

## **DTA Guide**

# **African States-EU Member States/EU Member States-African States DATA TRANSFER AGREEMENT GUIDE**

### **Purpose of the guide**

Data Transfer Agreements (DTAs) provide in principio a mechanism which acts as a minimum guarantee that the owners of inventions, as well as the data holders will be provided in first place the legal means in order to protect their interests and rights while at the same time these agreements promote secure data sharing within the research community. When drafting, reviewing or tailoring a standard DTA template, it is particularly important that all the relevant steps for the specific transfer are agreed upon between the parties (the provider and the recipient), as well as that the signatories are fully aware of their contractual obligations. Parties are expected to be capable of monitoring the compliance with the terms of a DTA.

A well-considered DTA and suited for the needs of a particular transfer can assist in safeguarding the rights and interests of both the parties involved as well as the data subjects, and does not create unnecessary hindrances to data sharing. When referring to data – including metadata – one should keep in mind that this term covers a variety of information which can either be related to the person directly such as health or genetic data or not. In the former case, where the person can be identified either directly or through the use of identification techniques of the data, these data are considered to be personal data. Especially in these situations where the personal data refer to sensitive information in regards to the person's health or genetic status, e.g. when –omics analysis take place, these data have an additional informational value and are considered to be a special category of data. It is therefore for the data of the latest category that a DTA has a particular importance as in case of breach of confidentiality the person's privacy is directly attacked.

A mere contract could never protect or guarantee by itself that contractual parties act bona fides and respect the signed terms of their agreement. Nonetheless, it is a first step to ensure that not only the provider and the recipient of the data which will be processed protect their intellectual property but also and most importantly, that the person from whom these data derived from is treated with respect. In compliance with the main principles of moral philosophy it is important that throughout the conduct of the research study the person linked to the data will be never treated as a means for research and as “pool of information” but with respect to their own privacy, which is something that this kind of agreement aims to ensure.

This African States-EU Member States/EU Member States-African States DATA TRANSFER AGREEMENT GUIDE presents a guiding template for developing a Data Transfer Agreement for data transfer between the African States-EU Member States/EU Member States-African States.

### **For data transfers from the African States to EU Member States:**

- Review whether and under what circumstances applicable rules (relevant law and institutional instruments) permit data transfer.
- Test whether the recipient institution meets the requirements set forth in the applicable rules. If yes and no other legal or factual hindrances exist, you may enter into an agreement. If legal or factual hindrances exist, examine, whether the DTA could



provide compensatory measures for the lack of unmet conditions. If so, carefully delineate those requirements and prior to entering the agreement check it with a lawyer.

### **For data transfers from the EU to African States:**

- Review whether and under what circumstances applicable rules (relevant law and institutional instruments) permit data transfer.
- The GDPR permits data transfer only if the provisions of GDPR, as well as preconditions for data transfer as set forth in chapter 5 of the GDPR are met (Article 44 GDPR). The GDPR provides for three distinct data transfer possibilities:
  - Transfers on the basis of an adequacy decision (Article 45 GDPR). As of now, there are no adequacy decisions regarding an African State.
  - With an explicit data subject's consent. This is an exceptional situation and generally does not apply to a large scale data transfers.
  - Transfers subject to appropriate safeguards (Article 46 GDPR). This possibility is applicable insofar as also the protection of individual rights and effective remedies exist.
    - Protection of individual rights:
    - Effective legal remedies:
    - The appropriate safeguards may be provided for, without requiring any specific authorisation from a supervisory authority, by one of the following means (Article 46.2 GDPR)
      - a legally binding and enforceable instrument between public authorities or bodies;
      - binding corporate rules;
      - standard data protection clauses adopted by the Commission;
      - standard data protection clauses adopted by a supervisory authority and approved by the Commission;
      - an approved code of conduct pursuant together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards; or
      - an approved certification mechanism pursuant to Article 42 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards.
    - Subject to the authorisation from the competent supervisory authority, the following may be used as means to ensure appropriate safeguards:
      - contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organisation; or
      - provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.

### **How to use “African States-EU Member States/EU Member States-African States DATA TRANSFER AGREEMENT GUIDE”?**

- This guide may be used to review, tailor or construct a DTA governing your intended data transfer.



- If you are transferring the data within an African State, from an African State to an African State, or from an African State to the third country or organisation, including the EU, review the relevant requirements of the applicable laws.
- If you are transferring the data within the EU, check compliance with the GDPR and other relevant laws.
- If you are transferring the data from the EU to third countries or international organizations mindful to the preconditions that ought to be met in order data is legitimate.
- This guide is not complete, any provision beyond those indicated in the guide that is relevant to the agreement between parties in regards to the occurring data transfer may be inserted; those steps that are irrelevant to the agreement are to be excluded.

## **African States-EU Member States/EU Member States-African States DATA TRANSFER AGREEMENT GUIDE**

### Identification information of the DTA

Provide date and place of signing the DTA, as well as the DTA reference/registration/identification number, if applicable.

### Information about the providing institution

Insert name and full address of the providing institution, and the person authorised to enter into a contract, as well as information about the responsible scientist that is signing the agreement.

### Subject of the DTA

Here describe what transaction this DTA governs, for example, the transfer and use of data transferred between a Providing Institution and the Receiving Institution. Here describe the practicalities regarding the research project for the purposes of which the data are transferred, as well as information about the data that are transferred, transfer process if necessary.

### Verification of legitimate preconditions for data transfer and compensation measures

If DTA involves transfer of personal data from the EU to the third countries or organisations, compliance with the GDPR rules, as well as conditions in Chapter 5 of GDPR is essential. Indicate legal grounds for such a data transfer. In the absence of an adequacy decision, and should the transfer not be an exceptional case where the data subject's consent suffices for the transfer, indicate what other legal grounds under Article 46 GDPR are applicable and how they are being fulfilled. In addition to that, specify the enforceable data subject rights that apply to the data subjects whose data are being transferred in the third country or organisation and effective legal remedies available to the data subjects.

### Costs

Here describe any (direct/indirect) costs that may incur in relation to the data transfer and the party that bears these costs, as well as further payment conditions and details.



#### Authorised use of the data and users

Here describe how the data may be used, by whom the data will be used, as well as any express prohibitions if relevant in so far as the general provisions on confidentiality and data security do not cover them.

#### Subcontractors

Here describe any position/statement regarding subcontracting, for example, whether and under what circumstances it is permissible, as well as associated responsibility and liability (whether or not the Recipient Institution retains the responsibility).

#### Protection of privacy

Here describe obligations regarding confidentiality data security, erasure and data retention, obligations before and during the research, as well as when the research is completed.

#### Return of research results

Here describe whether and how raw data will be returned to the Providing Institution at the end of the research.

#### Publications

Here describe how the results arising from the use of data will be published and how the Providing Institution is being acknowledged.

#### Intellectual property rights and ownership

Here describe any intellectual property agreement relating to the data transfer, as well as the matters relating to the ownership (custody) of the data. Furthermore, the use of results can be addresses here as relevant.

#### Warranties, liability and indemnification

Here describe warranties and liability for each of the parties, for example, declarations of a right to enter into the agreement and transfer data, waivers of responsibility, and further use of data. You may also consider indemnifying the Provider Institution.

#### Law and jurisdiction

Here indicate the applicable law and jurisdiction. You may agree on the use of mediation, arbitration (including indicating the arbitrator), language of the dispute.

#### Effective date of the DTA, termination of the DTA, and dispute settlement

Here provide information regarding the effective date of DTA and its termination, as well as describe where/how disputes arising from the DTA will be resolved.

#### Miscellaneous

Here describe other essential provisions that are applicable to the data transfer.

#### Attachments

Describe the annexes and appendices to the DTA. All annexes and appendices form an integral part of this DTA and is legally binding between the Parties.



### Notices and contact information

Here describe giving formal notices to the other party in regards to the DTA. Here provide any contact persons and details for notices for the Provider Institution and the Recipient Institution.
--

### Signatures

Signed for an on behalf of the Providing Institution	Signed for an on behalf of the Recipient Institution
Responsible scientist [insert title and details]	Responsible scientist [insert title and details]
Authorised official [insert title and details]	Authorised official [insert title and details]

DISCLAIMER: This is a DTA Guide. This DTA Guide is developed by Santa Slokenberga, Jane Reichel, and Olga Tzortzatou for the purposes of B3Africa project. Any use of this DTA Guide is exclusive responsibility of the respective users.