

**CONFORMED COPY**

**GEF TRUST FUND GRANT NO. TF 051486**

# **Global Environment Facility Trust Fund Grant Agreement**

**(National System of Protected Areas Project - FAN)**

**between**

**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**acting as an Implementing Agency of the Global Environment Facility**

**and**

**FONDO AMBIENTAL NACIONAL**

**Dated April 17, 2003**

# **GEF TRUST FUND GRANT NO. TF051486**

## **GLOBAL ENVIRONMENT FACILITY TRUST FUND GRANT AGREEMENT**

AGREEMENT, dated April 17, 2003, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) acting as an Implementing Agency of the Global Environment Facility (the GEF) and FONDO AMBIENTAL NACIONAL (FAN), in respect of Grant funds provided to the Global Environment Facility Trust Fund (the GEF Trust Fund) by certain members of the Bank as participants of the GEF.

WHEREAS (A) the Bank, pursuant to Resolution No. 91-5 of March 14, 1991 of the Executive Directors of the Bank, established the GEF to assist in the protection of the global environment and promote thereby environmentally sound and sustainable economic development;

WHEREAS (B) following the restructuring of the GEF, such arrangements continued in place on the basis set forth in Resolution No. 94-2 of May 24, 1994 of the Executive Directors of the Bank (Resolution No. 94-2), which, inter alia, established the GEF Trust Fund, authorized the first replenishment of the GEF Trust Fund and appointed the Bank as Trustee of the GEF Trust Fund;

WHEREAS (C) the second replenishment of the GEF Trust Fund was approved on the basis set forth in Resolution No. 98-2 of July 14, 1998 of the Executive Directors of the Bank;

WHEREAS (D) FAN, having satisfied itself as to the feasibility and priority of the project described in Schedule 2 to the MAE GEF Trust Fund Agreement (as hereinafter defined) (the Project), has requested assistance from the resources of the GEF Trust Fund for funding Part C of the Project, and said request having been approved in accordance with the provisions of the Instrument for the Establishment of the Restructured Global Environment Facility approved under Resolution No. 94-2 and to be funded from the resources of the GEF Trust Fund;

WHEREAS (E) by an agreement of even date herewith entered into between the Republic of Ecuador (Ecuador) and the Bank, also acting as an Implementing Agency of the GEF (the MAE GEF Trust Fund Grant Agreement), the Bank has agreed to make available additional GEF resources, on a grant basis, for the carrying out of Parts A, B and D of the Project in an aggregate principal amount equivalent to two million eight-hundred thousand Special Drawing Rights (SDR 2,800,000) (the MAE GEF Trust Fund Grant Agreement), but only on condition that FAN agree to undertake such obligations toward the Bank as are set forth in this Agreement;

WHEREAS (F) by a letter dated August 15, 2002, from Ecuador to the Bank, Ecuador has agreed that resources from the GEF Trust Fund be provided directly to FAN under the terms and conditions of this Agreement;

WHEREAS (G) the Bank has received a letter dated February 26, 2002 from Ecuador describing Ecuador's program for its national system of protected areas (*Sistema Nacional de Areas Protegidas* - SNAP) for the period 2001 to 2010 (the SNAP Program), and setting forth Ecuador's plan of actions over the medium and longer term to achieve the development and strengthening of SNAP; and

WHEREAS the Bank has agreed, on the basis, inter alia, of the foregoing, to extend the FAN GEF Trust Fund Grant to FAN upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

## ARTICLE I

### General Conditions; Definitions

Section 1.01. (a) The following provisions of the "General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans" of the Bank, dated May 30, 1995 (as amended through October 6, 1999), with the modifications set forth in paragraph (b) of this Section (the General Conditions) constitute an integral part of this Agreement:

- (i) Article I;
- (ii) Sections 2.01 (1), (2), (3), (4), (5), (6), (7) (8), (9), (10), (14), (15), (16), (18) and (21), 2.02 and 2.03;
- (iii) Section 3.01;
- (iv) Sections 4.01 and 4.06;
- (v) Article V;
- (vi) Sections 6.01, 6.02 (c), (e), (f), (g), (i), (l), (m), (n), (o) and (p), 6.03, 6.04 and 6.06;
- (vii) Section 8.01 (b);
- (viii) Sections 9.01 (a) and (c), 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09;
- (ix) Sections 10.01, 10.03 and 10.04;

- (x) Article XI; and
  - (xi) Sections 12.01 (c), 12.03 and 12.04.
- (b) The General Conditions shall be modified as follows:
- (i) a new paragraph shall be added to the end of Section 2.01 to read as follows: “the term ‘Special Drawing Rights’ and the symbol ‘SDR’ mean special drawing rights as valued by the International Monetary Fund in accordance with its Articles of Agreement”;
  - (ii) the term “Bank”, wherever used in the General Conditions, other than in Sections 2.01 (6) and 6.02 (f) and the last use of such term in Section 5.01 thereof, means the Bank acting as an Implementing Agency of the GEF, except that in Section 6.02, the term “Bank” shall also include the Bank acting in its own capacity;
  - (iii) the term “Borrower,” wherever used in the General Conditions, means FAN;
  - (iv) the term “Loan Agreement,” wherever used in the General Conditions, means this Agreement;
  - (v) the term “Loan” and “loan,” wherever used in the General Conditions, means the FAN GEF Trust Fund Grant;
  - (vi) the term “Loan Account,” wherever used in the General Conditions, means the FAN GEF Trust Fund Grant Account, the account to be open by the Bank on its books in the name of FAN to which the amount of the FAN GEF Trust Fund Grant will be credited;
  - (vii) a new subparagraph (q) shall be added after subparagraph (p) in Section 6.02 as follows:  
  
“(q) An extraordinary situation shall have arisen in which any further disbursement under the FAN GEF Trust Fund Grant would exceed the resources available for disbursement from the GEF.”;  
and
  - (viii) Section 10.04 is modified to read:

“Any dispute arising out of or relating to this Agreement which is not settled by agreement of the parties shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules in force on the date of this Agreement. The place of arbitration shall be Washington, D.C. In the event of a conflict between the UNCITRAL Arbitration Rules and the terms of this Agreement, the terms of this Agreement shall govern.”.

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires the several terms defined in the General Conditions, in the Preamble to this Agreement and in the MAE GEF Trust Fund Grant Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “Asset Management Agreement” means the asset management agreement referred to in Section 3.06 (b) of this Agreement;

(b) “Asset Manager” means the asset manager referred to in Section 3.06 (a) of this Agreement;

(c) “FAN Annual Work Program” means any of the annual work programs referred to in Section 3.05 (a) (i) of this Agreement;

(d) “FAN By-Laws” means the by-laws of FAN, approved by Executive Decree No. 2820 dated July 11, 2002, published in *Registro Oficial* No. 622 on July 19, 2002, as amended to the date of this Agreement, which determine the operational framework for the exercise of the powers, duties and functions of the corporate bodies of FAN;

(e) “FAN Charter” means the charter of FAN, approved by Executive Decree No. 3409, dated January 16, 1996, published in *Registro Oficial* No. 865 on January 18, 1996, as amended to the date of this Agreement, which determines the powers, duties and functions of the corporate bodies of FAN;

(f) “FAN Eligible Categories” means categories (1) through (4) set forth in the table in Part A.1 of Section I of Schedule 1 to this Agreement;

(g) “FAN Eligible Expenditures” means the expenditures for goods, services and recurrent costs referred to in Section 2.02 of this Agreement;

(h) “FAN-FMR” means each financial monitoring report prepared by FAN in accordance with Section 4.03 of this Agreement;

(i) “FAN Operational Manual” means the operational manual of FAN approved by FAN’s Board of Directors on May 15, 2002, that provides: (i) detailed arrangements for the carrying out of Part C of the Project; (ii) the procedures and criteria for the preparation and approval of the FAN Annual Work Programs; and (iii) operating procedures for the investment and utilization of the proceeds of the FAN GEF Trust Fund Grant;

(j) “FAN Performance Indicators” means the indicators for monitoring and evaluating the progress of FAN towards the attainment of Project objectives set forth in the letter from FAN to the Bank of even date herewith (Supplemental Letter);

(k) “FAN Procurement Strengthening Action Plan” means FAN’s procurement strengthening action plan for the Project, dated June 17, 2002;

(l) “FAN Special Account” means the account referred to in Part C.1 of Section I of Schedule 1 to this Agreement;

(m) “Investment Strategy” means the investment strategy to be approved by FAN’s Board of Directors for the investment of the proceeds of the FAN GEF Trust Fund Grant allocated to Category (4) of the table in Part A.1 of Section I of Schedule 1 to this Agreement pursuant to the Asset Management Agreement; and

(n) “Key FAN Personnel” means the personnel referred to in Section 3.04 of this Agreement.

## ARTICLE II

### The FAN GEF Trust Fund Grant

Section 2.01. The Bank agrees to make available to FAN, on the terms and conditions set forth or referred to in this Agreement, the FAN GEF Trust Fund Grant in an amount in various currencies equivalent to three million three-hundred thousand Special Drawing Rights (SDR 3,300,000).

Section 2.02. The amount of the FAN GEF Trust Fund Grant may be withdrawn from the FAN GEF Trust Fund Grant Account in accordance with the provisions of Schedule 1 to this Agreement for the capital endowment of FAN and for expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of goods, services and recurrent costs required for Part C of the Project and to be financed out of the proceeds of the FAN GEF Trust Fund Grant.

Section 2.03. The Closing Date shall be June 30, 2007 or such later date as the Bank shall establish. The Bank shall promptly notify FAN of such later date.

### **ARTICLE III**

#### **Execution of the Project**

Section 3.01. FAN declares its commitment to the objectives of the Project and, to this end, shall carry out Part C of the Project with due diligence and efficiency and in conformity with appropriate managerial, administrative, financial, ecological, environmental and conservation practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for Part C of the Project.

Section 3.02 (a) Without limitation upon the provisions of Section 3.01 of this Agreement, and except as FAN and the Bank may otherwise agree, FAN shall carry out the Project in accordance with: (i) the SNAP Program; (ii) the Implementation Agreement; (iii) the FAN Operational Manual; (iv) the Project Implementation Plan; (v) the FAN Procurement Strengthening Action Plan; and (vi) the applicable FAN Annual Work Program, so as to achieve the FAN Performance Indicators.

(b) If any provision of the FAN Operational Manual or the Project Implementation Plan is inconsistent with a provision of this Agreement, the provisions of this Agreement shall prevail.

Section 3.03. Except as the Bank shall otherwise agree, procurement of the goods and consultants' services required for Part C of the Project and to be financed out of the proceeds of the FAN GEF Trust Fund Grant shall be governed by the provisions of Schedule 2 to this Agreement.

Section 3.04. At all times during the execution of Part C of the Project, FAN shall ensure that FAN is staffed by key professional staff in numbers and with experience and qualifications acceptable to the Bank, operating under terms of reference satisfactory to the Bank, and selected in accordance with competitive and transparent procedures satisfactory to the Bank, all as prescribed in the FAN Operational Manual.

Section 3.05. (a) FAN shall:

- (i) not later than November 15 of each year, furnish to the Bank, for its review and approval, a proposed annual work program approved by FAN's Board of Directors, such program to specify the activities to be financed by FAN out of the investment income deriving from the proceeds of the FAN GEF Trust Fund Grant allocated to Category (4) of the table in Part A.1 of Section I of Schedule 1 to this Agreement during the following calendar year for the purposes of the implementation of Part C of the Project; and

- (ii) upon the Bank's approval, carry out such FAN Annual Work Program, as approved by the Bank.

(b) The Bank may refrain from approving any such Annual Work Program if the Bank has determined that FAN is not carrying out Part C of Section I of Schedule 1 of the Project as provided in this Agreement, and no appropriate remedial actions, satisfactory to the Bank, have been taken therefor.

Section 3.06. For the purposes of managing the proceeds of the FAN GEF Trust Fund Grant allocated to Category (4) of the table in Part A.1 of Section I of Schedule 1 to this Agreement in accordance with the Investment Strategy, at all times during the execution of the Project, FAN shall:

(a) retain the services of an internationally recognized asset manager of experience and qualifications acceptable to the Bank, under terms of reference satisfactory to the Bank; and

(b) ensure that the agreement with the Asset Manager contains terms and conditions satisfactory to the Bank, including the obligation of the Asset Manager to:

- (i) administer the proceeds of the FAN GEF Trust Fund Grant in accordance with the Investment Strategy;
- (ii) not later than one (1) month after the end of each quarter during the implementation of Part C of the Project, furnish to FAN and the Bank quarterly reports regarding management performance, capital value, asset allocation, and investment income with respect to the FAN GEF Trust Fund Grant; and
- (iii) abide by the provisions of Section 4.02 of this Agreement.

Section 3.07. FAN shall exercise its rights and comply with its obligations under the Implementation Agreement and the Asset Management Agreement in such a manner as to protect the interests of Ecuador, the Bank and FAN, and to accomplish the purposes of the FAN GEF Trust Fund Grant, and, except as the Bank shall otherwise agree, FAN shall not assign, amend, terminate, waive or fail to enforce the Implementation Agreement or the Asset Management Agreement or any provision thereof.

Section 3.08. FAN shall:

(a) not later than June 30, 2003, furnish to the Bank, for its review and approval, a fund-raising strategy to increase FAN's capital endowment; and

(b) upon the Bank's approval, carry out such fund-raising strategy as approved by the Bank.



Section 3.09. FAN shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the FAN Performance Indicators, the carrying out of Part C of the Project and the achievement of the objectives thereof; and

(b) not later than September 30 and March 31 of each year of Project implementation, starting in March 31, 2003, furnish to the Bank progress reports on the execution of Part C of the Project during the preceding calendar semester, of such scope and in such detail as the Bank may reasonably request.

Section 3.10. FAN shall:

(a) not later than November 30 of each year of Project implementation, starting in November 31, 2003, hold a Project annual review with the Bank, such review to be based on the reports referred to in Section 3.09 (b) of this Agreement; and

(b) if, as a result of any of the above reviews, the Bank shall have reasonably determined that the progress in the execution of the Part C of the Project or in the achievement of its objectives is not satisfactory, promptly take or cause to be taken all such remedial action, satisfactory to the Bank, as shall be necessary for the efficient execution of such Part of the Project or the timely achievement of its objectives.

Section 3.11. The Bank may, after June 31, 2007, inform FAN that it has decided not to carry out further supervision of Part C of the Project. Such notice shall also confirm any arrangement for the furnishing to the Bank of periodic information on the execution of Part C of the Project as Ecuador, the Bank, and FAN may have agreed upon beforehand. Upon receipt of such notice, the obligations of FAN referred to in Sections 3.05 and 3.09 of this Agreement shall cease.

## **ARTICLE IV**

### **Financial Covenants**

Section 4.01. (a) FAN shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition, including records and separate accounts in respect of Part C of the Project.

(b) FAN shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements), for each Fiscal Year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than four (4) months after the end of each such Fiscal Year: (A) certified copies of its financial statements for such Fiscal Year as so audited; and (B) the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested including, as part of the information provided in each such report, a management letter concerning internal controls; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the FAN Trust Fund Grant Account were made on the basis of FAN-FMRs or statements of expenditure, FAN shall:

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) retain, until at least one (1) year after the Bank has received the audit report for the Fiscal Year in which the last withdrawal from the FAN GEF Trust Fund Grant Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Bank's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the FAN-FMRs or statements of expenditure submitted during such Fiscal Year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

Section 4.02. (a) Pursuant to the provisions of the Asset Management Agreement, FAN shall cause the Asset Manager to maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition, including records and separate accounts in respect of the proceeds of the FAN GEF Trust Fund Grant allocated to Category 4 of the table in Part A.1 of Section I of Schedule 1 to this Agreement.

(b) Pursuant to the provisions of the Asset Management Agreement, FAN shall cause the Asset Manager to:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements), including those for the proceeds of the FAN GEF Trust Fund Grant referred to in paragraph (a) above, for each Fiscal Year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than four (4) months after the end of each such Fiscal Year: (A) certified copies of its financial statements for such Fiscal Year as so audited; and (B) the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested including, as part of the information provided in each such report, a management letter concerning internal controls; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 4.03. (a) With regard to Part C of the Project and without limitation upon FAN's progress reporting obligations set out in Section 3.09 (b) of this Agreement, FAN shall prepare and furnish to the Bank a FAN financial monitoring report, in form and substance satisfactory to the Bank, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the FAN GEF Trust Fund Grant, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and

- (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FAN-FMR shall be furnished to the Bank not later than forty-five (45) days after the end of the first calendar semester after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar semester; thereafter, each FMR shall be furnished to the Bank not later than forty-five (45) days after each subsequent calendar semester, and shall cover such calendar semester.

## **ARTICLE V**

### **Remedies of the Bank**

Section 5.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional event is specified, namely that MAE shall have failed to perform any of its obligations under the MAE GEF Trust Fund Grant Agreement.

## **ARTICLE VI**

### **Effectiveness; Termination**

Section 6.01. The following events are specified as additional conditions to the effectiveness of this Agreement within the meaning of Section 12.01 (c) of the General Conditions:

- (a) that the Asset Management Agreement shall have been executed and delivered on behalf of the parties thereto, and is legally binding upon them in accordance with its terms;
- (b) that the selection process of the independent auditor referred to in Section 4.01 (b) (i) of this Agreement shall have been started;
- (c) that the Key FAN personnel shall have been selected;
- (d) that the Investment Strategy shall have been approved by FAN's Board of Directors; and
- (e) that all conditions precedent to the effectiveness of the MAE GEF Trust Fund Grant Agreement (other than those related to the effectiveness of this Agreement) shall have been fulfilled.

Section 6.02. The date July 17, 2003 is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.03. This Agreement shall continue in full force effect until a date which is fifteen (15) years from the date of this Agreement.

Section 6.04. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

## ARTICLE VII

### Representation of FAN; Addresses

Section 7.01. The Executive Director of FAN is designated as representative of FAN, for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Bank:

International Bank for Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:	Telex:	Facsimile:
INTBAFRAD Washington, D.C.	248423 (MCI) or 64145 (MCI)	(202) 477-6391

For FAN:

Fondo Ambiental Nacional  
La Pradera N30-258 y Mariano Aguilera  
Edificio Santorini Piso 6  
Quito  
Ecuador

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.

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT  
as an Implementing Agency of the Global Environment Facility

/s/ John Redwood

By

Acting Regional Vice President  
Latin America and the Caribbean

FONDO AMBIENTAL NACIONAL

/s/ Samuel Sangüeza

By

Authorized Representative

**SCHEDULE 1**

**Withdrawal and Utilization of the Proceeds of the FAN GEF Trust Fund Grant**

**Section I. Withdrawal of the Proceeds of the FAN GEF Trust Fund Grant**

**Part A: General**

1. The table below sets forth the Categories of items to be financed out of the proceeds of the FAN GEF Trust Fund Grant, the allocation of the amounts of the FAN GEF Trust Fund Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

	<u>Category</u>	<u>Amount of the FAN GEF Trust Fund Grant Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1)	Goods under Part C of the Project	8,000	100%
(2)	Consultants’ services and training under Part C of the Project including audits	153,000	100%
(3)	FAN Incremental Recurrent Costs	87,000	100%
(4)	Capital endowment of FAN	3,052,000	100%
	TOTAL	<u>3,300,000</u> =====	

2. For the purposes of this Part A of Section I of Schedule 1, the terms:

(a) “foreign expenditures” means expenditures for goods supplied from the territory of any country other than Ecuador (if not sold while within the customs territory of Ecuador prior to such goods’ acquisition for use under the Project);

(b) “local expenditures” means expenditures for goods supplied from the territory of Ecuador (i.e., sold while within the customs territory of Ecuador for such goods’ first use under the Project) regardless of those goods’ territory of origin;

(c) “FAN Incremental Recurrent Costs” means FAN’s incremental recurrent costs arising from Project implementation, including inter alia: (i) Project-related workshops; (ii) office space and utilities; (iii) office equipment and supplies; and (iv) travel expenses and per diem of FAN officers; and

(d) “training” means expenditures incurred by FAN in connection with the carrying out of training activities under Part C of the Project, including tuition, travel expenses and per diem of trainers and trainees, rental of facilities and equipment, and training materials.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of SDR25,000, may be made in respect of Categories (1) through (3) of the table in Part A.1 of this Section on account of payments made for expenditures incurred within twelve (12) months prior to the date of this Agreement.

4. The Bank may require withdrawals from the FAN GEF Trust Fund Grant Account to be made on the basis of statements of expenditure for:

- (a) goods;
- (b) consulting firms under contracts costing less than \$100,000 equivalent;
- (c) individual consultants under contracts costing less than \$50,000 equivalent;
- (d) training; and
- (e) FAN Incremental Recurrent Costs,

all under such terms and conditions as the Bank shall specify by notice to the Recipient.

**Part B: Special Disbursement Procedure**

Subject to the provisions set forth or referred to in this Schedule, the proceeds of the FAN GEF Trust Fund Grant allocated to Category (4) of the table in Part A.1 of this Section shall be withdrawn from the FAN GEF Trust Fund Account under one application for withdrawal providing for the entire amount to be transferred to the Asset Manager pursuant to the provisions of the Asset Management Agreement.

**Part C: FAN Special Account**



1. FAN shall open and maintain in Dollars a special deposit account in a commercial bank acceptable to the Bank, on terms and conditions satisfactory to the Bank, including appropriate protection against set-off, seizure and attachment.

2. After the Bank has received satisfactory evidence that the FAN Special Account has been opened, withdrawals from the GEF Trust Fund Grant Account of amounts to be deposited into the FAN Special Account shall be made as follows:

(a) until the Bank shall have received: (i) the first FAN-FMR referred to in Section 4.03 (b) of this Agreement; and (ii) a request from FAN for withdrawal on the basis of FAN-FMRs, withdrawals shall be made in accordance with the provisions of Annex A to this Schedule 1; and

(b) upon receipt by the Bank of a FAN-FMR pursuant to Section 4.03 (b) of this Agreement, accompanied by a request from FAN for withdrawal on the basis of FAN-FMRs, all further withdrawals shall be made in accordance with the provisions of Annex B to this Schedule 1.

3. Payments out of the FAN Special Account shall be made exclusively for FAN Eligible Expenditures. For each payment made by FAN out of the FAN Special Account, FAN shall, at such time as the Bank shall reasonably request, furnish to the Bank such documents and other evidence showing that such payment was made exclusively for FAN Eligible Expenditures.

4. Notwithstanding the provisions of Part C.2 of Section I of this Schedule, the Bank shall not be required to make further deposits into the FAN Special Account:

(a) if the Bank determines at any time that any FAN-FMR does not adequately provide the information required pursuant to Section 4.03 of this Agreement;

(b) if the Bank determines at any time that all further withdrawals should be made by FAN directly from the FAN Trust Fund Grant Account; or

(c) if FAN shall have failed to furnish to the Bank within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Bank pursuant to said Section in respect of the audit of: (A) the records and accounts for the FAN Special Account; or (B) the records and accounts reflecting expenditures with respect to which withdrawals were made on the basis of FAN-FMRs.

5. The Bank shall not be required to make further deposits into the FAN Special Account in accordance with the provisions of Part C.2 of Section I of this Schedule if, at

any time, the Bank shall have notified FAN of its intention to suspend in whole or in part the right of FAN to make withdrawals from the GEF Trust Fund Grant Account pursuant to Section 6.02 of the General Conditions. Upon such notification, the Bank shall determine, in its sole discretion, whether further deposits into the FAN Special Account may be made and what procedures should be followed for making such deposits, and shall notify FAN of its determination.

6. (a) If the Bank determines at any time that any payment out of the FAN Special Account was made for an expenditure which is not an Eligible Expenditure, or was not justified by the evidence furnished to the Bank, FAN shall, promptly upon notice from the Bank, provide such additional evidence as the Bank may request, or deposit into the FAN Special Account (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment.

(b) If the Bank determines at any time that any amount outstanding in the FAN Special Account will not be required to cover payments for FAN Eligible Expenditures during the six-month period following such determination, FAN shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

(c) FAN may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the FAN Special Account.

(d) Refunds to the Bank made pursuant to subparagraphs (a), (b) or (c) of this paragraph 6 shall be credited to the FAN GEF Trust Fund Grant Account for subsequent withdrawal or for cancellation in accordance with the provisions of the FAN GEF Trust Fund Grant Agreement.

Section II. Utilization of Part of the Proceeds of the FAN GEF Trust Fund Grant

1. The investment income deriving from the proceeds of the FAN GEF Trust Fund Grant allocated to Category (4) of the table in Part A.1 of Section I of this Schedule (and any portion of the capital, in case such use of a portion of the capital has been approved by the Bank) shall be used exclusively for financing MAE Incremental Recurrent Costs, as prescribed in this Agreement, the FAN Operational Manual and each relevant FAN Annual Work Program.

2. No proceeds of the FAN GEF Trust Fund Grant allocated to Category (4) of the table in Part A.1 of Section I of this Schedule or the income derived therefrom shall be used to finance payments of any taxes levied by, or in the territory of, Ecuador on goods or services, or on the importation, manufacture, procurement or supply thereof.

3. If any of the following events shall occur within fifteen (15) years of the date of this Agreement, upon notice from the Bank, FAN shall promptly refund (or cause the Asset Manager to refund) to the Bank, for deposit into the FAN GEF Trust Fund Grant Account, the amount of the FAN GEF Trust Fund Grant allocated to Category (4) of the table in Part A.1 of Section I of this Schedule and the income derived therefrom, in whole or in part, at the Bank's option:

(a) that the Bank shall have determined, at any time, that: (i) FAN shall have failed to perform any of its obligations under this Agreement; and (ii) MAE shall have failed to perform any of its obligations under the MAE FAN GEF Trust Fund Grant Agreement;

(b) expenditures shall have been made under a contract in respect of which the Bank determines that corrupt or fraudulent practices were engaged in by representatives of FAN or of a beneficiary of the FAN GEF Trust Fund Grant during the procurement or execution of such contract, without FAN having taken timely and appropriate action satisfactory to Ecuador and the Bank to remedy the situation;

(c) the FAN By-laws, the FAN Charter, the FAN Operational Manual, the Investment Strategy or the Asset Management Agreement shall have been amended, suspended, terminated, waived or failed to be enforced in a manner which, in the opinion of the Bank, would materially and adversely affect the implementation of Part C of the Project or the attainment of its objectives; and

(d) FAN shall have been dissolved or its operations shall have been suspended.

**Annex A  
to  
SCHEDULE 1**

**Operation of FAN Special Account  
When Withdrawals Are Not Made  
On the Basis of FAN-FMRs**

1. For the purposes of this Annex the term “FAN Authorized Allocation” means an amount of \$50,000 to be withdrawn from the FAN GEF Trust Fund Grant Account and deposited into the FAN Special Account pursuant to paragraph 2 of this Annex.

2. Withdrawals of the FAN Authorized Allocation and subsequent withdrawals to replenish the FAN Special Account shall be made as follows:

(a) For withdrawals of the FAN Authorized Allocation, FAN shall furnish to the Bank a request or requests for deposit into the FAN Special Account of an amount or amounts which in the aggregate do not exceed the FAN Authorized Allocation. On the basis of each such request, the Bank shall, on behalf of FAN, withdraw from the FAN GEF Trust Fund Grant Account and deposit into the FAN Special Account such amount as FAN shall have requested.

(b) For replenishment of the FAN Special Account, FAN shall furnish to the Bank requests for deposit into the FAN Special Account at such intervals as the Bank shall specify. Prior to or at the time of each such request, FAN shall furnish to the Bank the documents and other evidence required pursuant to Part C.3 of Section I of Schedule 1 to this Agreement for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of FAN, withdraw from the FAN GEF Trust Fund Grant Account and deposit into the FAN Special Account such amount as FAN shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the FAN Special Account for FAN Eligible Expenditures. Each such deposit into the FAN Special Account shall be withdrawn by the Bank from the FAN GEF Trust Fund Grant Account under one or more of the FAN Eligible Categories.

3. The Bank shall not be required to make further deposits into the FAN Special Account, once the total unwithdrawn amount of the FAN GEF Trust Fund Grant minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions, shall equal the equivalent of twice the amount of the FAN Authorized Allocation. Thereafter, withdrawal from the FAN GEF Trust Fund Grant Account of the remaining unwithdrawn amount of the FAN GEF Trust Fund Grant shall follow such procedures as the Bank shall specify by notice to FAN. Such further withdrawals shall be made only after and to the extent that the Bank shall

have been satisfied that all such amounts remaining on deposit in the FAN Special Account as of the date of such notice will be utilized in making payments for FAN Eligible Expenditures.

**Annex B  
to  
SCHEDULE 1**

**Operation of FAN Special Account  
When Withdrawals Are Made  
On the Basis of FAN-FMRs**

1. Except as the Bank may otherwise specify by notice to FAN, all withdrawals from the FAN GEF Trust Fund Grant Account shall be deposited by the Bank into the FAN Special Account in accordance with the provisions of Schedule 1 to this Agreement. Each such deposit into the FAN Special Account shall be withdrawn by the Bank from the FAN GEF Trust Fund Grant Account under one or more of the FAN Eligible Categories.
2. Each application for withdrawal from the FAN GEF Trust Fund Grant Account for deposit into the FAN Special Account shall be supported by a FAN-FMR.
3. Upon receipt of each application for withdrawal of an amount of the FAN GEF Trust Fund Grant, the Bank shall, on behalf of FAN, withdraw from the FAN GEF Trust Fund Grant Account and deposit into the FAN Special Account an amount equal to the lesser of: (a) the amount so requested; and (b) the amount which the Bank has determined, based on the FAN-FMR accompanying said application, is required to be deposited in order to finance FAN Eligible Expenditures during the six-month period following the date of such report; provided, however, that the amount so deposited, when added to the amount indicated by said FAN-FMR to be remaining in the FAN Special Account, shall not exceed \$50,000.

## **SCHEDULE 2**

### **Procurement**

#### Section I. Procurement of Goods

##### Part A: General

Goods shall be procured in accordance with the provisions of Section I of the “Guidelines for Procurement under IBRD Loans and IDA Credits” published by the Bank in January 1995 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) and the following provisions of Section I of this Schedule.

##### Part B: Shopping

Goods estimated to cost \$50,000 equivalent or less per contract may be procured under contracts awarded on the basis of shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

##### Part C: Review by the Bank of Procurement Decisions

###### 1. Procurement Planning

Prior to the request of any quotation, the proposed procurement plan for the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods shall be undertaken in accordance with such procurement plan as shall have been approved by the Bank, and with the provisions of said paragraph 1.

###### 2. Post Review

With respect to each contract procured in accordance with the procedures referred to in Part B above, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with the provisions of the Section I and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 and revised in September 1997, January 1999 and May 2002 (the Consultant Guidelines), paragraph 1 of Appendix 1 thereto, Appendix 2 thereto, and the following provisions of Section II of this Schedule.

Part B: Quality- and Cost-based Selection

1. Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, paragraph 3 of Appendix 1 thereto, Appendix 2 thereto, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

2. The following provisions shall apply to consultants' services to be procured under contracts awarded in accordance with the provisions of the preceding paragraph: the short list of consultants, estimated to cost less than \$200,000 equivalent per contract, may comprise entirely national consultants in accordance with the provisions of paragraph 2.7 of the Consultant Guidelines.

Part C: Other Procedures for the Selection of Consultants

1. Selection Based on Consultants' Qualifications

Services rendered by consulting firms estimated to cost less than \$100,000 equivalent per contract shall be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.7 of the Consultant Guidelines.

2. Individual Consultants

Services for tasks that meet the requirements set forth in paragraph 5.1 of the Consultant Guidelines shall be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.1 through 5.4 of the Consultant Guidelines.



Part D: Review by the Bank of the Selection of Consultants

1. Selection Planning

A plan for the selection of consultants, which shall include contract cost estimates and applicable selection criteria and procedures, shall be furnished to the Bank, for its review and approval, prior to the issuance to consultants of any requests for proposals. Such plan shall be updated every six (6) months during the execution of the Project, and each such updating shall be furnished to the Bank for its review and approval. Selection of all consultants' services shall be undertaken in accordance with such selection plan (as updated from time to time) as shall have been approved by the Bank.

2. Prior Review

With respect to: (i) each contract for the employment of consulting firms estimated to cost \$100,000 equivalent or more, and (ii) the first contract for the employment of a consulting firm to be procured in accordance with the procedures referred to in Part C.1 above, the procedures set forth in paragraphs 2, 3, and 5 of Appendix 1 to the Consultant Guidelines shall apply.

3. Post Review

With respect to each contract procured in accordance with the procedures referred to in Part B above, the procedures set forth in paragraph 4 of Appendix 1 to the Consultant Guidelines shall apply.

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