

FINANCIAL SECTOR CHARTER COUNCIL

WEBSITE TERMS AND CONDITIONS

IN TERMS OF SECTION 11(3) OF THE [ELECTRONIC COMMUNICATIONS AND TRANSACTIONS \(ECT\) ACT 25 OF 2002](#), THESE TERMS AND CONDITIONS ARE BINDING AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS THE COUNCIL WEBSITE OR ANY PART THEREOF.

IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS YOU MUST LEAVE THE COUNCIL WEBSITE IMMEDIATELY, AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

DEFINITIONS AND INTERPRETATION

- a) **“Council”** means the Financial Sector Charter Council, a council established in terms of section 15 of the Financial Sector Charter, which is a transformation charter in terms of the Broad Based Black Economic Empowerment Act 53 of 2003;
- b) **“Council website”** means the Financial Sector Charter Council website located at www.fscharter.co.za and includes any part or element thereof;
- c) **“User”** means any person who enters or uses the Council website, notwithstanding the fact that such a person only visited the home page of the Council website;
- d) References herein to the singular include the plural and vice versa; and
- e) Notwithstanding the fact that hyperlinks in these terms and conditions to copyright notices and legislation should be deemed part of these terms and conditions in terms of section 11 of the ECT Act, the fact that some or all of the hyperlinks may be non-operational, shall not play a role in determination of the validity and interpretation of these terms and conditions.

1. GENERAL

The Council is responsible for overseeing implementation of the Financial sector Charter between 2004 and 2014.

2. ALLOWED USE AND LICENSE

- 2.1 The Council licenses the User to view, download and print the content of the Council website, provided that such content is used for personal, educational and/or non-commercial purposes only;
- 2.2 Content from the Council website shall not be used or exploited by Users for any commercial and non-private purposes in the absence of prior written consent of the Council;
- 2.3 Users may only access and use the Council website for lawful purposes;
- 2.4 The caching of the Council website shall only be allowed if:
 - 2.4.1 The purpose of the caching is to make the onward transmission of the content from the Council website more efficient;
 - 2.4.2 The cached content is not modified in any manner whatsoever;

- 2.4.3 The cached content is updated at least every 12 (twelve) hours; and
- 2.4.4 The cached content is removed or updated when so required by the Council.
- 2.5 If any User uses content from the Council website in breach of the provisions detailed herein:
 - 2.5.1 The Council reserves the right to claim damages from the User;
 - 2.5.2 The Council reserves the right to institute criminal proceedings against the User; and
 - 2.5.3 The Council shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of such content by the User or any third party who obtained any content from the User.
- 2.6 Hyperlinks to the Council website from any other source shall be directed at the home page of the Council website. The Council shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content from the Council website, if such content was accessed through a hyperlink not directed at the home page of the Council website. Persons that wish to link to content beyond the home page of the Council website shall do so at their own risk and indemnify the Council against any loss, liability or damage that may result from the use of content from the Council website, if such content was accessed through a hyperlink not directed at the home page of the Council website;
- 2.7 No person may frame the Council website, in any manner whatsoever, without the prior written consent of Council;
- 2.8 Apart from bona-fide search engine operators and use of the search facility provided on the Council website by Users, no person may use or attempt to use any technology or applications (including web crawlers or web spiders) to search or copy content from the Council website for any purposes, without the prior written consent of Council; and
- 2.9 All licenses and/or permissions granted in terms of this clause 2 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by the Council at any time without giving reasons therefore.

3. INTELLECTUAL PROPERTY RIGHTS AND DOMAIN NAME USE

All intellectual property on the Council website, including but not limited to content, trademarks, domain names, patents, design elements, software, databases, text, graphics, icons and hyperlinks are the property of or licensed to the Council and as such, are 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.



4. SOFTWARE AND EQUIPMENT

It is the responsibility of the User to acquire and maintain, at his/her own expense, the computer hardware, software, lines and access accounts required to access the Internet and the Council website and/or download content from this website.

5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

Access to the services, content, software and content downloads available from the Council website is classified as “electronic transactions” in terms of the ECT Act and therefore Users have the rights detailed in Chapter 7 of the ECT Act and the Council has the duty to disclose the following information:

- 5.1 **The full name and legal status of the website owner:** Financial Sector Charter Council;
- 5.2 **VAT registration number:** Not registered;
- 5.3 **Street address:** 4th Floor, Hollard Building, 66 Marshall Street, Marshalltown, 2107;
- 5.4 **Postal address:** P. O. Box 62542, Marshalltown, 2107;
- 5.5 **Physical address for receipt of legal service:** 4th Floor, Hollard Building, 66 Marshall Street, Marshalltown, 2107;
- 5.6 **Telephone Number:** +27 (0) 11 838 6966
- 5.7 **Board Members:** Click [here](#) to view the Council Board Members;
- 5.8 **Secretariat:** Click [here](#) to view the Council Secretariat;
- 5.9 **Main business:** The Financial Sector Charter Council has been constituted and is responsible for overseeing implementation of the Charter between 2004 and 2014. It will conduct reviews in 2009 and 2015 to assess whether the Charter’s objectives have been achieved and the impact of the Charter on financial sector transformation. The Council is made up of a board and a secretariat;
- 5.10 **The website address of the Council website is:** www.fscharter.co.za;
- 5.11 **The official e-mail address of the Council website is:** info@fscharter.co.za;
- 5.12 **Membership of self-regulatory or accreditation bodies:** Not applicable;
- 5.13 **Codes of conduct to which the Council subscribes:** Not applicable;
- 5.14 **Copies of the Manual published in terms of section 51 of the Promotion of Access to Information Act 2 of 2000:** Not applicable;
- 5.15 **Alternative dispute resolution:** Subject to urgent and/or interim relief, all disputes regarding:
 - 5.15.1 access to the Council website;



- 5.15.2 the inability to access the Council website;
- 5.15.3 the services and content available from the Council website; or
- 5.15.4 these terms and conditions,

shall be referred to arbitration in terms of the [expedited rules](#) of the Arbitration Foundation of South Africa and such arbitration proceedings shall be conducted in Johannesburg in English. The arbitration ruling shall be final and the unsuccessful party shall pay the costs of the successful party on a scale as between attorney and own client.

- 5.16 **The costs associated with the access and use of the Council website are as follows:** Free;
- 5.17 **Cooling-off period:** In terms of the operation of section 42(1)(d) of the ECT Act, the cooling-off provisions of the ECT Act do not apply to this web site; and
- 5.18 **Users may lodge complaints** concerning the Council website at info@fscharter.co.za. Users hereby assign the copyright in such complaints to the Council and understand that the Council may use, disclose and publish such complaints and is furthermore under no legal duty to answer, address or resolve such complaints.

6. CHANGES AND AMENDMENTS

The Council expressly reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice:

- 6.1 change these terms and conditions;
- 6.2 change the content and/or services available from the Council website;
- 6.3 discontinue any aspect of the Council website or service(s) available from the Council website; and/or
- 6.4 change the software and hardware required to access and use the Council website.

7. PRIVACY

- 7.1 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);
- 7.2 The Council may electronically collect, store and use, amongst other, the following personal information of Users:
 - 7.2.1 name and surname;
 - 7.2.2 contact details;
 - 7.2.3 non-personal browsing habits and click patterns;



- 7.2.4 e-mail address; and
- 7.2.5 IP address.
- 7.3 The Council collects, stores and uses the abovementioned information for the following purposes:
 - 7.3.1 communicate requested information to the User;
 - 7.3.2 newsletter database;
 - 7.3.3 registration and / or authentication of Users; and
 - 7.3.4 to compile non-personal statistical information about browsing habits, click-patterns and access to the Council website;
- 7.4 Information detailed above is collected either electronically by using cookies or is provided voluntarily by the User. Users may determine cookie use independently through their browser settings;
- 7.5 The Council may collect, maintain, save, compile, share, disclose and sell any information collected from users, subject to the following provisions:
 - 7.5.1 The Council shall not disclose personal information from Users unless the User consents thereto;
 - 7.5.2 The Council shall disclose information without the User's consent only through due legal process; and
 - 7.5.3 The Council may compile, use and share any information that does not relate to any specific individual; and
- 7.6 The Council owns and retains all rights to non-personal statistical information collected and compiled by Council.

8. HYPERLINKS TO THIRD PARTY SITES

- 8.1 The Council may provide hyperlinks to websites not controlled by the Council (target sites) and such links do not imply any endorsement, agreement on or support for the content of such target sites; and
- 8.2 The Council does not editorially control the content on such target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access or content available on or through such target sites.

9. SECURITY

- 9.1 The Council shall take all reasonable steps to secure the content of the Council website and the information provided by and collected from Users from unauthorised access and/or disclosure. However, the Council does not make any warranties or representations that content shall be 100% safe and secure;
- 9.2 The Council is under no legal duty to encrypt any content or communications from and to the Council website and is also under no legal duty to provide digital authentication of any page on the Council website;



- 9.3 Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, to the Council website or the server and computer network that support the Council website;
- 9.4 Notwithstanding criminal prosecution, any person who delivers any damaging code to the Council website, whether on purpose or negligently, shall, without any limitation, indemnify and hold the Council harmless against any and all liability, damages and losses Council and its partners / affiliates may suffer as a result of such damaging code;
- 9.5 Users may not develop, distribute or use any device to breach or overcome the security measures of the Council website and the Council reserves the right to claim damages any and all persons concerned with a security failure or breach; and
- 9.6 Any User who commits any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by the Council and its partners / affiliates.

10. DISCLAIMER AND LIMITATION OF LIABILITY

- 10.1 Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, and as far as allowed by law, the Council (including its owners, directors, employees, suppliers, Internet service providers, partners, affiliates and agents) shall not be liable for any damage, loss or liability of any nature incurred by whomever and resulting from:
 - 10.1.1 access to the Council website;
 - 10.1.2 access to websites linked to the Council website;
 - 10.1.3 inability to access the Council website;
 - 10.1.4 inability to access websites linked to the Council website;
 - 10.1.5 content available on the Council website;
 - 10.1.6 services available from the Council website;
 - 10.1.7 downloads and use of content from the Council website; or
 - 10.1.8 any other reason not directly related to Council's gross negligence.
- 10.2 The Council website is supplied on an "as is" basis and has not been compiled to meet the User's individual requirements. It is the responsibility of the User to satisfy himself or herself, prior to entering into this agreement with Council, that the content available from and through the Council website meets the User's individual requirements and is compatible with the User's computer hardware and/or software;
- 10.3 Information, ideas and opinions expressed on the Council website should not be regarded as professional advice or the official opinion of Council and Users are encouraged to seek professional advice before taking any course of action related to the information, ideas or opinions expressed on the Council website;



- 10.4 The Council does not make any warranties or representations that content and services available from the Council website will in all cases be true, correct or free from any errors. The Council shall take all reasonable steps to ensure the quality and accuracy of content available from the Council website and encourages Users to report incorrect and untrue information subject to the right of the Council to rely on its free expression rights and determine, in its sole and absolute discretion, the contents of this website; and
- 10.5 The Council does not make any warranties or representations that the Council website shall be available at all times. Users acknowledge that the Council website may be unavailable due to updates or other causes beyond the reasonable control of Council, including, but not limited to virus infection, unauthorised access, power failure or other “acts of God.”

11. REMOVAL AND CORRECTION OF CONTENT

Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from the Council website to the Council and the Council undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.

12. INTERCEPTION OF COMMUNICATIONS

- 12.1 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 sent or posted by the User to the Council website, its staff and employees; and
- 12.2 The User agrees and acknowledges that the consent provided by the User in clause 12.1 satisfies the “writing” requirement as detailed in the ECT Act and the RIC Act.

13. ENTIRE AGREEMENT AND SEVERABILITY

- 13.1 These terms and conditions constitute the entire agreement between the Council and the User and shall take precedence over any disclaimers and/or legal notices attached to any communications and/or postings received by the Council from the User;
- 13.2 Any failure by the Council to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision; and
- 13.3 In the event that any term or condition detailed herein is found unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall remain enforceable and applicable.



14. AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT

The User and the Council agree that:

- 14.1 the User shall be bound to these terms and conditions and such agreement is concluded in Johannesburg (South Africa) at the time the User enters the Council website for the first time;
- 14.2 data messages (as defined in the ECT Act) addressed by the User to the Council shall only be deemed to have been received if and when responded to;
- 14.3 data messages (as defined in the ECT Act) addressed to the User by Council shall be deemed to be received by the User as detailed in section 23(b) of the ECT Act;
- 14.4 data messages (as defined in the ECT Act) addressed by the User to the Council shall be deemed to have been created and sent by the User from within the geographical boundaries of South Africa;
- 14.5 electronic signatures, encryption and/or authentication is not required for valid electronic communications between the User and the Council; and
- 14.6 The User agrees and warrants that data messages that are sent to the Council from a computer, IP address or mobile device normally used by or owned by the User, was sent and/or authorised by the User personally.

15. APPLICABLE AND GOVERNING LAW

Subject to clause 5.4, the Council website is hosted, controlled and operated from the Republic of South Africa and therefore the South African law enforced by the South African courts governs the use or inability to use the Council website, its content, services and these terms and conditions.

16. LEGAL COSTS

The Council shall not be liable for costs incurred by Users to obtain professional advice relating to these terms and conditions.