

**CONFORMED COPY**

**CREDIT NUMBER 3850-NI**

# **Development Credit Agreement**

**(Poverty Reduction Support Credit)**

**between**

**REPUBLIC OF NICARAGUA**

**and**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**Dated February 5, 2004**

**CREDIT NUMBER 3850-NI**

**DEVELOPMENT CREDIT AGREEMENT**

AGREEMENT, dated February 5, 2004, between the 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, 2003, describing a program of actions, objectives and policies designed to achieve poverty reduction (hereinafter called the Program), declaring the Borrower's commitment to the execution of the Program, and requesting assistance from the Association in support of the Program during the execution thereof; and

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

NOW THEREFORE the parties hereto hereby agree as follows:

**ARTICLE I**

**General Conditions; Definitions**

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

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

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

(b) Section 4.01 is modified to read:

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

(c) Section 5.01 is modified to read:

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

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

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

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

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

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

(a) “AFPs” means *Administradoras de Fondo de Pensiones*, the private pension fund administrators established by Law No. 340 published in *La Gaceta* No. 72 and No. 73 on April 12, 2000;

(b) “Chinese-Wall” means the legal barrier that prevents information originating in the pension fund arm of a financial group to be used by other financial institutions of the same group to avoid the use of inside information;

(c) “CNE” means *Comisión Nacional de Energía*, the Borrower’s institution responsible for the formulation of energy sector policies and for the implementation of the national rural electricity program, established pursuant to Law No. 272, published in *La Gaceta* No. 74 on April 23, 1998;

(d) “CONAPAS” means *Comisión Nacional de Agua Potable y Alcantarillado Sanitario*, the Borrower’s commission responsible for the formulation of water and sanitation sector policies, established pursuant to Decree No. 51-1998, published in *La Gaceta* No. 138, on July 24, 1998;

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

(f) “ENACAL” means *Empresa Nicaragüense de Acueductos y Alcantarillados*, the Borrower’s institution responsible for the water supply and sewerage system established pursuant to Law No. 276, published in *La Gaceta* No. 12, on January 20, 1998;

(g) “ENTRESA” means *Empresa Nicaragüense de Transmisión Eléctrica*, The Borrower’s electric transmission company, established pursuant to Decree No. 116-1999, published in *La Gaceta* No. 67, on April 13 1999;

(h) “FISE” means *Fondo de Inversión Social de Emergencia*, the Borrower’s institution responsible for the administration and execution of projects aimed at satisfying the basic needs of vulnerable groups and to increase their productive capacity, established pursuant to Decree No. 59-1990, published in *La Gaceta* No 240 on December 13, 1990, amended by Decree No. 43-1994, published in *La Gaceta* No. 203 on October 31, 1994 and amended by Decree No. 57-1998, published in *La Gaceta* 203 on September 4, 1998;

(i) “FODIEN” means *Fondo de Desarrollo para la Industria Eléctrica Nacional*, the Borrower’s fund for rural electrification, established under Law 272 “*Ley de la Industria Eléctrica*”, published in *La Gaceta* No. 74 on April 23, 1998;

(j) “INSS” means *Instituto Nicaragüense de Seguridad Social*, the Borrower’s social security institute, established pursuant to Law No. 93, published in *La Gaceta* No. 46 on March 1, 1973;

(k) “Law of Municipalities” means *Ley de Municipios*, the Borrower’s Law No. 40 published in *La Gaceta* No. 155 on August 17, 1988, amended by Law No. 261, published in *La Gaceta* No. 162 on August 26, 1997;

(l) “Non-Financial Public Sector” means the Borrower’s institutions comprising the central government, INSS, the Municipality of Managua, ENTRESA and ENACAL;

(m) “Participatory Education Regime” means *Régimen de Educación Participativa*, the Borrower’s regime providing for the participation of civil society in the education sector, in particular that of parents, teachers and students, established pursuant to Law 413, published in *La Gaceta* No. 56 on March 21, 2002;

(n) “Poverty Reduction Expenditures” means *Gasto para la Reducción de la Pobreza*, the Borrower’s public expenditures of the Non-Financial Public Sector aimed at reducing poverty, as defined in Annex VI of the Borrower’s poverty reduction strategy paper entitled “A Strengthened Growth and Poverty Reduction Strategy,” dated July 2001;

(o) “SECEP” means *Secretaría de Coordinación y Estrategia de la Presidencia*, the Borrower’s institution responsible for coordinating public policies and strategies necessary to design and follow up Nicaragua’s development programs, established pursuant to Decree No. 118-2001, published in *La Gaceta* No. 1 and No. 2 on January 2 and 3, 2002 respectively,

amended by Decree No. 64-2002, published in *La Gaceta* No. 155 on August 19, 2002 and by Decree No. 29-2003, published in *La Gaceta* No. 51 on March 13, 2003;

(p) “Second-Tranche Release Date” means the date on which the Association sends the Borrower a notice to the effect that the conditions set forth or referred to in Section 2.02 (d) of this Agreement have been met;

(q) “SNIP” means *Sistema Nacional de Inversión Pública*, the Borrower’s national system of public investment, administrative unit responsible for coordinating, advising, consulting and controlling public investment, established pursuant to Decree 61-2001, published in *La Gaceta* No.129 on July 9, 2001;

(r) “Superintendency of Banks” means *Superintendencia de Bancos y Otras Instituciones Financieras*, the Borrower’s institution responsible for supervising and regulating depository financial institutions, established pursuant to Law No 316, published in *La Gaceta* No. 196 on October 14, 1999; and

(s) “Superintendency of Pensions” means *Superintendencia de Pensiones*, the Borrower’s institution for supervising and regulating AFPs, established pursuant to Law No. 388, published in *La Gaceta* No. 85 on May 8, 2001.

## ARTICLE II

### The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to forty nine million Special Drawing Rights (SDR 49,000,000).

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

(b) The Borrower shall open, prior to furnishing to the Association the first request for withdrawal from the Credit Account, and thereafter maintain in its central bank, 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.

(d) No withdrawals shall be made from the Credit Account after the aggregate of the proceeds of the Credit withdrawn from the Credit Account shall have reached the equivalent of SDR24,500,000 unless the Association shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Association:

- (i) with the progress achieved by the Borrower in the carrying out of the Program;
- (ii) that the macroeconomic policy framework of the Borrower is satisfactory; and
- (iii) that the actions described in Schedule 2 to this Agreement have been taken.

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

Section 2.03. The Closing Date shall be December 31, 2005 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 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 March 15 and September 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 March 15 and September 15 commencing on March 15, 2014, and ending on September 15, 2043. Each installment to and including the installment payable on September 15, 2023 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

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

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

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

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

Section 2.08. The currency of the 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 to be taken after the disbursement of the Credit which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program, including any action specified in 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 months after the date of the Association's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

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

### **ARTICLE IV**

#### **Additional Event of Suspension**



Section 4.01. Pursuant to Section 6.02 (1) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

## **ARTICLE V**

### **Termination**

Section 5.01. The date May 5, 2004 days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

## **ARTICLE VI**

### **Representative of the Borrower; Addresses**

Section 6.01. The Minister of 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

WITNESSED BY:

/s/ Enrique Bolaños G.  
President of the Republic of Nicaragua

## 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 a 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	-	Tobacco, unmanufactured, tobacco refuse
122	-	Tobacco, manufactured (whether or not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semiprecious stones, unworked or worked

718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or 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 member of the Bank or for goods procured in, or services supplied from, such territories; or (b) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

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 Section 2.02 (d) of this Agreement**

1. The Borrower's National Assembly has approved a budget for calendar year 2005 (or latest subsequent budget approved by the National Assembly prior to the Second Tranche Release Date) consistent with Poverty Reduction Expenditures of the Non-Financial Public Sector equal to at least 11.6% of the Borrower's gross domestic product (GDP) (in case of the 2005 budget) or 11.8% of GDP (in case of the 2006 budget), or a higher percentage of GDP (in case of post-2006 budgets).
2. The Borrower has provided to the Association evidence that Poverty Reduction Expenditures executed during calendar year 2003 (or during the latest subsequent calendar year before the Second Tranche Release Date if said Second Tranche Release Date occurs after December 31, 2004) represent at least 11% of the Borrower's gross domestic product (GDP) during the same period, or 11.4% of GDP (in case of calendar year 2004), or 11.6% of GDP (in case of calendar year 2005), or a higher percentage of GDP (in the case of post-2005 calendar years).
3. To lower the risks and reduce the fiscal impact on the Borrower of pension reform: (i) the Borrower's Presidency has issued decrees reforming its Decrees 57-2000 and 975 before the AFPs begin operation; (ii) the Borrower's Superintendency of Banks and Superintendency of Pensions have agreed on a satisfactory information sharing system between them; and (iii) the Borrower's Superintendency of Banks and Superintendency of Pensions have established a Chinese-Wall system to prevent the use of inside information between AFPs and their parent companies in the banking system.
4. The Borrower's Presidency has issued a decree modifying the regulations of the Law of Municipalities to promote fiscal sustainability of the Borrower by balancing, within the limitations imposed by law, municipal expenditures with resources transferred to municipalities, and the budget (for the year on which compliance with paragraph 1 above is based) conforms with the approved decree.
5. SECEP/SNIP has implemented complementary regulations of the National System of Public Investment, by incorporating all public investment projects and programs into an official registry of public investments governed by such regulations, including those financed by grants.
6. The Borrower's National Assembly has approved a budget for calendar year 2005 including funding for the incorporation of 1,180 additional schools into the Participatory Education Regime.

7. CONAPAS has approved a national water and sanitation strategy defining , *inter alia*, ENACAL' s role in the urban areas, and FISE' s role in the rural areas.

8. The Borrower has provided the Association evidence that it has completed demarcation, titling and registration of at least 5 indigenous territories in the Borrower' s Bosawas region.

9. CNE has restructured FODIEN in consultation with the Ministry of Finance and Public Credit through: (i) the necessary modifications of FODIEN' s legal structure based on an evaluation by CNE of such structure; (ii) the entry into effect of rules and procedures for selection, implementation and monitoring of subprojects supported by FODIEN; (iii) the establishment of funding, financing mechanisms and subsidy allocation criteria for subprojects; (iv) the entry into effect of rules and procedures for FODIEN' s management; and (v) the adoption of a medium term financing plan of FODIEN, consistent with overall fiscal sustainability of the Borrower.