



**AFRICAN CONTINENTAL FREE TRADE AREA SECRETARIAT**

Creating One African Market

---

**Fifteenth (15<sup>th</sup>) Meeting of the African Continental Free Trade Area (AfCFTA)  
Committee on Senior Trade Officials**

**15 - 17 October 2023**

**Kigali, Rwanda**

**PROTOCOL TO THE AGREEMENT ESTABLISHING THE AFRICAN  
CONTINENTAL FREE TRADE AREA ON DIGITAL TRADE**

**DRAFT**

**DISCLAIMER:**

**This document is strictly confidential and should not be copied or reproduced  
in whole or in part nor distributed in any manner to any third party.**



## AFRICAN CONTINENTAL FREE TRADE AREA SECRETARIAT

Creating One African Market

### Preamble

**We, Member States of the African Union,**

**RECALLING** Decision Ext/Assembly/AU/Dec.1(X) of the Assembly of the Heads of State and Government during its 10<sup>th</sup> Extraordinary Session held in Kigali, Rwanda, on 21 March 2018 adopting the Agreement Establishing the African Continental Free Trade Area (AfCFTA);

**PURSUANT TO** the principles and objectives of the Agreement Establishing the AfCFTA, and Article 8(3) of the Agreement, which provides for the conclusion of any additional instruments, deemed necessary, in furtherance of the objectives of the AfCFTA;

**RECALLING** Decision Assembly/AU/4(XXXII) of the Assembly of the Heads of State and Government of the African Union during its 33<sup>rd</sup> Ordinary Session held in Addis Ababa, Ethiopia, from 9<sup>th</sup> to 10<sup>th</sup> February 2020;

**HAVING REGARD** to the aspirations of the African Union (AU) Agenda 2063 and the Digital Transformation Strategy for Africa (2020-2030), and digital trade related matters incorporated in the relevant instruments of the AU, Regional Economic Communities, as well as international instruments and agreements;

**ACKNOWLEDGING** the increasing role of emerging and advanced technologies in fostering innovation and trade, and to further encourage the ethical, trusted, safe, and responsible adoption and use of such technologies;

**DESIRING** to harness digital technologies and innovation to boost intra-African trade and investment, deepen the economic integration of Africa, transform African societies and economies, generate sustainable and inclusive economic growth, stimulate job creation, reduce inequality, and eradicate poverty for the attainment of the continent's socio-economic development in line with the objectives of the AfCFTA;

**DETERMINED** to ensure the inclusion of all peoples and businesses, including micro, small and medium-sized enterprises, rural communities, indigenous peoples, women, youth, persons with disabilities and other underrepresented groups in digital trade;

**RESOLVED** to establish clear, predictable, transparent and harmonised rules as well as common principles and standards that enable and support digital trade;

**FURTHER RESOLVED** to create a transparent, open, predictable, secure, and trustworthy digital trade ecosystem for businesses and consumers;

**RECOGNISING** the different levels of development among State Parties and the need to provide technical assistance and capacity building to State Parties in the implementation of this Protocol; and

**Confidential**

**Do Not Circulate.**



**AFFIRMING** the inherent right of State Parties to regulate within their territories and to safeguard public welfare, promote sustainable development, protect essential security interests, and pursue legitimate public policy objectives,

**HAVE AGREED AS FOLLOWS:**



## PART I GENERAL PROVISIONS

### Article 1 Definitions

For the purposes of this Protocol:

- (a) **“AfCFTA”** means the African Continental Free Trade Area;
- (b) **“AfCFTA Secretariat”** means the Secretariat of the AfCFTA, as established under Article 13 of the Agreement;
- (c) **“Agreement”** means the Agreement Establishing the AfCFTA;
- (d) **“Computing facilities”** means computer servers and storage devices for processing or storing information;
- (e) **“Digital certificates”** means electronic documents or files that are issued or otherwise linked to a person to an electronic communication or transaction for the purpose of establishing the identity of the person;
- (f) **“Digital identity”** means a set of unique and validated digital attributes or credentials for identifying a natural or juridical person;
- (g) **“Digital payment”** means a transfer by a payer of a monetary value acceptable to a payee made through electronic means;
- (h) **“Digital trade”** means digitally enabled transactions of trade in goods and services that can either be digitally or physically delivered, and that involve natural and juridical persons;
- (i) **“Digital product”** means a electronic programme, text, video, image, sound recording, or any other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically except for a digitised representation of a financial instrument, including money;<sup>1</sup>
- (j) **“Electronic authentication”** means the process or act of verifying the identity of a party to an electronic communication or transaction, and ensuring the integrity of an electronic communication;
- (k) **“Electronic invoice”** means an invoice issued, transmitted and received in a structured data format which allows for its automatic and electronic processing;

---

<sup>1</sup> This definition should not be understood to reflect a State Party’s view that digital products are a good or a service.



- (l) **“Electronic invoicing”** means the automated creation, exchange and processing of requests for payments between suppliers and buyers using a structured digital format;
- (m) **“Electronic signature”** means a digitally encrypted stamp of authentication on digital information such as an electronic message or document that confirms the information originated from the signer and has not been altered;
- (n) **“Electronic Trust Services”** means an electronic service consisting of the creation, verification, validation of electronic invoices, electronic signatures, time stamps, certified electronic delivery, and website authentication certificates.
- (o) **“Transmitted electronically”** means the transfer of digital products using authorised digital networks and interchange systems consisting of, but not limited to, mobile and computer networks;
- (p) **“Open government information”** means non-proprietary information and data held by or on behalf of central, regional, or local government;
- (q) **“Measure”** means any action by a State Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or practice;
- (r) **“Person of a State Party”** means a natural or juridical person of a State Party conducting business in the territory of another State Party which maintains substantial business in the territory of that State Party;
- (s) **“Personal data”** means any information and data, about an identified or identifiable natural person by which this person can be identified, directly or indirectly;
- (t) **“Protocol”** means the Protocol to the Agreement Establishing the AfCFTA on Digital Trade;
- (u) **“State Party”** means a Member State that has ratified or acceded to the Protocol and for which the Protocol is in force;
- (v) **“Third Party”** means a State that is not a party to this Protocol;
- (w) **“Trade administration documents”** means forms issued or controlled by a State Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and



- (x) **“Unsolicited commercial electronic communications”** means any electronic communication whose primary purpose is the commercial advertisement or promotion of a commercial good or service, sent without the consent of the recipient or despite the explicit refusal of the recipient.

## Article 2

### Objectives

1. The general objective of this Protocol is to support the attainment of the objectives of the AfCFTA, stipulated in Article 3 of the Agreement, by establishing harmonised rules and common principles and standards that enable and support digital trade for sustainable and inclusive socio-economic development and the digital transformation of the continent.
2. The specific objectives of this Protocol are to:
  - a. promote and facilitate intra-African digital trade by eliminating barriers to digital trade among State Parties;
  - b. establish clear, predictable and transparent harmonised rules, and common principles and standards for digital trade;
  - c. create a transparent, open, predictable, secure, and trustworthy digital trade ecosystem for businesses and consumers;
  - d. enhance cooperation among State Parties on matters related to digital trade;
  - e. establish an institutional framework for the implementation and administration of this Protocol;
  - f. promote common and open standards to enable the interoperability of frameworks and systems to facilitate cross-border digital trade;
  - g. encourage trusted, safe, ethical, and responsible adoption and regulate the use of emerging and advanced technologies to support and promote digital trade;
  - h. promote digital skills development, innovation and entrepreneurship and digital industrialisation as well as develop digital infrastructure to facilitate digital transformation of State Parties; and
  - i. provide a common legal framework for digital trade among State Parties.



### Article 3

#### Scope of Application

1. This Protocol shall apply to measures adopted or maintained by a State Party affecting digital trade.
2. This Protocol does not apply to:
  - a. government procurement; or
  - b. information held or processed by or on behalf of a State Party, or measures related to that information, including measures related to its collection, except for Article 41 (Open Government Information).

### Article 4

#### Right to Regulate

Each State Party has the right to regulate within its territory and to safeguard public welfare, promote sustainable development, protect essential security interests and pursue legitimate public policy objectives.

### Article 5

#### Relationship between the Protocol and other Protocols of the AfCFTA

1. This Protocol, as an integral part of the Agreement, shall not derogate from or modify the rights and obligations of the State Parties under the other Protocols to the Agreement.
2. In the event of any conflict or inconsistency between this Protocol and any other Protocol to the Agreement in relation to matters specifically governed by the other Protocol, the provisions of the other Protocol shall prevail to the extent of the conflict or inconsistency.



## PART II

### MARKET ACCESS AND TREATMENT OF DIGITAL PRODUCTS

#### Article 6

##### Customs Duties

1. *[A State Party shall not impose customs duties on digital products transmitted electronically originating from other State Parties.]*
2. For greater certainty, Paragraph 1 of this Article does not preclude a State Party from imposing internal taxes, fees or other charges on digital products transmitted electronically originating from other State Parties, provided that such taxes, fees or charges are imposed in a manner consistent with the Agreement.

#### Article 7

##### Non-Discrimination of Digital Products

1. A State Party shall accord no less favourable treatment to digital products created, produced, published, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of another State Party than it accords to like digital products created, produced, published, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory or that of any other State Party.
2. A State Party shall accord no less favourable treatment to digital products from another State Party than it accords to like digital products from its territory, or that of any other State Party on the basis that the author, performer, producer, developer, distributor or owner of such products is a person of another State Party. This does not apply to subsidies, loans or grants provided by a State Party.
3. Nothing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties, provided that such trade arrangements do not impede or frustrate the objectives of this Protocol, and that any advantage, concession or privilege granted to a Third Party under such arrangements is extended to other State Parties on a reciprocal basis.





## **PART III**

### **FACILITATING DIGITAL TRADE**

#### **Article 8**

##### **Electronic Trust Services**

A State Party shall not deny the legal validity, effect, or admissibility of electronic documents, electronic signatures, electronic seals, electronic time stamps, or other electronic processes or means of validating, facilitating or enabling electronic transactions such as electronic registered delivery services or other forms of electronic trust services solely on the basis that it is in electronic form.

#### **Article 9**

##### **Electronic Authentication**

Each State Party shall adopt or maintain laws or regulations for electronic authentication that:

- a. permit parties to an electronic transaction to mutually determine the appropriate authentication methods for that transaction;
- b. permit parties to an electronic transaction to have an opportunity to prove before judicial or administrative authorities that their transactions comply with that State Party's laws or regulations with respect to authentication; and
- c. do not limit the recognition of authentication technology, methods, and implementation models.

#### **Article 10**

##### **Paperless Trading**

Each State Party shall accept electronic versions of trade administration documents as the legal equivalent of the paper version of such documents.



## Article 11

### Logistics and Last Mile Delivery

1. State Parties shall endeavour to enhance the regulatory environment for logistics services and related freight logistics services both for market access and non-discrimination and ensure that relevant domestic regulations are applied in a reasonable, transparent, and non-discriminatory manner.
2. State Parties shall endeavour to streamline licensing procedures related to logistics services and process all licence applications in a prompt and non-discriminatory manner.
3. State Parties agree, pursuant to their respective domestic laws and regulations, to promote the establishment of transport coordination mechanisms among themselves to improve infrastructure, promote international multimodal transport and inter-connectivity between different modes of transport, and formulate standard and compatible transport rules in order to facilitate transport and logistics services and last mile delivery.
4. State Parties shall endeavour to ensure that decisions made, and procedures applied by their regulatory authorities to all logistics services suppliers within their territories, are impartial, transparent, and non-discriminatory, and their relevant authorities do not adopt or maintain policies and measures that will restrain competition.
5. State Parties are encouraged to adopt, maintain or upgrade national addressing systems, postal, and relevant infrastructure to facilitate last mile delivery.

## Article 12

### Electronic Contracts

Each State Party shall adopt or maintain laws or regulations that:

- a. allow for contracts to be concluded by electronic means; and
- b. do not deny the legal effect, enforceability, or validity of an electronic contract solely on the grounds that the contract has been concluded by electronic means.



## Article 13

### Electronic Invoicing

1. Each State Party shall adopt or maintain laws or regulations that accept electronic invoices as the legal equivalent of paper versions of such invoices.
2. Each State Party shall ensure that the implementation of measures related to electronic invoicing in its territory supports or provides for cross-border interoperability with the electronic invoicing systems of other State Parties.

## Article 14

### Digital Identities

1. State Parties shall, in accordance with their laws and regulations, adopt or maintain digital identity regimes for both natural and juridical persons.
2. State Parties shall develop an Annex on Digital Identities to foster interoperability between their respective digital identity regimes. In developing the Annex on Digital Identities, State Parties shall consider, among others:
  - a. promoting technical interoperability by adopting principles or common standards for implementing digital identity policies and regulations adopted by relevant regional, continental or international organisations;
  - b. developing comparable protection of digital identities afforded by each State Party's respective legal frameworks, or the recognition of their legal and regulatory effects, whether accorded unilaterally or by mutual agreement;
  - c. adopting mutual recognition of digital identity regimes; and
  - d. exchanging knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation and security standards, and user adoption.



## Article 15

### Digital Payments

1. State Parties agree to enhance access to and participation in digital trade through the promotion of interoperability between their respective digital payment and settlement systems.
2. State Parties agree to support the development of affordable, real-time, safe, secure, inclusive, responsible and universally accessible cross-border digital payment and settlement systems. State Parties hereby agree to:
  - a. make publicly available their respective digital payment regulations, including those pertaining to regulatory approval, licensing requirements, procedures and technical standards;
  - b. adopt internationally and regionally accepted standards for digital payments;
  - c. enable, develop and promote cross-border authentication and electronic know-your-customer verifications of individuals and businesses;
  - d. promote the use of open application programming interfaces to facilitate greater interoperability and innovation in the digital payments ecosystem;
  - e. not arbitrarily or unjustifiably discriminate between financial institutions and non-financial institutions in relation to access to services and infrastructure necessary for the operation of digital payment systems; and
  - f. promote innovation, fair competition, and the introduction of new financial and digital payment products and services.
3. State Parties shall develop an Annex on Cross-Border Digital Payments.

## Article 16

### Domestic Electronic Transactions Framework

Each State Party shall adopt or maintain a legal framework governing electronic transactions taking into account relevant standards, guidelines or model laws adopted by relevant regional and international organisations.

## Article 17

### Electronic Transferable Records

Each State Party shall adopt or maintain mechanisms to facilitate the use of electronic transferable records taking into account relevant standards, guidelines or model laws adopted by relevant regional and international organisations.



## Article 18

### Digital Infrastructure

State Parties shall endeavour to, among others:

- a. promote the continuous development of digital infrastructure;
- b. provide an enabling regulatory environment to enhance universal access to support participation in digital trade;
- c. promote investment in digital infrastructure through partnerships between governments, investors, financial institutions, and development partners;
- d. promote interoperability and interconnectivity between different digital infrastructures among State Parties;
- e. promote measures that increase the affordability of broadband and technology devices and services; and
- f. promote the sharing of digital infrastructure through, among others, the development of regional data centres, regional cloud systems, and network infrastructure to address infrastructure constraints among State Parties and achieve optimal utilisation of the available capacity.

## Article 19

### Interoperability and Mutual Recognition

1. State Parties shall adopt certification mechanisms and disciplines for the mutual recognition of electronic authentication, digital certificates, digital identities, electronic time stamps, and electronic signatures, among others.
2. For greater certainty, this Protocol shall not prevent a State Party from requiring, for a particular category of transactions, the method of authentication or certification mechanism to meet certain performance standards or is certified by an authority accredited in accordance with its laws or regulations.
3. State Parties shall promote interoperability in technologies and applications required to facilitate digital trade, including, but not limited to, trade administration documents, electronic authentication, electronic signatures, digital payments, digital certificates, digital identities, cross-border data transfers, and digital infrastructure.



## PART IV DATA GOVERNANCE

### Article 20

#### Cross-Border Data Transfers

1. *[State Parties shall allow the cross-border transfer of data, including personal data, by electronic means, provided the activity is for the conduct of digital trade by a person of a State Party.]*
2. For greater certainty, a State Party may adopt or maintain measures inconsistent with Paragraph 1 to achieve a legitimate public policy objective or protect essential security interests, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on digital trade, and does not impose restrictions on transfers of data greater than are required to achieve the objective.
3. State Parties shall develop an Annex on Cross-Border Data Transfers.

### Article 21

#### Location of Computing Facilities

1. State Parties shall not require a person of another State Party to use or locate computing facilities in their territories as a condition for conducting digital trade in that territory.
2. State Parties shall encourage and support the establishment and use of computing facilities within State Parties to promote the development of local digital infrastructure and access in line with the objectives of this Protocol.



## Article 22

### Protection of Personal Data

1. Each State Party shall adopt or maintain a legal framework that provides for the protection of the personal data of natural persons engaging in digital trade.
2. Each State Party shall, in developing its legal framework referred to in Paragraph 1, take into account the relevant principles and guidelines adopted by regional, continental and international organisations.
3. Each State Party shall publish information or laws and regulations on the personal data protections it provides to natural persons engaging in digital trade, including how a natural person can pursue a remedy, and how an enterprise can comply with any legal requirement.
4. Each State Party shall require enterprises in its territory to adopt, maintain, and publish their policies and procedures related to the protection of personal data.
5. State Parties shall develop mechanisms to assist natural persons engaging in digital trade to exercise their rights and submit cross-border complaints regarding the protection of personal data.
6. State Parties shall endeavour to:
  - a. establish national data protection authorities or other relevant bodies;
  - b. build capacities of their national data protection authorities;
  - c. develop collaboration mechanisms and frameworks for technical assistance, enforcement, and awareness creation on personal data protection with other State Parties; and
  - d. maintain dialogue on personal data protection and sharing of knowledge, research and best practices with other State Parties.



## Article 23

### Data Innovation

State Parties shall endeavour to promote and support data innovation through:

- a. collaborating on data-sharing projects, including those involving researchers, academics, industry, and other stakeholders, using regulatory sandboxes, where relevant, to demonstrate the benefits of the cross-border transfer of data by electronic means;
- b. cooperating on the development of policies and standards for data mobility, including consumer data portability;
- c. facilitating the exchange of knowledge and best practices;
- d. developing data sharing frameworks that protect personal data taking into account best practices; and
- e. cooperating to create the necessary data capabilities to take advantage of data-reliant technologies and services, including the capacity to govern data that supports development and benefits State Parties and their citizens.
- f. sharing research and industry practices related to data innovation.





## PART V

### BUSINESS AND CONSUMER TRUST

#### Article 24

##### Source Code

1. State Parties shall not require the transfer of, or access to, a source code of software owned by a person of another State Party as a condition for the import, distribution, sale or use of that software, or of products containing that software in its territory.
2. This Article does not preclude a regulatory body or judicial authority of a State Party from requiring a person of another State Party to preserve and make available the source code of software to the regulatory body for a specific investigation, inspection, examination, audit, enforcement action, or judicial proceeding, subject to safeguards against unauthorised disclosure under the law or practice of a State Party.
3. For greater certainty, Paragraph 1 does not apply to the voluntary transfer of or granting of access to a source code owned by a person of another State Party under open-source licenses, such as in the context of open-source coding, or on a commercial basis such as in the context of a freely negotiated contract.

#### Article 25

##### Cybersecurity

1. Each State Party shall adopt or maintain measures to ensure cybersecurity and combat cybercrime within its jurisdiction. State Parties shall, in developing such measures, take into account standards and guidelines contained in relevant regional, continental, and international instruments.
2. State Parties shall endeavour to:
  - a. build capabilities of their national authorities or bodies responsible for cybersecurity incident management;
  - b. develop collaboration mechanisms for technical assistance and capacity building in cybersecurity with other State Parties;
  - c. strengthen existing collaboration mechanisms for anticipating, identifying, and mitigating malicious intrusions or dissemination of malicious intrusions or dissemination of malicious code that affects electronic networks of the State Parties, and use those mechanisms to swiftly address cybersecurity incidents;



- d. engage industry, civil society, academia, and other stakeholders in the promotion and enhancement of a culture of cybersecurity; and
  - e. maintain dialogue on cybersecurity matters, as well as for the sharing of information for awareness and best practices.
3. Each State Party shall require enterprises within its jurisdiction to use best practices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity incidents.

## **Article 26**

### **Open Internet Access**

State Parties shall endeavour to ensure that consumers in their territories have the ability to:

- a. access applications and use services on the internet of their choice, subject to reasonable, transparent, and non-discriminatory network management;
- b. connect devices of their choice to the internet, provided that such devices do not harm the network; and
- c. access information on the network management practices provided by internet services providers in the State Parties.

## **Article 27**

### **Online Consumer Protection**

1. Each State Party shall adopt or maintain consumer protection laws or other laws or regulations that prohibit misleading, fraudulent, and deceptive commercial activities or practices that cause harm or potential harm to consumers engaging in digital trade. For greater certainty, misleading, fraudulent, and deceptive commercial activities or practices include, among others:
  - a. making misrepresentations or false claims as to material qualities, price, suitability for purpose, quantity, or origin of goods or services;
  - b. advertising goods or services for supply without intention to supply;
  - c. failing to deliver products or provide services to consumers after the consumers have been charged; or
  - d. charging or debiting consumers' financial or other accounts without authorisation.
2. Each State Party shall, to the extent possible, provide protection for consumers engaging in digital trade that is at least equivalent to that provided for consumers of other forms of commerce under its laws or regulations.



3. State Parties shall ensure that consumers have the right to return and refund, including the right to return goods that are unsafe, defective or unfit for purpose and request a full refund or replacement for such goods within a reasonable period.
4. State Parties shall cooperate on matters related to consumer protection in digital trade, including in the enforcement of their consumer protection laws or regulations through national consumer protection agencies, authorities, or other relevant bodies as designated by each State Party or through activities such as the exchange of consumer complaints and other enforcement information.
5. State Parties shall cooperate on developing appropriate cross-border redress mechanisms for consumers engaging in digital trade.

## **Article 28**

### **Unsolicited Commercial Electronic Communications**

1. Each State Party shall adopt or maintain measures regarding unsolicited commercial electronic communications that:
  - a. require the consent of recipients to receive commercial electronic communications;
  - b. require suppliers of unsolicited commercial electronic communications to provide recipients with the ability to periodically review their permissions and to opt out of the ongoing reception of those messages; or
  - c. otherwise provide for the minimisation of unsolicited commercial electronic communications.
2. Each State Party shall provide recourse in its law against suppliers of unsolicited commercial electronic communications that do not comply with the measures adopted or maintained pursuant to Paragraph 1 of this Article.
3. State Parties shall cooperate in the regulation of unsolicited commercial electronic communications.

## **Article 29**

### **Online Safety and Security**

1. State Parties agree to promote a safe and secure online environment that supports digital trade.
2. State Parties shall develop an Annex on Online Safety and Security.



## PART VI

### DIGITAL TRADE INCLUSION

#### Article 30

##### Digital Inclusion

State Parties shall promote and facilitate the inclusion and participation of women, youth, indigenous peoples, rural communities, persons with disabilities, and other underrepresented groups in digital trade through, among others:

- a. promoting access to information and communications technologies;
- b. improving cross-border connectivity and interoperability;
- c. providing accessible, affordable, safe, and reliable internet;
- d. sharing experiences and best practices, including the exchange of experts, with respect to digital inclusion;
- e. identifying and addressing barriers to accessing digital trade opportunities;
- f. sharing methods and procedures for developing datasets and conducting analysis in relation to their participation in digital trade;
- g. participating in regional and multilateral fora to promote digital inclusion; and
- h. improving digital skills, digital literacy, and access to online business tools.

#### Article 31

##### Micro, Small and Medium-Sized Enterprises

State Parties shall promote and facilitate meaningful participation of micro, small and medium-sized enterprises (MSMEs) in digital trade through, among others:

- a. sharing information and best practices to improve the participation and capabilities of MSMEs in digital trade;
- b. promoting participation by MSMEs in online platforms and other mechanisms that could support MSMEs to connect with regional and international suppliers, buyers, and other potential business partners;
- c. fostering close cooperation and collaboration between their MSMEs;
- d. providing incentives to MSMEs in digital trade;
- e. supporting the development of start-ups;
- f. facilitating collaboration between foreign and domestic firms with a view to strengthening local capabilities;



- g. promoting research and development and the transfer of technology, skills, know-how, and innovation for the development of African MSMEs;
- h. encouraging the granting of credit, loans, or grants on preferential terms for financing MSMEs in digital trade;
- i. assisting MSMEs in the adoption, adaptation and use of technologies; and
- j. facilitating access to logistics and supply chain facilities for purposes of participating in digital trade.

## **Article 32**

### **Digital Innovation and Entrepreneurship**

State Parties shall promote:

- a. policy, legal and institutional frameworks that support digital innovation and entrepreneurship;
- b. the establishment of national and regional digital innovation and entrepreneurship hubs;
- c. access to finance and availing of funding mechanisms for digital innovators and enterprises; and
- d. partnerships and collaboration between public and private sectors and other relevant stakeholders for supporting digital innovation and entrepreneurship.

## **Article 33**

### **Digital Skills Development**

State Parties shall:

- a. promote the development and mainstreaming of digital skills policies in their national development policy framework;
- b. support the development of national and regional centres for and programmes on digital skills development;
- c. encourage diversity and inclusivity in digital skills development programmes and policies, including through programmes targeted at micro, small and medium-sized enterprises and start-ups; and
- d. promote multi-stakeholder partnerships in digital skills development.



**PART VII**  
**EMERGING TRENDS, TECHNOLOGIES AND INNOVATION**

**Article 34**

**Emerging and Advanced Technologies**

1. State Parties agree to facilitate the adoption and regulation of emerging and advanced technologies, subject to their legitimate public policy objectives and essential security interests.
2. State Parties shall, as appropriate, develop governance frameworks for ethical, trusted, safe, and responsible use of emerging and advanced technologies.
3. State Parties shall develop an Annex on Emerging and Advanced Technologies.

**Article 35**

**Financial Technology**

1. State Parties shall:
  - a. promote close collaboration between their Financial Technology enterprises and industry bodies, consistent with their respective laws and regulations;
  - b. encourage their respective Financial Technology enterprises to use facilities and assistance, where available, in other State Parties' territories to explore new business opportunities;
  - c. cooperate to improve opportunities for African Financial Technology enterprises;
  - d. promote the development of Financial Technology solutions for business and financial sectors; and
  - e. adopt relevant regional, continental, and international standards for Financial Technology.
2. State Parties shall develop an Annex on Financial Technology.



## Article 36

### Information and Communication Technology

State Parties shall:

- a. eliminate tariffs and non-tariff barriers to trade in ICT goods in accordance with the Protocol to the Agreement on Trade in Goods;
- b. liberalise trade in ICT services in accordance with the Protocol to the Agreement on Trade in Services;
- c. promote and facilitate investments in the ICT sector and promote the cross-border transfer of such technology, skills, and know-how in accordance with the Protocol to the Agreement on Investment;
- d. encourage the development of a regulatory framework on competition in the ICT sector in accordance with the Protocol to the Agreement on Competition Policy; and
- e. encourage innovation in the ICT industry in accordance with the Protocol to the Agreement on Intellectual Property Rights.



## PART VIII

### INSTITUTIONAL ARRANGEMENTS

#### Article 37

##### Committee on Digital Trade

1. The Committee on Digital Trade, established in accordance with Article 11 of the Agreement (the Committee), shall carry out such functions as assigned to it by the Council of Ministers to facilitate the implementation of this Protocol and to further its objectives.
2. The Committee may establish such sub-committees and working groups as it considers necessary for the effective discharge of its functions, with the approval of the Council of Ministers.
3. The Committee shall be composed of duly designated representatives from State Parties.

#### [Article 38]

##### [Pan-African Digital Trade Centre]

1. *[The Pan-African Digital Trade Centre (the Centre) is hereby established as a technical institution of the AfCFTA Secretariat.*
2. *The Council of Ministers shall recommend to the Assembly, the adoption of the appropriate governance and administrative structure, functions, and the Rules and Procedures for the administration and operation of the Centre, including the determination of the seat of the Centre, which shall be elaborated in the Annex on the Pan-African Digital Trade Centre.*
3. *The sources of the Centre's budget shall be derived from the annual budget of the AfCFTA Secretariat. Other sources of the budget may be recommended by the Council of Ministers for consideration of the Executive Council of the African Union including:*
  - a. fees collected by the Centre in the course of its operations;*
  - b. any grants, donations, bequests, or other contributions made to the Centre; and*





- c. other payments due to the Centre in respect of any matter incidental to its functions.*
- 4. The Centre shall perform its functions in collaboration with the relevant national, regional, continental and international institutions, professional bodies, the private sector, academia, and civil society on matters related to digital trade in Africa.*
- 5. The AfCFTA Secretariat shall undertake the functions of the Centre, on an interim basis, until its operationalisation.]*

## **PART IX**

### **TRANSPARENCY**

#### **Article 39**

##### **Publication of Information**

1. Each State Party shall promptly publish or make publicly available, including through electronic means, its laws, regulations, measures, policies, procedures, trade administration documents, internal fees, charges or sales taxes, and administrative rulings of general application relating to any digital trade or related matter covered by this Protocol.
2. Each State Party shall promptly publish or make publicly available including through electronic means, international, regional, or bilateral agreements to which it is a signatory relating to any digital trade or related matter covered by this Protocol.

#### **Article 40**

##### **Open Government Information**

Each State Party shall, to the extent possible, ensure that open government information is published or availed in a machine-readable format and can be searched, retrieved, used, reused and redistributed, and is regularly updated.



## Article 41

### Notification

1. Each State Party shall promptly notify, through the AfCFTA Secretariat, the other State Parties of any international, regional and bilateral agreements pertaining to or affecting digital trade with other State Parties to which they are signatory prior to or after the entry into force of this Protocol.
2. Each State Party shall promptly notify, through the AfCFTA Secretariat, the other State Parties of the introduction of any new or amendments to existing laws or regulations or any measure pertaining to or affecting the operation of this Protocol.
3. Each State Party shall promptly respond, through the AfCFTA Secretariat, to any requests by another State Party for specific information pertaining to any new or amendments to existing laws or regulations or any measure pertaining to or affecting the operation of this Protocol.
4. The AfCFTA Secretariat shall promptly circulate to the State Parties concerned any notification, request, or information provided pursuant to this Article.
5. For greater certainty, any notification or information provided pursuant to this Article shall be without prejudice as to whether the law or regulation, amendment or measure of a State Party is consistent with this Protocol.
6. Each State Party shall notify the AfCFTA Secretariat of its National Focal Point on digital trade.
7. The Committee on Digital Trade shall, with the assistance of the AfCFTA Secretariat, develop procedures for notification.

## Article 42

### Non-Disclosure of Confidential Information

Nothing in this Protocol shall be construed to require any State Party to disclose or allow access to confidential information and data, the disclosure of which would impede law enforcement or prejudice legitimate commercial and strategic interests of particular enterprises or institutions, whether public or private, or would otherwise be contrary to its public or essential security interests.



## PART X

### TECHNICAL ASSISTANCE, CAPACITY BUILDING AND COOPERATION

#### Article 43

##### Technical Assistance and Capacity Building

1. State Parties agree on the importance of technical assistance and capacity building in order to support and strengthen the capacity of State Parties in enabling and promoting digital trade, and to facilitate the implementation and attainment of the objectives of this Protocol.
2. The AfCFTA Secretariat shall, working with State Parties, Regional Economic Communities, the Pan-African Digital Trade Centre, development partners and other relevant stakeholders, coordinate the provision of technical assistance and capacity building to State Parties to facilitate the implementation of this Protocol.

#### Article 44

##### Areas of Cooperation

State Parties shall cooperate, through exchanging of information, research and development, training activities, peer learning, and sharing experiences and best practices, on matters relating to digital trade, including:

- a. Protection of Personal Data;
- b. Cross-Border Data Transfers;
- c. Online Consumer Protection;
- d. Cybersecurity;
- e. Unsolicited Commercial Electronic Communications;
- f. Electronic Authentication;
- g. Electronic Signatures;
- h. Digital Payments;
- i. Electronic Invoicing;
- j. Logistics;
- k. Digital Identities;
- l. Electronic Transferable Records;
- m. Digital Inclusion;
- n. Micro, Small and Medium-Sized Enterprises;
- o. Digital Skills Development;
- p. Digital Innovation and Entrepreneurship;
- q. Emerging and Advanced Technologies;
- r. Financial Technology;
- s. Data Innovation;



- t. Interoperability and Mutual Recognition;
- u. Online Safety and Security;
- v. Open Government Information;
- w. Anti-Money Laundering and Combatting the Financing of Terrorism
- x. Digital Infrastructure; and
- y. Any other areas relevant to boost, facilitate and regulate digital trade.

## PART XI DISPUTE SETTLEMENT

### Article 45 Dispute Settlement

Disputes between State Parties arising out of or relating to the interpretation and application of this Protocol shall be resolved in accordance with the Protocol to the Agreement on Rules and Procedures on the Settlement of Disputes.

## PART XII FINAL PROVISIONS

### Article 46

#### Annexes

1. State Parties shall, after the adoption of this Protocol, develop the Annexes on:
  - a. Cross-Border Digital Payments;
  - b. Cross-Border Data Transfers;
  - c. Digital Identities;
  - d. Financial Technology;
  - e. Emerging and Advanced Technologies; and
  - f. Online Safety and Security
  - g. *[the Governance Structure, Functions, and Rules and Procedures for the Administration and Operation of the Pan-African Digital Trade Centre.]*
2. State Parties may develop any additional annexes as deemed necessary for the effective implementation of this Protocol.



3. The annexes referred to in this Article shall, upon adoption by the Assembly, form an integral part of this Protocol.

### **Article 47**

#### **Entry into Force**

1. This Protocol shall be open for signature and ratification or accession by the State Parties to the Agreement, in accordance with their respective constitutional procedures.
2. This Protocol shall enter into force in accordance with the provisions of Articles 23(2) and 23(4) of the Agreement.

### **Article 48**

#### **Application**

State Parties shall align their national laws, rules and regulations with this Protocol within the period of *[three (3) years]* from entry into force of this Protocol.

### **Article 49**

#### **Implementation, Monitoring and Evaluation**

1. The Committee on Digital Trade shall be responsible for monitoring and evaluation of this Protocol and shall report to the Council of Ministers, through the Committee of Senior Trade Officials.
2. The AfCFTA Secretariat shall assist and support the Committee on Digital Trade in the implementation, monitoring and evaluation of this Protocol.
3. The AfCFTA Secretariat shall, in consultation with State Parties, prepare annual reports to facilitate the process of implementation, monitoring and evaluation of this Protocol.
4. The reports referred to in Paragraph 3 shall be considered and adopted by the Council of Ministers, through the Committee of Senior Trade Officials.

### **Article 50**

#### **Review**

The Protocol shall be subject to review by State Parties in accordance with Article 28 of the Agreement.



**Article 51**  
**Amendment**

Amendment to this Protocol shall be in accordance with Article 29 of the Agreement.

**Article 52**  
**Authentic Texts**

This Protocol is drawn up in six (6) original texts in the Arabic, English, French, Portuguese, Spanish and Swahili languages, all of which are equally authentic.