

Article X

United States Disaster Preparedness and Response Services
and
Related Programs

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1. Department of Homeland Security Disaster Preparedness Services and Related Programs
 - (a) The Government of the Federated States of Micronesia (FSM) may request an annual grant from the Department of Homeland Security (DHS), for disaster preparedness, which shall not exceed fifty (50) percent of the cost of improving, maintaining and updating disaster assistance plans, including evaluation of natural hazards and development of the programs and actions to mitigate such hazards, provided that no such grant shall exceed fifty thousand dollars (\$50,000) per annum and, provided further, that the FSM shall be eligible to receive such grants only if *funding for these purposes is available to States of the United States.*
 - (b) The Government of the FSM assumes all rights, obligations and liabilities arising out of assistance, services and programs provided by DHS under this Agreement, including but not limited to the obligation to fund not less than fifty (50) percent of the cost of improving, maintaining and updating the disaster assistance plans referenced in paragraph 1, above.
2. United States Agency for International Development (USAID) Office of U.S. Foreign Disaster Assistance Services and Related Programs
 - (a) As is the case with any disaster-affected country, the Federated States of Micronesia (FSM) may request U.S. Government (USG) foreign disaster assistance through the Chief of Mission of the U.S. Embassy. Based on assessment information provided by the FSM Government, its own assessment, or assessments of other partners, the U.S. Embassy can request specific assistance from the United States Agency for International Development's Office of U.S. Foreign Disaster Assistance within the Bureau of Democracy, Conflict, and Humanitarian Assistance (USAID/DCHA/OFDA). The following criteria would have to be met: 1) the disaster is deemed to be beyond the ability of the FSM to respond to; 2) the FSM has specifically requested or indicated it will accept USG assistance; and 3) a disaster response is in the interest of the USG.
 - (b) *The initial assistance provided through OFDA may be in the form of funding, commodities, or services (or a combination thereof) and is to be*

used for the immediate relief of people affected by the disaster to save lives and reduce human suffering. The dollar value of this initial assistance (whether in cash, kind, or a combination of the two) will usually be limited to US Dollars 50,000. Additional assistance may be provided if justified, based on additional assessment information and reporting. Under no circumstances will requests for assistance by the FSM be considered by OFDA that are not received directly from the U.S. Embassy.

- (c) OFDA has several other options for response beyond the initial provision of relief assistance. In major disasters and with the approval of the FSM Government, the U.S. Embassy may request that OFDA deploy a regional advisor, an assessment team, or a Disaster Assistance Response Team (DART) to provide direct coordination with OFDA and other organizations in the management of USG assistance. Based on further assessments of need, OFDA may provide additional relief commodities, fund proposals by indigenous private voluntary organizations (PVOs), the United Nations (UN), non-governmental organizations (NGOs) and international organizations (IOs). Any combination of these options may be utilized, based on the magnitude of the disaster, the response by other donors, and the FSM's own response capabilities. In all disaster events, there should be consultation between the FSM Government and the U.S. Embassy and between OFDA and the U.S. Embassy to assure that the needs of disaster victims are met within the context of the total assistance provided by the international disaster assistance community.
- (d) In addition to disaster relief, OFDA may also provide preparedness, mitigation, and technical assistance. These non-relief programs may be provided without the need for a disaster declaration, as coordinated between the FSM Government, the U.S. Embassy, OFDA and other partners.

Article XI

Federal Deposit Insurance Corporation
Services and Related Programs

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Federal Deposit Insurance Corporation
Services and Related Programs

The Government of the United States of America and the Government of the Federated States of Micronesia (the "parties") have agreed as follows:

1. This agreement provides the criteria under which the Federal Deposit Insurance Corporation ("FDIC") will continue to insure the Bank of the Federated States of Micronesia ("Bank").
2. As an ongoing FDIC-insured and FDIC-supervised bank, the Bank and its management are and shall continue to be subject to existing and future United States banking and banking-related laws, rules and regulations relating to supervision, regulatory, and resolution and receivership matters to the extent that those laws, rules and regulations do not conflict with the Federated States of Micronesia's constitutional prohibition on ownership of land by aliens. The mention below of specific laws, rules and regulations is not intended to limit the scope of this governing principle.
3. Within the FDIC's discretion, the sale of a controlling interest in the Bank to a person or entity other than a citizen of the Federated States of Micronesia ("FSM") shall trigger a loss of the Bank's insured status and result in termination of deposit insurance, provided, however, that the Bank is allowed to have up to 33 1/3 percent foreign ownership. The change-of-control provisions in section 7 of the *Federal Deposit Insurance Act* ("FDIC Act")(12 U.S.C.1817(j)) shall apply to any changes in the Bank's ownership.
4. The FDIC has the authority to suspend or terminate the Bank's deposit insurance if the Commissioner of Banking of the FSM ("Commissioner") does not promptly and fully enforce an FDIC directive or order against or involving the Bank or any "institution-affiliated party" ("IAP"), as that term is defined in 12 U.S.C.1813 (u).
5. Any proceeding involving administrative enforcement actions against the Bank or any IAP of the Bank shall be in accordance with the Federal Deposit Insurance Act ("FDI ACT") and FDIC regulations. Any proceeding against the Bank or an IAP shall be held in the State of Pohnpei, unless the parties agree to hold a hearing in another location, or unless an Administrative Law Judge finds good cause to hold a hearing in a different location.
6. The Bank or an affected IAP may appeal temporary administrative orders and interim appealable administrative orders to the United States District Court for the District of Guam or, if warranted by the circumstances, to another appropriate

United States District Court, after exhausting any administrative remedies. The Bank or an affected IAP may appeal a final order or directive to the United States Court of Appeals for the Ninth Circuit or to the United States Court of Appeals for the District of Columbia Circuit.

7. The FDIC may sue in the United States District Court for the District of Guam or, if warranted by the circumstances, in another appropriate United States District Court, to enforce any final or temporary order or directive against or involving the Bank or an IAP.
8. The government and courts of the FSM shall give full faith and credit and full effect to final and temporary orders and directives of the FDIC, any United States banking or regulatory agency, and any United States court. All such final and temporary orders and directives shall be enforced by the FSM in summary proceedings. The FSM, including the Department of Justice, courts and agencies of the FSM, commit to full cooperation in the enforcement of all such final temporary orders and directives.
9. The FSM shall bar the participation in the conduct of the affairs of the Bank by any IAP, person, or party who: (a) is subject to a final or temporary order of suspension, removal, or prohibition issued by the FDIC, other United States banking or regulatory agency, or United States court, and/or (b) has been convicted of, or has agreed to enter a pre-trial diversion of similar program, in connection with the prosecution for an offense of the type covered by section 19 of the FDIC Act (12 U.S.C. 1829), including any conviction and/or diversion that takes place in the FSM or in any other nation or jurisdiction.
10. If the Bank becomes "critically undercapitalized," as that term is used in the provisions of the FDI Act (12 U.S.C. 1821(c)(5), (9)-(13)), the Government of the Federated States of Micronesia shall act to close the Bank.
 - (a) The FDIC has the authority to appoint itself receiver of the Bank under the circumstances provided in 12 U.S.C. 1821(c)(10) and to exercise all powers conferred by the FDIC Act.
 - (b) If the Bank is closed for any reason, the FDIC shall become the receiver of the Bank on the date of the closing unless the FDIC notifies the Commissioner in writing that it will not serve as receiver.
 - (c) As under the provisions of the FDI Act (12 U.S.C. 1821 (d)(11)), the receiver's administrative expenses shall be paid prior to the payment of any other claims of unsecured creditors. In addition, the subrogated claim of the FDIC as insurer of deposits shall have priority over the payment of

any claims of general unsecured creditors of the Bank, other than the receiver's administrative expenses.

- (d) No person shall be permitted to bring an action in a court of law or other body (including any action that existed against the Bank prior to its failure) until such person has permitted the receiver a reasonable period to review such claim.
 - (e) No claim against a receiver arising prior to the failure of the Bank shall be valid unless it appears in the Bank's records.
 - (f) No claim against the receiver for its actions in liquidating the Bank shall prevail unless the plaintiff proves by clear and convincing evidence that the receiver acted in willful disregard of the law.
 - (g) It is further understood by the parties that: (1) no court or administrative agency shall enjoin the operations of the receivership; (2) officers, directors, and other professionals shall be liable to the receiver for any damages caused to the failed Bank; and (3) the receiver shall not be required to perform any executory contract which had been entered into by the Bank prior to its failure.
 - (h) The FDIC shall commence litigation between the receiver and creditors or debtors of the Bank only after a complete administrative review of the claim by the receiver. All suits of a civil nature to which the FDIC as receiver is a party must be brought in the United States District Court for the District of Guam or in another United States District Court agreed upon by the receiver and the litigant(s). When litigation is necessary, the FDIC shall attempt in good faith to reduce litigants' travel obligations and costs by soliciting the use of a special master designated by the United States District Court for the District of Guam. The special master would travel to the FSM to conduct hearings and gather evidence to assist the United States District Court for the District of Guam.
11. In addition to continuing to insure the Bank, the FDIC is prepared to provide technical assistance to the FSM, in the form of regulatory, supervisory and receivership/liquidation training and other support.

Article XII

Telecommunications Services and Related Programs

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Telecommunications Services and Related Programs

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

Definitions

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

United States Telecommunications Support

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

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

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

Responsibilities of the Federated States of Micronesia

7. For the duration of the Compact, as amended, the Federated States of Micronesia:
 - (a) Will operate its telecommunications services consistent with the provisions of the ITU Constitution and Convention and the ITU Radio Regulations and will fulfill all of its ITU obligations; and
 - (b) Will consult with the United States of America (using Joint Telecommunication Board meetings when time permits) on ITU issues, including all ITU conferences and meetings, which could affect its bilateral relationship with the United States of America.
8. In accordance with the applicable provisions of the ITU Convention or as may be provided for in a subsequent ITU instrument binding on the Government of the United States of America and the Government of the Federated States of Micronesia, the Federated States of Micronesia will give the United States of America its proxy to vote and sign on its behalf at any ITU conference or meeting that it does not attend, provided the two governments have consulted on the issues to be decided.

Operation of Telecommunications Services of the United States in the FSM

9. General Provisions:

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

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

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

11. The Government of the Federated States of Micronesia:

- (a) Permits the operation of United States telecommunication facilities in the Federated States of Micronesia, subject to coordination with the Government of the United States in accordance with the terms of this

Agreement; and will ensure that the provision of frequencies to the Government of the United States shall be free from all license requirements, taxes, duties, fees and charges;

- (b) Shall make prompt and reasonable efforts to satisfy requests by the Government of the United States for changes in existing frequencies and for requests for additional frequencies; and
- (c) Shall accept as its own, without a test or fee, the permits or licenses issued to United States personnel by the Government of the United States.

12.

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

13. The Government of the United States, through its Competent Authority, shall coordinate proposed major changes to United States telecommunications and extraordinary activities or exercises that would have the potential of causing either electromagnetic or physical interference with other systems used or licensed by the Government of the Federated States of Micronesia. The Government of the Federated States of Micronesia, through its Competent Authority, shall coordinate similar changes with the United States Competent Authority. The Government of the United States and the Government of the Federated States of Micronesia shall use their best efforts to avoid both electromagnetic and physical interference to each other's telecommunication operations. In the event the Competent Authorities cannot reach a mutually

satisfactory agreement through consultations, the matter will be referred to their respective governments for resolution in accordance with the provisions of Article V of Title Three or Article II of Title Four of the Compact, as amended, as appropriate.

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

Defense Telecommunication Provisions

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

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

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

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

United States Federal Programs and Services Telecommunication Provisions

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

Effective Date, Amendment and Duration

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

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

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