COPYRIGHT POLICY

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Approval

The signatories hereof, being duly authorised thereto, by their signatures hereto authorise the execution of the work detailed herein, or confirm their acceptance of the content hereof and authorise the implementation/adoption thereof, as the case may be, for and on behalf of the parties represented by them.

PROF AD MBEWU

CHIEF EXECUTIVE OFFICER

GOVERNMENT PRINTING WORKS
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PART 1: INTRODUCTION

1. PREAMBLE

The purpose of this copyright policy is to protect the copyrights of the State, and to regulate the use of State works as is defined in the Copyright Act 98 of 1978 (hereinafter referred to as "the Act"). This policy regulates the ownership, distribution, reproduction and commercial exploitation of all intellectual property published and/or created by GPW and the State, which are not specifically scheduled by the Act.

2. POLICY STATEMENT

It is the policy of the GPW to deal with the ownership, distribution and commercial exploitation of intellectual property developed by staff, state departments and other parties concerned at GPW. The policy is applicable to all departments of the GPW, to all temporary and permanent employees on the staff establishment of the GPW, to contract workers of the GPW, and to all parties who deal with and make use of GPW, its services and Copyright of the State.

3. CONTEXT

3.1 The GPW is a South African security printing specialist that deals with the printing of passports, visas, birth certificates, smart card identification documents and examination materials, as well as government stationery and publications, such as tender bulletins and government gazettes.

3.2 The GPW operates as a self-funded business within regulated parameters of South Africa's Department of Home Affairs.

3.3 In order to enable the GPW to fulfil its responsibilities and undertakings, for the optimal protection and to the mutual benefit of all parties, this policy attempts to consolidate existing rules and guidelines and stipulates the way in which intellectual property that originates in the GPW environment shall be dealt with, and specifically deals with ownership of State intellectual property and the exploitation thereof.
PART 2: COPYRIGHT LAW – A BRIEF REVIEW

4. COPYRIGHT LAW

Copyright, in terms of South African Law, is founded and regulated by the Copyright Act 98 of 1978 (hereinafter referred to as the Act). Copyright law provides a balance between the right of creators of copyright works to obtain a return for their efforts, and the right of the public to access those works. Recognition is given to the fact that certain types of knowledge should be treated as if they were private property and are therefore capable of being owned. Copyright is the area of law concerning the legal rights associated with intellectual creative effort or commercial reputation and goodwill. It covers a very wide area and includes literary and artistic works, films, computer programs, inventions, designs and trademarks. Therefore copyright may exist in almost every document printed, distributed or published by GPW on a daily basis.

4.1 COPYRIGHT

4.1.1 Copyright is defined as the exclusive right in relation to work embodying intellectual content and to regulate certain acts in relation to that work, and to determine the manners in which that work can be exploited for personal gain or profit.

4.1.2 Copyright entails a set of exclusive legal rights given to the author or creator of an original work which include the right to control how the work is used. The right to control the use of a work in all the manners in which it can be exploited for personal gain or profit is an essential right under the law of Copyright and that law does not achieve its objective unless such right is granted to the full. Copyright includes the right to copy, distribute, adapt, perform and display the work in public and it is a property right given to authors or creators of works. As a property right it can be transferred by sale, gift or legacy and by licence issued in order to duplicate.
4.1.3 The general principle entails the requirement that permission must be obtained prior to re-using or reproducing a particular work. Anyone who does any of these things without the required permission may be held responsible for that infringement.

PART 3: COPYRIGHT OF THE STATE AND GPW MANDATE

5. COPYRIGHT VESTING IN THE STATE

5.1 GPW deal primarily with information and documentation made by or under the direction and control of the State, which indicates that the exception regarding ownership in the case of works under control of the State is applicable.

5.2 Section 5 of the Act binds the State and provides that copyright shall be conferred on every work which is eligible for copyright and which is made by or under the direction or control of the State or such international organisation as may be prescribed.

5.3 In terms of section 21(2) of the Act it is specifically determined that the ownership of any copyright conferred by section 5, shall initially vest in the State or the international organization concerned, and not in the author.

5.4 The production of the work needs to be the principal object of State direction and control and not merely and incidental or peripheral consequence of some generalised governmental licensing or monitoring power, the direction and control should be directly and specifically expressed with respect to the work in question and should not be inferred from the fact of some residual or ultimate government veto.

5.5 Thus, it is evident that when and if the prescribed requirements are met, the State may own copyright in certain eligible works.
6. **THE MANDATE OF GOVERNMENT PRINTING WORKS**

In terms of Proc R24 GG 6299 of 9 February 1979, GPW is appointed as the officer in the public service in whom the copyright of the State is deemed to be vested. In terms of the Proclamation, GPW is allocated an administrative function. This right to administer includes the right to issue and/or grant licences, and authorise the use of certain works of the State that are copyright protected is therefore responsible for the regulation of proper administration of State works. The Public Services Act 103 of 1994, in schedule 3, determines that the Department of Home Affairs (DHA) is appointed as the responsible official of GPW. The Minister of the Executive Council of the DHA is therefore given the executive powers over State works that are copyright protected, and must therefore fulfil such executive roll in order to discharge itself of its Constitutional responsibility.

7. **WORK OF STATE THAT ARE COPYRIGHT PROTECTED**

7.1 Sections 12 – 19 of the Act provides for a list of exceptions of works that are excluded from copyright protection.

7.2 The State has copyright in respect of all works which fall outside the exclusions. Thus, any and all work of the State will be deemed to be Copyright protected, unless such works are explicitly excluded from Copyright protection in terms of the Act. Therefore, any reproduction, copying, distributing, making derivate works of, publicly performing of the State works, will result in infringement of State Copyright as is provided for in this Policy.

7.3 The following works are directly controlled by the Government Printing Works:

7.3.1 National and Provincial Government Gazettes

7.3.2 National Tender Bulletin
7.3.3 Parliamentary Bills

7.3.4 Government Departments' White Papers

7.3.5 Labour Related Charts (excluding Basic Conditions of Employment and Employment Equity)

8. **GPW STAFF**

8.1 **General:**

Ownership of intellectual property created by staff in the normal course and scope of their duties, vests, by law, in the State. The ownership of intellectual property created by contract workers, in the execution of their contractual obligations at the GPW, therefore also vests in the State.

8.2 **Specific provisions in respect of copyright:**

8.2.1 Employees and contract workers:

8.2.1.1 The ownership of all copyrights of employees of the GPW in respect of works created by them in the normal course and scope of their duties or on the specific instruction of the State and or GPW, vests in the State in terms of Section 21(1)(d) of the Act. Contract workers assign to the State their copyright in all works that may originate in the execution of their contractual obligations.

8.2.2 Works created:

8.2.2.1 All works created by staff of the GPW in the normal course and scope of their duties, shall, unless otherwise agreed, be deemed to be works originating within the scope of the staff.
members’ employment obligations. These include works that are created in the performance of a staff member’s normal duties, research or community-interaction projects assigned to the staff member.

8.3 **Specific provisions in respect of inventions, expertise and trade Secrets:**

8.3.1 All rights, interest and title in any invention, trade secret and knowledge, whether patentable or registerable as a model or not, created by an employee of the GPW in the normal course and scope of his/her employment at the GPW, vest by law in the State and in so far as these do not vest by law, that employee assigns such rights and interests to the State.

8.3.2 Employees and/or contract workers also assign to the State all their rights, title and interest in any inventions, knowledge and trade secrets that may be developed in the execution of their contractual obligations. Unless otherwise agreed, this shall include all inventions and expertise developed by the staff member in the field of specialization in which the said staff member has been appointed at the GPW.

8.3.3 The above assignments shall include all rights, title and interest in any works and inventions developed by the staff member that can be copyright protected, during the fulfilment of his/her employment obligations.

8.3.4 All inventions, expertise and trade secrets developed by a staff member (including after-hours work on the area of expertise of the GPW) shall be deemed to have been developed in the normal course and scope of his/her employment at the GPW and within the domain of expertise of the GPW, unless the staff member can prove
the contrary on the basis of an agreement or suchlike evidential material.

8.4 **Staff who conduct contract research:**

8.4.1 Staff of the GPW who visit other entities or other organizations with a view to discussing research ideas with them, or who conduct research elsewhere, must ensure that appropriate agreements regarding intellectual property rights are concluded prior to the visit. In a similar manner, staff members who are approached by outside organizations to conduct contract research for such bodies, regardless of the place where the contract research is done, must ensure that appropriate agreements regarding intellectual property rights are in place.

8.4.2 In the absence of appropriate agreements regarding intellectual property rights being agreed between the parties, the default arrangement is that all such intellectual property shall vest in the State (Republic of South Africa).

8.4.3 Contract research shall be deemed to fall within the normal course and scope of the staff member's employment, and the intellectual property that may be created as a result of such contract research shall vest in the State.

8.4.4 The GPW shall give reasonable consideration subject to relevant legislation to requests from the other organization regarding the intellectual property rights emanating from such research. Any assignment to, or sharing with, the outside organization of the said intellectual property rights that may emanate from such contract research, must be approved beforehand in writing and signed by the designated person from the GPW.
8.5 Consultation work undertaken by staff:

8.5.1 The product of consultation work, whether a report, an opinion, or any other form of product or service, may be delivered by a staff member of the GPW to an outside organization inclusive of the copyright on the product, provided the line head of the staff member approved such activity and the necessary arrangement regarding the associated cost of such product or service is paid to the GPW within the GPW policies.

8.5.2 The GPW retains the copyright on the raw data created during research for such consultation work in order to, inter alia, encourage further research. The GPW reserves all rights to any publication resulting from such consultative work. Staff members of the GPW, therefore, assign to the State the copyright and any other rights that may vest in such raw data, unless otherwise agreed with the GPW.

8.5.3 The GPW acknowledges that certain forms of consultation work cannot be performed effectively without the use of the GPW's assets, with attendant costs for the GPW. In such a case, the relevant staff members (individually or collectively) must conclude an agreement with GPW in consultation with the Head of Department concerned, including the manner in which the GPW is to be compensated for such use.

8.5.4 Other forms of private work that do not fall within the definition of consultation shall be deemed to be contract research, unless otherwise agreed beforehand, and shall be dealt with in terms of paragraph 8.4.
8.6 **Intellectual property that vests in staff:**

8.6.1 If a staff member claims that ownership of intellectual property vests in him- or herself, and can reasonably prove to the GPW that such intellectual property has not been created in the normal course and scope of his or her employment, the GPW shall accept that the staff member is entitled to the ownership thereof.

8.6.2 If any public money had been used in the development of such intellectual property, the GPW may lay a claim to the associated *pro rata* portion of intellectual property and the stipulations of the Act still apply.

8.7 **Contract workers**

8.7.1 Personnel who are appointed on a contract basis by the GPW are included under the terms staff and staff members as used above. They are subject to the same conditions regarding intellectual property rights that apply to the employees of the GPW, unless the contrary has been stated explicitly. Full rights, title and interest in respect of intellectual property, including inventions, designs, expertise and the copyright of all work developed in the normal course and scope of the execution of the contract with the GPW, are assigned to the State.

8.7.2 The relationship between the GPW and such contract workers shall be governed by a prior written contract that shall provide for, amongst others, the following:

8.7.2.1 assignment of intellectual property rights;

8.7.2.2 indemnity; and
8.7.2.3 moral rights waiver in the case of copyright.

8.7.3 In the absence of appropriate agreements regarding intellectual property rights being agreed between the parties, the default arrangement is that all such intellectual property shall vest in the State.

8.7.4 Each contract worker must also complete a disclosure form in respect of any such intellectual property developed in the course of his or her contract work.

9. TRADEMARKS OF THE GPW

9.1 The GPW is the owner of various registered and unregistered trademarks and therefore reserves all its rights in respect of any marks that include its name, coat of arms, abbreviation or similar indications, or that otherwise suggest an association with the GPW.

9.2 These include, inter alia, the names that identify the GPW and/or its corporate colours and logos that have been or will be developed by Departments, Institutes, Bureaux or Units and the GPW respective domain names.

9.3 The use of the GPW’s trade marks for private purposes or gain by staff, entities or members of the public is strictly prohibited, unless permission is granted by GPW upon the submission of a written request and motivation, for each event.

10. SOFTWARE

10.1 In terms of the Act, software is subject to copyright protection. However, the ownership of intellectual property in these works will vest in the State Information Technology Agency, in terms of the State Information
Technology Agency Act 88 of 1998 (SITAA). This is provided for in section 21 of SITAA and must be read in conjunction with section 5(6) of the Act. The copyright which normally vest in the State and is administered by the GPW, in the event software, vests in SITA.

10.2 SITA regulates and administers all State intellectual property relating to information systems and technology, as the agent, on behalf of the State. The executive authority to enforce such rights against infringing, regarding these works, also vests in SITA.

11. WORKS FALLING WITHIN THE PUBLIC DOMAIN

11.1 Works fall into the public domain as soon as they are produced. The public domain refers to works that are either ineligible for copyright or has an expired copyright on it. This entails the total absence of copyright protection for a piece of work that is not owned or controlled by anyone. The term indicates that work is basically “public property” and available for anyone to use for any purpose. If the work is within the public domain there is no ownership rights associated with it. It may be said that everyone and no one owns the work. Therefore, anyone may reproduce the work, distribute it, adapt it or use it in such a manner as they please as long as it is not contradicting to the Act or other legislation.

11.2 Work will be deemed to fall within the public domain in the following circumstances:

11.2.1 The original author or creator places their work in a public domain;

11.2.2 The copyright expires and the owner does not renew the copyright for their work;

11.2.3 The work is no longer owned by the original author;
11.2.4 No law exists that establishes proprietary rights to the author or creator, or they are specifically excluded from existing laws; if the work was created before Copyright laws were passed.

12. **CONFIDENTIALITY**

12.1 All employers, contract worker as well as all of the visiting/temporary employers or contractors who are not permanently employed by the GPW, must prior to their appointment or visit, sign a confidentiality agreement (non-disclosure agreement) in terms of which they undertake to keep confidential all confidential information which may come to their attention during their employment or visit to the GPW, and not to use it for personal gain.

12.2 These agreements must be in the form and substance acceptable to the Legal Office of GPW and must be signed by the relevant authorized personnel.

12.3 The agreements should be signed in duplicate in order to file one at the legal office of the GPW, and the other original to be retained by the recipients. A copy must also be provided to the relevant department of the GPW.

PART 4: **REGULATORY GUIDELINES FOR USE OF STATE COPYRIGHT**

13. **GUIDELINES FOR USE OF STATE COPYRIGHT WORKS**

13.1 GPW will be of assistance in the obtaining of the necessary permission for the reproduction of copyright works.

13.2 Application must be made to GPW in accordance with this Policy.
13.3 The application shall be brought in terms of a formal letter addressed to the GPW, setting out all the relevant details regarding the documentation for which permission to use State copyright works is requested.

13.4 Permission may be granted by the GPW subject to any of the following conditions:

13.4.1 The applicant signing a form of acceptance in terms whereof the applicant acknowledges that it has read and understands the contents of this Policy and agrees to abide by the terms and conditions as set out in the Policy, and understands the consequences of non-compliance with this Policy.

13.4.2 The authorisation is not exclusive to the requestor (natural person or legal entity) and Government Print Works reserves the right to grant permission to others who request similar information or part thereof;

13.4.3 The granted authority is valid for a period of twelve (12) months, starting from the date of the issuing of the authorization letter received from Government Print Works;

13.4.4 The materials to be produced should not be used for any other purposes beyond what is applied for;

13.4.5 The following Authorisation Acknowledgement must appear on the reproduced materials:

"Reproduced under Government Printer’s Authorisation (Authorisation No. xxxx ) dated DD/MM/YY."

13.5 The reproduction of a work shall be permitted as prescribed by regulation, but in such a manner that the reproduction is not in conflict with a normal
exploitation of the work and is not unreasonably prejudicial to the legitimate interests of the owner of the copyright.

13.6 Regulation 2 of the 1978 regulations, provide that the reproduction of a work shall be permitted except where otherwise provided if:

(i) Not more than one copy of a reasonable portion of the work is made, having regard to the totality and meaning of the work; and

(ii) If the cumulative effect of the reproduction does not conflict with the normal exploitation of the work to the unreasonable prejudice of the legal interest and residuary rights of the author.

13.7 Permission must be obtained from the legal holder of the copyright, as permission form any other person does not constitute legal authority for publication.

13.8 Any form of reproduction of work in which copyright vests in the State, without obtaining the required permission, as set out above, from GPW prior to reproduction, will result in the infringement of copyright and such infringer will be held liable.

PART 5: INFRINGEMENT OF COPY RIGHT, ENFORCEMENT, LIABILITY AND REMEDIES

14. ACTS OF VIOLATION OF COPYRIGHT

14.1 Only the copyright owner may do, or authorize the doing, of the following in respect of work:

14.1.1 reproduce it in any manner or form;

14.1.2 publish it;

14.1.3 perform it in public;
14.1.4 broadcast it;

14.1.5 transmit it in a diffusion service;

14.1.6 or adapt it.

14.2 Anyone who performs any of these actions without permission in respect of the work infringes the copyright of the State, is guilty of an offence, and will be prosecuted in terms of this Policy.

15. INFRINGEMENT OF COPYRIGHT

15.1 In terms of Section 23 of the Act, infringement of a copyright is described as when a person, not being the owner of the copyright, who, without the licences or consent of such owner, does or causes or any other person to do, in the Republic, any act which the owner has the exclusive rights to do or to authorise and therefore are within the monopoly of the copyright owner.

15.2 Copyright is not only infringed by misusing or misappropriating the whole of the work but also by misusing or misappropriating a substantial part of the work, meaning that taking an ordinary quotation from a work can constitute copyright infringement if the Stated formal conditions are not met.

15.3 Secondary infringement is also a form of infringement and is committed by:

15.3.1 Importing into the Republic for a purpose other than the importer’s private and domestic use;

15.3.2 Selling, letting or by way of trade offering or exposing for sale of hire; or

15.3.3 Distributing for the purposes of trade, or for any other purposes, to such an extent that the owner of the copyright is prejudicially affected;
15.3.4 Acquiring an article relating to a computer program in the Republic, being an infringing copy of a protected work with the knowledge that the item concerned is an infringing copy.

15.4 The criminal provisions of the Act are embodied in section 27 which determined that any person who at a time when copyright subsists in a work, without the authority of the owner of the copyright acts in any of the following manners, will be guilty of an offence:

15.4.1 makes for sale or hire;

15.4.2 sells or lets for hire or by way of trade offers or exposes for sale or hire;

15.4.3 by way of trade exhibits in public;

15.4.4 imports into the Republic otherwise than for his private or domestic use;

15.4.5 distributes for any purposes to such an extent that the owner of the copyright is prejudicially affected;

15.4.6 makes or has in possession a plate knowing that it is to be used for making infringing copies of work;

15.4.7 causes a literary or musical work to be performed in public knowing that copyright subsists in the work and that performance constitutes infringement;

15.4.8 causes a broadcast to be rebroadcast or transmitted in a diffusion service knowing that copyright subsists in the broadcast and that such rebroadcast or transmission constitutes infringement;
15.4.9 causes programme-carrying signals to be distributed by a distributor for whom they were not intended knowing that copyright subsists in the signals and that such distribution constitutes infringement.

16. LIABILITY FOR INFRINGEMENT

16.1 Liability is extremely strict and can take form in criminal or civil liability.

16.2 Criminal liability, which can attract fines and jail sentences may be a result of copyright infringements, as well as infringements in terms of the Copyright Act.

16.3 A person convicted of an offence under section 27 of the Act shall be liable as follows:

16.3.1 In the event of a first conviction, to a fine not exceeding R5 000.00 (five thousand rand) or to imprisonment for a period not exceeding 3 (three) years, or to both, for each article to which the offence relates.

16.3.2 In any other event, to a fine not exceeding R10 000.00 (ten thousand rand) or to imprisonment for a period not exceeding five years or to both, for each article to which the offence relates.

16.4 Civil liability may also occur as a result of copyright, particularly of obscene publications, for which certain remedies are available.

17. REMEDIES IN THE CASE OF INFRINGEMENT OF COPYRIGHT

17.1 The legal remedies available to the State when its copyright has been violated, are civil as well as criminal in nature.

17.2 Copyright shall be infringed by any person, not being the owner of the copyright, who, without the licence or consent of such owner, does or
causes any other person to do, in the Republic, any act which the owner has the exclusive right to do or to authorize

17.3 The infringement of copyright constitutes an unauthorized act and therefore results in a delict. All the common law delict remedies are available to the State, which includes the actio legis aquilia for damages and/or an interdict. The Act also makes provision for additional remedies as alternative to the common remedies.

17.4 Section 24 of the Act provides that infringements of copyright shall be actionable at the suit of the owner of the copyright, and in any action for such an infringement all such relief by way of damages, interdict, delivery of infringing copies or plates used or intended to be used for infringing copies or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other propriety rights.

17.5 The purpose of the interdict will be to stop or to prevent unauthorized use of the work. Where the State can prove that its right is being infringed by another and will probably continue to do so, it will be able to succeed with an application for an interdict.

17.6 In terms of section 24 of the Act, the court may grant an order for the handover of infringing copies or plates used or intended to be used for infringing copies or that it must be removed. If a claim for damages is awarded the claimant will be placed in the position he would have been in if the infringement did not take place.

18. COMPLIANCE OFFICER AND ENFORCER OF COPYRIGHTS VESTING IN THE STATE

18.1 The State has the executive authority to enforce copyrights of the State through enforcement of penalties, obtaining judgements and filing actions to court or other relevant forums in the enforcement of this copyright Policy.
18.2 The Government entity granted the executive authority to exercise these functions is the DHA as determined in schedule 3 of the Public Services Act 103 of 1994, which provides that the Minister of the DHA is appointed as the responsible official of the GPW and therefore, the Minister shall fulfil the executive function and has the right and responsibility to enforce the copyright vesting in the State.

PART 6: APPLICATION OF THIS POLICY

19. FIELD OF APPLICATION

All employees, clients, natural persons and legal entities who deal with GPW and make use of their services, should be familiar with the contents of this Policy and its procedures.