

CONFORMED COPY

CREDIT NUMBER 2171 TO

(Power Rehabilitation and Extension Project)

between

REPUBLIC OF TOGO

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated September 12, 1990

CREDIT NUMBER 2171 TO

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated September 12, 1990, between REPUBLIC OF TOGO (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) by agreement to be entered into between the Caisse Centrale de Cooperation Economique (CCCE) and the Borrower (such agreement hereinafter called the CCCE Loan Agreement) CCCE intends to make a loan (the CCCE Loan) to the Borrower in an aggregate principal amount approximately equivalent to fifteen million Dollars (\$15,000,000) to assist in financing the Project on the terms and conditions therein set forth; and

(C) the Project will be carried out by Compagnie Energie Electrique du Togo (CEET) with the Borrower's assistance and, as

part of such assistance, the Borrower will make available to CEET the proceeds of the Credit as provided in this Agreement; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the Project Agreement of even date herewith between the Association and CEET;

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, with the last sentence of Section 3.02 deleted (the General Conditions) constitute an integral part of this Agreement.

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) "CEET" means Compagnie Energie Electrique du Togo referred to in the Preamble, a corporation organized under the laws of Togo pursuant to the Borrower's Ordinance No. 63-12, dated March 20, 1963;

(b) "CFAF" means the Franc de la Communauté Financière Africaine, the currency of the Borrower;

(c) "Project Agreement" means the agreement between the Association and CEET, of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental thereto;

(d) "Project Preparation Advance" means the project preparation advance granted by the Association to the Borrower pursuant to two exchanges of letters, the first dated February 9, 1989 and March 9, 1989, and the second dated April 5, 1990 and April 12, 1990, each between the Borrower and the Association;

(e) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement; and

(f) "Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and CEET pursuant to Section 3.01 (b) of this Agreement, as the same may be amended from time to time, and such term includes any schedules thereto.

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 this Agreement, an amount in various currencies equivalent to eleven million four hundred thousand Special Drawing Rights (SDR 11,400,000).

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

(b) The Borrower shall, for the purposes of the Project, open and maintain in CFAF a special deposit account (the Special Account) in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set-

off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 3 to this Agreement.

(c) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to itself the amount required to repay the principal amount of the Project Preparation Advance withdrawn and outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance of the authorized amount of the Project Preparation Advance shall thereupon be cancelled.

Section 2.03. The Closing Date shall be December 31, 1994 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 or 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 payment date in that year specified in Section 2.06 of this Agreement.

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

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

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

Section 2.07. (a) Subject to paragraphs (b) and (c) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each May 15 and November 15, commencing November 15, 2000 and ending May 15, 2030. Each installment to and including the installment payable on May 15, 2010 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 gross national product per capita, as determined by the Association, shall have exceeded \$790 in constant 1985 dollars for five consecutive years, 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 them of the development of the Borrower's economy, modify the terms of repayment of installments under paragraph (a) above by 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. If so requested by the Borrower, the Association may revise such modification 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.

(c) 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 French Republic is hereby specified for the purposes of Section 4.02 of the General Conditions.

Section 2.09. CEET is designated as representative of the Borrower 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 Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to this end, without any limitation or restriction upon any of its other obligations under this Agreement, shall:

(i) cause CEET to perform in accordance with the provisions of the Project Agreement all the obligations of CEET therein set forth;
(ii) take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable CEET to perform such obligations; and
(iii) not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Borrower shall: (i) relend a portion of the proceeds of the Credit equivalent to eleven million five hundred and sixty thousand Dollars (\$11,560,000) to CEET under a subsidiary loan agreement to be entered into between the Borrower and CEET, under terms and conditions approved by the Association which shall provide, inter alia, that: (A) the proceeds of the Credit shall be relent at an interest rate of 7.75% per annum for a term of twenty (20) years, including a five year grace period, and (B) that CEET shall bear the foreign exchange risk of such onlending; and
(ii) contribute the balance of the proceeds of the Credit to CEET as an equity contribution.

(c) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

Section 3.02. Except as the Association 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 Credit shall be governed by the provisions of Schedule 1 to the Project Agreement.

Section 3.03. The Borrower and the Association 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 CEET pursuant to Section 2.03 of the Project Agreement.

Section 3.04. On or before January 15, 1991, the Borrower shall:

(a) transfer to CEET the ownership of the four 10MW diesel units of Centrale Thermique de Lome under a sales contract with CEET, approved by the Association, that shall provide, inter alia, for: (i) a sales price equal to the value of such units, as deter-

mined by a valuation thereof approved by the Association; (ii) payment of the sales price in installments; and (iii) adjustment to the sales price or to the schedule of installments to parallel any forgiveness of any direct or indirect obligation of the Borrower in respect of the foreign indebtedness incurred to finance the construction of such units; and

(b) enter into a performance contract with CEET, approved by the Association, setting forth performance targets for CEET through 1992 and providing incentives to CEET for improvement in productivity.

The Borrower shall comply with its obligations under such contracts, and shall not amend, waive or otherwise modify any material provision thereof without the approval of the Association.

Section 3.05. The Borrower shall, by November 30 of each year, consult with the Association regarding CEET's proposed investment program for CEET's succeeding fiscal year.

Section 3.06. The Borrower shall cause each government entity (whether central, local or other), including ministries, public entities and quasi-public entities: (a) to reduce their arrears due CEET in accordance with a schedule adopted on or before January 15, 1991 and satisfactory to the Association; (b) to pay all bills presented by CEET within three months of receipt; and (c) to adopt annual budgets that adequately provide for their respective projected annual electricity consumption.

ARTICLE IV

Remedies of the Association

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

(a) CEET shall have failed to perform any of its obligations under the Project Agreement;

(b) 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 CEET will be able to perform its obligations under the Project Agreement;

(c) (i) the Borrower's Ordinance No. 63-12, dated March 20, 1963, or (ii) the Borrower's Decree No. 63-152, dated December 11, 1963, shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of CEET to perform any of its obligations under the Project Agreement;

(d) the Borrower shall have failed to amend the statutes of CEET by July 1, 1991, in accordance with the Borrower's public enterprise reform program, in a manner satisfactory to the Association;

(e) the Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of CEET or for the suspension of its operations; and

(f) (i) subject to subparagraph (ii) of this paragraph:

(A) the right of the Borrower to withdraw the proceeds of any loan or grant made to the Borrower for the financing of the Project shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms of the agreement providing therefor; or

(B) any such loan shall have become due and payable prior to the agreed maturity thereof;

- (ii) subparagraph (i) of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Association that:
 - (A) such suspension, cancellation, termination or prematuring is not caused by the failure of the Borrower to perform any of its obligations under such agreement; and
 - (B) adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

Section 4.02. Pursuant to Section 7.01 (d) of the General Conditions, the following additional events are specified:

- (a) any of the events specified in paragraph (a) or (d) of Section 4.01 of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower;
- (b) any of the events specified in paragraph (c) or (e) of Section 4.01 of this Agreement shall occur; and
- (c) any of the events specified in paragraph (f) (i) (B) of Section 4.01 of this Agreement shall occur, subject to the proviso of paragraph (f) (ii) of such Section.

ARTICLE V

Effective Date; Termination

Section 5.01. 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) a Subsidiary Loan Agreement, satisfactory to the Association, has been executed on behalf of the Borrower and CEET;
- (b) all conditions precedent to the effectiveness of the CCCE Loan Agreement have been fulfilled save for the effectiveness of this Agreement; and
- (c) the Borrower has submitted an environmental impact assessment and an action plan to protect the environment during the Project, both satisfactory to the Association.

Section 5.02. The following are specified as additional matters, 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 Association:

- (a) the Project Agreement has been duly authorized or ratified by CEET and is legally binding upon CEET in accordance with its terms; and
- (b) the Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and CEET and is legally binding upon the Borrower and CEET in accordance with its terms.

Section 5.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VI

Representatives of the Borrower; Addresses

Section 6.01. Except as provided in Section 2.09 of this

(1)	Equipment and Vehicles for Parts A.7 and B.3 (c) of the Project	1,590,000	100% of foreign expenditures
(2)	Equipment, vehicles and related installation services for Part B (other than Part B.3 (c)) of the Project	4,470,000	100% of foreign expenditures
(3)	Consultants' services	1,820,000	100%
(4)	Training	680,000	100%
	Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(5)	Refunding of Project Preparation Advance	1,140,000	Amount due pursuant to Section 2.02 (c) of this Agreement
(6)	Unallocated	1,700,000	
	TOTAL	11,400,000 =====	

2. For the purposes of this Schedule, the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower, provided that, if the currency of the Borrower is also that of another country from the territory of which goods or services are supplied, expenditures in such currency for such goods or services shall be deemed to be "foreign expenditures."

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

SCHEDULE 2

Description of the Project

The objective of the Project is to improve the efficiency of the Borrower's electricity generation and distribution system, as managed by CEET.

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

Part A: Institutional Development of CEET

1. Completion of the previously initiated institutional study (a) to define and refine the respective responsibilities of CEET, the Borrower and Communaute Electrique du Benin; and (b) to provide a framework for the preparation of the performance contract.

2. Establishment of an efficient stock management system, including procurement procedures, for CEET.

3. Formulation of CEET's investment program for the period 1994-1999 and corresponding adjustment of CEET's tariff structure and levels.

4. Development and implementation of a computerized management information system, and related training of CEET's staff.

5. Overhaul of CEET's billing system as follows:

(a) construction of a laboratory for meter calibration;

(b) development of detailed maps to locate each of CEET's customers and trace the electricity network;

(c) identification and codification, through a physical inventory, of CEET's customers in the Lome area and updating of CEET's customer files;

(d) audit of all customer arrears; and

(e) acquisition and implementation of a computerized system to improve CEET's management of its customer accounts.

6. Technical, financial and managerial training of CEET's staff.

7. Acquisition by CEET of office equipment, vehicles and other equipment for the efficient operation of CEET.

Part B: Rehabilitation and Extension of Lome Electricity Power Supply and Distribution System and Related Studies

1. Rehabilitation of the electricity power supply system (including execution of preparatory studies) as follows:

(a) Lome A substation: replacement of the existing switchgear with technologically superior switchgear;

(b) Lome B substation: replacement of the existing switchgear with technologically superior switchgear, and the repair and energizing of two power transformers; and

(c) Lome Sicge substation: replacement of existing switchgear with switchgears recovered from the Lome A and Lome B substations.

2. Installation and operation of a control room to monitor and control the operation of the Lome area electricity network.

3. Rehabilitation and extension of the electricity distribution system (including execution of preparatory studies) as follows:

(a) restructuring and reinforcement of the electricity network in the center of Lome;

(b) extension, on the basis of feasibility studies, of CEET's distribution system to supply areas of Lome not currently electrified; and

(c) acquisition of tools, vehicles and other equipment necessary for the operation and maintenance of CEET's distribution system.

4. Preparation of a distribution master plan to meet the projected future requirements of Togo's distribution system.

5. Rehabilitation of gas turbines at the Centrale Thermique de Lome.

* * *

The Project is expected to be completed by June 30, 1994.

SCHEDULE 3

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1) through (4) 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 and services required for the Project and to be financed out of the proceeds of the Credit 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 one million Dollars (\$1,000,000) to be withdrawn from the Credit 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 Association 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 Borrower shall furnish to the Association a request or requests for a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association 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 Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount as the Borrower 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 Association from the Credit 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 Borrower out of the Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association 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 Association shall not be required to make further deposits into the Special Account:

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

(b) once the total unwithdrawn amount of the Credit allocated to the eligible Categories, less the amount of any outstanding special commitment entered into by the Association 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 Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association 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 Association 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 Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request, or (B) deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association 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 Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

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

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

