

CONFORMED COPY

TF 025285

Japanese Grant Agreement

(Enterprise Support Projects)

between

RUSSIAN FEDERATION

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

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

Dated May 2, 1995

TF 025285

JAPANESE GRANT AGREEMENT

AGREEMENT, dated May 2, 1995, between RUSSIAN FEDERATION (the Recipient) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, acting on its own behalf (the Bank) and as Administrator (the Administrator) of grant funds provided by JAPAN (Japan).

WHEREAS (A) pursuant to a letter agreement dated July 30, 1990 (the Framework Agreement) 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 Framework Agreement;

(B) the Recipient has adopted certain interrelated measures aimed at improving the environment for restructuring of privatized enterprises on the territory of the Recipient (the Privatization and Restructuring Program) and has requested the Bank's assistance in connection with the elaboration and implementation thereof;

(C) the Bank, having considered such request and the economic benefits likely to accrue to the Recipient in the implementation of the Privatization and Restructuring Program, has discussed with the authorities of the Recipient an appropriate framework for undertaking the analytical, technical and advisory work

required in connection therewith through a cooperative structured program, consisting of specific technical assistance and institutional development projects;

(D) pursuant to a letter dated December 9, 1993, the Ministry of Finance of Japan has agreed on behalf of Japan, in accordance with paragraph 1.2 (f) of the Framework Agreement, to make available to the Recipient, out of the grant funds referred to in Recital (A) of this Preamble, a special allocation (the Special Allocation) in the amount of thirty-six million dollars (\$36,000,000), which is intended to finance the cost of carrying out the various technical assistance activities referred to in such letter, relating to the implementation of the Privatization and Restructuring Program, within the framework of the cooperative program referred to in Recital (C) of this Preamble;

(E) the Recipient and the Administrator have agreed upon a specific program for the utilization of grant funds to be provided by Japan, whereby a portion of the Special Allocation would be set apart and utilized, on the terms and conditions hereinafter set forth, as a self-standing grant (the Grant) to support a program of technical assistance (the Technical Assistance Program, as described further hereinafter in Section 2.01 and in Schedule 1 to this Agreement) relating to activities pursuant to the establishment and development of an institutional base for the Privatization and Restructuring Program, together with preparation of related lending projects involving enterprise restructuring;

(F) the Recipient has requested the Bank to act as its executing agency in carrying out the Technical Assistance Program; and

(G) the Bank has agreed to carry out the Technical Assistance Program on the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the Recitals to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Dollars" and the sign "\$" mean dollars in the currency of the United States of America; and

(b) "Consultants" include individual consultants as well as consulting firms that provide any of the experts referred to in Section 2.02.

ARTICLE II

Technical Assistance Program

Section 2.01. The Technical Assistance Program shall consist of specifically defined management and technical assistance services within the framework of the cooperative program referred to in Recital (C) of the Preamble to this Agreement, for which the Recipient wishes to obtain analytical, technical and advisory services subject to the terms and conditions of this Agreement.

Section 2.02. Activities under the Technical Assistance Program shall be undertaken by consultants (the Consultants) who shall, as far as practicable, include Consultants with expertise in the following areas:

(a) enterprise restructuring;

(b) large scale privatization transactions; and

(c) general management consulting.

Section 2.03. The Consultants are expected to commence their services on March 1, 1995 and to provide a total of 48 person-months of service between that time and December 31, 1996.

ARTICLE III

Responsibilities of the Bank
and the Administrator

Section 3.01. The portion of the Special Allocation provided by Japan which shall be made available for the support of the Technical Assistance Program under the Grant pursuant hereto shall be in the amount of one million dollars (\$1,000,000).

Section 3.02. The Administrator shall utilize the proceeds of 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;
- (c) out-of-pocket expenses, including communications and reports, incurred by the Consultants in foreign and local currency in the performance of their services; and
- (d) related equipment and materials.

Section 3.03. The Bank shall make reasonable efforts to secure the services of the Consultants.

Section 3.04. The recruitment, engagement and supervision of the Consultants shall be the responsibility solely of the Bank and shall be done according to the Bank's applicable procedures.

ARTICLE IV

Responsibilities of the Recipient

Section 4.01. The Recipient shall cooperate with the Administrator, the Bank and the Consultants to ensure that the Technical Assistance Program is carried out promptly and effectively and, for this purpose, shall issue appropriate instructions to its officials, agents and representatives.

Section 4.02. The Recipient shall:

- (a) make arrangements for all personnel of the Consultants assigned to any activity under the Technical Assistance Program (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 such activity;
- (b) facilitate clearance through its customs of any equipment, materials and supplies required for such activity and any personal effects of the personnel of the Consultants assigned to such activity (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 such activity;
- (d) permit the personnel of the Consultants assigned to such activity (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 such activity 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 any activity under the Technical Assistance Program;
 - (ii) any equipment, materials and supplies brought into the Recipient's

territories by the Consultants for the purpose of carrying out any activity under the Technical Assistance Program 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 any activity under the Technical Assistance Program 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 4.03. The Recipient shall be responsible for dealing with any claims arising out of, or resulting from, the Technical Assistance Program that may be brought by third parties against the Administrator or the Bank. The Recipient shall indemnify the Administrator and the Bank against any costs, claims, damages or liabilities arising out of, or resulting from, any acts or omissions in connection with the Technical Assistance Program, except those resulting from the gross negligence or willful misconduct of the Administrator or the Bank, as the case may be.

Section 4.04. For purposes of carrying out the Technical Assistance Program, the Recipient shall make available to the Consultants, free of charge, the services, facilities and equipment set forth in Schedule 2 to this Agreement.

Section 4.05. 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.

ARTICLE V

Reports and Other Matters

Section 5.01. The Recipient, the Bank and the Administrator shall, from time to time, at the request of any party, exchange views on the Technical Assistance Program and consult on any reports prepared by the Consultants and the implementation of any recommendations made in those reports.

Section 5.02. The Bank and the Administrator may use any reports prepared by the Consultants for any purpose that the Bank 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 Bank and the Administrator.

ARTICLE VI

Enforceability of Agreement; Failure to Exercise Rights; Arbitration

Section 6.01. The rights and obligations of the Bank, 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 Bank 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 Bank.

Section 6.02. 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 6.03. (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 Bank 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 Bank 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 Bank, 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 Bank 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) 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.

(1) 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 VII

Effective Date, Suspension and Termination

Section 7.01. This Agreement shall become effective upon its execution by the parties.

Section 7.02. The Recipient may at any time request the Bank and the Administrator in writing to terminate the Technical Assistance Program or any activity thereunder. 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 Program in general, or in respect of any activity thereunder, 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 Bank or the Administrator, as the case may be, interferes or threatens to interfere with: (i) the successful implementation of the Technical Assistance Program, or of any activity thereunder; (ii) the accomplishment of the purposes of the Technical Assistance Program; or (iii) the execution of the Technical Assistance Program 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 7.03. If the Technical Assistance Program 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 7.04. 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 VIII

Representation

Section 8.01. All communications with respect to this Agreement shall be addressed as follows:

For the Recipient:

Minister of Finance
Ministry of Finance
Ul. Ilyinka, 9
Moscow, Russia

Telex:

112008

For the Administrator and the Bank:

Mr. Yukon Huang, Director
Europe and Central Asia Region
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.

RUSSIAN FEDERATION

By /s/ Andrei Vavilov

Authorized Representative

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT
on its own behalf and as Administrator
of the Grant

By /s/ Yukon Huang

Authorized Representative

SCHEDULE 1

Description of Technical Assistance Program

The objective of the Technical Assistance Program shall be to facilitate preparation by the Government of the Recipient of appropriate development projects suitable for financing by the Bank, with a view to addressing specific identified needs for restructuring of enterprises operating in the territory of the Recipient.

The Technical Assistance Program consists of providing assistance to the Chief Executive Officer (CEO) of the Russian Privatization Center in formulating, developing

and implementing programs for the privatization and post-privatization restructuring of Russian enterprises, and in developing other programs and activities to strengthen Russia's market economy framework in support of privatized enterprises. The activities will include, but not be limited to, assistance to the CEO in managing the relations with donors of financing for privatization and post-privatization activities and in coordinating and supervising the activities of consultants financed by such donors; provided, however, that no such assistance shall include responsibility for executing specific activities or expenditures financed under the loan between the Russian Federation and the Bank dated May 15, 1993 (Loan No. 3546-RU (Privatization Implementation Assistance Project)), as the same may be amended from time to time, or under any other Bank loans to, or guaranteed by, the Recipient, or in connection with any projects executed by the Bank. Without limitation on the foregoing, the Consultants shall not act in any supervisory or managerial capacity in respect of the procurement of goods and services financed under any such loan or project, nor in respect of the utilization thereof.

SCHEDULE 2

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

For purposes of Sections 4.04 and 4.05 of this Agreement, the Recipient shall make available to the Consultants, inter alia, suitable office space and meeting rooms with appropriate capacity to handle communications, including telephone, facsimile and telex equipment, as well as appropriate counterpart personnel and secretarial and translation/interpretation services as necessary for the efficient operation of the Consultants, as well as access on a best-efforts basis to appropriate policy-making officials of the Recipient.

