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CONSENT MANAGEMENT GUIDEBOOK

Gaborone, Botswana

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1. WHAT IS CONSENT MANAGEMENT?

- 1.1. It is the act or process of managing consent from users and customers (Data Subjects) for processing their Personal Data. It enables the Data Subjects the ability to opt-in and opt-out of consent and to withdraw given consent at any time. Consent management assists an organisation in ensuring that the Data Subject rights are observed by the organisation at every stage.
- 1.2. Consent is one of the 6 legal basis that the Secretariat relies on to process Personal Data of a Data Subject. (You can read paragraph 4.3. of the SADC Policy on Protection of Personal Data (“the Policy”) to get the full list of the lawful basis for processing Personal Data).
- 1.3. Proper consent management system must include the following:
 - a. asking the Data Subject for their consent by clearly disclosing who the consent is being given to and how the data will be used;
 - b. holding back on any processing of Personal Data until proper consent has been given;
 - c. securely storing all consents as proof that the consent has been obtained;
 - d. giving Data Subjects access to withdraw their consent at any time; and
 - e. renewed from time to time.

2. WHAT ARE THE CONDITIONS FOR CONSENT?

- 2.1. The Policy defines consent as any freely given, specific, informed, and unambiguous indication of the Data Subject’s wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of Personal Data relating to him or her.
- 2.2. The meanings of ‘freely’, ‘specific’, ‘informed’ and ‘unambiguous’ are not defined in the SADC Policy on Protection of Personal Data. However, the definitions provided by the European Data Protection Board (EDPB) assists in providing clarity to the meanings. The EDPB is an independent European body whose purpose is to promote cooperation among European Union data protection authorities. The EDPB defines the word free as implying a real choice by the Data Subject. Any element of inappropriate pressure or influence which could affect the outcome of that choice renders the consent invalid.
- 2.3. The EDPB definition for informed and specific is that the Data Subject must at least be notified about the Data Controller’s identity, what kind of data will be processed, how it will be used and the purpose of the processing operations as a safeguard against function creep. It also includes informing the Data Subject of the right to withdraw consent at any time.
- 2.4. Unambiguous is defined as either a statement or a clear affirmative act.
- 2.5. If the Secretariat is hosting a physical event and need to get photographs or videos taken, the Secretariat should inform the invited attendees in advance that it will be recording the event. The Secretariat must also explain the purpose of the recordings and if any of the photographs and recordings will be shared on its website, social media platforms or with news reporters. This gives the person an opportunity either to turn down the invite or provide consent. Similarly, when the Secretariat is hosting an online meeting (like Zoom) with external persons, it must inform the meeting attendees that the sessions will be recorded. See Annexure D for a template on Consent Statement to be Photographed.
- 2.6. Should any one of the Secretariat’s centres be involved in a survey or study which involves processing of Personal Data, it must ensure that consent is obtained.
- 2.7. Paragraph 4.4. of the Policy sets out the conditions for consent:

- a. '(a) where processing is based on consent, the controller shall be able to demonstrate that the Data Subject has consented to processing of his or her Personal Data. The SADC Secretariat can 'demonstrate' that the Data Subject has consented by producing any consent forms that might have been completed and accepted by the Data Subject'. For example, if a Data Subject agreed to be added to a SADC mailing list, the completed subscription form can document this consent. It is important to note that all consent forms must NOT be pre-ticked.
 - b. '(b) if the Data Subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of such a declaration which constitutes an infringement of this Policy shall not be binding.' This includes instances where there is a contract to be signed by the Data Subject. If in addition to that contract, the SADC Secretariat requires specific consent from the Data Subject, the Secretariat must ensure that such request for consent is separately and clearly provided.
 - c. '(c) the Data Subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the Data Subject shall be informed thereof. It shall be as easy to withdraw as to give consent.' This right to withdraw consent is mentioned in the Privacy Notice, the different Data Subject Access Requests Forms, as well as the consent template forms. Please review these documents to see how this right is included in the forms.
 - d. '(d) when assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing Personal Data that is not necessary for the performance of that contract'. It should be noted that when it comes to employees, the SADC Secretariat should avoid relying on consent and rather rely on another lawful basis as set out in paragraph 4.3. of the Policy. The reason for doing so is because in practice it may be difficult in an employer-employee relationship to prove that an employee provided consent freely.
- 2.8. Para 14.1.3. of the SADC Guidelines on Protection of Personal Data ("the Guidelines") provides further examples of conditions for:
- a. 'consent requests are transparent, using plain language, and is void of any illegible terms, jargon, or extensive legal terms;
 - b. freely provided, specific and informed, as the Secretariat is an unambiguous indication of the individual's wishes;
 - c. consent given by a statement or an explicit affirmative action (positive opt-in) which signifies agreement to the processing of Personal Data;
 - d. consent mechanisms are upfront, clear, granular (in fine detail) and easy to use and understand;
 - e. pre-ticked, opt-in boxes not allowed to be used;
 - f. where consent given as part of other matters (e.g., terms & conditions, agreements, contracts), the organisation will ensure that the consent is separate from the other matters and is not a precondition of any service (unless necessary for that service);
 - g. provide details of any other third party who will use or rely on the consent;
 - h. consent is always verifiable, and the Secretariat have controls in place to ensure that the Secretariat can demonstrate consent in every case;
 - i. the organisation keeps detailed records of consent and can evidence at a minimum that the individual has consented to the use and processing of their data, that the individual

- has been advised of the Secretariat name and any third party using the data; what the individual was told at the time of consent; how and when consent was obtained;
- j. the Secretariat shall ensure that withdrawal consent is as easy, clear, and straightforward as giving it and is available through multiple-options, including opt-out links in mailings or electronic communications; opt-out process explanation and steps on the Secretariat website and in all written communication; ability to opt-out verbally, in writing, or by email; consent withdrawal requests are processed immediately and without detriment; controls and processes have been developed and implemented to refresh consent, especially those relating to parental consents; for special category data, the consent obtained is explicit; stated clearly and in detail, leaving no room for confusion or doubt, without the processing purposes always being specified.'
- 2.9. Explicit consent is also required when processing special categories of Personal Data.
- 2.10. A Data Subject may also provide their consent to the transfer of their Personal Data to a third country that does not have adequate data protection laws. The SADC Secretariat will also have to inform the Data Subject of the possible risks of such data transfers (paragraph 6.9. of the Policy).

3. WHAT ARE THE CONTROLS TO MANAGE CONSENT?

- 3.1. The Secretariat must document records of Data Subject consent. For example, if a Data Subject requests to be added to a mailing list, that consent form must be documented. See Annexure C for an example of how to get consent to a mailing list. There should be a system in place to document consent received via the website, hardcopy forms, email, SMS, telephone, etc.
- 3.2. All electronic consent by means of opt-in must be followed by a follow up email or SMS to confirm the consent to process Personal Data.
- 3.3. The Secretariat must document Data Subject withdrawal of consent. The withdrawal of consent must be clear, simple, transparent, and free.
- 3.4. Any electronic methods of gaining consent are regularly reviewed by the Secretariat and tested to ensure that the Data Subjects can access the Privacy Notice or Cookie Notice. The SADC Privacy Notice must be used in all forms of consent and where Personal Data is being collected to ensure that the Secretariat is compliant with the Policy.
- 3.5. With verbal consent obtained via telephone or face to face, the Secretariat must ensure that the template script is complied with. A copy of the template script is annexed to these Guidance Notes as Annexure B.

4. SHOULD CONSENT BE THE PRIMARY LEGAL BASIS?

- 4.1. As mentioned above, consent is one of 6 legal basis to rely on when processing Personal Data. When dealing with employees, the Secretariat should avoid relying on consent.
- 4.2. Similarly, if there are other applicable lawful basis to rely on, the Secretariat should rather rely on that basis instead of relying on consent. This is because once consent has been withdrawn, you will not be allowed to change your legal basis to process the Personal Data.
- 4.3. The Secretariat cannot rely on consent where processing of Personal Data is a pre-condition of a service that the Secretariat is offering (see para 16 of the SADC Policy Guidelines).

5. HOW TO MANAGE CONSENT ON THE WEBSITE?

- 5.1. When a website makes use of cookies or any tracking technologies, you must obtain consent from the users. This consent may be made by means of a pop-up Cookie

Banner. A cookie banner must not have pre-ticked checkboxes as a default. See the example of a template cookie banner marked Annexure A.

- 5.2. By default, cookies must be deselected and deactivated, so that users can give their consent as a clear and affirmative action.
- 5.3. Forcing a website user to consent to cookies to gain access to a website is deemed unlawful. Users must be able to filter their consent and give it freely. Continued browsing and scrolling on a website does not constitute valid consent.
- 5.4. If the website is hosted on WordPress, makes use of Google Analytics or similar tools, has embedded content such as YouTube videos or social media buttons, then the website most likely sets third party tracking cookies on the user's browsers, and it is important to implement a consent management platform to make sure that:
 - a. all cookies are paused until proper consent has been obtained;
 - b. the user gets transparent information on the cookies; and
 - c. that he or she may withdraw his or her consent at the time.



Mr. Elias M. Magosi
Executive Secretary

Date: 26/09/2022 SEPTEMBER 2022

6. ANNEXURE A - COOKIE BANNER

Example 1

Our website uses cookies.

We are always working to improve this website for our users. To do this, we use anonymised data provided by cookies. You can learn more about how we use cookies by reading our [Cookie Notice](#).

Please choose one of the below options by ticking the appropriate box

I understand the SADC Secretariat's Cookie Notice and accept the use of cookies ☐

I do not accept the use of cookie ☐

Example 2

Our website uses cookies.

We are always working to improve this website for our users. To do this, we use anonymised data provided by cookies. This information might be about you, your preferences or your device and is mostly used to make the site work as you expect it to. The information does not usually directly identify you, but it can give you a more personalised web experience. You can learn more about how we use cookies by reading our [Cookie Notice](#).

You have the option to activate or block any performance cookies, functional cookies and targeting cookies. However, blocking some types of cookies may impact your experience of the site and the services we are able to offer.

Please choose one of the below options

I understand the SADC Secretariat's Cookie Notice and accept the use of all cookies ☐

Performance cookies
☐ ON ☐ OFF

Functional cookies
☐ ON ☐ OFF

Targeting cookies
☐ ON ☐ OFF

7. ANNEXURE B - SCRIPT

"Thank you for contacting the SADC Secretariat. Please note that this telephone call is recorded for quality purposes. We may collect and process your personal data during this telephone call. All processing of personal data will be done in line with our Privacy Notice. The Privacy Notice can be accessed on our website, or you can ask one of our staff members to provide you with a copy"

8. ANNEXURE C - MAILING LIST

Example 1

To subscribe to receiving updates on the work of the SADC Secretariat, please add your email to our mailing list. By entering your email address, you agree to receive our newsletter. Your personal data will be processed in accordance with our [Privacy Notice](#) which provides information on how we use and process your personal data.

@enter your email address	CLICK SUBMIT
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You are free to exercise your right to withdraw your consent from receiving our newsletter at any time by clicking [here](#).

Example 2

To subscribe to receiving updates on the work of the SADC Secretariat, please add your contact information to our mailing list. By providing your contact details, you agree to receive our newsletter and updates. Your personal data will be processed in accordance with our [Privacy Notice](#) which provides information on how we use and process your personal data.

Please indicate how you wish to receive the newsletter

Email:

@enter name	@enter your email address	CLICK SUBMIT
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SMS:

@enter name	@enter your contact number	CLICK SUBMIT
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Post:

@enter name	@enter your postal address	CLICK SUBMIT
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You are free to exercise your right to withdraw your consent from receiving our newsletter at any time by clicking [here](#).

9. ANNEXURE D CONSENT STATEMENT TO BE PHOTOGRAPHED

I understand that photographs (audio / video recordings) may be taken during the meeting / event.

I consent to having my photograph taken. I consent to use of my photograph (audio/video) in SADC Secretariat's material.

Name

Date

** Please note that all processing of your personal data will be done in line with our [Privacy Notice](#).*