



# MOVING FROM IDEA TO PRACTICE

PRINCIPLED DATA SHARING AGREEMENT  
NEGOTIATION BY DESIGN

Andrew J. Zahuranec, Hannah Chafetz, and Stefaan Verhulst



*This paper is part of a series—“Data Sharing Agreements: Moving from Idea to Practice.” This series describes the ways organizations can use data-sharing agreements to facilitate data collaborations that serve both the public and institutional interests. To view the other papers in this series, visit our webpage at [dsa.opendatapolicylab.org](https://dsa.opendatapolicylab.org).*

Those seeking to develop a data-sharing agreement (DSA) often struggle to align incentives and define roles and responsibilities with collaborators during stakeholder negotiations. These problems point to a need for guiding principles that data collaborative organizers—primarily local data stewards in the public and private sector—can use to inform how they go about negotiation. Towards this end, we have developed this resource, “Principled DSA Negotiation by Design,” which breaks down the components of principled negotiation in the context of drafting a DSA.

To build on literature that already exists in the field, this resource starts in column one with the principled negotiation framework developed by the [Harvard Negotiation Project](#). As outlined in the book *Getting to Yes*, this framework has four major tenets:

- 1. Separate the people from the problem:** Maintain a relationship with all negotiators throughout the negotiation process and handle emotional issues separately.
- 2. Focus on interests, not positions:** Prioritize the underlying needs of each party rather than the position in the negotiation.
- 3. Identify options:** Develop multiple options as a group, rather than focusing on a single option.
- 4. Insist on using objective criteria:** Establish a set of criteria to guide negotiations and help make decisions.

In column two, we supplement this framework with the principles that emerged from our data sharing agreement studios:

- **Fairness:** The extent to which all parties in an agreement operate on a level playing field and are able to advance their interests;
- **Transparency:** The degree to which all parties understand one another and the broader ecosystem; and

- **Reciprocity:** The degree to which an agreement can allow its parties to meaningfully advance or achieve their interests. <sup>1</sup>

We list each of these principles alongside an action that organizations might take to advance the data sharing agreement negotiation process. These action items are based on existing principled negotiation and open data principles and are represented as parts of a checklist to allow readers to track their work. Finally, we provide a third column for notes where participants can provide more details about how they are advancing their work.

***Principled Negotiation by Design***

Tenet	Action Items	Notes
Separate the people from the problem	<b>Fairness</b> <input type="checkbox"/> Develop a negotiation procedure that can be seen as legitimate by all parties throughout the process (e.g. having a third party mediator present)	
	<b>Transparency</b> <input type="checkbox"/> Have each party map the actors in the data ecosystem who may have a role to play in the data-sharing agreement or are otherwise related to the target issue (e.g. regulators, community groups, etc).	
	<b>Reciprocity</b> <input type="checkbox"/> Have each party define their financial, technical, and staffing requirements before they can enter into a Data Sharing Agreement and how those can be filled;	
Focus on interests, not positions	<b>Fairness</b> <input type="checkbox"/> Develop a procedure for negotiating with the other party on a data-sharing agreement, one that treats both groups as equals (e.g. third-party mediation)	

<sup>1</sup> The Open Data Action Labs (ODAL) is an effort from the [Open Data Policy Lab](#) (ODPL) to support organizations by helping to define new strategies and tools that can resolve the policy challenges they face. These solutions are built around addressing gaps and asymmetries that slow data innovation and hinder progress toward realizing the promise of the [Third Wave of Open Data](#). ODALs are built around a series of workshops (called “studios”) which give experts and stakeholders an opportunity to define the problems facing them and then ideate possible solutions to those problems in a collaborative setting. In February and March 2023, the ODPL and TrustRelay co-hosted conversations with experts in law, data, and smart cities. This mechanism is based on the findings from these conversations.

	<p><b>Transparency</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Define a clear and specific intelligence need that is shared by all parties and outline how data sharing will lead to insights that can address that need. Verify that all parties share complementary interests and are willing to make data as open as it needs to be to address the problem.</li> </ul>	
	<p><b>Reciprocity</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Define what unique assets each party brings to the table and the extent to which these assets can fill gaps that others have (e.g. finances, staff, technology, legitimacy). It may be useful to examine this from the perspective of comparative advantage in that while all parties may be able to produce certain assets, one can produce it at a lower cost than others.</li> </ul>	
Identify options	<p><b>Fairness</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Give each party in the negotiation an opportunity to speak and submit proposals, especially, as it relates to fulfilling their previously defined public and private obligations regarding data.</li> </ul>	
	<p><b>Transparency</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Outline to others what the alternatives to an agreement would be and compare the value and risks of not reaching an agreement with the value and risks of coming to consensus.</li> </ul>	
	<p><b>Reciprocity</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Define three alternative options for each decision and the degree to which these options can empower each organization to use the data effectively to meet their needs.</li> </ul>	
Insist on using objective criteria	<p><b>Fairness</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Consider how all parties can guarantee compliance by design and which parties will be responsible for fulfilling or monitoring certain objectives.</li> </ul>	
	<p><b>Transparency</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Outline 3–5 criteria to guide all decision-making processes—including how each criteria should be weighed. Make the criteria clear to others and provide opportunities for them to contribute.</li> </ul>	
	<p><b>Reciprocity</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Outline the minimum legal and security requirements needed for each party from the start, including all those measures needed to protect individuals’ privacy throughout the data collaboration.</li> </ul>	

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