

Figure AP3.F4. - Foreign Military Financing Loan Agreement

Agreement between the Government of the United States of America and the Government of [Insert applicable foreign country] Concerning a Foreign Military Financing Direct Loan

This **Agreement** made and entered into as of the ____ day of _____ is between the Government of [Insert applicable foreign country] and the Government of the United States of America (“U.S. Government”), (collectively referred to as the “Parties”). For [Insert applicable foreign country], this Agreement will be implemented by the _____. For the U.S. Government, this Agreement will be implemented by the Defense Security Cooperation Agency (“DSCA”) of the Department of Defense (“DoD”).

Whereas, the Government of [Insert applicable foreign country] desires to enter into Foreign Military Sales (“FMS”) purchase contracts (“Purchase Agreements”) with U.S. Military Departments and Agencies of DoD for the purchase of defense articles, defense services, and design and construction services of United States origin (with regard to articles and services financed hereunder, hereinafter collectively referred to as “Defense Items”);

Whereas, the Government of [Insert applicable foreign country] has requested a direct loan from the U.S. Government to exercise its authority pursuant to Section 23 of the Arms Export Control Act (AECA), as amended ([22 USC 2763](#)) and with funds appropriated under [Insert appropriate citation to the appropriations authority] to provide a direct loan to cover costs associated with FMS Purchase Agreements agreed to by the Government of [Insert applicable foreign country] and DSCA; and

Whereas, it has been determined that the aforesaid requested direct loan will facilitate the purposes of the AECA.

Now Therefore, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties hereto agree as follows:

Section 1 - Commitment

1. Subject to the terms and conditions of this Agreement, the U.S. Government agrees to provide to the Government of [Insert applicable foreign country], in a period of no greater than XX months from the date of this agreement (by the ____ day of _____), an aggregate principal amount not to exceed X billion, X million dollars (U.S. \$X) (hereinafter called the “Direct Loan Proceeds”), to be disbursed in whole or in part to finance FMS Purchase Agreements requested by the Government of [Insert applicable foreign country].

2. Before the U.S. Government provides such funds hereunder, the Government of [Insert applicable foreign country] shall execute and deliver to the DSCA a single promissory note ("Note") substantially in the form attached hereto as Annex I.
3. The Direct Loan Proceeds shall be available only to finance the purchase of Defense Items by the Government of [Insert applicable foreign country] pursuant to FMS Purchase Agreements, known as Letters of Offer and Acceptance ("LOA"), approved for such financing by DSCA. Direct Loan Proceeds shall not be available to fund any Direct Commercial Sale. [Remove this sentence if country is DCS eligible]
4. Procedures for obtaining DSCA approval to finance an FMS Purchase Agreement with Direct Loan Proceeds are attached hereto as Exhibit A. The Government of [Insert applicable foreign country] shall submit each request to utilize Direct Loan Proceeds to finance an FMS Purchase Agreement to DSCA in writing according to the procedures outlined in Exhibit B. The authorization from DSCA shall specify the case identifier assigned by DSCA to, and the amount of financing authorized for, the approved FMS Purchase Agreement. The U.S. Government has sole discretion whether to allow use of Direct Loan Proceeds to fund an FMS Purchase Agreement.
5. The outstanding balance of the Direct Loan Proceeds disbursed in accordance with Section 1.6 shall accrue interest at a fixed rate of X%, compounded semi-annually. The Note specifies the accrue rate, establishes how interest compounds, and specifies the number of repayment installments for Direct Loan Proceeds.
6. Disbursements:
 - a. Upon execution of the Note (Annex I), DSCA may make funds available to the Government of [Insert applicable foreign country] by loading the Direct Loan Proceeds from the U.S. Department of Treasury to its financial system using the FMF Direct Loan Financing Account (11X4122).
 - b. Upon DSCA's receipt of 1) a signed and accepted FMS Purchase Agreement and 2) a signed Annex II, if DSCA approves such request to use Direct Loan Proceeds to fund an FMS Purchase Agreement, the DoD Defense Finance and Accounting Service (DFAS) shall request that Direct Loan Proceeds, in whole or in part, be disbursed from DSCA's financial system into the Government of [Insert applicable foreign country] Foreign Military Sales (FMS) Trust Fund Account (9711X8242))
 - c. Interest shall begin to accrue on disbursed amounts of Direct Loan Proceeds on the date such funds are disbursed into [Insert applicable foreign country]'s FMS Trust Fund Account.
 - d. Direct Loan Proceeds that are not disbursed into [Insert applicable foreign country]'s FMS Trust Fund Account prior to X year(s) from the date of this Agreement, (the ____ day of _____) shall be no longer available to the Government of [Insert applicable foreign country] to purchase Defense Items via FMS Purchase Agreements.
 - e. The U.S. Government reserves the right to disapprove the Government of [Insert applicable foreign country] request to disburse Direct Loan Proceeds or use previously disbursed Direct Loan Proceeds to fund a signed FMS Purchase Agreement. In the event that the Government of [Insert applicable foreign country] request to fund a specific FMS Purchase Agreement with Direct Loan Proceeds is not approved such that no Direct Loan Proceeds are used to fund the signed FMS Purchase Agreement, the act of signing the specific FMS

Purchase Agreement will have no bearing on the amount of principal owed or interest accrual.

- f. In order to request a disbursement of Direct Loan Proceeds, the Government of [Insert applicable foreign country] must provide the U.S. Government a signed FMS Purchase Agreement and signed Request for Advance Funds Annex II 20 calendar days prior to the day that the undisbursed balance cancels.

Section 2 - Repayment and Assignability

1. [Insert applicable foreign country] hereby agrees to repay the U.S. Government the principal of the direct loan and interest on such principal made under this Agreement in accordance with the terms of this Agreement and the Note. All payments of principal and interest shall be made in immediately available funds of lawful money of the United States of America, as provided in Annex III – Repayment Procedures, hereof.
 - a. The date of payment under this Agreement shall be the date the U.S. Government's bank account is credited with the payment. The U.S. Government shall notify the Government of [Insert applicable foreign country] when such bank account is credited.
 - b. The repayment period is the total amount of time allotted to execute and repay the Direct Loan Proceeds and interest. The repayment period begins on the calendar day that this Agreement is signed by the Parties and shall not exceed a total of 12 years.
 - c. The payment schedule reflects the total amount of Direct Loan Proceeds borrowed and interest projected to accrue over the 12-year repayment period. [Insert applicable foreign country] may elect to utilize a grace period on the repayment of principal of up to one (1) year from the calendar day of the first disbursement of Direct Loan Proceeds into [Insert applicable foreign country] FMS Trust Fund Account. The payment schedule may be adjusted over time to account for changes in the amount or timing of funds borrowed and disbursed over time.
 - d. If, by the final date specified in Section 1.6(d) hereof, the Government of [Insert applicable foreign country] has not availed itself of the entire amount of the Direct Loan Proceeds, the installments of principal in the schedule shall be reduced and a new principal and interest schedule shall be provided in line with the agreed upon schedule in the Attachment to Annex I, reduced only for principal volume.
 - e. Disbursed Direct Loan Proceeds that have been returned from an FMS Purchase Agreement may be used by the Government of [Insert applicable foreign country] to make payments of principal and interest which it owes to the U.S. Government under this Agreement.
2. Whenever any payment under the Note is due on a Saturday, Sunday, or a day on which the DoD is not open for business, such payment shall be made on the first day thereafter on which the DoD is open for business, and such extension of time shall be included in computing interest in connection with such payment.
3. If [Insert applicable foreign country] fails to make payment within 15 calendar days after the due date on any installment of principal or interest under the Note and schedule, the amount payable shall be the overdue installment of principal or interest, plus interest thereon at the rate specified in the Note and this Agreement, from the due date to the date of payment. A payment received 15 calendar days before or after the payment due date is considered on time and has no bearing on interest accrual. Any additional accrued interest resulting from an

overdue payment received more than 15 days after payment due date shall be immediately added to the entire outstanding balance, and all payment amounts for the remaining installments shall be adjusted accordingly. If [Insert applicable foreign country] prepays principal more than 15 calendar days before the payment due date, the entire outstanding balance shall be immediately credited, and new payment amounts for all of the remaining installments that follow the earliest payment due date will be calculated.

Section 3 - Representations and Warranties

1. The U.S. Government has entered into this Agreement and will make the direct loan provided for herein on the basis of the following representations and warranties by [Insert applicable foreign country]:
 - a. [Insert applicable foreign country] has full power, authority and legal right to incur the indebtedness contemplated in this Agreement on the terms and conditions contained herein, and to execute, deliver and perform this Agreement and the Note;
 - b. The execution, delivery and performance of this Agreement and the Note will not violate any provisions of, and have been duly and validly authorized under, the laws of [Insert applicable foreign country], and all actions necessary to authorize the borrowings hereunder and the execution, delivery and performance of this Agreement and the Note have been duly taken; and
 - c. This Agreement has been, and the Note when issued will be, duly executed and delivered by persons duly authorized, and this Agreement constitutes, and the Note when issued will constitute, the valid, legal and binding obligation of [Insert applicable foreign country], enforceable in accordance with their respective terms.

Section 4 - Conditions of Lending

1. The obligation of the U.S. Government to make advances hereunder is subject to the conditions precedent that, prior to the first disbursement, it has received, satisfactory to it in form and substance:
 - a. Evidence of the authority of each person who:
 - i. signed this Agreement on behalf of the Government of [Insert applicable foreign country],
 - ii. signed or will sign a Note, and
 - iii. will sign on behalf of [Insert applicable foreign country], any notices, or other documents contemplated by this Agreement. Evidence of this authority shall be in the form of the letter at Annex IV- Delegation of Authority; and
 - b. The Note executed by the duly authorized representatives of the Government of [Insert applicable foreign country].
2. The obligation of the U.S. Government to make any disbursements of Direct Loan Proceeds hereunder is subject to the further conditions precedent that:
 - a. No event of default within the meaning of Section 6 hereof shall have occurred;

- b. DSCA shall have received a Note executed by the duly authorized representatives of the Government of [Insert applicable foreign country] and prepared in accordance with the procedures for disbursement of Direct Loan Proceeds;
- c. All legal matters incident to the Note and this Agreement shall be satisfactory to the General Counsel of the DSCA; and
- d. All financial matters incident to the Note and this Agreement shall be satisfactory to the Chief Financial Officer of DSCA.

Section 5 - Covenants

1. [Insert applicable foreign country] covenants and agrees that from the date of this Agreement and so long as any amounts remain unpaid on the Note or otherwise under this Agreement:
 - a. All payments of principal and interest on the Note and any other fees and expenses shall be made free and clear of, and without deduction for, any and all taxes, levies, duties, fees, charges, deductions, withholdings, restrictions or conditions of any nature whatsoever now or hereafter imposed, levied, collected or assessed with respect thereto, by or with respect to [Insert applicable foreign country] or any authority thereof or therein;
 - b. Any claim which it may now or hereafter have against any person, corporation or other entity (including without limitation, the U.S. Government, including DoD, DSCA, DFAS, and any supplier of Defense Items) in connection with any transaction, for any reason whatsoever, shall not affect the obligation of [Insert applicable foreign country] to make the payments required to be made to the U.S. Government under this Agreement or the Note, and shall not be asserted as a defense to the payment of such obligation or as a setoff, counterclaim, or deduction against such payments;
 - c. [Insert applicable foreign country] shall pay all taxes, now or hereafter in effect, imposed in connection with this Agreement or the Note by any government other than the U.S. Government with its national funds, with no bearing on the full amounts due the U.S. Government under this Agreement and the Note, and will save and hold harmless any holder of the Note from all losses or liabilities resulting from any delay or omission to pay such taxes;
 - d. Any legal action or proceeding against [Insert applicable foreign country] by the U.S. Government with respect to this Agreement or the Note may be brought in the Courts of the District of Columbia or in the United States District Court for the District of Columbia or in the courts of [Insert applicable foreign country], as the U.S. Government may elect, and by execution and delivery of this Agreement, [Insert applicable foreign country] submits to each jurisdiction. In the case of the Courts of the District of Columbia or of the United States District Court for the District of Columbia, [Insert applicable foreign country] consents to the service of process out of said courts by mailing copies of such process by registered United States mail, postage prepaid, to it at its addresses set forth in Section 7.2(a) and (b) hereof.

Section 6 - Defaults

1. A condition of default shall exist upon the occurrence of any of the following events:

- a. If [Insert applicable foreign country] fails for a period of thirty calendar days after installment payment due date to make payment of principal or interest on the Note in an amount that is equal to or greater than the amount due;
 - b. If a default shall have occurred on any other direct loan to [Insert applicable foreign country] by DSCA, a holder of the Note, or the U.S. Government or any agency thereof;
 - c. If any representation or warranty made by [Insert applicable foreign country] or any certification of [Insert applicable foreign country] required herein proves to be at any time incorrect in any material respect;
 - d. If [Insert applicable foreign country] defaults in the performance of any other provision in this Agreement, and such default shall continue unremedied for thirty calendar days after written notice thereof shall have been given to [Insert applicable foreign country].
2. Upon any default event described in this Section, the holder of the Note may declare immediately due and payable the net present value of all unpaid principal and interest payments due under the Note and any other note or other indebtedness of [Insert applicable foreign country] held by the holder of the Note and thereupon such amount shall become immediately due and payable without protest, presentment, notice or other demand of any kind, all of which are hereby expressly waived by [Insert applicable foreign country], and if such event occurs before the full amount of the Direct Loan Proceeds has been disbursed or before any other commitment of the holder of the Note to [Insert applicable foreign country] has been fulfilled, the holder of the Note may terminate or suspend such disbursements and commitments. [Insert applicable foreign country] shall pay all costs and expenses, including attorney fees incurred in the collection of amounts due hereunder after default.
 3. Upon any default event described in this section, the U.S. Government may also elect to unilaterally terminate any or all existing FMS Purchase Agreements funded with Direct Loan Proceeds.
 4. Upon any default event described in this section,
 - a. delivery of any assets purchased with Direct Loan Proceeds for which title has transferred to the Government of [Insert applicable foreign country] but physical possession of such assets has not yet been provided to the custody of the Government of [Insert applicable foreign country] may be immediately suspended by DSCA and physical custody of such Defense Items may remain with or be returned to the U.S. Government until the default is remedied by [Insert applicable foreign country] to the Credit Facilitator's satisfaction.
 - b. any assets purchased with Direct Loan Proceeds for which title has not transferred to [Insert applicable foreign country] and that are in the possession of the U.S. Government, or the U.S. Government's contractor or agent, including any assets in transit to the Government of [Insert applicable foreign country], may be sold by the U.S. Government to a third party, in a suitable manner determined by DSCA, to maximize the recovery to the U.S. Government. If [Insert applicable foreign country] default causes the U.S. Government to incur any additional storage, shipping, or administrative costs for assets purchased with Direct Loan Proceeds, the responsibility for any such additional costs shall reside with [Insert applicable foreign country]. The proceeds from any recovery activity by DSCA, subtracting any administrative costs incurred by the U.S. Government to liquidate the assets, shall be credited against the amount that is currently due.

Section 7 - Miscellaneous

1. No omission or delay on the part of the U.S. Government in exercising any right hereunder shall operate as a waiver of such right or any other right hereunder. The rights and remedies prescribed herein are cumulative and not in limitation of or substitution for other rights or remedies of the U.S. Government.
2. Any notice, demand or other communication hereunder shall be deemed to have been given if in writing and actually delivered at the addresses shown below:
 - a. In the case of the Government of [Insert applicable foreign country]:
 - b. In the case of the U.S. Government:

Director, Defense Security Cooperation Agency
2800 Defense Pentagon
Washington, D.C. 20301-2800

Or to such other addresses as may be specified in writing.
3. Notwithstanding Section 1.3 hereof, after the Direct Loan Proceeds fund an FMS Purchase Agreement, if Direct Loan Proceeds are returned from the funded FMS Purchase Agreement, any returned proceeds shall be available to fund FMS Purchase Agreements or make payment of principal and interest to the U.S. Government under any direct loan made or loan guaranteed pursuant to the Arms Export Control Act.
4. This Agreement and the Note issued thereunder shall be construed and interpreted in accordance with the laws of the United States of America, and if none are applicable, with those of the District of Columbia, United States of America. This agreement is a binding contract under United States domestic law and is not an international agreement.
5. This Agreement shall be binding upon and for the benefit of [Insert applicable foreign country] and the U.S. Government and their respective successors and assignees, except that [Insert applicable foreign country] may not assign its rights or obligations hereunder without the prior written consent of the DSCA. All agreements, covenants, representations and warranties made herein shall survive the delivery of the Note and the making of the advances hereunder.
6. Nothing in this agreement shall be construed as a waiver of the sovereign immunity, or any other privileges and immunities, of the United States.
7. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute a single instrument. Annexes I, II, III, and IV attached hereto are by this reference made a part of this Agreement.
8. All notices, demands, or other communications given under this Agreement, unless submitted in the English language, shall be accompanied by an English translation and such translation shall govern. The cost of any translation shall be borne by [Insert applicable foreign country].
9. In case any one or more of the provisions contained in this Agreement or the Note shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall not in any way be affected or impaired. This Agreement or the Note may be amended only with the mutual written consent of the Parties.

In Witness Whereof, the Parties hereto have caused this Agreement to be executed by their duly authorized officers and representatives on the day and year first above written.

Government of

Government of the United States of America

By

By

Date

Date