



**THE FOUNDING CONSTITUTION FOR AFRICAN
MEN CARE A NON-PROFIT COMPANY**

(AUGUST 2015)

INTRODUCTION

- A. The Non-Profit Company known as **AFRICAN MEN CARE ('AMC')** is established in terms of a founding Constitution (the "**Founding Constitution**") executed in Johannesburg on various dates from the 1st to the 31st August 2015; which **Founding Constitution** is adopted by AMC. Attached to the constitution is Appendix A which explains what AMC is.
- B. The **Founders** are the directors as detailed in paragraph C below.
- C. **Directors** are as follows:

No	Name	Surname	ID Number
1	Mzamo David	Masito	7402045508083
2	Phumla Portia	Hude	7303080618086
3	Ndileka Ivy	Hude	5412180818082

- D. **Beneficiaries** - under privileged scholars in need of financial assistance to facilitate their schooling. AMC funds learners in the Republic of South Africa.

CONTITUANCE OF THE NON-PROFIT COMPANY

The Non-Profit Company established under the name of '**African Men Care**' as aforesaid, in terms of the Founding Constitution, shall continue to exist.

DEFINITIONS AND INTERPRETATION

- 2.1 In this Founding Constitution, unless the context clearly otherwise indicates, the following terms shall have the meanings assigned to them respectively hereunder, viz:

2.1.1 "Founding Constitution": The Constitution executed in Johannesburg, on various dates from the 1st and 31st August 2015'

2.1.2 “The Board”: The Board of Directors as nominated from time to time, and dully appointed as required by the law in accordance with the Companies Act 71 of 2008.

2.1.3 “Public benefit Activities”: Those activities of the NPC designed as such by the Minister of Finance; in terms of section 30(1) of the Income Tax act No. 58 of 1962, as amended.

2.1.4 “The Public”: The Republic of South Africa.

2.1.5 “Special Appointment/s”: Any professional or other contractual assignments by the NPC, as contemplated by clause 9, involving a person serving as one of its Directors, or involving a company, partnership, or firm in which such Director holds office, or has a personal financial interest.

2.1.6 “The Directors”: The persons nominated to such office from time to time and dully appointed by the Board as in accordance with the Companies Act 71 of 2008.

2.2 Unless the context clearly otherwise indicates, the masculine includes the feminine; the singular includes the plural; and terms referring to persons includes juristic persons; and *vice versa*, in each instance.

2.3 Any reference to the Income Tax No.58 of 1962, as amended; or the Non-Profit Organisation Act No. 71 of 1997; or any other Statute mentioned hereunder, shall be deemed to denote such Statute as it may be amended from time to time, including any enactment which may hereafter be substituted therefor.

MAIN PURPOSE

- 3.1 The main purpose of the NPC shall be to assist under privileged learners to further their studies;
- By supplying the learners with school uniform;
- Supplying school books and stationery;
- Paying for extra mural activities;
- Providing mentorship and;
- Provide any support that may be necessary to assist the learners in furthering their education.

FUNDS

- 4.1 AMC shall obtain funding from individuals donations and company donations.
- 4.2 The NPC shall use the funds for the received for the purpose stated in 3 above.

APPROPRIATION OF FUNDS

In furthering the Main Purpose of AMC, the Directors shall have a complete and unfettered discretion as to the manner in which they may apply and appropriate the Funds from time to time; with the intent and purpose of such entire Fund, as it may be constituted from time to time, shall be at the disposal of the Directors, to be utilised as they may deem appropriate, in understanding their fiduciary mandate hereunder pursuant to the Main Purpose of the Non-Profit Company. Accordingly the Directors may initiate and undertake their own projects; manage and administer similar projects on behalf of third parties; and tender for, negotiate, and conclude management contracts, joint venture agreements, and other collaborative arrangements with any sphere of Government

Government, National, Provincial or Local (and with other State entities, including Traditional Authorities); and in collaboration with foreign government programmes, international aid and development organisations; and other interested parties, generally furthering the Main Purpose of the Non-Profit Company.

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DIRECTORS POWERS

The Directors shall be vested with all such administrative and other powers as they may require in order to implement their fiduciary responsibilities hereunder, and generally to promote the Main Purpose of the Non-Profit Company. Without derogating from the generality of the a foregoing, the Directors shall be vested with the General Investment and Administrative Powers Itemized in Schedule “A” to this Constitution; provided that all such powers shall be qualified to the extent envisaged by the Prescribed Fiscal Conditions set forth in Schedule “B”; thereby to ensure due compliance with the requirements of section 18A and 30 of the Income Tax Act No. 58 of 1962, as amended, in so far as they may be applicable to this NPC, and facilitate the NPC’s eligibility for tax-exempt status, and for other relevant fiscal benefits, as envisaged by the relevant legislation.

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DIRECTORS

7.1 The directors shall be responsible to take all necessary steps to ensure the proper management and administration of the Non-Profit Company, and the furtherance of its Main Purpose, in accordance with the terms and conditions of this Constitution.

7.2 The Board shall consist of a maximum of ten (10) Directors but there shall at all times be at least three (3) Directors in accordance with the Companies Act

7.3 No Director may be appointed for life or for an indefinite period and Directors shall rotate or be re-appointed in accordance with the following provisions:

7.3.1 Directors shall be re-appointed every three years at a Board meeting called for the purpose of electing directors;

7.3.2 if any director choses to resign, no longer qualifies to be a director in accordance with the Companies Act or dies the board shall elect a new director if there are less than the minimum number of directors left on the board, however if post the resignation, disqualification or death of a director the Non-Profit Company still has the minimum of three directors it is at the discretion of the directors whether to appoint a director to fill a vacancy that arises.

DIRECTOR VACATING OFFICE

The office of the Director shall be vacated if he/she:

- 8.1 Dies, or tenders his/her resignation in writing; or
- 8.2 Becomes of unsound mind, or otherwise unfit and incapable of acting in such capacity
- 8.3 Is declared insolvent or assigns his/her estate for the benefit of, or compounds with his/her creditors; or
- 8.4 Becomes for any other reason, legally disqualified from acting as director of the company, or
- 8.5 Is removed in terms of a resolution duly passed by the board in accordance with the Companies Act; or
- 8.6 Is not re-appointed by the Board at the end of any of the three (3) year terms as contemplated in clause 7.3.1.

It shall be the duty of the Director to immediately inform the Board in writing of the occurrence of any event as contemplated in clause 8.3 and/or 8.4 above

CONFLICT OF INTEREST

- 9.1 In compliance with their fiduciary responsibilities, the Directors shall ensure that their personal interests at no time conflict with their fiduciary responsibilities hereunder; and they shall at all times act in the best interest of the NPC, and its intended beneficiaries.
- 9.2 A Director shall on appointment submit a written and signed Declaration of interest to the board, listing the nature and extent of such personal and/or related interests, as well as the types of interests, that could reasonably be relevant to his/her position as a Director, including but not limited to directorships, direct and indirect shareholding in other companies and ownership or membership of specific entities. It will be the duty of a Director to at all times ensure that such Declaration of

interest is kept up to date and that any changes thereof are timeously communicated to the Board in writing.

- 9.3 In addition to the above, should the NPC be entering into a contract or considering a business opportunity, which is of significance in relation to the business, with a third party in which a Director has a material interest, albeit directly or indirectly, or where the Director is aware that a person or entity related to the Director has a material interest, such an interest has to be disclosed, in writing, at or before the meeting of the board at which the matter is first taken into consideration or, where such matter is dealt with by way of round robin resolution, as soon as the matter comes to the attention of the conflicted Director. In any such matters (“the Conflicted Matter”), the provisions of clause 9.5 will apply.
- 9.4 Notwithstanding the afore-going, it is recognised that from time to time the interests of the NPC and its Main Purpose may best be served by including as Directors, persons who have special knowledge, skills and experience relevant to the activities of the NPC; and that from time to time special circumstances may exist which require that the NPC enter into professional or other contractual arrangements with one or more persons then serving as Directors, or with companies, partnerships, or firms in which such persons may hold office, or have a financial interest (“Special Appointment”).
- 9.5 Accordingly, it is hereby stipulated that in the event of the Board desiring to affect any such Special Appointment in the circumstances and for the reasons as contemplated in clause 9.4 or in the event of the Board being made aware of the Conflicted Matter as contemplated in clause 9.3, the following procedures shall apply:
- 9.5.1 Any Director having such potential conflict of interest shall at the first opportunity declare such interest, and thereafter recuse him/herself from all discussions and proceeding of the Board with references to the matter under consideration; and such recusal shall disentitle the Director concerned from receiving Board documentation, minutes or other communications with reference to the matter in issue.
- 9.5.2 After such recusal and in the absence of any such affected Director/s, the remainder of the Board- provided it shall quorate shall consider the matter in issue on its merits and in the best interest of the NPC, and its beneficiaries. No Special Appointment shall be affected

and/or no Conflicted Matter shall be proceeded with by the Board unless the relevant decision is supported by no less than two-thirds (2/3) of the Directors present at such quorate meeting of the Board (excluding the Director/s concerned).

9.5.3 In respect of any such Special Appointment and/or Conflicted Matter, the Board shall record and minutes the special circumstances and reasons that have persuaded it to effect such appointment or proceed with such matter, and the steps taken to ensure that the relevant terms and conditions are at arms-length and provide for no more than reasonable remuneration for the services to be rendered.

9.6 A failure by a Director to disclose any potential conflict of interest as contemplated in this clause 9 shall constitute a ground for removal of such Director by the Board.

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SECURITY

No Director shall be required to furnish security the intention being that no person serving as a Director hereunder shall be required to give security in connection with or arising from such appointment as a Director.

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PROCEDURES AT DIRECTORS MEETINGS

The Board of Directors shall regulate its meetings and conduct its proceedings as it may deem appropriate from time to time, provided that:

11.1 A Chairperson (and if deemed appropriate, a Deputy Chairperson) shall be elected by the Board, and hold office for 3 years. The Chairperson, or any Director, may at any time at their discretion convene meetings of the Board; but shall be obliged to convene such meeting, if so requested by any two (2) Directors.

11.2 Notices convening meetings shall be in writing, and shall include an Agenda, and shall be posted or delivered to Directors at least five (5) days prior to the meeting, unless special circumstances require that an urgent meeting be held without compliance with such formalities. In the latter event, notice may be given either verbally, or in such other

manner as the Chairperson may deem appropriate provided the majority of the board members are in agreement of the alternative form of notification.

- 11.3 The quorum necessary for the transaction of any business by the Board shall be a majority of the Directors then serving being present at the meeting. No business shall be transacted at a Board meeting unless a quorum is present at the commencement of that meeting. If a quorum is not present within 30 (thirty) minutes after the time appointed from the commencement of any meeting of the Board, that meeting shall stand adjourned to the same day in the next successive week thereafter at the same time and place, and written notice shall be given of such adjournment meeting to all the Directors.
- 11.4 At meeting of the Board each Director shall have one (1) vote. Questions arising shall be decided by a majority of votes, unless otherwise provided herein
- 11.5 In the event of an equality of votes, the Chairperson **SHALL** have a second or casting vote.
- 11.6 Proper minutes shall be kept of all proceedings of the Board, and an attendance register recording the names of Directors present at each meeting. The minutes shall be available at all reasonable times for inspection or copying by any Director.
- 11.7 A decision that could be voted on at a meeting of the Board may, instead be adopted by written consent of a majority of the Directors, given in person or by electronic communication, provided that each Director has received notice of the matter to be decided. Such resolution, inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of Directors. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last Director who signed it (unless a statement to the contrary is made on that resolution).
- 11.8 The Board may delegate any of its powers and duties to one or more Special-Purpose Committee, as it may deem appropriate from time to time. Any such Committee, to which a delegation is made, shall conform to the directions and procedures stipulated by the Board from time to time, and in effecting any such delegation the Board shall not be

thereby divested of the powers and duties so delegated. The board shall appoint the members of such Committees, including the Chairpersons, for a period of three (3) years.

- 11.9 At the election of the Chairman and with the consent of the Board, the Director may confer meeting by simultaneous two-way communication via telephone, close circuit television or other electronic means or audio or audio visual communication, and each such Director who confers by such part of the quorum of the Board and a resolution passed during any such conference shall, notwithstanding that the Directors are not present together in one place at the time of the conference, be deemed to have been passed at the meeting of the Board duly called and constituted on the date and at the time at which the conference was so held.

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NOTICES

- 12.1 Notices of meetings shall be delivered to all Directors either by electronic communication or personally or by prepaid registered post, directed to the address notified by such person to the NPC; or in such other manner as may be approved by the Board.
- 12.2 The inadvertent, but bona fide, omission to address notice to any person shall not invalidate the proceedings of any meeting.
- 12.3 If posted by prepaid registered post, notices shall be deemed to have been received seven (7) days after posting. If sent by email it shall be deemed that the notice is delivered on receipt of an email delivery notice.

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MANAGEMENT ACCOUNTS; ANNUAL FINANCIAL STATEMENTS AND FINANCIAL YEAR

- 13.1 The board shall ensure that the NPC keeps proper accounting records and books of account. Financial Statements (including Capital and Income accounts) shall be prepared at least once a year in accordance with International Financial Reporting Standards ('IFRS') and within 6 (six) months after the close of the financial year, and shall clearly reflect the financial position and affairs of the NPC. Such records, books of account and Financial Statements shall be audited and certified in the customary manner by a Registered Auditor.

13.2 A copy of the audited Annual Financial Statements shall be made available to each Director within nine (9) months after the close of the financial year.

13.3 The financial year of the NPC shall commence on the 1 January and terminate 31 December each year.

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SIGNATURES

All contracts, cheques, promissory notes, and other documents requiring signature on behalf of the NPC, shall be signed in such manner as the Directors may from time to time approve, provided that in all instances there shall be at least two (2) signatures unless otherwise agreed by the Board.

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CONTRACTS AND LEGAL ACTION

The NPC shall have powers to enter into contracts; and to sue or be sued in its own name.

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AREA OF OPERATIONS

The activities of the NPC are conducted primarily within the Republic; provided that with the approval of Minister of Finance, as envisaged by the definition of “Public Benefit Activities”, contained in section 30(1) of the Income Tax Act No. 58 of 1962, as amended, the NPC may undertake projects and initiatives within the ambit of its Main Purpose, which also benefit persons living within the so-called “SADC “region of Southern Africa.

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INDEMNITY

17.1 Subject to the provisions of any relevant statute, each of the Directors, shall be indemnified by the NPC for acts done in good faith on its behalf; and it shall be the duty of the NPC to pay all costs and expenses which any such person may incur or become liable for as a result of a contract entered into, or act done by such person, in his or her capacity as a Director, with the authority of the Board, and in the *bona fide* discharge of his/her duties on behalf of the NPC.

17.2 Subject to the provisions of any relevant statute, no Director shall be liable for the following:

17.2.1 The acts, receipts, neglect or default of any other Director or office bearer, or for having joined in any receipt or other act for conformity.

17.2.2 For any loss or expense suffered by the NPC through the insufficiency of, or deficiency in, title to any property acquired by the NPC.

17.2.3 For the insufficiency of, or deficiency in, any security in or upon which the funds of the NPC may be invested;

17.2.4 For any loss or damage arising from bankruptcy, insolvency or dilictual act of any person or institution with whom money, securities or assets of the NPC are deposited; or

17.2.5 for any loss or damage caused to the Trust in any other manner;

Which occurs in the bona fine execution of the duties of a Director, unless it arises in consequence of dishonesty on the part of such Director, or the failure to exercise that degree of care, diligence and skill required by law.

DIRECTORS' DISCRETION

Where discretions are vested in the Directors in terms of this Constitution, such discretions, except where limited expressly or by necessary implication, shall be complete and absolute.

AMEDNDMENTS; NAME CHANGE AND DISSOLUTION

19.1 This Constitution may be amended; and the name of the NPC may be changed; and the NPC may be dissolved; in any such instance, by Resolution of the Directors passed at a quorate meeting dully convened for that purpose, provided that any such Resolution shall be supported by no less than two-thirds (2/3) of the Directors in office at that time, being not less than minimum number stipulated in clause 7.2; and provided further that the notice convening the meeting shall contain a statement regarding the intention to propose the relevant resolution.

19.2 Any Resolution duly adopted by the Board in terms of clause 19.1, shall be formalized by Notarial Deed as soon as reasonably possible after its adoption.

- 19.3 A copy of such Notarial Deed shall be submitted forthwith upon its execution to the Commissioner for the South African Revenue Service.

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PATRON/S

By unanimous decision of all the Directors, the Non-Profit Company may at any time appoint one or more persons to serve as Patron/s of the NPC, for such period, and on such terms, as the Directors may deem appropriate from time to time.

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PUBLIC BENEFIT ORGANISATION

- 21.1 The Board will submit an application to the South African Receiver of Revenue to be registered as a Public Benefit Organisation as provided for in terms of section 30 of the Income Tax Act which will be approved for purpose of section 18A(1)(a) of the income Tax Act.
- 21.2 In order for the Non-Profit Company to comply with the requirements relevant, to remain a Public Benefit Organisation and for the period while it is so registered, it is must do the following:
- 21.2.1 The sole object of the Non-Profit Company as described in this Memorandum shall at all times be to carry on one or more public benefit activity as defined in section 30(1) of the Income Tax Act'
- 21.2.2 No activity will directly or indirectly promote the economic self-interest of any fiduciary or employee of the NPC otherwise than by way of reasonable remuneration;
- 21.2.3 At least 85% (eighty five percent) of the activities of the Non-Profit Company measured either in cost or time spent will be carried out for the benefit of persons in the Republic;
- 21.2.4 The funds of the NPC will be used solely for the objects for which it was established or shall be invested with a financial institution as defined in section 1 of the Financial Service Board Act No. 97 of 1990, as amended or replaced from time to time;
- 21.2.5 No remuneration will be paid to any employee, office bearer or other persons who in the opinion of the Board is excessive, having regard to what is reasonable in the sector and in relation to the service rendered;

21.1.6 The NPC will not economically benefit any person in a manner that is inconsistent with its objects as described in this Constitution; and

21.2.7 Upon the winding up, deregistration or dissolution of the NPC, its net assets must be distributed in the manner determined in accordance with item 1(4)(b) of Schedule 2 of the Act, subject to the relevant requirements of the Income Tax Act applicable to a Public Benefit Organisation, if any.

THE DIRECTOR'S/S BY THEIR SIGNATURES HERETO, DO HEREBY CONFIRM THEIR APPROVAL OF THE FOUNDING CONSTITUTION, ON THE TERMS AND CONDITIONS SET FORTH HEREIN.

Thus done and signed at the places and on the dates listed below, in the presence of the undersigned witnesses:

Name of Director	Signature	Witness
1.----- - Place..... Date.....		
2.----- - Place..... Date.....		
3.----- - Place..... Date.....		

