

AP3. APPENDIX 3

FMF LOAN AND GRANT PROGRAM AGREEMENTS

AP3.1. FMF LOAN AGREEMENT

Figure AP3.F1. FMF Loan Agreement - Loan Agreement

Loan Agreement made and entered into as of the _____ day of _____ between the Government of _____ (“Borrower”) and the Government of the United States of America as represented by the Defense Security Cooperation Agency (“DSCA”).

Whereas, the Borrower 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 Borrower has requested a loan from the Government of the United States of America (hereinafter sometimes referred to as the “Lender”) to finance payments required to be made by the Borrower under the Purchase Agreements; and

Whereas, it has been determined that the aforesaid requested loan 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

1.1 Subject to the terms and conditions of this Loan Agreement (“Agreement”), the Lender agrees to make advances to the Borrower from time to time in an aggregate principal amount not to exceed _____ dollars (U.S. \$ _____), the obligation of the Lender under this section being hereinafter called the “Loan Proceeds.”

1.2 Before requesting any advance hereunder, the Borrower shall execute and deliver to the DSCA a single promissory note (“Note”) substantially in the form attached hereto as **Annex I**.

1.3 The Loan Proceeds shall be available only to finance the purchase of Defense Items by the Borrower 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 Borrower to enter into a Purchase Agreement in implementation of this Loan Agreement shall be separately communicated by the DSCA in writing to the Borrower substantially in the form of the **Attachment to Exhibit A**. The authorization shall specify the case identifier assigned by the DSCA to, and the amount of financing authorized for, the approved Purchase Agreement.

1.4 Advances

(a) Each advance hereunder by the Lender shall be made upon the delivery to the DSCA of a letter request from the Borrower. The letter request shall be in the form set forth in **Annex II** and shall be delivered to the DSCA 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 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 Borrower shall be authorized in accordance with Requests for Advances, which shall be prepared by the Borrower in the form of **Annex II** hereof and forwarded to the Lender for each advance. Each advance shall bear interest, as provided in Section 2, commencing with the disbursement date of the advance.

(d) Subject to the terms and conditions of this Loan Agreement, the Lender agrees to make advances to the Borrower from time to time from the date of the Loan Agreement through the expiration date (expiration date written in each agreement). After such date, the undisbursed balance will be cancelled in accordance with Title 31 USC 1552.

Section 2 -- Repayment and Assignability

2.1

(a) The Borrower hereby agrees to repay the principal of the advances made under this Agreement semiannually in accordance with the repayment schedule set forth in the Note ("Schedule"), and to pay interest on such outstanding unpaid principal as provided in the Note. All payments of principal and interest shall be made in immediately available funds of lawful money of the United States of America, at the Federal Reserve Bank of New York, as provided in **Annex III** hereof.

(b) If on any installment date in the Schedule the outstanding balance of the advances is less than the amount of principal due, the Borrower shall, on such installment date, repay the entire outstanding balance, plus accrued interest thereon. If thereafter the Borrower shall avail itself of the Loan Proceeds in an amount which would have been payable on a prior installment date but for the provisions of the immediately preceding sentence, such amount, plus accrued interest thereon, shall be repayable on the next succeeding installment date of the Schedule occurring after the disbursement of such amount and the scheduled principal repayable on that date shall be increased by such amount.

(c) If by the final date specified in Section 1.4(d) hereof the Borrower has not availed itself of the entire amount of the Loan Proceeds, and if such date is not extended by amendment to this agreement, the installments of principal in the Schedule shall be reduced in the inverse order of the maturity thereof to the extent of the unused balance of the Loan Proceeds.

(d) The Borrower may prepay principal in part or in full without penalty or premium, but such prepayment must be accompanied by payment of interest on the amount prepaid to the date of repayment and must be applied to the satisfaction of installments of principal repayments in the inverse order of their maturities.

2.2 Whenever any payment under the Note shall be due on a Saturday, Sunday, or a day on which the DoD or the Federal Reserve Bank of New York are not open for business, such payment shall be made on the first day thereafter on which the DoD and the Federal Reserve Bank of New York are open for business, and such extension of time shall be included in computing interest in connection with such payment, but excluded from the next interest period, if any.

2.3 If the Borrower fails to make payment when and as due of any installment of principal or interest under the Note, the amount payable shall be overdue installment of principal or interest, plus interest thereon at the rate specified in the Note, from the due date to the date of payment.

2.4 The Lender may sell or assign the Note at any time, in whole or in part. However, if the Lender intends to sell or assign the Note or any part thereof to any entity other than an agency of the United States, the Lender shall give the Borrower written notice thereof not less than fifteen days prior to the date of the intended sale or assignment; in that event, the Borrower shall have the option, to be exercised by giving written notice to the Lender at least five days prior to the intended sale or assignment, to purchase the entire Note on such terms and conditions as are established by the Lender.

Section 3 -- Representations and Warranties

3.1 The Lender has entered into this Agreement and will make the loan provided for herein on the basis of the following representations and warranties of the Borrower:

(a) The Borrower 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 the Borrower, 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 the Borrower, enforceable in accordance with their respective terms.

Section 4 -- Conditions of Lending

4.1 The obligation of the Lender to make advances hereunder is subject to the conditions precedent that, prior to the first disbursement, it shall have 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 Borrower,
 - (ii) signed or will sign the Note, and
 - (iii) will sign on behalf of the Borrower, 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 IV**; and

(b) The Note executed by the duly authorized representative of the Borrower.

4.2 The obligation of the Lender to make any advance 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) The DSCA shall have received a letter request executed by the duly authorized representative of the Borrower and prepared in accordance with the procedures for disbursement of Loan Proceeds; and
- (c) All legal matters incident to the Note, and this Agreement shall be satisfactory to the General Counsel of the DSCA.

Section 5 -- Covenants

5.1 The Borrower 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 and at least until ten years has elapsed from the date first above written:

(a) All payments of principal and interest on the Note and 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 the Borrower 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 Government of the United States, DoD, DSCA and any supplier of Defense Items) in connection with any transaction, for any reason whatsoever, shall not affect the obligation of the Borrower to make the payments required to be made to the Lender 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) It will pay all taxes, now or hereafter in effect, imposed with respect to this Agreement or the Note by any government other than the Government of the United States of America 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 it by the Lender 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 the Borrower, as the Lender may elect, and by execution and delivery of this Agreement, the Borrower 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 Borrower 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 8.3(a) hereof;

(e) The Borrower shall make all of its records and files relating to its use or other disposition of the Loan

Proceeds and to any Purchase Agreement approved for financing with such Loan Proceeds available upon request for inspection by the Department of Defense of the Lender or by the Department of Justice of the Lender;

(f) The Borrower shall make its officials and its employees as well as its nationals who are neither officials nor employees available, to the fullest extent allowed by the laws of the Borrower, for interview by the Department of Defense of the Lender or by the Department of Justice of the Lender in connection with any investigation of crime under the laws of the Lender arising out of the use or other disposition of any of the Loan Proceeds or arising out of any Purchase Agreement approved for financing with such Loan Proceeds; and,

(g) The Borrower shall notify in writing each commercial supplier with which it has a Purchase Agreement approved for financing with the Loan 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 6 -- Defaults

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

(a) If the Borrower fails for a period of ten calendar days to make any payment of principal or interest on the Note when due;

(b) If a default shall have occurred on any other loan to the Borrower by the DSCA, a holder of the Note, or the Government of the United States of America or any agency thereof;

(c) If any representation or warranty made by the Borrower herein or any certification of the Borrower required herein proves to be at any time incorrect in any material respect;

(d) If

(i) the Borrower defaults in the performance of any of the provisions in Sections 1, 2 or 7 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 Borrower; or

(e) If the Borrower 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 the Borrower.

6.2 Upon each and any such event, the holder of the Note may declare immediately due and payable the unpaid principal and accrued interest on the Note and any other note or other indebtedness of the Borrower 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 the Borrower, and if such event occurs before the full amount of the Loan Proceeds has been disbursed or before any other loan commitment of the holder of the Note to the Borrower has been fulfilled, the holder of the Note may terminate or suspend such disbursements and commitments. The Borrower shall pay all costs and expenses, including attorney fees incurred in the collection of amounts due hereunder after default.

Section 7 -- Transportation

7.1 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"). In each instance where a supplier will arrange ocean transportation for Defense Items being purchased, the Borrower shall give written notice of this requirement to the supplier:

(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.

7.2 The Borrower 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.

7.3 Advances hereunder may be used to pay ocean or air freight costs for transportation of only those Defense Items financed by this loan and only if such items are carried on vessels or aircraft of United States registry.

Section 8 -- Miscellaneous

8.1 The Borrower and the Lender may agree at any time hereafter to apply a portion or portions of Loan Proceeds that have not been approved to finance Purchase Agreements (in accordance with Section 1.3 hereof) as a participation or participation's in credit(s) furnished to the Borrower for the financing of the purchase of Defense Items by the Borrower pursuant to Purchase Agreements so approved. Such participation(s) shall be limited to those in credit(s) furnished by any individual, corporation, partnership, or other juridical entity doing business in the United States, and the Borrower and the Lender shall agree for that purpose with the entity furnishing said credit(s) on the terms and conditions under which the credit(s) will be furnished.

8.2 No omission or delay on the part of the Lender 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 Lender.

8.3 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 Borrower to:

(b) In the case of MARAD to:

Director, Office of Market Development
Maritime Administration
US Department of Transportation
Washington, D.C. 20590-0001

(c) In the case of the Lender to:

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

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

8.4 Notwithstanding Section 1.3 hereof, the Loan 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 Borrower not less than fifteen

business days before the disbursement date.

8.5 This Agreement and the Note 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.

8.6 This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and assigns, except that the Borrower 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.

8.7 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.

8.8 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.

8.9 In case any one or more of the provisions contained in this Agreement or the Note 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 Borrower, Lender, and holder of the Note.

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 _____

Figure AP3.F2. FMF Loan Agreement - Annex 1
Promissory Note

Promissory Note

For Value Received, the Government of _____ (“Borrower”) hereby promises to pay to the Government of the United States of America (“Lender”) such sums as may be advanced by the DSCA hereunder. The Lender shall not be obliged to advance more than _____ dollars (US \$_____).

The principal amount advanced under this Note shall be repaid in _____ installments of \$_____ and _____ installment of \$_____. The installments shall be due and payable on _____ and _____ of each year commencing on _____, with the final installment due on _____. A schedule of the principal amounts due is attached hereto.

Advances shall bear interest on the unpaid principal balance outstanding at a rate of _____ percent per annum on _____ and _____ of each year commencing on _____. Interest shall be calculated on the basis of a year of 365 days and the actual number of days elapsed. The total amount of advances hereunder shall be repaid, with right of prepayment, in accordance with the schedule attached to this Note.

Both principal and interest shall be paid in lawful money of the United States in immediately available funds at the Federal Reserve Bank of New York.

This Note is issued at Washington, D.C., pursuant to the Loan Agreement dated _____ between the Borrower and the Lender, and is subject to the terms and entitled to the benefits of that Agreement.

Government of _____

Date: _____

By _____ (Seal)

Figure AP3.F3. FMF Loan Agreement - Attachment to Annex 1
Principle Payment Schedule

Principal Repayment Schedule	
The first (amount)_	shall be repaid on ___(date)_____
The next _____	shall be repaid on _____
The next _____	shall be repaid on _____
The next _____	shall be repaid on _____
The next _____	shall be repaid on _____
The next _____	shall be repaid on _____
The next _____	shall be repaid on _____
The next _____	shall be repaid on _____
The next _____	shall be repaid on _____
The next _____	shall be repaid on _____
The next _____	shall be repaid on _____
The next _____	shall be repaid on _____
The last _____	shall be repaid on _____
Total	

Figure AP3.F4. FMF Loan Agreement - Annex 2 –
Request for Advance Funds – Sample Letter Principle Payment Schedule

Request for Advance of Funds – Sample Letter

Director
Defense Finance and Accounting Service -Indianapolis
ATTN: Security Assistance Accounting/JAX
8899 East 56th Street
Indianapolis, IN 46249-6300

Dear Sir:

In accordance with the provisions of Section 1.4 of our Loan Agreement with the Government of the United States of America dated _____, the Government of _____ hereby requests DFAS Indianapolis approval and disbursement of an advance of _____ from that loan.

The Government of _____ acknowledges that advances hereunder may be used to pay ocean and air freight costs only for transportation of Defense Items being carried on vessels or aircraft of United States registry, and that all materiel financed from this loan which is to be shipped by ocean surface transportation must be transported in privately-owned vessels of United States registry unless a waiver is obtained in accordance with Section 7 of the Loan Agreement. In furtherance of this requirement, the suppliers of the materiel being financed with this advance were so notified and given appropriate shipping instructions.

In connection with this request, the Government of _____ confirms that, as appropriate: the defense articles and services for which payment is requested have been satisfactorily delivered; or the advance payment requested is in accordance with requirements of the contract; or the progress payment requested is based on the contractor's satisfactory progress and is in accordance with requirements of the contract; and that payment is therefore due and unpaid under the Purchase Agreement _____ with the _____.

Sincerely,
Government of _____
By _____
(Name and Title)

Figure AP3.F5. FMF Loan Agreement - Annex 3
Repayment Procedures

Repayment Procedures

All repayments shall be in immediately available U.S. dollars at the New York Federal Reserve Bank, New York, New York, on the day payment is due. To this end, payment shall be made by either of the following methods. The New York Federal Reserve Bank maintains accounts for many foreign central banks. The Borrower may make payment by a direct transfer from its central bank (or a central bank being utilized by it for that purpose) to the New York Federal Reserve Bank. In effecting the transfer, the central bank should use the exact payment account information provided below, and indicate to the New York Federal Reserve Bank that the funds are for credit to the United States Treasury, for credit to the account of the Defense Security Cooperation Agency:

021030004

Payment Amount (in U.S. dollars)

TREASURY NYC/(97000002) DSCA/BUSINESS OPERATIONS/COMPROLLER

(Begin third party text – may use up to 230 characters with this optimum format; this text should include the precise loan installment(s) to which the remitted amount should be credited.)

Should the Borrower choose to use the Federal Reserve wire payment system (“Fedwire”), a system for making instantaneous transfers of funds between U.S. banks, the Borrower should instruct its local U.S. bank to transfer the funds to the New York Federal Reserve Bank by Fedwire on the payment date and to include in the wire the payment account information set forth in the preceding paragraph.

The payment account information must be exactly in the form shown above (including spacing between words or numbers) to insure timely receipt by the DSCA, and to avoid the assessment of late charges.

Checks, drafts, and other orders for payment do not constitute immediately available funds and therefore do not meet the requirements of the Promissory Note. These instruments will be accepted but funds will be credited to accounts only after confirmation by the U.S. Treasury.

Figure AP3.F6. FMF Loan Agreement - Annex 4
Designation of Authority

Designation of Authority

1. The Borrower shall provide to the DSCA a written communication that evidences the authority for incumbents of specifically named offices or specifically named individuals to sign the loan documents on its behalf. As a minimum the communication will contain the following:

Director

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

Dear Sir:

The following officials of the Government of _____ are duly authorized to execute and deliver documents as indicated below in connection with a loan agreement in the amount of _____ between the Government of the United States and this Government:

a. Loan Agreement:

[Person's Name(s) and/or Title(s) of Office(s)] _____

b. Promissory Note:

[Person's Name(s) and/or Title(s) of Office(s)] _____

c. Requests for Disbursement and Such Other Documents

As May Be Required Under This Loan Agreement:

[Person's Name(s) and/or Title(s) of Office(s)] _____

Sincerely,

By _____

(Name and Title Typed)

Date: _____

Copy to:

Defense Finance and Accounting Service-IN
Security Assistance Accounting/JAX
8899 East 56th Street
Indianapolis, IN 46249-6300

2. The designation of authority letter shall be signed by an appropriate person empowered under the laws of the Borrower to delegate to selected officials authority to sign debt obligations or the other documents as stated in the name of its Government. The Borrower shall submit a designation of authority letter to DSCA containing the names and signatures of newly designated officials whenever changes occur.

Figure AP3.F7. FMF Loan Agreement - Exhibit A
 Procedures for Obtaining DSCA Approval for
 Loan Financing of Purchase Agreements

Procedures for Obtaining DSCA Approval for Loan Financing of Purchase Agreements

1. General. The Defense Security Cooperation Agency (DSCA) is responsible for approving loan financing of all Purchase Agreements that the Borrower wishes to finance with proceeds from the loan issued by the DSCA under the provisions of the Arms Export Control Act. The use of loan proceeds shall be approved for the financing of purchases by the Borrower only of defense articles, defense services, and design and construction services of U.S. origin. In reviewing requests for financing of Purchase Agreements, the DSCA is guided by objectives established by the U.S. Government for improvement of the Borrower's defense capabilities, by generally accepted financing practices, and by United States laws, regulations and policies in effect at the time the financing is requested. The U.S. Government reserves the right to refuse to finance any purchase agreement and is not required to explain its reason(s) for such refusal.
2. Purchases from U.S. Military Departments
 - a. The U.S. Military Departments effect Foreign Military Sales (FMS) by means of the Letter of Offer and Acceptance (LOA). Each LOA, also referred to as an FMS case, is identified by a three digit alphabetic code referred to as "case identifier". If a Borrower desires to fund an FMS case from this loan, it must so inform the Military Department prior to the issuance of the LOA. In turn, the Military Department will reflect the desired loan financing on the LOA and submit it to the DSCA (Business Operations Directorate) for approval and countersignature.
 - b. When the Borrower wishes to use FMS loan funds to pay amounts due under an FMS case which has already been established as a "cash" or "dependable undertaking" case, the Borrower must ask the pertinent Military Department to convert all or part of that case from cash to loan funding. The Military Department must also submit the amended case to the DSCA (Business Operations Directorate) for review and approval to support the requested change in funding.
 - c. For each case it approves for financing from the FMS loan, the DSCA (Business Operations Directorate) will reserve funds from the uncommitted loan balance in an amount equal to the entire estimated cost of the FMS case, or, as the situation may be, that part of the FMS case requested for loan funding. The portion of the loan so reserved will then be available only for such payments. Payments, either for deliveries of materiel or progress payments, from advances requested by the Borrower, will be made by the DSCA (Business Operations Directorate) against the amount reserved for that purpose.
3. Purchases from Commercial Firms
 - a. Loan funds may be used to finance purchases from U.S. Commercial Suppliers, provided such financing has been approved by the DSCA. In order that the DSCA may advise a Borrower whether it will approve such financing, the Borrower must provide a copy of the contract or proforma purchase order to the DSCA (Business Operations Directorate) for its review, preferably before the Borrower obligates itself to a purchase which it desires to be financed with loan funds. Before the DSCA can give its final approval of loan financing, the commercial supplier must submit to the DSCA the "Contractor's Certification and Agreement with Defense Security Cooperation Agency" as illustrated in Exhibit B. The Borrower should allow at least 90 days for the DSCA's review of the contract for approval of loan financing. Each loan financing approval shall be separately communicated by the DSCA in writing to the Borrower by use of the "Loan Financing Approval" illustrated as an attachment to this exhibit.
 - b. Loan financing shall be approved and made available only to finance the purchase of defense articles and services authorized for such financing by DSCA in accordance with policies and procedures in effect at the time such financing is approved. Current DSCA policies pertinent to approval of loan financing for purchase agreements are included in the Security Assistance Management Manual.

c. In addition to the approval mentioned above, the DSCA, at the time it approves requests for advances (disbursements) of funds pursuant to Annex II, also will require from the Borrower invoices properly executed by the commercial supplier, and bills-of-lading and statements, as may be applicable, substantially in the formats described in paragraph 4 of Exhibit B (DSCA Requirements for Documentation to Support Requests for Advances).

d. For each commercial purchase agreement for which financing is approved, the DSCA (Business Operations Directorate) will assign a case identifier and will provide to the Borrower a Loan Financing Approval letter in the form of the Attachment to this Exhibit. This letter will provide the case identifier assigned to the case. For each case it approves for loan financing, the DSCA (Business Operations Directorate) will reserve loan funds in the amount requested. The loan funds so reserved will then be available only for payments on that case, unless the Borrower directs otherwise. Payments for deliveries, progress, or advance payments, will be processed by the DSCA (Business Operations Directorate) against the amount reserved for the approved purchase agreement.

e. The DSCA (Business Operations Directorate) will also provide letters to the commercial firm informing it of conditions of loan financing and certifications required as prerequisites to the DSCA approving FMS loan financing for the purchase agreement, and indicating the DSCA approval of financing of the purchase agreement.

Figure AP3.F8. FMF Loan Agreement - Attachment to Exhibit A
Loan Financing Approval

Loan Financing Approval

Dear Sir:

Pursuant to the provisions of Section 1.3 of the Loan Agreement between your Government and the U.S. Government, and in response to your recent request for loan financing of a purchase directly from a commercial firm, financing for the following purchase arrangement is hereby approved:

Supplier:

Contract or Proforma Invoice number and date:

Case Identifier Assigned to This Purchase	Funds Previously Reserved for This Purchase	Funding Revision	Funds Reserved for <u>This Purchase</u>
-------------------------------------------------	---------------------------------------------------	------------------	--------------------------------------------

Sincerely,

Figure AP3.F9. FMF Loan Agreement - Exhibit B
DSCA Requirements to Support Requests for Advances

DSCA Requirements for Documentation to Support Requests for Advances

1. This Exhibit describes the documents which the Borrower must furnish to the DSCA (Business Operations Directorate) in support of requests for advances.
2. Whenever the Borrower desires a disbursement of FMS loan funds, its authorized representative(s), as designated pursuant to provisions of the Loan Agreement, shall forward the written request, prepared in accordance with Annex II of the Agreement, to the Defense Finance and Accounting Service-IN, Security Assistance Accounting/JAX, 8899East 56th Street, Indianapolis, IN 46249-6300 not less than 15 business days before the desired disbursement date.
3. With each request for an advance, the Borrower will provide a letter addressed to the Director, Defense Finance and Accounting Service, substantially in the format as follows:

Dear Sir:

In accordance with the provisions of Section 1.4 of our Loan Agreement with the Government of the United States of America dated [date], the Government of [] hereby requests the DSCA approval and disbursement of an advance of [amount] from that loan.

The Government of [] acknowledges that advances hereunder may be used to pay ocean and air freight costs only for transportation of Defense Items being carried on vessels or aircraft of United States registry, and that all materiel financed from this loan which is to be shipped by ocean surface transportation must be transported in privately owned vessels of United States registry unless a waiver is obtained in accordance with Section 7 of the Loan Agreement. In furtherance of this requirement, the suppliers of the materiel being financed with this advance were so notified and given appropriate shipping instructions.

In connection with this request, the Government of [] confirms that, as appropriate: the defense articles and services for which payment is requested have been satisfactorily delivered; or the advance payment requested is in accordance with requirements of the contract; or the progress payment requested is based on the contractor's satisfactory progress and is in accordance with requirements of the contract; and that payment is therefore due and unpaid under the Purchase Agreement [insert Case Identifier] with the [insert Supplier].

Sincerely,
Government Of _____
By _____
(Name and Title)

4. Whenever funds from this loan are to be used to pay a Commercial Supplier, the Borrower shall also provide invoices and bills-of-lading in support of each request for an advance, as follows:

- a. As a minimum, the invoices must:
 - (1) reflect the amount due and payment due date;
 - (2) specify whether the amount billed is a down payment, progress/milestone payment, or delivery payment;
 - (3) list the items and services delivered for which payment is requested;
 - (4) indicate by a separate entry the transportation costs, if not included in the item price;
 - (5) designate the FOB point and "ship to" address;
 - (6) designate the address to where the payment should be sent;
 - (7) if the billed amount consists of "cost, insurance and freight" (CIF) terms for delivery of materiel to a destination point outside the United States, provide the name of the carrier(s) of the materiel from the U.S. Port of Embarkation; and

(8) be supported by a copy of freight bills, air waybills, or rated on-board bills-of-lading, fully accounting for the cost of inland and export transportation of the items covered by the invoice for which payment is requested. If the Contractor pays for the transportation, whether the transportation cost is included in the price of the item or billed separately to the Purchaser, bills-of-lading or air waybills must be submitted with the invoice for which payment is requested. A copy of the invoice for the cost of any insurance coverage on the shipment must also be submitted along with the shipping documents.

b. If the Purchaser is paying the export transportation cost with other than U.S. Government funds (i.e., the Contractor is not paying for the export transportation cost) the Contractor will submit a certification with the invoice as follows:

The [Contractor] acknowledges that U.S. Government funds are being used by the Government of _____ to finance this purchase and certifies that no shipping cost has been incurred by this firm for exporting this materiel from the United States and no shipping cost is included in the sales price or otherwise included in the invoice amount for which payment is requested.

c. All Contractor's invoices must be submitted with the following certification:

The [Contractor] acknowledges U.S. Government funds are being used by the Government of _____ to finance this purchase and certifies that the invoice(s) submitted with respect thereto are free from any material false statement or misrepresentation and do not omit any material facts.

d. Before DSCA authorizes the use of loan funds to finance any purchase from a Commercial Supplier, the Borrower must ensure that the Commercial Supplier completes and submits to the DSCA the "Contractor's Certification and Agreement with Defense Security Cooperation Agency." See Chapter 9, paragraph C9.7.4. and http://www.dsca.osd.mil/DSCA_memoranda/fmf_dcc_2001/2001_cert.pdf

5. Whenever funds from this loan are to be used to pay an amount owed on an FMS case, the Borrower shall also provide a listing of the FMS cases for which payment is requested and the amounts applicable to each.

AP3.2. FMF GRANT AGREEMENT

Figure AP3.F10. FMF Grant Agreement - Attachment to Exhibit B

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

1.1 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.

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

1.3 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

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

3.1 The obligation of the Grantor to make advances hereunder is subject to the conditions 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 (i) signed this Agreement on behalf of the Grant Recipient and, (ii) 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**.

3.2 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

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 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

5.1 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.

5.2 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

6.1 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:

- (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.

6.2 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.

6.3 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

7.1 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.

7.2 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. 20590-0001
- (c) In the case of the Grantor to:
Director, Defense Security Cooperation Agency
201 12th St South, Suite 203
Arlington VA 22203-5408
or to such other addresses as may be specified in writing.

7.3 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.

7.4

- (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.

7.5 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.

7.6 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.

7.7 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.

7.8 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 _____

Figure AP3.F11. FMF Grant Agreement - Annex 1
Designation of Authority

Designation of Authority

1. The Grant Recipient shall provide to the DSCA a written communication that evidences the authority for incumbents of specifically named offices or specifically named individuals to sign the grant documents on its behalf. As a minimum the communication will contain the following:

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

Dear Sir:

The following officials of the Government of _____ are duly authorized to execute and deliver documents as indicated below in connection with the Grant Agreement _____ between the Government of the United States and this Government:

a. Grant Agreement:

[Person's Name(s) and/or Title(s) of Office(s)] _____

b. Requests For Disbursement And Such Other Documents As May Be Required Under This Grant Agreement:

[Person's Name(s) and/or Title(s) of Office(s)] _____

Sincerely,

By _____

(Name and Title Typed)

Date: _____

Copy to:
Defense Finance and Accounting Service-IN
Security Assistance Accounting/JAX
8899 East 56th Street
Indianapolis, IN 46249-6300

2. The designation of authority letter shall be signed by an appropriate person empowered under the laws of the Grant Recipient to delegate to selected officials authority to sign documents as stated in the name of its Government. The Grant Recipient shall submit a designation of authority letter to DSCA containing the names and signatures of newly designated officials whenever changes occur.

Figure AP3.F12. FMF Grant Agreement - Annex 2
Request for Advance of Funds – Sample Letter

Request for Advance of Funds – Sample Letter

Director
Defense Finance and Accounting Service-IN
Security Assistance Accounting/JAX
8899 East 56th Street
Indianapolis, IN 46249-6300

Dear Sir:

In accordance with the provisions of Section 1.3 of our Grant Agreement with the Government of the United States of America dated _(date)_, the Government of _____ hereby requests DFAS Indianapolis approval and disbursement of an advance of _(amount)_ from that grant.

The Government of _____ acknowledges that advances hereunder may be used to pay ocean and air freight costs only for transportation of Defense Items being carried on vessels or aircraft of United States registry, and that all materiel financed from this grant which is to be shipped by ocean surface transportation must be transported in privately owned vessels of United States registry unless a waiver is obtained in accordance with Section 6 of the Grant Agreement. In furtherance of this requirement, the suppliers of the materiel being financed with this advance were so notified and given appropriate shipping instructions.

In connection with this request, the Government of _____ confirms that, as appropriate: the defense articles and services for which payment is requested have been satisfactorily delivered; or the advance payment requested is in accordance with requirements of the contract; or the progress payment requested is based on the contractor's satisfactory progress and is in accordance with requirements of the contract; and that payment is therefore due and unpaid under the Purchase Agreement (insert Case Identifier) with the (insert Supplier).

Sincerely,
Government of _____
By _____
(Name and Title)

Figure AP3.F13. FMF Grant Agreement - Exhibit A-
 Procedures for Obtaining DSCA Approval For
 Grant Financing of Purchase Agreements

Procedures for Obtaining DSCA Approval For Grant Financing of Purchase Agreements

1. General. The Defense Security Cooperation Agency (DSCA) is responsible for approving grant financing of all Purchase Agreements that the Grant Recipient wishes to finance with proceeds from the grant issued by the DSCA under the provisions of the Arms Export Control Act. The use of grant proceeds shall be approved for the financing of purchases by the Grant Recipient only of defense articles, defense services, and design and construction services of U.S. origin. In reviewing requests for financing of Purchase Agreements, DSCA is guided by objectives established by the U.S. Government for improvement of the Grant Recipient's defense capabilities, by generally accepted financing practices, and by United States laws, regulations and policies in effect at the time the financing is requested. The U.S. Government reserves the right to refuse to finance any purchase agreement and is not required to explain its reason(s) for such refusal.
2. Purchases from U.S. Military Departments
 - a. The U.S. Military Departments effect Foreign Military Sales ("FMS") by means of the Letter of Offer and Acceptance ("LOA"), Department of Defense Form 1513. Each LOA, also referred to as an FMS case, is identified by a three digit alphabetic code referred to as "case identifier." If a Grant Recipient desires to fund an FMS case from this grant, it must so inform the Military Department prior to the issuance of the LOA. In turn, the Military Department will reflect the desired grant financing on the LOA and submit it to the DSCA (Business Operations/Comptroller Directorate) for approval and countersignature.
 - b. When the Grant Recipient wishes to use grant funds to pay amounts due under an FMS case which has already been established as a "cash" or "dependable undertaking" case, the Grant Recipient must ask the pertinent Military Department to convert all or part of that case from cash to grant funding. The Military Department must also submit the amended case to the DSCA (Business Operations/Comptroller Directorate) for review and approval to support the requested change in funding.
 - c. For each case it approves for financing from the grant, the DSCA (Business Operations/Comptroller Directorate) will reserve funds from the uncommitted grant balance in an amount equal to the entire estimated cost of the FMS case requested for grant funding. The portion of the grant so reserved will then be available only for such payments. Payments, either for deliveries of materiel or progress payments, from advances requested by the Grant Recipient, will be made by the DSCA (Business Operations/Comptroller Directorate) against the amount reserved for that purpose.
3. Purchases from Commercial Firms
 - a. Grant funds under the Arms Export Control Act may be used to finance purchases from U.S. Commercial Suppliers, provided such financing has been approved by the DSCA. In order that the DSCA may advise a Grant Recipient whether it will approve such financing, the Grant Recipient must provide a copy of the contract or proforma purchase order to the DSCA (Business Operations/Comptroller Directorate) for its review, preferably before the Grant Recipient obligates itself to a purchase which it desires to be financed with grant funds. Before the DSCA can give its final approval of grant financing, the commercial supplier must submit to DSCA the "Contractor's Certification and Agreement with Defense Security Cooperation Agency" as illustrated in Exhibit B which is subject to change by the DSCA any time hereafter. The Grant Recipient should allow at least 90 days for DSCA's review of the contract for approval of grant financing. Each grant financing approval shall be separately communicated by DSCA in writing to the Grant Recipient by use of the "Grant Financing Approval" illustrated as an attachment to this exhibit.
 - b. Grant financing shall be approved and made available only to finance the purchase of defense articles and services authorized for such financing by the DSCA in accordance with policies and procedures in effect at the time such financing is approved. Current DSCA policies pertinent to approval of grant financing for purchase agreements are included in the Security Assistance Management Manual.
 - c. In addition to the approval mentioned above, DFAS Indianapolis, at the time it approves requests for advances (disbursements) of funds pursuant to Annex II, also will require from the Grant Recipient invoices properly executed by the commercial supplier, and bills-of-lading and statements, as may be applicable, substantially in

the formats described in paragraph 4 of Exhibit B (DSCA Requirements for Documentation to Support Requests for Advances).

- d. For each commercial purchase agreement for which financing is approved, the DSCA (Business Operations/Comptroller Directorate) will assign a case identifier and will provide to the Grant Recipient a Grant Financing Approval letter in the form of the Attachment to this Exhibit. This letter will provide the case identifier assigned to the case. For each case it approves for grant financing, the DSCA (Business Operations/Comptroller Directorate) will reserve grant funds in the amount requested. The grant funds so reserved will then be available only for payments on that case, unless the Grant Recipient directs otherwise. Payments for deliveries, progress, or advance payments, will be processed by the DSCA (Business Operations/Comptroller Directorate) against the amount reserved for the approved purchase agreement.
- e. The DSCA (Business Operations/Comptroller Directorate) will also provide letters to the commercial firm informing it of conditions of grant financing and certifications required as prerequisites to the DSCA approving grant financing for the purchase agreement, and indicating the DSCA approval of financing of the purchase agreement.

Figure AP3.F14. FMF Grant Agreement - Attachment To Exhibit A
Grant Financing Approval

Grant Financing Approval			
Dear Sir:			
Pursuant to the provisions of Section 1.2 of the Grant Agreement between your Government and the U.S. Government, and in response to your request for grant financing of a purchase directly from a commercial firm, financing for the following purchase agreement is hereby approved:			
Supplier:			
Contract or Proforma Invoice number and date:			
Case Identifier Assigned to This Purchase	Funds Previously Reserved for This Purchase	Funding Revision	Funds Reserved for <u>This Purchase</u>
Sincerely,			

Figure AP3.F15. FMF Grant Agreement - Exhibit B
DSCA Requirements for Documentation to Support Requests for Advances

DSCA Requirements for Documentation to Support Requests for Advances

1. This Exhibit describes the documents which the Grant Recipient must furnish to the DSCA (Business Operations/Comptroller Directorate) in support of requests for advances.
2. Whenever the Grant Recipient desires a disbursement of grant funds, its authorized representatives(s), as designated pursuant to provisions of the Grant Agreement, shall forward the written request, prepared in accordance with Annex II of the Agreement, to the Defense Finance and Accounting Service-IN, ATTN: Security Assistance Accounting/JAX, 8899East 56th Street, Indianapolis, IN 46249-6300, not less than 15 business days before the desired disbursement date.
3. With each request for an advance, the Grant Recipient will provide a letter addressed to the Defense Finance and Accounting Service, substantially in the format as follows:

Dear Sir:

In accordance with the provisions of Section 1.3 of our Grant Agreement with the Government of the United States of America dated (date), the Government of _____ hereby requests the DFAS Indianapolis approval and disbursement of an advance of (amount) from that grant.

The Government of _____ acknowledges that advances hereunder may be used to pay ocean and air freight costs only for transportation of Defense Items being carried on vessels or aircraft of United States registry, and that all materiel financed from this grant which is to be shipped by ocean surface transportation must be transported in privately owned vessels of United States registry unless a waiver is obtained in accordance with Section 6 of the Grant Agreement. In furtherance of this requirement, the suppliers of the materiel being financed with this advance were so notified and given appropriate shipping instructions.

In connection with this request, the Government of _____ confirms that, as appropriate: the defense articles and services for which payment is requested have been satisfactorily delivered; or the advance payment requested is in accordance with requirements of the contract; or the progress payment requested is based on the contractor's satisfactory progress and in accordance with requirements of the contract; and that payment is therefore due and unpaid under the Purchase Agreement (Case Identifier) with the (Supplier).

Sincerely,

GOVERNMENT OF _____

By _____
(Name and Title)

4. Whenever funds from this grant are to be used to pay a Commercial Supplier, the Grant Recipient shall also provide invoices and bills-of-lading in support of each request for an advance, as follows:

- a. A copy of the Supplier's invoice, which has been prepared in accordance with the relevant provisions of the Purchase Agreement. As a minimum, the invoice must: (1) reflect the amount due and payment due date; (2) specify whether the amount billed is an advance, progress, or delivery payment; (3) list the items and services delivered for which payment is requested; (4) indicate by a separate entry the amount included in the invoice for transportation and related costs; (5) designate the FOB point and "ship to" address; (6) designate the address to where the payment should be sent; (7) if the billed amount consists of "cost, insurance and freight" for delivery of materiel to a destination point outside the United States, provide the name of the carrier(s) of the materiel from the U.S. Port of Embarkation; and, (8) be supported by a copy of freight bills, air waybills, or rated on-board bills-of-

lading, fully accounting for the cost of inland and export transportation of the items covered by the invoice for which payment is requested. If the Commercial Supplier pays for the transportation, whether the transportation cost is included in the price of the item or billed separately to the Grant Recipient, bills-of-lading or air waybills must be submitted with the invoice for which payment is requested. A copy of the invoice for the cost of any insurance coverage on the shipment must also be submitted along with the shipping documents.

b. The request for an advance must include a copy of the Supplier's invoice as specified in paragraph 4.a above and a certification from the Supplier as follows:

The (Commercial Supplier) acknowledges U.S. Government funds are being used by the Government of _____ to finance this purchase and certifies that the invoice(s) submitted with respect thereto are free misrepresentation and do not omit any material facts.

(Signed)
(Commercial Supplier)

c. If the Grant Recipient is paying the export transportation cost with other than funds granted under the Arms Export Control Act or FMS loan funds, and therefore the Commercial Supplier is not paying for the export transportation cost, the supplier will be required to submit a certification with the invoice as follows:

The (Commercial Supplier) acknowledges U.S. Government funds are being used by the Government of _____ to finance this purchase, and certifies that no shipping cost has been incurred by this firm for exporting this materiel from the United States, and therefore no cost is included in the sales price or otherwise included in the invoiced amount for which payment is requested.

(Signed)
(Commercial Supplier)

d. Before the DSCA authorizes the use of grant funds to finance any purchase from a Commercial Supplier, the Grant Recipient must ensure that the Commercial Supplier completes and submits to the DSCA the "Contractor's Certification and Agreement with the Defense Security Cooperation Agency." See Chapter 9, paragraph C9.7.4. and http://www.dsc.osd.mil/DSCA_memoranda/fmf_dcc_2001/2001_cert.pdf

5. Whenever funds from this grant are to be used to pay an amount owed on an FMS case, the Grant Recipient shall also provide a listing of the FMS cases for which payment is requested and the amounts applicable to each.

Figure AP3.F16. FMF Grant Agreement - Exhibit C
Marine Transportation Waiver Procedures

Marine Transportation Waiver Procedures

1. The following procedures and conditions shall be adhered to concerning marine transportation of defense articles, the purchase of which is to be financed under this agreement. All defense articles, which are transported by ocean vessel, shall be transported in privately owned vessels of United States registry unless a waiver of this requirement is obtained from the Director, Defense Security Cooperation Agency, Department of Defense. Requests for waiver are categorized as general, non-availability or security as outlined below.

A. General Waivers

Consideration will be given to a waiver application to authorize vessels flying the flag of the country to whom this agreement applies to participate in the transportation of cargo generated under this agreement provided the recipient country does not discriminate against United States flag vessels in the carriage of the exports or imports of the recipient nation. Approval may be granted for recipient country's vessels to carry up to, but not in excess of 50 percent of the cargo under this agreement. Ocean freight revenue is the main criterion for determining flag participation but cargo valuation shall also be taken into consideration. Accordingly, throughout the life of this agreement, U.S. flag vessels shall not receive less than 50 percent of the cargo valuation and ocean freight revenue insofar as practicable.

Applications for general waiver should be submitted as soon as practicable after determination has been made to use recipient country flag vessels but at least twenty-one (21) days in advance of intended shipping dates to enable verification of the treatment accorded vessels of U.S. registry and to process the application.

Subsequent to the granting of a general waiver, if it occurs that neither United States flag vessels nor recipient country flag vessels are available, consideration will be given to specific waiver applications to authorize, on a shipment-by-shipment basis, the use of third flag vessels. Applications for the use of a third flag vessel under an approved general waiver should be submitted at least 21 days prior to the intended shipping date to allow time to process the application. If a waiver is granted to allow the use of a third flag vessel for a particular shipment under an existing general waiver, the cargo carried by the third flag vessel shall be recorded against the recipient country flag vessels' portion of the cargo available under the general waiver.

The application for a general waiver and subsequent waivers for the use of third flag vessels should be submitted by the recipient country directing the shipment (or the recipient's freight forwarder) to the Director, Defense Security Cooperation Agency, Director, Defense Security Cooperation Agency, 201 12th St South, Suite 203, Arlington VA 22203-5408, with a copy to the Director, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, D.C. 20590.

B. Non-Availability Waivers

Consideration will be given to waiver applications to authorize use of foreign flag vessels in those cases of non-availability of United States flag vessels or in instances of non-availability of United States flag vessels at reasonable rates.

Applications for non-availability waivers to permit use of recipient country flag vessels need not be submitted if a general waiver has been approved and the recipient country will use U.S. flag vessels to carry over 50 percent of the cargo under this agreement. Applications are required where a general waiver (1) has not been applied for, (2) has not been approved, or (3) has been approved but, on a shipment-by-shipment basis, U.S. flag vessels are not available or not available at reasonable rates and shipments on non-U.S. flag vessels will exceed 50 percent of the cargo under this agreement. If a general waiver has been approved, every effort should be made to ship defense articles and equipment, where U.S. flag vessels are not available or not available at reasonable rates, under the recipient country's portion of the cargo available under the general waiver. Therefore, applications for non-availability waivers, where a general waiver has been approved, should be submitted only

under unusual circumstances.

Applications on the basis of non-availability of vessels of United States registry must establish and document that the recipient country has made a reasonable, timely, and bona fide effort to arrange shipment on vessels of United States registry and that such vessels are not available. Such applications must be submitted at least 21 days in advance of the intended shipping date to enable verification of non-availability of vessels of United States registry and to process the application.

Applications on the basis of non-availability of vessels of United States registry at reasonable rates must establish and document all applicable comparative rates and should be submitted at least 21 days in advance of the intended shipping date to enable verification of non-availability of vessels of United States registry at reasonable rates and to process the application.

Applications for non-availability waivers must be submitted on a shipment-by-shipment basis. Applications should be submitted to the Director, Defense Security Cooperation Agency, 201 12th St South, Suite 203, Arlington VA 22203-5408 with a copy to the Director, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, D.C. 20590.

Each application for a non-availability waiver should contain the following information:

1. Identification and address of the applicant
2. Recipient country
3. Date of grant
4. Manufacturer and/or exporter
5. List and description of commodities to be shipped
6. FAS value of commodities
7. Shipping date
8. Loading port
9. Discharge port
10. Estimated ocean freight cost
11. Proposed vessel(s) to be used
12. Weight of shipment
13. Cube measurement of shipment
14. Original point of production

C. Security Waivers

Consideration will be given to waiver applications to authorize vessels flying the flag of the country to whom the agreement applies on the basis of reasonable security needs in regards to the cargo and the arrival of such cargo at its destination. A security waiver may be requested for a specific shipment or series of shipments under this agreement where sabotage may reasonably be expected or a state of emergency exists.

Application for security waivers need not be submitted if a general waiver has been approved and the recipient country will use U.S. flag vessels to carry over 50 percent of the cargo under this agreement. Applications are required where a general waiver (1) has not been applied for, (2) has not been approved, or (3) has been approved but, on a shipment-by-shipment basis, use of recipient country flag vessels will exceed 50 percent of the cargo under this agreement. If a general waiver has been approved, every effort should be made to ship those defense articles and equipment involving special security or safety requirements under the recipient country's portion of the cargo available under the general waiver. Therefore, waiver applications for security or safety reasons where a general waiver has been approved should be submitted only under unusual circumstances.

Applications on the basis of security must provide the specific security or safety requirements and information involved in the shipment(s) to be made at least 21 days in advance of the intended shipment(s) dates to enable verification of the security or safety requirements and to process the application.

The application should be provided by the recipient country to the Director, Defense Security Cooperation Agency, 201 12th St South, Suite 203, Arlington VA 22203-5408 with a copy to the Director, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, D.C. 20590.

2. In order to monitor the use of marine transportation under this agreement, pertinent information should be forwarded as early as possible but not later than 90 days after shipment to the Director, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, D.C. 20590, for all shipments of goods financed in whole or in part with grant funds. The following information must be reported:

- (A) Date of Grant
- (B) FAS Value of Cargo
- (C) Manufacturer
- (D) Freight Forwarder
- (E) Ocean Freight Cost
- (F) Name of Vessel
- (G) Vessel Flag of Registry
- (H) Date of Loading
- (I) Port of Loading
- (J) Port of Final Discharge
- (K) Cargo Description
- (L) Gross Weight of Cargo
- (M) Cubic Measurement of Cargo

A properly rated and legible copy of the ocean bill of lading in English will suffice so long as all the above information is contained thereon.

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