

CONFORMED COPY

TF 025238

Japanese Grant Agreement

(Financial Sector Adjustment Project)

between

REPUBLIC OF KAZAKSTAN

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

as Administrator of Grant Funds
provided by JAPAN

Dated July 30, 1996

TF 025238

JAPANESE GRANT AGREEMENT

AGREEMENT, dated July 30, 1996, between the REPUBLIC OF KAZAKSTAN (the Recipient) and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) acting 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 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; and

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 2 to this Agreement (the Technical Assistance) on the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. (a) The following provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank, dated January 1, 1985, with the modifications set forth in paragraph (b) of this Section (the General Conditions)

constitute an integral part of this Agreement:

- (i) Article I;
- (ii) Sections 2.01 (1), (2), (3), (4), (6), (8), (9), (10), (11), (18) and (20), 2.02 and 2.03;
- (iii) Section 3.01;
- (iv) Section 4.01 and the first sentence of Section 4.09;
- (v) Article V;
- (vi) Sections 6.01, 6.02 (a), (c), (d), (e), (f), (i) and (k), 6.03, 6.04 and 6.06;
- (vii) Section 8.01 (b);
- (viii) Sections 9.01 (a) and (c), 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09;
- (ix) Sections 10.01, 10.03 and 10.04; and
- (x) Article XI.

(b) The General Conditions shall be modified as follows:

(i) the term "Bank", wherever used in the General Conditions, other than in Sections 2.01 (8) and 6.02 (f) thereof and the last use of such term in Section 5.01 thereof, means the International Bank for Reconstruction and Development acting as Administrator of the Grant pursuant to the letter agreement between Japan and the Bank and the Association referred to in Recital (A) of this Agreement, except that in Section 6.02, the term "Bank" shall also include the International Bank for Reconstruction and Development acting in its own capacity;

(ii) the term "Borrower", wherever used in the General Conditions, means the Recipient;

(iii) the term "Loan Agreement", wherever used in the General Conditions, means this Agreement;

(iv) the term "Loan", wherever used in the General Conditions, means the Grant;

(v) the term "Loan Account", wherever used in the General Conditions, means the Grant Account, an account opened by the Administrator on its books in the name of the Recipient to which the amount of the Grant is credited;

(vi) the term "Project", wherever used in the General Conditions, means the technical assistance described in Schedule 2 to this Agreement;

(vii) Section 4.01 shall read:

"Withdrawals from the Grant Account shall be made in yen; provided, however, that if the expenditures to be financed out of the Grant have been paid or are payable in another currency, the Administrator shall, at the request of the Recipient, purchase such currency with the proceeds of such withdrawal."; and

(viii) the second sentence of Section 5.01 shall read:

"Except as the Administrator and the Recipient shall otherwise agree, no withdrawals shall be made: (a) on account of expenditures in the territories of any country which is not a member of the Administrator for goods produced in, or services supplied from, such territories; or (b) for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Administrator, is prohibited by a decision of the United Nations Security Council

taken under Chapter VII of the Charter of the United Nations."

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in the Recitals to this Agreement have the respective meanings therein set forth; and the following additional terms have the following meanings:

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

(b) "yen" and "¥" mean the currency of Japan.

ARTICLE II

The Grant

Section 2.01. The Administrator agrees to make available to the Recipient, on the terms and conditions set forth or referred to in this Agreement, the Grant in an amount of forty two million three hundred thousand yen (¥42,300,000).

Section 2.02. (a) The amount of the Grant may be withdrawn from the Grant Account in accordance with the provisions of Schedule 1 to this Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and the Administrator, for expenditures made (or, if the Administrator shall so agree, to be made) in respect of the reasonable cost of carrying out the Project and to be financed out of the Grant.

(b) The Recipient shall, for the purposes of the Project, open and maintain in Dollars a special deposit account in a commercial bank on terms and conditions satisfactory to the Administrator, 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 4 to this Agreement.

Section 2.03. The Closing Date shall be June 30, 1997, or such later date as the Administrator shall establish. The Administrator shall promptly notify the Recipient of such later date.

ARTICLE III

Execution of the Project

Section 3.01. The Recipient shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative and financial practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

Section 3.02. Except as the Administrator shall otherwise agree, procurement of the consultants' services required for the Project and to be financed out of the Grant shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.03. (a) The Recipient shall maintain or cause to be maintained records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of the Project of the departments or agencies of the Recipient responsible for carrying out the Project or any part thereof.

(b) The Recipient shall:

(i) have the records and accounts referred to in paragraph (a) of this Section for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Administrator;

(ii) furnish to the Administrator as soon as available, but in any case not later than six (6) months after the end of each such year, the report of such audit by said auditors, of such scope and in such detail as the Administrator shall have reasonably requested; and

(iii) furnish to the Administrator such other information concerning said records and accounts and the audit thereof as the Administrator shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Grant Account were made on the basis of statements of expenditure, the Recipient shall:

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) retain, until at least one year after the Administrator has received the audit report for the fiscal year in which the last withdrawal from the Grant Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Administrator's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

ARTICLE IV

Effectiveness; Termination

Section 4.01. This Agreement shall become effective upon its execution by the parties hereto.

Section 4.02. This Agreement shall continue in effect until the Grant has been fully disbursed and the parties to this Agreement have fulfilled all their obligations hereunder.

ARTICLE V

Representation

Section 5.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.03 of the General Conditions.

Section 5.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Recipient:

Ministry of Finance
97 Ablai-Khan Avenue
Almaty, 480091
Republic of Kazakhstan

Telex:

251 245 FILIN

For the Administrator:

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.

REPUBLIC OF KAZAKSTAN

By /s/ Zhomart Mukashev

Authorized Representative

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT
as Administrator of the Grant

By /s/ Yukon Huang

Authorized Representative

SCHEDULE 1

Withdrawal of the Grant

1. The table below sets forth the Categories of items to be financed out of the Grant, the allocation of the amount of the Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

| Category | Amount of the Grant Allocated (Expressed in Yen) | % of Expenditures to be Financed |
|----------------------------------|---|--|
| Consultants' services: | | |
| (a) for Part A of the Project | 6,900,000 | 100% |
| (b) for Part B of the Project | 7,500,000 | 100% |
| (c) for Part C of the Project | 7,400,000 | 100% |
| (d) for Part D of the Project | 6,900,000 | 100% |
| (e) for Part E of the Project | 6,600,000 | 100% |
| (f) for Part F of the Project | 7,000,000 | 100% |
| Total | 42,300,000 | |

2. 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.

3. The Administrator may require withdrawals from the Grant Account to be made on the basis of statements of expenditure for expenditures for services under contract not exceeding \$50,000 equivalent under such terms and conditions as the Administrator shall specify by notice to the Recipient.

SCHEDULE 2

Description of the Technical Assistance

The objective of the Technical Assistance is to support preparation by the

Government and the National Bank of the Republic of Kazakhstan of important elements of the reform program supported by the Bank's Financial Sector Adjustment Loan.

Part A: Inter-Enterprise Arrears

Assistance to the Recipient's Ministry of Justice and State Committee for State Property Management in reviewing the experience with management contracts for large state enterprises as a remedy against the build-up of inter-enterprise and other arrears, and in preparing an improved model management contract and improved mechanisms for the monitoring, amendment and enforcement of management contracts.

Part B: Database on Financial Conditions of Banks

Assistance to the Bank Supervision Department of the National Bank of the Republic of Kazakhstan (NBK) in monitoring the financial condition of selected large problem banks, including the implementation of their restructuring agreements concluded with NBK, and advising on improvements in their financial structure and performance and the resolution of their financial distress.

Part C: Regulatory Framework

Assistance to the Recipient's Ministry of Justice in analyzing actual and potential barriers to the use of collaterals in lending, and in preparing a draft law on Movable Property Collateral.

Part D: Capital Markets Development

Assistance to the Recipient's Ministry of Finance and the State Committee for State Property Management in preparing and overseeing the sale of residual state shares in banks at Kazakhstan's capital markets, with a view to enhancing the development of these markets through this substantial increase of their transaction volume and the experience with the procedures that will be applied.

Part E: Barriers to Private Sector Development

Assistance to the Recipient's Ministry of Finance and the State Committee on State Property Management in further preparing and starting to implement the auctioning of non-performing loans lent to enterprises by the Ministry of Finance, or with a Ministry of Finance guarantee, in order to thus accelerate the resolution of these loans which have been a major barrier to private sector development.

Part F: Strategy for Post-Privatization Restructuring

Assistance to NBK in the formulation of a strategic restructuring plan for Agroprom Bank, and in particular the restructuring of its branch network, with particular attention on its impact on the financing of post-privatization restructuring in the agricultural sector by Agroprom Bank and other financial institutions.

SCHEDULE 3

Consultants' Services

1. In order to assist the Recipient in carrying out the Technical Assistance, the Recipient shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Administrator. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Administrator on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by The World Bank as Executing Agency" published by the Bank in August 1981. For complex, time-based assignments, the Recipient shall employ such consultants under contracts using the Standard Form of Contract for Consultants' Services issued by the Bank in June 1995, with such modifications as shall have been agreed by the Administrator.

2. Notwithstanding the provisions of paragraph 1 above, the provisions of the Consultant Guidelines requiring prior Administrator review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts shall not apply to (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each, or (b) contracts for the employment of individuals estimated to cost less than \$50,000 equivalent each. However, this exception to prior Administrator review shall not apply to: (a) the terms of reference for such contracts; (b) single-source selection of

consulting firms; (c) assignments of a critical nature, as reasonably determined by the Bank; (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above; or (e) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

SCHEDULE 4

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means the Category 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 services required for the Project and to be financed out of the proceeds of the Grant 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 \$100,000 to be withdrawn from the Grant Account and deposited in 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 Administrator 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 Recipient shall furnish to the Administrator 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 Administrator shall, on behalf of the Recipient, withdraw from the Grant Account and deposit into the Special Account such amount or amounts as the Recipient shall have requested.

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

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

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

(b) if the Recipient shall have failed to furnish to the Administrator,

within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Administrator pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

(c) if, at any time, the Administrator shall have notified the Recipient of its intention to suspend in whole or in part the right of the Recipient to make withdrawals from the Grant Account pursuant to the provisions of Section 6.02 of the General Conditions; or

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

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

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

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