

**Figure AP3.F14. FMF Grant Agreement - Attachment to Exhibit B**

**FMF Grant Agreement**

**Grant Agreement** made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ between the Government of \_\_\_\_\_ ("Grant Recipient") and the Government of the United States of America as represented by the Defense Security Cooperation Agency ("DSCA").

**Whereas**, the Grant Recipient desires to enter into purchase contracts ("Purchase Agreements") with Military Departments and Agencies of the United States Department of Defense ("DoD"), various United States commercial suppliers, or both of them 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"); and

**Whereas**, the Grant Recipient has requested a grant from the Government of the United States of America (hereinafter sometimes referred to as the "Grantor") to finance payments required to be made by the Grant Recipient under the Purchase Agreements; and

**Whereas**, it has been determined that the aforesaid requested grant will facilitate the purposes of the Arms Export Control Act, as amended ("Act").

**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 Grant Agreement ("Agreement"), the Grantor agrees to make advances to the Grant Recipient from time to time, the obligation of the Grantor under this section being hereinafter called the "Grant Proceeds," within and to the extent of the total amount of Foreign Military Financing funds that may be obligated during the United States fiscal year 200X for the Grant Recipient.
2. The Grant Proceeds shall be available only to finance the purchase of Defense Items by the Grant Recipient pursuant to Purchase Agreements approved for such financing by the DSCA in accordance with the policies and procedures in effect at the time such financing is approved. The current DSCA procedures for obtaining this approval are, without being incorporated herein, attached hereto as Exhibit A. Each authorization for the Grant Recipient to enter into a Purchase Agreement in implementation of this Grant Agreement shall be separately communicated by the DSCA in writing to the Grant Recipient substantially in the form of the Attachment to Exhibit A. The

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authorization shall specify the case identifier assigned by the DSCA to, and the amount of financing authorized for, the approved Purchase Agreement.

**3. Advances:**

- a. Each advance hereunder for any direct commercial contract financed with these Grant Proceeds shall be made upon the delivery to the Defense Finance and Accounting Service (DFAS), Indianapolis, Co., of a letter request from the Grant Recipient. The letter request shall be in the form set forth in Annex II and shall be delivered to the DFAS Indianapolis not less than fifteen business days before the disbursement date. Documentation in support of letter requests shall be in accordance with DSCA policies and procedures in effect at the time the Purchase Agreement, for which the advance is requested, was approved by the DSCA. The current DSCA requirements for documentation supporting requests for disbursement are, without being incorporated herein, attached hereto as Exhibit B
- b. Not more than two advances for direct commercial contracts shall be requested in any single month, except that an advance of \$100,000 or more may be requested at any time. An advance may consist of payments to more than one supplier.
- c. Advances made to the Grant Recipient shall be authorized in accordance with Requests for Advances, which shall be prepared by the Grant Recipient in the form of Annex II hereof and forwarded to the Grantor for each advance.
- d. Advances hereunder for any FMS case (i.e. not a direct commercial contract) financed with these Grant Proceeds may be disbursed by DFAS Indianapolis unilaterally. Any letter submitted by the Grant Recipient authorizing disbursement for FMS cases may be transmitted to DFAS Indianapolis via facsimile or electronically.

**Section 2 - Representations and Warranties**

- 1. The Grantor has entered into this Agreement and will make the grant provided for herein on the basis of the following representations and warranties of the Grant Recipient:
  - a. The Grant Recipient has full power, authority and legal right to enter into this Agreement on the terms and conditions contained herein, and to execute, deliver and perform this Agreement;
  - b. The execution, delivery and performance of this Agreement will not violate any provisions of, and have been duly and validly authorized under, the laws of the Grant Recipient, and all actions necessary to authorize the borrowings hereunder and the execution, delivery and performance of this Agreement have been duly taken; and
  - c. This Agreement has been, duly executed and delivered by persons duly authorized, and this Agreement constitutes the valid, legal and binding obligation of the Grant Recipient, enforceable in accordance with its terms.

**Section 3 - Conditions of Grant**

- 1. The obligation of the Grantor to make advances hereunder is subject to the conditions

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precedent that, prior to the first disbursement, it shall have received, satisfactory to it in form and substance, evidence of the authority of each person who:

- a. signed this Agreement on behalf of the Grant Recipient and,
- b. will sign on behalf of the Grant Recipient, any notices, requests for advances, or other documents contemplated by this Agreement.

Evidence of this authority shall be in the form of the letter at **Annex I**.

2. The obligation of the Grantor to make any advance hereunder is subject to the further conditions precedent that:
  - a. No event of default within the meaning of Section 5 hereof shall have occurred;
  - b. The DSCA shall have received a letter request executed by the duly authorized representative of the Grant Recipient and prepared in accordance with the procedures for disbursement of Grant Proceeds; and
  - c. All legal matters incident to this Agreement shall be satisfactory to the General Counsel of the DSCA, or the General Counsel's successor.

**Section 4 - Covenants**

1. The Grant Recipient covenants and agrees that from the date of this Agreement at least until ten years has elapsed from the date first above written:
  - a. It will pay all taxes, now or hereafter in effect, imposed with respect to this Agreement by any government other than the Government of the United States of America and will save and hold harmless from all losses or liabilities resulting from any delay or omission to pay such taxes.
  - b. Any legal action or proceeding against it by the Grantor with respect to this Agreement 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 the Grant Recipient, as the Grantor may elect, and by execution and delivery of this Agreement, the Grant Recipient 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, the Grant Recipient 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 address set forth in Section 7.2(a) hereof.
  - c. The Grant Recipient shall make all of its records and files relating to its use or other disposition of the Grant Proceeds and to any Purchase Agreement approved for financing with such Grant Proceeds available upon request for inspection by the Department of Defense of the Grantor or by the Department of Justice of the Grantor.
  - d. The Grant Recipient shall make its officials and its employees as well as its nationals who are neither officials nor employees available, to the full extent allowed by the laws of the Grant Recipient, for interview by the Department of Defense of the Grantor or by the Department of Justice of the Grantor in connection with any investigation of crime under the laws of the Grantor arising out of the use or other disposition of any of the Grant Proceeds or arising out of any Purchase Agreement

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approved for financing with such Grant Proceeds.

- e. The Grant Recipient shall notify in writing each commercial supplier with which it has a Purchase Agreement approved for financing with the Grant Proceeds promptly upon its receipt of notification by DSCA of such approval that United States Government funds are being and will be used to finance such Purchase Agreement.

**Section 5 - Defaults**

1. A condition of default shall exist upon the occurrence of any of the following events of default:
  - a. If a default shall have occurred on any loan made to or guaranteed for the Grant Recipient by the DSCA or the Government of the United States of America or any agency thereof;
  - b. If any representation or warranty made by the Grant Recipient herein or in any certification of the Grant Recipient required herein proves to be at any time incorrect in any material respect;
  - c. If:
    - i. the Grant Recipient defaults in the performance of any of the provisions in Section 6 hereof, and
    - ii. such default shall continue unremedied for thirty calendar days after written notice thereof shall have been given by the DSCA to the Grant Recipient; or
  - d. If the Grant Recipient defaults in the performance of any other provision or covenant in this Agreement, and such default shall continue unremedied for thirty calendar days after written notice thereof shall have been given to the Grant Recipient.
2. Upon each and any such event, the Grantor may declare immediately due and payable the unpaid principal and accrued interest on any note or other indebtedness of the Grant Recipient held by the Grantor 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 the Grant Recipient, and if such event occurs before the full amount of the Grant Proceeds has been disbursed or before any loan commitment of the Grantor to the Grant Recipient has been fulfilled, the Grantor may terminate or suspend such disbursements and commitments. The Grant Recipient shall pay all costs and expenses, including attorney fees incurred in the collection of amounts due hereunder after default.

**Section 6 - Transportation**

1. All Defense Items to be transported from the United States by ocean vessel shall be transported in vessels of United States registry unless a waiver is obtained from the DSCA or the Maritime Administration, U.S. Department of Transportation ("MARAD"). The current DSCA and MARAD procedures for obtaining a waiver are, without being incorporated herein, attached hereto as **Exhibit C**. In each instance where a supplier will arrange ocean transportation for Defense Items being purchased, the Grant Recipient shall give written notice of this requirement to the supplier:

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- a. for Purchase Agreements already entered into, within ten days of the date hereof, and
  - b. for Purchase Agreements hereafter entered into, on the date the Purchase Agreement is consummated.
2. The Grant Recipient shall provide the following information to the Director, Office of Market Development (MARAD), with respect to any ocean or air shipments of Defense Items from the United States:
- a. FMS Case Identifier,
  - b. FAS value of cargo,
  - c. supplier,
  - d. freight forwarder,
  - e. freight cost,
  - f. name of vessel or airline,
  - g. vessel/aircraft flag of registry,
  - h. date of loading,
  - i. port or place of loading,
  - j. port or place of final discharge,
  - k. cargo description,
  - l. gross weight of cargo, and
  - m. cubic measurement of cargo.
- This information shall be provided as soon as possible and in any event not later than 90 days from the date of shipment, and shall contain a reference to this Agreement.
3. Advances hereunder may be used to pay ocean or air freight costs for transportation of only those Defense Items financed by this grant and only if such items are carried on vessels or aircraft of United States registry.

**Section 7 - Miscellaneous**

1. No omission or delay on the part of the Grantor 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 Grantor.
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 Grant Recipient to:  
(To be inserted at the time the Grant Agreement is issued.)
  - b. In the case of MARAD to:

Director, Office of Market Development  
Maritime Administration  
US Department of Transportation  
Washington, D.C. 20590-000

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c. In the case of the Grantor to:

Director, Defense Security Cooperation Agency  
201 12<sup>th</sup> St South, Suite 203  
Arlington VA 22203-5408

or to such other addresses as may be specified in writing.

3. Notwithstanding Section 1.2 hereof, the Grant Proceeds shall also be available to make payment of principal and interest owed to the United States Government under any loan made or guaranteed pursuant to the Arms Export Control Act except principal and interest not due at the time payment is to be made. Advances requested to be made for such purpose shall be made upon delivery to the DSCA of a letter request from the Grant Recipient not less than fifteen business days before the disbursement date.
4. –
  - a. This Agreement shall be construed and interpreted in accordance with the laws of the United States of America, and if none is applicable, with those of the District of Columbia, United States of America.
  - b. In the event of a dispute regarding a Purchase Agreement between the Grant Recipient and a Military Department or Defense Agency of DoD that is approved for grant financing under this or other Grant Agreements, the Grantor reserves the right to make an advance hereunder, notwithstanding Section 1.3 hereof, if the Grant Recipient fails to deliver to DFAS Indianapolis a letter request for disbursement in the form set forth in **Annex II** or fails to comply with the documentation requirements set forth as **Exhibit B**, within fifteen business days after the date the disbursement was to have been made.
  - c. In the event of a dispute regarding a Purchase Agreement between the Grant Recipient and a Commercial Supplier that is approved for grant financing under this or other Grant Agreements, no advance hereunder can be made until the Grant Recipient complies with the provisions of Section 1.3 hereof, notwithstanding any dispute settlement provisions or procedures included in such a Purchase Agreement or dispute resolution.
5. This Agreement shall be binding upon and inure to the benefit of the Grant Recipient and the Grantor and their respective successors and assigns, except that the Grant Recipient 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 making of the advances hereunder.
6. 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 and II** attached hereto are, by this reference, made a part of this Agreement.
7. 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.

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8. In case any one or more of the provisions contained in this Agreement should 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 Grantor and the Grant Recipient.

**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 \_\_\_\_\_

By \_\_\_\_\_

Government of the United States of America

By \_\_\_\_\_