
FINANCIAL SECTOR CHARTER COUNCIL

END USER LICENSE AGREEMENT

1 PARTIES

- 1.1 This End User License Agreement (“License”) is an agreement between you, (“User”) in your individual capacity or as a representative of a legal entity, jointly or severally, and the Financial Services Charter Council (“Council”).

2 INTERPRETATIONS & DEFINITIONS

- 2.1 In this License, unless inconsistent with the pertinent Website Terms and Conditions or otherwise specifically indicated by the context as contrary, the following terms shall have the following meanings:
- 2.2 “Charter” means a transformation charter established by the Financial Services Sector of South Africa in terms of the Broad-based Black Economic Empowerment [BBBEE] Act [Act 53 of 2003]
- 2.3 “Council” means the Financial Services Charter Council, a council constituted for the purposes of overseeing implementation of the Charter between 2004 and 2014
- 2.4 “Parties” means the Website Secure Access Area User, and the Council and party shall mean either as indicated by context;
- 2.5 “Licensed Rights” means the non-exclusive and non-transferable right to:
- 2.5.1.1 Use the Website Secure Access Area for the purpose of the Services; and
- 2.5.1.2 Download, read, save and print the following:
- 2.5.1.2.1 *This License;*
- 2.5.1.2.2 *The pertinent Website Terms and Conditions; and*
- 2.5.1.2.3 *Website user manual or similar documentation necessary for the utilisation of the website;*
- 2.6 “Territory” means the User's computer, computer network or similar device located and operated from within the borders of the Republic of South Africa;
- 2.7 “Support” means support on access to the Website and use of the Website Secure Access Area by the User, available free of any fees or charges levied by the Council;

- 2.8 “Website” means the Council website [www.fscharter.co.za] established for the purposes of providing an online resource for the Charter stakeholders;
- 2.9 “Website Terms and Conditions” means the terms and conditions to which the User is subject when using the Council Website available from the Website upon use by the User of the Website;
- 2.10 “Website Secure Access Area” means the restricted access part of the Website, located at [<http://fsc.pdigital.co.za>] and established for the purpose of providing authorised Users a facility for secure communications;
- 2.11 “Commencement Date” means the date upon which the User agrees to this License concurrent with the date of first access to the Website Secure Access Area; and
- 2.12 “User Support Centre” means the support centre provided by Council, Monday to Friday (excluding public holidays) from 8:00 to 17:00 (South African time) available at the following details:
- Tel.: 011 447 6147 ;
- E-mail: josh@prefix.co.za

3 WEBSITE SECURE ACCESS AREA AUTHORISATIONS

- 3.1 This part of the website is a highly secure access area that will allow you, the User to view and share Charter related documentation and data and submit mandatory reporting documentation online subject to 3.2 below.
- 3.2 You acknowledge and agree to only access the Website Secure Access Area if you fall within one or more of the following categories of authorised Users:
- 3.2.1 Charter participants; and
- 3.2.2 Financial Institutions
- 3.3 Charter participants refer to board and alternate members of the Council, the Council secretariat and the technical committee members of the Council;
- 3.4 Financial Institutions include banks; long -term insurers, short -term insurers, re-insurers, collective investment schemes, investment managers, retirement funds, and licensed exchanges. Any other institution in the financial sector may opt to participate in the Charter but must receive specific authorisation from the Council.
- 3.5 If you are a Charter Participant you are hereby authorised as follows:

- 3.5.1 To use the Website Secure Access Area for internal communications with other Charter Participants and the Council; and
- 3.5.2 To access information including meeting documents such as meeting agendas, minutes, research and reports
- 3.6 If you are a Financial Institution you are hereby authorised as follows:
 - 3.6.1 To use the Website Secure Access Area for internal communications with the Council; and
 - 3.6.2 To submit annual performance reports pertaining to the Charter objectives by utilising the secure channel of communication offered by the Website Secure Access Area;
subject to individual institution authorisation by the Council.
- 3.7 The Council grants no further authorisations either expressed or implied.
- 3.8 The Website Secure Access Area is subject to change without further notice.
- 3.9 The Council reserves all rights, in its sole and absolute discretion, to deny or suspend authorisation.

4 GRANT OF LICENSE

- 4.1 The Council hereby grants the User the right to exercise the Licensed Rights in the Territory from the Commencement Date for the duration of this License and subject to the terms and conditions detailed herein and in the Website Terms and Conditions. The User may authorise persons employed by the User to use the Website Secure Access Area up to a maximum of 2 (two) users and such persons shall be bound by the terms of this License and the Website Terms and Conditions.

5 TERM AND TERMINATION

- 5.1 Subject to clause 16 below, this License commences on the Commencement Date and continues indefinitely unless terminated by either Party through 1 (one) month's prior written notice to the other Party.

6 UNAUTHORISED ACTIONS

The User shall not:

- 6.1 Copy, reproduce, market, distribute, sell or license the Website, any part thereof or and data or documentation accessed in the Website Secure Access Area without the necessary authorisation or permission of the Council;
- 6.2 Modify, adapt, reverse engineer, deconstruct or upgrade the Website or any part thereof;

- 6.3 Use, copy, distribute, remove, cover or deal with any trademarks, logos, icons, screen shots or similar assets or any part thereof, of the Council;
- 6.4 Download, create, develop, distribute or use any device to breach or overcome the security measures and settings of the Website Secure Access Area nor assist or allow any third party to download create, develop, distribute or use any device to breach or overcome the security measures and settings of the Website Secure Access Area or any part thereof.

7 DUTIES OF THE USER

Notwithstanding any other rights and duties detailed in this agreement, the User and all persons authorised by the User to use the Website Secure Access Area have the duty to:

- 7.1 inform the Council of any real and/or suspected infringements or breaches of this agreement by any third Party;
- 7.2 legally and in writing obtain all necessary permissions and authorisations from the relevant parties to monitor, scan, copy, back-up, save, use, secure, filter, block and/or delete all electronic communications received and sent by the User or any third person authorised by the User to use the Website Secure Access Area, as detailed in the Regulation of Interception of Communications Act 70 of 2002;
- 7.3 protect and secure the confidentiality and integrity of the User's username and password;
- 7.4 report any unauthorised use and / or disclosure of the User's username and password to the Customer Support Centre;
- 7.5 bring the content of this License and the Website Terms and Conditions to the attention of any person authorised by the User to use the Website Secure Access Area
- 7.6 back-up all information prior to submitting it via the Website Secure Access Area.

8 DUTIES OF THE COUNCIL

- 8.1 The Council will provide the following:
 - 8.1.1 Maintain a log of all events on the Website Secure Access Area;
- 8.2 Notwithstanding any other rights and duties detailed in this agreement, the Council has the duty to provide the Licensed Rights, the Website Secure Access Area software application and Support to the User.

9 USER WARRANTIES

The User and all persons authorised by the User to use the Website Secure Access Area warrant that:

- 9.1 The Website Secure Access Area shall only be used for legal purposes;
- 9.2 Data uploaded to the Website Secure Access Area shall not be, contain or link to any information that is or could be regarded as:
 - 9.2.1 Illegal;
 - 9.2.2 Unauthorised by the owner or legal right holder; and/or
 - 9.2.3 Dangerous code such as viruses, worms and Trojan horses
- 9.3 Data uploaded to Website Secure Access Area shall be:
 - 9.3.1 Accurate,
 - 9.3.2 In a format usable within the parameters of the Website Secure Access Area; and
 - 9.3.3 Data that is authorised by the relevant parties to be used by the User;

10 COUNCIL WARRANTIES

Subject to the terms of this License and the Website Terms and Conditions, the Council does not make any warranties or representations of any nature whatsoever.

11 LIMITATION OF LIABILITY

- 11.1 The Council, including its partners, affiliates and employees shall not be liable for any damage, loss or destruction incurred by the User or any third Party related to the use of the Website Secure Access Area unless such damage, loss or destruction resulted from the gross negligence or illegal actions of the Council.
- 11.2 The liability of the Council for any loss, damage or destruction shall be limited to R1000,00 (one thousand rands) only.
- 11.3 The Council will not be liable for loss of data or disruption of data.

12 INDEMNIFICATION

- 12.1 The User indemnifies and holds the Council harmless against any and all damages, losses or destruction incurred by Council and resulting from the User's breach of the terms of this License and the Website Terms and Conditions.

13 INTERCEPTION, MONITORING AND DISCLOSURE

- 13.1 Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the User agrees to the Council's right to intercept, block, filter, read, delete, disclose and use all communications (including all "data messages" as defined in the ECT Act) send or posted by the User to the Website Secure Access Area, its staff and employees. The RIC Act may be downloaded from: <http://www.info.gov.za/acts/2002/a70-02/>.
- 13.2 The User indemnifies and holds the Council harmless against any costs, liabilities and damages that may result from a claim that a communications was illegally intercepted, blocked, filtered, copied, read, used, retained and/or monitored;
- 13.3 The Council shall only disclose the contents of a communication if -
- 13.3.1 authorised thereto by the User;
 - 13.3.2 authorised thereto by any third party who send the communication;
 - 13.3.3 reasonably required for the proper execution of the Council's duties in terms of this Agreement; or
 - 13.3.4 authorised or required through due legal process.

14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 All intellectual property on and in the Website Secure Access Area, including but not limited to content, trademarks (or any confusingly similar trademarks), logos, pictures, video, downloads, domain names, patents, design elements, software, source code, databases, text, graphics, icons and hyperlinks is the property of or licensed to the Council and as such, is protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in clause 2, all other rights to intellectual property on the Council Website are expressly reserved.

15 CHANGES AND AMENDMENT

- 15.1 The Council reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice or justification:
- 15.1.1 change these terms and conditions;
 - 15.1.2 change the content and/or services available from the Website Secure Access Area;
 - 15.1.3 discontinue any aspect of the Website Secure Access Area or service(s) available from the facility; and/or

15.1.4 change the software and hardware required to access and use the Website Secure Access Area.

16 PRIVACY

16.1 The Council shall take all reasonable steps to protect the personal information of Users and for the purpose of this clause, "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA).

16.2 The Privacy Statement as per the Council Website Terms and Conditions refers.

17 ASSIGNMENT

17.1 The User shall not, without the prior and written consent of the Council, be allowed to assign, cede, or delegate its rights and / or obligations in terms of this License or the Website Terms and Conditions, in whole or in part, to any third party.

18 BREACH OF CONTRACT

18.1 If any of the Parties (the aggrieved Party) alleges that the other Party (the defaulting Party) is in breach of any of the provisions of this agreement and the defaulting Party has failed to remedy such breach within 10 (ten) days after receipt of a written, including e-mail, notice given by the aggrieved Party requiring of the defaulting Party to remedy such breach, the aggrieved Party shall, without prejudice to any other right which it may have, be entitled to specific performance or cancellation of this agreement with or without a claim for damages;

18.2 Any dispute of whatsoever nature arising in respect of a matter regulated by this agreement, or the implementation of this agreement, shall within 7 (seven) days of a written request by either of the parties to such dispute, be referred to the Arbitration Forum of South Africa for confidential arbitration in terms of the expedited rules and procedures of the said forum. Without affecting the validity of this clause such rules may be downloaded from: http://www.arbitration.co.za/Pages/docs/expedited_rules.pdf

18.3 The arbitration proceedings shall be held in Johannesburg in English and the decision shall be final and binding on the Parties;

18.4 The unsuccessful Party shall pay the costs of the successful Party on the scale as between attorney and own client; and

18.5 Nothing in this clause shall prevent a Party from approaching a court of competent jurisdiction in South Africa for urgent or interim relief, where applicable.

19 ELECTRONIC COMMUNICATIONS

- 19.1 Electronic Communications between the Parties may take place subject to the following conditions:
- 19.1.1 All Electronic Communications from User to the Council are to be submitted to the following addresses: **enochg@fscharter.co.za; tandekan@fscharter.co.za**
- 19.1.2 A Data message (as defined in the Electronic Communications and Transactions Act 25 of 2002) sent by the User to Council shall be deemed to have been received by the Council only when the Council responds thereto, and for the purposes of this clause an auto-response shall not be a response by the Council;
- 19.1.3 A Data Message will be deemed to have been sent by the Council once the Data Message enters an information system outside the control of the Council;
- 19.1.4 All Data Messages between the Council and the User will not be without legal force or effect merely because it is in the form of a Data Message, or not evidence by an electronic signature;
- 19.1.5 Notwithstanding anything to the contrary contained in this clause, a written notice or other communication actually received by either party and for which written receipt has been obtained, shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address;

20 WHOLE AGREEMENT

- 20.1 This License and the Website Terms and Conditions constitute the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter hereof and the Parties will not be entitled to rely in any dispute regarding this agreement, or any terms, conditions, or representations not expressly contained in this agreement;
- 20.2 No amendment, change or consensual cancellation of this agreement shall be binding unless recorded in a written document and signed by the Parties; and
- 20.3 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement by any Party shall operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this agreement.

21 GOVERNING LAW

- 21.1 The laws of South Africa shall govern the validity and interpretation of this License agreement.