

Your Library Agreement

Your Library Ltd

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YOUR LIBRARY AGREEMENT made the day of 2022.

BETWEEN:

KNOX CITY COUNCIL

- and -

MAROONDAH CITY COUNCIL

- and -

YARRA RANGES COUNCIL

- and -

YOUR LIBRARY LTD ACN

1 Background

- 1.1 The Founding Member Councils first established the Eastern Regional Libraries Corporation (ABN 67 990 548 408) on or about 14 June 1996 by agreement made under section 196 of the Local Government Act 1989 (Vic).
- 1.2 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.
- 1.3 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.
- 1.4 Therefore, on [insert date], 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.
- 1.5 The Company is established as a beneficial enterprise under the Local Government Act 2020, section 110, to
 - (a) provide resources and programs aimed at meeting the information, recreation, educational and cultural needs of the diverse communities of Knox, Maroondah and Yarra Ranges in an equitable, effective, efficient, responsive and forward-looking manner in accordance with the values and objectives of the Corporate Plan;
 - (b) provide or ensure the provision of, subject to any conditions attached to any State government library subsidies and grants to the Company or the Member Councils, a regional library service for the Member Councils;
 - (c) make By-Laws relating to the Company and perform any other functions which are conferred on Company under this Agreement or its Constitution, including defining overall policy objectives, developing strategic policy, letting tenders for the provision of services, monitoring contracts under which services are provided, and approving a corporate plan and a strategic resources plan; and
 - (d) to do all things necessary or expedient in accordance with this Agreement and the Constitution for the carrying out of its functions.

- 1.6 The Founding Member Councils have agreed to record their initial contribution and transfer of assets, licences, operations and activities from the Eastern Regional Libraries Corporation to the Company pursuant to this Agreement, which shall operate in addition to the Constitution of the Company.
- 1.7 The Company will continue to service the area comprising the Member Councils' municipal districts.
- 1.8 The Founding Member Councils have agreed to contribute certain sums of money annually for the purposes of the Company pursuant to the terms of this Agreement.

2 Purpose of this Agreement

- 2.1 The purpose of this Agreement is to govern the relationship between the Member Councils as members of the Company, including with respect to the contribution of assets to the Company and ongoing support and contributions to be provided by the Member Councils to the Company.
- 2.2 The Member Councils and the Company have entered into their respective undertakings and agreements contained in this Agreement in consideration of the efficient and orderly conduct and management of the Company, in the interests of the Company and the Member Councils.
- 2.3 The Member Councils jointly and severally covenant that during the continuance of this Agreement, each of them will abide by the provisions of this Agreement and will exercise their rights and powers as Members of the Company, in accordance with the provisions contained in this Agreement.
- 2.4 Each of the Member Councils covenant that the provisions of this Agreement will be enforceable by or against each of them and by or against any of the other Member Councils, and in the event of an inconsistency between this Agreement and the Constitution, this Agreement shall take precedence.
- 2.5 Each of the Member Councils will act, and execute such further instruments, consents and make such decisions and vote on resolutions of meetings of the Company and exercise their powers of appointment to the Board, so as to give full effect to the provisions of this Agreement.
- 2.6 The Company acknowledges that the Member Councils have agreed to regulate their conduct in accordance with this Agreement. The Company will conduct its business and affairs by ensuring that it will act on lawful resolutions and directions given by the Member Councils in accordance with this Agreement in respect of any matter which is governed or regulated by this Agreement.

3 Duration

- 3.1 This Agreement commences on the date of this Agreement and will continue to be binding on each of the Member Councils while that Member Council remains a member of the Company and, insofar as is relevant and appropriate in respect to continuing obligations, after that Member Council has ceased to be a member of the Company.

4 Interpretation

4.1 Definitions

In this Constitution unless the contrary intention appears:

Agreement means this agreement, to be known as the "Your Library Agreement".

Board means the directors of the Company present at a meeting, duly convened as a Board meeting, at which a quorum is present.

CEO means the Chief Executive Officer of the Company.

Company means Your Library Ltd (ACN).

Constitution means the constitution of the Company as amended from time to time.

Eastern Regional Libraries Corporation means Eastern Regional Libraries Corporation (ABN 67

990 548 408) incorporated under section 196 of the Local Government Act 1989 (Vic).

Financial Contribution means the annual financial contribution of the Member Councils to the Company.

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

Initial Contributions means the equity transferred to the Company from the Eastern Regional Libraries Corporation for the benefit of library services within the LGAs the Founding Member Councils

LGA means Local Government Area.

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

Premises means the premises of the library branches occupied by the Eastern Regional Libraries Corporation at the date of this Agreement listed in the Schedule.

Schedule means the schedule to this Agreement.

Specific Contribution means specific contributions made to the Company by a Member Council for the benefit of libraries and library branches within the LGA of that Member Council.

5 Contribution of Initial Contribution and Assets

- 5.1 The Founding Member Councils record that the Eastern Regional Libraries Corporation holds or has the use of the Initial Contributions and assets provided by or obtained for the benefit of libraries operated by the Eastern Regional Libraries Corporation within the LGAs of the respective Founding Member Councils.
- 5.2 The parties record that:
 - (a) the Founding Member Councils have made available to the Eastern Regional Libraries Corporation the Premises set out in the Schedule for the purpose of the Company operating library branches; and
 - (b) the Eastern Regional Libraries Corporation holds the Initial Contributions set out in the Schedule for the use of library services within the LGAs of the Founding Member Councils.
- 5.3 Legal title and ownership of assets held by the Eastern Regional Libraries Corporation as at the date of this Agreement shall be deemed to be transferred to the Company upon the execution of this Agreement, and the parties shall do all things reasonably necessary to effect the transfer of such assets.
- 5.4 The Company shall assume the rights and responsibilities of the Eastern Regional Library Corporation with respect to the Premises on the date of this Agreement.
- 5.5 The parties agree that the Company shall utilise the Initial Contributions set out in the Schedule for the benefit of library services within the LGA of the relevant Founding Member Council. In complying with this clause, the Company shall have consideration of the overall value of the Initial Contribution, including any depreciation of the value of the assets comprising the Initial Contribution, rather than any specific asset comprising a part of the Initial Contribution.

6 Specific Contribution of Assets

- 6.1 A Member Council may make a Specific Contribution of assets to the Company. Subject to any specific agreement at the time of the Member Council making the Specific Contribution, the Company shall utilise the Specific Contribution for the benefit of libraries within the LGA of the relevant Member Council that contributed the Specific Contribution. In complying with this clause, the Company shall have consideration of the overall value of the Specific Contribution, including any depreciation of the value of the assets comprising the Specific Contribution, rather than any specific asset comprising a part of the Specific Contribution.

7 Corporate Plan

- 7.1 The Company and the Board shall be responsible for the development of a corporate plan. The corporate plan may operate for one or more years, but shall not operate for more than five years.
- 7.2 The Company and the Board shall formulate the corporate plan in consultation with the Member Councils.
- 7.3 The Board shall present the corporate plan to a general meeting of the Company for approval by the Member Councils.
- 7.4 The Company must not substantially deviate from an adopted corporate plan without first obtaining the Member Councils' written approval.

8 Budget and Strategic Resource Plan

- 8.1 The CEO, in collaboration with the Board, shall be responsible for developing a proposed budget and strategic resource plan by 1 July of each year.
- 8.2 The budget and strategic resource plan shall identify the financial and other resource requirements of the Corporation.
- 8.3 The proposed budget shall be developed in accordance with general accounting principles and shall include:
 - (a) Current financial reports showing the assets, liabilities and equity of the Company;
 - (b) The amount of each Member Council's proposed Financial Contribution to the Company for the financial year commencing on 1 July, calculated in accordance with clause 9;
 - (c) The amount of funds expected to be received from other sources for the financial year commencing on 1 July; and
 - (d) The expected expenses of the Company for the financial year commencing on 1 July.
- 8.4 The Board must not adopt a proposed annual budget or a revised annual budget that has not been approved, in writing, by the Member Councils.
- 8.5 Upon the Board approving the budget in a general meeting of the Company, the Member Councils must pay the Financial Contributions in accordance with clause 9 or as otherwise specified in the budget.
- 8.6 The Company is not responsible for specific maintenance, repair, replacement and operating costs of assets owned by any one or more of the Councils, including furniture.
- 8.7 Each Member Council will cover the maintenance, repair, replacement and operating costs of its assets, including furniture.
- 8.8 The Company must not call tenders for the whole of a service or major service delivery component contract without the prior written consent of all the Member Councils.

9 Member Council Financial Contributions

- 9.1 In developing the proposed Financial Contributions of each Member Council, the Company shall have regard to:
 - (a) The number of libraries, library services and other services provided or expected to be provided by the Company in the Member Council's LGA;
 - (b) The proportion of the Company's administrative staffing and resources that will be utilised in the Member Council's LGA; and
 - (c) The State Governments' Public Library Grant made available by the Member Council to the Company.

- 9.2 The Financial Contributions shall be calculated with the purpose of covering the ongoing operational costs of the Company, other than operational costs that can be funded by revenue generated by the Company or obtained by other external funding.
- 9.3 The amount to be contributed to the Company by each Member Council during each financial year shall be the sum of:
- (a) the amount specified in the Company's adopted annual budget in accordance with the formula determined by the Board and formally endorsed by each Member Council from time to time;
 - (b) all State Government library grants and subsidies received by the Council for library services, unless otherwise agreed by the Board;
 - (c) funds received by the Member Council from any other sources for library services to be provided by the Company; and
 - (d) funds received by the Member Council from any other sources for library services to be provided by the Company, in respect of which no provision has been made in the Company's budget.
- 9.4 Each Member Council's financial contribution to the Company under clause 9 shall be paid in quarterly instalments on the first day of July, October, January and April of each year, or, if pursuant to a contract with an external service provider, the Company is required to make payments more frequently than quarterly, with sufficient frequency to ensure that the Company is capable of observing its contractual obligations with the external service provider.
- 9.5 If the proposed annual budget has not been approved by each Member Council by 1 July, the first instalment for that year shall be the same amount paid by the Member Council in the previous quarter and the second instalment shall include any adjustment to ensure that the two instalments together equal half of the amount to be paid by that Member Council for that financial year or as soon as reasonably practicable.
- 9.6 All other Council contributions under clause 9 shall be paid within one month of receipt of the monies by the Member Council.

10 Reporting & Accounts

- 10.1 The Chief Executive Officer shall provide each Member Council with a copy of the Company's annual report, including audited financial accounts, to ensure that they meet their reporting timelines in accordance with the Local Government Act 2020:
- (a) within three months of the end of each financial year,
 - (b) or at another date (or dates) to be agreed with the Member Councils.
- 10.2 The Company through its Directors and Member Council officers responsible for library services must provide each Member Council with quarterly financial reports which include an operating statement reporting the Company's performance to budget and other performance indicators as detailed in the corporate plan and annual budget.
- 10.3 The books of accounts and all other financial records of the Company shall be available for inspection at all reasonable times by any Director, a person authorised by a Member Council or any person authorised by the Secretary of the Department responsible for administering State Government library subsidies and grants from which the Company or Member Councils receive funds.

11 Library Services and Branch Libraries

- 11.1 The Company and a Member Council may enter into an agreement for the Member Council to provide the Company with services, including the lease or licence of a premises;

- 11.2 The Company and a Member Council may open new library branches.
- 11.3 The Company and a Member Council may expand, renovate or develop existing library branches.
- 11.4 The Company and a Member Council may enter into a funding arrangement whereby the Member Council provides the Company with Specific Contributions towards establishing a new library branch or undertaking a significant expansion, renovation or development of a library branch.
- 11.5 The occupancy of branch (including mobile) libraries may be subject to a separate agreement between the respective Member Council and the Company that sets out the obligations and the responsibilities of the parties.
- 11.6 If, in respect of any of the branch (including mobile) libraries described in the Schedule, no agreement of the type described in clause 11.5 exists as of the date of this Agreement, the Member Council that requires that there be an agreement to which clause 11.5 applies must negotiate in good faith with the Company to procure the execution of an agreement.
- 11.7 Nothing in this clause 11 of this Agreement generally requires a Member Council to continue to provide the facilities or services provided to the Company at the commencement of this Agreement or subsequently, nor restricts a Member Council from adding to, changing or withdrawing any of the facilities provided to the Company.
- 11.8 Where a Member Council adds to, changes or withdraws any of the services provided by, or facilities provided to, the Company that leads to excess employees, then that Member Council will be liable for the redundancy costs for excess employees, whether deployed in branch libraries, the administration of the Company or otherwise. This clause is subject to every attempt first being made by the Company to redeploy the affected employees within its operations.

12 Premises provided by a Member Council

- 12.1 For the avoidance of doubt, the Company and a Member Council may renegotiate any agreement or enter into a new agreement with respect to any Premises listed in the Schedule.

13 Admission of New Member Councils

- 13.1 The parties agree that a new Member Council shall only be admitted to membership of the Company pursuant to clause 8.3(c) of the Constitution in circumstances where the new Member Council enters into this Agreement with the Company and each existing Member Council.

14 Distribution of Assets upon a Member Council ceasing to be a Member

- 14.1 In the event that a Member Council ceases to be a member of the Company, the Member Council may require the Company to transfer assets held by the Company for the benefit of library branches within the LGA of that Member Council to another library corporation or other body corporate, provided that the library corporation or body corporate is a charity of the type which the Company could make a distribution of surplus assets to under clause 33 of the Constitution were the Company being wound up.
- 14.2 The Company may charge the Member Council its reasonable costs associated with complying with a direction under clause 14.1.
- 14.3 For the purposes of clause 14.2, the cost to the Company of a Council's withdrawal from this Agreement, shall include (but not be limited to):
- (a) redundancy costs for excess employees (whether deployed in branch libraries, the administration of the Company or otherwise);
 - (b) the cost of extracting bibliographic records for that Council's books and materials; and
 - (c) the cost of amending bibliographic records to account only for those books and materials which remain.
- 14.4 The portion of assets to which a Member Council is entitled to have directly transferred to another library corporation or body corporate under clause 14.1:
- (a) is those books and like materials housed within a branch (including mobile) library located in

- its municipal district; and
- (b) may not be taken in the form of other property or cash unless the Board agrees; and
 - (c) the cost of removing the books and like materials shall be paid for by the Member Council.
- 14.5 The portion of assets (other than books and like materials) to which a Member Council is entitled to have transferred to another library corporation or body corporate under clause 14.1:
- (a) shall be calculated according to the value of the assets as disclosed by the relevant audited financial statements;
 - (b) shall be the value of the Member Council's proportionate share of the Initial Contributions and Specific Contributions, as adjusted by any increase or decrease in that value from the date of the Initial Contribution or Specific Contribution(s) and the date of the Member Council's withdrawal; and
 - (c) may be taken in such combination of property and cash as agreed between that Member Council, the other Member Councils and the Company.
- 14.6 For the purposes of clause 14.5, the increase or decrease in the value of a Member Council's Initial Contribution and Specific Contributions will be calculated in the same proportion as the Member Council's financial contribution to the Company relative to all other Member Councils' contributions to the Company between the date of the Initial Contribution or Specific Contribution(s) and the date of that Member Council's withdrawal.
- 14.7 A Member Council that withdraws from this Agreement shall be liable for a portion of the liabilities, including contingent liabilities, of the Company as at the date of its withdrawal from the Agreement.
- 14.8 The portion of the liabilities and contingent liabilities to which a Member Council is liable under clause 14.7:
- (a) shall be calculated according to the liabilities and contingent liabilities as disclosed by the relevant audited financial statements and reports, and any notes attached to them; and
 - (b) shall be the value of the Member's Council's proportionate share in the Initial Contributions and Specific Contributions, as adjusted by any increase or decrease in those values between the date of the Initial Contribution or Specific Contribution(s) and the date of that Member Council's withdrawal.
- 14.9 For the purposes of clause 14.8(b), the increase or decrease in the value of a Member Council's Initial Contribution and Specific Contributions will be calculated in the same proportion as the Member Council's financial contribution to the Company relative to all other Member Councils' contributions to the Company between the date of the Initial Contribution or Specific Contribution(s) and the date of that Member Council's withdrawal.

15 Distribution of Assets upon winding up of Company

- 15.1 In the event that the Company is wound up, each Member Council may nominate a library corporation or other body corporate to receive surplus assets of the Company.
- 15.2 The Member Councils, in exercising their power under clause 33 of the Constitution to distribute surplus assets of the Company, shall act in a manner that is fair and reasonable to each Member Council, and in particular:
- (a) The parties shall, as far as is reasonably practicable, transfer assets held by the Company for the benefit of library branches within the LGA of a particular Member Council to the library corporation or other body corporate nominated by that Member Council; and
 - (b) The calculation of the distribution of assets and liabilities will be in accordance with the provisions of clause 14 ***Distribution of Assets upon a Member Council ceasing to be a Member.***

16 Amendment of this Agreement

- 16.1 An amendment to this Agreement has no effect unless it is:
- (a) in writing and signed by all parties to the Agreement; and
 - (b) the parties agree that if a Council transfers assets to the Company or makes available additional assets for the use of the Company in accordance with the clauses 6 and 11, this does not constitute an amendment to this Agreement.

17 Agreement Review

- 17.1 The Member Councils shall, together with the Board, review the operation of this Agreement at least once in every four years.

18 Cessation of the original agreement

- 18.1 Subject to clause 18.2, the Original Regional Library Agreement ceases on the day on which this Agreement takes effect.

- 18.2 Any:

- (a) right accrued; or
- (b) obligation incurred

by reason of the Original Agreement will continue to exist notwithstanding the cessation of the Original Agreement.

19 Dispute Resolution

- 19.1 Any dispute, grievance or other disagreement between Member Councils concerning the interpretation or application of this Agreement shall be dealt with in the same manner as a dispute would be dealt with under the Constitution of the Company.

The parties execute this Agreement to evidence being bound by it:

EXECUTED BY KNOX CITY COUNCIL by
being signed by the persons authorised to sign
on behalf of the Council

.....
(signature)
Name of authorised officer:

.....
(signature)
Name of authorised officer:

.....
Position:
.....

.....
Position:
.....

Date:/...../2022

**EXECUTED BY MAROONDAH CITY
COUNCIL** by being signed by the persons
authorised to sign on behalf of the Council

.....
(signature)
Name of authorised officer:

.....
(signature)
Name of authorised officer:

.....
Position:
.....

.....
Position:
.....

Date:/...../2022

EXECUTED BY YARRA RANGES COUNCIL

by being signed by the persons authorised to sign on behalf of the Council

.....
(signature)

Name of authorised officer:

.....
(signature)

Name of authorised officer:

.....
Position:

.....
Position:

.....

.....

Date:/...../2022

EXECUTED BY YOUR LIBRARY LTD by

being signed by the persons authorised to sign on behalf of the Company

.....
(signature)

Name of authorised officer:

.....
(signature)

Name of authorised officer:

.....
Position: Director

.....
Position: Director

Date:/...../2022

SCHEDULE PREMISES & INITIAL CONTRIBUTIONS



Premises:

- Bayswater Library
- Boronia Library
- Ferntree Gully Library
- Knox Library
- Rowville Library

Calculation of contribution to *Your Library Ltd*

Initial contribution to ERL 1996:

| | \$,000 | % |
|--|----------------|----------------|
| Member Councils' initial contributions to ERL | | |
| Knox | \$1,342 | 36.39% |
| Maroondah | \$918 | 24.89% |
| Yarra Ranges | \$1,429 | 38.72% |
| Total Member Councils' initial contributions to ERL | \$3,689 | 100.00% |

Accumulated surpluses to 30 June 2021 \$10,257

| | | |
|------------------------------------|-----------------|----------------|
| Total Equity @ 30 June 2021 | \$13,946 | 100.00% |
|------------------------------------|-----------------|----------------|

Member Councils' share of Total Equity @ 30 June 2021

| | | Less Distribution | Adjusted Total Equity | Revised % Equity* |
|---|-----------------|----------------------|-----------------------------|----------------------|
| Revised Contribution to ERL after distribution | | | | |
| Knox | \$5,075 | \$2,000 | \$3,075 | 38.70% |
| Maroondah | \$3,471 | \$2,000 | \$1,471 | 18.51% |
| Yarra Ranges | \$5,400 | \$2,000 | \$3,400 | 42.79% |
| Revised Equity at 30 June 2021 | \$13,946 | \$6,000 | \$7,946 | 100.00% |

*The revised percentage equity will be the percentage distribution available to the Member Councils on withdrawal or dissolution.

**SCHEDULE
PREMISES & INITIAL CONTRIBUTIONS**



Premises:

- Croydon Library
- Realm Library

Calculation of contribution to *Your Library Ltd*

Initial contribution to ERL 1996:

| | \$,000 | % |
|--|----------------|----------------|
| Member Councils' initial contributions to ERL | | |
| Knox | \$1,342 | 36.39% |
| Maroondah | \$918 | 24.89% |
| Yarra Ranges | \$1,429 | 38.72% |
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|------------------------------------|-----------------|----------------|
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|------------------------------------|-----------------|----------------|

Member Councils' share of Total Equity @ 30 June 2021

| | | Less Distribution | Adjusted Total Equity | Revised % Equity* |
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| Maroondah | \$3,471 | \$2,000 | \$1,471 | 18.51% |
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| Revised Equity at 30 June 2021 | \$13,946 | \$6,000 | \$7,946 | 100.00% |

*The revised percentage equity will be the percentage distribution available to the Member Councils on withdrawal or dissolution.

SCHEDULE PREMISES & INITIAL CONTRIBUTIONS



Premises:

- Belgrave Library
- Healesville Library
- Lilydale Library
- Montrose Library
- Mooroolbark Library
- Yarra Junction
- Flexi Vehicle

Calculation of contribution to Your Library Ltd

Initial contribution to ERL 1996:

| | \$,000 | % |
|--|----------------|----------------|
| Member Councils' initial contributions to ERL | | |
| Knox | \$1,342 | 36.39% |
| Maroondah | \$918 | 24.89% |
| Yarra Ranges | \$1,429 | 38.72% |
| Total Member Councils' initial contributions to ERL | \$3,689 | 100.00% |

Accumulated surpluses to 30 June 2021 \$10,257

Total Equity @ 30 June 2021 \$13,946 100.00%

Member Councils' share of Total Equity @ 30 June 2021

| | | Less Distribution | Adjusted Total Equity | Revised % Equity* |
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| Revised Equity at 30 June 2021 | \$13,946 | \$6,000 | \$7,946 | 100.00% |

*The revised percentage equity will be the percentage distribution available to the Member Councils on withdrawal or dissolution.