

CONFORMED COPY

TF 022164

Japanese Grant Agreement

(Management Contracts)

between

ROMANIA

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

as Administrator
of Grant Funds provided by JAPAN

Dated February 9, 1995

JAPANESE GRANT AGREEMENT

AGREEMENT, dated February 9, 1995, between ROMANIA (the Recipient) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) 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 the Bank and the International Development Association (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;

(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; and

(C) the Administrator 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 be suitably qualified for carrying out the tasks assigned to them.

Section 1.02. As used in this Agreement, the term "dollars" and the sign "\$" mean dollars in the currency of the United States, 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 February 15, 1995 and to provide a total of 50 person-months of service by June 30, 1995.

ARTICLE II

Responsibilities of the Administrator

Section 2.01. The Grant to be provided by Japan for the Technical Assistance shall be in an amount of four hundred thousand dollars (\$400,000).

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 Administrator 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 Administrator and shall be done according to the Bank's applicable procedures.

ARTICLE III

Responsibilities of the Recipient

Section 3.01. The Recipient shall cooperate with the Administrator 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. The Recipient shall indemnify the Administrator 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.

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 Administrator 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 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 Administrator may use any reports prepared by the Consultants for any purpose that the Administrator may consider appropriate but those reports may not be made public except by agreement between the Recipient and the Administrator.

ARTICLE V

Enforceability of Agreement; Failure to Exercise Rights; Arbitration

Section 5.01. The rights and obligations of 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 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 Bank.

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 Administrator and the Recipient.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by 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 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 Administrator and the

Recipient. 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) If, within thirty days after counterparts of the award shall have been delivered to the parties, the award shall not be complied with, any party may: (i) enter judgment upon, or institute a proceeding to enforce, the award in any court of competent jurisdiction against any other party; (ii) enforce such judgment by execution; or (iii) pursue any other appropriate remedy against such other party for the enforcement of the award and the provisions of this Agreement. Notwithstanding the foregoing, this Section shall not authorize any entry of judgment or enforcement of the award against any party that is a member of the Bank except as such procedure may be available otherwise than by reason of the provisions of this Section.

(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 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 of principal or interest or any other amount due to the Bank or the Association: (i) under any loan or guarantee agreement between the Recipient and the Bank, or (ii) under any development credit agreement between the Recipient and the Association, 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) The Bank or the Association shall have suspended in whole or in part the right of the Recipient to make withdrawals under any loan agreement with the Bank or any development credit agreement with the Association because of a failure by the Recipient to perform any of its obligations under such agreement or any guarantee agreement with the Bank.

(d) Any event shall have arisen that, in the opinion of the Administrator 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 Bank 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:

Ministry of Finance
17, Apolodor Str.
Sector 5, Bucharest
Romania

Telex:

11239

For the Administrator and the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INTBAFRAD
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.

ROMANIA

By /s/ Florin Georgescu

Authorized Representative

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT
as Administrator of the Grant

By /s/ Michael H. Wiehen

Authorized Representative

SCHEDULE 1

Description of Technical Assistance

The Technical Assistance consists of: (a) preparing base management contracts for about 25 public enterprises; (b) finalizing of management contracts with private sector groups through international bidding for a pilot case of two to four commercial companies; (c) designing a proposal for an investment fund for the financing of restructuring needs of enterprises with management contracts; and (d) carrying out workshops and training to upgrade the skills of the staff of the Recipient's ministries and institutions coordinating "regies autonomes", as well as of the staff of the State Ownership Fund.

SCHEDULE 2

Description of Services, Facilities, Equipment and Counterpart Personnel to be Made Available by the Recipient

For the purposes of Sections 3.04 and 3.05, the Recipient shall make available to the Consultants, inter alia:

- (a) assistance and suitable facilities to organize meetings, and workshops and other staff training and to facilitate the acquisition of essential information;
- (b) suitable office space, communication facilities and secretarial services;
and
- (c) qualified counterpart personnel, selected with the advice of the Administrator and the Consultants.

