

NEGOTIATED AGREEMENT

BY AND BETWEEN
THE BOARD OF REGENTS
OF THE
UNIVERSITY OF GUAM



UNIVERSITY OF GUAM
UNIBETSEDĀT GUAHAN

AND THE
UOG FACULTY UNION,
AMERICAN FEDERATION OF TEACHERS,
LOCAL 6282



A Union of Professionals

MARCH 1, 2013

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ARTICLE I

PREAMBLE

The Board of Regents of the University of Guam, hereinafter referred to as the “Board,” and the University of Guam Faculty Union, Local 6282 of the American Federation of Teachers, hereinafter referred to as the “Union,” and the University President, hereinafter referred to as the “President,” recognize that the fulfillment of the mission and purposes of the University of Guam requires a mutual understanding and definition of the relationships between the Board and the Administration on the one hand and the Faculty on the other hand. Attainment of these objectives is a mutual responsibility and requires collegial participation in the consideration of matters of mutual concern.

The Board and the Union further recognize that the attainment of these objectives requires cooperation among the Board, the Administration, and the Faculty. To this end, the free and open exchange of views is necessary with all parties participating. The Union and the Board are committed to the principle of shared governance. To ensure an independent Faculty voice, representatives of the Faculty shall be selected by the Faculty according to procedures determined by the Faculty.

In the exercise of its rights and responsibilities, the Board shall consult with the Union, in the spirit of collegiality and good faith, in the determination of appropriate conditions of employment for Faculty members.

The Board and the Union recognize that there are many issues that are of mutual concern to labor and management and that can best be addressed through cooperative action. It is the Board’s and Union’s position that the majority of University Faculty and Administrators are committed to this process.

Committed efforts shall be made by the Board and the Union to preserve the integrity and intent of this *Agreement*.

ARTICLE II

RECOGNITION

A. BOARD RECOGNITION OF THE UNION AS SOLE BARGAINING AGENT

The Board hereby recognizes the Union as the exclusive and sole negotiation agent for the bargaining unit composed of the non-supervisory, full-time employees (hereinafter referred to as “Faculty”) in the following classes of positions at the University of Guam:

Assistant Instructor
Instructor
Assistant Professor
Associate Professor
Professor
Extension Agents I, II, III, IV
Extension Specialist

B. UNION RECOGNITION OF THE BOARD’S PREROGATIVES

The Union recognizes that the operations and administration of the University shall be fully vested in its Board of Regents and the President, as the executive agent of the Board and the Chief Executive Officer of the University, and their duly designated representatives.

The Board retains the right and responsibility for the operations and administration of the University, through their duly designated Administrators, in accordance with all applicable laws and University policies, rules, regulations, guidelines, practices, and provisions of this *Agreement*. For example, the Administration has the regulated authority to hire, assign, transfer, suspend, promote, evaluate, discipline, lay off, or discharge Faculty members.

C. RECOGNITION OF THE FACULTY SENATE

Without waiving any Union rights as the sole bargaining agent, the Union and the Board of Regents recognize the desirability of a democratic governance system for Faculty in areas of academic concern. Such a governance system is implemented through a democratically elected and representative Faculty Senate.

ARTICLE III

UNION RIGHTS CLAUSE

A. UNION ACCESS TO UNIVERSITY PREMISES

Duly certified representatives of the Union shall be permitted on University premises at all reasonable hours for the purpose of conducting official Union business such as assisting in the resolution of Faculty complaints and grievances, and the maintenance and monitoring of this *Agreement*.

B. UNION USE OF UNIVERSITY FACILITIES

The Union may use the University's facilities and equipment, upon request, subject to the University's policies and procedures.

C. UNION USE OF UNIVERSITY COMMUNICATION SERVICES

The Union shall be permitted to use the University's communication services for the purposes of intracampus distribution, subject to the University's policies and procedures.

D. UNION USE OF BULLETIN BOARDS AT THE UNIVERSITY

The Union may post bulletins and notices pertaining to official Union business on official bulletin boards. All such postings shall be made over the signature of a certified Union representative and shall be coordinated with the individual responsible for the bulletin board.

E. UNION ACCESS TO INFORMATION FROM THE BOARD

Upon written request, the Board shall provide the Union with information necessary for the Union to adequately represent the bargaining unit, provided the information is available and is not confidential.

F. WORK LOAD OF THE FACULTY UNION PRESIDENT

1. The Faculty Union President shall receive a one-quarter (0.25) FTE load allocation each semester to conduct Union business related to the implementation of this *Agreement*. If the Faculty Union President holds a nine-month Faculty appointment, he or she will be placed on a twelve-month appointment with a one-quarter (0.25) FTE load allocation each semester for work related to the implementation of this *Agreement*. The Dean/Director will assign the remainder of the Union President's duties, and the Union President may petition the Dean/Director for an additional load allocation when warranted by the workload related to the implementation of this *Agreement*.

2. It is understood that the Faculty Union President's one-quarter (0.25) FTE load allocation related to the implementation of this *Agreement* does not preclude a load allocation for other responsibilities.

G. PRINTING AND DISTRIBUTION OF THE *AGREEMENT*

Upon ratification by the Board and the Union, this *Agreement* shall be printed and distributed to all affected persons. The Board and the Union shall share expenses for this printing, and any subsequent printing, on an equal basis.

H. NONDISCRIMINATION AGAINST UNION OFFICERS OR MEMBERS

1. Neither the Board nor the Administration shall discriminate against, or discipline, any officer of the Union Executive Board for legitimate activities undertaken while performing his or her duty of fair representation.
2. Neither the Board nor the Administration shall discriminate against any Faculty member with respect to hours, wages, or terms and conditions of employment by reason of his or her membership in the Union.

I. MONTHLY MEETING BETWEEN THE UNIVERSITY PRESIDENT AND THE UNION PRESIDENT

The President of the University and the Union President shall schedule a conference at least once each month. Other participants may be invited by mutual agreement.

J. CONSULTATION

1. The Faculty Union shall have the right to present its views to the Board and the Board's representatives on matters of concern. It shall also have the right to hold consultations and discussions with the Administration about personnel policies, practices, and other matters affecting the specific working conditions of bargaining unit members as enumerated in this *Agreement*.
2. The Faculty Union President may attend all regular and special Board meetings (excluding executive sessions). He or she may speak on each issue as it is discussed.
3. The Executive Secretary of the Board of Regents shall provide the Faculty Union President with notices, agenda, and minutes of all regular, special, and sub-committee meetings of the Board; and copies of all proposed actions and official non-confidential correspondence related to wages, hours, and working conditions. All such documents shall be given to the Union President when they are given to the Board members.

4. The President shall be responsible for ensuring and providing the Faculty Union President the opportunity for consultation regarding policies and procedures related to personnel policies, practices and any other matter affecting the specific working conditions of bargaining unit members prior to approval or submission to the Board.

ARTICLE IV

FACULTY RIGHTS AND RESPONSIBILITIES

A. FACULTY RIGHTS

The Board of Regents and the Union agree that the Board and the Administration shall accord just and equitable treatment to all Faculty members in the exercise of their professional rights, privileges, and responsibilities. The two parties further agree that the Board and the Administration shall not deprive any Faculty member of their rights and privileges within the University without due process. Faculty members shall exercise these rights, privileges, and responsibilities in a professional manner as members of the University community and with due regard for the attendant rights of all others.

The Board of Regents and the Union agree that the following are rights the Board and the Administration shall accord to all Faculty members:

1. Academic freedom rights, which include:
 - a. the right to introduce controversial topics into the classroom as long as these topics are related to the subject under study;
 - b. the right to pursue research and to publish research findings as part of one's academic duties, and to conduct their research honestly and report their findings accurately; and
 - c. the right to express their views (orally or in writing) on controversial matters within as well as beyond their areas of special expertise without being subject to censorship or disciplinary action by the Administration.
2. Freedom of speech and expression;
3. Freedom to communicate with members of the Board, with any member of the University Administration, with officials of the Government of Guam and the Legislature, with members of accrediting bodies, and with the media without being subject to censorship or disciplinary action by the Administration.

It is understood that unless authorized to serve as such, Faculty members are not the official spokespersons for the University, and Faculty members have the duty to make it clear if and when they do not speak for the University;

4. Freedom of association;
5. Freedom from any discrimination that violates the University's statement of nondiscrimination and affirmative action;

6. The right to privacy, safety, and security of their possessions while on University premises. Faculty members, however, are responsible for securing their personal property with due diligence. This right to security does not abridge the Administration's right to access all offices for safety and security reasons.

B. DUE PROCESS AND JUST CAUSE IN DISCIPLINARY ACTIONS

If the Administration takes any action against a Faculty member that could result in discipline up to and including dismissal, or result in the loss of Faculty rights granted and specifically stated in this *Agreement*, University policy, or both, such action shall comply with the provisions of due process and such action shall be for just cause.

C. FILES ON FACULTY

Files on Faculty maintained by the Administration are governed by the following rules:

1. Number and location

The Administration may keep any number of files in various locations on Faculty members, but the Administration shall maintain only one (1) Official Personnel File for each Faculty member. The Official Personnel File shall be located in the Human Resources Office. The Official Personnel File shall contain all documents (including official BOR-approved student evaluations) and other information that relate to the work performance of, or may affect the employment status of, the Faculty member. Only documents in the Official Personnel File, materials supplied by the Faculty member, or materials requested by an Administrator or the Promotion and Tenure Committee during the course of an evaluation conducted under Article V of this *Agreement*, shall be used in evaluating the Faculty member regarding his or her work performance or employment status. All files maintained on Faculty by Administration are subject to the Privacy Act of 1972.

2. Contents of the Official Personnel File

The Faculty member shall have the right to have full knowledge of the Official Personnel File's contents, and the file may be comprised of anything that documents or supports performance or employment status. Such documentation could include, but would not be limited to, personnel actions, commendations, and copies of official Board-approved student evaluations. Each Faculty member has the right to review the contents of his or her Official Personnel File in the Human Resources Office upon request during normal business hours.

3. Persons authorized to place material in, have access to, and copy contents of Official Personnel Files

Only the Faculty member or the Administration may have documentation placed in the Official Personnel File. Other than documents generated on a routine basis, all documents placed in the File shall include a written notation identifying who had the document placed in the File. Only an authorized official, the Faculty member, or a person authorized by the Faculty member, may inspect and read the contents of the Official Personnel File.

If the Faculty member requests a copy of any document(s) in the Official Personnel File, the Administration shall, absent extraordinary circumstances, provide the requested copies within five (5) business days of the Faculty member's request. The Faculty member shall pay for the copies at the current duplication costs per page.

4. Notification of placement of materials in the Official Personnel File

Faculty members must be notified, in writing, or by receiving a copy of, any document placed in their Official Personnel File at the time such document is placed in the file.

5. Anonymous documents and the Official Personnel File

With the exception of Board-approved student evaluations, no anonymous document shall be placed in a Faculty member's Official Personnel File. If any Administrator receives an anonymous document about a Faculty member, the Administrator shall immediately destroy the document.

6. Unsolicited signed documents

No unsolicited signed documents (including e-mail messages) received by an Administrator, directly relating to a Faculty member's work performance or employment status, shall be placed in the Faculty member's Official Personnel File until the following occur:

- a. the Faculty member receives a copy of the unsolicited document; and
- b. there is a ten (10) business-day period during which the Administrator will substantiate authorship of the document; and

- c. communication occurs (at the option of the Faculty member) between the Administrator and the Faculty member about the contents of the document within ten (10) business days from when the Faculty member received notification of receipt of the document from the Administrator(s).

If the author of the document in question is a fellow Faculty member, the Dean/Director(s), after meeting with the author, may, at the discretion of the Administrator(s), also place a copy of the document in the author's Official Personnel File or return the document to the author.

7. Faculty comments and removal of documents from the Official Personnel File

Faculty members have the right to insert comments concerning any document in their Official Personnel File, and such documents shall be attached to the document of concern. Documents may only be permanently removed from an Official Personnel File by mutual written agreement between the Faculty member and the Dean/Director.

D. FACULTY INPUT

Article I of this *Agreement* contains principles that require input from the Faculty. Such input can come from the Faculty as a whole at the University-wide level, or the College/School/Research center level/Other Assigned Area, or the Division level. Whenever Faculty input is required, it will only come through the appropriate elected representatives.

Individual Faculty may provide input to the Administration, but the individual Faculty member speaks only for himself or herself.

E. THE FACULTY ELECTION COMMISSION

The Faculty Election Commission is the body responsible for conducting the election of Faculty representatives as required by this *Agreement* and the University of Guam *Rules, Regulations and Procedures Manual (RR&PM)* and will be responsible for:

1. Scheduling and announcing elections;
2. Certifying the eligibility of candidates;
3. Certifying the eligibility of voters;
4. Conducting the balloting;
5. Certifying and publishing election results; and
6. Arbitrating protests concerning any step of the election process.

A grievance cannot be filed based on any Faculty Election Commission decision.

The Faculty Election Commission shall create and distribute election procedures and rules to be followed in conducting Faculty Elections.

The Faculty Election Commission shall consist of six (6) at-large full-time Faculty members. Members shall be elected in the Spring semester by the full-time Faculty. Faculty Election Commission members will be elected for staggered two-year terms. Every Spring semester, one-half of the members shall be up for election. Their terms shall begin the first day of the following Fall semester. At the beginning of the Fall semester, the Commission members shall choose one of their members to be Chair for that Academic Year.

For Faculty elections, the Office of the Senior Vice President for Academic and Student Affairs (Senior Vice President) will give appropriate clerical assistance and support to the Faculty Election Commission. Also, at the start of each semester, the Human Resources Office will provide the Commission with an updated list of full-time Faculty. Beyond that, there shall be no other involvement of the Administration in the Faculty election process. A grievance cannot be filed against the Office of the Senior Vice President or the Human Resources Office for failure to comply with these provisions.

The Faculty Election Commission deals only with University required elections and has no involvement with the Faculty Union electing its officers or any other intra-union election.

F. ELECTION AND DUTIES OF DIVISION CHAIRS IN COLLEGES AND SCHOOLS

1. Eligibility and election

All Colleges and Schools shall be divided into Divisions. Divisions shall have a Chair who is elected by a majority vote of the full-time Faculty members of the Division. All Chairs must be tenured or tenure-track Faculty members of the Division.

Each Division shall hold its election for Chair within the month of April, and the Chair shall take office on the first day of the following Fall Semester.

2. Term of office

The Division Chair's term of office shall be two (2) years, with the possibility of running for consecutive terms.

3. Acting Chair

At no time shall the office of Chair remain vacant.

When a Chair is unavailable to fulfill his or her duties for a short-term period of up to four (4) weeks, he or she shall designate another tenured or tenure-track Faculty member as acting Chair subject to the Dean/Director's approval of the leave. The acting Chair need not be a member of the same Division. When a Chair is unable to fulfill his or her duties for four weeks or more, then the position is declared to be an unforeseen vacancy.

4. Unforeseen vacancy

In case of an unforeseen vacancy, the senior Faculty member of the Division (based first on rank, and then time in rank at UOG) shall assume the duties of Chair. A new Chair shall be elected within fifteen (15) business days, and shall serve the remainder of the uncompleted term.

5. Role, compensation, and duties

The Chair provides leadership to the Faculty in the Division for the improvement of academic advisement, instruction, assessment, research, and other CFES endeavors. The Chair's primary duty is to serve as the elected leader and representative of the Division Faculty. In carrying out all of their duties, Chairs are accountable to their Dean/Director.

Compensation of Division Chairs shall remain as described in the 2008 *Agreement* for those whose term ends in May 2014. Starting with Division Chairs elected in Spring Semester 2014, for the term of this (2013) *Agreement*, compensation shall be \$3,000 per semester. In addition, load allocations for the work of Division Chair may be negotiated with the Dean/Director.

The Division Chair has no authority to make final decisions regarding hiring, assigning, transferring, suspending, promoting, evaluating, or disciplining any Faculty member of the Division.

The duties of the Chair shall be as follows:

- a. hold and direct meetings of the Division at least once a month during the Academic Year. The regular schedule for these meetings shall be set at the beginning of each semester. The schedule shall be set so as to allow all Faculty members to attend during business days. A tentative agenda for each meeting shall be distributed at least two (2) business days prior to each meeting. Copies of the minutes shall be provided to Division Faculty and the Dean/Director.

The latest edition of *Roberts Rules of Order* shall be used at Division meetings as the Parliamentary procedure.

- b. represent the ideas, needs, and recommendations of the Division to the Dean/Director, and for conveying information and requirements from the Dean/Director to the members of the Division, on a continuous basis.
- c. represent the Division on the College's Academic Affairs Committee and be responsible for informing the Division membership of all actions of the Academic Affairs Committee relevant to that Division on a continuous basis.
- d. coordinate preparation of the Division class schedule with the Faculty and each individual Division member's load assignments that are consistent with the scheduling criteria of the College/School and the University, conferring with Faculty in each program about their respective schedules. Submit these documents as recommendations to the Dean/Director on or before the dates established by the coordinated College/School and University schedules.
- e. confer with the Division members regarding overloads and hiring of part-time Faculty. He or she shall then provide the Dean/Director with the Division's recommendations at the appropriate or scheduled times.
- f. monitor the ordering and receipt of textbooks with the Division staff, after receiving Division member's requests, for all classes offered by full or part-time Faculty of the Division, on or before the date established by the Academic/Administrative Calendar.
- g. convey recommendations to the Academic Affairs Committee regarding curriculum changes or modifications requested by the Division. Review for accuracy the drafts of Division programs in the University Undergraduate Catalog and (if applicable) in the Graduate Bulletin, and assist as needed in periodic reviews of the on-line catalog.
- h. monitor preparation of Program Reviews within the Division.
- i. facilitate the activities of the Division with respect to priorities, deadlines, and available resources.
- j. facilitate resolution of Faculty/student disputes in accordance with the *Student Handbook*.
- k. coordinate mentoring of new Faculty within the Division.
- l. fulfill such other assignments as the Dean/Director may require to carry out the statutory mission of the University.

6. Removal from office for inadequate performance of duties

There are two mechanisms that may be used to remove a Chair from his or her elected position:

- a. at any time during the Chair's term, a recall vote of two-thirds (2/3) of the Division's full-time Faculty members shall remove a Chair.
- b. after the Chair has served at least three (3) months, the Dean/Director has the authority to remove the Chair following consultation with the Division. The Chair shall have the opportunity to be heard by the Dean/Director before a final decision is made.

The Chair who is removed from office is ineligible to be reelected for the remainder of the uncompleted term.

G. ORGANIZATION AND FACULTY REPRESENTATION IN AREAS OUTSIDE THE COLLEGES AND SCHOOLS WHERE FACULTY ARE ASSIGNED

Faculty in each of these areas shall develop a schedule for monthly meetings and the means for providing input to the Administration along the parameters listed above in Section F. The latest edition of *Roberts Rules of Order* shall be used at their Faculty meetings as the Parliamentary procedure.

H. COURSE REQUIREMENTS AND CONDUCTING CLASSES

Before the end of the first full week of classes, Faculty shall provide a course syllabus to the students and the Dean/Director that communicates University and instructor course requirements and any other information the instructor deems appropriate to the conduct of the course.

Faculty are expected to abide by the contact hour requirements of the course schedule.

I. STUDENT GRADES

Faculty members shall have the right to determine the individual grades of students in their classes, in accordance with University grading policies, subject to a student's right to grieve a grade in accordance with University policy. Faculty members shall assess students in an ethical and responsible manner, shall maintain appropriate records, and shall ensure that each student in their classes is aware of both the criteria for grades and the process by which grades will be determined.

J. STUDENT EVALUATIONS

The Administration shall provide student evaluation forms to the Faculty no later than three (3) weeks prior to the end of each semester, and no later than three (3) days prior to the end of intersession and Summer session classes. The Faculty member shall ensure that class time is set aside for conducting the student evaluations.

K. FINAL EXAMS AND SUBMISSION OF FINAL GRADES

The Administration shall set the schedule for final exams and Faculty members shall adhere to this schedule by meeting with the students at the established time.

For graduating seniors, Faculty members shall have two (2) business days after the completion of the last scheduled day of final exams to submit final grades. For all other students, Faculty members shall have three (3) business days after the completion of the last scheduled day of final exams to submit final grades.

L. DUTY DAYS

For nine-month Faculty, duty days are all business days between the first and last day of the semester as defined by the Academic Calendar.

M. FACULTY APPLICATION TO ANY VACANT ACADEMIC POSITION

Faculty members may apply for any vacant academic position at the University of Guam, under University guidelines, without any detriment to their present position.

N. ADDITIONAL COMPENSATED EMPLOYMENT

Faculty may engage in additional employment, either internal or external to the University of Guam, and outside of duties indicated on the CFES plan, subject to the following guidelines:

1. The additional compensated employment shall be neither so extensive nor so demanding as to interfere with the Faculty member's full-time performance of his or her primary duties to the University.
2. Before undertaking additional compensated employment, or annually if it is ongoing, Faculty members shall notify the Dean/Director. The Faculty member shall submit details of the extent of the employment in their Comprehensive Faculty Evaluation System Plan and Faculty workload form, and amend these documents as outside compensated employment commitments change.

If at any time the Dean/Director considers that the additional employment interferes with the performance of the official duties, or determines that there is a conflict of commitment or conflict of interest for the Faculty member, the Faculty member and the Dean/Director shall meet to discuss the matter. They will work toward resolution and discuss either reducing or ceasing the additional employment. Absent mutual agreement on a satisfactory resolution, the Dean shall make the final decision.

3. No Faculty member shall use, or allow to be used, any University facilities, supplies, or equipment for anything other than University-approved duties and activities.

ARTICLE V

FACULTY EVALUATIONS

A. RIGHT TO EVALUATION AND REVIEW BY PEERS AND ADMINISTRATORS

Faculty members have a right and obligation to be evaluated and reviewed by their peers. Faculty also have a right and obligation to be evaluated and reviewed by their Dean/Director in accordance with the Comprehensive Faculty Evaluation System.

The Deans/Directors shall call for Faculty to submit CFES plans for the coming year and reports for the previous year. Deans/Directors shall choose an appropriate time for the start of the call period no later than twenty (20) business days before the date the increment is due to begin. The call period shall end twenty (20) business days after the date the increment was due to begin. The Dean's/Director's office must provide documented confirmation to the Faculty member of receipt of CFES materials. If the Faculty member submits these materials within the call period, and the evaluation is positive, the applicable increment shall become effective at the start of the semester appropriate to the initial hire date of the Faculty member, or on the anniversary date of initial hire for twelve-month Faculty.

If the Faculty member fails to submit the corroborative materials required for his or her CFES review within the call period, the Faculty shall receive a negative CFES evaluation and any applicable increment shall be forfeited.

If the Dean/Director fails to submit the completed forms to the Human Resources Office (HRO) within forty-five (45) business days of the date the applicable increment was due to begin, and the Faculty member provides HRO with evidence that he or she submitted materials within the timeline, the increment shall become automatic and HRO shall process the increment.

B. RIGHT TO EVALUATION BY STUDENTS

Faculty members also have a right and responsibility to be evaluated by their students. However, in no case will the Board-approved student evaluations account for more than 25% of the total weight allotted for the evaluation of the teaching role. Student evaluation systems and instruments will be used in accordance with the Comprehensive Faculty Evaluation System.

C. TIMEFRAME FOR VARIOUS PEER REVIEWS AND REVIEWS BY APPROPRIATE ADMINISTRATORS

Faculty members are responsible for developing a Faculty evaluation package based on the Comprehensive Faculty Evaluation System. Faculty will typically undergo evaluations within the following order and timeframe:

1. Increment interview with the Dean/Director

This shall occur in the second consecutive semester of service, and once each consecutive year thereafter.

2. Promotion

Depending on their rank, tenure-track Faculty may first apply in either the third, fourth, or fifth year of consecutive academic service.

3. Tenure

Tenure-track Faculty may first apply in the fifth year of consecutive academic service, but no later than the first semester of the sixth continuous Academic Year.

4. Post-tenure review

This review shall occur following two (2) consecutive negative annual CFES reviews.

5. Voluntary peer review

At any time, a Faculty member may notify the Dean/Director that he or she would like a peer review. The Dean/Director shall then direct the Faculty member's Division or Other Assigned Area to form an ad hoc peer review committee according to the process outlined below in Section F.

6. Administrative procedures for each review

The final written review will follow this path at the administrative level:

- a. for the increment interview, the Dean/Director sends his or her evaluation and recommendation to the Human Resources Office to be processed and placed in the Faculty member's Official Personnel File.
- b. for post-tenure and voluntary peer review, the Dean/Director shall attach his or her written comments and recommendations to the ad hoc peer review committee's final report, and forward it to the Senior Vice President for action, with a copy sent to the Human Resources Office to be placed in the Faculty member's Official Personnel File. For post-tenure review, the recommendation may include disciplinary action including adverse action.

In the Research Units, however, the Director will be the first Administrator to handle the written review.

D. FACULTY RIGHTS WHILE UNDERGOING INCREMENT REVIEWS

Faculty members who are undergoing an increment review with the Dean/Director shall have the following rights:

1. The right to be evaluated only on substantiated information.
2. The right to have the Dean/Director consider only materials that by their content honor the University's legal and moral commitment to nondiscrimination.
3. The right to have access to all evidence that the Dean/Director uses to conduct his or her evaluation.
4. The right to be given the opportunity to review and comment, in writing, on the Dean/Director's conclusions, and to attach the written comments to the Dean/Director's report before it is forwarded to the Human Resources Office.

E. FACULTY RIGHTS WHILE UNDERGOING POST-TENURE OR VOLUNTARY PEER REVIEW

Faculty members undergoing post-tenure or voluntary peer review shall have their review conducted by an ad hoc peer review committee.

In the course of any of these two reviews, the Faculty member shall have the following rights:

1. The right to have advance notice of at least five (5) business days before the convening of any meeting by the ad hoc peer review committee.
2. The right to be evaluated only on substantiated information.
3. The right to have the ad hoc peer review committee consider only materials that by their content honor the University's legal and moral commitment to nondiscrimination.
4. The right to have access to all evidence that the ad hoc peer review committee may consider in fulfilling its mandate.
5. The right to be given the opportunity to review and comment, in writing, on the ad hoc peer review committee's conclusions, and to attach the written comments to the committee's report before it is forwarded to the next administrative level.
6. The right to be given the opportunity, at each administrative level, to review and comment, in writing, on the relevant Administrator's conclusions, and to attach the written comments to the relevant Administrator's report before it is forwarded to the next administrative level.

F. PEER REVIEW PROCESS FOR POST-TENURE OR VOLUNTARY PEER REVIEW

The peer review process for post-tenure or voluntary peer review shall be conducted as follows:

1. An ad hoc peer review committee shall be formed consisting of five (5) members, at least two (2) of whom must be from the Faculty member's Division or Other Assigned Area, and the committee shall be constituted as follows:
 - a. Upon direction from the Dean/Director, the Faculty member's Division or Other Assigned Area will elect two (2) members from the Division or Other Assigned Area, and the Faculty member to be reviewed will name two (2) members from any Division or Other Assigned Area. Those four (4) committee members shall name a fifth Faculty member who shall serve as committee chair.
 - b. Ad hoc peer review committee members must be full-time tenured Faculty members at the rank of Professor or Extension Specialist, and must have been a Faculty member for at least three (3) consecutive Academic Years at the University of Guam.
2. Deadlines for the various reviews are as follows:
 - a. Post-tenure review
 - (1) The ad hoc peer review committee shall, at the direction of the Dean/Director, be established within the first four (4) weeks of the beginning of the Fall or Spring Semester.
 - (2) Absent extraordinary circumstances, the final report will be sent to the Faculty member and the Dean/Director prior to the end of the semester during which the review took place.
 - (3) Under extraordinary circumstances, however, the ad hoc peer review committee may extend its work up to six (6) weeks beyond the end of the semester with the written concurrence of the Dean/Director and the Faculty member under review. At the conclusion of this extension, the final report shall be sent to the Faculty member and the Dean/Director.
 - b. Voluntary peer review
 - (1) At the direction of the Dean/Director, the ad hoc peer review committee shall be established at the next regularly scheduled Division or Other Assigned Area meeting.

- (2) Absent extraordinary circumstances, the final report will be sent to the Faculty member and the Dean/Director within forty-five (45) business days from the time the ad hoc peer review committee was formed.

G. CRITERIA FOR ALL REVIEWS

For all reviews, the criteria shall be those listed in the Board-approved Comprehensive Faculty Evaluation System (CFES).

H. FACULTY COMMENTS ON THE AD HOC PEER REVIEW COMMITTEE'S FINAL REPORT

1. The ad hoc peer review committee shall give a copy of its preliminary report to the Faculty member. If the Faculty member wishes to discuss the report with the committee, he or she may request to do so, and the committee shall honor the request. After meeting with the Faculty member, the committee may alter the report if it feels such a change is appropriate.
2. If the Faculty member disputes the committee's final report, he or she may do so, in writing, and attach the comments to the report. The Faculty member's written response shall then become an attachment to the committee's report.

I. REAPPOINTMENT

Reappointment is a prerogative of the Administration and therefore the procedure for reappointment shall be created by the Administration. During the Faculty member's first year of employment, the Administration will inform him or her, in writing, of the procedure to use in applying for reappointment.

Absent extraordinary circumstances, if the Faculty member has applied in accordance with the procedures as distributed by the Dean/Director, the Faculty member will be informed of the Administration's decision, to reappoint or not, at least twelve (12) months prior to the expiration of the Faculty member's initial employment contract.

The decision not to reappoint the Faculty member is not an adverse action as defined in Article X of this *Agreement* and therefore the provisions of Article X shall not apply.

Violation of the Administration's procedures during reappointment review, failure to reappoint and failure to inform the Faculty member of the decision to not reappoint within twelve (12) months prior to the expiration of the initial employment contract are not grievable and Article IX of this *Agreement* shall not apply to these cases.

J. PROMOTION AND TENURE EVALUATION PROCESS

To assist the Administration in determining whether an individual Faculty member should be promoted, or granted tenure, or both, there shall be a University Promotion and Tenure Committee. The Committee, as an advisory body, does not promote or tenure Faculty members. It shall only receive, act upon, and make objective recommendations regarding all Faculty requests for promotion or tenure in accordance with the criteria established by the Board of Regents.

1. Election of the Committee and eligibility of its members

- a. The Promotion and Tenure Committee shall consist of eight (8) at-large members who must be tenured Faculty holding the rank of Professor or Extension Specialist.
- b. Members shall be elected in the Spring semester by the full-time tenure-track or tenured Faculty. Their terms shall begin the first day of the following Fall semester, and their terms shall be for two (2) years. These are staggered terms, and every Spring semester, one-half of the Committee will be up for election.
- c. The Faculty Senate Committee on Faculty Excellence (SCFE) shall, after consultation with an ad hoc Committee of former P&T Chairs convened by the SCFE, maintain a pool of at least eight (8) eligible Faculty willing to serve on the P&T Committee. For each scheduled general election, the SCFE shall nominate no more than two (2) names for every open seat.

Any eligible Faculty member may also nominate himself or herself.

There shall be no provision for write-in votes for the P&T Committee election, and write-in votes shall not be counted.

Should a P&T Committee member be unable to complete an elected term of service, the P&T Committee Chair shall, within five (5) business days after verification of the vacancy, notify the SCFE to nominate from the existing pool a new member to fill the remainder of the uncompleted term. The SCFE shall, within five (5) business days of receiving notice of the vacancy, submit the name to the Faculty Senate to be placed on the agenda of the next scheduled Senate meeting. Upon approval by the Senate, the Faculty member shall immediately assume his or her place on the P&T Committee.

- d. Following the Committee election, and during the Spring Semester, both the old Committee and the newly elected Committee shall meet to conduct transition business. At this meeting, the new Committee shall elect a Chair by a majority vote of the returning members and the newly elected members. The Chair shall be elected from returning Committee members and newly elected members who have served a minimum of one year on the Committee in earlier terms, and the Chair shall receive a one-quarter (.25) load allocation each semester of his or her term as Chair for service on the Committee.

The Senior Vice President and the Faculty Union President shall meet with the Committee at this transition meeting to review procedures and answer questions about the promotion and tenure process.

- e. At the same meeting, a Vice Chair and a Secretary shall be elected by a majority vote of the returning members and the newly elected members. Any of these members are eligible to run for the positions of Vice Chair and Secretary. The Chair, Vice Chair and Secretary shall have full voting rights.

2. Quorum

When voting on an application for promotion or tenure, a quorum shall consist of seven (7) members. For all other business, a quorum shall consist of a majority of the Committee.

3. Support services

- a. The Administration shall provide the Committee with sufficient support services to ensure the timely and efficient performance of the Committee's duties and obligations.
- b. The Human Resources Office shall continue to provide secretarial support and secure space for applicants' files.
- c. The Human Resources Office shall also assist the Committee by certifying information requested by the Committee about an applicant. This information shall include, but is not necessarily limited to, the following: date of tenure-track employment; current rank; effective date of applicant's reappointment; date of last promotion at UOG; and date of tenure.
- d. The Senior Vice President makes the final decision on eligibility for promotion and tenure for all applicants.

4. Possible exclusion of a Committee member from evaluating an applicant

Applicants for promotion or tenure shall have the right to request, in writing, that one Committee member be excluded from hearing their application for a stated cause. If the exclusion is deemed appropriate by a majority of the Committee, the Committee shall excuse that member from consideration of that case.

5. General operations of the Promotion and Tenure Committee

If the Committee has questions about the interpretation of the promotion and tenure procedures in the *Agreement*, the Committee shall refer the matter to the Agreement Implementation Committee (see Article XII.D in this *Agreement*).

Only full-time tenure-track Faculty members at the University of Guam will be considered and evaluated by the Committee. The Committee will make a reasonable effort to ensure that all information, recommendations, and evaluations placed before it in each case are substantiated in order that all applicants receive fair and equitable treatment.

a. Confidentiality

During Committee meetings, all evaluative comments about an applicant's Completed Application Package are to be confidential. Violation of this confidentiality requirement may result in a letter of censure from the Committee to the offending person(s), with a copy of the letter being sent to the Senior Vice President and President.

b. Call for applications

- (1) The Committee shall publicize a call for applications for promotion, or tenure, or both, no later than the fifteenth day of September.
- (2) Application for promotion, or tenure, or both, is by self-application. The applicant shall submit to the Committee a completed application package.

c. Completed Application Package

The completed application package shall include:

- (1) an application form (available from the Human Resources Office) indicating what action is being requested and what roles are to be evaluated in support of the requested action;
- (2) a signed statement authorizing access to the applicant's Official Personnel File by members of the Committee;
- (3) a comprehensive statement elaborating the applicant's roles;
- (4) documentation supporting the comprehensive statement including an up-to-date vita;
- (5) all CFES Plans since date of last promotion or date of initial tenure-track hire, whichever applies;
- (6) the Dean/Director's annual CFES evaluative letters since date of last promotion or date of initial tenure-track hire, whichever applies; and
- (7) a list of no fewer than five (5) persons from whom the Committee shall seek recommendations.

This list of names shall include at least two (2) current members of the applicant's Division or Other Assigned Area. At least one (1) of those two (2) names shall be a current member of the applicant's academic discipline at the University of Guam, except when the applicant is the only member of that academic discipline.

Applicants are encouraged to include in their list of references the names of academic or professional peers from outside the University.

Applicants shall send their completed application packages to the Committee in care of the Human Resources Office.

d. Notification of Dean/Director

At the time of application, the applicant shall notify his or her Dean/Director, in writing, that he or she has applied for promotion, or tenure, or both.

- e. Priority in consideration of application packages
 - (1) The Committee shall consider applications on a first come-first served basis using the date of receipt of the completed application package by the Human Resources Office as the determining factor.
 - (2) All completed application packages received by the Human Resources Office no later than 5 PM of the last day of the Fall semester shall be guaranteed a recommendation by the Committee before the end of the following Spring semester.
 - (3) All completed application packages received by the Human Resources Office no later than 5 PM of the last day of the Spring semester shall be guaranteed a recommendation by the Committee before the end of the following Fall Semester.

- f. Timelines and possible extensions
 - (1) No timeline stated in this Article starts until the Human Resources Office receives the completed application package.
 - (2) When either the Committee, or the Senior Vice President, or the President, or the Board is reviewing the application package, the applicant and the appropriate party may, by mutual written agreement, extend the timelines specified in this Article. The written agreement shall specify the new extension date.

- g. Letters of recommendation and evaluation
 - (1) Letters from individuals named in the list of references

Within five (5) business days of receipt of the completed application package, the Committee shall request letters of recommendation from the individuals named in the list of five (5) or more names submitted by the applicant.
 - (2) Letters from the University community

Following receipt of the completed application package, the Committee shall announce to the University community the candidates' names, roles, and action(s) requested, and it shall accept recommendations and comments regarding each application. Recommendations and comments from the University community shall become part of the applicant's completed application package.

Absent extraordinary circumstances, if the Committee does not receive letters of recommendation within twenty (20) business days from the date of request, the Committee shall proceed to consider the application without them. Letters received after the twenty (20) business days shall not be accepted and shall be returned to the sender. However, referees may send letters by fax or e-mail during the twenty (20) business days with a signed original postmarked within the twenty (20) business days.

(3) Letter from the Dean/Director

When the letters of recommendation are received by the Committee, or no later than twenty-five (25) business days after the completed application package is received by the Committee, the Chair shall request a recommendation from the applicant's Dean/Director.

The Dean/Director shall be provided access to the applicant's completed application package and letters from nominees and the University community in order to prepare the requested recommendation.

The Dean/Director shall have ten (10) business days to supply the requested recommendation. If the Committee has not received the Dean/Director's recommendation within ten (10) business days, the Committee shall proceed to consider the application.

(4) Additional letters requested by the Committee

At any time, the Committee may request, in writing, additional letters of evaluation to clarify, substantiate, or resolve questions germane to the application. When a request is made, the Committee shall provide a copy of the request to the applicant.

(5) Option of applicant receiving copies of all letters

If any applicant requests so in writing, a copy of all letters of recommendation, comments, evaluations, and replies to requests by the Committee shall be provided to him or her within five (5) business days of said documents being received by the Committee. The applicant shall have ten (10) business days to make written comment on any or all of the above referenced documents.

Applicants may examine the materials and letters in their completed application packages at any time during business hours.

The closing date for material to be placed in the completed application package is ten (10) business days prior to the meeting where the applicant's package is scheduled for presentation before the Committee. The Committee Chair shall notify the applicant five (5) business days before the closing date.

h. Review and verification of the applicant's completed application package

Prior to presentation, the Committee shall have at least ten (10) business days in which to study the material in each application package.

For each applicant, the Committee shall assign at least two (2) members to be the applicant's presenters. They shall have the responsibility for substantiating evidence placed before the Committee.

Unless the applicant has previously challenged an official evaluation, in writing, the Committee shall accept the official evaluation at face value. The Committee shall verify all other materials as it sees fit. Any information before the Committee that has not been substantiated shall be removed from the file and returned to the sender.

In the event that statements by the applicant in the completed application package have not been documented to the satisfaction of the Committee, the Chair shall notify the applicant. He or she shall then be given the opportunity to provide further documentation.

At any level of this process, only criteria contained in either this *Agreement* or Board-approved policy shall influence the outcome of any application for promotion or tenure.

i. Voting on an applicant's completed application package

In each case before the Committee, the decision to recommend shall be determined by secret ballot with at least seven (7) members voting. Members shall vote by paper ballot. A majority of the votes cast must be affirmative votes before an application can be sent forward with a positive recommendation.

In the event that an application does not receive a majority of the votes cast as affirmative votes, the Chair shall provide the applicant a letter detailing the Committee's rationale for its vote and suggest that the applicant withdraw the application.

The applicant who has received an initial negative vote from the Committee has the right to address the Committee at its next meeting. At that meeting, the Faculty member will have the opportunity to present his or her reasons why the Committee should reconsider its initial negative recommendation. At the next Committee meeting following the applicant's request for reconsideration, the Committee shall re-vote on the applicant's completed application package.

If any applicant does not withdraw his or her application, the Committee shall forward the applicant's completed application package, with the Committee's recommendation, to the Senior Vice President within five (5) business days after the Committee's final vote.

A decision by the Administration or Board of Regents that reverses the Committee's recommendation shall be in writing and shall include justification for the reversal. Absent extraordinary circumstances, the Administration or the Board shall, within five (5) business days following their decision, present their written justification to the Committee.

6. Promotion application procedures

Concurrently with the annual increment review, the Dean/Director and each Faculty member eligible for promotion shall discuss the Faculty member's development and fitness for the position held by the Faculty member, and the Faculty member's plan for working toward promotion. The Dean/Director shall summarize the discussion, in writing, and make specific recommendations regarding activities for achieving promotion. The Dean/Director shall then provide a copy of this statement to the Faculty member.

A Faculty member is considered for promotion through self-application.

a. Eligibility and criteria

- (1) Faculty members become eligible for promotion from Assistant Instructor to Instructor, or from Extension Agent I to Extension Agent II, or from Instructor to Assistant Professor, or from Extension Agent II to Extension Agent III, after three (3) years in rank. They may apply in their third year.
- (2) Faculty members become eligible for promotion from Assistant Professor to Associate Professor, or from Extension Agent III to Extension Agent IV, after four (4) years in rank. They may apply in their fourth year.

- (3) Faculty members become eligible for promotion from Associate Professor to Professor, or from Extension Agent IV to Extension Specialist, after five (5) years in rank. They may apply in their fifth year.
- (4) For Faculty whose initial appointment began in the Spring semester, the sequence of their years of academic service is Spring/Fall, rather than Fall/Spring. Therefore, depending on the rank sought, they can first apply for promotion in the Spring semester at the start of either their third, fourth, or fifth year of academic service.
- (5) At least three (3) years of the time-in-rank requirement must be in full-time employment at the University of Guam.
- (6) In addition to the above time-in-rank and employment requirements, all Faculty members affected must possess all required degrees as specified in University policy.
- (7) Faculty may not apply for promotion during their first two (2) consecutive years at the University of Guam.
- (8) Time spent as an Administrator shall not be counted toward time-in-rank and employment requirements for the purposes of this Faculty promotion process.
- (9) Promotion to Professor shall not automatically include tenure. Tenure is earned separately.
- (10) At all levels of review, criteria as defined, published, and approved by the Board shall be the sole basis on which judgment for promotion shall be made.

b. Submission of completed application package after the call

The Faculty member may not submit his or her completed application package to the Committee until after the call for applications.

c. Review by Senior Vice President if the Committee fails to forward a recommendation

In the event that the Committee fails to make a recommendation to the Senior Vice President within the time permitted under this *Agreement*, the Senior Vice President may nevertheless consider and act upon the application and forward a recommendation to the President.

d. Grievances regarding the promotion process

No grievance concerning this process may be filed or considered until the President has made the final decision regarding the promotion application.

e. Material in the completed application package

- (1) The Faculty member is responsible for the development of the materials in the completed application package that are relevant to the review and evaluation for promotion.
- (2) At any level of the review or evaluation, the Committee or Administration may request additional information and materials from individuals or Divisions or Other Assigned Areas, either on-campus or off-campus, that are germane to the application package.
- (3) A copy of such requests shall be provided to the applicant at the time the requests are made. If the applicant requests so in writing, the Committee or the Administration shall provide the applicant with copies of any responses and replies after the Committee or the Administration has officially received them. The applicant has the right to comment in writing on any responses and replies at any level of the review or evaluation.
- (4) If, after the Committee has forwarded the completed application package to the next review level, the Senior Vice President, or the President, receives any unsolicited letters about the applicant, the applicant shall be notified in accordance with Article IV, section C, of this *Agreement*.

f. Administrative procedures for the promotion evaluation

Following the procedures detailed above in this Article, the application and Committee recommendations, if forwarded, shall be transmitted to the Senior Vice President. If they are not forwarded, the Committee will notify the applicant to pick up his or her materials at the Human Resources Office.

Upon receipt of a recommendation from the Promotion and Tenure Committee, the Senior Vice President shall evaluate the application.

Absent extraordinary circumstances, the Senior Vice President shall act upon the application and forward a recommendation to the President within thirty (30) business days of receiving the Committee's recommendation.

Upon receipt of a recommendation from the Senior Vice President, the President shall evaluate the application.

Absent extraordinary circumstances, the President shall issue a decision within thirty (30) business days of receiving the recommendation of the Senior Vice President.

Promotions approved by the President shall become effective upon the commencement of the first semester following the completion of the required time in service or rank, or the first semester following the approval of the President, whichever is later.

Copies of all recommendations made about each applicant by the Committee, Dean/Director, the Senior Vice President, and the President shall, absent extraordinary circumstances, be sent to the applicant within five (5) business days of issuance.

Failure of the Promotion and Tenure Committee or any Administrator to notify an applicant of action taken regarding a promotion application shall not constitute grounds for automatic promotion.

7. Tenure application procedures

Concurrently with the annual increment review, the Dean/Director and each Faculty member eligible for tenure shall discuss the Faculty member's development and fitness for the position held by the Faculty member, and the Faculty member's plan for working toward tenure. The Dean/Director shall summarize the discussion, in writing, and make specific recommendations regarding activities for achieving tenure. The Dean/Director shall then provide a copy of this statement to the Faculty member.

A Faculty member is considered for tenure through self-application.

a. Eligibility and criteria

- (1) Faculty members are eligible to apply for tenure after completing four (4) consecutive Academic Years of probationary service, and they may apply during the fifth year. Only employment under a tenure-track contract shall be considered in determining the length of probationary service.

For Faculty whose initial appointment began in the Spring semester, the sequence of their consecutive years of academic service is Spring/Fall, rather than Fall/Spring, and they can first apply for tenure in the Spring semester at the start of their fifth consecutive year of academic service.

- (2) Approved administrative and University-paid leave shall be counted for purposes of computing years of service and shall not suspend the timeline for computing years of service.

Leaves of absence without pay for one semester or more, may count as service toward tenure if the Senior Vice President gives prior written approval. If approved, the timeline for computing years of service toward tenure shall not be suspended. Otherwise, the timeline for computing years of service is suspended.

- (3) Time spent as an Administrator suspends the timeline for computing years of service for tenure.
- (4) At all levels of review, criteria as defined, published, and approved by the Board shall be the sole basis on which judgment for tenure shall be made.

- b. Submission of completed application package after the call

The Faculty member may not submit his or her completed application package to the Committee until after the call for applications.

- c. Review by Senior Vice President if the Committee fails to forward a recommendation

In the event that the Committee fails to make a recommendation to the Senior Vice President within the time permitted under this *Agreement*, the Senior Vice President may nevertheless consider and act upon the application and forward a recommendation to the President.

- d. Grievances regarding the tenure process

No grievance concerning this process may be filed or considered until the Board of Regents has made the final decision regarding the tenure application.

- e. Material in the completed application package

- (1) The Faculty member is responsible for the development of the materials in the completed application package that are relevant to the review and evaluation for granting tenure.
- (2) At any level of the review or evaluation, the Committee or Administration may request additional information and materials from individuals or Divisions or Other Assigned Areas, either on-campus or off-campus, that are germane to the application package.

- (3) A copy of such requests shall be provided to the applicant at the time the requests are made. If the applicant requests so in writing, the Committee or the Administration shall provide the applicant with copies of any responses and replies after the Committee or the Administration has officially received them. The applicant has the right to comment in writing on any responses and replies at any level of the review or evaluation.
- (4) If, after the Committee has forwarded the completed application package to the next review level, the Senior Vice President, or the President, or the Board of Regents receives any unsolicited letters about the applicant, the applicant shall be notified in accordance with Article IV, section C, of this *Agreement*.

f. Administrative procedures for the tenure evaluation

Following the procedures detailed above in this Article, the application and Committee recommendations, if forwarded, shall be transmitted to the Senior Vice President. If they are not forwarded, the Committee will notify the applicant to pick up his or her materials at the Human Resources Office.

Upon receipt of a recommendation from the Promotion and Tenure Committee, the Senior Vice President shall evaluate the application.

Absent extraordinary circumstances, the Senior Vice President shall act upon the application and forward a recommendation to the President within thirty (30) business days of receiving the Committee's recommendation.

Upon receipt of a recommendation from the Senior Vice President, the President shall evaluate the application.

Absent extraordinary circumstances, the President shall issue a recommendation to the Board of Regents within thirty (30) business days of receiving the recommendation of the Senior Vice President.

The Board of Regents shall consider the application and, absent extraordinary circumstances, render a decision within sixty (60) business days of receiving the President's recommendation. All Board discussions concerning the application shall take place in Executive Session.

Absent extraordinary circumstances, the Faculty member shall be notified of the Board's decision within five (5) business days of its being rendered.

The granting of tenure shall become effective as of the date of the Board's final decision. Faculty members awarded tenure by the Board shall enjoy all rights and privileges accorded to tenured Faculty.

Tenured Faculty may not be terminated except for cause, and the tenured employment may not be interrupted except for lay off as defined in Article XI, section B, of this *Agreement*.

Copies of all recommendations made in each case by the Committee, Dean/Director, the Senior Vice President, the President, and the Board of Regents shall, absent extraordinary circumstances, be sent to the applicant within five (5) business days of issuance.

Failure of the Promotion and Tenure Committee or any Administrator to notify an applicant of action taken regarding a tenure application shall not constitute grounds for automatic tenure.

8. Tenure and security of employment

For full-time tenure-track Faculty whose initial appointment began in Fall semester, the sequence of their consecutive Academic Years of service is Fall/Spring. The earliest they can apply for tenure is the Fall semester of their fifth consecutive Academic Year, and the latest they can apply is the Fall semester at the start of their sixth consecutive Academic Year.

For full-time tenure-track Faculty whose initial appointment began in the Spring semester, the sequence of their consecutive Academic Years of service is Spring/Fall, rather than Fall/Spring. The earliest they can apply for tenure is the Spring semester of their fifth consecutive Academic Year, and the latest they can apply is the Spring semester at the start of their sixth consecutive Academic Year of service.

Failure to be granted tenure by the end of the Faculty member's sixth consecutive Academic Year of full-time, tenure-track employment at the University of Guam, shall result in termination at the end of the Faculty member's seventh consecutive Academic Year.

ARTICLE VI

WORKING CONDITIONS

A. VARIETY OF WORKLOAD ALLOCATIONS

Both the Board and the Union agree that Faculty responsibilities typically encompass activities in instruction, service, and creative/scholarly activity or research. They also agree that Faculty shall endeavor to accomplish their responsibilities in a variety of workload allocations as determined by the Dean/Director in consultation with the Faculty member. The Board and Administration shall endeavor to provide sufficient resources to help Faculty carry out these responsibilities.

The work of the Faculty in their areas of responsibility is professional in character, and thus it does not conform to the exact pattern of an eight-hour day or forty-hour workweek. As a point of reference, though, and for formulating workloads and developing the budget, the workload of the Faculty shall be considered equivalent to a forty-hour workweek. This is not intended to be applied as an eight-hour, five-day workweek, but rather to establish the general parameters of the Faculty member's obligation.

B. OFFICE HOURS

Office hours shall be approved by the Dean/Director, and shall be at least six (6) hours over at least three (3) business days per week. Faculty members shall post their office hours and contact information on their office doors and provide a copy to the Dean/Director, and shall inform the Dean/Director of any modification or inability to meet posted office hours.

Full-time Faculty members teaching in the evening or on weekends shall schedule some but not all office hours during evenings or weekends and are encouraged to offer additional office hours during times when their students are available.

Office hours must be held in the Faculty member's campus office.

C. STUDENT ADVISEMENT

The Dean/Director shall approve the times for Faculty to assist with student advisement. During the Academic Year, Faculty members shall be available for advisement during the registration periods specified in writing by the Administration.

D. INSTRUCTIONAL LOAD

For Faculty whose primary role is teaching, twelve (12) credit hours of lecture per semester, or twelve (12) contact hours per week of science laboratory, will typically constitute a full instructional load. In special circumstances, the Dean/Director may permit variations to the twelve-credit-hour policy.

To assure full transparency of all teaching assignments to Faculty, schedules of all academic courses leading to a degree offered by the University, including not only courses offered by the schools and colleges, but also offered by the Office of Professional and International Programs (for example, Course by Conference, Special Projects, Credit by Exam, or other regular courses), shall be available online as soon as the assignment is approved by the Dean/Director. These schedules shall include the names of the instructors assigned to each course.

Faculty of the Division or Other Assigned Area concerned shall be consulted by the Dean/Director regarding changes in load allocation of 0.25 or more that are assigned to routine activities such as committee chair, program coordinator, or other similar academic non-instructional support functions.

The Board and the Union recognize the impossibility of creating an instructional load formula that is universally applicable to the complex academic programs at the University. To meet each Division's varying instructional, service and research commitments, each Division, through its Division Chair, shall have considerable flexibility to recommend Faculty work loads for the Academic Year to the Dean/Director. For Faculty in Other Assigned Areas, each Faculty member meets directly with their Dean/Director to agree on the Faculty member's work load.

E. APPOINTMENT OF FACULTY TO DIVISIONS OR OTHER ASSIGNED AREAS

Faculty appointment to a Division or Other Assigned Area shall be a matter of initial contractual arrangement.

Subsequent reassignment shall be made in consultation with the affected Faculty member and the Division(s) or Other Assigned Area(s) concerned, taking into consideration educational, research, and programmatic concerns and the Faculty member's professional training and experience. The President shall make the final decision on reassignment.

A full-time Faculty member shall be assigned to one Division or Other Assigned Area.

F. TEACHING COURSES BEYOND A FULL INSTRUCTIONAL LOAD

The Faculty Division meets and recommends a schedule of proposed courses to the Dean/Director.

Teaching courses beyond a full instructional load is an overload. Overloads are not an entitlement, but are subject to Administrative approval. Faculty cannot be required to teach beyond their full instructional load. However, for Faculty approved to teach overload courses, compensation shall be at the rate approved by the Administration.

Instructional overloads must be approved by the Dean/Director and may not exceed 0.50 FTE. Programmatic exceptions for special circumstances may only be granted by the Senior Vice President upon recommendation from the Dean/Director.

Overload assignments by the Dean/Director will be based on work performance, using the CFES as an evaluative measure. If the Dean/Director determines that no full-time Faculty members in the affected academic program are available, the program Faculty shall recommend part-time Faculty for these assignments.

G. POOL OF PART-TIME FACULTY

The full-time Faculty members in each program shall develop a pool of individuals who have the program's recommendation to be hired as part-time Faculty. The full-time members of the program shall develop and continuously update the pool by either adding or removing individuals from the list after evaluating them using the CFES instructional and collegiality criteria, and a copy of the confidential evaluation shall be given to the Dean/Director, via the Division Chair.

Full time Faculty may request to teach courses in another college, School, or program. Such a request shall be in writing to the Chair of the Division containing the program, who will refer the request to the program Faculty. The program Faculty shall consider the request and add the name to the list or not.

These recommendations are forwarded to the Dean/Director by the appropriate Division Chair.

Absent extraordinary circumstances, only part-time Faculty listed in this pool will be employed.

When the need arises to assign a part-time Faculty member to a course, the Dean/Director will first try to select from the pool of recommended part-time Faculty.

If it is not possible to choose from the recommended list, the Dean/Director may recommend hiring an individual not included in the pool. In such cases, the Dean/Director shall advise the Division Chair concerning the person hired. The full-time Faculty in the affected program, or concentration where appropriate, will then conduct an evaluation of that person for possible inclusion in the pool and forward their evaluation and recommendation to the Dean/Director.

H. CLASS ENROLLMENT CAPS

Each Division's Faculty shall recommend to the Dean/Director the appropriate minimum and maximum enrollment caps for their classes. Due consideration will be given to the physical facilities available, the nature of the class, and the assigned instructor. In any event, class size shall not exceed room capacities such as may be set by OSHA or other safety authorities. The Dean/Director's decision on enrollment caps is final.

The Board and the Union acknowledge that economic and academic factors require a minimum class size in many cases. But in order to prepare academic majors in a given field, it is sometimes necessary to hold classes that are less than the minimum size. Average class sizes throughout an academic Division will be considered when making a decision on whether to allow a small class to proceed.

I. WORK ENVIRONMENT

The Board shall endeavor to provide a safe, secure, and healthy work environment with adequate office space that provides privacy. Suggestions and questions relating to the safety, security, size, privacy, or health concerns of the work environment will be referred to the Dean/Director.

J. STAFF SUPPORT

The Board shall endeavor to provide sufficient resources to meet all appropriate staff support needs.

K. FACULTY DEVELOPMENT

Faculty development is a priority for the University and is a joint responsibility of the University and the individual Faculty member.

Both the Board and the Union recognize the need for increased funding of Faculty development. Each Academic Year, therefore, the Administration and the Faculty shall endeavor to obtain a significant, real increase in funds, from external and local resources, for Faculty development activities. Such funds shall be distributed in the fairest manner possible, taking into consideration the goals and desires of individual Faculty members, the needs of their College/School, and the needs of the University.

The Board and the Union also recognize that Faculty travel is an important component of Faculty development and for the enhancement of Faculty skills and knowledge. Faculty members shall have the right to apply for financial support to defray the costs of travel in connection with professional activities in accordance with University policy.

At the end of each Academic Year, the Senior Vice President shall produce an annual report on Faculty development. This report shall include a breakdown of the distribution of funds, and shall be distributed to the University community.

L. FACULTY COMPLIANCE WITH POLICIES AND PROCEDURES

Faculty members are expected to be aware of, and comply with, the policies, practices, rules, regulations, or guidelines of the University and their College/School or Other Assigned Area, as published and distributed by the Administration. Practices, rules, regulations, or guidelines shall be standardized whenever possible.

M. CONSULTATION ON CHANGES IN THE ACADEMIC YEAR CALENDAR

The Senior Vice President and the Union President will consult on any proposed changes in the Board-approved Academic Year Calendar.

ARTICLE VII

SALARIES AND FRINGE BENEFITS

A. SALARY SCHEDULES

Salary schedules for Faculty will be established by the Board, depending upon the availability of funds, and may be adjusted from time to time at the Board's discretion.

B. SALARY COMMITTEE

A Salary Committee shall be formed. Members of the Salary Committee shall be appointed each year by September 1. The membership shall consist of two (2) persons appointed by the President and two (2) members appointed by the Union.

The Salary Committee shall meet to formulate Faculty salary recommendations, encompassing both rate and structure for both regular and overload compensation, to be submitted to the President by the last business day of the Spring Semester. The President shall forward and give an oral report on these recommendations to the appropriate Board Subcommittee before the November regular meeting of the Board of Regents.

The Board of Regents will consider these Salary Committee recommendations for the budget of the following fiscal year. These recommendations shall take into consideration recent changes in the cost-of-living index, the compatibility of University of Guam salaries with those of similar institutions and the University of Guam's financial conditions.

C. SALARY INCREMENTS

If, after the annual increment review and evaluation, the Dean/Director certifies that a Faculty member's performance has been satisfactory in the preceding year, the Faculty member, if not at the top step available of his or her rank, shall be granted an increment subject to availability of funds.

In certifying a Faculty member's performance, the Dean/Director shall, in writing, justify all salary increment decisions, identify any deficiencies in the Faculty member's roles as outlined in the Faculty member's evaluation plan, and make recommendations for improvement.

D. PROMOTION DIFFERENTIAL

Any Faculty member who is promoted in rank shall receive a differential equivalent to two (2) steps. Faculty may also receive an increment for which they are eligible in accordance with Article VII, Section C of this *Agreement*.

E. PAID HOLIDAYS

The Board shall observe all official holidays designated by Guam Statute. Absent extraordinary circumstances, all such holidays shall be non-working days with pay for the Faculty.

F. EQUITABLE COMPENSATION AND WORKING CONDITIONS

Comparable and equitable compensation and working conditions for nine-month and twelve-month Faculty shall continue.

G. COMPENSATION FOR WORK BETWEEN SEMESTERS

If an Academic Year (nine-month contract) Faculty member is requested to work during the periods between semesters, compensation shall be negotiated with the Dean/Director.

H. TUITION WAIVERS FOR FACULTY MEMBERS, THEIR SPOUSES, AND THEIR DEPENDENT CHILDREN

Tuition waivers for Faculty members, their spouses, and their dependent children shall continue for the term of this *Agreement*. Tuition waivers are designed to enable Faculty members, their spouses, and their dependent children to enroll in or audit a class where there is excess instructional capacity. Faculty members, their spouses, and their dependent children will not have to pay tuition for institutional credit-bearing courses. For the purposes of this tuition waiver program, dependent children are defined as those individuals listed on the Faculty member's income tax return as "dependents" for the most recent filing period.

Students who are under the tuition waiver program shall not be counted in the tally for determining minimum enrollment for the instructor's compensation

I. FACULTY COMPUTER EQUIPMENT

In order to enhance Faculty effectiveness, the University will endeavor to provide all Faculty with computers, printers, software, and broadband Internet access.

J. COMPENSATION FOR PROVIDING SUBSTANTIAL COVERAGE OF ANOTHER FACULTY MEMBER'S CLASSES

When a Faculty member provides class/laboratory coverage for more than two (2) continuous weeks for another Faculty member, the Dean/Director shall make an attempt to provide compensation where appropriate. If provided compensation, then compensation shall be for the entire period covered if the coverage extends beyond the two (2) continuous weeks.

ARTICLE VIII

LEAVES

A. APPLYING FOR LEAVE

Faculty shall have the right to apply for any of the various forms of leave as detailed in University policy and all applicable laws. Absent extraordinary circumstances, any leave or combination of leaves shall not exceed two (2) consecutive academic years.

When applying for leave, Faculty shall provide full and accurate information.

The University Administration shall evaluate each application on its own merits, giving due consideration to the needs and priorities of both the individual and the institution. A timely response to each request for leave shall be provided in writing to the applicant.

B. FULFILLMENT OF FACULTY RESPONSIBILITIES DURING LEAVE

Leave must be approved in advance by the Dean/Director. Whenever a Faculty member requests leave, he or she shall make written arrangements for the fulfillment of his or her essential obligations and responsibilities, such as assigned classes, committee obligations, or work assignments.

In case of an unanticipated absence, barring extraordinary circumstances, the Faculty member must immediately contact the Dean/Director to arrange for the fulfillment of his or her essential obligations and responsibilities.

C. FACULTY WORKING IN MORE THAN ONE AREA OF SUPERVISION

In cases in which Faculty members are assigned to work in more than one area of supervision, such arrangements shall be subject to approval by all appropriate Dean/Directors.

D. FACULTY RANK AND SALARY WHILE ON LEAVE

Faculty members on leave shall have the right to return to their rank and salary.

Faculty members on approved leave shall receive all salary entitlements as specified in this *Agreement* and in University policy, provided the Faculty member presents documentation for evaluation by the Dean/Director as mutually agreed upon in the leave application.

E. CHANGE IN A FACULTY MEMBER'S ORIGINAL POSITION WHILE ON LEAVE

The Dean/Director shall be responsible for notifying the Faculty member on leave of any change in the Faculty member's appointment to a College, School, Division, or Other Assigned Area.

ARTICLE IX

GRIEVANCE PROCEDURES

A. STATEMENT OF PURPOSE

In any labor-management relationship, there may occasionally be disagreements and conflict. This *Agreement* provides a formal framework for an equitable, dispassionate, and expeditious resolution of labor-management conflict at the University. All parties, however, are encouraged to communicate and attempt to resolve their differences informally before, during, and after any formal conflict resolution procedure.

Nothing in this *Agreement* abrogates either party's right to pursue judicial remedies for resolving the grievance after the grievance procedure is completed.

B. DEFINITION OF GRIEVANCE

A grievance means a Faculty member's, or a group of Faculty members', expressed feeling of dissatisfaction with aspects of the working conditions and working relationships which are outside the Faculty member's control, including appeals from adverse disciplinary actions not covered by paramount law or regulation.

The grievance procedure stated herein shall extend only to the interpretation or application of existing agreements or to University of Guam personnel policies and regulations and shall not extend to the settlement of disputes or allegations of unfair labor practices for which procedures are otherwise provided by law and regulations.

A grievance cannot be filed against another Faculty member.

Further, a grievance cannot be filed regarding: 1) reappointment decisions; or 2) the refusal of the President to grant promotion or the Board to grant tenure.

C. REPRESENTATION RIGHTS DURING THE GRIEVANCE PROCEDURE

1. At any level of the grievance procedure, both parties are barred from having attorneys present at grievance proceedings, however, either party has the right to designate an advisor of their choice (who is a full-time employee of the University or Union representative) who may be at the proceedings.

In the spirit of expeditious resolution of a grievance, parties are required to communicate directly with each other during the process. If an advisor is present, the advisor's role is to consult with, and/or advise their party, and he or she may, if requested, speak in that role during the meeting.

2. At each step of the grievance procedure, the Union President shall be notified of all grievance proceedings. The Union President, or designee, and President, or designee, shall have the right to attend all grievance proceedings as observers.

D. PROHIBITION ON FACULTY REPRESENTING THE ADMINISTRATION DURING THE GRIEVANCE PROCEDURE

Under this *Agreement*, all full-time Faculty are covered as members of the collective bargaining unit. Therefore, a full-time Faculty member cannot serve in any capacity as an Administrator's advisor during the grievance procedure.

E. TIMELINES

The business day following an event, or the business day following receipt of any official correspondence filed in relation to a grievance, shall be considered the first business day.

Absent extraordinary circumstances, failure by either party to adhere to any of the timelines at any level of the grievance procedure shall result in the grievance being settled in favor of the other party.

At any level of the grievance procedure, and prior to the expiration of any timeline, both parties may, by mutual written agreement, stipulate to extend any timeline prescribed in the grievance procedure. The written agreement shall stipulate the new extension, and a copy of the agreement shall be sent to the Union President and the Human Resources Office.

F. DELIVERY OF OFFICIAL CORRESPONDENCE

All official correspondence and documents filed in accordance with the grievance procedure shall be hand delivered to the designated recipient. The correspondence or documents shall be received and dated at the location where it is served, with a receipted copy returned to the originator.

If a recipient is unavailable at the time of delivery, the official correspondence or documents may be given to the recipient by registered mail, or by facsimile or to the recipient's designated representative. Service by mail shall be deemed accomplished on the date of the postmark, and a facsimile shall be deemed accomplished according to confirmation of transmittal.

G. GRIEVANCE FILES AT THE HUMAN RESOURCES OFFICE

The Human Resources Office must establish and maintain the grievance files separate from the Personnel Files of the parties involved. Only the grievant or designee, the Faculty Union President or designee, and the Administration shall have access to the grievance file. The Human Resources Office shall hold the files for a period of five (5) years after action has been taken on that grievance. The files shall then be destroyed.

H. REQUESTING INFORMATION

One party may possess relevant information that the other party may need to investigate and process the grievance. If either party requests such information in writing (and if the information sought is not confidential as defined by Guam statute or Federal law), the other party shall, absent extraordinary circumstances, provide the requested information within five (5) business days at the current duplication costs.

I. GRIEVANCE PROCEDURE

Prior to filing any grievance, Faculty are encouraged to speak with a Union representative to be aware of the process and their rights.

Any Faculty member, group of Faculty members, or the Union may file a grievance based on the following procedure:

1. Step One: Meeting with the Administrator being grieved
 - a. Within five (5) business days of the alleged violation, or within five (5) business days from when the Faculty member(s) or Union became aware of, or reasonably should have been aware of the alleged violation, the grievant shall request, in writing, a meeting with the Administrator being grieved in an attempt to work out a resolution to the alleged problem. The written request shall include:
 - (1) a description of the facts surrounding the issue, including who was involved, what happened, when it happened, and where it happened, and;
 - (2) a citation of the sections of the *Agreement* or the University of Guam personnel policies and regulations that have been allegedly violated;
 - (3) a statement of what the grievant seeks as a remedy; and
 - (4) a request to meet with the Administrator being grieved to discuss the issues contained in the written statement.

The grievant shall also supply a copy of the written request to the Union President on the same day the Administrator receives the written request.

- b. Within five (5) business days of receipt of the written request for the formal meeting, the Administrator being grieved and the grievant shall meet.

- c. Within five (5) business days of the formal meeting, the Administrator being grieved shall send his or her written decision to the grievant.
2. Step Two: Meeting with the Administrator's Supervisor
 - a. If the grievant does not receive the remedy that he or she requested at the Step One meeting, or does not receive an alternative remedy satisfactory to the grievant, then the grievant may, within five (5) business days of receiving the Step One decision, submit the written statement to the supervisor of the Administrator being grieved. This written statement shall include all of the information from the previous step.
 - b. The grievant and the Administrator's supervisor shall meet within five (5) business days of the supervisor's receipt of the written statement and discuss the issues raised.
 - c. The Administrator's supervisor shall not consider any new alleged violations or charges other than those presented at Step One.
 - d. Within five (5) business days of meeting with the grievant, the supervisor shall meet with the Administrator concerned to discuss the grievance.
 - e. After the meeting with the Administrator, the supervisor has five (5) business days to reply in writing to the grievant.
 - f. If the grievant does not receive the remedy that he or she requested, or does not receive an alternative remedy satisfactory to the grievant, then the grievant has the right to appeal to an ad hoc Grievance Hearing Committee.
3. Step Three: Appeal to the ad hoc Grievance Hearing Committee
 - a. If the grievance has not been settled at Step Two, then within five (5) business days after the grievant's receipt of the written decision of the Administrator's supervisor, the grievant may appeal the decision by requesting a hearing by an ad hoc Grievance Hearing Committee by giving written notice to that effect in person or by registered or certified mail, directed to the President, the Administrator being grieved, and the Faculty Union President.

The ad hoc Grievance Hearing Committee shall consist of five (5) members, all of whom shall be selected from among all Administrators and tenured Faculty of the University. Members cannot be selected if they have a family relationship, as defined in the *RR&PM*, to either the grievant or the Administrator being grieved. Two (2) members shall be selected by the Faculty member and two (2) members shall be appointed by the Administrator being grieved. Those four (4) members will select the fifth member who shall be the Chair. Neither the affected Faculty member nor the President shall serve as a member of the ad hoc Grievance Hearing Committee.

b. Process of the hearing

- (1) The request shall be in writing stating the Faculty member's desire for a hearing, and include all of the information from each of the previous steps. The request shall be filed with the President, the Administrator being grieved and Faculty Union President.
- (2) Within five (5) business days of receipt of the written request, the Faculty member will select two (2) members to serve on the Grievance Hearing Committee and the Administrator being grieved will select two (2) members to serve on the Grievance Hearing Committee.
- (3) Within five (5) business days of their selection, the four (4) members will select the fifth member.
- (4) Within five (5) business days of the selection of the fifth member, the Grievance Hearing Committee shall determine a time and place for the hearing and shall notify, in writing, both parties. The hearing must take place no later than ten (10) business days after the Grievance Hearing Committee notifies both parties, unless the Committee notifies all parties of an extension not to exceed ten (10) business days.
- (5) The Grievance Hearing Committee shall conduct the hearing and issue a written decision within ten (10) business days of the date of the hearing to the grievant, the Administrator being grieved, the Union President, and the President.

c. The Grievance Hearing Committee shall not consider any new alleged violations or charges other than those presented at Step One.

- d. If either party disputes the grievability of the issue, the Grievance Hearing Committee shall first determine whether the issue is indeed grievable. If the issue is not grievable, it shall be referred back to the parties without decision or recommendation on its merits.
- e. The decision of the Grievance Hearing Committee shall be final and binding upon the parties. There shall be no appeal from the Grievance Hearing Committee's decision by either party, if such decision is within the scope of the Grievance Hearing Committee's authority as described below:
 - (1) The final written decision of the Grievance Hearing Committee shall be limited to addressing the violation(s) listed in the Step One written request, and, with a supporting rationale, (a) granting the full relief requested, or (b) granting partial relief, or (c) denying the relief requested, or (d) granting an alternative relief that addresses the violation(s).
 - (2) The Grievance Hearing Committee shall not have the power to add to, subtract from, disregard, alter, or modify any of the terms of this *Agreement* or University policy.
 - (3) The Grievance Hearing Committee's decision must be consistent with the terms of this *Agreement* and University policy.
 - (4) Within twenty (20) business days of receipt of the Committee's decision, if the grievant or the Administrator being grieved produces evidence that the Committee did not adhere to (2) or (3) above, or new evidence is now available that could have a substantial impact on the grievance, then either party may request, in writing, a reconsideration by the Committee. The Committee shall issue a decision within ten (10) business days of receiving the request for reconsideration. There shall be no further appeal.

The supervisor of the Administrator grieved shall ensure that all the terms of the decision are implemented, and the Faculty Union shall monitor implementation of the decision.

ARTICLE X

DISCIPLINARY ACTION INCLUDING ADVERSE ACTION

A. STATEMENT OF PURPOSE

This Article of the *Agreement* provides a formal framework for an equitable, expeditious, and systematic resolution of matters involving disciplinary action, including Adverse Action. The purpose of disciplinary action, including Adverse Action, by the Administration, is to recognize, address, and, if possible, correct inappropriate behavior.

The underlying principle in disciplinary cases is to ensure that the Faculty member is afforded procedural rights during the disciplinary action, including Adverse Action, and that the disciplinary action, including Adverse Action, by the Administration is for cause and is appropriate to the offense.

All parties, however, are encouraged to communicate and attempt to resolve the matter informally before, during, and after any formal disciplinary action procedure.

Nothing in this *Agreement* abrogates either party's right to pursue judicial remedies for resolving the disciplinary action after the process described in this Article is completed.

B. NOTICE TO FACULTY ABOUT ALLEGED INAPPROPRIATE BEHAVIOR

A Faculty member shall be provided an opportunity to explain his or her perspective before an Administrator begins any disciplinary or adverse action procedure for alleged inappropriate behavior.

When an Administrator receives information alleging that a Faculty member has behaved inappropriately, the Administrator and the affected Faculty member shall meet to discuss the allegation before any disciplinary or adverse action procedures are implemented as described below in sections C and D of this Article.

The requirement for notice in this section does not apply to egregious acts, such as threats or acts of violence.

C. LEVELS OF DISCIPLINARY ACTIONS INCLUDING ADVERSE ACTION

Disciplinary action shall be appropriate to the seriousness and nature of the offense, shall take into account the past record of the Faculty member, and shall be based on the model of progressive discipline. However, depending on the severity of the alleged offense, the appropriate Administrator may proceed to Level 2 or Level 3 of disciplinary actions. The following is a list of levels of disciplinary actions that the Dean/Director may pursue in addressing and correcting, if possible, inappropriate conduct in a reasonable manner:

1. Level One (no loss of pay or loss of job; not an Adverse Action)
 - a. an oral or a written warning (not placed in the Faculty member's Official Personnel File) about the possible consequences if the inappropriate behavior continues. Such a warning may include a recommendation to seek counseling and/or a request to provide a development plan to correct the inappropriate behavior, and/or a restriction of privileges; and/or
 - b. a written warning, placed in the Faculty member's Official Personnel File, about the possible consequences if the inappropriate behavior continues. Such a warning may include a recommendation to seek counseling and/or a request to provide a development plan to correct the inappropriate behavior, and/or a restriction of privileges; and/or
 - c. a letter of reprimand placed in the Faculty member's Official Personnel File; this is a formal expression of institutional rebuke, conveyed by the Dean/Director. Such a letter may include a recommendation to seek counseling and/or a requirement to provide a development plan to correct the inappropriate behavior, and/or a restriction of privileges.
2. Level Two (loss of pay; an Adverse Action)
 - a. docking of pay; and/or
 - b. suspension without pay; and/or
 - c. loss of step; and/or
 - d. demotion in rank
3. Level Three (loss of job; an Adverse Action)

The disciplinary action at this level is dismissal from employment at the University of Guam.

The President of the University has sole authority to dismiss any tenured or non-tenured Faculty member. In all cases where dismissal is being considered, the President shall consult with the Faculty Union President prior to dismissing any member of the Faculty.

Termination due to failure to be granted reappointment, or due to failure to be granted tenure by the end of the sixth academic year, or due to expiration of a limited-term contract is not an adverse action as defined in Article X herein.

Disciplinary actions such as letters of reprimand, which the Administration can issue but which do not involve Adverse Actions as defined in Article X herein, may be subjects of a grievance as provided for in Article IX herein. If such action is grieved, the Human Resources Office must establish and maintain the disciplinary action files separate from the Official Personnel Files of the parties involved. Only the Faculty member or designee, the Union President or designee, and the Administration shall have access to the disciplinary action file.

If the disciplinary action is upheld, then the Human Resources Office shall, within seven (7) days of receipt of the final decision, add the disciplinary action to the Faculty member's Official Personnel File.

If disciplinary action is not upheld, then the Human Resources Office shall, within seven (7) days of receipt of the final decision, certify the expungement of the disciplinary action.

D. DEFINITIONS OF ADVERSE ACTION

1. Adverse action means the suspension, demotion or dismissal of a Faculty member for causes outlined in section E of this Article.
2. Suspension means the temporary removal of a Faculty member from his or her position with loss of pay as a disciplinary measure.
3. Demotion means the involuntary reduction of a Faculty member's Rank or the involuntary reduction of a Faculty member's salary steps within the same Rank as a disciplinary measure.
4. Dismissal means the termination of a Faculty member from his or her position for cause.

E. AUTHORIZED CAUSES FOR DISCIPLINARY ACTION INCLUDING ADVERSE ACTION

Authorized causes for disciplinary action, including adverse action, against a Faculty member shall be limited to the following:

1. fraud in securing appointment, promotion, or tenure;
2. misconduct in research as defined in the UOG *RR&PM*;
3. demonstrated incompetence in his or her academic discipline, work performance, or employment;
4. inexcusable neglect of duty related to work performance or employment;

5. willful dishonesty related to work performance or employment;
6. inexcusable absence without approved leave;
7. insubordination, which means willful failure to obey a direct, legitimate order from an Administrator in the Faculty member's direct supervisory chain;
8. intoxication or illegal drug use while on campus;
9. addiction to the use of illegal drugs;
10. conviction of a misdemeanor involving moral turpitude;
11. conviction of a felony;
12. insulting, rude, or belligerent treatment of the public, students, or other University employees;
13. misuse of government property in violation of law, rules, or regulations;
14. other gross personal misconduct, either during or outside duty hours, that is of such a nature that it causes discredit to the University;
15. illegal job action as defined in the Public Employee-Management Relations Act of Guam (PEMRA);
16. consumption of alcohol on campus without prior approval from appropriate authority;
17. Sexual harassment as defined in the University EEO policy;
18. violation of any provision of the contract and or any provision of the University policy, rules and regulations.

F. PROCEDURES

1. Each Faculty member is entitled to the following procedural rights during Adverse Action proceedings:
 - a. the right to be notified of the charges, and to be supplied with a copy of any documents and investigation reports that involve the charges;
 - b. the right to have a Union representative in any interview the Administration might hold with the Faculty member to investigate a possible discipline charge against a Faculty member;

- c. the right to have, and be present at, a fair hearing by the Adjudication Committee;
- d. the right to representation at any formal hearing;
- e. the right to confront accusers; and
- f. the right to answer the charges and present evidence and witnesses.

2. Representation Rights During the Adverse Action Procedures

- a. At each step of the adverse action procedures, the Union President shall be notified, in writing, of all adverse action proceedings. The Union President, or designee, shall have the right to attend all adverse action proceedings.
- b. At each step of the adverse action proceedings, the Faculty member shall have the right to designate an advisor (or Union representative) of his or her choice who may be present to consult with, advise, and speak for the Faculty member.
- c. At each step of the adverse action proceedings, either party retains the right to representation by legal counsel.

3. Prohibition on Faculty Representing the Administration During Disciplinary Action Procedures

Under this *Agreement*, all full-time Faculty are covered as members of the bargaining unit. Therefore, a full-time Faculty member cannot serve in any capacity as an Administrator's advisor during the adverse action procedure.

4. Timelines

For purposes of this Article, "day" shall mean calendar day. The day after an event or the day following receipt of any official correspondence filed in relation to an adverse action, shall be considered the first day of the next indicated timeline.

At any level of the Adverse Action procedure, and prior to the expiration of any timeline, both parties may, by mutual written agreement, stipulate to extend any timeline prescribed in the Adverse Action procedure. The written agreement shall stipulate the new extension, and a copy of the agreement shall be sent to the Union President and the Human Resources Office.

5. Delivery of Official Correspondence

All official correspondence and documents filed in accordance with the disciplinary action procedure shall be hand delivered to the designated recipient. The correspondence or documents shall be received and dated at the location where it is served, with a receipted copy returned to the originator.

If a recipient is unavailable at the time of delivery, the official correspondence or documents may be given to the recipient by registered mail, using the address on file in the Human Resources Office, or by facsimile, or to his or her representative as designated in writing.

Service by mail shall be deemed accomplished on date of postmark and a facsimile shall be deemed accomplished according to confirmation of transmittal.

6. Adverse Action Files at the Human Resources Office

The Human Resources Office must establish and maintain the adverse action files separate from the Personnel Files of the parties involved. Only the Faculty member or designee, the Faculty Union President or designee, and the Administration shall have access to the adverse action file.

If the adverse action is implemented, then the Human Resources Office shall, within seven (7) days of implementation, add the adverse action to the Faculty member's Official Personnel File.

If the adverse action is modified by the Adjudication Committee, then the Human Resources Office shall, within seven (7) days of receipt of the final decision, replace the original adverse action with the modified adverse action in the Faculty member's Official Personnel File.

If the adverse action is revoked by the Adjudication Committee, then the Human Resources Office shall, within seven (7) days of receipt of the final decision, destroy the adverse action file or purge the Faculty member's Official Personnel File of the adverse action.

7. Requesting Information

One party may possess relevant information that the other party may need to investigate and process the adverse action or the appeal of the adverse action. If either party requests such information in writing (and if the information sought is not confidential as defined by Guam statute or Federal law), the other party shall, absent extraordinary circumstances, provide the requested information within seven (7) days at the current duplication costs.

8. Adverse Action Procedures

a. Notice of Proposed Adverse Action

A Faculty member against whom adverse action is sought is entitled to written notice stating any and all causes, with the bases of specific charges expressed in detail, for the proposed action.

b. Faculty member's Answer

A Faculty member is entitled to twenty (20) days for answering charges in a notice of proposed adverse action and for furnishing affidavits in support of his or her answer.

If the Faculty member fails to answer within twenty (20) days of receipt of the adverse action notice, the charges will be deemed admitted and the Faculty member shall forfeit the right to answer.

If the Faculty member answers, the President shall consider his or her answer in reaching a decision.

The Faculty member may answer orally or in writing or both. The right to answer personally includes the right to answer orally in person by being given a reasonable opportunity to make any representations which the Faculty member believes might sway the final decision in the case, but does not include the right to a trial or formal hearing with examinations of witnesses.

When the Faculty member requests, in writing, an opportunity to answer personally, the President shall meet with the Faculty member to hear his or her answer.

c. Duty Status During Notice Period

A Faculty member against whom adverse action is proposed is entitled to be retained in an active duty status during the notice period.

However, when circumstances are such that the retention of the Faculty member in active duty in his or her position may result in damage to University property or may be detrimental to the interests or operations of the University or injurious to the Faculty member, fellow workers, or the general public, the President may temporarily assign the Faculty member to duties in which these conditions will not exist or place him or her on suspension with pay.

d. Notice of Adverse Action

The Faculty member is entitled to notice of the President's decision at the earliest practicable date but no later than twenty (20) days following the due date of the Faculty member's response.

The University shall deliver the notice of decision to the Faculty member at or before the time the action will be made effective. The notice shall be in writing, be dated, inform the Faculty member of the specific statement of the charges upon which such action is based, inform the Faculty member of his or her right to appeal, and inform him or her of the time limit within which an appeal may be submitted, all as provided in Article X, section D, subsection 11, of this *Agreement*.

The Adverse Action is effective the date of the Notice of Adverse Action. Implementation of the adverse action decision, from its effective date, is subject to the provisions in Article X, section D, subsection 12, of this *Agreement*.

9. Appeals of Adverse Action

This section sets forth procedures to provide a simple, orderly method through which a Faculty member may seek prompt reconsideration of an adverse action against him or her.

a. Definitions

- (1) Appeal means a request by a Faculty member for reconsideration of an adverse action against him or her.
- (2) Original Adverse Action means an adverse action by the University against a Faculty member as defined in Article X, section D, subsection 1, of this *Agreement*.
- (3) "Day" shall mean calendar day.
- (4) Adjudication Committee means the constituted ad hoc body to hear and adjudicate adverse action appeals.

The Adjudication Committee shall consist of five (5) members, all of whom shall be selected from among all Administrators and tenured Faculty of the University. Two (2) members shall be selected by the affected Faculty member and two (2) members shall be appointed by the President. Those four (4) members will select the fifth member who shall be the Chair. Members cannot be selected if they have a family relationship, as defined in the *RR&PM*, to either the President or the affected Faculty member. Neither the affected Faculty member nor the President shall serve as a member of the Adjudication Committee.

b. The Appeal

(1) Right to Appeal or Terminate Appeal

- (a) Any full-time Faculty member is entitled to appeal an adverse action.
- (b) A regular contract Faculty member occupying a permanent position with the University is entitled to appeal adverse actions imposed during the term of his or her contract. Non-renewal of contract is not considered an adverse action and is not subject to appeal.
- (c) The Faculty member may terminate his or her appeal at any time before the President's final decision and the request for termination shall be honored by the Administration.

(2) Process of Appeal

- (a) An appeal shall be in writing stating the Faculty member's desire for adjudication and it shall be filed with the President within seven (7) days of the date of the Notice of Adverse Action.
- (b) Within seven (7) days of the President's receipt of the written appeal, the Faculty member will select two (2) members of the Adjudication Committee and the President will appoint two (2) members of the Adjudication Committee.
- (c) Within seven (7) days of their selection/appointment, the four (4) members will select the fifth member.

- (d) Within seven (7) days of the selection of the fifth member, the Adjudication Committee shall determine a time and place for the hearing and shall notify, in writing, both parties. The hearing must take place no earlier than fourteen (14) days after the Committee notifies both parties, unless otherwise agreed to in writing.
- (e) The Adjudication Committee shall conduct the hearing and issue a written decision to both parties within sixty (60) days of the date of the Notice of Adverse Action. In the event the sixtieth day falls on a holiday or a weekend, the next working day shall be considered the sixtieth day.

(3) Basis of Appeal and Rebuttal

- (a) Within fourteen (14) days of filing the appeal, the Faculty member shall submit to the Committee a written statement that sets forth clearly the basis of the appeal, stating all relevant facts pertaining to the issues raised in the appeal and specifying the statutes, rules and regulations, if any, upon which the Faculty member relies.

Absent extraordinary circumstances, if the written statement is not submitted on or before the expiration of the fourteen (14) day period, the Faculty member shall forfeit appeal rights, and the adverse action shall be implemented.

- (b) The Committee shall immediately provide the President with a copy of the Faculty member's written statement.
- (c) The President shall within fourteen (14) days after receipt of the Faculty member's written statement, forward to the Adjudication Committee the Administration's statement of defense. The Administration's statement of defense shall contain objections to any or all issues raised by the appeal, objections to the form of the appeal, the Administration's view of the facts, a rebuttal to any matter raised in the appeal, a description of testimonial and/or documentary evidence upon which the Administration will rely in its defense of the appeal.

A statement of defense shall be deemed a specific denial of all aspects of the appeal not expressly admitted. All objections as to the form of the appeal shall be deemed waived, unless objected to as provided herein.

Absent extraordinary circumstances, if a statement of defense is not submitted on or before the expiration of the fourteen (14) day period, the Administration shall forfeit defense rights, and the adverse action shall be revoked.

- (d) The Committee shall immediately provide the Faculty member with a copy of the Administration's statement of defense.

(4) Presentation of Appeal

In presenting an appeal, a Faculty member shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of his or her own choosing.

If the Faculty member designates a representative, the representative shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal.

c. Hearing Procedures before the Adjudication Committee

- (1) The Adjudication Committee shall keep minutes of its procedures and maintain records of the hearing. The record of hearing shall contain a summary of all testimony presented and copies of all documents submitted to the Committee.
- (2) Each party shall have the following rights: the right to counsel; to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though the matter may not have been covered in the direct examination; to impeach any witness and to rebut the evidence against him or her. It shall be the right of the Faculty member to decide if the hearing shall be open or closed to the public.
- (3) The Faculty member shall first present his or her case by calling witnesses and offering evidence. The Administration shall then present its defense and any rebuttal to the Faculty member's case. The Faculty member may then rebut the Administration's defense. Summation by each side then follows in the same order.

The burden of proof is on the Administration.

The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule of evidence. Irrelevant and unduly repetitious evidence shall be excluded.

- (4) Within sixty (60) days after the date of the Notice of Adverse Action, the Adjudication Committee shall deliver its written recommendation for action to the Faculty member, the Union President, and the President. The recommendation for action shall be based on the preponderance of evidence; shall be in writing; and shall contain findings of fact, a determination of the issues and defenses presented, and remedial action to be taken, if any. The Adjudication Committee shall recommend sustaining, modifying or revoking the adverse action. One copy of the record of hearing shall be provided to the Faculty member, the Union President, and the President.

d. Decision of the President

Following receipt and review of the Adjudication Committee's recommendation, the President shall sustain, modify or revoke the adverse action against the Faculty member. The decision of the President is final and there is no further right of administrative appeal. The President's final written decision shall be made within seven (7) days after receipt of the Adjudication Committee's recommendation. One copy of the President's final decision shall be provided to both the Faculty member and the Union President.

e. Death of the Faculty member

When an appeal is properly filed before the death of the Faculty member, the Adjudication Committee and President shall process it to completion.

10. Effective date of implementation of Adverse Actions

- a. If the adverse action is for suspension without pay for five (5) days or less, or for demotion of two (2) pay steps or less, the adverse action shall be implemented on the effective date of the final Notice of Adverse Action. The Faculty member may then appeal the adverse action following the procedures outlined in this Article.
- b. If the adverse action is for anything else, the implementation date shall be sixty (60) days after the effective date of the final Notice of Adverse Action, or on the date of the final decision by the President, whichever is earlier.

- c. If a Notice of Proposed Adverse Action is issued against a nine-month Faculty member or a twelve-month Faculty member on approved leave at a time when it is not possible to communicate with or contact the Faculty member, the Administration may continue the adverse action process through the final Notice of Adverse Action. The Administration shall place the Notice of Adverse Action in an adverse action file in the Human Resources Office as provided for in this Article and shall be effective as of that date.

However, implementation of the adverse action against the Faculty member shall be suspended until one of the following events occurs, whichever is first: (1) the Faculty member is contacted by or communicates with the Administration or (2) the first day of the next regular semester or (3) the Faculty member returns from approved leave. At such time, the timelines for the process of appeal shall be reactivated and commenced as of that date.

- d. If a Notice of Proposed Adverse Action is issued against a nine-month Faculty member or a twelve-month Faculty member who is absent without approved leave at a time when it is not possible to communicate with or contact the Faculty member, the Administration may continue the adverse action process through the final Notice of Adverse Action. The Administration shall place the Notice of Adverse Action in both the adverse action file and the Official Personnel File in the Human Resources Office as provided for in this Article. The adverse action shall be effective and implemented as of that date.

ARTICLE XI

RECRUITMENT, LAYOFFS, AND RECALL

A. FACULTY RECRUITMENT

Recruitment is a mutual concern of all in the University community. The Administration shall give serious consideration to recommendations from the Division(s) or Other Assigned Area(s) concerned when filling a Faculty vacancy.

No tenure-track or non-tenure-track full-time Faculty position can be filled unless a search is conducted according to the procedures in this Article.

1. Formation of Search Committees

Search Committees for Faculty positions shall be established in the following manner:

- a. The Dean/Director shall request approval from the Senior Vice President to fill a vacancy.
- b. Upon approval, the Dean/Director shall request that the Division or Other Assigned Area forward names of full-time Faculty members to serve on the search committee.
- c. The Division or Other Assigned Area will then elect from three (3) to five (5) members (the exact number is left up to the Faculty) from all the full-time Faculty members of the Division or Other Assigned Area. The Division or Other Assigned Area will forward the names of the selected individuals to the Dean/Director.
- d. The Dean/Director shall appoint these Faculty members to the Search Committee. The Dean/Director may also appoint up to two (2) additional full-time Faculty members. The Dean/Director shall then convene the Search Committee and appoint the Committee Chair from the elected members.
- e. In fulfilling its Faculty recruitment responsibilities, the Search Committee shall invite all full-time Faculty members in the Division or Other Assigned Area to have input into the process. The Search Committee shall establish criteria for selection with the concurrence of the Dean/Director and the Senior Vice President. The criteria shall be in accordance with University-wide and College-wide standards and the University's policy on nondiscrimination and affirmative action.

2. Length of service for non-tenure-track full-time Faculty

After ten (10) consecutive or non-consecutive semesters of non-tenure-track contracts, the faculty member must again be selected for the position using the search procedure as described in this Article before he or she can be rehired on another non-tenure-track contract.

This provision only applies to full-time Faculty positions funded by Guam legislative appropriations to the University of Guam.

3. Emergency-hire Faculty

In the event of an unexpected vacancy in a Faculty position (due to, for example, death, sudden resignation or retirement, or serious illness, or absence without approved leave), the Dean/Director shall first attempt to reassign duties to other Faculty in the program.

If it is not possible to reassign duties to other Faculty in the program, the Dean/Director may recommend a candidate for an emergency full-time hire to the Senior Vice President and the President. Such an emergency hire may be conducted without going through the search process described in this Article. The employment period of the emergency-hire Faculty shall be for a term no longer than the completion of the Academic Year in which the vacancy occurred.

4. Advance notice of salary schedule and fringe benefits

Newly recruited Faculty members shall be given notice of the salary schedule and fringe benefits in advance of being expected to sign the initial employment contract. Following the receipt of the signed contracts, the Human Resources Office shall send to the Union a copy of the names and addresses of the new Faculty members.

B. FACULTY LAYOFFS

The Board recognizes that laying off Faculty is a most serious separation step for an institution of higher learning. It may be necessary to lay off a Faculty member because of a bona fide financial exigency as specified below.

Faculty layoffs shall only be taken as a final step in an orderly planned consultative process. No Faculty layoffs shall take place until all other reasonable cost-saving measures have been exhausted, and until after a total freeze on the hiring of any personnel to fill any newly created University positions has been in place for at least six (6) months. This hiring freeze only applies to positions funded by Guam legislative appropriations to the University of Guam.

To this end, different processes and procedures shall apply, according to the nature and reason for the layoff.

1. Layoff due to financial exigency

After the Board has declared that a layoff of Faculty members is necessary due to a bona fide financial exigency, the Administration shall consult with Faculty members of the affected Division or Other Assigned Area and with the Union.

In determining which Faculty member's employment to discontinue for reasons of financial exigency, a multi-level review process shall be used. The first level of review shall focus on the single criterion of programmatic needs. Once this review has identified the program areas to be eliminated or cut-back, the final selection of layoffs shall be undertaken by the Administration. Once programmatic needs have been established, preference for retention shall be given to those holding tenured positions, starting at the rank of Professor. Part-time Faculty, or non-tenured Faculty, or both, shall be released first.

In making this determination on layoff, the Administration shall actively solicit recommendations from the various Faculty Divisions or Other Assigned Areas and organizations of the University including the Union and shall give due consideration to all recommendations. Such recommendations shall be transmitted in writing to the President within forty-five (45) business days of notice of impending layoffs.

2. Layoff procedures

Before any layoff is declared, the Administration, supported by affected Faculty members and the Union, shall make a documented and demonstrated effort to locate appropriate, alternative, or equivalent employment within the University for those Faculty members subject to layoff. Written notice of these efforts shall be shared with the affected Faculty members and with the Union. Once programmatic needs have been established, preference for retention shall be given to those holding tenured positions, starting at the rank of Professor. Part-time Faculty, or non-tenured Faculty, or both shall be released first.

No full-time Faculty members shall be laid off unless and until the alternatives below have been considered, and if deemed feasible, implemented:

- a. Shared load between Divisions or Other Assigned Areas;

- b. Reassignment to another Division or Other Assigned Area, but only after consultation with the affected Faculty member and with the Division or Other Assigned Area to which the Faculty member may be reassigned, taking into consideration educational, research, and programmatic concerns and the Faculty member's professional training and experience;
- c. Supplementation of assigned duties with alternative duties;
- d. Transfer to a vacant position (but only with the consent of a majority of Faculty members of the Division or Other Assigned Area wherein there is the vacant position);
- e. Reduced appointment;
- f. Negotiated separation package;
- g. Early retirement.

Faculty members who are to be laid off shall be given at least one (1) year's notice. The Administration shall make every reasonable effort to find appropriate employment for the laid off Faculty member outside the University.

3. Special Circumstances for extramurally funded Faculty

In any University there are always Faculty members whose circumstances of employment merit special consideration such as those funded extramurally. In regards to layoff, such cases will be considered individually in consultation with the Union.

4. Ad Hoc Special Appeals Committee

Appeals of specific layoff decisions may be filed by the affected Faculty member(s) with an ad hoc Special Appeals Committee. The committee shall consist of three (3) members, all of whom shall be selected from among Administrators and all tenured Faculty of the University. One (1) member shall be selected by the Faculty member and one (1) member shall be appointed by the President. Those two (2) members will select the third member who shall be the Chair. Neither the affected Faculty member nor the President shall serve as a member of the ad hoc Special Appeals Committee.

The committee shall conduct a hearing within ten (10) business days of receiving the appeal, and shall give a decision within five (5) business days of that hearing.

Appeals of the Special Appeals Committee decision by either party will be heard by the Board of Regents. Any appeal must be filed in, writing, to the Executive Secretary of the BOR within ten (10) business days of the receipt of the decision of the Special Appeals Committee. The appeal shall be heard by the Board of Regents no later than at the next regularly scheduled meeting occurring ten (10) or more business days after the appeal is filed. All appeals shall be in writing and shall be restricted to the proposed implementation of the decisions of the Board of Regents. The Union shall be notified of the time and place of any hearing and may attend.

C. FACULTY RECALL

1. The Administration shall compile and keep current a list of Faculty members who have been laid off, the layoff date, and addresses. Names will remain on the list for a period of three (3) years. Laid off Faculty members shall be responsible for providing timely information as to their whereabouts and availability in order to keep files up to date.
2. Promotion and tenure timelines shall be suspended for up to three (3) years for Faculty terminated by reason of layoff.
3. If positions become available within three (3) years of the lay off actions, eligible Faculty members who were laid off will have first priority for recall in reverse order of lay off, so long as this can be accomplished while accommodating the University's programmatic needs. These Faculty members shall be so notified by registered letter sent to their last known address. In order to exercise this right of recall, the Faculty member must be available within one year. Recall rights shall expire three (3) years from the date of lay off or upon failure to accept an offer of recall made within the three-year period.
4. In all cases of layoff of Faculty members for reasons described in this Article, the position of the Faculty member laid off shall not be filled by a replacement unless:
 - a. the laid off Faculty member has been offered reinstatement and has failed to accept within thirty (30) business days of receipt of such an offer; or
 - b. after mailing the offer of reinstatement, the Administration receives an official notice of undeliverability of the letter within thirty (30) business days of the mailing; or
 - c. the laid off Faculty member declines to accept the offer of reinstatement.

5. No retraining of returning Faculty members or upgrading of Faculty skills can be required by the University without the written approval of the Faculty member. Should such approval be given, the Board of Regents shall give due consideration to Faculty member requests for training in the awarding of Government of Guam student financial aid.

D. SPECIAL ISSUES

If a special issue arises that would affect the continuous employment of tenured Faculty, the Administration will provide ninety (90) business days notice to the Union of such intent to implement.

The Administration and the Union will immediately commence negotiations as to the impact and implementation of such change. If agreement by both parties is not reached through negotiations, another ninety (90) business days will be given as notice. During this second period of ninety (90) business days, efforts will continue to obtain an Impact and Implementation agreement.

Upon the completion of the one-hundred eighty (180) business days, absent an agreement, management may proceed with implementation.

ARTICLE XII

SAVINGS CLAUSE, ACT OF GOD CLAUSE, AND INTEGRATION OF THE *AGREEMENT* WITH UNIVERSITY POLICY

A. SAVINGS CLAUSE

In the event any portion of this *Agreement*, in whole or in part, is declared to be illegal, void, or invalid by any court of competent jurisdiction, all other items, conditions, and provisions of this *Agreement* shall remain in full force and effect to the same extent as if that portion had never been incorporated in this *Agreement*, and in such event the remainder of this *Agreement* shall continue to be binding upon the parties thereto.

B. ACT OF GOD CLAUSE

It may happen that a portion of this *Agreement*, in whole or in part, cannot be implemented or upheld as the result of the direct, immediate, and exclusive operation of the forces of nature, uncontrolled or uninfluenced by the power of humans, and without human intervention, which is of such character that it could not have been prevented, or avoided by foresight or prudence. Such forces of nature include, but are not limited to, wars, civil insurrection, earthquakes, typhoons, and sudden illness or death of a person. In these cases, the *Agreement* still applies, but timelines may be altered by the circumstances.

C. INTEGRATION OF THE *AGREEMENT* WITH UNIVERSITY POLICY, RULE, REGULATION, GUIDELINE, OR PRACTICE

For the life of this *Agreement*, the *Agreement* shall prevail over all University policies, practices, rules, regulations, or guidelines, whether written or unwritten, and over any policy, practice, rule, regulation, or guideline, whether written or unwritten, of any component of the University.

1. Policy, rule, regulation, guideline, or practice not covered by the *Agreement*

The Board and the Union agree that there is a body of written policy, rule, etc., and written interpretation of those policies, rules, etc., governing administrative decisions concerning wages, hours, or working conditions that this *Agreement* may not cover. In the event of a conflict of any University policies, rules, etc., with this *Agreement*, the *Agreement* shall prevail.

2. Policy, rule, regulation, guideline, or practice not in conflict with the *Agreement*

Any University policies, rules, etc., that do not conflict with this *Agreement* may be either continued for the term of this *Agreement* or changed or eliminated.

If changed or eliminated, however, the Union, as the exclusive bargaining agent of the Faculty, must be consulted in ample time to review the policy, rule, etc., and advise the Administration before the policy, rule, etc., goes into effect or is discontinued. Representatives of the Administration will meet and consult with Union representatives and shall give serious consideration to their views of the matter under discussion. For the life of this *Agreement*, no new policies, rules, etc., of the University shall be created that conflict with the provisions of this *Agreement*.

3. Practices

Concerning practices, if the Administration decides to establish or rely upon a specific practice in making a discretionary decision concerning wages, hours, and/or working conditions, the Union, as the exclusive bargaining agent of the Faculty, must receive notification to that effect. Representatives of the Administration will meet and consult with Union representatives and shall give serious consideration to their views of the matter under discussion.

D. ALTERING, AMENDING, SUPPLEMENTING, ENLARGING, OR MODIFYING THE *AGREEMENT*

Both parties for the lifetime of this *Agreement*, agree that they shall not be obligated to bargain collectively with respect to any subject matter referred to or governed by this *Agreement*, unless the Board and the Union mutually agree in writing to alter, amend, supplement, enlarge or modify any of its provisions.

No labor-management contract is able to cover every contingency. Therefore, both parties agree to allow the formulation of Memorandums of Understanding to address contingencies as they arise. Due to the unique nature of University life, and following a ten (10) business day notice and comment period from the parties to this *Agreement*, only the President and the UOG Faculty Union President can sign Memorandums of Understanding.

In addition, either party (the President or Union President) may convene an ad hoc *Agreement* Implementation Committee (AIC) that includes at least one (1) other member from each of the Administration's and Union's negotiating teams for this *Agreement*. The main role and purpose of the ad hoc *Agreement* Implementation Committee will be to clarify the intent of the *Agreement* and, if necessary, to recommend resolution of disputes over interpretation of the *Agreement* via a Memorandum of Understanding as described in this Article.

E. DISCLAIMER REGARDING ACCESS TO FILES

Pursuant to the terms and conditions in this collective bargaining agreement, the Administration is obligated and authorized to provide access to specific files and to disclose and release information contained therein to authorized members of the Faculty Union. In fulfilling such obligation, the University of Guam shall not be held liable by the members of the collective bargaining unit.

F. ECONOMIC IMPACT

The Board and the Union recognize that implementation of this *Agreement* has an economic impact. In the continuing spirit of collegiality and good faith, the Union and the Administration will consult to alleviate any possible negative economic impact that may arise regarding implementation of this *Agreement*.

ARTICLE XIII

IMPLEMENTATION

The intent of Interest-Based Bargaining is to create a permanent collaborative relationship between the University's Faculty and the Administration. Therefore, the Board and the Union recognize that the spirit of this *Agreement* calls for a serious collaborative effort to work out issues that will arise in the implementation of this *Agreement*.

A. ISSUES RELATED TO THE COMPENSATION OF THE UNION REPRESENTATIVES INVOLVED WITH NEGOTIATING THE COLLECTIVE BARGAINING AGREEMENT

Starting in Spring Semester 2013, the Administration and the Union will begin formal consultation on resolving issues related to UOG policies and Guam law as they relate to the compensation of the Union Representatives involved with negotiating the Collective Bargaining Agreement.

B. ISSUES RELATED TO FACULTY COMPENSATION FOR GRANTS AND CONTRACTS, AND FACULTY MANAGEMENT OF GRANTS AND CONTRACTS

Understanding the importance and complexity of these issues, the Administration and the Union shall, in good faith and in a timely manner, develop an MOU addressing both Faculty compensation for grants and contracts, and Faculty management of grants and contracts.

ARTICLE XIV

DURATION

This *Agreement* shall go into effect at 12:00 o'clock a.m. on March 1, 2013, and shall remain in effect until 12:00 o'clock a.m. on February 28, 2018. This *Agreement* supersedes all earlier *Agreements* and understandings, written or unwritten, between the Board of Regents and the Union.

If a new *Agreement* has not been successfully negotiated by the expiration date of February 28, 2018, the existing *Agreement* shall remain in effect until a new *Agreement* is finalized, but such an extension shall not exceed six (6) months, unless mutually agreed to continue the *Agreement* for an agreed upon specified period of time.

If at the end of the six-month extension, the new *Agreement* is not yet completed, the agreed to sections of the *Agreement* shall be submitted to the Board of Regents and the UOG Faculty Union membership for a vote. Any portion(s) of the *Agreement* not agreed to shall be submitted to binding arbitration.

No sooner than February 28, 2018, and no later than March 21, 2018, either party may notify the other of its desire to negotiate another *Agreement*. Upon receipt of such notice, negotiations on modalities shall commence no later than April 15, 2018, and negotiations on the actual *Agreement* shall commence no later than May 1, 2018.

The Administration and Union negotiation teams shall each be composed of at least four (4) members but no more than six (6) members.

ARTICLE XV

DEFINITIONS

These definitions are for clarity, and are not intended to alter, amend, supplement, enlarge, or modify the terms of this *Agreement*.

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| ACADEMIC AFFAIRS COMMITTEE: | A representative body in each College and School composed of at least, the Dean/Director, Associate Dean(s), Associate Director(s), as applicable, and all Division Chairs in the College or School. Those AAC members may authorize additional members by majority vote. |
| ACADEMIC EMPLOYEES: | Faculty and Administrators. |
| ACADEMIC YEAR: | The time period covered by the regular Fall and Spring Semesters as defined by the Academic Calendar, usually mid-August to mid-December and mid-January to mid-May respectively. |
| ACTING ADMINISTRATOR: | <p>A full-time Faculty member who chooses to accept an administrative position in an acting capacity (without going through the formal search process). Absent extraordinary circumstances, if an Administrator takes leave of four (4) weeks or less, Faculty shall not serve as the short-term acting Administrator.</p> <p>A Faculty member choosing to accept a position as an acting Administrator retains his or her status as a Faculty member for a maximum period of one (1) year (365 consecutive calendar days) only for the purpose of applying for promotion or tenure. This time period as an acting Administrator shall count towards satisfying time in rank/employment requirements for promotion or tenure. In all other aspects, that individual shall be considered an Administrator.</p> |

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| ADMINISTRATOR: | An individual employed by the University of Guam in a position defined on the President's approved list of Administrative Positions. Administrators may sometimes teach classes, but their primary assignment is administration. No University personnel may be both Administrator and Faculty at the same time. |
| BUSINESS DAY: | A regular weekday University class day during the Academic Year for nine-month Faculty. For twelve-month Faculty, a regular weekday, excluding holidays, during the calendar year. For purposes of grievances or disciplinary actions, days when the Faculty member concerned is on approved leave shall not count as business days. Days lost due to Acts of God are not considered business days. |
| CALENDAR DAY: | All days, including Business days, weekends and holidays. |
| CALL PERIOD: | Deans/Directors shall choose an appropriate time for the start of the call period no later than twenty (20) business days before the date the increment is due to begin. The call period shall end twenty (20) business days after the date the increment was due to begin. |
| CONSULTATION WITH FACULTY: | Consultation with Faculty by an Administrator means that the Faculty concerned must receive notification as to a proposed new action, apart from anticipated routine matters, and that all Faculty concerned must be provided the time and opportunity during business days to review and respond to the proposed action before it is approved. Absent extraordinary circumstances, notification to the affected Faculty shall be at least ten (10) business days before the proposed new action is approved. |

CONSULTATION WITH THE UNION:

Consultation with the Union by the Administration or the Board of Regents means written notification to the Faculty Union President as to a proposed action as described in Article XII, and that the Faculty Union President must be provided the time and opportunity to review and respond to the proposed action before it is approved. Absent extraordinary circumstances, notification shall be at least twenty (20) business days before the proposed action is approved, or a shorter period of time if mutually agreed to by both parties.

DIVISION:

The smallest organizational structure in the Colleges and Schools as recommended by the full-time Faculty to the Dean/Director and approved by the President. A Division is comprised of full-time Faculty, and no full-time Faculty member may be a member of more than one Division or Other Assigned Area at any one time.

EXTRAORDINARY CIRCUMSTANCES:

A circumstance or set of circumstances that is beyond an individual's control and that he or she could not have reasonably been expected to have taken into account at the time or to have avoided or overcome it or its consequences.

FACULTY:

See Article II of this *Agreement*.

GRIEVANT(S):

Faculty member(s) initiating a grievance.

MORAL TURPITUDE:

Conduct that is an extreme departure from ordinary standards of honesty, good morals, justice, or ethics.

NON-SUPERVISORY:

No authority to make decisions regarding hiring, assigning, transferring, suspending, promoting, evaluating or disciplining any Faculty member.

NON-TENURE TRACK:

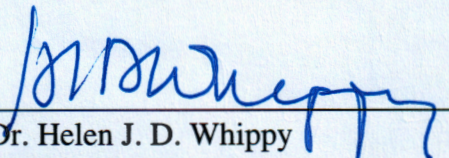
Faculty who are limited term full-time hires as indicated on their UG-1.

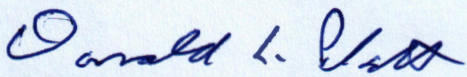
| | |
|--------------------------|---|
| NOTIFICATION: | Means a written document placed in a Faculty member's or Administrator's official campus mail box. Notification to the UOG Faculty Union means a written document sent to the UOG Faculty Union President's campus mail box. |
| OFFICIAL PERSONNEL FILE: | The only official file on a Faculty member that the University Administration uses as the basis for personnel action. |
| OTHER ASSIGNED AREA: | An organizational structure of the University approved by the President where full-time Faculty are assigned that is not part of a College or School. No full-time Faculty member may be a member of more than one Other Assigned Area or Division at any one time. |
| OVERLOAD | Paid teaching, research, or service beyond a full work load as defined by this <i>Agreement</i> and the Faculty member's approved CFES plan. |
| PEMRA: | The Public Employee-Management Relations Act of Guam. |
| PRIVILEGES: | As used in Article X, this includes, but is not limited to, travel grants, intramural research grants, sabbatical leave, overloads, and load allocations. |
| SEMESTER: | Academic periods, as defined by the Academic Calendar, traditionally called Fall or Spring, and usually running from mid-August to mid-December in the Fall, and mid-January to mid-May in the Spring. |
| SUBSTANTIATE: | To confirm the source and authorship of a document or other material. |
| TENURE-TRACK: | Faculty who are hired full-time and hold a position that would allow them to apply for promotion or tenure as described in Article V of this <i>Agreement</i> . |

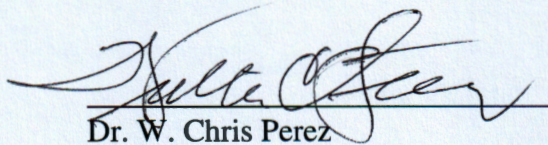
SIGNATURE SHEET

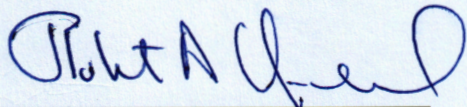
The undersigned are duly authorized representatives of the Board of Regents and the University of Guam Faculty Union, Local 6282, of the American Federation of Teachers.

IN WITNESS WHEREOF THE PARTIES HERETO AGREE TO ALL THE PROVISIONS SET FORTH IN THIS AGREEMENT AND HAVE SET THEIR HANDS ON THIS 28th DAY OF FEBRUARY 2013.


Dr. Helen J. D. Whippy
Chief Negotiator for the Board
and
Senior Vice President


Dr. Donald L. Platt
Chief Negotiator for the Faculty
and
President, UOG Faculty Union


Dr. W. Chris Perez
Chair, Board of Regents
University of Guam


Dr. Robert A. Underwood
President
University of Guam