
PROJECT NUMBER P172849

REIMBURSABLE ADVISORY SERVICES AGREEMENT

(SOUTH AFRICA OMBUDS DIAGNOSTIC)

between

**FINANCIAL SECTOR CONDUCT AUTHORITY of
THE REPUBLIC OF SOUTH AFRICA**

and the

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

AGREEMENT FOR REIMBURSABLE ADVISORY SERVICES

AGREEMENT dated as of the Signature Date (as defined in Section 18 of the Annex to this Agreement), between the FINANCIAL SECTOR CONDUCT AUTHORITY of the REPUBLIC OF SOUTH AFRICA (the “Client”) and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the “Bank”) (jointly referred to as “the Parties” and each of them a “Party”).

WHEREAS, the Bank seeks to provide advisory and technical assistance to the Client to enhance the effectiveness and efficiency of South Africa’s financial sector ombuds system in order to enforce good market conduct practices;

WHEREAS, the Client has requested the Bank to provide to the Client reimbursable advisory services (the “Reimbursable Advisory Services” or “RAS”) described in the Schedule to this Agreement to undertake a diagnostic on South Africa’s financial sector ombuds system;

NOW, therefore, the Parties hereto agree as follows:

1. ***Reimbursable Advisory Services.*** The Bank shall provide to the Client the services (“Reimbursable Advisory Services” or “RAS”) described in the Schedule to this Agreement, on the terms and conditions set out in this Agreement, including the Annex hereto, which constitutes an integral part hereof.
2. ***Client Contacts.*** In carrying out the Reimbursable Advisory Services, the Bank shall work closely with the designated officials of the Client. The Client shall provide the Bank with the names and contact information for said designated officials.
3. ***Timing.*** While the Bank undertakes to mobilize all reasonable means available to it to carry out the Reimbursable Advisory Services in a timely manner, the timetable set out in the Schedule to this Agreement have been prepared in good faith based in light of information currently available to the Bank, and are given on an indicative basis assuming that: (a) the Client and its personnel shall carry out their respective duties in a satisfactory and timely manner; and (b) the Client shall at all times act in a timely manner in providing information, making decisions and providing necessary support as provided herein and as requested from time to time by the Bank.

4. **Payment**

(a) The Client shall pay the Bank a fixed fee of 70,000 US Dollars (US\$ Seventy thousand) in accordance with the following schedule of payment:

<u>Amount of Installment</u>	<u>Event upon which Payment is Due</u>
1. US\$35,000	Delivery of Preparatory Report
2. US\$35,000	Delivery of Diagnostic Report

(b) All payments to the Bank hereunder shall be made in full when due, upon submission of an invoice by the Bank. Payment shall be made, in United States Dollars, in immediately available funds, without any deductions whatsoever for taxes, duties, charges or other withholdings, and notwithstanding any pending dispute between the Parties, to such account as the Bank may from time to time designate in writing.

5. **Effectiveness.** This Agreement shall become effective once it has been duly signed by both Parties.

6. **Expiration.** This Agreement shall expire on to **December 31, 2020** unless it shall earlier be renewed with the mutual agreement of the Client and the Bank.

7. **Termination.** Either the Client or the Bank may terminate this Agreement prior to its expiration upon ninety (90) days' written notice to the other. Upon receipt of such notice, the Parties shall take all appropriate steps to terminate in an orderly manner the activities then ongoing under the Reimbursable Advisory Services and to settle promptly all outstanding matters.

8. **Cooperation.** (a) The Client shall at all times provide the Bank in a timely manner with any and all information that may affect the performance of the Reimbursable Advisory Services, inform the Bank of any developments relating to the Reimbursable Advisory Services, and do all things necessary to enable Bank Personnel to carry out the Reimbursable Advisory Services hereunder.

(b) It is expressly agreed and understood that the Bank shall bear no responsibility for delay in performance occasioned by the Client's failure to provide its contribution as set forth in Section D of the Schedule to this Agreement or otherwise cooperate as set forth in paragraph (a) above.

9. **Addresses.** For purposes of Section 17 of the Annex to this Agreement:

(a) the Client's address is:

Financial Sector Conduct Authority
41 Matroos Road

Ashlea Gardens
Pretoria; and

(b) the Client's Electronic Address is:

Fax: +27 12 346 7263
E-mail: kershia.singh@fsca.co.za

(c) the Bank's address is:

The World Bank
442 Rodericks Road
Lynnwood
Pretoria; and


(d) the Bank's Electronic Address is:

E-mail: mmarienelly@worldbank.org

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 Signature Date.

FINANCIAL SECTOR
CONDUCT AUTHORITY
of REPUBLIC OF SOUTH
AFRICA

INTERNATIONAL BANK FOR
RECONSTRUCTION AND
DEVELOPMENT

By: 
Authorized Representative

Name: Lefofane Kekana

Title: CFO

Date: 21-Apr-2020

By: 
Authorized Representative

Name: Marie Françoise Marie-Nelly

Title: Country Director

Date: ~~08-Apr-2020~~

SCHEDULE

Description of the Reimbursable Advisory Services

A. *Reimbursable Advisory Services.* Except as the Client and the Bank may otherwise agree, the Reimbursable Advisory Services shall include the following activities and output:

1. Activities

- i. Evaluating the current operations of the financial sector ombuds system including against international good practice and principles, including: (a) structural and institutional aspects of ombud schemes; and (b) complaint resolution processes and outreach and coordination activities of ombud schemes.
- ii. Identifying weaknesses or gaps in the financial sector ombuds system which may be addressed by the Financial Sector Regulation (“FSR”) Act, in particular, identifying issues which could be addressed by the Ombud Council established in terms of the FSR Act as a regulator of ombuds, as well as possible improvements to the alternative dispute resolution system available to consumers which could be supported by the Client.
- iii. Assessing of the potential of three reform proposals, set out in the 2017 Consultation Policy Document titled “*A Known and Trusted Ombud System for All*”, published by National Treasury, namely: (a) hybrid model building on provisions of the FSR Act; (b) centralized model establishing a single statutory ombud scheme; and (c) industry ombuds with strong oversight by the Ombud Council, or any other suitable models, to address any identified gaps or weaknesses in the financial sector ombuds system.

2. Outputs

- i. A preparatory report setting out preparatory activities undertaken as part of the RAS (“Preparatory Report”).
- ii. A diagnostic report providing recommendations on enhancing the effectiveness and efficiency of the South African ombuds system (“Diagnostic Report”).

Any change to the foregoing scope of work shall be set out in a writing signed by the Client and the Bank, setting out the additional work to be undertaken and the fees in respect thereof.

B. Timetable. Except as the Client and the Bank may otherwise agree, the Bank shall endeavor to perform the Reimbursable Advisory Services in accordance with the following tentative timetable:

DELIVERABLE AND INTERMEDIATE OUTPUTS	DELIVERY DATE
Preparatory Report	Within 4 months from the Signature Date
Diagnostic report	Within 8 months from the Signature Date

C. Bank Personnel. The following is an indicative list of the persons likely to be involved in carrying out the Reimbursable Advisory Services:

- Julian Casal, Senior Financial Sector Economist
- Claudia Meek, Financial Sector Specialist
- Gian Boeddu, Senior Financial Sector Specialist
- Nina Mocheva, Senior Financial Sector Specialist

D. Counterparts and Facilities. The Client shall carry out the following activities: provide relevant material to support the delivery of the preparatory report and facilitate stakeholder discussions and information requests for the diagnostic report, in support of the Reimbursable Advisory Services.

E. Records. The Bank shall keep appropriate records of the Reimbursable Advisory Services in accordance with its normal record-keeping practices and shall furnish to the Client such information regarding the Reimbursable Advisory Services as the Client shall reasonably request.

**ANNEX
STANDARD TERMS AND CONDITIONS**

1. **Performance Standard; Non-Exclusivity.** The Bank hereby shall carry out the Reimbursable Advisory Services with the same care and diligence as it uses in its other analytical and advisory activities. The engagement of the Bank as adviser to the Client hereunder is non-exclusive and shall not restrict the Client from engaging other advisers on the same or related issues.

2. **Bank Personnel.** The Bank shall, in its sole discretion, determine the composition of the staff (including staff holding consultant appointments) (“Bank Personnel”) assigned to perform the Reimbursable Advisory Services. The Schedule to this Agreement contains an indicative list of Bank Personnel likely to be involved in carrying out the Reimbursable Advisory Services; provided, however, that the Bank retains at all times the right to assign such other person or persons in addition to, or substitution for, any of the persons appearing on that list as the Bank may deem necessary or appropriate in the performance of its duties hereunder. The Client may, if it has reasonable cause for dissatisfaction with the performance of any of the Bank Personnel, request the Bank to replace such person(s). For avoidance of doubt, it is agreed and understood that this Agreement does not create any employment or other contractual relationship between the Client and Bank Personnel.

3. **Client Contributions.** The Client shall carry out the activities and provide the facilities and other arrangements set out in the Schedule to this Agreement.

4. **Bank Operational Policies.** The Bank shall provide its advice in a manner consistent with its relevant environmental and social safeguards policies.

5. **Confidentiality.** The Parties agree that this Agreement and the outputs set out in the Schedule to this Agreement shall only be made available to the public after the Client has given its written consent to such disclosure. For this purpose, the Client hereby authorizes the Bank to publicly disclose this Agreement and the outputs set out in the Schedule to this Agreement in their final form. With respect to underlying information provided by the Client in support of the Reimbursable Advisory Services, the Client reserves the right to designate said information as confidential. The Bank may publicly disclose such information only after the Client has given its prior consent. With respect to underlying information (other than the final outputs) provided by the Bank in support of the Reimbursable Advisory Services, the Bank reserves the right to designate said information as confidential. The Client may publicly disclose such information only after the Bank has given its prior consent

6. **Intellectual Property.** The intellectual property rights of each Party in any of its pre-existing data or documents used by the Bank in connection with the Reimbursable Advisory Services shall remain with that Party. The intellectual property rights in new materials prepared by the Bank in connection with the Reimbursable Advisory Services

shall belong to the Bank; *provided, however*, that the Client shall have the global, non-exclusive, perpetual (for the duration of the copyright), and royalty-free right to use, copy, display, distribute, publish and create derivative works of all or part of these materials and incorporate the information therein in its research, papers, publications, web sites, and other media without the consent of the Bank, subject to the limitations on disclosure of confidential information and any third party rights, as indicated in Section 5, *Confidentiality*, of this Annex.

7. ***Representation of the Bank's Views and Use of the Bank's Name, Marks and Logo.*** (a) The Client agrees that it shall not represent, or permit the representation of, the Bank's views without the prior written consent of the Bank.

(b) The Client further agrees that it shall not use, or permit the use of the Bank's name, marks or logos in any advertisements, promotional literature or information without the prior written consent of the Bank, and that if such consent is provided that it shall use the name, marks and logos strictly in accordance with the permission provided and with the insertion of the Bank's usual disclaimers.

(c) Both Parties shall include the appropriate attribution and disclaimers in new materials prepared in connection with the Reimbursable Advisory Services.

8. ***Disclaimers and Liabilities***

(a) While the Bank shall make diligent efforts in its performance of the Reimbursable Advisory Services, the Bank makes no express or implied representation or warranty as to the extent of success that may be achieved in the implementation of any recommendation contained in any work product prepared by or with the assistance of the Bank or Bank Personnel.

(b) Without limitation to the immunities and privileges of the Bank under its Articles of Agreement and other applicable rules of law, the Bank shall not be liable to the Client or other third party for any loss, cost, damage or liability that the Client shall incur as a result of the Reimbursable Advisory Services.

(c) The Parties acknowledge and agree that it is not the purpose of this Agreement to create a partnership, joint venture or similar arrangement whereby the Parties could be held jointly liable vis-a-vis third Parties or for any other purposes. Nothing herein shall constitute a commitment by the Bank to provide financing to the Client in respect of a project or otherwise.

9. ***Governing Law.*** This Agreement is governed by, and shall be construed in accordance with, the laws of England.

10. ***Settlement of Disputes.*** (a) The Parties hereto shall endeavor in good faith to resolve any differences or disputes under, or in connection with, this Agreement by

amicable settlement. Any dispute arising out of or in connection with this Agreement which is not settled by agreement of the Parties shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules in force on the Signature Date. In the event of a conflict between the UNCITRAL Arbitration Rules and the terms of this Agreement, the terms of this Agreement shall govern.

(b) Neither the Client nor the Bank shall be entitled in any proceeding under paragraph (a) of this Section to assert any claim that any provision of these Standard Conditions or of the RAS Agreement is invalid or unenforceable because of any provision of the Bank's Articles of Agreement.

11. ***Privileges and Immunities; Tax Immunity.*** The Client recognizes and shall take all reasonable steps to give effect to the status, immunities and privileges of the Bank and its Personnel set forth in the Bank's Articles of Agreement and other applicable rules of law. The Parties acknowledge and agree that no provision of this Agreement, nor the submission to arbitration by the Bank, in any way constitutes or implies a waiver, renunciation, termination, or modification by the Bank of any privilege, immunity or exemption of the Bank granted in the Bank's Articles of Agreement and other applicable rules of law. This includes, *inter alia*, the immunity of the Bank, its assets, income and its operations and transactions, from all taxation and customs duties.

12. ***Amendments.*** Any amendment or waiver of, or any consent given under, any provision of this Agreement shall be in writing and, in the case of an amendment, signed by the Parties.

13. ***Saving of Rights.*** No course of dealing and no failure or delay by any Party hereto in exercising any power, remedy, discretion, authority or other right under this Agreement shall impair, or be construed to be a waiver of or an acquiescence in, that or any other power, remedy, discretion, authority or right under this Agreement, or in any manner preclude its additional or future exercise.

14. ***Successors and Assignees; No Assignment without Consent.*** This Agreement binds and benefits the respective successors and assignees of the Parties, provided that none of them may assign this Agreement in whole or in part without the prior consent of the other.

15. ***Entire Agreement.*** This Agreement, together with its Schedule, constitutes the entire agreement among the Parties hereto and supersedes any and all prior agreements, understandings and arrangements, oral or written, between the Parties with respect to the subject matter hereof.

16. ***Termination.*** Notwithstanding termination or expiration of this Agreement, the provisions of this Agreement relating to; (a) obligation of confidentiality under Section 5 of this Annex; (b) the obligations spelled out in Sections 6 on Intellectual Property and 11 on Privileges and Immunities of this Annex; and (c) the obligation of the

Client to pay to the Bank remuneration for the Reimbursable Advisory Services performed prior to the date of termination or expiration of the Agreement, as well as reimbursement of any reasonable costs related to the termination of the Agreement by the Client, shall continue in full force and effect.

17. ***Execution of this Agreement; Notices and Requests.*** (a) This Agreement may be executed in several counterparts, each of which is an original, but all of which constitute the same agreement. If executed by Electronic Means, this Agreement is an original.

(b) Any notice or request required or permitted to be given pursuant to this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when delivered by hand, by mail, or Electronic Means, to the Party to which it is to be given or made at such Party's address or Electronic Address, set out in Section 9 of this Agreement, or at such other address or Electronic Address as such Party shall have designated by notice to the Party giving such notice or making such request. Notices delivered by Electronic Means shall be deemed dispatched by the sender from its Electronic Address when it leaves the Electronic Communications System of the sender and shall be deemed received by the other Party at its Electronic Address when such notice or request becomes capable of being retrieved in machine readable format by the Electronic Communications System of the receiving Party.

(c) Electronic Documents shall have the same legal force and effect as information contained in this Agreement or a notice under this Agreement not executed or transmitted by Electronic Means.

18. ***Definitions***

(a) "Electronic Address" means the designation of an address that uniquely identifies a person within a defined Electronic Communications System for purposes of authenticating the dispatch and receipt of Electronic Documents.

(b) "Electronic Communications System" means the collection of computers, servers, systems, equipment, network elements and other hardware and software used for the purposes of generating, sending, receiving or storing or otherwise processing Electronic Documents, acceptable to the Bank and in accordance with any such additional instructions as the Bank may specify from time to time to the Client.

(c) "Electronic Document" means information contained in this Agreement or a notice under this Agreement that is transmitted by Electronic Means.

(d) "Electronic Means" means the generation, sending, receiving, storing or otherwise processing of an Electronic Document by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy, acceptable to the Bank.

(e) “Signature Date” means the later of the two dates on which the Client and the Bank signed this Agreement.