

Public Disclosure Authorized

CONFORMED COPY

CREDIT NUMBER 3736-NI

Development Credit Agreement

(Programmatic Structural Adjustment Credit)

between

REPUBLIC OF NICARAGUA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated March 19, 2003

Public Disclosure Authorized

CREDIT NUMBER 3736-NI

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated March 19, 2003, between REPUBLIC OF NICARAGUA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Association has received from the Borrower a letter dated December 12, 2002, describing a program of actions, objectives and policies designed to support the Borrower's poverty reduction strategy (the Program), declaring the Borrower's commitment to the execution of the Program, and requesting assistance from the Association in support of the Program during the execution thereof;

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

(C) on the basis, inter alia, of the foregoing, the Association has decided to provide such assistance to the Borrower in support of the Program by making the Credit in one tranche as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

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

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

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

(b) Section 4.01 is modified to read:

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

- (c) Section 5.01 is modified to read:

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

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

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

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

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

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

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

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

(c) “ENITEL” means *Empresa Nicaragüense de Telecomunicaciones*, the Borrower’s telecommunications company established pursuant to Law No. 210 of November 30, 1995, published in *La Gaceta* No. 231, on December 7, 1995;

(d) “FAITAN” means *Fondo de Apoyo a la Investigación Tecnológica Agropecuaria y Forestal de Nicaragua*, the Borrower’s competitive fund for agricultural and forestry research services, implemented in accordance with the Subsidiary Agreement of May 4, 2001 entered into by the Borrower’s Ministry of Finance and Public Credit, the Ministry of Agriculture, Livestock and Forestry and FUNICA, as defined below, for the implementation of the Agricultural Technology Project partially financed by the Association Credit No.3371-NI;

(e) “FSS” means *Fondo Social Suplementario*, the Borrower’s supplementary social fund established pursuant to Decree No. 46-98 , published in *La Gaceta* No. 117 on June 24, 1998 as amended by Decree 54-98, published in *La Gaceta* No. 167 on September 4, 1998, Decree 122-00, published in *La Gaceta* No. 232 of December 6, 2000 and Decree 57-2002 published in *La Gaceta* No. 114 on June 19, 2002, as the agency responsible for the financing of projects and programs in the area of health, education and social protection and for channeling funds made available as a result of HIPC debt relief received by the Borrower;

(f) “FUNICA” means *Fundación para el Desarrollo Tecnológico y Forestal de Nicaragua*, the Borrower’s foundation for agricultural and forestry development technology established pursuant to Decree A.N. No. 2867 published in *La Gaceta* No. 71 on April 17, 2001 as the agency responsible for administering the funds of *inter alia* FAITAN, as defined above;

(g) “General Health Law” means *Ley General de Salud*, the Borrower’s Law No. 423 of November 17, 2002 published in *La Gaceta* No. 91 on May 17, 2002, that provides the legal framework for strengthening the normative and regulatory role of the Ministry of Health of the Borrower;

(h) “HIPC Initiative ” means Highly Indebted Poor Countries debt relief initiative administered by the Association;

(i) “INTA” means *Instituto Nicaragüense de Tecnología Agropecuaria*, the Borrower’s institute for agricultural technology established pursuant to Decree 22-93, published in *La Gaceta* No. 61 on March 26, 1993, as amended by Decree No. 111/2000, published in *La Gaceta* No. 207 on November 1, 2000, Decree No. 40-2001, published in *La Gaceta* No. 75 on April 23, 2001 and Decree No. 19/2002, published in *La Gaceta* No. 42 on March 1, 2002;

(j) “Regulation” means *Reglamento de la Ley de Participación Educativa*, the Borrower’s Decree No. 46-2002 published in *La Gaceta No. 95* on May 23, 2002, which regulates the Borrower’s School Autonomy Law as defined here below;

(k) “School Autonomy Law” means *Ley de Participación Educativa*, the Borrower’s Law No. 413 published in *La Gaceta No. 56* on March 21, 2002 that provides the legal framework for the participation of parents, students and teachers in the administration of public schools in the Borrower’s territory;

(l) “School Councils” means *Consejos Directivos Escolares*, councils established pursuant to the School Autonomy Law with the objective of organizing and facilitating community participation in the administration of public schools; and

(m) “SIGFA” means *Sistema Integrado de Gestión Financiera, Administrativa y Auditoría*, the Borrower’s integrated system for the financial management of its administration, established pursuant to Law 290 of June 3, 1998, published in *La Gaceta No. 102* on June 3, 1998 and implemented pursuant to Decree No. 44-98, published in *La Gaceta No. 117* on June 24, 1998.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to eleven million four hundred thousand Special Drawing Rights (SDR11,400,000).

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

(b) The Borrower shall open, prior to furnishing to the Association the first request for withdrawal from the Credit Account, and thereafter maintain in the Central Bank of Nicaragua, a deposit account in Dollars on terms and conditions satisfactory to the Association. All withdrawals from the Credit Account shall be deposited by the Association into the Deposit Account.

(c) The Borrower undertakes that the proceeds of the Credit shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Association shall have determined at any time that any proceeds of the

Credit shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Association: (i) deposit into the Deposit Account an amount equal to the amount of said payment; or (ii) if the Association shall so request, refund such amount to the Association. Amounts refunded to the Association upon such request shall be credited to the Credit Account for cancellation.

Section 2.03. The Closing Date shall be December 31, 2003 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

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

(b) The commitment charge shall accrue: (i) from the date sixty (60) days after the date of this Agreement (the Accrual Date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or cancelled; and (ii) at the rate set as of the June 30 immediately preceding the Accrual Date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

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

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

Section 2.06. Commitment charges and service charges shall be payable semiannually on June 15 and December 15 in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each June 15 and December 15 commencing June 15, 2013 and ending December 15, 2042. Each installment to, and including the installment payable on, December 15, 2022 shall be one percent (1%) of such

principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's per capita gross national product (GNP), as determined by the Association, shall have exceeded for three (3) consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by the Association of the development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by:

- (A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and
- (B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six (6) months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five (5) years on such repayment of principal.

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

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

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Particular Covenants

Section 3.01. (a) The Borrower and the Association shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and the actions specified in Schedule 2 to this Agreement.

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

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

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

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

(b) furnish to the Association as soon as available, but in any case not later than four (4) months after the date of the Association's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

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

ARTICLE IV

Additional Events of Suspension

Section 4.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional events are specified:

(a) The Borrower's macroeconomic policy framework has become inconsistent with the objectives of the Program.

(b) An action has been taken or a policy has been adopted to reverse any action or policy under the Program in a manner that would, in the opinion of the Bank, adversely affect the achievements of the objectives of the Program.

(c) An action has been taken or a policy has been adopted to reverse any action listed in Schedule 2 to this Agreement.

ARTICLE V

Termination

Section 5.01. The date June 17, 2003 is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VI

Representative of the Borrower; Addresses

Section 6.01. The Minister of Finance and Public Credit of the Borrower is designated as the representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

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

For the Borrower:

Ministerio de Hacienda y Crédito Público
Costado Norte de la Asamblea Nacional
Managua, Nicaragua

Facsimile: 505-2223033

For the Association:

International Development Association
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, Nicaragua, as of the day and year first above written.

REPUBLIC OF NICARAGUA

By /s/ Eduardo Montealegre
Authorized Representative

INTERNATIONAL DEVELOPMENT
ASSOCIATION

By /s/ Amparo Ballivian
Acting Regional Vice President
Latin America and the Caribbean

SCHEDULE 1

Excluded Expenditures

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

1. expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;
2. expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the Association shall have financed or agreed to finance, or which the Bank or the Association shall have financed or agreed to finance under another credit or loan;
3. expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Association by notice to the Borrower:

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
112	-	Alcoholic beverages
121 manufactured	-	Tobacco, un- tobacco refuse
122 manufactured	-	Tobacco, (whether or not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semiprecious stones, un-worked or worked

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971	-	Gold, non-monetary (excluding gold ores and concentrates)

4. expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;

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

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

7. expenditures under a contract in respect of which the Association determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Credit during the procurement or execution of such contract, without

the Borrower having taken timely and appropriate action satisfactory to the Association to remedy the situation.

SCHEDULE 2

Actions Referred to in Recital (B) of the Preamble to this Agreement

1. The Borrower has provided to the Association a report on the Borrower's poverty-focused and overall public spending executed in 2001, to be used as baseline for future expenditure monitoring purposes.
2. INTA has adopted operational regulations and by-laws designed to encourage the creation of a market for providers of agricultural technology services.
3. The Borrower has created, and is operating, FUNICA to, *inter alia*, administer a competitive fund to finance agricultural services (FAITAN).
4.
 - (a) The Borrower has divested 51 percent of its ENITEL shares.
 - (b) ENEL's power generating operations have been assigned to four successor companies of ENEL, two of which have been either sold to, or are being operated by, the private sector.
5. The Borrower's School Autonomy Law and its Regulation have both been approved by the Borrower's National Assembly and executive branch, respectively, and are in effect.
6.
 - (a) 2800 members of School Councils have been trained on their responsibilities under the School Autonomy Law and its Regulation;
 - (b) 20,000 copies of the School Autonomy Law and its Regulation have been published and distributed to School Councils, parents, and education sector staff;
 - (c) 50% of public schools in the territory of the Borrower are receiving direct financial transfers from the Borrower as provided under the School Autonomy Law and its Regulation for managing schools, and said schools have been given and are exercising the power to hire and fire their teachers; and
 - (d) a pilot program designed to analyze the effects of implementing the School Autonomy Law and its Regulation is being implemented.
7. The Borrower's General Health Law has been approved by the Borrower's National Assembly and is in effect.

8. The Borrower has established, and is operating, a results-based management system for basic health care delivery in 13 municipalities.

9. The Borrower has furnished to the Association evidence that the estimated percentage of the total national population served by potable water connections has increased by at least 1.4 percentage points per year in each of 2000 and 2001. The Borrower has also furnished to the Association evidence that the percentage of the total national population with access to sanitation services has increased by 0.7 percentage points per year over the period 1998 - 2001.

10. The Borrower has implemented the SIGFA budget formulation and execution modules and SIGFA accounting module in 31 central government agencies and institutions and has made budget execution figures publicly available through the internet.

11. The FSS Coordinating Committee has approved the regulations for tracking and accounting all funds made available to the Supplementary Social Fund (FSS), including HIPC debt relief funds received by the Borrower.