African Union, African Regional Bodies

Agreement Establishing the African Continental Free Trade Area

Protocol to the Agreement Establishing the African Continental Free Trade Area on Digital Trade

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African Union

Agreement Establishing the African Continental Free Trade Area

Protocol to the Agreement Establishing the African Continental Free Trade Area on Digital Trade

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We, Member States of the African Union,

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

PURSUANT to the principles and objectives of the African Continental Free Trade Area (AfCFTA), and Article 8(3) of the AfCFTA 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 adopted during its 33rd Ordinary Session held in Addis Ababa, Ethiopia, in February 2020 calling for the negotiations of e-commerce in the AfCFTA;

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 the need to 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 and local communities, indigenous peoples, women, youth, persons with disabilities and other underrepresented groups in digital trade;

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

FURTHER RESOLVED to create a transparent, 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

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:

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Part I – General provisions

Article 1 – Definitions

For the purpose of this Protocol:

(a) "**AfCFTA**" means the African Continental Free Trade Area;

(b) "**AfCFTA Agreement**" means the Agreement Establishing the AfCFTA;

(c) "**Computing Facilities**" means computer servers and storage devices for processing or storing information;

(d) "**Digital Certificates**" means electronic documents or files that are issued or otherwise linked to a person who is a party to an electronic communication or transaction for the purpose of establishing the identity of the person;

(e) "**Digital Identity**" means a set of unique and validated digital attributes or credentials for identifying a natural or juridical person;

(f) "**Digital Payment**" means a transfer by a payer of a monetary value acceptable to a payee made through electronic means;

(g) "**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;

(h) "**Digital Product**" means an electronic programme, text, video, image, sound recording, or any other product that is digitally encoded, that is produced for commercial sale or distribution, and that can be transmitted electronically except for a digitised representation of a financial instrument, including money[1] ;

(i) "**Electronic Authentication**" means the process or act of verifying the identity of a party to an electronic communication or transaction that ensures the integrity of an electronic communication;

(j) "**Electronic Invoice**" means an invoice issued, transmitted and received in a structured data format which allows for its automatic and electronic processing;

(k) "**Electronic Invoicing**" means the automated creation, exchange and processing of requests for payments between suppliers and buyers using a structured digital format;

(l) "**Electronic Signature**" means a digitally encrypted stamp of authentication on digital information such as an electronic message or document that confirms that the information originated from the signer and has not been altered;

(m) "**Electronic Trust Services**" means an electronic service consisting of the creation, verification and validation of electronic invoices, electronic signatures, time stamps, certified electronic delivery, and website authentication certificates;

(n) "**Measure**" means any action by a State Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or practice;

(o) "**Open Government Information**" means non-proprietary information and data held by or on behalf of central, regional, or local government;

(p) "**Person of a State Party**" means a natural or juridical person of a State Party conducting business in the territory of another State Party that maintains substantial business operations in the territory of a State Party;

[1] This definition should not be understood to reflect a State Party's view that digital products are a good or service.

(q) "**Personal Data**" means any information and data, about an identified or identifiable natural person by which such person can be identified, directly or indirectly;

(r) "**Protocol**" means the Protocol to the AfCFTA Agreement on Digital Trade;

(s) "**Secretariat**" means the Secretariat of the AfCFTA, established pursuant to Article 13 of the AfCFTA Agreement;

(t) "**State Party**" means a Member State that has ratified or acceded to the Protocol and for which the Protocol is in force;

(u) "**Third Party**" means a State that is not a party to this Protocol;

(v) "**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;

(w) "**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; 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 AfCFTA 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 predictable and transparent harmonised rules, and common principles and standards for digital trade;
    c. create a transparent, predictable, secure, and trustworthy digital trade ecosystem for businesses and consumers;
    d. enhance cooperation among State Parties on matters related to digital trade;
    e. promote common and open standards to enable the interoperability of frameworks and systems to facilitate cross-border digital trade;
    f. encourage trusted, safe, ethical, and responsible adoption and regulation of the use of emerging and advanced technologies to support and promote digital trade;
    g. promote digital skills development, digital innovation and entrepreneurship, digital industrialisation, and digital infrastructure development to facilitate the digital transformation of State Parties; and
    h. 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 39 of this Protocol.

Article 4 – Right to regulate

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

Part II – Market access and treatment of digital products

Article 5 – Annex on Rules of Origin

State Parties shall adopt an Annex that sets out Rules of Origin for the determination of the origin for African-owned enterprises, African digital platforms and African content. Further, the Annex shall define the scope of digital products covered by the Protocol, taking into account the objective to develop an AfCFTA Digital Market, trade in African products, promotion of African firms and use of African digital platforms.

Article 6 – Customs duties

1. A State Party shall not impose customs duties on digital products transmitted electronically originating from other State Parties, subject to the scope and origin criteria that shall be set out in the Annex of Rules of Origin, in accordance with Article 5 of this Protocol.

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 AfCFTA 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.

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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, or electronic trust services such as 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 they are in electronic form.

Article 9 – Electronic authentication

Each State Party shall adopt or maintain laws and 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 and 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 interconnectivity 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 that 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 systems, and relevant infrastructure to facilitate last-mile delivery.

Article 12 – Electronic contracts

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

a. allow for contracts to be concluded by electronic means; and

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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 and 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 systems for both natural and juridical persons.
2. State Parties shall develop an Annex on Digital Identities to foster interoperability between their respective digital identity systems. In developing this Annex, 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 systems; 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 shall enhance access to and participation in digital trade by promoting interoperability between their respective digital payment and settlement systems.
2. State Parties shall support the development of affordable, real-time, safe, secure, inclusive, responsible and universally accessible cross-border digital payment and settlement systems, and 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 international and regional 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 to 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, electronic invoices, 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 and 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.

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Part IV – Data governance

Article 20 – Cross-Border Data Transfers

1. State Parties shall, subject to an Annex on Cross-Border Data Transfers, 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 of this Article to achieve a legitimate public policy objective or protect essential security interests, provided that the measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on digital trade, and do not impose restrictions on transfers of data greater than are necessary to achieve the objective.
3. In accordance with paragraph 1 of this Article, the Annex on Cross-Border Data Transfers shall, among others, set out legitimate public policy objectives, how data may be used, restrictions on sharing of data to third parties, including data protection regulations and restrictions that may be applied by regulators.

Article 21 – 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 engaged in digital trade.
2. Each State Party shall, in developing its legal framework referred to in paragraph 1 of this Article, 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 protection it provides to natural persons engaged 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 engaged 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 responsible for the enforcement of personal data protection laws;
    b. build capacities of their national data protection authorities or other relevant bodies responsible for the enforcement of personal data protection laws;
    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 22 – 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. For greater certainty, a State Party may adopt or maintain measures inconsistent with paragraph 1 of this Article to achieve a legitimate public policy objective or protect essential security interests provided that the measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on digital trade, and do not impose restrictions on the use or location of computing facilities greater than are necessary to achieve the objective.

3. 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 23 – Data innovation

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

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;

e. cooperating to create the necessary 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; and

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, or an algorithm expressed in that source code, 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 or an algorithm expressed in that source code, to the regulatory body for a specific investigation, inspection, examination, audit, enforcement action, or judicial proceeding or when required for legitimate and legal public interest reasons to be stipulated in an Annex to be developed by State Parties, subject to safeguards against unauthorised disclosure under the law or practice of a State Party.

3. For greater certainty, paragraph 1 of this Article 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. In adopting and maintaining such measures, State Parties shall take into account standards and guidelines contained in relevant regional, continental, and international instruments.

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2. State Parties shall endeavour to:

    a. build the capabilities of their national authorities or bodies responsible for the management of cybersecurity incidents;

    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 the 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, and share best practices and information to enhance awareness.

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 – Internet access

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

a. access applications and to use services on the internet of their choice, subject to reasonable, transparent, and non-discrim inatory 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 service providers in the State Parties.

Article 27 – Online consumer protection

1. Each State Party shall adopt or maintain consumer protection laws or other laws and regulations that prohibit misleading, fraudulent, and deceptive commercial activities or practices that cause harm or have the potential to cause harm to consumers engaged 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 the material qualities, prices, 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 engaged in digital trade that is at least equivalent to that provided for consumers of other forms of commerce under its laws and 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 and 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 engaged 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 and local 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 the 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 the participation of MSMEs in online platforms and other mechanisms that could support them 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 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 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.

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Part VII – Emerging 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 the 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 Information and Communication Technology (ICT) goods in accordance with the Protocol on Trade in Goods;
b. liberalise trade in ICT services in accordance with the Protocol 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 on Investment;
d. encourage the development of a relevant framework to regulate competition in the ICT sector in accordance with the Protocol on Competition Policy; and
e. encourage innovation in the ICT industry in accordance with the Protocol 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 AfCFTA Agreement, 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.

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2. The Committee on Digital Trade may, with the approval of the Council of Ministers, establish such sub-committees and working groups as it considers necessary for the effective discharge of its functions.
3. The Committee on Digital Trade shall be composed of duly designated representatives from State Parties.

Part IX – Transparency

Article 38 – 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 39 – Open government information

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

Article 40 – Notification

1. Each State Party shall promptly notify, through the Secretariat, the other State Parties of any international, regional and bilateral agreements pertaining to or affecting digital trade with other State Parties to which it is a signatory prior to or after the entry into force of this Protocol.
2. Each State Party shall promptly notify, through the Secretariat, the other State Parties of the introduction of any new or amendments to existing laws and regulations or any measure pertaining to or affecting the operation of this Protocol.
3. Each State Party shall promptly respond, through the Secretariat, to any requests by another State Party for specific information pertaining to any new laws and regulations or amendments thereof or any measure pertaining to or affecting the operation of this Protocol.
4. The 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 Secretariat of its national focal point on Digital Trade.
7. The Committee on Digital Trade shall, with the assistance of the Secretariat, develop procedures for notification.

Article 41 – 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.

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Part X – Technical assistance, capacity building and cooperation

Article 42 – Technical assistance and capacity building

1. State Parties agree 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 Secretariat shall, working with State Parties, Regional Economic Communities, 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 43 – 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

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y. any other areas relevant to boost, facilitate and regulate digital trade.

Part XI – Final provisions

Article 44 – Relationship between this Protocol and other protocols of the AfCFTA

1. This Protocol, as an integral part of the AfCFTA Agreement, shall not derogate from or modify the rights and obligations of the State Parties under the other protocols to the AfCFTA Agreement.
2. In the event of any conflict or inconsistency between this Protocol and any other Protocol to the AfCFTA 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.

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 on Rules and Procedures on the Settlement of Disputes.

Article 46 – Annexes

1. State Parties shall, after the adoption of this Protocol, develop annexes on:
    a. Rules of Origin;
    b. Digital Identities;
    c. Cross-Border Digital Payments;
    d. Cross-Border Data Transfers;
    e. Criteria for Determining the Legitimate and Legal Public Interest Reasons for Disclosure of Source Code;
    f. Online Safety and Security;
    g. Emerging and Advanced Technologies; and
    h. Financial Technology.
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 AfCFTA 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 AfCFTA Agreement.

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Article 48 – Application

1. State Parties shall apply appropriate measures to bring into effect the rules and procedures set out in the provisions of this Protocol.
2. State Parties shall cooperate with each other in ensuring compliance with the provisions of this Protocol.
3. State Parties shall not take any measures inconsistent with the provisions and objectives of this Protocol.
4. State Parties shall align their national laws, rules and regulations with this Protocol within a period of five (5) years from its entry into force.

Article 49 – Implementation, monitoring and evaluation

1. The Committee on Digital Trade shall be responsible for the monitoring and evaluation of the implementation of this Protocol and shall report to the Council of Ministers, through the Committee of Senior Trade Officials.
2. The Secretariat shall assist and support the Committee on Digital Trade in the monitoring and evaluation of the implementation of this Protocol.
3. The 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 of this Article shall be submitted to the Council of Ministers, through the Committee of Senior Trade Officials, for consideration and adoption.

Article 50 – Review

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

Article 51 – Amendment

Any amendment to this Protocol shall be undertaken in accordance with Article 29 of the AfCFTA Agreement.

Article 52 – Authentic texts

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

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