

Figure A3.F4. FMF Loan Agreement

FMF 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. 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.”
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.
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

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

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

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

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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. 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.
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.
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

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

1. The obligation of the Lender 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:

- 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.
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

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

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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

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.
2. Upon each and any such event, the holder of the Note may declare immediately due

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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

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
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.

3. Advances hereunder may be used to pay ocean or air freight costs for transportation of

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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

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.
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.
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.

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

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- from the Borrower not less than fifteen business days before the disbursement date.
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.
 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.
 7. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute a single instrument. Annexes I, II, III, and IV attached hereto are by this reference made a part of this Agreement.
 8. All notices, demands, or other communications given under this Agreement, unless submitted in the English language, shall be accompanied by an English translation and such translation shall govern.
 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 _____