



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

JAN 28 2004

In reply refer to:  
I-04/000431

MEMORANDUM FOR     DIRECTOR  
                          DEFENSE FINANCE AND ACCOUNTING SERVICE  
                          DENVER CENTER

SUBJECT:   FMS Transformation Deliverable: Implementation of Commercial Banking  
              Account (CBA) for Foreign Military Sales (FMS)  
              (DSCA 04-02)           [SAMM E-Change 04-02]

This memorandum announces the establishment of the CBA program for FMS. Issuance of this policy enables FMS purchasers to, in accordance with established guidelines and criteria, participate in CBA arrangements for the purpose of depositing certain funds associated with FMS cases.

Attached are the following documents that collectively comprise this policy:

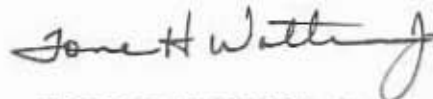
- **Attachment 1** contains the CBA arrangement procedures paper, detailing the applicable responsibilities and processes.
- **Attachment 2** contains the Banking Agreement template. The BA is signed by the participating U.S. bank and the FMS purchaser.
- **Attachment 3** contains the Memorandum of Understanding (MOU) template. The MOU is signed by DSCA and the FMS purchaser.

In addition, **Attachment 4** provides an orientation briefing that should be used to familiarize stakeholders (to include prospective U.S. banks and FMS purchasers) with this initiative.

The Security Assistance Management Manual (DoD 5105.38-M), Chapter 9, C9.11 will be updated to reflect this policy. The following language will be inserted as C9.11.3: "Some countries may establish an account with a commercial bank, for their FMS deposits. Two agreements are required: an agreement between the FMS purchaser and the participating commercial bank, and a separate agreement between the FMS purchaser and DSCA. FMS purchasers should contact the DSCA Business Operations/Comptroller directorate regarding these accounts. Commercial accounts do not include FMF funds." The subsequent sections within C9.11 will be renumbered accordingly.

I am pleased to announce this FMS transformation initiative. I also commend your Security Assistance directorate leadership, who worked diligently with my staff to develop this policy and

whose collaboration with us was invaluable. My point of contact for this FMS transformation project is Mr. David Rude, telephone (703) 604-6569 (DSN 664-6569), [david.rude@dscs.mil](mailto:david.rude@dscs.mil).



TOME H. WALTERS, JR.  
LIEUTENANT GENERAL, USAF  
DIRECTOR

Attachments  
as stated

Copy to:  
Dr. Jennifer Stewart  
Chair, Foreign Procurement Group  
c/o Canadian Embassy  
501 Pennsylvania Avenue, N.W.  
Washington, D.C. 20001

OUSD(Compt)/ODCFO (A&FP&A)

Army (DASA(DE&C))

Navy (Navy IPO)

USAF (SAF/IA and SAF/FM)

DISAM/CC

# COMMERCIAL BANKING ACCOUNT ARRANGEMENT PROCEDURES PAPER

## **Section 1: Introduction and Framework**

### 1.1 Definitions

1.1.1 **U.S. bank:** The definition for a U.S. bank is contained in 31 C.F.R. 202. In addition, the U.S. bank must be Federally-licensed, Federally-insured, U.S. domestically chartered, and in an “active” status as reported by the Office of the Comptroller of the Currency (OCC, for National U.S. banks), Federal Reserve Board, Office of Thrift Supervision and/or the Federal Deposit Insurance Corporation. This term does not refer to any one specific financial institution.

1.1.2 **Commercial U.S. bank Account:** This account is a blocked account in a U.S. bank, as defined in 1.1.1, above.

1.1.3 **Funds:** This term refers to national funds (cash) paid by the Purchaser to this account. Funds originating from U.S. Government appropriations cannot be sent to this account.

1.1.3.1 **Working Funds:** This term refers to the U.S. dollar amount determined by the case or under an official billing statement (DD645 or SBA (Special Billing Arrangement)) from time to time to be necessary to cover accrued costs (which includes contractor holdback) and to provide at all times sufficient other funds to make payments during up to the next sixty (60) days under United States Foreign Military Sales (hereinafter referred to as “FMS”) cases approved for financing by the Purchaser.

1.1.3.2 **Excess Funds:** This term refers to the U.S. dollar amount provided by the Purchaser, for its approved FMS cases, which is in excess of the requirements for Working Funds and termination liability as defined in subsections 1.3(a) and (b) of this section.

1.1.4 **Government of Purchaser FMS Trust Fund Account:** This term refers to the account maintained by the U.S. Treasury and identified by FMS purchaser as 8242, Agency Location Code 00003801. Funds will be drawn into the Purchaser FMS Trust Fund Account from the (U.S. bank name) U.S. bank account to facilitate disbursements made by the Defense Finance and Accounting Service (DFAS) for obligations incurred by the U.S. Government on behalf of the Government of Purchaser.

1.1.5 **Purchaser Representative:** An official that is, at a minimum, duly authorized to execute the responsibilities associated with this commercial U.S. banking account in accordance with the internal laws and regulations of the Purchaser.

### 1.2 Purpose

This paper describes the procedures pursuant to which a commercial banking account (CBA) arrangement can apply to the Foreign Military Sales (FMS) program. Nothing in these procedures relieves the Purchaser of the responsibility to make complete and timely payments for FMS Transactions.



### 1.3 Scope

1.3.1 The CBA covers working funds and excess funds relating to an FMS customer's program. Termination liability (T/L) amounts may not reside under this CBA. Instead, T/L may reside only in either (a) an interest-bearing account with the Federal Reserve Bank of New York, or (b) the FMS Trust Fund, or (c) governed by the Standby Letter of Credit (SBLC) used for the FMS program.

1.3.2 The following language is specified in all Banking Agreements

### 1.4 Documents

This arrangement consists of two documents:

1.4.1 Memorandum of Understanding (MOU). The parties to this agreement are the Defense Security Cooperation Agency (DSCA) and the FMS Purchaser.

1.4.2 Banking Agreement (BA). The parties to this agreement are the participating U.S. bank and the FMS Purchaser.

## **Section 2: Responsibilities**

### 2.1 United States Government (USG)

The USG will not exercise control or custody over the funds in the CBA and is not a party to the account, nor is the USG liable for any financial losses resulting from the deposits of the purchaser's funds into the CBA.

### 2.1 Defense Security Cooperation Agency (DSCA)

The DSCA is a party to the MOU, and it is the Beneficiary of the CBA. The DSCA is responsible for implementing all aspects of the U.S. Security Cooperation Program. In addition, DSCA is the Trust Fund manager of the FMS program and is ultimately responsible for sound and efficient fiduciary and financial management thereof.

#### 2.1.1 Director

The DSCA Director has oversight of the implementation, execution and management of the CBA. The Director must approve any waivers to the eligibility threshold criteria contained in Section 3.2 and 3.3 below as regards a particular CBA. The Director normally signs the MOUs on behalf of DSCA.

#### 2.1.2 Comptroller/Director, Business Operations

The DSCA Comptroller/Director, Business Operations directs and oversees the financial management of Security Cooperation programs (particularly the Foreign Military Sales program) and DoD appropriated programs allocated to DSCA to optimize the use of fiscal resources and maximize benefit to the U.S. foreign policy and national security objectives. The Comptroller/Business Operations is the lead directorate within DSCA for performing the FMS Trust Fund manager functions/duties.

The DSCA Comptroller/Director, Business Operations provides general leadership and policy guidance to the Deputy for Financial Management regarding

administration of the CBA. The Comptroller/Director, Business Operations determines whether a CBA application will be approved or rejected. However, the Director normally signs all MOUs on behalf of DSCA.

### 2.1.3 Deputy for Financial Management (FM)

The Deputy for FM is responsible for day-to-day financial management of the FMS program, to include country financial management, financial policy and information reporting.

FM will issue MOU documents; participate in discussions with FMS Purchaser representatives and U.S. bank officials; recommend to the DSCA Comptroller/Director, Business Operations whether a CBA application should be approved or rejected; ensure adherence to CBA policy; update CBA policy as necessary (to include obtaining requisite coordinations thereon); notify DFAS when CBAs are implemented; maintain a current tracking mechanism to reflect CBA activity; resolve problems/issues that arise; keep the DSCA Director and Comptroller/Director, Business Operations apprised of CBA-related issues as appropriate; serve as USG contact for all CBA-related inquiries; and serve as overall coordinator for the DSCA's portion of the CBA program.

### 2.1.4 General Counsel (GC)

The DSCA GC will serve as counsel to the Director, Comptroller and FM on CBA issues. At a minimum, GC will coordinate on all CBA documents prior to their signature and issuance to designated parties for their review and acceptance. GC is responsible for reviewing any proposed revisions to CBA documents.

## 2.2 Office of the Under Secretary of Defense (Comptroller)

The OUSD(C) is responsible for issuing financial policy relating to the FMS program. Volume 15 of the DoD Financial Management Regulation (FMR, DoD 7000.14-R) pertains.

## 2.3 Defense Financing and Accounting Service (DFAS) Denver

The Directorate for Security Assistance (DFAS-ADY/DE) is responsible for the financial accounting of FMS Trust Fund transactions and accounts. As regards the CBA, DFAS-ADY/DE will record the deposit of funds from the U.S. bank to the FMS Purchaser's case(s) against which the deposit was applied. DFAS is also responsible for maintaining the Electronic Funds Transfer (EFT) arrangement with the U.S. bank.

As a courtesy to the purchaser and to assist in the purchaser's budgeting and payment processes, DFAS will create a memo entry record of amounts deposited, on the purchaser's quarterly FMS billing statement (DD Form 645), when notified that the funds were received in the CBA. The memo entry will also record the purchaser's directions concerning crediting the funds to specific LOAs during future DFAS funds collections. The purchaser's FMS trust fund account at DFAS will be credited only with payment upon DFAS collection of the funds into that trust fund.

## 2.4 FMS Purchaser

The FMS Purchaser may initiate a request to participate in the CBA for FMS program. All requests must be sent to the DSCA Comptroller/Director, Business Operations in writing and

signed by an official authorized to accept the CBA documents on behalf of the Purchaser's government/organization. The FMS Purchaser is responsible for paying to the U.S. bank any/all fees associated with the CBA. No fees can be capitalized or subsumed into the dollar amount specified in the CBA documents. The Purchaser must specify to DSCA the U.S. bank it wishes to participate in the CBA for FMS program. The Purchaser is responsible for notifying DSCA in writing if and when it wishes to terminate its agreement with a U.S. bank and must receive written authorization from DSCA before proceeding to do so. The Purchaser must sign both the MOU and the CBA in order for the associated CBA to be implemented. Lastly, all funds in the CBA are the property of the purchaser.

## 2.5 U.S. Bank

The U.S. bank will be a party to the CBA with the FMS Purchaser. Refer to that document for a delineation of the rights and responsibilities of the participating U.S. bank.

## **Section 3: Solicitation and Review**

### 3.1 Solicitation

Any FMS Purchaser can initiate a request to establish and use a CBA for FMS program. However, a request does not imply DSCA acceptance; refer to Sections 3.2 and 3.3 for eligibility requirements. The Purchaser's request must include the following at a minimum: the full (legal) name of the U.S. bank proposed for consideration; documentary proof that the U.S. bank meets the minimum acceptance requirements set out below, designation of authority signed by Minister-level officials; and preferred timeframe during which the CBA should be implemented. While the Purchaser can submit its desired CBA documents for DSCA review, only those documents that comply with DSCA rules and procedures will be acceptable. Other submissions must be brought into compliance before they are acceptable.

### 3.2 Eligibility Requirements: FMS Purchaser

DSCA reserves the right to disapprove or delay a Purchaser's request to participate in the CBA for FMS program. In addition, programs funded with Foreign Military Financing (FMF) funds (repayable and non-repayable credits) and/or any other U.S. appropriated funds are not eligible to participate in this program.

### 3.3 Eligibility Requirements: U.S. Bank

Extreme care shall be taken in terms of reviewing a U.S. bank's eligibility for participating in the CBA for FMS program. Title 15 of the U.S. Code, regarding U.S. branches of foreign U.S. banking companies, and 31 C.F.R. 202 govern. The U.S. bank must be a U.S. bank that is Federally-licensed, Federally-insured, U.S. domestically chartered, and in an "active" status as reported by the Office of the Comptroller of the Currency (OCC, for National U.S. banks), Federal Reserve Board, Office of Thrift Supervision and/or the Federal Deposit Insurance Corporation. The following Web sites must be used at a minimum to validate U.S. bank status:

National Information Center: <http://www.ffiec.gov/nic/default.htm>  
(This provides U.S. banking data for all institutions in the Federal Reserve banking system.)

FDIC: <http://www2.fdic.gov/idasp>

(This provides information for all U.S. banks monitored by the FDIC.)

OCC National Banks Administrator Report dated 11 April 2001

(This provides a list of all Foreign Banks with branches in the U.S. that are Federally-licensed. Does not apply to U.S. banks.)

Once U.S. bank status has been verified using the above references, DSCA will then determine its credit ratings to ensure they meet acceptable thresholds. In short, U.S. banks must be rated as investment grade. To ensure consistent application, DSCA will use the Fitch rating service, web site: <http://www.fitchratings.com>. Acceptable ratings:

	<u>Fitch</u>	<u>Moody's</u>
International Long-Term Credit Rating	AAA, AA, A	Aaa, Aa, A1
- and -		
International Short-Term Credit Rating	F1, F2, F3	P1

*Note:* If the ratings provided by Fitch contains insufficient data for DSCA to make a determination for a specific U.S. bank, or for any other reason determined by DSCA, another rating agency (e.g., Moody's) may be used. Comparable rating thresholds will apply regardless of which agency's data is used to decide on the eligibility issue. The comparable Moody's ratings are shown above for illustrative purposes. The Moody's web site is: <http://www.moodys.com>. Refer to DSCA/FPS regarding user ID and password. Remember to log out before closing the application.

Use of long-term credit ratings is preferred to the use of short-term credit ratings. No exceptions approving the eligibility of U.S. banks that do not meet these standards will be granted. If the U.S. bank fails to meet any of the criteria, DSCA will advise the Purchaser accordingly.

## **Section 4: Acceptance**

### **4.1 Notification of CBA Decision**

After reviewing the application based on requirements shown in Section 3 above, DSCA will notify the Purchaser as to its approval/disapproval with the CBA proposal. All approval/disapproval notifications must be in writing. The DSCA Director provides written approval; the DSCA Comptroller/Director, Business Operations provides written disapproval.

#### **4.1.1 Approval Notification**

Approvals can be in the form of either approvals as provided (meaning there are no changes with the proposal contained in the CBA application) or approvals as modified (meaning DSCA does approve the package subject to modifications). All modifications must be clearly articulated in the notification letter. *Note:* DSCA cannot modify unilaterally the CBA signed between the Purchaser and the U.S. bank. However, certain actions cannot be taken by the U.S. bank or FMS Purchaser without the express written consent of DSCA. Those requirements are articulated in the BA and MOU.

#### **4.1.2 Disapproval Notification**

DSCA will notify the Purchaser if the package was disapproved, to include the specific reason(s) for not being able to accept the CBA proposal. (Refer to note in Section 3.3.)



If there is a basis for approving the package if altered by the Purchaser (for example, proposing a different U.S. bank in order to meet acceptable eligibility thresholds), that would be stated in the notice as well.

#### 4.2 Acceptance Documentation

The approval letter to the Purchaser will announce that DSCA accepts the proposal (either as is or as modified). A copy of the approval letter will be sent to the U.S. bank at the address specified by the Purchaser. That letter will propose the specific date, time and location for the official acceptance of all CBA documents. A date will be shown by which the Purchaser and U.S. bank are to confirm the date and time selected, the account number assigned by the U.S. bank, and insertion of text into the BA (for example, the U.S. bank's address/contact for sight draft presentation and the Purchaser's designated authorities). Informal arrangements via telephonic or e-mail contact prior to the letter issuance are encouraged to expedite the acceptance process. The Purchaser and U.S. bank officials should reply to DSCA (FM) not later than five (5) business days prior to the scheduled meeting time to reschedule or cancel that meeting. Appended to the DSCA letter will be the BA reflecting any modifications made to the original version.

#### 4.3 Authorizing Officials

The following officials are authorized to sign CBA documents:

##### 4.3.1 DSCA/USG

The DSCA Director, DSCA Deputy Director or DSCA Comptroller/Director, Business Operations may sign CBA documents. Further redelegation is not authorized.

##### 4.3.2 FMS Purchaser

Designated by an FMS Purchaser official at Minister-level. Minister-level can also sign without further designation. No formal acceptance can occur without the designation of authority already submitted and if the designated official does not sign.

##### 4.3.3 U.S. Bank

Left to the discretion of the U.S. bank. DSCA does reserve the rights to demand proof of designation authorization and deny acceptance until such documentation is received, reviewed and approved.

#### 4.4 Documents Accepted

Formal acceptance occurs in the form of signatures affixed by designated officials on all the following documents:

- Three (3) original copies of the BA. Only U.S. bank and FMS Purchaser officials sign the BA.
- Three (3) original copies of the MOU. Only DSCA and the FMS Purchaser sign the MOU.

#### 4.5 Acceptance Document Repositories

The document repositories for the FMS Purchaser and U.S. bank are at the discretion of those parties. Repositories for the USG are:

- MOU Agreement (original): DSCA (FM Policy)
- MOU Agreement (copies): DSCA (FM Country Finance Director (CFD)), DSCA GC, DFAS Denver
- BA (copies): DSCA (FM Policy, CFD, GC), DFAS Denver

## **Section 5: Implementation**

### **5.1 Implementation Criteria**

The CBA is implemented when all parties signed all copies of the documents noted in section 1.4 above. At this stage, the process to notify applicable USG agencies as to the implementation shall commence.

### **5.2 Notification to USG Entities**

Upon CBA implementation, DSCA will engage specific DoD components as follows:

- *DFAS Denver:* A frontchannel cable will be sent from DSCA that confirms implementation of the CBA.
- *FMS Purchaser:* A letter will be sent from DSCA that confirms implementation details of the CBA documents.

## **Section 6: Execution/Monitoring/Adjustments**

### **6.1 Deposits to the CBA**

Upon implementation of the CBA, the FMS Purchaser may deposit funds to the CBA. Upon receipt of each and every principal deposit, the U.S. bank will notify DFAS-Denver of the amount and date received including any deposit instructions received. DFAS Denver will also treat it as a deposit made into an account that is recognized for specific FMS cases, based on an accepted Letter of Offer and Acceptance document or a official USG billing statement (i.e., DD645 or special billing arrangement). For accounting purposes, DFAS will identify the deposit as a memo entry only.

### **6.2 Withdrawal Instructions**

The Attachment to both documents specified in section 1.4 above provides the format that must be used by DFAS to withdraw funds from the CBA.

#### **6.2.1 Withdrawal Criteria**

DFAS-Denver will normally make monthly principal withdrawals from the Account to the Purchaser FMS Trust Account . DFAS-Denver shall have sole unilateral withdrawal rights to the Account. The Purchaser has no unilateral authority to draw funds from the account. The Purchaser may withdraw Funds subject to the written authorization of DFAS and the co-signature of the DFAS representative on the drawing document. The Purchaser may only withdraw funds from the Account in excess of Funds determined by DSCA to be required for FMS transactions. The Purchaser and the U.S. bank shall separately agree on how interest will accrue and the methodologies through which the Purchaser may withdraw accrued interest from the Account, if the withdrawal is properly authorized by DFAS/DSCA.

U.S. banks shall be permitted to comply with any writ, levy order or other similar judicial or regulatory order or process concerning the Account, that complies with US law and regulation, and shall not be in violation of this agreement for doing so.

#### **6.2.2 Withdrawals**

The withdrawals will be done only by DFAS Denver. The withdrawals will be accomplished as defined within the Electronic Funds Transfer (EFT) arrangement with the U.S.

bank as defined in 2.3 above. No documentation other than the those defined in the EFT arrangement is required for presentation to the U.S. bank in order for that presentation to be complete. The U.S. bank cannot dishonor payment by demanding that additional documents be furnished by the DFAS Denver.

#### 6.2.3 Withdrawal Request Honor

The BA governs the timeframes by which the payment demand is to be honored.

#### 6.2.4 Application of Payment Received/Withdrawal Accounting

Upon receipt of the funds from the U.S. bank, DFAS will ensure the payment is properly collected to the FMS case(s). DFAS-Denver shall account for withdrawals from the account covered by the BA to the FMS Trust Fund, to the appropriate Financial Management Ledger Accounts (FMLAs).

### **Section 7: References**

#### 7.1 DoD Financial Management Regulation, Volume 15 (DoD 7000.14-R)

The DoD FMR prescribes the financial policies and procedures applicable to the USG Department of Defense. Volume 15 pertains to Security Assistance (including FMS). Chapter 4 of Volume 15 will be revised to incorporate relevant policy applicable to the CBA.

#### 7.2 Security Assistance Management Manual (DoD 5105.38-M)

The SAMM provides for the policies and procedures associated with the Security Assistance (including FMS) program. The SAMM will be revised to incorporate relevant policy applicable to the CBA.

#### 7.3 DSCA Policy Memorandum

The DSCA Director will send a memorandum to pertinent DoD components announcing the CBA for FMS program implementation. An electronic copy of this document will be warehoused in the “Policy” section of the DSCA Web site (<http://www.dsca.mil>).

#### 7.4 Legal Framework

The Arms Export Control Act is statutory authority for the FMS program, to include the legal requirements for T/L.

7.4.1 Any disputes between DSCA and the FMS Purchaser regarding the CBA document will be resolved by consultations between the DSCA and FMS Purchaser and not referred to any international tribunal or third party for settlement.

7.4.2 United States Courts shall have exclusive jurisdiction over CBA disputes between the U.S. bank and FMS Purchaser. However, if the agreement includes an arbitration clause, arbitration must take place in the United States. The CBA shall be governed by and construed in accordance with the commercial law of the United States or the laws of any State of the United States, as agreed by the U.S. bank and FMS Purchaser and as set forth in their agreement, notwithstanding that the rules of private international law (“choice of law” rules) might otherwise lead to application of some other law.

Prepared by: David A. Rude / Date of Last Revision: 30 January 2004

**SAMPLE BANKING AGREEMENT**

**Between**

**MINISTRY OF DEFENSE OF (COUNTRY NAME)  
MINISTRY OF FINANCE/ NATIONAL U.S. BANK**

**and**

**(U.S. BANK NAME) U.S. BANK**

Note: This sample banking agreement is intended as a template only, to facilitate discussions between the U.S. bank and Purchaser. Use of this template also promotes standardization among the various banking agreements of this nature. An inventory of minimum essential requirements to satisfy DSCA needs is appended to this sample agreement.

## 1. Parties

The parties to this agreement (hereinafter referred to as the “Agreement”) are:

- a) The Ministry of Defense of (country name) (hereinafter referred to as the “Purchaser ”); and
- b) (U.S. bank name) U.S. bank, N.A. (hereinafter referred to as the “U.S. bank”).
- c) The Ministry of Finance of (country name).

## 2. Definitions

For the purpose of this Agreement, the following definitions are applicable:

- a) **Funds:** This term refers to national funds (cash) paid by the Purchaser to this account. Programs funded with Foreign Military Financing (FMF) funds (repayable and non-repayable credits) and/or any other U.S. appropriated funds are not covered by this account.
- b) **U.S. Bank:** The definition for a U.S. bank is contained in 31 C.F.R. 202. In addition, the U.S. bank must be Federally-licensed, Federally-insured, U.S. domestically chartered, and in an “active” status as reported by the Office of the Comptroller of the Currency (OCC, for National banks), Federal Reserve Board, Office of Thrift Supervision and/or the Federal Deposit Insurance Corporation.
- c) **Commercial Bank Account:** This account is a blocked account in a U.S. bank, as defined above.
- d) **Government of Purchaser FMS Trust Fund Account:** This term refers to the account maintained by the U.S. Treasury and identified as 8242, Agency Location Code 00003801. Funds will be drawn into the Purchaser FMS Trust Fund Account from the (U.S. bank name) U.S. bank account to facilitate disbursements made by the Defense Finance and Accounting Service (DFAS) for obligations incurred by the U.S. Government on behalf of the Government of Purchaser.
- e) **Business Day:** This term refers to each day except for Saturdays, Sundays and U.S. bank Holidays.

## 3. Establishment of the Account

- a) Promptly after signature of this Agreement by the three parties, and any other documentation required by the U.S. bank, the U.S. bank shall establish for the Purchaser, a U.S. dollar account identified by the U.S. bank as “[name of Purchaser] FMS Account, Account Number XXXXXXXX” (hereinafter referred to as the “Account”).

b) All funds in the Account shall be the property of the Purchaser . Any losses sustained, as a result of investments made by the U.S. bank shall be fully borne by the Purchaser.

#### **4. Deposits in the Account**

a) The U.S. bank will provide daily electronic notification to DFAS-Denver of any principal deposits into the Account, including any deposit instructions received.

b) Electronic transfers into the Account shall be made using the following routing details:

Account Name:	<b>[name of Purchaser ] FMS Account</b>
Account Number:	
U.S. bank Name:	(U.S. bank name) U.S. bank
ABA Routing Number:	

#### **5. Withdrawals from the Account**

a) DFAS-Denver will normally make monthly principal withdrawals from the Account to the Purchaser FMS Trust Fund.

b) DFAS-Denver shall have sole unilateral withdrawal rights from the Account, using the procedures set forth in this section.

c) The Purchaser has no unilateral authority to withdraw funds from the account. Purchaser requests to withdraw funds from the account must be approved by DSCA who will instruct DFAS to return the funds to the Purchaser.

d) The Purchaser and the U.S. bank shall separately agree on how interest will accrue and the methodologies through which the Purchaser may withdraw accrued interest and other funds from the Account, if the withdrawal is properly authorized by DFAS/DSCA.

e) Each U.S. bank will be required to subscribe to an Internet based electronic banking portal meeting DFAS-Denver requirements and approval.

f) DFAS-Denver will execute principal withdrawals from the account using the appropriate electronic banking portal to transfer funds from the Account to the Purchaser FMS Trust Fund to maintain adequate levels of Working Funds.

g) A Drawdown Agreement is required between the U.S. Bank and the provider of the electronic banking portal prior to Account opening to ensure proper debit authorization.



h) The U.S. Bank is required to participate in electronic data exchange of Account information.

i) DFAS-Denver will be responsible for controlling access to the electronic banking portal. The System Administrators will be assigned by DFAS-Denver. System Administrators will have the ability to self-administer the electronic banking portal. The System Administrators will be able to perform the following functions: add new users and administrators; reset passwords; delete or disable users; add and update system services; copy access from one user to many users; customize dual control settings; and run management reports.

j) DFAS-Denver will notify the U.S. Bank of the names of the individuals selected as the System Administrators and wire approvers.

## **6. Account Information**

The U.S. bank shall send to the Purchaser and to the DFAS-Denver a Monthly Account Statement that will include:

- Opening and Closing Account Balances,
- Itemized Deposits,
- Itemized Withdrawals, and
- Interest Rate and Accrued Interest.

The statements shall be sent to the following addressees:

(insert Purchaser address information here)	DFAS-ADYK/DE 6760 E. Irvington Place Denver, Colorado 80279-2000
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In addition, the U.S. bank shall provide to individuals designated by the Purchaser, DSCA and DFAS-Denver, online access to Account information via the U.S. bank's online banking service.

## **7. Termination**

This Agreement may be terminated by written notification at any time by either the U.S. bank, singly, or the Purchaser and the U.S. bank, jointly, however, the Purchaser may not terminate the account without the prior written approval of DSCA. The termination request shall be signed by appropriate and authorized representatives, as determined by the U.S. bank, and the Purchaser.

## **8. Limitation Of Liability**

a) U.S. bank will not be liable to Purchaser or for any expense, claim, loss, damage or cost ("Damages") arising out of or relating to its performance under this Agreement other than

those Damages which result directly from its acts or omissions constituting negligence or intentional misconduct.

b) In no event will U.S. bank be liable for any special, indirect, exemplary or consequential damages, including but not limited to lost profits.

c) U.S. bank will be excused from failing to act or delay in acting, and no such failure or delay shall constitute a breach of this Agreement or otherwise give rise to any liability of U.S. bank, if (i) such failure or delay is caused by circumstances beyond U.S. bank's reasonable control, including but not limited to legal constraint, emergency conditions, action or inaction of governmental, civil or military authority, fire, strike, lockout or other labor dispute, war, riot, theft, flood, earthquake or other natural disaster, breakdown of public or private or common carrier communications or transmission facilities, equipment failure, or negligence or default of Purchaser or (ii) such failure or delay resulted from U.S. bank's reasonable belief that the action would have violated any guideline, rule or regulation of any governmental authority.

d) The U.S. bank may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party.

## **9. General Provisions**

a) Each party represents and warrants to the other parties that (i) this Agreement constitutes its duly authorized, legal, valid, binding and enforceable obligation; (ii) the performance of its obligations under this Agreement and the consummation of the transactions contemplated hereunder will not result in the violation of any law, regulation, judgment, decree or governmental order applicable to it; and (iii) all approvals and authorizations required to permit the execution, delivery, performance and consummation of this Agreement and the transactions contemplated hereunder have been obtained.

b) This Agreement may be amended only by a writing signed by Purchaser, and the U.S. bank, pursuant to approval/consent by the Defense Security Cooperation Agency.

c) This Agreement may be executed in counterparts; all such counterparts shall constitute but one and the same agreement.

d) This Agreement controls in the event of any conflict between this Agreement and any other document or written or oral statement. This Agreement supersedes all prior understandings, writings, proposals, representations and communications, oral or written, of any party relating to the subject matter hereof.

e) This Agreement shall be interpreted with the commercial law of the United States or the law of the State of \_\_\_\_\_ without reference to private international law ("choice of law" rules) that otherwise might lead to application of some other law. The Parties agree that any arbitration of disputes must take place in the United States.

f) Any written notice or other written communication to be given under this

Agreement shall be addressed to each party at its address set forth on the signature page of this Agreement or to such other address as a party may specify in writing. Such notice shall be effective upon receipt.

g) Nothing contained in the Agreement shall create any agency, fiduciary, joint venture or partnership relationship between U.S. bank and Purchaser.

h) Banks shall be permitted to comply with any writ, levy order or other similar judicial or regulatory order or process concerning the Account, that complies with US law and regulation, and shall not be in violation of this agreement for doing so.

**10. Insert Arbitration Clause, if any (after sending a copy to DSCA)**

**11. Effective Date**

This agreement shall enter into force on the date on which all required signatures are subscribed hereon.

On behalf of:  
the (Purchaser )

Signature: \_\_\_\_\_

Name:  
Title:  
Address:  
Date: \_\_\_\_\_

On behalf of:  
the (U.S. bank)

Signature: \_\_\_\_\_

Name:  
Title:  
Address:  
Date: \_\_\_\_\_

On behalf of:  
The (Purchaser MOF)

Signature: \_\_\_\_\_

Name:  
Title:

Address:

Date: \_\_\_\_\_

**APPENDIX TO SAMPLE BANKING AGREEMENT**

**MINIMUM ESSENTIAL REQUIREMENTS FOR DSCA**

To facilitate establishment of the banking agreement and to promote standardization among the various banking agreements of this nature, DSCA suggests that the aforementioned sample template be used. Of necessity to DSCA, however, is that the following minimum essential requirements are explicitly stated in any banking agreement of this nature:

1. A section identifying all parties. As prescribed in Section 1 of the sample template, the following parties must be present: Purchaser's Ministry of Defense (or equivalent); U.S. bank; and Purchaser's Ministry of Finance (or equivalent).
2. A section that defines all unique terms used in this banking agreement. The following terms must be used and defined as prescribed in Section 2 of the sample template:
  - a. Funds
  - b. U.S. Bank
  - c. Commercial Bank Account
  - d. Government of Purchaser FMS Trust Fund Account
  - e. Business Day
3. The establishment of the account must be as prescribed in Section 3 of the sample template.
4. Procedures for deposits into this account must be as prescribed in Section 4 of the sample template.
5. Procedures for withdrawals from this account must be as prescribed in Section 5 of the sample template.
6. Account information procedures must be as prescribed in Section 6 of the sample template.
7. Account termination procedures must be as prescribed in Section 7 of the sample template.
8. General provisions as prescribed in Sections 9(a) through 9(e) of the sample template must be included.
9. An explicitly stated effective date, as well as signatures by authorized representatives of all parties, must be included. Section 11 of the aforementioned sample banking agreement provides a suggested template.

**MEMORANDUM OF UNDERSTANDING (MOU)**

**Between**

**MINISTRY OF DEFENSE OF (COUNTRY NAME)**

**And**

**MINISTRY OF FINANCE OF (COUNTRY NAME)**

**And**

**DEFENSE SECURITY COOPERATION AGENCY**

## 1. Parties

The parties to this agreement (hereinafter referred to as the “Agreement”) are:

- a) The Ministry of Defense of (country name) (hereinafter referred to as the “Purchaser ”); and
- b) The Defense Security Cooperation Agency (hereinafter referred to as “DSCA”), an agency of the United States Department of Defense (hereinafter referred to as the “DOD”)
- c) The Ministry of Finance of (country name)

## 2. Definitions

For the purpose of this Agreement, the following definitions are applicable:

- a) **U.S. Bank:** The definition for a U.S. Bank is contained in 31 C.F.R. 202. In addition, the U.S. Bank must be Federally-licensed, Federally-insured, U.S. domestically chartered, and in an “active” status as reported by the Office of the Comptroller of the Currency (OCC, for National U.S. Banks), Federal Reserve Board, Office of Thrift Supervision and/or the Federal Deposit Insurance Corporation. Funds:
  - b) **Commercial Bank Account:** This account is a blocked account in a U.S. bank, as defined above.
  - c) **Funds:** This term refers to national funds (cash) paid by the Purchaser to this account. Programs funded with Foreign Military Financing (FMF) funds (repayable and non-repayable credits) and/or any other U.S. appropriated funds are not covered by this account.
    - 1) **Working Funds:** This term refers to the U.S. dollar amount determined by the case or under an official billing statement (DD Form 645 or SBA(Special Billing Arrangement)) from time to time to be necessary to cover accrued costs (which include contractor holdback) and to provide at all times sufficient other funds to make payments during up to the next sixty (60) days under United States Foreign Military Sales (hereinafter referred to as “FMS”) cases approved for financing by the Purchaser .
    - 2) **Excess Funds:** This term refers to the U.S. dollar amount provided by the Purchaser , for its approved FMS cases, which is in excess of the requirements for Working Funds and termination liability as defined in subsection (1) of this section.
  - d) **Government of Purchaser FMS Trust Fund Account:** This term refers to the account maintained by the U.S. Treasury and identified by FMS purchaser as 8242, Agency Location Code 00003801. Funds will be drawn into the Purchaser FMS Trust Fund Account from the (U.S. Bank name) U.S. Bank account to facilitate disbursements made by the Defense

Finance and Accounting Service (DFAS) for obligations incurred by the U.S. Government on behalf of the Government of Purchaser.

### **3. Purpose of Agreement**

a) The Purchaser, in conjunction with its participation in the FMS program, wants to establish a U.S. Dollar account with the U.S. Bank to facilitate disbursements made by DFAS for obligations incurred by the United States Government (USG) on behalf of the Government of Purchaser. The purpose of this Agreement is to delineate the rights and responsibilities of DSCA and the (country name).

b) During the period that the Purchaser's funds are deposited into the Account, the funds are the property of the Purchaser. The USG will not exercise custody or control over the funds in the Account and is not a party to the account, nor is the USG liable for any financial losses resulting from the deposits of the Purchaser's funds in the Account.

c) As a courtesy to the Purchaser and to assist in the Purchaser's budgeting and payment processes, DFAS-Denver will record a memo entry in the accounting system in accordance with the Purchaser's directions concerning crediting the funds to specific FMS cases. DFAS-Denver will incorporate the FMS case-level memo data on the Purchaser's Quarterly Foreign Military Sales (FMS) billing statement (DD Form 645). The Government of Purchaser FMS Trust Fund Account at DFAS-Denver will be credited only with payment upon DFAS collection of funds into that trust fund.

d) Nothing in this agreement relieves the Purchaser of Responsibility to make complete and timely payments for FMS transactions.

### **4. Deposits in the Account**

a) Promptly after signature of all parties to this Agreement, DSCA will advise DFAS-Denver, Director for Security Assistance, to transfer to the Account all Excess Funds in the Purchaser FMS Trust Fund.

b) All future payments pertaining to FMS cases henceforth may be deposited in the Account.

c) The U.S. bank will provide daily electronic notification to DFAS-Denver of any principal deposits into the Account, including any deposit instructions received.

d) Electronic transfers into the Account shall be made using the following routing details:

Account Name: [name of Purchaser ] FMS Account  
Account Number:  
U.S. Bank Name: (U.S. Bank name) U.S. Bank  
ABA Routing Number:

**5. Withdrawals from the Account**

- a) DFAS-Denver will normally make monthly principal withdrawals from the Account to the Purchaser FMS Trust Account.
- b) DFAS-Denver shall have sole unilateral withdrawal rights from the Account, using the procedures set forth in this section.
- c) The Purchaser has no unilateral authority to withdraw funds from the account. Purchaser requests to withdraw funds from the account must be approved by DSCA who will instruct DFAS to return the funds to the Purchaser..
- d) The Purchaser and the U.S. bank shall separately agree on how interest will accrue and the methodologies through which the Purchaser may withdraw accrued interest and other funds from the Account, if the withdrawal is properly authorized by DFAS/DSCA.
- e) Each U.S. bank will be required to subscribe to an Internet based electronic banking portal meeting DFAS-Denver requirements and approval.
- f) DFAS-Denver will execute principal withdrawals from the account using the appropriate electronic banking portal to transfer funds from the Account to the Purchaser FMS Trust Fund to maintain adequate levels of Working Funds.
- g) A Drawdown Agreement is required between the U.S. Bank and the provider of the electronic banking portal prior to Account opening to ensure proper debit authorization.
- h) The U.S. Bank is required to participate in electronic data exchange of Account information.
- i) DFAS-Denver will be responsible for controlling access to the electronic banking portal. The System Administrators will be assigned by DFAS-Denver. System Administrators will have the ability to self-administer the electronic banking portal. The System Administrators will be able to perform the following functions: add new users and administrators; reset passwords; delete or disable users; add and update system services; copy access from one user to many users; customize dual control settings; and run management reports.
- j) DFAS-Denver will notify the U.S. Bank of the names of the individuals selected as the System Administrators and wire approvers.



**6. Termination**

This Agreement may be terminated by written notification at any time by either the DSCA, singly, or the Purchaser and DSCA, jointly. The termination request shall be signed by appropriate and authorized representatives, as determined by the DSCA and the Purchaser .

**7. General Provisions**

This Agreement may be amended only by a writing signed by Purchaser and DSCA.

U.S. Banks shall be permitted to comply with any writ, levy order or other similar judicial or regulatory order or process concerning the Account, that complies with US law and regulation, and shall not be in violation of this agreement for doing so.

**8. Disputes.**

Any Disputes between the parties regarding this document will be resolved by consultations between the Parties and not referred to any international tribunal or third party for settlement.

**9. Effective Date**

This agreement shall enter into force on the date on which all required signatures are subscribed hereon.

MEMORANDUM OF UNDERSTANDING Between FMS Purchaser and DSCA

On behalf of:  
the (Purchaser )

Signature: \_\_\_\_\_

Name:

Title:

Address:

Date: \_\_\_\_\_

On behalf of:  
the Defense Security Cooperation Agency

Signature: \_\_\_\_\_

Name: Tome H. Walters, Jr.  
LtGen, DSCA

Title: Director, DSCA

Address:

Date: \_\_\_\_\_

On behalf of:  
The (Purchaser MOF)

Signature: \_\_\_\_\_

Name:

Title:

Address:

Date: \_\_\_\_\_