

## Your Library Ltd

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**A Public Company Limited by Guarantee**

**Draft Constitution for circulation to Member Councils**

**17 March 2022**

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## 1 Preamble

- (a) The Founding Member Councils first established the Eastern Regional Libraries Corporation (ABN 67 990 548 408) on or about 14 June 1996 by an agreement made under section 196 of the Local Government Act 1989 (Vic).
- (b) In accordance with section 330(4) of the Local Government Act 2020 (Vic), as an existing regional library, the Eastern Regional Libraries Corporation must be wound up by 1 July 2031.
- (c) Section 110(1) of the Local Government Act 2020 (Vic) allows the Founding Member Councils to become members of and participate in the formation of a corporation and appoint directors.
- (d) Therefore, on **XX /XX / 2022**, the Founding Member Councils resolved to apply section 110 of the Local Government Act 2020 (Vic) to establish the Company as a new not-for-profit, public library, registered as a company limited by guarantee under the Corporations Act.
- (e) The Founding Member Councils will record their initial contribution and transfer of assets, licences, operations and activities from the Eastern Regional Libraries Corporation to the Company under a separate agreement.

## 2 Name of Corporation

The name of the company is **Your Library Ltd.**

## 3 Status of the Constitution and replaceable rules

This is the Constitution of the Company. The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

## 4 Interpretation

### 4.1 Definitions

In this Constitution unless the contrary intention appears:

**Auditor** means the person appointed for the time being as the auditor of the Company.

**ABN** means Australian Business Number.

**ACNC** means the Australian Charities and Not-for-profits Commission.

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and includes any regulations made under the ACNC Act and any rulings or requirements of the Commissioner made under the ACNC Act having application to the Company.

**ASIC** means the Australian Securities and Investments Commission.

**Appointed Board Member** means a Director appointed pursuant to clause 18.1(b) from time to time.

**Board** means the Directors present at a meeting, duly convened as a Board meeting, at which a quorum is present.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Melbourne, Victoria, Australia.

**Company** means **Your Library Ltd (ACN )**.

**Constitution** means this constitution as amended from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Deductible Contributions** mean a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for that purpose.

**Director** means a person who is a director for the time being of the Company and **Directors** means more than one Director.

**Founding Member Councils** means the Knox City Council, Maroondah City Council and Yarra Ranges Council.

**Gifts** mean gifts of money or property for the Objects of the Company.

**ITAA97** means the *Income Tax Assessment Act 1997* (Cth).

**Member** means the Member Councils and any other body corporate who is, or who is registered as, a member of the Company.

**Members** mean more than one Member.

**Membership** means being a Member of the Company.

**Member Councils** means the Knox City Council, Maroondah City Council and Yarra Ranges Council, and where a subsequent Council is admitted as a Member, includes that Council.

**Objects** mean the objects of the Company set out in clause 5.1.

**Property** means any real, personal, tangible, intangible, moveable or immovable property of any kind where ever situated including money and choses in action.

**Register of Members** means the register of Members maintained pursuant to the Corporations Act.

**Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.

**Representative** means a body corporate or the Member Councils' representative as appointed under clause 15.

**Rule** means a rule, by-law or policy made by the Directors in accordance with Clause 19(e) and includes all rules, by-laws or policies previously adopted by the Eastern Regional Libraries Corporation and which become the rules, by-laws or policies of the Company at the date of incorporation of the Company.

**Secretary** means any person appointed for the time being as, or to perform the functions of, secretary of the Company.

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth) and the *Income Tax Assessment Act 1936* (Cth) as appropriate.

## **4.2 Interpretation**

In this Constitution:

- (a) the words “including”, “include” and “includes” are to be construed without limitation;
- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation, regulations and instruments made under it, and that legislation and subordinate legislation, regulations and instruments, as amended, re-enacted or replaced from time to time;
- (c) a reference to a “person” includes a corporate representative appointed pursuant to section 250D of the Corporations Act;
- (d) headings are used for convenience only and are not intended to affect the interpretation of this Constitution;
- (e) a reference to a meeting includes a meeting by digital or other technology where all attendees have reasonable opportunity to participate;
- (f) a reference to a person being present in person includes an individual participating in a meeting as described in clause 4.2(e);
- (g) a reference to a person being present includes an individual participating in a meeting in person or through a Representative; and
- (h) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act when used in this Constitution.

## **4.3 Operation of Corporations Act**

While the Company is a registered charity under the ACNC Act the provisions of the Corporations Act in Part 2G.2 and Part 2G.3<sup>1</sup> apply as if section 111L(1) of the Corporations Act was not enacted and if one of those provisions includes a reference to lodging documents with or notifying ASIC that requirement does not apply to the Company.

## **4.4 Signing**

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

## **5 Objects and purpose**

### **5.1 Objects and purpose**

The Object and principal purpose of the Company is to be a charity (with charitable sub-type advancing culture) and a public library (endorsed as a deductible gift recipient under item 12.1.2 of the table of cultural organisations set out in section 30-100 of the ITAA97) pursuing the following charitable objects:

- (a) to operate a digital library, library branches and provide library services to and within the Member Councils, and to provide similar services to other Councils, Beneficial Enterprises or library corporations through a service level agreement;
- (b) provide services, resources and programs aimed at meeting the information, recreation, educational, placemaking, business, economic and cultural needs of the diverse communities of the Member Councils in an equitable, effective, efficient, responsive and forward looking manner in accordance with the values and objectives as determined by the Board;
- (c) to act as trustee and to perform and discharge the duties and functions

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<sup>1</sup> Part 2G.2 and 2G.3 are provisions in relation to meetings of members and keeping minutes

incidental to acting as a trustee where this is incidental or conducive to the attainment of these Objects; and

- (d) to do such things as are incidental or ancillary to the attainment of these Objects.

## **5.2 Limitation of Powers**

The Company is prohibited from making distributions to Members and paying fees (or other remuneration) to the Directors. The Secretary must approve all other payments the Company makes to Directors and provide a report on any such payments at the first available general meeting.

## **5.3 Non profit**

The assets and income of the Company must be applied solely in furtherance of the Objects, and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to members, directors or any trustees of the Company.

## **5.4 Payment in good faith**

Clause 5.3 does not prevent payment, directly or indirectly, in good faith to a Member:

- (a) of reasonable remuneration for services to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of fair and reasonable interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause 5.4(c) by the Company in a General Meeting;
- (d) of reasonable rent for premises let by a Member;
- (e) a contribution towards a grant or project in furtherance of the Objects and Purposes of the Company; or
- (f) in furtherance of the Objects and Purposes of the Company poses of the Company.

## **5.5 Conduit Policy**

Any allocation of funds or property to other persons or organisations must be made in accordance with the Objects of the Company and must not be influenced by the preference of the donor.

## **6 Amendment of this Constitution**

### **6.1 Amendment by Special Resolution**

This Constitution may be modified or repealed only by a special resolution of the Company in a general meeting.

### **6.2 Date of effect of the amendment**

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

### **6.3 Notification to the ACNC**

The Company will notify ASIC or, if a registered charity, the ACNC (as applicable) of any modification or repeal of this Constitution within the time specified in the ACNC Act or the Corporations Act.

## **7 Member's Liability**

### **7.1 Liability to contribute**

Each Member during the year ending on the day of the commencement of the



winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

## **7.2 Limited liability**

The amount that each Member or past Member is liable to contribute under clause 7.1 is not to exceed \$1.00.

## **8 Membership**

### **8.1 Founding Members**

The Founding Member Councils are the founding Members of the Company.

### **8.2 Categories of membership**

Additional categories and classes of members, if required, may be created by a special resolution of the Members of the Company in a general meeting.

### **8.3 Admission as a Member**

The Company may admit a body corporate as a Member where:

- (a) The applicant is eligible under clause 8.5 and makes an application to the Directors in accordance with clause 8.6;
- (b) The Board recommends that the applicant be admitted as a member to its Member Councils; and
- (c) The existing Member Councils agree in writing to admit a new Member, which such written consent to be provided once that Council has approved the admission of a new Member at a Council meeting.

### **8.4 Becoming a Member**

Subject to the Corporations Act, a body corporate becomes a Member on the registration of that body corporate's name in the Register of Members.

### **8.5 Eligibility for Membership**

To be eligible to be a Member, a body corporate must:

- (a) be nominated by 1 existing Member;
- (b) consent in writing to become a Member; and
- (c) agree to be bound by this Constitution.

### **8.6 Application for Membership**

- (a) Only a body corporate satisfying the eligibility requirements for Membership may apply for Membership.
- (b) The Board may prescribe the process, information and supporting documents required for an applicant to apply for Membership and the form in which the application for Membership is to be made.
- (c) An application for Membership must:
  - (i) be in writing signed by the applicant;
  - (ii) if the Board has prescribed the form of the application for Membership, be in that prescribed form;
  - (iii) if the Board has prescribed information and supporting documents to be included as part of an application, include

- the information and supporting documents, and
- (iv) be accompanied by the membership fee, if any, determined by the Directors.

### **8.7 Consideration for application for Membership**

- (a) At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and in their discretion either accept, accept subject to conditions, defer the decision to a subsequent meeting of the Board or reject the application.
- (b) If the Board accepts the application for Membership, or accepts subject to conditions, the application must be submitted to the Member Councils for consideration;
- (c) The Member Councils may only accept an application in accordance with clause 8.3(c).
- (d) The Board and the Member Councils are not required to give reasons for refusing an application for membership.

### **8.8 Membership fees**

The Members must pay such membership fees as prescribed from time to time by the Directors.

### **8.9 Registration as a Member**

If the Company accepts an application for Membership, as soon as practicable, the Secretary must notify the applicant of the decision and must register the name of the body corporate in the Register of Members and record any conditions imposed on that Member's Membership.

## **9 Rights of Members are non-transferable**

The rights and obligations of a Member are specific to that body corporate and are not transferable.

## **10 Cessation of Membership**

### **10.1 Cessation of Membership**

A Member ceases to be a Member:

- (a) if the Member resigns as a Member in accordance with this Constitution;
- (b) if the Member is expelled as a Member in accordance with this Constitution;
- (c) if the Member is being wound up or ceasing to exist;
- (d) if the Member is placed under external administration or becomes insolvent unless the Member Councils (but not including a Member Council whose membership is the subject of this clause) unanimously resolve for that Member to remain a Member of the Company.

### **10.2 Resignation of Member**

A Member may resign from the Company by giving the Board at least 12 months' notice.

### **10.3 Termination of membership**

- (a) A Member Council may recommend to the Board that the Company terminate the membership of a Member if the Member Council is of the view that the Member is not complying with its obligations as a Member of the Company.
- (b) At the first meeting of the Board after a recommendation is received to terminate a Membership, the Board must consider termination and in their discretion and subject to clause 10.3(c) either accept, accept subject to

conditions, defer until further information is provided or reject the recommendation. Any such decision must be based on one of the following substantive grounds:

- (i) the Member has failed to pay any fee that may be prescribed by the Directors from time to time within 12 months after the fee was due and payable;
  - (ii) where the Member is a Member Council, both Appointed Board Member positions for that Council have been vacant for 12 months, or no Appointed Board Members appointed by that Member Council have attended Board meetings for 12 months;
  - (iii) where the Member is a Member Council, that Member Council has failed to attend 3 consecutive general meetings of the Company;
  - (iv) the Member refuses or neglects to comply with this Constitution; or
  - (v) the Member engages in conduct which is prejudicial to the interests of the Company.
- (c) Before deciding to accept or accept subject to conditions the recommendation the Board must provide the Member whose Membership is under consideration notice of the proposed action and provide the Member with an opportunity to respond. The Board must allow the Member at least 14 days from when the Board provides the notice to respond to the notice;
- (d) If the Board decides to accept or accept subject to conditions the recommendation must be submitted to the Member Councils for consideration;
- (e) The Board's final resolution on the termination is subject to each Member Council (but not including a Member Council whose membership is the subject of this clause) agreeing in writing to terminate the Member; and
- (f) If the Member Councils (but not including a Member Council whose membership is the subject of this clause) agree in writing to terminate the Member, the Board must terminate the Membership of that Member by giving 14 days' notice of the termination to that Member.
- (g) If a dispute arises regarding the termination of a Member's membership under this clause 10.3, the dispute resolution procedure contained in clause 34 must be followed and, for the purposes of clause 34.1, written notification under clause 10.3(a) will be the notice of the dispute (as defined in clause 34.1).

## **11 Maintenance of Register**

### **11.1 Register of Members**

The Secretary must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member;
- (c) any conditions imposed on a Member's Membership; and
- (d) in respect of each body corporate who has ceased to be a Member, the date on which that body corporate ceased to be a Member.

### **11.2 Inspection of Register of Members**

The Company must provide access to the Register of Members in accordance with the Corporations Act.

## **12 General Meetings**

### **12.1 Annual general meetings**

The Company must hold an annual general meeting:

- (a) within 6 months of incorporation; and

- (b) after the first annual general meeting, before 30 August in each calendar year.

The Board or Secretary shall convene the annual general meeting.

#### **12.2 Business at an annual general meeting**

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, directors' report and auditor's report;
- (b) the appointment of the auditor; and
- (c) determination of auditor's remuneration.

#### **12.3 Director and Chief Executive Officer convening a general meeting**

Any Director or the Directors may convene a general meeting.

The Chief Executive Officer under delegation by the Board may convene a general meeting.

#### **12.4 Meetings requested by Members**

- (a) If the Board receives a request from a Member or Members with a right to vote at any general meeting the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, the signatures of the Members may be contained in more than one document.
- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

#### **12.5 Notice of general meeting**

At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting; and
- (c) state any proposed resolutions.

#### **12.6 Shorter notice of general meeting**

Subject to the Corporations Act, a shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to by all Members entitled to attend and vote at the meeting and any such general meeting will be treated as having been duly convened.

#### **12.7 Notice of resumption of an adjourned meeting**

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

#### **12.8 Use of technology**

A general meeting may be held in one place or two or more places. If a general meeting is held in two or more places, the Company must use technology that gives Members a reasonable opportunity to participate at that general meeting.

#### **12.9 Postponement or cancellation of a general meeting**

- (a) Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of a general meeting, or postpone or cancel a general

meeting.

- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

#### **12.10 Notice of change, postponement or cancellation of a meeting**

- (a) If the Directors have convened a general meeting, the Board may change the place (or places) of the general meeting, postpone or cancel the general meeting. If a Director has convened a general meeting, only the Director who convened the general meeting may change the place (or places) of the general meeting, or postpone or cancel the general meeting.
- (b) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.
- (c) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (d) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

#### **12.11 Omission to give notice relating to a general meeting**

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

### **13 Proceedings at general meetings**

#### **13.1 Quorum**

- (a) A quorum at a general meeting is where a simple majority of Representatives of the Member Councils is present in person, but must include a Representative of each of the Member Councils. The quorum must be present at all times during the general meeting.

Lack of Quorum

- (b) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
  - (i) if convened by a Director or on the request of Members, is dissolved; or
  - (ii) in any other case:
    - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors or Director at the meeting may determine; or
    - (B) if the Directors do not so determine, no Director is present or no Director present so determines:
      - (1) the date for the resumption of the adjourned general

- meeting will be on the same day in the next week;
- (2) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
  - (3) the place (or places) for the resumption of the adjourned general meeting will be at the same place (or places) as the adjourned meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

### **13.2 Chairing general meetings**

- (a) The chair of the general meeting will be the Director elected for the time being as chair of the Board meetings.
- (b) If the chair is not present within 15 minutes after the time appointed for any general meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that general meeting, the Directors present may elect a Director present to chair that general meeting.
- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, or the Members present otherwise determine that they wish to appoint a different person as chair, the Members present may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and the same place (or places) in the following week.

### **13.3 Conduct of general meetings**

The chair of each general meeting has charge of the conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

### **13.4 Adjournment**

- (a) The chair of a general meeting may adjourn the meeting to another date, time and place (or places) if it appears to the chair that it is likely to be impracticable to hold or to continue to hold the meeting because of the number of Members who wish to attend but who are not present.
- (b) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the chair.
- (c) No business may be transacted on the resumption of an adjourned or postponed general meeting other than the business referred to in the notice convening the adjourned or postponed general meeting.

## **14 Proxy**

A Member must not appoint a proxy to attend a general meeting or vote on their behalf.

## **15 Body Corporate Representative**

### **15.1 Appointment of a Corporate Representative**

- (a) Each Member must appoint at least one (1), and up to two (2), natural persons as its Representative(s) to exercise on its behalf any or all of the powers it may exercise:
  - (i) at meetings of the Members;
  - (ii) at meetings of creditors or debenture holders; or

- (iii) relating to resolutions to be passed without meetings.
- (b) In the event that a Member does not appoint any Representative, the Director(s) appointed by that Member shall be deemed to be the Member's Representative(s).
- (c) Where a Member appoints two (2) Representatives, the Representatives will have one collective vote and must vote as a block. In the event of a division between the Representatives of a Member with respect to any resolution, the vote of that Member will be in the negative.
- (d) The appointment of a Representative may be a standing one.

**15.2 Authority to act as a Representative**

- (a) An appointment of a Representative must be in writing and be signed by the body corporate or the Member Council appointing the Representative and state:
  - (i) the Member's or Member Council's name and address, or
  - (ii) the Company's name;
  - (iii) the Representative's name or the name of the office held by the Representative; and
  - (iv) the general meeting at which the Representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the Representative may specify the manner in which the Representative(s) must vote on any particular resolution and may restrict the exercise of any power.
- (c) The Company may rely on an instrument appointing a Representative as definitive evidence that the Representative has been validly appointed in accordance with the rules and procedures of that Member for the making of such an appointment.

**15.3 Instrument to be received by the Company**

- (a) An instrument purporting to appoint the Representative is not valid unless it is received by the Company at least 48 hours before the general meeting or, in the case of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.
- (b) An instrument appointing a Representative must be received by the Company at any of the following:
  - (i) the registered office; or
  - (ii) a place or electronic address specified for that purpose in the notice of the general meeting.

**15.4 Revocation of appointment of Representative**

The appointment of a Representative may be revoked by the Member who appointed the Representative by notice to the Company from the Member stating that the appointment of the Representative is revoked or by appointing a new Representative.

**16 Voting**

**16.1 Entitlement to vote**

Each Member entitled to vote at a general meeting may vote in person through their Representative(s). Each Member has one vote, whether on a show of hands, or a poll.

**16.2 No Casting vote**

If there is an equality of votes, either on a show of hands or on a poll, then the chairperson of the meeting is not entitled to a casting vote in addition to any votes

to which the chairperson is entitled as a Member or Representative, and consequently, the resolution fails.

### **16.3 Voting on resolution**

At any general meeting, a resolution put to a vote must be determined by a show of hands unless a poll is demanded in accordance with this Constitution. A resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

### **16.4 Objection to right to vote**

- (a) A challenge to a right to vote at a general meeting:
  - (i) may only be made at that general meeting; and
  - (ii) must be determined by the chair.
- (b) A determination made by the chair in relation to a challenge to a right to vote is binding on all Members and is final.

### **16.5 Written resolutions**

Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than one document and a signature includes an electronic signature.

### **16.6 Minutes**

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
  - (i) carried;
  - (ii) carried unanimously;
  - (iii) carried by a particular majority; or
  - (iv) lost or not carried by a particular majority,is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of the Company and the minutes are adopted at the next general meeting is evidence of that fact unless the contrary is proved.
- (b) After each general meeting, the Directors must record or cause to be recorded in the minutes book:
  - (v) the proceedings and resolutions of each general meeting;
  - (vi) any declarations at each general meeting; and
  - (vii) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within one month after the general meeting.
- (d) The minute books must be kept electronically at the registered office and distributed to the Directors electronically within three months after each general meeting.
- (e) Members may inspect the minute books electronically at any time on the Company's Intranet. No amount may be charged for inspection.

### **16.7 Disputes to be resolved by the chair**

The chair will determine any dispute in relation to any vote, and the determination of the chair is binding on all Members and is final.



## **17 Poll**

### **17.1 Chair may determine to take a poll**

The chair of a general meeting may determine that a poll be taken on any resolution.

### **17.2 Right to demand a poll**

A poll may be demanded on any resolution at a general meeting other than the election of a chair or the question of an adjournment by any Member present at the meeting.

### **17.3 Procedure for demanding a poll**

- (a) A poll may be demanded:
  - (i) before a vote on a show of hands is taken;
  - (ii) before the result of a vote on a show of hands is declared; or
  - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded on the election of a chair or the question of an adjournment, it must be taken immediately. If a poll is demanded on any other matter, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll does not prevent the general meeting from continuing for the transaction of any business.

## **18 Appointment and removal of Directors**

### **18.1 Number and Composition of Directors**

- (a) The Company must have six (6) Directors upon its incorporation.
- (b) The Directors shall consist of two (2) Board Members appointed by each of the Member Councils (Appointed Board Member).
- (c) Once appointed, the Appointed Board Member holds office in accordance with clause 18.4.
- (d) The Member Councils who have nominated an Appointed Board Member may withdraw their nomination at any time if the person so nominated no longer holds office with that Member Council or is no longer suitable to be nominated as the Appointed Board Member.
- (e) If an Appointed Board Member is unable to be present at a Board meeting, the Board shall allow a Senior Executive Officer of the Member Council that appointed Board Member to attend the Board meeting in the place of the absent Appointed Board Member. The Senior Executive Officer shall not have a vote and does not have the powers of a director.

### **18.2 Retirement or Vacancy**

The Company may, at a General Meeting at which:

- (a) a Director retires or otherwise vacates office; or
- (b) a Director vacancy exists by operation of clause 18.7 or otherwise,

- (c) request that the Board seeks a new nomination from the Member Council for an Appointed Board Member in accordance with clause 18.1.

### **18.3 Qualifications of Directors**

- (a) To be eligible for the office of Director a person must consent in writing to act as a Director.
- (b) In the event that it is required under a law, regulation or guideline applicable to the Company, the Company must ensure that a majority of the Directors are persons who have the requisite level or degree of responsibility to the general public.

### **18.4 Terms and retirement of Directors**

- (a) Subject to clause 18.5, Directors are elected for terms of two (2) years.
- (b) At each Annual General Meeting, any Director who has held office for two (2) years or more since last being elected, must retire from office but subject to clauses 18.2 and 18.5 is eligible for reappointment. A retiring Director holds office until the conclusion of the meeting at which that Director retires.
- (c) The Members may by ordinary resolution increase or decrease the period of time for which a Director holds office under clause 18.4(a).
- (d) The Members may by ordinary resolution remove any Director before the expiration of that Director's period of office, and may then request that the Board seek a new nomination from the Member Council for an Appointed Board Member in accordance with clause 18.1.

### **18.5 Reappointment of Directors**

Directors are entitled to seek reappointment as Directors provided that they are still nominated by the Member Councils as their Appointed Board Member and the Director's period of continuous service to the Company does not exceed a period of eight (8) years unless the Members, by ordinary resolution in General Meeting or unanimous written resolution, elect to waive this requirement for a particular Director.

### **18.6 Casual vacancy or additional Director**

- (a) The Directors may at any time request a new nomination from the Member Council for an Appointed Board Member in accordance with clause 18.1 either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number of Directors appointed by that Member Council set out in clause 18.1(b).
- (b) A Director appointed under clause 18.6(a) holds office until the conclusion of the next Annual General Meeting of the Company but is eligible for appointment at that meeting.

### **18.7 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, a person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting;
- (b) ceases to be eligible under clause 18.3;
- (c) resigns as a Director by notice in writing to the Company;
- (d) is no longer nominated by the Member Council as its Appointed Board Member under clause 18.1(d).
- (e) if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (f) dies;

- (g) is disqualified from acting as a Director under the Corporations Act;
- (h) is absent from Board meetings for a continuous period of six months without leave of absence from the Board.

## **19 Powers and duties of Board**

- (a) The primary objective of the Board is to achieve the best library service outcomes for the communities of the Member Councils within the context of each of the Member Councils' available resources and competing demands. These outcomes include the provision of resources and programs aimed at meeting the information, recreation, educational, placemaking, business, economic and cultural needs of the diverse communities of the Members in an equitable, effective, efficient, responsive and forward looking manner in accordance with the values and objectives as determined by the Board
- (b) Subject to this Constitution and the Corporations Act, the activities of the Company are to be managed by, or under the direction of, the Board.
- (c) Subject to this Constitution and the Corporations Act, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- (d) The powers of the Board include the power to:
  - (i) borrow or otherwise raise money;
  - (ii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
  - (iii) issue debentures and other securities, and any instrument (including any bond).
- (e) Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter Rules which are binding on the Members for the management and conduct of the business of the Company.
- (f) The rules, by-laws or policies previously adopted by the Eastern Regional Libraries Corporation become the rules, by-laws or policies of the Company at the date of incorporation of the Company.

## **20 ACNC governance standards**

The Company and each Director must comply with the duties described in governance standard 5 as set out in the regulations made under the ACNC Act and such other obligations as apply under the ACNC Act and the Corporations Act from time to time.

## **21 Delegation**

- (a) The Board may delegate any of its powers to:
  - (i) a Director;
  - (ii) a committee in accordance with clause 22;
  - (iii) an employee of the Company; or
  - (iv) any other person.
- (b) The power may be delegated for such time as determined by the Directors and the Directors may at any time revoke or vary the delegation.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Directors, and the exercise of the power by the delegate is as effective as if the Directors had exercised it.
- (d) The Directors may continue to exercise any power they have delegated.

## **22 Committees**

### **22.1 Delegation to committees**

- (a) The Directors may delegate any of their powers, to a committee which may consist of one or more Directors and such other persons as they think fit.
- (b) A committee to which any powers have been delegated under clause 22.1(a) must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.
- (c) Notwithstanding any delegation of authority under this clause 22.1, the Directors remain responsible for any decisions of a committee appointed by them and must ensure that the committee exercises its powers appropriately.

### **22.2 Meetings of committees**

A committee may meet and adjourn as it thinks proper.

### **22.3 Chairperson of a committee**

The members of a committee may elect one of their number as chairperson of their meetings. If a meeting of a committee is held and:

- (a) a chairperson has not been elected; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the committee members involved may elect one of their number to be chairperson of the meeting.

### **22.4 Determination of questions**

- (a) Questions arising at a meeting of a committee are to be determined by a majority of votes of the members present and voting.
- (b) In the event of an equality of votes, the chairperson of the meeting does not have a casting vote.

## **23 Negotiable instruments**

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

## **24 Remuneration and reimbursement for expenses**

### **24.1 Remuneration of Director**

The Company must not pay and a Director is not entitled to receive any fee (or other remuneration) from the Company for services performed as a Director.

### **24.2 Reimbursement of expenses**

Directors are entitled to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings of the Board and committees of the Board, if approved by the Board.

## **25 Board meetings**

### **25.1 Convening meetings**

- (a) In the ordinary course, the Chief Executive Officer will convene Board meetings in accordance with the determinations of the Board.
- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

## **25.2 Notice of meetings**

- (a) Reasonable notice of each Board meeting must be given to the Directors entitled to receive a notice (if any).
- (b) Each notice must state:
  - (i) the date, time and place (or places) of the Board meeting;
  - (ii) the general nature of the business to be conducted at the Board meeting; and
  - (iii) any proposed resolutions.

## **25.3 Omission to give notice**

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

## **25.4 Use of technology**

A Board meeting may be held in one, two or more places using such technology as determined by the Board and set out in the notice. The Board must use technology that gives Directors a reasonable opportunity to participate at that Board meeting. The clauses relating to meetings of Directors apply to each such meeting in the usual manner.

## **25.5 Quorum at meetings**

- (a) A quorum at a Board meeting is where each Member Council has at least one Appointed Board Member present in person. The quorum must be present at all times during the Board meeting.
- (b) However, the quorum requirement shall not apply with respect to the Appointed Board Member(s) of a particular Member Council where that Appointed Board Member(s) have failed to attend the prior two Board meetings, provided that after each Board meeting the Company advised the Member in writing that its Appointed Board Member(s) failed to attend the Board meeting.

## **25.6 Chair of meetings**

- (a) At the first Board meeting a chair and deputy chair will be elected from the Directors present in person.
- (b) Subject to a vote of the Board to the contrary:
  - (i) The chair and deputy chair of the Board shall be held on an annual rotational basis;
  - (ii) A chair and deputy chair shall serve for the duration of a calendar year; and
  - (iii) At the first Board meeting of a new calendar year, a new chair and deputy chair shall be elected from the Directors appointed by the Member whose turn it is to hold the chair and deputy chair.
- (c) The Directors may elect a Director to chair a Board meeting by a majority vote.
- (d) If the chair is not present within 15 minutes after the time appointed for a Board meeting or if the chair is unwilling or unable to act as chair for the whole

or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.

#### **25.7 Passing resolutions at meetings**

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director present in person is entitled to vote and has one vote.

#### **25.8 No Casting vote**

If on any resolution an equal number of votes is cast for and against a resolution, the chair does not have a casting vote in addition to any vote cast by the chair as a Director and subsequently, the resolution is lost.

#### **25.9 Conduct of meetings**

The chair of each Board meeting has charge of the conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

#### **25.10 Written resolutions**

The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document, with each document to be identical to each other document and a signature can be an electronic signature.

#### **25.11 Minutes of meetings**

- (a) Within three months after each Board meeting, the Directors must record or cause to be recorded in the minute books:
  - (i) the proceedings and resolutions of each Board meeting; and
  - (ii) all resolutions passed without a Board meeting.
- (b) The chair, or the chair of the next Board meeting, must sign the minutes within three months after the meeting.
- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books between the hours of
- (e) 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

### **26 Director's conflict of interests**

#### **26.1 Declaration of interest**

- (a) Any Director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out:
  - (i) the nature and extent of the interest; and
  - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

#### **26.2 Voting by interested Directors**

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) vote on the matter at a meeting; or
- (b) be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

## **27 Appointment of Secretary and Chief Executive Officer**

### **27.1 Secretary**

- (a) The Company must have at least one Secretary. The Board has the power to appoint a natural person to act as secretary on the terms and for such period as the Board may determine.
- (b) Any Secretary appointed may be removed at any time by the Board.

### **27.2 Chief Executive Officer**

- (a) The Directors may appoint a Chief Executive Officer on such terms and conditions (including as to remuneration) as they consider appropriate.
- (b) The Directors may delegate any of their powers to the Chief Executive Officer:
  - (i) on the terms and subject to any restrictions they decide; and
  - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Board,and may revoke the delegation at any time.
- (c) The Chief Executive Officer may be invited to attend all meetings of the Directors, but may not hold the office of a Director and is not entitled to vote.

## **28 Removal and remuneration of Auditor**

### **28.1 Appointment of Auditor**

An Auditor will be appointed by the Company at a general meeting for a period not exceeding four years from the date that the Auditor provided a request for quote.

### **28.2 Remuneration of Auditor**

The remuneration of the Auditor may be determined by the Company at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

### **28.3 Removal of Auditor**

- (a) Subject to the Corporations Act, the Company may remove an Auditor by resolution at a general meeting.

Note: the Corporations Act requires 2 months' notice to be provided to remove an Auditor.

### **28.4 Auditor's attendance at general meetings**

The Auditor must be notified of, and may attend, any general meeting and any Audit or Risk Advisory Committee meeting. The Auditor is entitled to be heard at any general meeting or Audit and Risk Advisory Committee it attends on any part of the business of the general meeting which concerns the Auditor.

## **29 Execution of documents**

Documents executed for and on behalf of the Company must be executed by:

- (a) Directors;

- (b) a Director and the Secretary; or
- (c) the Chief Executive Officer under delegation.

## **30 Financial records**

### **30.1 Member's access to financial records**

A Member or any other person may inspect financial or any other records of the Company where such inspection is authorised by the Board or its delegate, or required by law or by order of a court with jurisdiction.

### **30.2 Directors' access to financial records**

Any Director may at any time access and inspect any financial and any other record of the Company, other than those protected by privacy principles, freedom of information or other legislation.

### **30.3 Access to financial records after ceasing to be a Director**

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director, if required by law or by order of a court.

## **31 Notices**

### **31.1 General**

Any notice, statement or other communication under this Constitution must be in writing, except that any notice convening a Board meeting does not need to be in writing.

### **31.2 How to give a communication**

In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:

- (a) personally delivered;
- (b) left at the person's current address as recorded in the Register of Members;
- (c) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by email to the person's current email address for notices; or
- (e) by other electronic means.

### **31.3 Communications by post**

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting;
- (b) outside Australia or to an address outside Australia, ten Business Days after posting.

### **31.4 Communications by email**

A communication is taken to be given if sent by email immediately on sending the email unless the sender receives a delivery failure notification indicating that the email has not been delivered to the information system of the recipient.

### **31.5 After hours communication**

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,



it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

## **32 Indemnity and insurance**

### **32.1 Indemnity**

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may procure directors and officeholders insurance or pay any premium in respect of a contract of insurance between an insurer and a director or other officer or any person who has been a director or other officer of the Company in respect of the liability suffered or incurred in or arising out of the conduct of any activity of the Company and the proper performance by the director or other officer of any duty.
- (b) The indemnity in clause 32.1(a):
  - (i) is enforceable without the officer first having to make a payment or incur an expense;
  - (ii) is enforceable by the officer notwithstanding that the officer has ceased to be an officer of the Company; and
  - (iii) applies to any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the officer, whether incurred before or after the date of this Constitution.

### **32.2 Documenting indemnity**

The Company may enter into an agreement containing an indemnity in favour of any officer. The Board will determine the terms of the indemnity contained in the agreement.

### **32.3 Insurance**

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may pay any premium in respect of a contract of insurance between an insurer and an officer or any person who has been an officer of the Company in respect of the liability suffered or incurred in or arising out of the conduct of any activity of the Company and the proper performance by the officer of any duty.
- (b) If the Board determines, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

## **33 Winding up and revocation**

### **33.1 Winding up of the Company**

- (a) In the case of the winding-up of the Company, any surplus assets that remain after the satisfaction of all debts and liabilities, then, subject always to clause 33.2, those surplus assets must be transferred to another organisation with charitable purposes which is not carried on for the profit or gain of its individual members.
- (b) The organisation will be determined by a special resolution of the Members at or before the time of dissolution.

### **33.2 Transfer of surplus assets – deductible gift recipients**

- (a) Where the Company has been endorsed as a deductible gift recipient under Subdivision 30 BA of the Tax Act, either as an entity or in relation to a fund or an institution it operates, then where:
  - (i) the Company is wound up;
  - (ii) the fund or institution is wound up; or

- (iii) the endorsement under Subdivision 30 BA of the Tax Act is revoked;
- (b) any surplus:
  - (i) Gifts;
  - (ii) Deductible Contributions; and
  - (iii) money received by the Company because of such Gifts or Deductible Contributions,

remaining after payment of all liabilities must be transferred to one or more organisations, funds or institutions that comply with clause 33.1 and are deductible gift recipients.

## **34 Dispute resolution**

### **34.1 Handling a dispute**

Where there is a dispute, grievance or another disagreement between a Member and the Company, or between a Member and a Member, whether arising out of the application of this Constitution or otherwise (**Dispute**), then the party raising the Dispute must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other party in writing of the nature of the Dispute, and the following must occur:

- (a) the parties must in the period of 14 days from the service of the notice of the Dispute (Initial Period) use their best endeavours to resolve the Dispute;
- (b) if the parties are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the parties;
- (c) if the disputants are unable to agree on a mediator within 7 days of the expiration of the Initial Period, the parties may request the chairperson of the Resolution Institute to nominate a mediator to whom the Dispute will be referred;
- (d) the costs of the mediation must be shared equally between the parties; and
- (e) where:
  - (i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 34.1(b);
  - (ii) the mediation has not occurred within 6 weeks of the date of the notice of the Dispute; or
  - (iii) the mediation fails to resolve the Dispute;

then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.

### **34.2 Urgent interlocutory relief**

The procedure in clause 34.1 will not apply in respect of proceedings for urgent or interlocutory relief.

# Schedule 1

## Appointment of Representative at a General Meeting

### Your Library Ltd

#### ACN

The Member Council: ..... (name)  
of ..... (address)  
being a member of the above named Company hereby appoint  
..... (name)  
of ..... (address)  
and ..... (name)  
of ..... (address)  
as our Representation to attend and vote for us on our behalf at the meeting of the members of the  
Company to be held on the ..... day of ..... 20 ..... and at any  
adjournment of that meeting.

[TO BE INSERTED IF DESIRED] This form is to be used in favour of/against the resolution (Strike  
out whichever is not desired)

[INSERT DETAILS OF SPECIFIC RESOLUTIONS IF DESIRED]

Signed: .....  
Name: .....  
Position: .....  
Dated: .....

This notice must be returned to Your Library Ltd ACN at:  
[ADDRESS/EMAIL ADDRESS/FAX No]  
by [TIME] on [DATE]  
[INSERT SPECIFIC DETAILS ENSURING THAT THE TIME IS 48 HOURS BEFORE THE TIME  
FOR THE MEETING]