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OFFICE OF THE PRESIDENT

No. 1324.

16 October 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 88 of 1998: State Information Technology Agency Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 1324.

16 Oktober 1998

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 88 van 1998: Wet op die Staatsinligtingstechnologie-agentskap, 1998.

*(English text signed by the President.)
(Assented to 12 October 1998.)*

ACT

To provide for the establishment of a company that will provide information technology, information systems and related services to, or on behalf of, participating departments and in regard to these services, act as an agent of the South African Government; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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(Engelse teks deur die President geteken.)
(Goedgekeur op 12 Oktober 1998.)

WET

Om voorsiening te maak vir die oprigting van 'n maatskappy om inligtingstegnologie, inligtingstelsels en verwante dienste aan of ten behoeve van deelnemende departemente te lewer en om ten opsigte van die dienste as agent van die Suid-Afrikaanse Regering op te tree; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

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CHAPTER 1

STATE INFORMATION TECHNOLOGY AGENCY (PTY) LIMITED:
ESTABLISHMENT, INCORPORATION AND RELATED MATTERS

20

Definitions

1. In this Act, unless the context otherwise indicates—

- (i) **"Agency"** means State Information Technology Agency (Pty) Ltd contemplated in section 2(1); (i)
- (ii) **"Board"** means the Board of Directors of the Agency contemplated in section 8; (xii) 25
- (iii) **"Companies Act"** means the Companies Act, 1973 (Act No. 61 of 1973); (ix)
- (iv) **"department"** means a national department, provincial administration or organisational component listed in Schedules 1 and 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and for the purpose of this Act, the entity known as Infoplan will be regarded as a department; (iv) 30
- (v) **"incorporation date"** means the date on which the Agency is incorporated as a company in accordance with section 3; (viii) 35
- (vi) **"information systems"** means applications and systems to support the business whilst utilising information technology as an enabler or tool; (v)
- (vii) **"information systems security"** means to preserve the availability, integrity and confidentiality of information systems and information according to affordable security practices; (vi) 40
- (viii) **"information technology"** means all aspects of technology which are used to manage and support the efficient gathering, processing, storing and dissemination of information as a strategic resource; (vii)
- (ix) **"Managing Director"** means the Managing Director of the Agency contemplated in section 13; (ii) 45
- (x) **"Minister"** means the Minister for the Public Service and Administration or any Minister appointed by the President and assigned the power in terms of sections 91(2) and 92(1) of the Constitution, 1996, to be the shareholder on behalf of the State; (x)
- (xi) **"participating department"** means any department making use of services provided by the Agency; (iii) and 50
- (xii) **"President"** means the President of the Republic of South Africa. (xi)

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- 17. Aandeelhouding
- 5 18. Aard van Staat se finansiële belang
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- 21. Intellektuele eiendom
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- 23. Regulasies
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- 25. Staat gebind deur hierdie Wet
- 26. Kort titel en inwerkingtreding

HOOFTUK 1**20 DIE STAATSINLIGTINGSTEGNOLOGIE-AGENTSAP (EDMS) BEPERK:
INSTELLING, INLYWING EN VERWANTE AANGELEENTHEDE****Woordomskrywing**

1. In hierdie Wet, tensy onbestaanbaar met die samehang, beteken—
 - (i) **“Agentskap”** die Staatsinligtingstegnologie-agentskap (Edms) Beperk beoog in artikel 2(1); (i)
 - 25 (ii) **“Besturende Direkteur”** die Besturende Direkteur van die Agentskap in artikel 13 beoog; (ix)
 - (iii) **“deelnemende departement”** ’n departement wat gebruik maak van die dienste wat deur die Agentskap gelewer word; (xi)
 - (iv) **“departement”** ’n nasionale departement, provinsiale administrasie of organisasiekomponent gelys in Bylaes 1 en 2 by die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994) en vir die doeleindes van hierdie Wet word die entiteit bekend as Infoplan geag ’n departement te wees; (iv)
 - 30 (v) **“inligtingstelsels”** die toepassings en stelsels om die besigheid te ondersteun terwyl daar gebruik gemaak word van inligtingstegnologie as ’n instaatstelselmeganisme of instrument; (vi)
 - 35 (vi) **“Inligtingstelselsekerheid”** om die beskikbaarheid, integriteit en vertroulikheid van inligtingstelsels en inligting binne bekostigbare sekerheidspraktyke te handhaaf; (vii)
 - (vii) **“inligtingstegnologie”** al die aspekte van tegnologie wat aangewend word in die bestuur en ondersteuning van die effektiewe versameling, prosessering, storing en ontleding van inligting as ’n strategiese hulpbron; (viii)
 - 40 (viii) **“inlywingsdatum”** die datum waarop die Agentskap ingelyf is as ’n Maatskappy ooreenkomstig artikel 3; (v)
 - (ix) **“Maatskappywet”** die Maatskappywet, 1973 (Wet No. 61 van 1973); (iii)
 - 45 (x) **“Minister”** die Minister vir die Staatsdiens en Administrasie of ’n Minister deur die President aangestel en aan wie die bevoegdheid opgedra is om ingevolge artikels 91(2) en 92(1) van die Grondwet, 1996, die aandeelhouer namens die Staat te wees; (x)
 - (xi) **“President”** die President van die Republiek van Suid Afrika; (xii) en
 - 50 (xii) **“Raad”** die Raad van Direkteure van die Agentskap beoog in artikel 8. (ii)

Act No. 88, 1998 STATE INFORMATION TECHNOLOGY AGENCY ACT, 1998**Establishment of Agency**

2. (1) A juristic person to be known as State Information Technology Agency (Pty) Ltd is established.

(2) The Agency will be incorporated as a private company in accordance with section 3. 5

Incorporation of Agency

3. (1) The Minister must effect the incorporation of the Agency as a private company in terms of the Companies Act.

(2) Despite the provisions of the Companies Act or any other law, the State will be the sole shareholder of the company. 10

(3) Despite the provisions of the Companies Act—

(a) the Minister, on behalf of the State, must sign the memorandum of association, articles of association and all other documents necessary in connection with the formation and incorporation of the company; and

(b) the Registrar of Companies must— 15

(i) register the memorandum of association and articles of association as signed by the Minister;

(ii) incorporate the company as a private company under the name “State Information Technology Agency (Pty) Ltd”; and

(iii) issue to the company a certificate to commence business with effect from the date of the company’s incorporation. 20

(4) The Agency will initially comprise of—

(a) the Central Computer Services of the Department of State Expenditure;

(b) Infoplan;

(c) the sub-component Information Systems within the Department of Safety and Security; and 25

(d) any other department approved by the Minister.

(5) Departments must participate in the formation of the Agency, subject to subsection (6).

(6) Participation will be phased in over a period of time as determined, from time to time, by Cabinet on recommendation of the Minister. 30

(7) The Agency must, at incorporation, be exempt from the provisions of sections 63 and 172 of the Companies Act.

Application of Companies Act to Agency

4. (1) The provisions of the Companies Act will apply to the Agency, except where otherwise stated in this Act. 35

(2) The Companies Act will not apply to the Agency where the Minister of Trade and Industry has issued a declaration under section 5 of this Act.

Certain provisions of Companies Act not applicable to Agency

5. (1) The Minister, on the recommendation of the Agency, may, from time to time, request the Minister of Trade and Industry to declare any particular provision of the Companies Act not applicable to the Agency. 40

(2) (a) The request must be fully motivated, and the necessary particulars about the request and the motivation be made known by the Registrar of Companies by notice in the *Gazette*. 45

(b) In that notice the Registrar must—

(i) invite interested persons who may have any objections to such a declaration to submit their objections and representations to a person named in the notice; or

(ii) if sent by post, not later than 21 days after the date of the notice, place that person in possession of their objections and representations. 50

(3) The Minister of Trade and Industry may, by notice in the *Gazette*, after having considered the objections and representations received, if satisfied on reasonable grounds that the non-application of that provision to the Agency will—

(a) contribute to the efficiency of the Agency or will reduce its operating costs;

Instelling van Agentskap

2. (1) Die Staatsinligtingstegnologie-agentskap (Edms) Bpk word as 'n regspersoon ingestel.

(2) Die Agentskap word ingelyf as 'n private maatskappy ooreenkomstig artikel 3.

5 Inlywing van Agentskap

3. (1) Die Minister moet die inlywing van die Agentskap as 'n private maatskappy ingevolge die Maatskappywet bewerkstellig.

(2) Ondanks die bepalings van die Maatskappywet of enige ander wet, is die Staat die enigste aandeelhouer van die maatskappy.

10 (3) Ondanks die bepalings van die Maatskappywet—

(a) moet die Minister, namens die Staat, die akte van oprigting, die statute en alle ander dokumente wat in verband met die stigting en inlywing van die maatskappy nodig is, onderteken; en

15 (b) moet die Registrateur van Maatskappye—

(i) die akte van oprigting en statute soos deur die Minister onderteken, registreer;

(ii) die maatskappy as 'n private maatskappy met die naam "Staatsinligtingstegnologie-agentskap (Edms) Bpk" inlyf; en

20 (iii) aan die maatskappy 'n sertifikaat om met besigheid te begin, uitreik met ingang van die datum van die maatskappy se inlywing.

(4) Die Agentskap sal aanvanklik bestaan uit—

(a) die Sentrale Rekenaardiens van die Departement van Staatsbesteding;

(b) Infoplan;

25 (c) die sub-komponent Inligtingstelsels van die Departement van Veiligheid en Sekuriteit; en

(d) enige ander departement deur die Minister goedgekeur.

(5) Departemente moet aan die vorming van die Agentskap deelneem, behoudens subartikel (6).

30 (6) Deelname word oor 'n tydperk ingefaseer soos van tyd tot tyd deur die Kabinet op aanbeveling van die Minister bepaal.

(7) Die Agentskap moet by inlywing van die bepalings van artikels 63 en 172 van die Maatskappywet vrygestel wees.

Toepassing van Maatskappywet op Agentskap

4. (1) Die bepalings van die Maatskappywet is van toepassing op die Agentskap, tensy anders in hierdie Wet aangedui.

(2) Die Maatskappywet is nie op die Agentskap van toepassing waar die Minister van Handel en Nywerheid 'n verklaring kragtens artikel 5 van hierdie Wet uitgereik het nie.

Sekere bepalings van Maatskappywet nie op Agentskap van toepassing nie

5. (1) Die Minister kan van tyd tot tyd, op aanbeveling van die Agentskap, die Minister van Handel en Nywerheid versoek om enige besondere bepaling van die Maatskappywet as nie op die Agentskap van toepassing nie, te verklaar.

(2) (a) Die versoek moet ten volle gemotiveerd wees, en die nodige besonderhede aangaande die versoek en die motivering moet deur die Registrateur van Maatskappye by kennisgewing in die *Staatskoerant* bekend gemaak word.

45 (b) Die Registrateur moet in daardie kennisgewing—

(i) belanghebbende persone wat enige besware teen so 'n verklaring het, uitnooi om hul besware en verhoë aan 'n persoon in die kennisgewing genoem voor te lê; of

50 (ii) indien per pos versend, daardie persoon nie later nie as 21 dae na die datum van die kennisgewing in besit van hul besware en verhoë te stel.

(3) Die Minister van Handel en Nywerheid kan, na oorweging van die besware en verhoë ontvang, by kennisgewing in die *Staatskoerant*, indien op redelike gronde tevrede dat die nie-toepassing van dié bepaling op die Agentskap—

55 (a) tot die Agentskap se doeltreffendheid sal bydra of sy bedryfskoste sal verlaag;

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- (b) not reduce or limit the accountability of the Agency as a public institution or detract from the requirements of transparency regarding its functioning and operations; and
 - (c) not be prejudicial to the rights or interests of employees of the Agency or of any other interested party, or to the claims of the creditors of the Agency, 5
- declare, with effect from the date stated in the notice, the whole or part of a provision of the Companies Act not applicable to the Agency.

Objective of Agency

6. The objective of the Agency is to provide information technology, information systems and related services in a maintained information systems security environment to, or on behalf of, participating departments and organs of state and in regard to these services, act as an agent of the South African Government. 10

Powers and functions of Agency

7. (1) To achieve its objective, the Agency may— 15
- (a) provide data processing services;
 - (b) provide information technology and information systems training;
 - (c) provide application software development and maintenance services;
 - (d) promote the effective utilisation of information technology to enhance the efficiency at all levels of the Public Service;
 - (e) provide technical, functional and business advice and support regarding information technology; 20
 - (f) provide information technology and information systems management services;
 - (g) with regard to any of the above functions act as procurement agency in respect of information technology requirements, in accordance with State procurement policy; and 25
 - (h) perform any other function which the Minister may, from time to time, determine to give effect to the objective of the Agency.
- (2) The Agency must in the execution of its functions maintain a comprehensive information systems security environment according to approved policy and standards. 30
- (3) The Agency must in the execution of its functions adhere to the policies on information management and information technology and a framework of norms and standards to give effect to such policies, as well as regulations made in this regard by the Minister in terms of the Public Service Act, 1994 (Act No. 103 of 1994), and this Act.

CHAPTER 2

35

GOVERNANCE OF AGENCY**Board of Directors**

8. (1) The Agency will be governed and controlled, in accordance with this Act, by a Board of Directors appointed by the Minister after consultation with Cabinet.
- (2) The business and operational plans of the Agency must be approved by the Board of Directors in consultation with the Minister. 40
- (3) The Board of Directors will represent the Agency.

Roles and responsibilities of Directors

9. A Director of the Agency must carry out his or her duties in accordance with the provisions of this Act and the Companies Act. 45

- (b) nie die Agentskap se rekenpligtigheid as 'n openbare instelling sal verminder of beperk of aan die vereistes van deursigtigheid wat betref sy funksionering en bedryf, afbreuk sal doen nie; en
- (c) nie afbreuk sal doen aan die regte of belange van die werknemers van die Agentskap of van enige ander belanghebbende party, of aan die eise van die Agentskap se skuldeisers nie,
- 5 verklaar dat die geheel of 'n gedeelte van 'n bepaling van die Maatskappywet, met ingang van die datum in die kennisgewing vermeld, nie op die Agentskap van toepassing is nie.

10 Doel van Agentskap

6. Die doel van die Agentskap is om inligtingstegnologie, inligtingstelsels en verwante dienste in 'n instandgehoue inligtingstelselsekerheidsomgewing aan of ten behoeve van deelnemende departemente en organe van die Staat te lewer en om ten opsigte van die dienste as agent vir die Suid-Afrikaanse Regering op te tree.

15 Bevoegdhede en funksies van Agentskap

7. (1) Om sy doel te bereik, kan die Agentskap—
- (a) dataverwerkingsdienste verskaf;
- (b) inligtingstegnologie- en inligtingstelselopleiding verskaf;
- (c) ontwikkelings- en onderhoudsdienste ten opsigte van toepassingsprogrammatuur verskaf;
- 20 (d) die effektiewe benutting van inligtingstegnologie bevorder ten einde die effektiwiteit van die Staatsdiens op alle vlakke te verhoog;
- (e) tegniese, funksionele en besigheidsadvies en ondersteuning met betrekking tot inligtingstegnologie verskaf;
- 25 (f) inligtingstegnologie- en inligtingstelselbestuursdienste verskaf;
- (g) ten opsigte van enige van die bogenoemde funksies, met betrekking tot die inligtingstegnologievereistes ooreenkomstig die Staat se verkrygingsbeleid, as verkrygingsagent optree; en
- 30 (h) enige ander funksie wat die Minister van tyd tot tyd vasstel om die doel van die Agentskap te bereik, verrig.
- (2) Die Agentskap moet in die uitvoering van sy funksies, ooreenkomstig goedgekeurde beleid en standaarde, 'n omvattende inligtingstelselsekerheidsomgewing in stand hou.
- (3) Die Agentskap moet in die uitvoering van sy funksies aan die inligtingsbestuur- en inligtingstegnologiebeleid en 'n raamwerk van norme en standaarde om aan die beleid uitvoering te gee, asook regulasies wat in die verband deur die Minister ingevolge die Staatsdienswet, 1994 (Wet No. 103 van 1994), en hierdie Wet uitgevaardig word, voldoen.
- 35

HOOFSTUK 2

40 BESTUUR VAN AGENTSAP

Raad van Direkteure

8. (1) Die Agentskap word ooreenkomstig hierdie Wet bestuur en beheer deur 'n Raad van Direkteure, deur die Minister na oorleg met die Kabinet aangestel.
- (2) Die Agentskap se besigheids- en operasionele planne moet deur die Raad van
- 45 Direkteure in oorleg met die Minister goedgekeur word.
- (3) Die Raad van Direkteure verteenwoordig die Agentskap.

Rol en verantwoordelikhede van Direkteure

9. 'n Direkteur van die Agentskap moet sy of haar pligte uitvoer ooreenkomstig die bepalings van hierdie Wet en die Maatskappywet.

Composition of Board

10. (1) The Board must consist of not more than ten members appointed by the Minister, consisting of—
- (a) a non-executive Chairperson;
 - (b) not more than three executive Directors, one of whom must be designated as the Managing Director; 5
 - (c) additional non-executive members, consisting of—
 - (i) one member representing the Department of Public Service and Administration;
 - (ii) one member representing the Department of State Expenditure; 10
 - (iii) one member as a legal expert; and
 - (iv) other members on the grounds of their expertise.
- (2) A majority of the appointed Directors forms a quorum.
- (3) The Chairperson has a casting vote in addition to a deliberative vote, and on an equality of votes he or she must exercise the casting vote. 15

Terms of office of members of Board

11. (1) A non-executive member of the Board—
- (a) holds office for a period of three years which can be extended, unless a shorter period is stipulated in the letter of appointment of the member;
 - (b) serves as member on the terms and conditions determined by the Minister and specified in the letter of appointment of the member; and 20
 - (c) may resign by giving one month's written notice to the Minister.
- (2) An executive member of the Board may resign by giving notice as stipulated in his or her employment contract.

Service conditions and remuneration 25

12. A member of the Board, except the executive directors and any appointed member who holds a post or office in a department, or any institution, organisation or body established by or under any other law and funded wholly or partly by the State, will be remunerated, on a daily basis at a rate determined by the Minister, from time to time, with the concurrence of the Minister of Finance. 30

CHAPTER 3**MANAGING DIRECTOR****Functions of Managing Director**

13. (1) The organisation of the Agency and its day to day business and operations will be under the charge and general management and control of the Managing Director, subject to the general or special directions and instructions that the Board may, from time to time, issue to the Managing Director. 35
- (2) The Managing Director is accountable to the Board, and is the chief administrative and executive officer of the Agency.

CHAPTER 4 40**STAFFING OF AGENCY****Staff of Agency**

14. (1) The Managing Director may appoint staff to perform work for the Agency, subject to any general or special direction of the Board.
- (2) The remuneration, allowances and service benefits of the staff of the Agency must be determined by the Board. 45

Samestelling van Raad

10. (1) Die Raad bestaan uit hoogstens tien lede, deur die Minister aangestel, bestaande uit—

- (a) 'n nie-uitvoerende Voorster;
- 5 (b) nie meer nie as drie uitvoerende Direkteure, van wie een as die Besturende Direkteur aangewys moet word;
- (c) addisionele nie-uitvoerende lede, bestaande uit—
 - (i) een lid wat 'n verteenwoordiger van die Departement van Staatsdiens en Administrasie is;
 - 10 (ii) een lid wat 'n verteenwoordiger van die Departement van Staatsbesteding is;
 - (iii) een lid as 'n regs kundige; en
 - (iv) ander lede op grond van hul kundigheid.
- (2) 'n Meerderheid van die aangestelde Direkteure vorm 'n kworum.
- 15 (3) In geval van 'n staking van stemme moet die Voorster, wat benewens 'n beraadslagende stem ook 'n beslissende stem het, die beslissende stem uitbring.

Ampstermyn van Raadslede

11. (1) 'n Nie-uitvoerende lid van die Raad—
 - (a) dien vir 'n termyn van drie jaar wat verleng kan word, tensy 'n korter termyn
20 in die lid se aanstellingsbrief gespesifiseer is;
 - (b) dien as 'n lid op die bepalings en voorwaardes soos deur die Minister bepaal en in die aanstellingsbrief vermeld; en
 - (c) kan bedank deur 'n maand skriftelike kennisgewing aan die Minister te gee.
- (2) 'n Uitvoerende lid van die Raad kan bedank deur kennis te gee soos in sy of haar
25 dienskontrak uiteengesit is.

Diensvoorwaardes en besoldiging

12. 'n Lid van die Raad, uitgesonderd die uitvoerende direkteure en enige aangestelde lid wat ook 'n pos of amp beklee in 'n departement, of enige ander instelling, organisasie of liggaam ingestel deur of kragtens enige ander wet en wat in
30 geheel of gedeeltelik deur die Staat befonds word, beklee, word op 'n daaglikse grondslag besoldig teen 'n tarief soos van tyd tot tyd deur die Minister, met die instemming van die Minister van Finansies, bepaal.

HOOFSTUK 3**BESTURENDE DIREKTEUR****35 Funksies van Besturende Direkteur**

13. (1) Die organisasie van die Agentskap en sy daaglikse besigheid en bedryfswerk-saamhede staan onder die toesig en algemene bestuur en beheer van die Besturende Direkteur, behoudens die algemene of spesiale opdragte en voorskrifte wat die Raad van tyd tot tyd aan die Besturende Direkteur uitreik.
- 40 (2) Die Besturende Direkteur is rekenpigtig aan die Raad en is die hoof-administratiewe en uitvoerende beampte van die Agentskap.

HOOFSTUK 4**PERSENEELVOORSIENING VAN AGENTSAP****Personeel van Agentskap**

- 45 14. (1) Behoudens enige algemene of spesiale voorskrif van die Raad, kan die Besturende Direkteur personeel vir die Agentskap aanstel om werk vir die Agentskap te verrig.
- (2) Die vergoeding, toelaes en diensvoordele van die personeel van die Agentskap word deur die Raad bepaal.

(3) The normal rules of non-disclosure of information in the Public Service will apply to personnel of the Agency.

(4) In the making of appointments and the filling of posts, the evaluation of persons must be based on training, skills, competence, knowledge and the need to redress the imbalances of the past to achieve an Agency broadly representative of the South African people, including representation according to race, gender and disability. 5

Staff of participating departments

15. (1) All employees involved in the information technology function of the participating departments contemplated in section 3(4), and practitioners in the information technology function of departments contemplated in section 3(5), will be made an employment offer by the Agency, unless otherwise agreed to between the Agency, an employee and the department concerned. 10

(2) The offer will be subject to the following principles:

(a) The total remuneration package, including the comparable monetary value of the service benefits due to them, offered by the Agency, may not be less than those payable or due to them by the previous employer immediately prior to their transfer to the Agency, but the remuneration package must be reconsidered within six months after the offer was made to employees contemplated in section 3(4); 15

(b) all vested rights accrued to the employee must be acknowledged and transferred from the previous employer and associated funds to the Agency; 20

(c) transfer of Infoplan employees who are members of a pension fund registered in terms of the Pensions Fund Act, 1956 (Act No. 24 of 1956), must be done in terms of section 14 of the said Act;

(d) prior to the transfer of the personnel, an agreement must have been reached among the current employers, the Agency and the Minister, and with the concurrence of the Minister of Finance, where applicable, as to whether— 25

(i) certain benefits such as accrued leave and sick leave should be wholly or partially carried over to the Agency; or

(ii) the monetary value of such benefits should be payable wholly or partially to an employee prior to transfer, 30

and the agreement must furthermore stipulate which portion of the costs of the transferred benefits are carried by the previous employer and which portion by the Agency;

(e) the agreement must also deal with the handling of any contractual obligation between the employer and the employee; 35

(f) the offer will only be made to employees who are in the service of the respective employers at the time of the conclusion of the agreement;

(g) personnel in the service of the State and to whom an offer is made and who accept that offer, will not be entitled to voluntary severance package; 40

(h) an officer who is a member of the Government Employees' Pension Fund and who is employed by the Agency may—

(i) choose to become a dormant member of such Fund, and from the date of exercising such a choice, such an officer must, despite the provisions of any other law, be regarded to be a dormant member of the Fund; or 45

(ii) choose to remain a member of the Fund, in which case the Agency will be responsible for the employer's contribution to the Fund; or

(iii) request to become a member of any other approved pension fund and withdraw from the current Fund in accordance with the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996). 50

(3) (a) The Minister or any other Minister may, at the request of the Agency, second an officer to the Agency in accordance with section 15(3) of the Public Service Act, 1994.

(b) For as long as that officer is seconded to the Agency, the Agency must reimburse the relevant department for the remuneration and allowances paid by the department to that officer, and for any other moneys spent by the department on the officer's other service benefits and any other costs to the department arising from the secondment of that officer to the Agency. 55

(3) Die algemeen geldende reëls in die Staatsdiens ten opsigte van die nie-openbaarmaking van inligting is op die personeel van die Agentskap van toepassing.

(4) By die doen van aanstellings en die vulling van poste moet die beoordeling van persone gebaseer word op opleiding, vaardighede, bevoegdheid, kennis en die behoefte om die wanbalanse van die verlede reg te stel ten einde 'n Agentskap te bewerkstellig wat in die breë verteenwoordigend van die Suid-Afrikaanse bevolking is, met inbegrip van verteenwoordiging volgens ras, geslag en gestremdheid.

Personeel van deelnemende departemente

15 15. (1) 'n Werksaanbod sal deur die Agentskap aan alle personeel betrokke by die inligtingstegnologiefunksie van deelnemende departemente beoog in artikel 3(4), en praktisyns in die inligtingstegnologiefunksie van departemente soos in artikel 3(5) bedoel, gemaak word, tensy anders tussen die Agentskap, die werknemer en die betrokke departement ooreengekom.

(2) Die aanbod sal aan die volgende beginsels onderhewig wees:

- 15 (a) Die totale vergoedingspakket wat deur die Agentskap aangebied word, met inbegrip van die vergelykbare monetêre waarde van diensvoordele wat personeel toeval, mag nie minder wees as dit wat betaalbaar was deur die vorige werkgewer onmiddellik voor hul oorplasing na die Agentskap nie, maar die vergoedingspakket moet binne ses maande nadat die aanbod aan personeel beoog in artikel 3(4) gedoen is, heroorweeg word;
- 20 (b) alle gevestigde opgeloopte regte aan die werknemer moet erken en oorgeplaas word vanaf die vorige werkgewer en geassosieerde fondse na die Agentskap;
- 25 (c) die oorplasing van Infoplan-werknemers wat lede is van 'n pensioenfonds wat ingevolge die Pensioenfondswet, 1956 (Wet No. 24 van 1956), geregistreer is, geskied ingevolge artikel 14 van genoemde Wet;
- (d) voor die oorplasing van personeel, moet 'n ooreenkoms tussen die huidige werkgewers, die Agentskap en die Minister, en met die instemming van die Minister van Finansies waar van toepassing, bereik word daarvoor of—
- 30 (i) voordele soos opgeloopte verlof en siekteverlof in die geheel of gedeeltelik aan die Agentskap oorgedra moet word;
- (ii) die monetêre waarde van sodanige voordele in die geheel of gedeeltelik voor die oordrag aan 'n werknemer betaalbaar sal wees, en die ooreenkoms moet verder aandui watter deel van die koste van die oorgedraagde voordele deur die vorige werkgewer en watter deel deur die Agentskap gedra moet word;
- 35 (e) hierdie ooreenkoms moet ook handel met die hantering van enige kontraktuele verpligtinge tussen die werknemer en die werkgewer;
- (f) die aanbod word slegs gedoen aan personeel wat op die tydstip dat die ooreenkoms gesluit word in diens van die onderskeie werkgewers is;
- 40 (g) personeel in diens van die Staat aan wie 'n aanbod gedoen word en wat daardie aanbod aanvaar, is nie op 'n vrywillige skeidingspakket geregtig nie;
- (h) 'n beampte wat lid is van die Staatsdienswerknemerspensioenfonds en wat deur die Agentskap in diens geneem word, kan—
- 45 (i) verkies om 'n dormante lid van sodanige Fonds te word en vanaf die datum van die uitoefening van sodanige keuse word sodanige beampte, ongeag die bepalinge van enige ander wet, geag 'n dormante lid van die fonds te wees; of
- (ii) verkies om lid te bly van die fonds, in welke geval die Agentskap vir die werkgewer se bydrae tot die Fonds verantwoordelik sal wees; of
- 50 (iii) versoek om lid van enige ander goedgekeurde pensioenfonds te word en te onttrek aan die huidige Fonds ingevolge die Regeringswerknemerspensioenwet, 1996 (Proklamasie No. 21 van 1996).

(3) (a) Die Minister of enige ander Minister kan, op versoek van die Agentskap, 'n beampte ooreenkomstig artikel 15(3) van die Staatsdienswet, 1994, aan die Agentskap sekondeer.

(b) Die Agentskap moet, vir solank daardie beampte aan die Agentskap gesekondeer is, die betrokke departement vergoed vir die besoldiging en toelaes wat die departement aan daardie beampte betaal, en enige koste wat die departement aan die beampte se ander diensvoordele bestee asook vir enige ander koste vir die departement wat uit die persoon se sekondering aan die Agentskap voortspruit.

CHAPTER 5**FINANCIAL MATTERS****Funding of Agency**

16. (1) The Agency is funded from monies received for services rendered that are stipulated in the service level agreements entered into with participating departments and organs of state. 5

(2) The rates used for determining the cost of service will be reasonably market related and periodically approved by the Department of State Expenditure.

(3) The Agency will focus on generating maximum efficiency and cost-effectiveness for the State and the Board will recommend to the Minister on the basis of a strategic plan what excess funds will be retained by the Agency and for which purpose. 10

(4) Funding and capital to start operating the Agency must be obtained from funds agreed to between the Minister and the Minister of Finance, after consultation with the participating departments.

(5) Payment for services provided by the Agency to a department or an organ of state will be made according to the stipulations of the business agreement between the parties. 15

(6) (a) Any special funding required or other special financial arrangement, including any government grants, may be negotiated by the Agency with the Minister, the Minister of Finance and any other interested party.

(b) The subsequent agreement will include all conditions to be met relating to such an arrangement. 20

(7) (a) The Agency may, with the approval of the Minister, accept donations and bequests.

(b) Particulars of each donation or bequest accepted by the Agency must be given in the annual report of the Agency. 25

(8) The Department of Public Service and Administration will be responsible for all transfer payments to the Agency approved by the Department of State Expenditure.

(9) The books and records of accounts and financial statements of the Agency will be audited annually by the Auditor-General.

Shareholding 30

17. The rights attached to the shares of which the State is the holder will be exercised by the Minister on behalf of the State.

Nature of financial interest of State

18. (1) The State will be issued with fully paid-up shares in the Agency as specified in an agreement entered into between the Agency and Minister, with the concurrence of the Minister of Finance, in exchange for the assets and liabilities invested in the Agency valued on a method acceptable to the State, but if the State is issued with shares which are less than the nett value of the assets and liabilities invested in the Agency, the Agency will be indebted to the State for the difference between the nett value of the assets so invested and the value of the shares so issued. 35 40

(2) (a) The debt contemplated in subsection (1) will be regarded as a loan by the State to the Agency, the terms and conditions of such a loan must be set out in the agreement.

(b) The agreement must make provision that the Agency may issue the State with debentures for the whole or part of the amount of the loan.

(3) For the purpose of this section, any reference to the nett value of the assets and liabilities invested in the Agency must be understood to mean the value of all the movable, immovable and other property or assets transferred to the Agency, minus the liabilities. 45

HOOFSTUK 5**FINANSIËLE AANGELEENTHEDE****Befondsing van Agentskap**

16. (1) Die Agentskap word befonds uit gelde wat ontvang word vir dienste gelewer
5 soos in diensvlakoorreenskoms met deelnemende departemente en organe van die Staat bepaal.

(2) Die tariewe wat gebruik word om die koste van dienste te bepaal moet redelik markverwant wees en periodiek deur die Departement van Staatsbesteding goedgekeur word.

10 (3) Die Agentskap moet daarop fokus om maksimum doeltreffendheid en koste-effektiwiteit vir die Staat te bewerkstellig en die Raad moet by wyse van 'n strategiese plan aan die Minister motiveer watter oortollige fondse deur die Agentskap behou kan word en vir welke doel.

(4) Befondsing en kapitaal om die Agentskap te begin bedryf moet verkry word
15 vanuit fondse soos ooreengekom tussen die Minister en die Minister van Finansies, na oorleg met die deelnemende departemente.

(5) Betaling vir dienste gelewer deur die Agentskap aan 'n departement of orgaan van die Staat geskied ooreenkomstig die bepalings van die besigheidsooreenskoms tussen die partye.

20 (6) (a) Die Agentskap kan met die Minister, die Minister van Finansies en enige ander belanghebbende party onderhandel oor spesiale fondse benodig of 'n ander spesiale finansiële reëling, insluitende enige owerheidstoekennings.

(b) Die gevolglike ooreenkoms moet alle voorwaardes bevat wat in verband met sodanige ooreenkoms nagekom moet word.

25 (7) (a) Die Agentskap mag met die goedkeuring van die Minister donasies en skenkings aanvaar.

(b) Besonderhede van elke donasie en skenking deur die Agentskap aanvaar, moet in die Agentskap se jaarverslag uiteengesit word.

(8) Die Departement vir Staatsdiens en Administrasie is verantwoordelik vir alle
30 oordragbetalings aan die Agentskap soos deur die Departement van Staatsbesteding goedgekeur.

(9) Die Agentskap se rekenkundige rekords en finansiële jaarstate word jaarliks deur die Ouditeur-generaal geouditeer.

Aandeelhouding

35 17. Die regte verbonde aan die aandele waarvan die Staat die houer is, word deur die Minister namens die Staat uitgeoefen.

Aard van Staat se finansiële belang

18. (1) Die Staat word, in ruil vir die bates en laste in die Agentskap belê en
40 gewaardeer op 'n waardasiemetode aanvaarbaar vir die Staat, soos bepaal in 'n ooreenkoms aangegaan tussen die Agentskap en die Minister en met instemming van die Minister van Finansies, met volopbetaalde aandele in die Agentskap uitgereik, maar indien die Staat uitgereik word met aandele waarvan die waarde minder is as die netto waarde van die bates en laste in die Agentskap belê, is die Agentskap die verskil tussen die netto waarde van die bates aldus belê en die waarde van die aandele aldus uitgereik,
45 aan die Staat verskuldig.

(2) (a) Die skuld beoog in subartikel (1) word geag 'n lening van die Staat aan die Agentskap te wees en die bedinge en voorwaardes van sodanige lening moet in die ooreenkoms uiteengesit word.

(b) Die ooreenkoms moet voorsiening maak dat die Agentskap aan die Staat
50 skuldbriewe vir die geheel of gedeelte van die leningsbedrag kan uitreik.

(3) Vir die doeleindes van hierdie artikel, moet enige verwysing na die netto bates en laste soos in die Agentskap belê, verstaan word as te bedoel die waarde van alle roerende, onroerende en ander eiendom of bates oorgedra aan die Agentskap, min alle laste te wees.

Transfer of assets

19. (1) Where an activity of the Agency was performed by a participating department and an asset was held or used by any of the parties referred to in section 3(4) in connection with the performance of that activity, the relevant Head of Department in consultation with his or her Minister must transfer the asset to the Agency. 5

(2) The transfer of such assets to the Agency must take place by mutual agreement between the participating department and the Agency in consultation with the Minister of Finance, and in the case of a transfer of assets of Infoplan from Denel (Pty) Ltd, the provisions of the Companies Act will apply.

(3) Despite subsections (1) and (2), the State may transfer assets to the Agency in order to further the objective, powers and functions of the Agency. 10

(4) The Agency may sell fixed assets only with the approval of the Board in consultation with the Minister.

CHAPTER 6**SERVICE DELIVERY**

15

Business Agreement

20. (1) A business agreement to regulate the relationship between individual participating departments or organs of state and the Agency must be concluded.

(2) The business agreement must be supported by service level agreements negotiated between individual participating departments or organs of state and the Agency. 20

(3) Contracts, rights and obligations existing at the time of transfer of assets from participating departments or organs of state must be ceded to the Agency.

CHAPTER 7**GENERAL AND MISCELLANEOUS PROVISIONS****Intellectual property**

25

21. (1) Despite any provision in any other law, all intellectual property rights, in any product, service, item, method or any other thing of any nature vested in any participating department or organ of state relating to information technology or information systems will vest in the Agency.

(2) The Board of Directors is empowered to direct how such product, service, item, method or any other thing of any nature is to be utilised by the Agency in the achievement of its objective. 30

Dissolution of Agency

22. The Agency will be dissolved according to the terms and conditions determined by the Minister in consultation with the Cabinet. 35

Regulations

23. The Minister may make regulations regarding—

- (a) the functions to be performed by the Agency;
- (b) the appointment of Directors to the Board;
- (c) the security requirements of the different departments and organs of state;
- (d) the security clearance of staff;
- (e) transitional arrangements with regard to the formation of the Agency; and
- (f) any other matter which the Minister may consider necessary to prescribe in order to achieve the objects of this Act. 40

Accountability

45

24. (1) The Agency is accountable to the Minister.

Oordrag van bates

19. (1) Waar 'n werksaamheid van die Agentskap deur 'n deelnemende departement uitgevoer en 'n bate deur enige van die partye in artikel 3(4) bedoel, in verband met die uitvoering van daardie werksaamheid in besit of gebruik was, moet die betrokke departementshoof in oorleg met sy of haar Minister die bate na die Agentskap oordra.
- (2) Die oordrag van sodanige bates aan die Agentskap moet plaasvind deur onderlinge ooreenkoms tussen die deelnemende departement en die Agentskap in oorleg met die Minister van Finansies, en in die geval van 'n oordrag van die bates van Infoplan van Denel (Edms) Bpk, geld die bepalings van die Maatskappywet.
- 10 (3) Ondanks subartikels (1) en (2) kan die Staat bates aan die Agentskap oordra met die oogmerk om die doel, bevoegdhede en funksies van die Agentskap te bevorder.
- (4) Die Agentskap mag vaste bates slegs met die goedkeuring van die Raad in oorleg met die Minister verkoop.

HOOFSTUK 6

15

DIENSLEWERING

Besigheidsooreenkoms

20. (1) 'n Besigheidsooreenkoms moet aangegaan word om die verhouding tussen die individuele deelnemende departemente of organe van die Staat en die Agentskap te reël.
- 20 (2) Die besigheidsooreenkoms moet ondersteun word deur diensvlakoooreenkomste soos onderhandel tussen individuele deelnemende departemente of organe van die Staat en die Agentskap.
- (3) Kontrakte, regte en verpligtinge wat tydens die oordrag van bates vanaf deelnemende departemente of organe van die Staat bestaan, moet aan die Agentskap gesedeer word.
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HOOFSTUK 7

ALGEMENE EN DIVERSE BEPALINGS

Intellektuele goedere

21. (1) Ondanks 'n bepaling in enige ander Wet, word alle intellektuele goedereregte in enige produk, diens, item, metode of enigiets anders van enige aard, wat in enige deelnemende departement of orgaan van die Staat gevestig is en met inligtingstegnologie of inligtingstelsel verband hou, in die Agentskap gesetel.
- (2) Die Raad van Direkteure is gemagtig om te bepaal hoe sodanige produk, diens, item, metode of enigiets anders van enige aard deur die Agentskap aangewend moet word in die bereiking van sy doel.
- 30
- 35

Ontbinding van Agentskap

22. Die Agentskap word ontbind volgens die bedinge en voorwaardes soos deur die Minister in oorleg met die Kabinet bepaal.

Regulasies

- 40 23. Die Minister kan regulasies uitvaardig betreffende—
- (a) die funksies wat deur die Agentskap verrig moet word;
 - (b) die aanstelling van die Direkteure in die Raad;
 - (c) die sekuriteitsvereistes van die verskillende departemente en organe van die Staat;
 - 45 (d) sekerheidsklarings van personeel;
 - (e) oorgangsbepalings rakende die vorming van die Agentskap; en
 - (f) enige ander aangeleentheid wat die Minister nodig ag om voor te skryf ten einde die oogmerke van hierdie Wet te verwesenlik.

Rekenpligtigheid

- 50 24. (1) Die Agentskap is rekenpligtig teenoor die Minister.

Act No. 88, 1998 STATE INFORMATION TECHNOLOGY AGENCY ACT, 1998

(2) The Agency must compile an annual report and submit it to the Minister, who must table that report in Parliament.

(3) The Agency must comply with the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992), as applicable to listed entities.

State bound by this Act

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25. This Act binds the State.

Short title and commencement

26. (1) This Act is called the State Information Technology Agency Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed in respect of different provisions of this Act.

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(3) A reference in this Act to its commencement must be construed as a reference to the applicable dates so fixed.

(2) Die Agentskap moet 'n jaarverslag opstel en aan die Minister voorlê, wat dit in die Parlement ter tafel moet lê.

(3) Die Agentskap moet voldoen aan die Wet op Verslagdoening deur Openbare Entiteite, 1992 (Wet No. 93 van 1992), soos op gelyste entiteite van toepassing.

5 Staat gebind deur hierdie Wet

25. Hierdie Wet bind die Staat.

Kort titel en inwerkingtreding

26. (1) Hierdie Wet heet die Wet op die Staatsinligtingstegnologie-agentskap, 1998, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* 10 bepaal.

(2) Verskillende datums kan aldus bepaal word ten opsigte van verskillende bepalinge van hierdie Wet.

(3) 'n Verwysing in hierdie Wet na die inwerkingtreding daarvan word uitgelê as 'n verwysing na die toepaslike datum wat aldus bepaal is.

