secondary),
- (e) the Legislative Branch,
- (f) the Judicial Branch,
- (g) the Public Defender Corporation, and
- (h) every other public entity created by Guam law.

For purposes of accounting for contributions, the term “Contributing Employer” refers to the various payroll centers used within the Government of Guam from which contributions are made to the Plan.

2020 NOTE: Reference to Territory of Guam removed and/or altered pursuant to 1 GCA § 420.

§ 4A406. Deferred Compensation Program.

Deferred Compensation Program means the Government of Guam Deferred Compensation Program established and operated in accordance with Article 3, Chapter 8, Title 4 of the Guam Code Annotated, and inclusive of modifications in the terms and conditions of the Deferred Compensation Program applicable to the members of the Defined Benefit 1.75 Retirement System.

§ 4A407. Defined Benefit 1.75 Retirement System or DB 1.75 Plan.

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Defined Benefit 1.75 Retirement System or DB 1.75 Plan means the Government of Guam Defined Benefit 1.75 Retirement System established and operated under this Article 5. The Defined Benefit 1.75 Retirement System shall consist of the mandated and coordinated participation of members in two separate and preexisting retirement programs:

(a) the Retirement Fund established and maintained under Article 1, Chapter 8 of Title 4 of the Guam Code Annotated; inclusive of the modifications to the terms and conditions of the Retirement Fund for Defined Benefit 1.75 Plan members as set forth in this Article 5; and

(b) the Deferred Compensation Program established and maintained under Article 3, Chapter 8 of Title 4 of the Guam Code Annotated.

2020 NOTE: Subsection designations added/altered pursuant to authority granted by 1 GCA § 1606.

This section contains two citations to “this Article 5” which is apparently a reference to Article 5, Chapter 8 of Title 4 of the Guam Code Annotated, which governs the DB 1.75 Plan. This GAR Chapter 4A does not include an Article 5.

§ 4A408. Defined Contribution System.

Defined Contribution System means the government of Guam Defined Contribution Retirement System established and operated in accordance with Article 2, Chapter 8, Title 4 of the Guam Code Annotated and inclusive of modifications in the terms and conditions of the Defined Contribution Retirement System applicable to the members of the Defined Benefit 1.75 Retirement System.

§ 4A409. Director.

Director means the Director of the Government of Guam Retirement Fund as appointed by the Board in accordance with Section 8140 of Article 1, Chapter 8 of Title 4 of the Guam Code Annotated.

§ 4A410. Effective Date.

The effective date of the Plan is January 1, 2018.

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§ 4A411. Employee.

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

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

§ 4A412. Excess Account Balance.

Excess Account Balance means the amount by which a Member’s Account balances in Section 8208 (Member’s Contributions) and Section 8209.1(a) (Rollover of Member’s Contributions from Section 8164(a)) of Article 2, Chapter 8, Title 4 of the Guam Code Annotated exceeds the Member’s Actuarial Cost of Credited Service.

§ 4A413. Existing Retirement System.

Existing Retirement System means the Government of Guam Retirement Fund established and operated in accordance with Article 1, Chapter 8, Title 4 of the Guam Code Annotated and exclusive of modifications in the terms and conditions of the Existing Retirement System applicable to the members of the Defined Benefit 1.75 Retirement System.

§ 4A414. GCA.

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

§ 4A415. Government.

The Government of Guam.

§ 4A416. Member.

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Member or Defined Benefit 1.75 Plan Member means any person who meets the eligibility requirements for membership in the Defined Benefit 1.75 Retirement System as described in GCA Section 8502 and who participates in the Defined Benefit 1.75 Retirement System. A Member for whom contributions to the Plan are currently being made is considered an “active” Member. A Member for whom contributions to the Plan are not currently being made is an “inactive” Member.

§ 4A417. Plan Year.

Each 12-month period ending December 31.

§ 4A418. Retirement Fund.

Retirement Fund means the Government of Guam Retirement Fund established and operated in accordance with Article 1, Chapter 9, Title 4 of the Guam Code Annotated and inclusive of the modifications in the terms and conditions of the Existing Retirement System applicable to members of the Defined Benefit 1.75 Retirement System.

§ 4A418. Salary.

(a) The Employee’s stated rate of base pay which is authorized by the Employer’s personnel action. Salary excludes any amounts exceeding the Employee’s stated rate of base pay and any amounts that constitutes non-based pay, whether or not such amounts are paid in cash. Salary includes Employee Contributions picked up by the Employee’s Contributing Employer under the Defined Contribution System or the Deferred Compensation Program.

(b) In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual Salary of each Employee taken into account for purposes of determining benefits for a Plan Year shall not exceed the limitation in effect under Code Section 401(a)(17). For the Plan Year commencing January 1, 2017, the limit is \$270,000. The limitation shall be adjusted for increases in the

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cost-of-living in accordance with Code Sections 401(a)(17)(B) and 415(d).

2020 NOTE: Subsection designations added/altered pursuant to authority granted by 1 GCA § 1606.
