

CONFORMED COPY

TF029546

Japanese Grant Agreement

(Public Sector Reform Project)

between

UKRAINE

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

as Administrator of Grant Funds
provided by JAPAN

Dated December 5, 1996

TF029546

JAPANESE GRANT AGREEMENT

AGREEMENT, dated December 5, 1996, between UKRAINE (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;

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; and

WHEREAS (C) Parts A, B and C of the Technical Assistance will be carried out by the Bank pursuant to a separate grant agreement of even date herewith between the Recipient and the Bank, acting on its own behalf and as Administrator of the Grant, on the terms and conditions set forth in such agreement;

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 be modified to read:

"Withdrawals from the Grant Account shall be made in Dollars; 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.";

(viii) the second sentence of Section 5.01 is modified to 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 Bank or 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 following additional terms have the following meanings:

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

(b) "MOF" means the Ministry of Finance of the Recipient; and

(c) "PIU" means a Project Implementation Unit to be established in the MOF for purposes of the Technical Assistance.

ARTICLE II

The Grant

Section 2.01. For the purposes of Part D of the Technical Assistance, the Administrator agrees to make available to the Recipient, on the terms and conditions set forth or referred to in this Agreement, out of the proceeds of the Grant, an amount equal to one hundred and thirty-eight thousand one hundred Dollars (\$138,100).

Section 2.02. (a) The amount of the Grant referred to in Section 2.01 of this Agreement 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 Part D of the Technical Assistance and to be financed out of the Grant.

(b) The Recipient may, for the purposes of Part D of the Technical Assistance, open and maintain in Dollars a special deposit account in a commercial bank acceptable to the 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 May 1, 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 Part D of the Technical Assistance

Section 3.01. (a) The Recipient shall carry out Part D of the Technical Assistance 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 such Part D of the Technical Assistance.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Recipient and the Administrator shall otherwise agree, the Recipient shall carry out Part D of the Technical Assistance in accordance with the Implementation Program set forth in Schedule 5 to this Agreement.

Section 3.02. Except as the Administrator shall otherwise agree, procurement of the consultants' services required for Part D of the Technical Assistance 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 Part D of the Technical Assistance of the departments or agencies of the Recipient responsible for carrying out such Part.

(b) The Recipient shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section and those for the Special Account 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 4 (four) 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.

Section 3.04. For the purposes of Section 9.07 of the General Conditions and without limitation thereto, the Recipient shall:

(a) prepare, on the basis of guidelines acceptable to the Administrator, and furnish to the Administrator not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Recipient and the Administrator, a plan for the future utilization of the results of the Technical Assistance;

(b) afford the Administrator a reasonable opportunity to exchange views with the Recipient on said plan.

ARTICLE IV

Effectiveness; Termination

Section 4.01. This Agreement shall become effective on the date upon which the Administrator dispatches to the Recipient notice of its acceptance of evidence satisfactory to the Administrator furnished by the Recipient that the execution and delivery of this Agreement on behalf of the Recipient has been duly authorized or ratified by all necessary governmental action and that this Agreement is legally binding upon the Recipient in accordance with its terms.

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
12/2 Hrushevsky St.
Kyiv, Ukraine 252008

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.

UKRAINE

By /s/ Roman Shpek

Authorized Representative

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT
as Administrator of the Grant

By /s/ Basil G. Kavalsky

Authorized Representative

SCHEDULE 1

Withdrawal of the Grant

1. The table below sets forth the Categories of items to be financed pursuant to this Agreement, out of the amount of the Grant referred to in Section 2.01 of this Agreement; the amount of the allocation 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 Dollars) to be Financed	% of Expenditures
(1) Consultants' services for Part D of the Technical Assistance	138,100	100%

TOTAL

138,100

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 consultants' services under contracts not exceeding (i) \$100,000 equivalent for consulting firms and (ii) \$50,000 equivalent for individuals, 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 facilitate the preparation of a public sector reform project capable of being financed by the Bank which would aim to enhance the policy reform efforts of the Recipient's Government by strengthening the institutional basis for public administration and fiscal consolidation.

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

Part A: Pension Reform

Provision of technical assistance to the Recipient relating to reform of the pension system, including (i) preparation of a study on options for a new pension system and remedial measures needed to prevent the collapse of the existing system; (ii) delivery of a seminar on the results of such study; and (iii) study tours for key officials involved in management, implementation and design of the pension system.

Part B: Streamlining Government

Provision of technical assistance to the Recipient in the areas of (i) deregulation of administrative procedures and (ii) civil service reform.

Part C: Fiscal Federalism

1. Provision of technical assistance in analyzing the system of tax imposition and collection, focusing on the division of power between central and local authorities in the area of tax levy and collection and sharing of tax revenues.

2. Assistance with conducting a survey on the impact and mechanisms for divesting social obligations of state enterprises and assumption of social services obligations by local authorities.

Part D: Tax Reform and Administration

Provision of technical assistance to the Recipient in the area of tax reform and administration, including:

1. Review of the VAT administration of the Recipient, focusing on collection and rebating policies, and preparation of a training course on VAT system administration.

2. Preparation of a report that would identify an implementation strategy for major components of an automated tax return processing system.

3. Review of customs duty collection performance and assistance in designing a strategy to improve the effectiveness of the customs administration of the Recipient.

SCHEDULE 3

Consultants' Services for Part D of the Technical Assistance

1. Consultants' services for Part D of the Technical Assistance shall be procured under contracts awarded in accordance with the provisions 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 (the Consultant Guidelines). For complex, time-based assignments, such contracts shall be based on the standard form of contract

for consultants' services issued by the Bank, with such modifications thereto as shall have been agreed by the Administrator. Where no relevant standard contract documents have been issued by the Bank, other standard forms acceptable to the Administrator shall be used.

2. Notwithstanding the provisions of paragraph 1 of this Section, 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 individual consultants estimated to cost less than \$50,000 equivalent each. However, said exceptions 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 Administrator, (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 Category" means Category 1 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 Category in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term "Authorized Allocation" means an amount equivalent to \$50,000 to be withdrawn from the Grant 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 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 deposit into the Special Account of an amount or amounts 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 Category, 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 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 minus the total amount of all outstanding special commitments 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.

SCHEDULE 5

Implementation Program

1. Responsibility for overall management and implementation of the Technical Assistance, as described in Schedule 2 to this Agreement, shall be vested with the MOF.

2. Responsibility for specific administrative and supervision functions relating to Part D of the Technical Assistance including procurement, disbursements, financial and other reporting and auditing may be delegated to the PIU under terms of reference satisfactory to the Administrator.

3. For purposes of carrying out its responsibilities under Part D of the Technical Assistance, the PIU shall appoint a project manager whose qualifications and terms of reference shall be acceptable to the Bank.

4. The MOF shall ensure that all activities and programs to be carried out under Part D of the Technical Assistance shall be implemented by authorized agencies of the Recipient having properly qualified personnel, adequate resources and facilities and under appropriate terms of reference acceptable to the Administrator.

5. Specific programs and activities shall be carried out in accordance with a budget, schedule and work plan satisfactory to the Administrator.

