

COPY CONFORMED

CREDIT NUMBER 3827 NIR

Development Credit Agreement

(Second Public Expenditure Adjustment Credit)

between

REPUBLIC OF NIGER

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated November 4, 2003

CONFORMED COPY

CREDIT NUMBER 3827 NIR

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated November 4, 2003, between REPUBLIC OF NIGER (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Association has received from the Borrower a letter dated September 12, 2003, describing a program of actions, objectives and policies designed to achieve consolidation and coordination of the Borrower's budgeting process and reform of its financial management (hereinafter called the Program), declaring the Borrower's commitment to the execution of the Program, and requesting assistance from the Association in support of the Program during the execution thereof;

(B) the Borrower has carried out the measures and taken the actions described in Schedule 2 to this Agreement to the satisfaction of the Association and has maintained a macroeconomic policy framework satisfactory to the Association; and

WHEREAS, on the basis, inter alia, of the foregoing, the Association has decided in support of the Program to provide such assistance to the Borrower by making the Credit in two tranches as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985, (as amended through October 6, 1999) with the modifications set forth below (the General Conditions) constitute an integral part of this Agreement:

- (a) Section 2.01, paragraph 12, is modified to read:

“‘Project’ means the program, referred to in the Preamble to the Development Credit Agreement, in support of which the Credit is made.”;

(b) Section 4.01 is modified to read:

“Except as the Borrower and the Association shall otherwise agree, withdrawals from the Credit Account shall be made in the currency of the Deposit Account specified in Section 2.02 (b) of the Development Credit Agreement.”;

(c) Section 5.01 is modified to read:

“The Borrower shall be entitled to withdraw the proceeds of the Credit from the Credit Account in accordance with the provisions of the Development Credit Agreement and of these General Conditions”;

(d) The last sentence of Section 5.03 is deleted;

(e) Section 9.06 (c) is modified to read:

“(c) Not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, the Borrower shall prepare and furnish to the Association a report, of such scope and in such detail as the Association shall reasonably request, on the execution of the Program referred to in the Preamble to the Development Credit Agreement, the performance by the Borrower and the Association of their respective obligations under the Development Credit Agreement and the accomplishment of the purposes of the Credit.”; and

(f) Section 9.04 is deleted and Sections 9.05, 9.06 (as modified above), 9.07 and 9.08 are renumbered, respectively, Sections 9.04, 9.05, 9.06 and 9.07.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “ARM” means *Autorité de Régulation Multisectorielle*, the Borrower’s multisector regulatory agency established pursuant to the Borrower’s Ordonnance No.: 99-044 dated October 26, 1999 published in the Borrower’s Official Gazette of November 15, 2000, page 791;

(b) “BCEAO means *Banque Centrale des États de l’Afrique de l’Ouest*, the common central bank for the west African Francophone countries and Guinea Bissau;

(c) “Cash Allocation Plan” means the Borrower’s *cadre d’un plan de trésorerie*, which makes monthly provisions for cash allocations to expenditures in accordance with budgetary credits;

(d) “*Certificat de Concordance*” means a compliance certificate, confirming the coherence of the public account (“*compte de gestion*”) of the Borrower’s treasury and budgetary accounts (“*comptes administratifs*”) of the Borrower’s budget directorate;

(e) “Deposit Account” means the account referred to in Section 2.02 (b) of this Agreement;

(f) “Currency of the European Union” means the common currency of the European Union entered into under the Maastricht treaty dated November 1, 1993, which adopted the euro as such currency;

(g) “*Ecoles Normales*” means the Borrower’s teachers’ training centers, established pursuant to law No.: 2002/029 dated December 31, 2002, published in the Borrower’s Official Gazette No.: 13 dated September 13, 2003, page 549;

(h) “Education Sector” means the sector administered by the Borrower’s *Ministère de l’Education de Base 1 et de l’Alphabétisation*, the Borrower’s basic education and adult learning ministry;

(i) “FCFA” means *Franc de la Communauté Financière Africaine*, the Borrower’s currency;

(j) “First Tranche” means the Tranche (as hereafter defined) referred to in Category (1) of the table set forth in paragraph 1 of Schedule 1 to this Agreement, to be released by the Association on or after the Effective Date;

(k) “FY” means the Borrower’s fiscal year, starting January 1 and ending December 31 of each calendar year;

(l) “Health Sector” means the sector administered by the Borrower’s *Ministère de la Santé Publique et de la Lutte contre les Endémies*, the Borrower’s Ministry in charge of health;

(m) “*Loi de finance*” means the Borrower’s budget law;

(n) “MTEF” means the Borrower’s Medium-Term Expenditure Framework (*cadre des dépenses à moyen terme*) containing the Borrower’s budgetary provisions for the FY 2005, 2006 and 2007, based on and subsequent to a joint Association/Borrower budget review in early 2004;

(o) “PEMFAR” means Public Expenditure Management and Financial Accountability Review, being carried out jointly by the Borrower and the Association;

(p) “Bringing to the Point of Sale” means that the Borrower has taken the following steps: (i) prepared and distributed to interested parties bidding documents for the relevant state company; (ii) solicited offers directly, through advertisement(s) in appropriate newspapers, or in any other form, under terms and conditions agreed upon between the Borrower and the Association; (iii) evaluated the offers and selected the successful bidder(s) (if any) for the purpose of negotiations; and (iv) invited said successful bidder(s) (if any) to enter into good faith negotiations;

(q) “Procurement Code” means the Borrower’s Procurement Code, pursuant to Ordonnance No.: 2002-007 dated September 18, 2002, published in the Borrower’s Official Gazette No. 13 dated September 13, 2003, page 550;

(r) “*Programme de budget pluriannuel*” means the Borrower’s multiyear budget program;

(s) “Rural Development Sector” means the sector administered by the Borrower’s *Ministère de développement agricole le Ministère des ressources animales et le Minsitère de l’hydraulique, de l’environnement et de la lutte contre la desertification*, the Borrower’s Ministries of Agriculture, Livestock and Water and protection of the Environment, respectively;

(t) “SONIDEP” means *Société Nigérienne des Produits Pétroliers*, the Borrower’s petroleum distribution company, established pursuant to *Ordonnance* No.: 77-01, dated January 20, 1977, published in the Official Gazette dated February 1, 1977, page 61;

(u) “Second Tranche” means the Tranche (as hereafter defined) referred to in Category (2) of the table set forth in paragraph 1 of Schedule 1 to this Agreement, to be released by the Association on or after the date on which the conditions referred to in Section 2.02 (d) of this Agreement have been met; and

(v) “Tranche” means any of the following: First Tranche and Second Tranche.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to forty-seven million four hundred thousand Special Drawing Rights (SDR 47,400,000).

Section 2.02. (a) Subject to the provisions of paragraphs (b), (c) and (d) of this Section, the Borrower shall be entitled to withdraw the proceeds of the Credit from the Credit Account in support of the Program.

(b) The Borrower shall open, prior to furnishing to the Association the first request for withdrawal from the Credit Account, and thereafter maintain in the Nigerian branch of BCEAO a Deposit Account in FCFA on terms and conditions satisfactory to the Association. All withdrawals from the Credit Account shall be deposited by the Association into the Deposit Account.

(c) The Borrower undertakes that the proceeds of the Credit shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Association shall have determined at any time that any proceeds of the Credit shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Association, (i) deposit into the Deposit Account an amount equal to the amount of said payment, or (ii) if the Association shall so request, refund such amount to the Association. Amounts refunded to the Association upon such request shall be credited to the Credit Account for cancellation.

(d) No withdrawals shall be made from the Credit Account under Category (2) of the table under paragraph 1 of Schedule 1 to this Agreement, unless the amount specified in Category (1) has been withdrawn by the Borrower and the Association shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Association:

- (i) with the progress achieved by the Borrower in the carrying out of the Program;
- (ii) that the macroeconomic policy framework of the Borrower is satisfactory, as measured on the basis of indicators agreed between the Borrower and the Association; and
- (iii) that the actions described in Schedule 3 to this Agreement have been taken.

If, after said exchange of views, the Association is not so satisfied, the Association may give notice to the Borrower to that effect and, if within 90 days after such notice, the Borrower shall not have taken steps satisfactory to the Association, in respect of (i), (ii) and (iii) above, as the case may be, then the Association may, by notice to the Borrower, cancel the unwithdrawn amount of the Credit or any part thereof.

Section 2.03. The Closing Date shall be December 31, 2004, or such later date as the Borrower and the Association shall agree upon. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or cancelled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent ($3/4$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on May 1st. and November 1st. in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each May 1st and November 1st, commencing November 1st, 2013 and ending May 1st, 2043. Each installment to and including the installment payable on May 1st, 2023 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever (i) the Borrower's per capita gross national product (GNP), as determined by the Association, shall have exceeded for three consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by the Association of the development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by:

- (A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and
- (B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(d) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The Currency of the European Union is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Particular Covenants

Section 3.01. (a) The Borrower and the Association shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and the actions specified in Schedule 3 to this Agreement.

(b) Prior to each such exchange of views, the Borrower shall furnish to the Association for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Association shall reasonably request.

(c) Without limitation upon the provisions of paragraph (a) of this Section, the Borrower shall exchange views with the Association on any proposed action to be taken after the disbursement of the Credit which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program, including any action specified in Schedules 2 and 3 to this Agreement.

Section 3.02. Upon the Association's request, the Borrower shall:

(a) have the Deposit Account audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;

(b) furnish to the Association as soon as available, but in any case not later than four months after the date of the Association's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

(c) furnish to the Association such other information concerning the Deposit Account and the audit thereof as the Association shall have reasonably requested.

ARTICLE IV

Additional Event of Suspension

Section 4.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

ARTICLE V

Effective Date; Termination

Section 5.01. The following event is specified as an additional condition to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions, namely, that the Borrower has issued and sent to interested parties bidding documents in form and substance satisfactory to the Association on the acquisition of shares of SONIDEP.

Section 5.02. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VI

Representative of the Borrower; Addresses

Section 6.01. The Minister of the Borrower in charge of finance is designated as the representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Minister of Finance
Ministry of Finance and Economy
BP 389
Niamey
Republic of Niger

Facsimile:

(227) 73 59 34

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Telex:

Facsimile:

INDEVAS

248423 (MCI) or

(202)

477

6391

Washington, D.C.

64145 (MCI)

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

REPUBLIC OF NIGER

By /s/ Joseph Diatta

Authorized Representative

ASSOCIATION

INTERNATIONAL

DEVELOPMENT

By /s/ Antoinette M. Sayeh

Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the Credit and Excluded Expenditures

1. Subject to the provisions set forth or referred to in this Schedule, the table below sets forth the amounts allocated to specific Tranches to be withdrawn from the Credit Account:

	Tranche	Amount of the Credit Allocated (Expressed in <u>SDR Equivalent</u>)	% of Expenditures <u>to be financed</u>
(1)	First Tranche	29,000,000	100% of foreign expenditures
(2)	Second Tranche	18,400,000	100% of foreign expenditures

	TOTAL	47,400,000 =====	

2. For the purposes of this Schedule the term “foreign expenditures” means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower.

3. For purposes of Section 2.02 (c) of this Agreement, the proceeds of the Credit shall not be used to finance any of the following expenditures:

(a) expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;

(b) expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the Association shall have financed or agreed to finance, or which the Association or the Bank shall have financed or agreed to finance under another credit or a loan;

(c) expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Association by notice to the Borrower:

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
112	-	Alcoholic beverages
121	-	Tobacco, unmanufactured, tobacco refuse
122 manufactured	-	Tobacco, (whether or not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silver-

		smiths' wares (including set gems)
971	-	Gold, non-monetary (excluding gold ores and concentrates)

(d) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;

(e) expenditures for environmentally hazardous goods (for purposes of this paragraph the term "environmentally hazardous goods" means goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party;

(f) expenditures (a) in the territories of any country which is not a member of the Bank or for goods procured in, or services supplied from, such territories or (b) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

(g) expenditures under a contract in respect of which the Association determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Credit during the procurement or execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Association to remedy the situation.

SCHEDULE 2

Actions Referred to in Recital B of this Agreement

A. Budget Management

1. (a) Closure, as outlined in paragraph 52 of the Program, of budgetary accounts for FY 2002 through issuance of a *Certificat de Concordance* and submission of said *Certificat*, dated September 9, 2003, to the Association; and

(b) submission of the budget execution law (*Loi de Règlement*) for FY 2001 to the *Chambre des Comptes* of the Borrower's Supreme Court, in accordance with paragraph 52 of the Program (*Borderau d'envoi* No.: 0042/SGG/DI, dated July 10, 2003).

2. The Borrower's Minister in charge of finance has issued *Arrêté* No.: 300/MF/E/DGB/DB, dated September 9, 2003, outlining the budget preparation process, establishing the sequence and dates of actions as well as the role and responsibilities of all ministries, services and other actors involved in the budget preparation process, as outlined in paragraph 38 of the Program.

3. The Borrower's Minister in charge of finance has prepared an outline (*esquisse de projet du budget*) No.: 592/MEF/CAB, dated September 9, 2003, of preliminary recurrent budget spending for FY 2004 for the Health Sector, the Education Sector and the Rural Development Sector, pursuant to paragraph 38 of the Program.

4. Establishment of the framework for the Cash Allocation Plan (*cadre d'un plan de trésorerie*), reflecting priority allocations for social and poverty alleviation priorities reflected in paragraph 45 of the Program.

B. Procurement

1. The Borrower's Minister in charge of finance has issued four *Arrêtés* concerning the implementation of the Procurement Code (*Arrêtés* Nos.: 301/MF/E; 302/MF/E; 303/MF/E; and 304/MF/E respectively, all dated September 9, 2003).

C. Regulatory Reforms

1. The Borrower's *Comité interministeriel* has received from the President of ARM, pursuant to a transmission letter No.: 38/ARM2003, dated September 8, 2003, a short list of two eligible candidates for each of the positions of the four directors for ARM, namely: (a) the director in charge of energy; (b) the director in charge of telecommunications; (c) the director in charge of water; and (d) the director in charge of transportation, in conformity with paragraph 54 of the Program.

D. Social Sector Reforms

1. The Borrower has adopted Decree No.: 2003-198/PRN/MEB1/A, dated July 24, 2003, approving by-laws (*les statuts*) providing for the implementation of a regulatory framework for the Borrower's *Ecoles Normales*.

2. Circular letter of the Borrower's Minister in charge of basic education No.: 58/MEB1/A/DEP, dated June 25, 2003 confirming the commitment of the Borrower to recruit 2,702 contractual school teachers for the school year 2003/04.

Schedule 3

Actions Referred to in Section 2.02 (d) (iii) of this Agreement

A. Budget Management

1. Adoption, by the Borrower's Council of Ministers, of an action plan for budgetary and financial management for FY 2005, based on the recommendations of the PEMFAR mission, in form and substance acceptable to the Association, pursuant to paragraph 49 of the Program.

2. The Borrower's Minister in charge of finance has furnished to the Association, a letter, in form and substance acceptable to the Association, certifying the execution of the Borrower's expenditure in the first quarter of FY 2004 pursuant to the Cash Allocation Plan, as set forth in paragraph 45 of the Program.

3. The Borrower has carried out the following actions set forth in the Arrêté referred to in paragraph A.2. of Schedule 2 to this Agreement: (a) issuance of a draft macroeconomic and financial framework containing an outline of FY 2005 budget allocations, and (b) issuance of a budget circular to line ministries providing guidance in the preparation of their respective budget proposals.

4. The Borrower's *Loi de finance* for FY 2004 reflects priorities as set forth in paragraph A. 3. of Schedule 2 to this Agreement.

5. The Borrower's *Programme de budget pluriannuel* for the Education Sector, the Health Sector and the Rural Development Sector for FY 2005, FY 2006 and FY 2007 complies with the MTEF for said Fiscal Years, pursuant to paragraph 38 of the Program.

B. Procurement

1. The Borrower has published a Decree, in form and substance satisfactory to the Association, establishing its *Agence de Régulation des Marchés Publics* pursuant to Article 123 of its Procurement Code and Paragraph 41 of the Program.

C. Social Sector Reforms

1. The Borrower's Minister in charge of health has adopted a pilot program, in form and substance acceptable to the Association, providing for direct funding of selected health districts through performance contracts, pursuant to paragraph 57 of the Program.

D. Regulatory Reforms

1. SONIDEP has been brought to the Point of Sale.