

CONFORMED COPY

GEF TRUST FUND GRANT NUMBER TF051960

Global Environment Facility Trust Fund Grant Agreement

(Off Grid Rural Electrification Project - PERZA)

between

REPUBLIC OF NICARAGUA

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

acting as an Implementing Agency of the Global Environment Facility

Dated May 27, 2003

GEF TRUST FUND GRANT NUMBER TF051960

GLOBAL ENVIRONMENT FACILITY TRUST FUND GRANT AGREEMENT

AGREEMENT, dated May 27, 2003, between REPUBLIC OF NICARAGUA (the Recipient) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) acting as an implementing agency of the Global Environment Facility (GEF) in respect of grant funds provided to 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;

(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 which, *inter alia*, established the GEF Trust Fund and appointed the Bank as trustee of the GEF Trust Fund (Resolution No. 94-2);

(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 (Resolution No. 98-2);

(D) the Recipient, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement (the Project), has requested assistance from the resources of the GEF Trust Fund in the financing of Parts A, B, E and F 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 94-2 and to be funded from the resources of the GEF Trust Fund; and

(E) the Recipient has also requested the Association to provide additional financing towards the financing of the Project by an agreement of even date herewith between the Recipient and the Association (the Development Credit Agreement), whereby the Association has agreed to provide such assistance in an amount in various currencies equivalent to eight million eight hundred thousand Special Drawing Rights (SDR 8,800,000); and

WHEREAS the Bank has agreed, on the basis, *inter alia*, of the foregoing, to extend the grant (the Grant) to the Recipient 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), (7), (8), (14), (15), (16), (18) and (21), 2.02 and 2.03;
 - (iii) Section 3.01;
 - (iv) Section 4.01; Section 4.06;
 - (v) Article V;
 - (vi) Sections 6.01, 6.02 (c), (e), (f), (g), (h), (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, 12.02, 12.03 and 12.04.
- (b) The General Conditions shall be modified as follows:
- (i) the term "Bank", wherever used in the General Conditions, other than in Sections 5.01 (a) and 6.02 (f) thereof, means the Bank acting as an implementing agency of the GEF;
 - (ii) the term "Borrower", wherever used in the General Conditions, means the Recipient;
 - (iii) the term "Loan Agreement", wherever used in the General Conditions, means this Agreement;

- (iv) the term “Loan”, wherever used in the General Conditions, means the Grant;
- (v) the term “Loan Account”, wherever used in the General Conditions, means the Grant Account, the account opened by the Bank on its books in the name of the Recipient to which the amount of the Grant is credited; and
- (vi) a new paragraph (q) is added to Section 6.02 of the General Conditions, as follows: “(q) An extraordinary situation shall have arisen in which any further disbursement under the Grant would exceed the resources available for disbursement from the Global Environment Facility.”

Section 1.02. Wherever used in this Agreement, 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) “ATDR-BL” means *Asociación de Trabajadores de Desarrollo Rural-Benjamín Linder*, a non-governmental organization legally established in the territory of the Recipient, and duly filed under number 346, pages 353-366, Volume IX, First Book of the Registry of Associations of the Department of Registry and Control of Associations of the Ministry of Government, to carry out activities of generation, distribution and commercialization of electrical energy at the site referred to in Part B.1 of the Project;

(b) “BDS” means business development services;

(c) “BDS Provider” means an entity accredited as per criteria in the Operational Manual to provide BDS to Beneficiaries;

(d) “Beneficiaries” means households and small businesses located in the Project Sites;

(e) “Beneficiary Agreement” means an agreement, satisfactory to the Association, between an MFI and a Beneficiary, referred to in Section 3.01 (d) (i) of the Development Credit Agreement;

(f) “CNE” means *Comisión Nacional de Energía*, the Recipient’s institution responsible for the formulation of energy sector policies and for the implementation of the national rural electricity program, established under Law No. 272 “*Ley de la Industria Eléctrica*” published in the Recipient’s Official Gazette on April 23, 1998;

(g) “Commercial Bank Agreement” means an agreement, satisfactory to the Bank, between CNE and an Eligible Commercial Bank, referred to in Section 3.01 (d) (i) of this Agreement;

(h) “Draft-Law for the Promotion of the Hydro-electric Sub-Sector” means the Recipient’s *Anteproyecto de Ley de Promoción del Sub-sector Hidroeléctrico*, presented to the National Assembly on April 1, 2002;

(i) “Electricity Provider” means an entity: (i) selected as per criteria in the Operational Manual (except in the case of ATDR-BL) to provide electricity in the Project Sites (such term also includes SHS Providers and SBCS Providers); and (ii) that has entered into an agreement (satisfactory to the Association and containing performance indicators approved by the Association) with INE or CNE, as the case may be, allowing the Electricity Provider to provide such service;

(j) “Electricity Provider Credit Agreement” means an agreement, between an Eligible Commercial Bank and an Electricity Provider, referred to in Section 3.01 (d) (i) of this Agreement;

(k) “Electricity Provider Subsidy Agreement” means an agreement, between CNE and an Electricity Provider, referred to in Section 3.01 (d) (ii) of this Agreement;

(l) “Electricity Services Provider Agreement” means the agreement referred to in Section 1.02 (i)(ii) above;

(m) “Eligible Commercial Bank” means a commercial bank that has been selected following the criteria provided in the Operational Manual, to provide Subproject financing to Electricity Providers;

(n) “Eligible Second-Tier Financial Institution” means a financial institution that has been selected, following the criteria provided in the Operational Manual, to provide Grant proceeds to MFIs pursuant to Part C of the Project;

(o) “ENEL” means *Empresa Nicaragüense de Electricidad*, the Recipient’s power company, established pursuant to Law 46-94 of January 1, 1995 published in the Recipient’s Official Gazette No. 204 on November 1, 1994;

(p) “FMR” means each financial monitoring report prepared in accordance with Section 4.02 of this Agreement;

(q) “FODIEN” means *Fondo para el Desarrollo de la Industria Eléctrica Nacional*, the Recipient’s national electricity development fund established under Law 272 published in the Recipient’s Official Gazette on April 23, 1998;

(r) “Implementation Letter” means the letter of even date herewith from the Recipient to the Bank setting forth the Project monitoring indicators;

(s) “Indigenous People Development Plan” means the plan referred to in Section 3.08 of this Agreement;

(t) “INE” means *Instituto Nicaragüense de Energía*, the Recipient’s energy regulatory entity, established pursuant to Legislative Decree No. 16 published in the Recipient’s Official Gazette No. 2 on August 23, 1979 and governed by its *Ley Orgánica* approved by Decree No. 87 of May 23, 1985, published in the Recipient’s Official Gazette No. 106 on June 6, 1985, as amended;

(u) “MFI” means a micro-finance institution accredited, following criteria provided for in the Operational Manual, to make loans to Beneficiaries;

(v) “Micro-Finance Credit Agreement” means an agreement, between an Eligible Second-Tier Financial Institution and an MFI, referred to in Section 3.01 (d) (i) of the Development Credit Agreement;

(w) “Micro-Finance Matching Grant Agreement” means an agreement referred to in Section 3.01 (d) (ii) of the Development Credit Agreement;

(x) “Operational Manual” means the manual referred to in Section 3.06 of this Agreement;

(y) “PMU” means the Project management unit referred to in Section 3.12 of this Agreement;

(z) “Project Sites” means sites served by electricity infrastructure constructed or installed under Part B of the Project, and their surrounding areas;

(aa) “SBCS” means solar battery charging station;

(bb) “SBCS Provider” means an entity accredited as per criteria in the Operational Manual to provide solar battery charging station services to Beneficiaries;

(cc) “SGSA” means the second generation special account referred to in Section 2.02(b) of this Agreement, to be opened with proceeds of the Special Account;

(dd) “SHS” means solar home systems;

(ee) “SHS Provider” means an entity accredited as per criteria in the Operational Manual to sell SHS nationwide, install the systems and provide after sales maintenance service throughout the rural areas in the Recipient’s territory;

(ff) “SIN” means *Sistema Interconectado Nacional*, the Recipient’s national electricity interconnected system;

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

(hh) “Subsidiary Agreement” means the agreement to be entered into between the Recipient and CNE pursuant to Section 3.01 (b) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Agreement; and

(ii) “Subproject” means the construction of electricity infrastructure at a site covered by Part B.1 through B.5 of the Project.

ARTICLE II

The Grant

Section 2.01. The Bank agrees to make available to the Recipient, on the terms and conditions set forth or referred to in this Agreement, the Grant in an amount in various currencies equivalent to four million twenty thousand Dollars (US\$4,020,000).

Section 2.02. (a) The amount of the Grant may be withdrawn from the Grant Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of goods, works and services required for carrying out the Project and to be financed out of the proceeds of the Grant.

(b) The Recipient may, for the purposes of the Project, open and maintain in Dollars a separate special deposit account in its Central Bank on terms and conditions satisfactory to the Bank. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 4 to this Agreement. The Recipient may likewise open and operate a second generation special account under terms and conditions satisfactory to the Bank.

Section 2.03. The Closing Date shall be December 31, 2008 or such later date as the Bank shall establish. The Bank shall promptly notify the Recipient of such later date.

Section 2.04. The President of the CNE, and any person or persons whom he or she shall designate in writing, is designated as representative of the Recipient for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 of this Agreement and Article V of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Recipient declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, shall cause CNE, pursuant to the Subsidiary Agreement, to carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, and environmental practices, and in accordance with the Operational Manual, and shall take or cause to be taken all actions, including the provision of funds, facilities, services and other resources necessary or appropriate for CNE to carry out the Project, and shall not take or permit to be taken any action which would prevent or interfere with the carrying out of the Project by CNE.

(b) The Recipient shall make the proceeds of the Grant available on a grant basis to CNE under an agreement (the Subsidiary Agreement), to be entered between the Recipient and CNE, under terms and conditions satisfactory to the Bank.

(c) The Recipient shall exercise its rights, and carry out its obligations, under the Subsidiary Agreement in such a manner as to protect the interests of the Recipient and the Bank and to accomplish the purposes of the Grant, and, except as the Bank shall otherwise agree, the Recipient shall not assign, amend, abrogate, waive or fail to enforce the Subsidiary Agreement or any provision thereof.

(d) (i) For purposes of carrying out Parts B.2 through B.5 of the Project, the Recipient shall cause CNE to make available to an Eligible Commercial Bank, through an agreement (Commercial Bank Agreement), the required amounts from the Grant to be on-lent to Electricity Providers under another agreement (the Electricity Provider Credit Agreement) to be entered into between the said Eligible Commercial Bank and each Electricity Provider on terms and conditions which shall have been approved by the Bank, to finance the carrying out of a Subproject by such Electricity Provider; and

(ii) for purposes of carrying out Parts B.1 through B.5 of the Project, the Recipient shall cause CNE to make available to Electricity Providers (except the SBCS Providers), through an agreement (the Electricity Provider Subsidy Agreement), the required amounts from the Grant to subsidize the carrying out of a Subproject by such Electricity Provider;

(e) The Recipient shall cause CNE to: (i) exercise its rights and carry out its obligations, under the Subsidiary Agreement and each Commercial Bank Agreement and Electricity Provider Subsidy Agreement, in such a manner as to protect the interests of

the Bank and the Recipient and accomplish the purposes of the Grant; and (ii) except as the Bank shall otherwise agree, not amend, abrogate, assign, waive or fail to enforce the Subsidiary Agreement and any Commercial Bank Agreement and Electricity Provider Subsidy Agreement, or any provision thereof.

(f) The Recipient shall ensure that CNE causes the parties to each Electricity Provider Credit Agreement to: (i) carry out their obligations under each such agreement; and (ii) exercise their rights under each such agreements as to protect the interests of the Bank and the Recipient and accomplish the purposes of the Grant and, except as CNE shall otherwise agree, not amend, abrogate, assign, waive, or fail to enforce any such agreement or provision thereof.

Section 3.02. The Recipient shall cause CNE to ensure that each Electricity Provider: (a) install, operate and maintain equipment under the Project in accordance with environmental standards and procedures that comply with local law, ensure proper recycling or disposal of batteries and solar cells, ensure proper storage, handling and disposal of fuels and ensure that mini-hydro (run of the stream) plants are set outside of protected areas, are set away from fish spawning areas and areas of particular ecological or scenic values, do not harm riverine vegetation and are regulated so as to restrict access by hunters and fishermen to sensitive areas; and (b) apply the environmental procedures (set forth in the Operational Manual) in the evaluation and execution of all Subprojects.

Section 3.03. Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Grant shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.04. The Recipient and the Bank hereby agree that the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) shall be carried out by CNE.

Section 3.05. For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Recipient shall cause CNE to:

(a) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Recipient and the Bank, a plan for the future operation of the Project; and

(b) afford the Bank a reasonable opportunity to exchange views with CNE on said plan.

Section 3.06. The Recipient shall cause CNE to carry out the Project in accordance with a manual, satisfactory to the Bank (the Operational Manual), said manual to include, *inter alia*:

(a) the organizational structure of the PMU , the procurement and financial requirements, and the procedures for the carrying out, monitoring and evaluation of the Project;

(b) the criteria for the selection, approval and implementation of Subprojects, including the environmental screening, evaluation, approval and monitoring procedures;

(c) the guidelines for construction of Subprojects;

(d) the criteria for the selection of Electricity Providers;

(e) a project implementation plan, including, *inter alia*, a detailed procurement plan;

(f) the criteria for accreditation of MFIs;

(g) the criteria for accreditation of BDS Providers;

(h) the criteria for accreditation of SHS Providers and SBCS Providers;

(i) the criteria for the selection of Eligible Commercial Banks;

(j) the criteria for the selection of Eligible Second-Tier Financial Institutions;

(k) a list of Beneficiary activities that cannot be financed under Part C.1 (a) of the Project;

(l) a list of BDS Provider and Beneficiary activities that cannot be supported through BDS or otherwise under Part D of the Project;

(m) the Indigenous People Development Plan;

(n) a model Micro-Finance Matching Grant Agreement;

(o) a model Micro-Finance Credit Agreement;

(p) a model Beneficiary Agreement;

(q) a model Commercial Bank Agreement;

(r) a model Electricity Provider Subsidy Agreement; and

- (s) a model Electricity Provider Credit Agreement.

In the case of any conflict between the terms of this Agreement and those of the Operational Manual, the terms of this Agreement shall prevail.

Section 3.07. Without limitation to the provisions of Section 3.01 (a) to this Agreement, the Recipient shall make yearly and timely allocation of the amounts of counterpart funds required to carry out the activities under the Project.

Section 3.08. The Recipient shall cause CNE to carry out a plan, designed to assist indigenous peoples affected by the Project (the Indigenous Peoples Development Plan) in accordance with such plans.

Section 3.09. The Recipient shall cause CNE and INE, as the case may be, to: (i) exercise its rights and carry out its obligations under each Electricity Services Provider Agreement, in such a manner to protect the interests of the Bank and the Recipient and accomplish the purpose of the Grant; and (ii) except as the Bank shall otherwise agree, not amend, abrogate, sign, waive or fail to enforce each Electricity Services Provider Agreement or any provision thereof.

Section 3.10. The Recipient shall cause CNE:

- (a) to maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the Project monitoring indicators set forth in the Implementation Letter, the carrying out of the Project and the achievement of the objectives thereof;

- (b) to prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank, on or about December 31, 2004, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (d) of this Section, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

- (c) to review with the Bank, by June 30, 2005, or such later date as the Bank shall request, the report referred to in paragraph (e) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Bank's views on the matter.

Section 3.11. The Recipient shall cause CNE to, unless the Bank shall otherwise agree, promote, identify, appraise, approve and monitor Subprojects in accordance with the rules and procedures set forth or referred to in the Operational Manual.

Section 3.12. The Recipient shall cause CNE to: (a) establish and maintain a Project management unit integrated within CNE, with an organizational structure, staff, functions and responsibilities satisfactory to the Bank, for the implementation and supervision of the Project; and (b) without limitation to paragraph (a) above, ensure that any change of PMU structure, staff, personnel, functions and responsibilities shall be effected only with the prior approval of the Bank.

Section 3.13. For purposes of Parts B.3 and B.4 of the Project, the Recipient shall cause CNE to identify and determine the sites mentioned therein, subject to approval of said sites by the Bank.

Section 3.14. The Borrower shall cause CNE to ensure that recipients of subsidies under categories 1 through 3 in the table in paragraph 1 of Schedule 1 to this Agreement pay, with their own counterpart funds, any tax due on purchases financed by such subsidies, so that in no case shall these subsidies finance such taxes.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Recipient shall cause CNE to establish and maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with accounting standards acceptable to the Bank, consistently applied, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to the Project.

(b) The Recipient shall cause CNE to:

- (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 auditing standards acceptable to the Bank, consistently applied, by independent auditors;
- (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year: (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year as so audited; and (B) an opinion on such statements and report of such audit, by said auditors, of such scope and in such detail as the Bank shall have reasonably requested;

- (iii) furnish to the Bank such other information concerning such records, accounts and financial statements, and the audit thereof, and concerning said auditors, as the Bank may from time to time reasonably request; and
 - (iv) within no later than 90 days after the Effective Date, appoint the independent auditors referred to in Section 4.01(b) (i) of this Agreement.
- (c) For all expenditures with respect to which withdrawals from the Grant Account were made on the basis of statements of expenditure, the Recipient shall:
- (i) maintain or cause to be maintained, in accordance with sound accounting practices, records and separate accounts reflecting such expenditures;
 - (ii) ensure that all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures are retained until at least one year after the Bank has received the audit report for the fiscal year in which the last withdrawal from the Grant Account was made; and
 - (iii) enable the Bank's representatives to examine such records.
- (d) The Recipient shall:
- (i) have the records and accounts referred to in paragraph (c) (i) of this Section and those for the Special Account and SGSA 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 six months after the end of each such year the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested, including a separate opinion by said auditors as to whether the 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;
 - (iii) furnish to the Bank such other information concerning said records and accounts and the audit thereof as the Bank shall from time to time reasonably request; and

- (iv) appoint, within no later than 90 days after the Effective Date, the independent auditors referred to in Section 4.01 (d) (i) of this Agreement.

Section 4.02. (a) Without limitation upon the Recipient's progress reporting obligations set out in Section 3.10 (b) of this Agreement, the Recipient shall cause CNE to prepare and furnish to the Bank a 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 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 FMR shall be furnished to the Bank not later than 45 days after the end of the first calendar quarter 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 quarter; thereafter, each FMR shall be furnished to the Bank not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

ARTICLE V

Remedies of the Bank

Section 5.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional events are specified:

(a) that the Draft-Law for the Promotion of the Hydro-electric Sub-sector, once legislatively approved and thus converted into law, shall have been amended, suspended, abrogated, repealed or waived so as to, in the opinion of the Bank, affect materially and adversely the ability of the Electricity Providers to carry out Subprojects by, for example, constraining the right of Electricity Providers to use water to generate electricity; and

(b) (i) Subject to subparagraph (ii) of this paragraph:

(A) the right of the Recipient to withdraw the proceeds of the Development Credit made to the Recipient for the financing of the Project shall have been suspended, canceled or terminated in whole or in part, pursuant to the terms of the Development Credit Agreement providing therefor; or

(B) such Development Credit shall have become due and payable prior to the agreed maturity thereof.

(ii) Subparagraph (i) of this paragraph shall not apply if the Recipient establishes to the satisfaction of the Bank that:

(A) such suspension, cancellation, termination or prematuring is not caused by the failure of the Recipient to perform any of its obligations under any of such agreement; and

(B) adequate funds for the Project are available to the Recipient from other sources on terms and conditions consistent with the obligations of the Recipient under this Agreement;

(c) the Recipient shall have failed to perform any of its obligations under the Development Credit Agreement; and

(d) as a result of events which have occurred after the date of this Agreement, an extraordinary situation shall have arisen which shall make it improbable

that the Recipient will be able to perform its obligations under the Development Credit Agreement.

ARTICLE VI

Effective Date; 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 (b) of the General Conditions:

- (a) the Subsidiary Agreement has been executed on behalf of the Recipient and CNE;
- (b) CNE has issued the Operational Manual and put it into effect;
- (c) CNE has established, and made operational, financial management arrangements satisfactory to the Association;
- (d) the PMU has been established and become operational with, *inter alia*, financial management staff in numbers and with qualifications satisfactory to the Bank;
- (e) the Bank has been provided with evidence satisfactory to the Bank that the amounts needed as Borrower's counterpart funds to carry out the Project up to December 31, 2003 have been allocated to the Project;
- (f) the Bank has been provided with evidence satisfactory to the Bank that the bidding process for selection of the Electricity Provider for the El Ayote Subproject referred to in Part B.2 of the Project, has been launched;
- (g) the Bank has been provided with evidence satisfactory to the Bank that CNE has reached the agreement with ATDR-BL, endorsed by INE, referred to in Section 1.02 (i) (ii) of this Agreement; and
- (h) the Development Credit Agreement has been executed and delivered and all conditions precedent to its effectiveness thereunder, except only the effectiveness of this Agreement, have been fulfilled.

Section 6.02. The following is specified as an additional matter, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Bank, namely, that the Subsidiary Agreement has been duly authorized or ratified by the Recipient and CNE and is legally binding upon the Recipient and CNE in accordance with its terms.

Section 6.03. The date August 25, 2003 is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.04. This Agreement shall continue in effect until the Grant has been fully disbursed and the parties to this Agreement have fulfilled their obligations hereunder.

ARTICLE VII

Representative of the Recipient; Addresses

Section 7.01. Except as provided in Section 2.04 of this Agreement, the Minister of Finance and Public Credit of the Recipient is designated as representative of the Recipient 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 Recipient:

Edificio del Ministerio de Hacienda y Crédito Público
Avenida Bolívar, frente a la Asamblea Nacional
Managua, Nicaragua
Apartado Postal 28

Facsimile: (505) 222-3033

With copies to:

Comisión Nacional de Energía
Atención: Presidente de la CNE
Del portón del Hospital Bautista
1 cuadra abajo, 125 metros al Lago
Apdo. CJ-159

Facsímile: (505) 222-4629

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:

INDEVAS
Washington, D.C.

248423 (MCI) or
64145 (MCI)

(202) 477-6391

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

REPUBLIC OF NICARAGUA

By /s/ Eduardo Montealegre

Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Amparo Ballivian

Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the Grant

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Grant, the allocation of the amounts of the 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 Grant Allocated (Expressed in Dollars)</u>	<u>% of Expenditures to be Financed</u>
(1) Subsidies I under Parts B.3 and B.5 of the Project	470,000	35%
(2) Subsidies II under Parts B.2 and B.4 (b) of the Project	60,000	35%
(3) Subsidies III under Part B.4 (a) of the Project	60,000	35%
(4) Consultants' Services under Part A, Parts B.6, B.7, E, and Part F.2 of the Project	2,710,000	56%
(5) Training under Parts B.7 (e), B.7 (f) and Part F.1 (b) of the Project	600,000	84%

<u>Category</u>	<u>Amount of the Grant Allocated (Expressed in Dollars)</u>	<u>% of Expenditures to be Financed</u>
(6) Audit services required under Section 4.01 of this Agreement and Part F.1 (c) of the Project	120,000	45%
TOTAL	<u>4,020,000</u>	

2. For the purposes of this Schedule:

(a) the term “Subsidies I” means amounts for goods, works and services for Parts B.3 and B.5 of the Project, financed through the Electricity Provider Subsidy Agreements referred to in Section 3.01 (d) (ii) of this Agreement;

(b) the term “Subsidies II” means amounts payable under Electricity Services Provider Agreements to Electricity Providers by CNE and/or INE for implementation of Parts B.2 and B.4(b) of the Project, financed through the Electricity Provider Subsidy Agreements referred to in Section 3.01 (d) (ii) of this Agreement;

(c) the term “Subsidies III” means amounts payable under Electricity Services Provider Agreements to Electricity Providers by CNE and/or INE for implementation of Part B.4(a) of the Project, financed through the Electricity Provider Subsidy Agreements referred to in Section 3.01 (d) (ii) of this Agreement; and

(d) the term “training” includes only: (i) reasonable travel, room board and per diem expenditures incurred by trainees in connection with their training and by non-consultant training facilitators; (ii) course fees; (iii) training facility rentals; and (iv) training material preparation, acquisition, reproduction and distribution expenses not otherwise covered under this paragraph.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

(a) payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of \$400,000, may be made on account of payments made for expenditures before that date but after December 15, 2002; and

(b) payments made for expenditures covered by disbursement category 2 set forth in the table in paragraph 1 of this Schedule unless the Draft-Law for the Promotion of the Hydro-electric Sub-sector has been approved by the Recipient's National Assembly and has been declared in effect, including its promulgation and publication in the Recipient's Official Gazette.

4. The Bank may require withdrawals from the Grant Account to be made on the basis of statements of expenditure for expenditures for Subsidies I, Subsidies II, Subsidies III and training, under such terms and conditions as the Bank shall specify by notice to the Recipient.

SCHEDULE 2

Description of the Project

The objectives of the Project are to support the Recipient in: (i) increasing the sustainable provision of electricity services and associated social and economic benefits in selected rural sites in its territory; and (ii) strengthening its institutional capacity to implement its national rural electrification strategy.

The Project consists of the following parts, subject to such modifications thereof as the Recipient and the Bank may agree upon from time to time to achieve such objectives:

Part A. Rural Electrification and Renewable Energy Policies and Strategies

1. Strengthening of FODIEN through the provision of technical assistance, including the following actions:
 - (a) development of a proposal to reform and strengthen FODIEN;
 - (b) presentation by CNE to the Recipient of the proposed reforms, in consultation with other relevant government institutions, and adoption of the plan to reform FODIEN; and
 - (c) support to CNE to implement the reform adopted by the Recipient.
2. Development of an overall energy sector policy that includes the general guidelines for a policy of rural electrification, as well as service standards and other procedures for the provision of electricity services in rural areas.
3. Rationalization of prices and subsidies through the provision of technical assistance to develop electricity prices and subsidies policies that would provide the policy guidelines for INE to set tariffs, both in urban and rural areas.
4. Elaboration of a strategy by CNE to address the situation of ENEL's off-grid plants, including: (a) a plan to make ENEL's off-grid plants sustainable and privately managed if feasible, or to dismantle said plants and replace them by other sources of energy when the latter is the better option; and (b) a proposal to implement the plan in (a) above within CNE's electrification program.
5. Carrying out of a wood fuel survey to analyze the environmental impact of this energy generation method in the Recipient's territory and propose more environmentally sound alternatives.

6. Carrying out of other policy and strategy studies, including, *inter alia*, studies on the quality of rural services and public dissemination of sector policies and strategies.

Part B. Rural Electrification Subprojects

1. Establishment of a mini-hydro power plant at El Bote-El Cua, its connection to the distribution network in San Jose Bocay and interconnection of these systems to the SIN.

2. Establishment of a mini-hydro power plant, installation of distribution lines that will serve the municipality of El Ayote and adjacent communities, and the installation of the necessary transmission lines to connect it with SIN.

3. Establishment of central SBCS(s) in: (a) each of Francia-Sirpe, Awastingni and Sangni Laya; and (b) other sites to be determined in accordance with Section 3.13 of this Agreement.

4. (a) Carrying out of power subprojects (other than hydro-electric), including the establishment of power plants, installation of distribution (mini-grid) and transmission lines, construction of roads to the plants and other improvements, in sites to be identified in accordance with Section 3.13 of this Agreement; and

(b) Carrying out of hydro-electric power subprojects, including the establishment of power plants, installation of distribution (mini-grid) and transmission lines, construction of roads to the plants and other improvements, in sites to be identified in accordance with Section 3.13 of this Agreement.

5. Carrying out of a solar photovoltaic subproject, consisting of the commercial dissemination and installation of photovoltaic systems, by, *inter alia*, providing funds to accredited dealers of SHS to make SHS affordable to Beneficiaries.

6. Carrying out of feasibility studies, financial and economic analysis, and social and environmental assessments to: (a) define the appropriate technology for, and finalize the preparation of Subprojects under Parts B.1 through B.3 (a) of the Project; and (b) prepare new Subprojects under Parts B.3 (b) and B.4 of the Project.

7. Provision of technical assistance and training activities to: (a) support preparation work for new Subproject sites; (b) evaluate performance of renewable energy systems deployed; (c) provide standards and certification services for photovoltaic systems; (d) supervise and monitor the implementation of Subprojects; (e) train power plant and SBCS operators; and (f) train and provide market development support to accredited dealers of SHS.

Part C. Micro-Finance Services

1. Support to the MFIs to maximize the development impact of the Subprojects, through provision of:

(a) commercially priced, performance-based loans to MFIs (through Micro-Finance Credit Agreements) to on-lend to Beneficiaries (through Beneficiary Agreements) to finance electricity connections, purchase of photovoltaic systems, purchase of batteries and accessories for charging in centralized solar stations and for other business purposes (with exclusion of purposes listed on a negative list); and

(b) institutional development matching grants to MFIs (through Micro-Finance Matching Grant Agreements) to support technical assistance and asset purchases to improve their financial management systems and new product development and piloting.

2. Carrying out of market studies to demonstrate the scale and variety of credit demand by Beneficiaries under Part C.1 (a) above.

3. Carrying out of supervision and evaluation exercises to measure Beneficiary satisfaction under Part C.1 (a) above.

4. Management by Eligible Second-Tier Financial Institutions of funds on-lent to MFIs.

Part D. Business Development Services

1. (a) Development of BDS products and delivery models for Project Sites; and
(b) provision of BDS to Beneficiaries.

2. Carrying out of market studies to enable BDS Providers to determine the potential for specific types of services under Part D.1 above.

3. Carrying out of supervision exercises, at the firm and BDS Provider level, to measure coverage, quality, client satisfaction and sustainability of services under Part D.1 above.

4. Carrying out of coordination services in support of Part D.1 above.

Part E. Project Communication and Social Participation

Carrying out of specific activities that will strengthen the social impact of the Project and will support the implementation of the Indigenous People Development Plan, including, *inter alia*:

1. supporting community participation in the design and supervision of the Project, including field trips to Project Sites in the Atlantic coast and the central region of the Recipient's territory for social monitoring and evaluation, and meetings with local authorities;
2. disseminating and promoting the Project through presentations, promotion and dissemination workshops and other social/communication tasks; and
3. undertaking annual and final evaluations to assess the social impact of the Project.

Part F.: Project Management and Institutional Strengthening

1. Support to the PMU through:
 - (a) acquisition of selected equipment and software;
 - (b) carrying out of training for PMU staff with regard to Project coordination, supervision and monitoring; and
 - (c) carrying out of financial audits.
2. Operation of the PMU for purposes of Project management and supervision.

* * *

The Project is expected to be completed by June 30, 2008.

SCHEDULE 3

Procurement

Section I. Procurement of Good and Works

Part A: General

Goods and works 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: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.
2. To the extent practicable, contracts for goods shall be grouped in bid packages estimated to cost \$150,000 equivalent or more each.

Part C: Other Procurement Procedures

1. National Competitive Bidding

(a) Goods estimated to cost less than \$150,000 equivalent per contract, but more than \$25,000 equivalent per contract, up to an aggregate amount not to exceed \$250,000 equivalent, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

(b) Works estimated to cost \$1,500,000 equivalent or less per contract, but more than \$50,000 equivalent per contract, up to an aggregate amount not to exceed \$1,800,000 equivalent, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

2. International or National Shopping

Goods estimated to cost \$25,000 equivalent or less per contract, up to an aggregate amount not to exceed \$170,000 equivalent, may be procured under contracts awarded on the basis of international/national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

3. Procurement of Small Works

Works estimated to cost \$50,000 equivalent or less per contract, up to an aggregate amount not to exceed \$150,000 equivalent, may be procured under a lump-sum, fixed price contracts awarded on the basis of quotations obtained from three (3) qualified domestic contractors, in response to a written invitation. The invitation shall include a detailed description of the works, including basic specifications, the required completion date, a basic form of agreement acceptable to the Bank, and relevant drawings, where applicable. The award shall be made to the contractor who offers the lowest price quotation for the required work, and who has experience and resources to complete the contract successfully.

4. BOO Procurement

Facilities under Parts B.2 and B.4 of the Project shall be constructed and operated under a contract awarded by INE to an entrepreneur (selected in agreement with CNE) on the basis of limited international bidding procedures in accordance with the provisions of paragraph 3.2 of the Guidelines, subject to the provisions of paragraph 3.13 (a) thereof. The goods, works and services required for the construction of said facilities shall then be procured in accordance with the applicable procedures of said entrepreneur.

Part D: Review by the Bank of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to bid for contracts, 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 and works 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. Prior Review

With respect to each contract for goods and works (other than those procured by an entrepreneur covered by Part C.4 of this Section), the procedures set forth in paragraphs 2 and 3 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 Sections I and 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 Section.

Part B: Quality- and Cost-based Selection

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, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

Part C: Other Procedures for the Selection of Consultants

1. Least-cost Selection

Services under small and simple contracts estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

2. Selection Based on Consultants' Qualifications

Services for promotion campaigns, beneficiary surveys, training and market studies under Parts A and D of the Project estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.7 of the Consultant Guidelines.

3. Single Source Selection

Services under Part B.3 (a) of the Project, and services under very small contracts which are estimated to cost less than \$25,000 equivalent per contract, where it is not possible or justified to obtain competitive proposals, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraphs 3.8 through 3.11 of the Consultant Guidelines.

4. Individual Consultants

Services of individual consultants for : (a) specialized advisory services shall be procured under contracts awarded in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultant Guidelines; and (b) specialized advisory services under Parts B, C and D of the Project may be selected on a sole-source basis in accordance with the provisions of paragraphs 5.3 and 5.4 of the Consultant Guidelines, subject to prior approval of the Bank.

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, contract packaging, 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 12 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

(a) With respect to each contract for the employment of consulting firms, the procedures set forth in paragraphs 2, 3 and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of individual consultants the report on the comparison of the qualifications and experience of candidates, terms of reference and terms of employment of the consultants shall be furnished to the Bank for its prior review and approval. The contract shall be awarded only after the said approval shall have been given. The provisions of paragraph 3 of Appendix 1 to the Consultant Guidelines shall also apply to such contracts.

SCHEDULE 4

Special Account

1. For the purposes of this Schedule:
 - (a) the term “eligible Categories” means Categories set forth in the table in paragraph 1 of Schedule 1 to this Agreement;
 - (b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Grant allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and
 - (c) the term “Authorized Allocation” means an amount equivalent to \$270,000 to be withdrawn from the Grant Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule.
2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.
3. After the Bank has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:
 - (a) For withdrawals of the Authorized Allocation, the Recipient shall furnish to the Bank a request or requests for deposit into the Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Bank shall, on behalf of the Recipient, withdraw from the Grant Account and deposit into the Special Account such amount or amounts as the Recipient shall have requested.
 - (b)
 - (i) For replenishment of the Special Account, the Recipient shall furnish to the Bank requests for deposits into the Special Account at such intervals as the Bank shall specify.
 - (ii) Prior to or at the time of each such request, the Recipient shall furnish to the Bank the documents and other evidence required pursuant to paragraph 4 of this Schedule 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 the Recipient, withdraw from the Grant Account and deposit into the Special Account such amount as the Recipient shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for

eligible expenditures. All such deposits shall be withdrawn by the Bank from the Grant Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Recipient out of the Special Account, the Recipient 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 eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Bank shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Bank shall have determined that all further withdrawals should be made by the Recipient directly from the Grant Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Recipient 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 the records and accounts for the Special Account;

(c) if, at any time, the Bank shall have notified the Recipient of its intention to suspend in whole or in part the right of the Recipient to make withdrawals from the Grant Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Grant allocated to the eligible Categories minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Grant Account of the remaining unwithdrawn amount of the Grant allocated to the eligible Categories shall follow such procedures as the Bank shall specify by notice to the Recipient. 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 Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Bank shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Bank, the Recipient shall, promptly upon notice from the Bank: (A) provide such additional evidence as the Bank may request; or (B) deposit into the Special Account (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such

payment or the portion thereof not so eligible or justified. Unless the Bank shall otherwise agree, no further deposit by the Bank into the Special Account shall be made until the Recipient has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Bank shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Recipient shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

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

(d) Refunds to the Bank made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Grant Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.