



Cotlands

together we bring hope to life

COTLANDS CONSTITUTION

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COTLANDS CONSTITUTION

1 Name

The organisation hereby constituted will be called **COTLANDS** (hereinafter referred to as “the organisation”).

2 Interpretation

- 2.1 In the interpretation of this constitution, unless contrary to the context, words signifying the singular shall include the plural and vice versa and words signifying the masculine shall include the feminine and neuter.
- 2.2 The headings of this constitution are for the purposes of reference and do not form part of this constitution
- 2.3 Generally the widest possible interpretation shall be given to the terms and powers and authorities contained herein.
- 2.4 Notwithstanding the omission of any provisions from this constitution, the organisation may do anything which is reasonable and necessary to enable it to pursue and realise the main and secondary objects.

3 Body corporate

The organisation shall:

- 3.1 Exist in its own right, separately from its members.
- 3.2 Continue to exist even when its membership changes and there are different office bearers.
- 3.3 Be able to own property and other possessions.
- 3.4 Be able to sue and be sued in its own name.

OBJECTIVES

4 Main Objectives

- 4.1 The organisation’s main objectives are to provide exceptional models of care to children and their families through a variety of outreach and residential services that address their specialised needs, to improve their quality of life.
- 4.2 The organisation shall carry on its public benefit activities as defined in section 30(1) of the Income tax Act No. 58 of 1962 (as amended) (hereinafter referred to as “the Act”), in a non-profit manner and with an altruistic or philanthropic intent
- 4.3 The organisation will not carry on any business undertaking or trading activity unless specifically permitted in terms of section 30(3)(b)(iv) of the Act.

5 Secondary Objectives

- 5.1 The organisation’s secondary objectives are derived from and are not inconsistent with the organisation’s main objectives. The secondary objectives will be:
 - 5.1.1 To address the needs of vulnerable children through a variety of specialised interventions, ranging from outreach programmes to end stage palliative care.
 - 5.1.2 To form partnerships with other NGO’s, local government and the private sector to fill the service delivery gaps in various communities by providing a range of services that will ensure the care and development of young children, provision of food security, reverse the spread of HIV and AIDS, create jobs and promote self sustainability in poorer communities.
 - 5.1.3 To take into consideration Government’s priorities for the region when evaluating existing services and establishing new services.
 - 5.1.4 To identify current services available to vulnerable children in the areas Cotlands operates or plans to operate, to avoid unnecessary duplication, and to establish how best Cotlands knowledge, skills and resources can be utilised to address these needs.
 - 5.1.5 To offer training and capacity building to share Cotlands knowledge and expertise with other organisations.

6 Registration as Non-Profit Organisation

The organisation shall become registered in terms of Section 13(5) of the Non-Profit Organisations Act, 1997 (Act No. 71 of 1997), within such period as the Commissioner may determine, and comply with any other requirements imposed in terms of that Act, unless the Commissioner in consultation with the Director or Non-profit Organisation designated in terms of Section 8 of the Non-profit Organisations Act 1997, on good cause shown, otherwise directs.

7 Income and property

- 7.1 The organisation will keep a record of everything it owns.
- 7.2 No donation will be accepted 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 the 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 Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose any 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.
- 7.3 The income and property of the organisation however derived shall be applied solely towards the promotion of the objectives of the organisation, as set forth in this constitution, and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to any person; provided that nothing herein contained shall prevent the payment in good faith of remuneration to any employee, office bearer, member or other person which is not excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with the organisation's objectives.
- 7.4 A member of the organisation can only get money back from the organisation for expenses that he has paid for on behalf of the organisation.
- 7.5 Where the organisation provides funds or assets to any association of persons as contemplated in section 30(b)(iii) of the Act, all reasonable steps will be taken to ensure that the funds are utilised for the purpose for which it has been provided
- 7.6 All moveable and immovable property of the organisation shall be vested in and registered in the name of the organisation itself.
- 7.7 The funds of the organisation shall be invested only with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No 97 of 1990) or in securities listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
- 7.8 Ensure that the organisation is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.
- 7.9 The organisation has not and will not use its resources directly or indirectly to support, advance or oppose any political party or to promote the economic self-interest of any fiduciary or employee of the organisation otherwise than by way of reasonable remuneration.
- 7.10 All legal actions, applications and / or proceedings brought by or against the organisation shall be in the name of the Chairperson on behalf of the organisation, and such Chairperson shall sign and execute all power of Attorneys and all necessary deeds and documents in the premises for and on behalf of the organisation

8 Membership

- 8.1 Membership is open to all persons who have donated to the organisation the sum of R100,00 (One hundred Rand) or its equivalent in kind during the preceding financial year and extends for a period of 6 (six) months after the end of that financial year
- 8.2 All members are entitled to be informed of and to attend the AGM of the organisation and to cast a vote in any matter put to such AGM
- 8.3 Members shall not have any right, title, interest and claim, demand in or to any of the moneys, property or assets of the organisation. Membership does not involve any member in any personal financial liability in respect of any claim or action against the organisation.

MANAGEMENT STRUCTURE

9 Elections and Membership of the Management Committee and Executive Management Committee (EMC)

- 9.1 The Management Committee ("the Board")
 - 9.1.1 The Board will manage the organisation. The Board, with co-opted members, shall comprise of a minimum of 15 (fifteen) members and not exceed 30 (thirty) members.
 - 9.1.2 Members of the organisation shall duly nominate candidates for election in writing. The proposer, seconder and the candidate shall sign the nomination form. Such nominations must reach the Chairperson not later than 14 (fourteen) days before the Annual General Meeting ("AGM")
 - 9.1.3 The Chairperson, Vice-Chairperson, Secretary and Treasurer will be elected by the Board at the first meeting after the AGM.
- 9.2 The Executive Management Committee ("the EMC")
 - 9.2.1 The Board will, at such meetings, elect an EMC consisting of a minimum of 5 (five) and a maximum of 10 (ten) persons. The Chairperson of the Board will automatically be Chairperson of the EMC
 - 9.2.2 The convenors of every sub-committee (see clause 9.8 below) as well as the Directors of the organisation will have a seat on the EMC.
- 9.3 The Board and EMC shall have the power to co-opt additional members to fill a vacancy through co-option and to appoint ad hoc (non-voting) members for specific needs as and when so required. .
- 9.4 Any member of the EMC, Board, or sub-committee who fails to attend three consecutive meetings without an apology in writing to the Chairperson or Secretary, shall automatically cease being a member with effect from the date of the fourth consecutive meeting and shall be advised thereof in writing by the Secretary
- 9.5 The Chairperson and Vice Chairperson shall serve a 3 (three) year term of office after which period they must stand down but may make themselves available for re-election after nomination, provided that neither position may be held for more than two successive terms by the same person
- 9.6 Members of the Board shall serve a 2 (two) year term of office after which period they must stand down but may make themselves available for re-election after nomination
- 9.7 At least 3 (three) members who accept fiduciary (legal) responsibility for the organisation, will not be connected persons in relation to each other, and no single person directly or indirectly controls the decision making powers relating to the organisation.
- 9.8 Sub-Committees
 - 9.8.1 The E.M.C. shall have the power to elect sub-committees, who will be vested with certain responsibilities, authority and tenure, as the EMC deems fit.
 - 9.8.2 Any Sub-committee will comprise of at least 3 (three) members of the Board.

- 9.9 All members of the organisation have to abide by decisions that are taken by the Board.
- 9.10 The office of a Board, EMC or Sub-Committee member shall be vacated if a member:
 - 9.10.1 resigns; or
 - 9.10.2 becomes unfit and/or incapable of acting as such; or
 - 9.10.3 would be disqualified, in terms of the Companies Act or equivalent legislation in force from time to time, from acting as a Director of a Company; or
 - 9.10.4 is removed by the Board, by resolution adopted by at least three-quarters (3/4) of its members in office from time to time, being not less than the required minimum of 15 (fifteen) members. The Management Committee shall not be obliged to furnish reasons for its decision/s regarding removal except to the member removed and to the members of the Organisation in General Meeting.
- 9.11 Should a position on the Board, EMC or Sub-Committee fall vacant, the Board, by resolution adopted at least two-thirds (2/3) of its members, may (and if the vacancy reduces the number of members to less than 15 (fifteen) shall) co-opt a member/s to fill the vacancy/ies. The office of any person so co-opted as member of the Board shall lapse unless confirmed by resolution of members at the next Board Meeting.

10 Meetings of the Board and EMC

- 10.1 The Board shall meet at least twice per year. More than 50% (fifty percent) of the members of a committee shall be present at meetings to form a quorum for any meeting
- 10.2 The EMC shall meet at least twice per year. More than 50% (fifty percent) of the members of a committee shall be present at meetings to form a quorum for any meeting
- 10.3 Members may delegate their power to vote at meetings to a third party, however, such delegation shall be in writing by way of Proxy, and shall be presented at the meeting at which it will be exercised.

11 Voting at Board, EMC and Sub committee meetings

- 11.1 Matters arising at any meeting of the Board, EMC and sub committee shall be decided by a majority of votes by a show of hands, except where a ballot is proposed. If the votes are equal on an issue, then the chairperson has either a second or deciding vote.
- 11.2 Persons, or their representatives, who receive remuneration from the organisation may be co-opted onto the Board or EMC for a specific purpose, but may not exercise a vote and may not hold office. Neither may such persons exercise a vote at the AGM

12 Powers of the Board

- 12.1 To oversee the vision and development of the organisation in totality on a strategic level
- 12.2 To elect members of the EMC
- 12.3 To convene a Special Board Meeting if deemed necessary

13 Powers of the EMC

- 13.1 The EMC shall have any or all powers which are reasonably necessary to enable it to pursue and achieve its objectives and which are not in conflict with this constitution and shall have full power and authority to act in any matter or to do anything which could or might be done by the General Meeting, except in such matters as are in terms of the constitution, specially reserved to be dealt with at a General Meeting of members
- 13.2 In addition to the general powers and authorities hereby conferred on the EMC and without in any way limiting such powers and authorities, the EMC shall have the following special powers (which it may delegate to a sub-committee):
 - 13.2.1 To employ the Executive Director of the organisation in terms of the conditions of employment of the organisation; who in turn will have the following responsibilities:

- 13.2.1.1 The Executive Director of the organisation shall appoint, suspend or dismiss all other staff in terms of the conditions of employment of the organisation;
- 13.2.1.2 The Executive Director of the organisation is mandated to act as Legal Guardian of the children in lieu of the EMC,
- 13.2.1.3 and such other responsibilities as noted & as seen fit for the running of the organisation (as long as not in contravention with this constitution or the matters required to be addressed at a special general meeting);
- 13.2.1.4 to acquire by purchase, lease, exchange or in any other manner whatsoever, any movable or immovable property for the organisation, calculated to benefit the organisation and to advance its objectives and to turn to account immovable or movable property by constructing, altering, demolishing or reconstructing same

- 13.2.2 To secure the fulfilment of any contracts or engagements entered into by the EMC, by mortgage, or charge, or debentures, or otherwise howsoever of all or any part of the property of the organisation, in such manner and under such conditions as it may think fit
- 13.2.3 To sell, lease, let or hire, exchange, alienate or otherwise dispose of or mortgage, or otherwise deal with or turn to account all or part/s of the immovable and movable properties, rights, business, privileges or undertaking of the organisation, and upon such terms as may be thought expedient, and as it may think most beneficial to the members, officers, staff and beneficiaries of the organisation, and to apply the consideration arising there from as it may think most advantageous to the organisation, and to accept payment therefore in cash or shares or debentures or other securities.
- 13.2.4 To institute, conduct, defend, compound or abandon any legal proceedings by or against the organisation or its officers, or otherwise concerning the affairs of the organisation; also to compound and allow time for payment or satisfaction of any debts due, and of any claims and demands by or against the organisation
- 13.2.5 To refer any claim or demand by or against the organisation to arbitration, and to perform or refuse to perform the award
- 13.2.6 To make and give receipts, releases and other discharges for monies payable to the organisation, and for claims and demands of the organisation, and except where otherwise provided in this constitution, such receipts shall be signed by the Treasurer or some person lawfully acting in the place of such Treasurer
- 13.2.7 To open or close any banking account in the name of the organisation and to draw, accept, endorse, make and execute any bills of exchange, promissory notes, cheques, and other negotiable instruments. Any such instruments shall be signed by the Chairperson of the EMC of the organisation, or some other person lawfully acting in the place of such Chairperson, and countersigned by the Treasurer of the organisation or some other person lawfully acting in the place of such Treasurer. Another person will only be acting lawfully on behalf of the Chairperson or Treasurer in this instance if they have been given such authority in terms of a Resolution granting them specific authority to do so.
- 13.2.8 To make, vary and repeal bye-laws, rules and regulations for the regulation of the affairs of the organisation, its officers, staff or the members of the organisation, provided however that such by-laws, rules and regulations do not conflict with this constitution and the agreed philosophy of the organisation
- 13.2.9 To lend, invest or otherwise deal with any monies or funds of the organisation not immediately required for the purposes of the organisation upon such securities and in such manner and on such terms as it may think fit, and from time to time to vary or release such investments and to purchase or otherwise any land, bonds, securities, issued by any local, municipal, public or provincial body, and to realise and dispose of same. Funds so invested may only be invested with registered financial institutions as defined in Section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990) or in securities listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)

- 13.2.10 To grant consent to persons, not members of the organisation, to use or enter upon the grounds or buildings used or owned by the organisation upon such terms as it may think fit, or to refuse admission or usage at its discretion
- 13.2.11 To enter into contracts with other bodies or persons for the promotion of any purposes incidental to the organisation's objectives
- 13.2.12 Fill any casual vacancy occurring in the position of Auditor and to fix the remuneration of the organisation's Auditor, staff and such permanent, temporary or special services as may be required
- 13.2.13 To appoint and in its discretion to remove, discharge or suspend such Attorneys, Agents, Medical Officers, Secretaries, Officers, Canvassers, for permanent, temporary or special services, as it may think fit, and to invest them with such powers as it may think expedient, and to determine their duties and fix and vary their salaries or emoluments and to require security in such instances and to such amounts, as it may think fit
- 13.2.14 To carry out and give effect to resolutions of the AGM
- 13.2.15 To procure the registration of this constitution with any authority or authorities or to submit same for registration (if required) as an association not for gain in terms of the Laws of South Africa
- 13.2.16 Generally to make, vary and repeal all such other rules and regulations and by-laws as may be necessary for the proper carrying out of the provisions of this constitution, in matters or things specially entrusted to the EMC by the members and to do all such acts and things not inconsistent with this constitution which in the interests of the organisation it may consider desirable
- 13.2.17 To allocate the funds required to adequately support the standards, norms and programmes of the organisation ensuring a quality service to children and families

14 Minutes of Meetings

The Board and EMC shall cause minutes of the appointment of officers, and the names of members of the Board and EMC present at each meeting, with the resolutions and proceedings of such meetings, and all resolutions and proceedings of all General Meetings of members, to be duly entered in books provided for the purpose. Any such minutes, or an extract there from, signed by the Chairperson and Secretary shall be received as prima facie evidence of the matter stated in such minutes or extract

15 Finance

- 15.1 An Auditor shall be appointed at the AGM. His duty is to audit and check on the finances of the organisation. Once in every year the books and accounts shall be examined and a balance sheet and relevant accounts to be drawn, the correctness of which shall be ascertained and certified by a properly qualified and practising auditor.
- 15.2 The Treasurer's responsibility is to control the day-to-day finances of the organisation. The treasurer shall arrange for all funds to be put into a bank account in the name of the organisation. The Treasurer must also keep proper records of all the finances
- 15.3 Whenever funds are taken out of the bank account, the Chairperson and at least one other member or some other persons of the organisation lawfully acting in their place, must sign the withdrawal or cheque.
- 15.4 Proper books of accounts shall be kept of all sums of monies received and expended by the organisation and the matter in respect of which such receipt and expenditure takes place, and of the properties, credits and liabilities of the organisation
- 15.5 Ensure that any books of account, records or other documents relating to its affairs are retained and carefully preserved by any person in control of the organisation, for a period of four years after the completion of the transaction, act or operation to which they relate.
- 15.6 The financial year of the organisation ends on 31 March each year
- 15.7 The organisation must provide to the director of Non-profit Organisations the necessary documentation and information, in writing and within the prescribed periods, as specified in terms of section 18(1) of The Non-profit Organisations Act No. 71 of 1997

- 15.8 The organisation will submit the required returns for income tax together with the relevant supporting documents

16 Structures and Decision Making

- 16.1 Annual General Meeting (AGM)
- 16.1.1 An AGM shall be held once in each year, not more than fifteen months after the preceding AGM and within six months of the end of the financial year
- 16.1.2 The Chairperson, or person nominated, shall preside at the AGM. A quorum shall consist of 20 (twenty) members
- 16.1.3 If within fifteen minutes after the time appointed for the meeting, a quorum is not present, the meeting shall be adjourned to the same day in the next week at the same time and place. If that day is a public holiday, then to the next succeeding day. If at such adjourned meeting a quorum is not present within fifteen minutes after the time appointed for the meeting, the members present shall be a quorum and shall have full power to act
- 16.1.4 Only members shall be entitled to vote at an AGM
- 16.2 Proceedings of the AGM
- 16.2.1 The AGM shall deal with and dispose of the following matters, which shall be deemed ordinary business:
- 16.2.1.1 To confirm the minutes of the previous AGM
- 16.2.1.2 To receive the following reports:
- 16.2.1.3 Chairperson's Report
- 16.2.1.4 Executive Director's Report
- 16.2.1.5 Annual Financial Statements
- 16.2.2 To elect:
- 16.2.2.1 The auditors for the ensuing year
- 16.2.2.2 Honorary Officers
- 16.2.2.3 The Board
- 16.2.2.4 To consider resolutions in respect of which at least fourteen days notice shall have been given to the Chairperson
- 16.2.2.5 All other business transacted at an AGM shall be deemed special business
- 16.2.3 Notice of the AGM
- 16.2.3.1 Notice of the day, hour and place of the AGM of the organisation shall be given at least twenty-one days before the date fixed for the meeting by an advertisement in a newspaper in the approved formatting
- 16.2.4 A Special General Meeting may be convened at any time by:
- 16.2.4.1 The Board, or
- 16.2.4.2 Two members and seconded by two members supported in writing by a further twenty members.
- 16.2.4.3 The same procedures in respect to notice and quorum for an AGM applies to a Special General Meeting.

17 Amendments to the Constitution

- 17.1 The terms of this Constitution may be amended by resolution of at least two thirds of the members present at any AGM or Special Meeting, provided the notice requirements, as set out below, have been complied with.
- 17.2 A written notice must go out not less than fourteen (14) days before the meeting at which the changes to the constitution are going to be proposed.
- 17.3 A copy of all amendments to the constitution or any other written instrument under which the organisation was established, must be submitted to the Commissioner for the South African Revenue Service

18 Amalgamation and Dissolution of Cotlands

- 18.1 The organisation may enter into partnership or amalgamate with any person, association or institution, provided such association or institution is exempt from income tax in terms of section 10(1)(cN) of the Act with the same or similar objectives, or the property of the organisation may, subject to the provision as stated herein, be sold and the organisation wound up, dissolved or reconstructed, by the resolution of not less than two-thirds of votes of the members present in person at a Special General Meeting; provided however,
- 18.1.1 that not less than one month's special notice of the meeting to consider any such questions of partnership, sale, amalgamation, winding-up, dissolution or reconstruction shall be given and that such notice shall clearly set forth the objects of the meeting; and provided further
- 18.1.2 that not less than fifty members shall be personally present at any such meeting
- 18.2 If, upon winding up or dissolution of the organisation, there remains, after satisfaction of all its debts and liabilities, any remaining assets, these will be transferred to:
- 18.2.1 Any similar public benefit organisation, which has been approved in terms of section 30 of the Act
- 18.2.2 Any institution, board or body which is exempt from the payment of income tax in terms of section 10(1)(cA) of the Act, which has as its sole object the carrying on of any public benefit activity; or
- 18.2.3 Any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of the Act
- 18.3 Liquidators - Except so far as a Special General Meeting shall otherwise determine, the Board shall be the Liquidators of the organisation whenever it shall be wound up or reconstructed

19 Indemnity

- 19.1 Subject to the provisions of any relevant statute, members of the Board and other office bearers shall be indemnified by the organisation for all acts done by them in good faith on its behalf. It shall be the duty of the organisation to pay all costs and expenses, which any such person incurs or becomes liable for as a result of any contract entered into, or act done by him or her, in his or her said capacity, in the discharge, in good faith, of his or her duties on behalf of the Association.
- 19.2 Subject to the provisions of any relevant statute, no member of the Board and or other office bearer of the organisation shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the Board, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

20 Disputes

- 20.1 In the event of a serious disagreement between the members of the Board and/or the organisation regarding the interpretation of this constitution then any two (2) Board members or any five (5) members of the organisation shall be entitled to declare a dispute. Such declaration shall be in writing, state the issue in dispute, and be addressed to the Board.
- 20.2 The Board shall consider such declaration within two (2) weeks of receiving it. Should the Board not be able to resolve the dispute to the satisfaction of the person(s) declaring it, the dispute shall be referred either to a mediator or arbitrator.
- 20.3 Should the dispute be referred to a mediator, the person(s) declaring the dispute and the Board must agree on a suitable mediator and to the costs of such mediation. A mediator may recommend an appropriate resolution of the dispute.
- 20.4 In the absence of agreement regarding a mediator or should mediation not resolve the dispute, the dispute shall be referred to arbitration. The arbitrator shall be such suitably qualified person/s as the person(s) declaring the dispute and the Board may mutually agree.

- Alternatively, each of the parties shall be entitled to nominate one arbitrator, who shall act jointly with a third person to be nominated jointly by the respective nominees of the parties; on the basis that a majority decision of the appointed arbitrators shall be final and binding.
- 20.5 The arbitration shall be held on an informal basis, and the arbitrator shall have the power to determine the procedure to be adopted subject to principles of natural justice.
- 20.6 The arbitrator may base her/his award not only upon the applicable law but also upon the principles of equity and fairness.
- 20.7 The person(s) declaring the dispute and the Board, beforehand, may agree to share the costs of the arbitration. In the absence of such agreement the arbitrator shall decide which parties shall be liable for the costs.
- 20.8 The decision of the arbitrator shall be final and binding upon all parties and capable of being made an Order of Court on application by any of them.

21 Adoption and Approval

This constitution was adopted and approved by a two-thirds majority of members present at the Annual General Meeting of Cotlands held on the 15th of September 2005

Signed as a correct record

Chairperson
(Duly authorised hereto)

Finance Committee Convenor
(Duly authorised hereto)