

CONFORMED COPY

TF GRANT NUMBER 029354 YE

JAPANESE GRANT AGREEMENT

(Economic Rehabilitation Project)

between

THE REPUBLIC OF YEMEN

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

on its own behalf and as Administrator  
of Grant Funds provided by JAPAN

Dated November 9, 1995

TF GRANT NUMBER 029354 YE

JAPANESE GRANT AGREEMENT

AGREEMENT, dated November 9, 1995, between THE REPUBLIC OF YEMEN (the Recipient) and INTERNATIONAL DEVELOPMENT ASSOCIATION acting on its own behalf (the Association) and as Administrator (the Administrator) of grant funds provided by JAPAN (Japan).

WHEREAS (A) pursuant to a letter agreement dated July 30, 1990 between Japan and International Bank for Reconstruction and Development (the Bank) and the Association, Japan has requested the Bank and the Association, and the Bank and the Association have agreed, to administer grant funds to be made available by Japan for the financing of certain programs and projects supported by the Bank and the Association, as the case may be, in accordance with the provisions of such letter agreement;

WHEREAS (B) Japan has agreed to make available to the Recipient a grant out of said grant funds (the Grant) to finance the cost of carrying out the technical assistance described in Schedule 1 to this Agreement (the Technical Assistance) on the terms and conditions hereinafter set forth;

WHEREAS (C) the Recipient has requested the Association to carry out the Technical Assistance;

WHEREAS (D) the Association has agreed to carry out the Technical Assistance on the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows:

## ARTICLE I

### Definitions; Term of Technical Assistance

Section 1.01. The Technical Assistance shall be undertaken by consultants (the Consultants) who shall, as far as practicable, include Consultants with expertise in the following areas:

- (a) customs administration;
- (b) financial sector;
- (c) legal;
- (d) finance; and
- (e) privatization.

Section 1.02. As used in this Agreement, the terms "yen" and "¥" mean the currency of Japan, and the term "Consultants" includes individual consultants as well as any consulting firm that provides any of the experts referred to in Section 1.01.

Section 1.03. The Consultants are expected to commence their services on November 30, 1995 and to provide a total of 24 person-months of service between that time and June 30, 1996.

## ARTICLE II

### Responsibilities of the Association and the Administrator

Section 2.01. The Grant to be provided by Japan for the Technical Assistance shall be in an amount of forty-two million yen (¥42,000,000).

Section 2.02. The Administrator shall utilize the Grant to finance the following expenditures in connection with the services of the Consultants:

- (a) remuneration, per diem and other allowances;
- (b) international and local travel expenses; and
- (c) out-of-pocket expenses, including communications and reports, incurred by the Consultants in foreign and local currency in the performance of their services.

Section 2.03. The Association shall make reasonable efforts to secure the services of the Consultants.

Section 2.04. The recruitment, engagement and supervision of the Consultants shall be the responsibility solely of the Association and shall be done according to the Association's applicable procedures.

## ARTICLE III

### Responsibilities of the Recipient

Section 3.01. The Recipient shall cooperate with the Administrator, the Association and the Consultants to ensure that the Technical Assistance is carried out promptly and effectively and, for this purpose, shall issue appropriate instructions to its officials, agents and representatives.

Section 3.02. The Recipient shall:

- (a) make arrangements for all personnel of the Consultants assigned to the Technical Assistance (other than nationals of the Recipient or permanent residents of the Recipient's territories) and all dependents of such personnel promptly to be provided with any necessary entry and exit visas, residence and work permits, exchange documents and travel documents required for their stay in the Recipient's territories during the duration of the Technical Assistance;
- (b) facilitate clearance through its customs of any equipment, materials and supplies required for the Technical Assistance and any personal effects of the personnel of the Consultants assigned to the Technical Assistance (other than

nationals of the Recipient or permanent residents of the Recipient's territories) and the dependents of such personnel;

(c) permit the Consultants to bring into, and withdraw from, the Recipient's territories reasonable amounts of foreign currency for purposes related to the Technical Assistance;

(d) permit the personnel of the Consultants assigned to the Technical Assistance (other than nationals of the Recipient or permanent residents of the Recipient's territories) and the dependents of such personnel to bring into, and withdraw from, the Recipient's territories reasonable amounts of foreign currency for their personal use; and

(e) exempt the Consultants and the personnel of the Consultants assigned to the Technical Assistance from (or the Recipient shall pay on behalf of the Consultants and such personnel) any taxes, duties, fees, levies and other impositions imposed under the laws and regulations in effect in the Recipient's territories on the Consultants and such personnel in respect of:

- (i) any payments whatsoever made to the Consultants and such personnel (other than nationals of the Recipient or permanent residents of the Recipient's territories) in connection with the carrying out of the Technical Assistance;
- (ii) any equipment, materials and supplies brought into the Recipient's territories by the Consultants for the purpose of carrying out the Technical Assistance and which, after having been brought into such territories, will be subsequently withdrawn therefrom by them;
- (iii) any equipment, material and supplies brought into the Recipient's territories by the Consultants for the purpose of carrying out the Technical Assistance and which will be consumed therein or become the property of the Recipient; and
- (iv) any property brought into the Recipient's territories by the Consultants or such personnel (other than nationals of the Recipient or permanent residents of the Recipient's territories) or the dependents of such personnel for their personal use and which will be consumed therein or subsequently withdrawn therefrom by them upon their respective departure from the Recipient's territories, provided that the Consultants, such personnel and their dependents shall follow the usual customs procedures of the Recipient in importing property into the Recipient's territories.

Section 3.03. The Recipient shall be responsible for dealing with any claims arising out of, or resulting from, the Technical Assistance that may be brought by third parties against the Administrator or the Association. The Recipient shall indemnify the Administrator and the Association against any costs, claims, damages or liabilities arising out of, or resulting from, any acts or omissions in connection with the Technical Assistance, except those resulting from the gross negligence or willful misconduct of the Administrator or the Association, as the case may be.

Section 3.04. For purposes of carrying out the Technical Assistance, the Recipient shall make available to the Consultants, free of charge, the data, services, facilities and equipment set forth in Schedule 2 to this Agreement.

Section 3.05. The Recipient shall make available to the Consultants, free of charge, such counterpart personnel to be selected by the Recipient, with the advice of the Association and the Consultants, as are set forth in Schedule 2 to this Agreement. If any member of the counterpart personnel fails to perform adequately any work assigned to him by the Consultants that is consistent with the position occupied by such member, the Consultants may request the replacement of such member, and the Recipient shall not unreasonably refuse to act upon such request.

#### ARTICLE IV

##### Reports and Other Matters

Section 4.01. The Recipient, the Association and the Administrator shall, from time to time, at the request of any party, exchange views on the Technical Assistance and consult on any reports prepared by the Consultants and the implementation of any

recommendations made in those reports.

Section 4.02. The Association and the Administrator may use any reports prepared by the Consultants for any purpose that the Association or the Administrator, as the case may be, may consider appropriate but those reports may not be made public except by agreement between the Recipient, the Association and the Administrator.

#### ARTICLE V

##### Enforceability of Agreement; Failure to Exercise Rights; Arbitration

Section 5.01. The rights and obligations of the Association, the Administrator and the Recipient under this Agreement shall be valid and enforceable in accordance with their terms notwithstanding the law of any State or political subdivision thereof to the contrary. Neither the Association nor the Administrator nor the Recipient shall be entitled in any proceeding under this Article to assert any claim that any provision of this Agreement is invalid or unenforceable because of any provision of the Articles of Agreement of the Association.

Section 5.02. No delay in exercising, or omission to exercise, any right, power or remedy accruing to any party under this Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default. No action of such party in respect of any default, or any acquiescence by it in any default, shall affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

Section 5.03. (a) Any controversy between the parties to this Agreement, and any claim by any such party against any other such party arising under this Agreement which has not been settled by agreement of the parties shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The parties to such arbitration shall be the Association and the Administrator on the one side and the Recipient on the other side.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed jointly by the Association and the Administrator; a second arbitrator shall be appointed by the Recipient; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice or, failing appointment by said President, by the Secretary-General of the United Nations. If either side shall fail to appoint an arbitrator, such arbitrator shall be appointed by the Umpire. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought and the name of the arbitrator appointed by the party instituting such proceeding. Within thirty days after such notice, the other party shall notify to the party instituting the proceeding the name of the arbitrator appointed by such other party.

(e) If within sixty days after the notice instituting the arbitration proceeding, the parties shall not have agreed upon an Umpire, any party may request the appointment of an Umpire as provided in paragraph (c) of this Section.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to the provisions of this Section and except as the parties shall otherwise agree, determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(h) The Arbitral Tribunal shall afford to all parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such

Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to this Agreement. Each party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this Section.

(i) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. The Association, the Administrator and the Recipient shall each defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by the Association and the Administrator on the one side and the Recipient on the other. Any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs shall be determined by the Arbitral Tribunal.

(j) The provisions of arbitration set forth in this Section shall be in lieu of any other procedure for the settlement of controversies between the parties to this Agreement or of any claim by any such party against any other such party arising thereunder.

(k) The Association shall not be entitled to enter judgment against the Recipient upon the award, to enforce the award against the Recipient by execution or to pursue any other remedy against the Recipient for the enforcement of the award, except as such procedure may be available against the Recipient otherwise than by reason of the provisions of this Section. If, within thirty days after counterparts of the award shall have been delivered to the parties, the award shall not be complied with by the Association, the

Recipient may take any such action for the enforcement of the award against the Association.

(l) Service of any notice or process in connection with any proceeding under this Section or in connection with any proceeding to enforce any award rendered pursuant to this Section shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address specified in this Agreement or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The parties to this Agreement waive any and all other requirements for the service of any such notice or process.

## ARTICLE VI

### Effective Date, Suspension and Termination

Section 6.01. This Agreement shall become effective upon its execution by the parties.

Section 6.02. The Recipient may at any time request the Association and the Administrator in writing to terminate the Technical Assistance. Whether or not the Recipient has made such a request, the Administrator may at any time suspend or, after consultation with the Recipient, terminate the right of the Recipient to receive Grant funds for the Technical Assistance if any of the following circumstances shall have occurred and be continuing:

(a) The Recipient shall have failed to make payment (notwithstanding the fact that such payment may have been made by a third party) of principal, interest, service charges or any other amount due to the Association or the Bank: (i) under any development credit agreement between the Recipient and the Association, or (ii) under any loan or guarantee agreement between the Recipient and the Bank, or (iii) in consequence of any guarantee or other financial obligation of any kind extended by the Bank to any third party with the agreement of the Recipient.

(b) The Recipient shall have failed to perform any obligation under this Agreement.

(c) (i) The Association or the Bank shall have suspended in whole or in part the right of the Recipient to make withdrawals under any development credit agreement with the Association or any loan agreement with the Bank because of a

failure by the Recipient to perform any of its obligations under such agreement; or (ii) the Bank shall have suspended in whole or in part the right of any borrower to make withdrawals under a loan agreement with the Bank guaranteed by the Recipient because of a failure by such borrower to perform any of its obligations under such agreement.

(d) Any event shall have arisen that, in the opinion of the Association or the Administrator, as the case may be, interferes or threatens to interfere with the successful implementation of the Technical Assistance, the accomplishment of its purposes, or the execution of the Technical Assistance in accordance with the terms and conditions of this Agreement.

(e) The Recipient: (i) shall have been suspended from membership in or ceased to be a member of the Association; or (ii) shall have ceased to be a member of the International Monetary Fund.

(f) A representation made by the Recipient, in or pursuant to this Agreement, or any statement furnished in connection therewith, and intended to be relied upon by the Administrator in making the Grant, shall have been incorrect in any material respect.

Section 6.03. If the Technical Assistance is suspended or terminated, the Recipient and the Administrator shall consult with each other concerning any further action that may be necessary or desirable.

Section 6.04. The Administrator is not an agent of or trustee for the Recipient and shall not have any fiduciary relationship with the Recipient. The Recipient shall have no right to any portion of the Grant that is not expended by the Administrator pursuant to this Agreement.

#### ARTICLE VII

##### Representation

Section 7.01. All communications with respect to this Agreement shall be addressed as follows:

For the Recipient:

The Ministry of Planning and Development  
P.O. Box 175  
Sana'a  
Republic of Yemen

Cable address:

CENPLAN

Telex:

226 CENPLAN YE

For the Administrator and the Association:

Director, Country Department II  
Middle East and North Africa Region  
International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

INDEVAS  
Washington, D.C.

Telex:

197688 (TRT),  
248423 (RCA),  
64145 (WUI) or  
82987 (FTCC)

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

THE REPUBLIC OF YEMEN

By/s/ Abdulkader Ba-Ja'amal

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION  
on its own behalf and as Administrator  
of the Grant

By/s/ Jacques F. Baudouy

Acting Country Director  
Country Department II  
Middle East and North Africa

#### SCHEDULE 1

##### Description of Technical Assistance

The objective of the Technical Assistance is to assist the Recipient in the preparation of a proposed Economic Recovery Credit which would define a structural reform program, consisting of a limited number of measures in trade, the financial sector, price liberalization, public enterprise restructuring and privatization aimed at transforming the economy from one that is inward looking and driven by the public sector, to one that is outward looking and driven by the private sector.

The Technical Assistance consists of the following parts, subject to such modifications thereof as the Recipient and the Administrator may agree upon from time to time to achieve the objective of the Technical Assistance:

1. Preparatory work. Preparatory work will be carried out to identify and understand the implications of the measures to be implemented under the Economic Recovery Credit and successive structural reform measures. A seminar will be held with international experts to assess the impact of reforms on the private sector and to prepare for successive operations.

2. Legal Framework for Private Sector Development. Establishment of a stable, effective legal framework is essential for the development of the private sector. A private sector assessment will be carried out to determine the impact of the Recipient's legal, judicial, administrative, and regulatory system in order to determine the constraints upon the private sector. Suggestions will be made for improvements to the Recipient's legal framework to create an enabling environment for development of the private sector.

3. Customs Administration and International Trade. As timely delivery and cost cutting will be essential for competitiveness, importers and exporters will need to clear their shipments without undue delays and uncertainties regarding valuation, duty drawback and temporary entry schemes. A review of customs legislation, regulations and procedures will be made, and a program will be designed to simplify and streamline customs procedures and documentation requirements, as well as ensure transparency and efficiency. Requirements for the automation of customs will also be

identified and steps will be taken to prepare for computerization and a shift to the harmonized system.

4. Financial Sector Restructuring and Regulatory Reform. An assessment will be made of the efficacy of the Recipient's banking regulation and supervision, focusing on: (i) the adequacy of legislation and regulations; (ii) an analysis of the banking sector's ability to assess credit risks and classify loans according to these risks; and (iii) an analysis of risks other than those derived from the quality of the portfolio. A diagnostic analysis will be made of the prerequisites for a financial sector in which existing banks can become financially viable institutions, and a program will be designed which would increase the banking sector's ability to fulfill its role as intermediary and would facilitate privatization and the creation of new banks. In addition, an action program to set up a stock market or a secondary market including legal, financial, human resources and regulatory needs will be developed.

5. Public Enterprise Restructuring and Privatization. A number of preparation activities will be carried out in order to assist the Recipient in its program of public enterprise restructuring and privatization including: (i) the selecting and prioritizing candidates for privatization; (ii) preparing and carrying out privatization of specific enterprises, including valuation; development of methods of privatization; development of sales strategy and action plans; addressing legal and regulatory issues, financial and human resources restructuring; preparing information memoranda, prospectuses, and carrying out marketing activities; (iii) reviewing the existing regulatory framework governing public utilities and defining a new institutional and regulatory setting; (iv) reviewing budgetary transfers to public enterprises and cross arrears and defining an action plan to phase out such transfers and to settle cross arrears; and (v) strengthening the capability of the Recipient to monitor the performance of and increase financial discipline of public enterprises.

#### SCHEDULE 2

##### Description of Services, Facilities, Equipment and Counterpart Personnel to be made available by the Recipient

1. The Recipient will provide the Consultants with suitably furnished office space, together with office services including access to the following communications facilities: telephone, facsimile and telex equipment.
  2. The Recipient will provide the Consultants with a copy of all available reports and data, free of charge.
  3. The Recipient will set up a Coordination and Review Committee to review the Consultants' reports and comment on them.
- 