



EthiXPERT

"Inspiring responsible and ethical research"



EthiXPERT

Memorandum of Incorporation

May 2020

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1. INTERPRETATION

In this document, capitalised words shall bear the same meanings as in the Companies Act and the following terms shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings:

- a) **“AGM”** means the Annual General Meeting, attended by all directors, to be initially held, no more than 24 months after The Company's date of incorporation, and thereafter once every calendar year within or not more than 6 months after the end of the financial year, but no more than 15 months after the date of the previous annual general meeting;
- b) **“Alternate Director”** An alternate director is an individual who is appointed to attend a board meeting on behalf of the director of a company where the principal director would be otherwise unable to attend.
- c) **“Board”** means the board of Directors of the Company;
- d) **“Business Day”** means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- e) **“CEO”** – means the Chief Executive Officer of The Company, appointed by the Board;
- f) **“Chairman”** means the Chairperson of the Board of the Company;
- g) **“Code of Practice”** means the Code of the Company approved by the Directors, from time to time;
- h) **“Commission”** means the Companies and Intellectual Property Commission (CIPC) established in terms of Section 185 of the Companies

Act;

- i) **“Competition Act”** means the Competition Act No. 89 of 1998;
- j) **“Director”** means a Director of the Company; and where the context so provides, an alternative director appointed in respect of such director;
- k) **“Effective Date”** means the date on which the Company’s Mol is filed with CIPC (11 May 2018);
- l) **“Ex officio director”** means a person who holds office as a director of a company, solely because of that person holding some other office, title, designation or similar status specified in this document;
- m) **“File”** when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;
- n) **“Income Tax Act”** means the Income Tax Act;
- o) **“Individual”** means a natural person;
- p) **“Mol”** means the Memorandum of Incorporation of the Company, which shall become binding on the Company with effect from the date upon which it is filed with CIPC;
- q) **“Republic”** means the Republic of South Africa;
- r) **“Rules”** means **“rules”** and **“rules of a company”** as defined in the Companies Act;
- s) **“SARS Commissioner”** means the Commissioner of the South African Revenue Services;
- t) **“the Act”** means the Companies Act;
- u) **“the Company”** – means EthiXPERT (NPC), a non-profit company incorporated and existing under the laws of the Republic; and
- v) **“the Office”** - means the registered office of the Company.

2. IN THIS DOCUMENT

- a) a reference to a **“Section”** by number refers to the corresponding Section of the Companies Act;
- b) a reference to a **“paragraph”** by number refers to the corresponding paragraph in this document;
- c) a reference to a **“Regulation”** by number refers to the corresponding

- regulation in the Companies Regulations;
- d) any reference to a “person” includes any natural, juristic or quasi-juristic person, including without limitation any sole proprietorship, firm, partnership, trust, close corporation, company, undertaking, joint venture, authority or other incorporated or unincorporated entity or association;
 - e) any reference to a “day” shall be to any calendar day. Where any number of days or Business Days are prescribed in this document, those days shall be reckoned exclusively of the first and inclusively of the last day or Business Day (as the case may be), unless (in the case of days) the last day falls on a day not being a Business Day, in which event the last day shall be the next succeeding Business Day;
 - f) words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include juristic persons, other corporate entities, unincorporated associations of persons and state entities, and vice versa;
 - g) any reference to an enactment includes any subordinate legislation made from time to time under that enactment, as may be amended from time to time;
 - h) words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the Companies Act shall when used in this document in a similar context bear the same meaning unless excluded by the subject or the context, or unless this document provides otherwise;
 - i) the provisions of this document shall be interpreted in the same way as the provisions of the Companies Act (which forms part of the MoI of the Company in terms of Section 19(1)(c)) are interpreted; and
 - j) each provision and each sentence and each part of a sentence in this document is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent or contravenes any provision of the Companies Act, or void, such may to that extent only be modified or severed from this document, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the Companies Act or is not void.
 - k) The long standard form of MoI for a Non-Profit Company contained in the regulations published in terms of the Companies Act, as amended from time to time, shall not apply to the Company.

3. NAME OF THE COMPANY

EthiXPERT has been registered as an independent company to carry on business as a not-for-profit international, non-governmental organisation, headquartered in South Africa with a mandate for operation in Africa and globally in May 2018.

4. BACKGROUND AND VISION OF EthiXPERT

- 4.1 The Company is incorporated to work towards the global objective that all the people of each country are able to achieve health and quality of life on the basis of equity and social justice, with a special focus on achieving this goal in Africa. The Company's specific focus and contribution will be to enhance responsible and ethical research capacity in and for Africa.
- 4.2 To fulfil its mandate the Company shall build sufficient organisational capacity to achieve its vision and mission in Africa and for Africa.
- 4.3 The Company acknowledges that Research Ethics is fundamental for health, quality of life and social development. To this end, the Company shall purpose to build capacity in responsible conduct of research by providing training and developing relevant tools to facilitate knowledge and skills development to health research stakeholders in Africa, including research institutions, institutions of higher learning, researchers, research integrity officers, research ethics committees and research administrators, among others.
- 4.4 The Company aims to partner with relevant role players including decision-makers, research institutions, implementing agencies and funding organisations to identify their research gaps and to identify, develop and deliver sustainable and cultural acceptable evidence-based solutions.

5. Vision: Inspiring responsible and ethical research capacity in and for Africa

6. MISSION

Build institutions in Africa's capabilities to deliver responsible and ethical research to address existing health and social challenges facing Africa.

7. VALUES

Botho (humanity, serving people)
Care
Collaboration
Fairness
Integrity

8. LEGAL STATUS

- 8.1. The Company is a juristic person incorporated under the Companies Act, 71 of 2008 of South Africa (the "Act") and is therefore a legal entity and shall continue to be a distinct and separate legal entity and body corporate with the power to acquire, hold and alienate property of every description whatsoever, and with the capacity to acquire rights and obligations. (Section 19(1)(a) of the Act)
- 8.2. All actions or suits, proceedings at law or any arbitration shall be brought by or against the Company in the name of the Company and the Board may authorize any person or persons to act on behalf of the Company and to sign all such documents and to take all such steps as may be necessary in connection with any such proceedings.
- 8.3. The Company will continue to exist regardless of any change in the composition of its board unless, and until the provisions of paragraph 17 hereof are invoked.

9. INCOME AND PROPERTY

- 9.1. The Company will keep a record of everything it owns. (Assets register)
- 9.2. Notwithstanding anything to the contrary herein contained:
 - a) The Company is not formed and does not exist for carrying on any business that has for its object the acquisition of gain by the Company.
 - b) Directors and office-bearers have no rights in the property or other assets of the Company solely by their being directors or office-bearers.
 - c) The income and property of the Company whenever and howsoever derived shall be applied towards the payment of expenses, the acquisition of property and the promotion of its objects and purposes as per Schedule 1(1)(2)(a) of the Act, and such other lawful purposes as may be decided upon by the Board, or if the latter so desires, by a general meeting for the attainment of the objects and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the directors of the Company or its controlling or controlled company or office-bearers provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any Prescribed Officer of the Company except as reasonable compensation for any services actually rendered to the Company.
 - d) The Company shall not be entitled to carry on any trading or other profit-making activities or participate in any business, profession or occupation carried on by any of its Directors or employees financial assistance or any premises or continuous services or facilities for the purpose of carrying on any business, profession or occupation, provided that the Company may

trade and engage in profit making activities solely for the purpose of and in pursuance of achieving its aims and objectives.

10. INCORPORATION AND NATURE OF THE COMPANY

- a) The Company is incorporated as a Non-Profit Company as defined in the Act.
- b) The Company is, in terms of Section 19(1)(c) read with Section 15(2) of the Act, incorporated in accordance with, and governed by:
 - the unalterable provisions of the Act, that are applicable to Non-Profit Companies;
 - the alterable provisions of the Act, that are applicable to Non-Profit Companies, subject to the limitations, extensions, variations or substitutions set out in the Company's Mol; and
 - the provisions of the Company's Mol.
- c) The Company's Mol and any rules of the Company in terms of Section 15(6) of the Act, are binding between:
 - the Company or any of its representatives and any party it may interact with
 - the Company and its Prescribed Officer or employees.
- d) All parties referred to in 10.c are required to familiarise themselves with the relevant provisions of the Act, including those contemplated by paragraph 10.b and the provisions of this Company's Mol.

11. COMPLIANCE WITH SECTION 30 OF THE INCOME TAX ACT AND COMPETITION ACT

- 11.1. The Company is cognisant of the advantage of competition to economies and endeavour not to act in a way that will lessen competition in any territory nor divide any markets nor act in any way that could result in any contravention of the Competition Act.
- 11.2. The Company shall have at least three Prescribe, who are not connected in relation to each other, to accept the fiduciary responsibility of the Company, and no single person shall directly or indirectly control the decision-making powers relating to the Company.
- 11.3. The Company is prohibited from distributing any of its funds to any person (otherwise than during undertaking its objects) and is required to utilize its funds solely for the objects for which it has been established.
- 11.4. The Company's activities shall be carried on in a non-profit manner.
- 11.5. The Company is prohibited from directly or indirectly distributing any surplus

funds to any person, other than in terms of paragraphs 14.16, 14.17 and 16.5.

- 11.6 The Company may not pay any remuneration to any person which is excessive having regard to what is generally considered reasonable in the sector and in relation to the service rendered, nor may any remuneration be determined as percentage of any amounts received or accrued to the Company.
- 11.7. The Company undertakes to submit to the Commission of the South African Revenue Service, when and if applicable, a copy of any amendment to the Company's MoI or other written instrument under which it is established.
- 11.8. The Company is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of Income Tax Act; provided that a donor (other than a donor which is an approved public benefit organization or an institution board or body which is exempt from tax in terms of Section 10 (1)(cA)(i) of the Income Tax Act, which has as its sole and principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

12. CONFLICTS WITH THE COMPANIES ACT

12.1. Notification of conflicts

Any person bound by the Company's MoI who has formed the view or forms the view or otherwise becomes aware that any provision of the Company's MoI or any agreement entered into by the Company contravenes or has become inconsistent with any provision of the Act (as it is amended from time to time), whether or not such provision is void or could be declared void by a court in terms of Section 218(1) of the Act or a person could incur personal liability in terms of Section 218(2) of the Act or otherwise, shall within 10 Business Days of forming that view or becoming aware of such contravention or inconsistency inform the Board in writing of the applicable contravention or inconsistency.

12.2. Board must address inconsistencies

If any provision of the Act is amended, or the Board is aware or informed of any inconsistency with or contravention of the Act in terms of paragraph 8.1 or otherwise, then in addition to and without limiting the rights or remedies of any other person in terms of the Company's MoI or otherwise, the Board shall expeditiously:

- a) assess that amendment to the Act and/or that inconsistency or contravention; and
- b) obtain reasoned written external legal opinion if the Board deems it necessary with respect to any such alleged inconsistency or contravention; and
- c) propose amendments to the agreement in question or propose the Special Resolutions required to appropriately amend the Company's MoI, as the case may be, as is necessary so as to remove or eliminate or address any applicable contraventions or inconsistencies.

13. MAIN BUSINESS, SCOPE OF OPERATIONS AND OBJECTIVES OF THE COMPANY

13.1 Main business

- a) Build responsible and ethical research capacity in and for Africa

13.2 Scope of operations

- a) The Company will work with similar companies and organisations in the rest of Africa or globally to further the interests of its stakeholders and/or clients by assisting relevant institutions to develop and build capacity for responsible and ethical research wherever required
- b) The Company shall have the capacity to pursue and achieve unlimited objects insofar as they are ancillary to the achievement of the purpose and business of the Company.

13.3 Specific objectives

- a) Promote and support the ethical context of research and innovation systems and capacity as a comprehensive strategy for countries in Africa to achieve health, equity and social development;
- b) Consider the creation and management of a funding mechanism to intensify the implementation of the Company's core objectives in Africa;
- c) Take all the actions that are relevant and necessary in the pursuit of the core objectives of the Company;
- d) Carry on any other activity, trade or business whatsoever which can, in the opinion of the Board, be advantageously carried on by the Company in connection with or as ancillary to any of the above objectives or the general business of the Company.
- e) To develop national and institutional capacities in research and ethics:
 - to market and sell the online REC administration system (RHInnO Ethics) that COHRED developed and which is currently being maintained by an IT partner in South Africa.
 - Provide training to research ethics committees in best practice in ethics review and protection of research participants

- Working in partnership with stakeholders where appropriate, to promote sound ethical standards for research
- Providing capacity development courses and other interventions to build the capacity of researchers in Africa

14. DIRECTORS

14.1 Powers of Directors (Section 66(1) of the Act)

- a) The business of the Company shall be managed and supervised by the Board in accordance with the stated objects of the Company and as envisioned in terms of Section 66(1) of the Act. The Board may exercise all powers of the Company which are not excluded by a statute of this document.
- b) The Board will be the official spokesperson for the Company and no statements in respect of the Company may be made without the prior permission of the Board. The Board may delegate its rights and duties in this respect to a sub-committee.
- c) The Board shall have, both within and outside South Africa full capacity to carry on or undertake any business or activity, do any act which it may by law do, or enter into any transaction, and for these purposes it shall have full rights, powers, and privileges to the extent that the business, undertaking, property or acts proposed to be transacted, acquired, dealt with or performed fall within the scope of its objects.

14.2. Appointment

- a) Subject to paragraph 14.2.h. and as per Section 66.2 of the Act, the Company shall have a minimum of 3 (three) Directors and a maximum of 9 (nine) Directors. No Director may be a 'connected person' (as defined in the Income Tax Act) in relation to any other Director. No single Director shall directly or indirectly control the decision-making powers relating to the Company.
- b) Subject to the proportions in paragraph 14.2.a, vacancies occurring on the Board shall be filled at the first ensuing General Meeting. Each Director of the Company shall be entitled but not obliged to nominate one Director to fill such vacancy.
- c) Every Director must satisfy the qualification and eligibility requirements set out in Section 69 of the Act to become or remain a Director.
- d) The election or appointment of a Director is a nullity if, at the time of the election or appointment, that person is ineligible or disqualified in terms of Section 69 of the Act.
- e) On appointment a director has to deliver to the company a written consent to act as director.
- f) The Chair and Vice Chair shall be elected by the Board, from the

representatives elected to the Board in terms of the process outlined above, on nomination by a Board Member.

- g) The Chair and Vice Chair of the Board shall *ipso facto* be Chair and Vice Chair of the Company. The remaining members of the Board shall be the CEO and directors and shall be appointed as follows:
- Independent Chair elected by the Board
 - CEO appointed by the Board
- h) Board Members will be nominated and elected by fellow board members and not to exceed 9 (nine), as follows:
- The Board shall have the power from time to time to appoint any other person as a Director (in addition to the Directors appointment in terms of paragraph 14.2.a) as an addition to the Board, provided that no more than three Directors so appointed shall be members of the Board at any one time. Any Director so appointed shall have voting power at meetings of the Board and be taken into consideration for constituting a quorum at meetings of the Board, provided further that such persons shall only serve on the Board for as long as determined by the Board or a General Meeting.
 - It shall not be necessary for the Directors of the Company to retire by rotation in any year, and a Director once appointed shall remain in office until he either resigns, is disqualified or is removed in terms of paragraph 14.5.
 - i) If any Director is not entitled to attend or vote at any meeting of the Board then his alternate shall likewise not be entitled to attend or vote thereat.
 - j) The Board may, appoint a Treasurer/Financial officer/Accountant who shall be responsible for managing the funds of the Company, to the extent consented to by the Board of the Company.

14.3. Vacation of office (Sections 70(1)(a) &70(1)(b) of the Act)

- a) The office of the Director shall *ipso facto* be vacated if such Director:
- dies;
 - resigns, by giving 1 (one) calendar months' notice to the Company;
 - becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time;
 - is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company;
 - is absent from board meetings for more than 3 (three) consecutive meetings without permission of the Board; and is not represented at any such meeting by an alternate Director or proxy, and the Board resolves that his office be vacated;
 - is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof;

- becomes ineligible or disqualified in terms of Section 69 of the Act; or is removed.

14.4. Removal from office

- a) The Company may in accordance with Section 71 of the Act remove any Director and may by Resolution appoint another Director in his stead.
- b) A Director may further be removed from office by order of the court as contemplated in Section 71(5) or (6) of the Act.

14.5. Vacancies

The Directors may act notwithstanding any vacancy on the Board, provided that for so long as their number is reduced below the number fixed in paragraph 14.2.a as the minimum number of Directors, then the remaining Directors may act for the purpose of increasing the number of Directors to that number, but for no other purpose.

14.6 Conduct of Directors

- a) The conduct of Directors will be as prescribed by Section 76 of the Act.

14.7 Meetings

- a) Meetings will be conducted as ruled by Section 73 of the Act
- b) The Directors will endeavour to meet monthly for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit.
- c) Special meetings of the Board shall be called by the Chair whenever he deems it advisable or upon the request of two (2) Board members, in which event the meeting shall be called within 21 (twenty-one) days of receipt of the requisition by the Chair, and 30 (thirty) days if one of the matters to be discussed is to appoint a new Board member. A notice of such special meeting must include the matters to be discussed at the Board meeting.
- d) A quorum at Board Meetings will consist of more than 50% (fifty percent) of the directors, provided that there will be no quorum unless at least (three) Directors (or their duly appointed alternates) are present in person.
- e) If within 15 (fifteen) minutes after the appointed time for a meeting to begin, a quorum has not been reached, the Board meeting shall stand adjourned to a day not less than 7 (seven) days and not more than 14 (fourteen) days from the date of the meeting at a time and place determined by the Chair. At such an adjourned meeting of which written notice shall be given, the members present shall form a quorum.
- f) The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) of the Act is not limited or restricted by this document.
- g) Due and proper notice of a Board Meeting as per section 73 (4)(b) of the Act shall be given to all the Directors and such notice shall be given seven

- (7) Business days before the meeting and include the agenda and, if possible, any resolution to be proposed at the meeting.
- h) Notices may be sent in electronic format and for purposes of this document a notice sent in electronic format will be deemed to be delivered to the Director if it is sent to the address supplied by the member in writing or electronically and is not returned as undelivered within 24 (twenty-four) hours from the time that it is sent. All Directors present in person at any meeting shall be deemed to have received notice of such meeting.
 - i) The conduct of meetings shall generally be governed in terms of Section 73 of the Act. Notwithstanding the aforementioned, the Board may regulate their meeting as they think fit.
 - j) Where the Chair has failed to give the required notice of the Board meeting, or there was a defect in the giving of the notice, such meeting may proceed, provided that all of the Directors acknowledge actual receipt of the notice or are present at the meeting or waive notice of the meeting. (Section 73(5)(a) of the Act)
 - k) A Board meeting may be conducted by electronic communication, or one or more Directors may participate in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting. (Section 73(3) of the Act)
 - l) Board meetings may be conducted face-to-face or electronically, which would allow members to be present and participate through electronic means.
 - m) The Chair and in his absence the Vice Chair shall chair all meetings.
 - n) If the Chair or Vice Chair is not present within (ten) minutes after the time appointed for holding the meeting, or is unwilling to act, the Directors may choose another Board Member to serve as Chair.
 - o) At every Board Meeting the Minutes of the last preceding Board Meeting shall be read and signed by the presiding officer after confirmation.
 - p) It shall be competent for a meeting to authorise the presiding officer to sign and confirm Minutes as correct if after perusal thereof s/he is of the opinion that the Minutes reflect a true record of the proceedings.
 - q) The proceedings of any meeting shall not be invalidated by reason of the nonreceipt by any member of the notice of the meeting.
 - r) The CEO of the Company shall attend all Board Meetings and shall not in his capacity as CEO have a casting vote in addition to any vote, he may have by virtue of being a Director of the Company.
 - s) A decision that could be voted on at a Board meeting may instead be adopted by written consent of the required number of Directors, given in person, or by electronic communication, provided that each Director has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting. (Section 74 of the Act)
 - t) All matters for consideration by the Board shall be decided on motion duly seconded and voted upon by show of hands, by ballot or by verbal

indication in the event of a virtual meeting, and shall unless otherwise provided herein, be decided by the votes of a majority of the members of the Board present in person or represented by proxy.

- u) Each Director shall be entitled to one vote regarding all business brought before the Board. (Section 73(5)(c) of the Act)
- v) The Chair of the Board meeting shall have a casting vote in the event of a tie. (Section 73(5)(e) of the Act)
- w) All Board Members must abide by the majority decision.
- x) For a special resolution to be adopted at a Board Meeting, it must be supported by at least 75% (seventy five percent) of all the Directors.
- y) For an ordinary resolution to be adopted at a Board meeting, it must be supported by more than 50% (fifty percent) of the Directors who voted on the resolution and in the case of a tied vote, the Chair may cast a deciding vote.
- z) Resolutions adopted by the Board must be dated and sequentially numbered; and are effective as of the date of the resolution, unless the resolution states otherwise. (Section 73(7) of the Act).

14.8 Minutes

- a) Proper minutes and attendance records must be kept for all Board Meetings and any of its committees, of the Company, and include in the minutes any declaration of personal financial interest given by notice or made by a Director as required by Section 75; and every resolution adopted by the Board. (Section 73(6) of the Act) The minutes shall be confirmed as a true record of proceedings by the next Meeting of the Board and shall thereafter be signed by the Chair.
- b) Minutes shall be kept in a register and filed with the attendance registers.
- c) Any minutes of a Board Meeting, or a resolution, signed by the Chair of the meeting, or by the Chair of the next Board Meeting, is evidence of the proceedings of that meeting, or adoption of that resolution. (Section 73(8) of the Act)
- d) The Directors may delegate any of their powers to committees, sub-committees, divisions or working groups consisting of Board Member or their representatives. (Section 72 of the Act)
- e) Any committee so formed shall, in the exercise of the powers so delegated, conform to any conditions that may from time to time be imposed upon it by the Directors.
- f) All acts done at any meeting of the Board or of a committee, sub-committee, task team, division or working group of Directors, or by any person acting as a Director and/or nominated representative shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Directors or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

14.9. Directors acting other than at meeting

The Board may pass resolutions in writing or by any electronic communication without there being a meeting, provided that each Director receives a notice of the matter to be decided on. A decision made in the manner contemplated in this paragraph is of the same effect as if it had been approved by voting at a meeting. (Sections 73(1) & 73(2) of the Act)

14.10. Personal Financial Interests

If a Director has a personal financial interest, (or knows that a related person has such an interest) he must disclose in advance, in writing, to the Board the nature and extent of that interest. This disclosure must comply with the requirements of the Act. If the personal financial interest (including that of a related person), arises after the matter has been approved by the Board then the Director or prescribed officer concerned must promptly, after the interest arises, disclose the same to the Board in accordance with Section 75 of the Act. 40 33.12.

14.15 Powers of the Board of Directors

- a) The Board of Directors may take on the power and authority that it believes it needs to be able to achieve the objectives that are stated in this MoI. Its activities must abide by the law.
- b) The Board of Directors has the power and authority to raise funds, make donations except to Directors, or to invite and receive contributions.
- c) The Board of Directors have the power to buy, hire or exchange for any property that it needs to achieve its objectives.
- d) The Board of Directors has the right to impose alternative rules for proper management, including procedure for application, approval and termination of service.
- e) to Schedule 1(1)(1)(2) of the Act, the Company may acquire and hold securities issued by a for-profit company or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its objects.
- f) In addition to observing the limitations set out in Schedule 1(1)(3) of the Act, the Company:
 - must carry out its activities in a non-profit manner and with an altruistic or philanthropic intent;
 - must refrain from carrying on any activity which is intended to directly or indirectly promote the economic self-interest of any director or employee other than by way of reasonable remuneration;
 - must utilise its funds solely for the object for which it has been established;
 - is prohibited from directly or indirectly distributing any of its funds to any person otherwise than during undertaking any activity in furtherance of its object;
 - is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to

conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility of the donation in terms of Section 18A of the Income Tax Act 58 of 1962 ("Income Tax Act"); provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of Section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

- g) The Company is empowered to provide legal assistance to Directors or any person in the service of the Company where deemed necessary and to institute, conduct, defend, compound or abandon any legal proceedings by, against or on behalf of the Company, or otherwise concerning the affairs of the Company; provided that if the legality of laws, regulations or other statutory instruments, by any national, provincial or local authority is to be challenged in court, the Company may, if authorised by majority vote at a General Meeting or special Meeting, institute action for and on behalf of the Company.
- h) The Company is authorised to open bank accounts in the name of the Company and to draw, accept, endorse, make and execute bills of exchange, promissory notes, cheques and other negotiable instruments connected with the business and affairs of the Company;

14.16 Remuneration

- a) The Directors of the Company shall not be entitled to any remuneration or reimbursement of expenses in consideration for or respect of their services as directors, except as contemplated in this document.
- b) Where a Director renders additional services to the Company, other than his services as a Director, such Director may be remunerated by the Company for such services, provided that such remuneration is fair and reasonable, and has been approved by means of a Board Resolution following the procedure set out in Section 75(5) and Section 1(1)(5)(4)(a) of the Act and supported by no less than 75% of the disinterested Directors of the Company.
- c) The Company is authorised to remunerate any person or persons in cash for services rendered in the execution or development of its business.

14.17. Reimbursements

A Director of the Company may be reimbursed by the Company for reasonable and necessary expenses incurred in the *bona fide* performance of his duties to the Company, provided that any reimbursement of any expense not of a category of expenses expressly budgeted for in the annual budget of the Company approved by the Board, or of an amount exceeding any limit with

respect to any category of expenses specified in the annual budget of the Company approved by the Board, shall be subject to the prior approval of a disinterested majority of the Directors of the Company by resolution.

14.18. Loans

As per Section 1(5)(3) of the Act, the Company may not provide any loan to secure any debt or obligation of any nature whatsoever; or otherwise provide any direct or indirect financial assistance to a Director of the Company or of a related or inter-related company or to a person related to any such Director.

14.19 Provisions of Chapter 3 of the Companies Act

- a) The Company is obliged to appoint an auditor and have their financials audited, even in the event of their Public Interest Score (PIS) being below the required number. See paragraph 39 for the requirements for appointment of auditor. (Chapter 3, part a – Section 84(1)(c) of the Act)
- b) The Company does not elect, in terms of Section 34(2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act.
- c) The Board of the Company has the discretion to appoint a Finance and Audit Committee and a Remuneration Committee.

15. INDEMNIFICATION AND DIRECTORS INSURANCE (Section 78 of the Act)

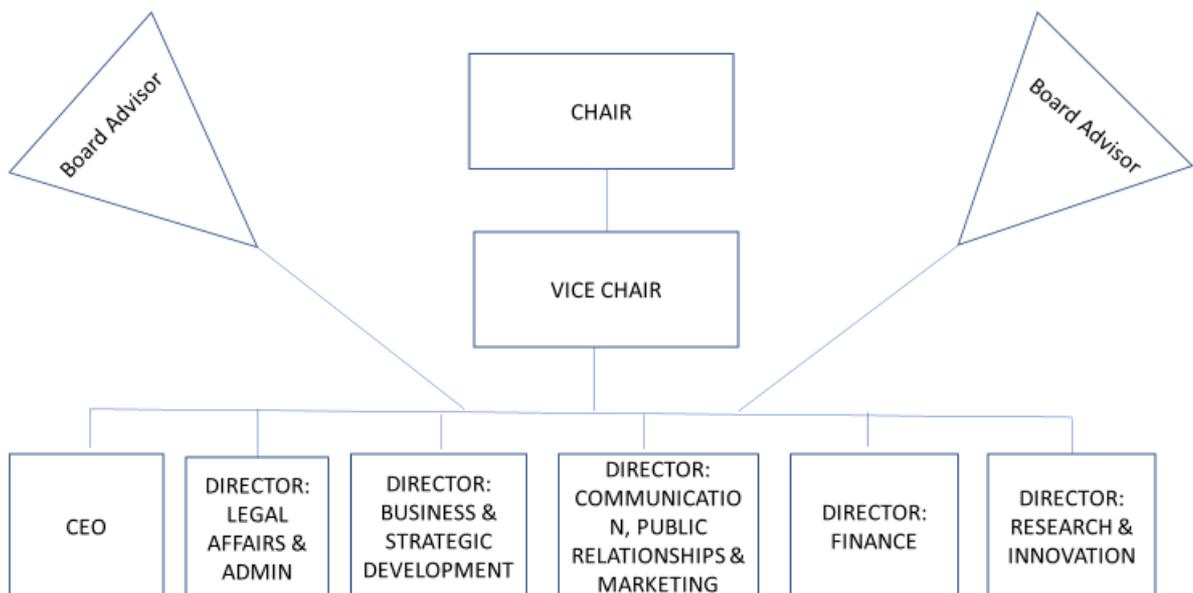
- a) In this section, director includes a former director, an alternate director, prescribed officer and a committee member, irrespective of whether the person is also a member of the company's board.
- b) The Company may not directly or indirectly pay any fines or penalties that may be imposed on a Director who has been convicted of an offence in terms of any national legislation.
- c) Subject to a resolution of the Directors, the Board may:
 - advance expenses to a Director to defend litigation in any proceedings arising out of that Director's service to the Company; and (Section 78(4)(a) of the Act)
 - directly or indirectly indemnify a Director for expenses contemplated in paragraph 15.3, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or exculpate the Director, or arise in respect of any liability for which the Company may indemnify the Director as provided in terms of Sections 78(5) and (6) of the Act. (Section 78(4)(b) of the Act)
- d) Subject to the limitations imposed by Section 78(6) of the Act, the Company may indemnify a Director, committee member or officer of the Company and every person (whether an officer 41 of the Company or not) employed by the Company out of the funds of the Company against all liability incurred by him as such Board member, manager, or officer when acting as a result of, or implementing a decision taken by the Board, or a general meeting of the Company provided that such actions are not illegal

nor in contravention of the King IV guidelines on corporate governance.

- e) The Company may purchase insurance to protect: (Section 78(7) of the Act)
 - a Director against any liability or expenses for which the Company is permitted to indemnify a Director; or
 - The Company against any contingency including, but not limited to:
 - any expenses that the Company is permitted to advance in accordance with paragraph 34.3; or
 - any liability for which the Company is permitted to indemnify a Director in accordance with paragraph 34.3.2.
- f) 15.6. The Company is entitled to claim restitution from a director of the Company for any money paid directly or indirectly by the Company to or on behalf of that director in any manner inconsistent with this section. (Section 78(8) of the Act)

16. PRESCRIBED OFFICERS AND OFFICIALS

16.1 Organogram



16.2. The Chair and Vice Chair

- a) The Board shall appoint a Chair. Such appointment of the Chair shall be upon such terms and conditions and for such periods as the Board may decide. The Board may elect a Vice Chair from any of its nominated Board Members upon such terms and conditions and for such period as the Board may decide.

- b) Subject to the provisions of any contract between himself and the Company, a Chair shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- c) The position of Chair of the Company is a non-remunerated position.
- d) The Chair shall be elected by the Board and can either be a Board member or an independent third party, provided that such a person must in the opinion of the Board:
 - be available for meetings of the Company;
 - have extensive experience and knowledge of issues pertaining to research capacity development;
 - have knowledge and experience of applying the principles of good governance according to the King IV Report.
- e) The Chair of the Board shall *de facto* be the Chair of the Company and is independent and as such will not be entitled to represent his company/institution, where he is full-time employed, on the Board.
- f) The Directors may from time to time entrust to and confer upon a Chair for the time being such of the powers exercisable hereunder by the directors as they may think fit and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient. They may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that regard, and may from time to time revoke, withdraw, alter or vary all or any of such powers.
- g) The Chairman or a Vice Chairman may be suspended or removed by a majority vote of not less than 75% (seventy five percent) of the number of votes of the members of the Board. Notwithstanding the foregoing, the Chair or a Vice Chair may be suspended or removed by a resolution of the simple majority of the Board if such person, in the opinion of the Board, has:
 - infringed or threatened to infringe any term of this document; or
 - acted or threatened to act in a manner detrimental to the interests of the Company; or
 - been guilty of conduct, which, in the discretion of the Board, has brought the Company into disrepute.

16.3. Acting Chair

In the event of both the Chair and the Vice Chair being temporarily unable to perform their duties, the Board shall appoint a Director to act as Chair until the Chair or Vice Chair is able to resume his duties, or, in the event of the Chair and Vice Chair being permanently unable to perform their duties, until the next ensuing meeting when a new Chair and Vice Chair shall be elected in accordance with the provisions of paragraph 16.2.

16.4. Responsibilities of the Chair and Vice Chair:

- a) The Chair and the Vice Chair shall exercise the powers and perform the duties as set out in this document.
- b) The Chair shall preside at all meetings of the Board and at all General Meetings of the Company in his capacity as Chair of the Company. The Chair shall perform such duties as by usage and custom pertain to this office.
- c) The Chair shall preside at all meetings at which he is present to enforce observance of this document, sign Minutes of meetings after confirmation, acts a mandatory signatory for all financial transactions of the Company, generally exercise supervision over the affairs of the Company and perform such other duties as by usage and custom pertain to the office. He or she shall have a deliberative vote and in the event of equality of voting, a casting vote.
- d) The Vice Chair shall exercise the powers and perform the duties of the Chair in the absence of the Chair for whatsoever reason or when called upon to do so by the Chair. The provisions of this document, in so far as they apply to the Chair, shall apply to the Vice Chair.
- e) Notwithstanding anything elsewhere provided in this document, the Chair and Vice Chair shall be entitled to attend and speak at all Board Meetings and shall be entitled to a vote as a Director or to form part of the quorum of Directors at Board meetings.
- f) The Chair shall have a second vote or a casting vote at meetings of the Board. The Vice Chair and any other Director who acts as Chair shall only have a deliberative vote in their capacity as Director.

16.5. Chief Executive Officer (CEO)

- a) The Board shall appoint a CEO. Such appointment of the CEO shall be upon such terms and conditions and for such periods as the Board may decide.
- b) Notwithstanding anything elsewhere provided in this document, the CEO shall be required to present at least a quarterly report on activities performed at all Board Meetings and shall be entitled to a vote as a Director or to form part of the quorum of Directors at Board meetings.
- c) Subject to the direction of the Board, the CEO shall be vested with all the powers and authorities expressly conferred by the Board on him and may exercise all such powers and do all such acts and things as may be exercised or done by the Board and are not hereby directed or required to be exercised or done by the Company in General Meetings. The CEO shall report directly to the Chair.
- d) The Directors may from time to time entrust to and confer upon the CEO for the time being such of the powers exercisable hereunder by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and condition, and with such restrictions, as they think expedient. They may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that regard, and may from time to time revoke, withdraw, alter or vary all or any of

such powers.

- e) Without limiting the generality of the foregoing, the CEO shall, in particular:
- be responsible for the budgeting and administering of the Company's affairs, with the aim of achieving the Company's annually approved objectives and budgets;
 - use such personnel, councils, committees, task teams and/or external contractors, within an approved budget, as he deems necessary to achieve the main object and objectives of the Company and the Board.
 - Subject to the provisions of any contract between himself and the Company, the CEO be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- f) The CEO may resign by giving 2 (two) months' notice to the Board.

16.6 Roles and Responsibilities of the other directors

- a) Director: Business and Strategic Development. This director will address the vision and mission of the company in drafting strategic plans. Short term and long-term plans (five years, and ten years) must be developed and followed by the Board to reach goals and target within specific timeframes.
- b) Director: Communications, Public Relations and Marketing. This director is responsible for drafting and providing leadership in the implementation of marketing and communication plans. Regular e-newsletters, the development of a website, announcements on social media and database administration will form part of this director's responsibilities.
- c) Director: Finance. This director will ensure that all financial requirements are met, i.e. adherence to SARS, that an accountant or bookkeeper get to know the company's business, that a registered auditor is appointed, that money is invested well and that a sound bookkeeping system is in place. Budgets and forecasts must also be drawn up in conjunction with the Director for Business and Strategic Development to have activities aligned with the budget. This director will ensure that the requirements stipulated in the Companies Act 71 of 2008 are adhered to and duly incorporated in conjunction with the Director for Legal Advice and Administration.
- d) Director: Legal Affairs and Administration. This director will deal with all legal aspects of the company to ensure legislation is adhered to. Contracts, governance and all other legal matters that may arise from time to time will be overseen by this person. Furthermore, this director will take care of all the administrative matters of the company to ensure proper functioning of all operational matters.
- e) Director: Research and Innovation: This director is responsible for leading the development of research capacity development programmes and initiatives.
- f) Advisors to the Board. Independent people and/or ex officio will be appointed from time to time to steer and assist the Board with direction. Advisors are well experienced people who have served for more than ten

years on Company Boards.

17. FINANCES

- a) The Directors shall cause true accounts as required by the Act to be kept of the sums of money received and expended by the Company, and the matters in respect of which such receipts and expenditure take place, and of the assets, credits and liabilities of the Company. The accounting records of the Company shall be kept at the Office of the Company, or at such place or places as the Directors think fit.
- b) As per this document, the Company must apply all of its assets and income, however derived, to advance the objects of the Company.
- c) The Funds of the Company shall be applied to the payment of expenses, the objects of the Company and such other lawful purposes as may be decided upon by the Board, or if the latter so desires, by a meeting for the attainment of the objects specified in paragraph 4 of this document but shall not be distributed to office bearers and / or employees except as reasonable compensation for services rendered.
- d) All amounts due or collected on behalf of the Company, where not paid by electronic funds transfer shall be paid to the Company's bank account; provided that any surplus funds not for the time being required for the purposes specified in paragraph 13.3 may be invested upon such security and on such terms and conditions as the Board may approve.
- e) The Chair of the Board is a mandatory signatory. All cheques and formal documents shall be signed by no less than two of the three signatories as appointed by the Board for the purpose.
- f) Payments made by the Company for a transaction of up to R5000 (South African Rand) shall require the approval of the CEO. All payments will require the signatures of two people: The signature of the Chair is mandatory. A secondary signatory could be the Director Legal Affairs and Administration or the Director Finances.
- g) Payments made by the Company for transactions of more than R5000 shall be approved by the CEO, with the support of the Board Members.
- h) The Company may make payments contemplated in paragraphs 10.10 and 10.11 if such payment:
(Schedule 1(5)(4) of the Act)
 - is in the ordinary course of the Company's business and for fair value;

or

- constitutes an accountable advance to meet:
 - legal expenses in relation to a matter concerning the Company; or
 - anticipated expenses to be incurred by the Director/CEO on behalf of the Company.
- i) The Board may from time to time and in such manner and on such terms as they deem fit, exercise all the power of the Company to borrow, raise or secure the payment of money, either with or without any specific security on the undertaking or property of the Company.
- j) The Company's financial year end shall be the last day of February.

18. AUDITORS (Section 90 of the Act)

- a) Each year at the first Board Meeting, the Directors shall appoint or extend the appointment of an auditor.
- b) A person or company must be a registered auditor.
- c) In addition to the prohibition contemplated in section 84.5, no person shall be qualified for appointment of auditor of the Company if in terms of Section 90(b) of the Act if he is:
- a director or prescribed officer of the Company;
 - an employee or consultant of the Company who was or has been engaged for more than one year in the maintenance of any of the Company's financial records or the preparation of any of its financial statements;
 - a Director, officer or employee of a person appointed as company secretary in terms of Part B of Section 3 of the Act;
 - a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs secretarial work for the Company;
 - a person who, at any time during the five financial years immediately preceding the date of appointment, was a person contemplated in any of sub-paragraphs 14.3.1 to 14.3.4; or
 - a person related to a person contemplated in sub-paragraph 18.c
- d) The appointment, powers, rights, remuneration and duties of the auditors shall be regulated by the provisions of the Act.
- e) The resignation of an auditor is effective in terms of Section 91(1) to (5) of the Act when the notice is filed. (Section 91 of the Act).

19. COMPANY RECORDS AND ACCOUNTING RECORDS

All company records contemplated by Section 24 of the Act, and all accounting records contemplated by Section 28 and Section 25 of the Act, shall be kept and maintained at, and shall be accessible at or from, the registered office of the Company, or in the case of all or any of the Company records at or from such other location or locations within the Republic of South Africa as the Board may from time to time determine.

20. ANNUAL FINANCIAL STATEMENTS

- a) Each year, the Company must prepare annual financial statements, as contemplated in Section 30 of the Act, within six months after the end of its financial year.
- b) The Company elects, in terms of Section 30(2)(b)(ii)(aa) of the Act, that the annual financial statements of the Company be audited voluntarily.
- c) The annual financial statements must:
 - include an auditor's report;
 - include a report by the Directors with respect to the state of affairs, the business and surplus or shortfall of the Company, including:
 - any material matter relating to the Company's state of affairs; and
 - any prescribed information;
 - be approved by the Board and signed by the authorised Directors

21. ANNUAL RETURNS (Section 33 of the Act)

Each year, the Company must file an annual return in the prescribed form with the prescribed fee, and within the prescribed period (currently being 30 days) after the end of the anniversary of the date of its incorporation, which return must:

- a) include a copy of the Company's annual financial statements;
- b) designate a Director, employee or other person who is responsible for the Company's compliance with the transparency, accountability and integrity requirements in terms of Part C of Chapter 2 of the Act, and the requirements of Chapter 3 of the Act, if these requirements apply to the Company; and
- c) any other prescribed information.

22. ENHANCED ACCOUNTABILITY AND TRANSPARENCY

- a) The Company does not elect, in terms of Section 34(2) of the Act to comply voluntarily with the provisions of Chapter 3 of the Act.
- b) The Company may, but is not obliged to, appoint a person to serve as company secretary and/or appoint a person to serve as an auditor, and/or

establish an audit committee, on such terms and subject to such conditions as the Board in its discretion may from time to time determine.

23. COMPETING AND CONFLICTING INTERESTS

When conflicts of interests arise, it is required for the Board to immediately be made aware of these possible conflicts to ensure effective management. This can be done either via an emergency meeting or at the next business meeting.

24. CHANGES TO THE MoI

- a) The MoI may be altered as indicated below:
 - in any manner necessary to correct an error in spelling, punctuation, reference, grammar or similar defect on the face of the document by publishing a notice of the alteration in any manner required or permitted by this MoI, or
 - the MoI can be changed at any time if a Special Resolution for amendment is proposed. The resolution must be agreed upon and passed by not less than two thirds of the Board of Directors at a regular or special meeting.
- b) A written notice must go out not less than fourteen (14) days before the meeting at which the changes to the MoI are going to be proposed. The notice must indicate the proposed changes to the MoI that will be discussed at the meeting
- c) No amendments may be made which would have the effect of making the organisation cease to exist.

25. DISPUTE RESOLUTION

- a) Any disputes arising from the MoI that are not resolved internally, shall be referred for arbitration.
- b) If the dispute is primarily of a financial nature, a practising chartered accountant agreed upon by the parties, or, failing such agreement, appointed by the Secretary of the South African Institute for Chartered Accountants; and if the dispute is of any other nature, to a practising attorney or advocate agreed upon by the PARTIES or, failing such agreement, appointed by the Secretary of the Legal Practitioners Council of South Africa.
- c) Arbitration procedures shall be instituted in Pretoria, South Africa.

26. JURISDICTION & CHOICE OF LAW

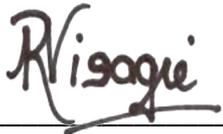
- a) South African Courts shall have jurisdiction and specifically those of Northern Gauteng.
- b) Regardless of the place of execution, performance or *domicile* of the board member or stakeholder, all matters
- c) shall be governed by and construed under and in accordance with the Laws of the Republic of South Africa

27. DISSOLUTION / WINDING-UP

- a) The Company may be wound up voluntarily by the Board by virtue of the general meeting, passing a resolution supported by at least 75% of the Board members present in person or by proxy and entitled to vote. Not less than 21 (twenty-one) days' notice shall be given of such meeting and the notice convening the meeting shall clearly state the question of dissolution of the organisation and disposal of its assets will be considered. Any such voluntary winding up affected in accordance with Section 80 of the Act.
- b) Upon the dissolution of the Company, after all debts and commitments have been paid, and in the manner determines in accordance with Schedule 1(1)(4)(b) of the Act and Section 30B(8) of the Income Tax Act, its net assets must be distributed to another non-profit organisation that has similar objectives. This may be determined by the Board members of the Company at or before the time of its dissolution, or failing such determination, by the court.
- c) For avoidance of doubt, in accordance with Schedule 1(1)(4)(a) of the Act no past or present Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied.

28. APPROVAL OF THE Mol

This Mol was approved and accepted by the Board of Directors of EthiXPERT at a Directors Meeting, virtually held on 31 March 2020.



Chairperson Dr RG Visagie



CEO Mr Francis Kombe

Acknowledgement:

This document is based on the 'Out of Home Media South Africa (NPC)' constitution that is available on the internet free of charge